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GEOHERMAL REGULATIONS AND STATUTES
DECEMBER 1987

Compiled by

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Alaska Division of
Geological and Geophysical Surveys

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Fairbanks, Alaska 99709

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GEOHERMAL REGULATIONS AND STATUTES DECEMBER 1987

AS CONTAINED IN THE
ALASKA ADMINISTRATIVE CODE
AND THE ALASKA STATUTES



STATE OF ALASKA

**DEPARTMENT OF
NATURAL RESOURCES**

**DIVISION OF GEOLOGICAL
AND GEOPHYSICAL SURVEYS**

STATE OF ALASKA

**GEOHERMAL
REGULATIONS
AND STATUTES**

AS CONTAINED IN THE
ALASKA ADMINISTRATIVE CODE
AND THE ALASKA STATUTES

Steve Cowper
Governor

Judith A. Brady
Commissioner
Department of Natural Resource Resources

December 1987

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Alaska Statutes

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Chapter 25. Evidence.

Sec. 09.25.110. Inspection and copies of public records. Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record. (AS 3.22 ch 101 SLA 1962)

Cross references. For proof of public records, see Evid. R. 1005; for management and preservation of public records, see AS 40.21.

NOTES TO DECISIONS

For discussion of the history of this section, see *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Broad policy. — This section and AS 09.25.120 articulate a broad policy of open records. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

The "agencies and departments" language used in this section must be read as referring to the agencies and departments of the governments to which the statute applies, but that language itself does not define what the applicable level of government is. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

The word "public" as used in this section and AS 09.25.120 with "officer" refers both to state and local officials. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Application to municipalities. — The provisions of this section are applicable to municipalities. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

In light of the common law rule, legislative history, and the court's reading of the

sections, the state supreme court will construe this section and AS 09.25.120 as that court would have construed them prior to 1937, which is as a strong legislative declaration that records in the possession of municipalities shall be available for public inspection, subject to exceptions based on need. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Disclosure of applications for public posts. — Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular, requires public disclosure and inspection of applications for posts having substantial discretionary authority. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

University of Alaska. — The legislature intended to include the University of Alaska within the scope of state agencies subject to the public records statute. *Carter v. Alaska Pub. Employees Ass'n*, Sup. Ct. Op. No. 2657 (File No. 6586), P.2d (1983).

The president of the University of Alaska is a public officer for purposes of this section. *Carter v. Alaska Pub. Employees Ass'n*, Sup. Ct. Op. No. 2657 (File No. 6586), P.2d (1983).

Applied in *Mainers v. Bering Strait School Dist.*, Sup. Ct. Op. No. 2887 (File Nos. 8-125, 8-140), 687 P.2d 287 (1984).

Collateral references. — Finding of draft board as evidence of physical condition of one registered, 16 ALR 247.

Admissibility of report of public officer

or employee on cause of or responsibility for injury to person or damage to property, 153 ALR 163; 69 ALR2d 1148.

Sec. 09.25.120. Inspection and copying of public records. Every person has a right to inspect a public writing or record in the state, including public writings and records in recorders' offices except (1) records of vital statistics and adoption proceedings which shall be treated in the manner required by AS 18.50; (2) records pertaining to juveniles; (3) medical and related public health records; (4) records required to be kept confidential by a federal law or regulation or by state law. Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the legal fees therefor a certified copy of the writing or record, and the copy shall in all cases be evidence of the original. Recorders shall permit memoranda, transcripts, and copies of the public writings and records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public writings and records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants; and shall furnish proper and reasonable facilities to persons having lawful occasion for access to the public writings and records for those purposes, subject to reasonable rules and regulations, in conformity to the direction of the court, as are necessary for the protection of the writings and records and to prevent interference with the regular discharge of the duties of the recorders and their employees. (§ 3.23 ch 101 SLA 1962)

NOTES TO DECISIONS

For discussion of the history of this section, see *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Broad policy. — AS 09.25.110 and this section articulate a broad policy of open records. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Effect of "in the state" language. — When the legislature chose to say "in the state," and not "of the state" in the first sentence of this section, they were conscious of the fact that they were defining scope and had it been intended to limit the application of this section to state agencies and departments, it could easily and clearly have done so. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

The word "public" as used in AS 09.25.110 and this section with "officer" refers both to state and local officials. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Application to municipalities. — The provisions of AS 09.25.110 and this section are applicable to municipalities. *City of Kenai v. Kenai Peninsula Newspapers,*

Inc., Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

In light of the common law rule, legislative history, and the court's reading of the sections, the state supreme court will construe AS 09.25.110 and this section as that court would have construed them prior to 1957, which is as a strong legislative declaration that records in the possession of municipalities shall be available for public inspection, subject to exceptions based on need. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

Disclosure of applications for public posts. — Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular requires public disclosure and inspection of applications for posts having substantial discretionary authority. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, Sup. Ct. Op. No. 2479 (File Nos. 4954, 5433), 642 P.2d 1316 (1982).

University of Alaska. — The legislature intended to include the University of Alaska within the scope of state agencies subject to the public records statute. *Carter v. Alaska Pub. Employees Ass'n*, Sup. Ct. Op. No. 2657 (File No. 6886), 112d (1963).

Collateral references. — In
Am.Jur.2d. Records and Recording Laws,
§§ 12-31.
76 C.J.S. Records, §§ 33-41

Validity, construction, and application
of statutes making public proceedings
open to the public, 38 ALR3d 1070.

Confidentiality of records as to recip-
ients of public welfare, 54 ALR3d 768.

Validity, construction, and application
of statutory provisions relating to public
access to police records, 82 ALR3d 19.

Restricting access to judicial records of
state courts, 84 ALR3d 598.

Payroll records of individual govern-
ment employees as subject to disclosure to
public, 100 ALR3d 689.

Alaska Statutes

Title 27. Mining.

Chapter 05. Administration and Services.

Sec. 27.05.010. Department responsible for mineral resources.
The department has charge of all matters affecting exploration, de-
velopment and mining of the mineral resources of the state, the col-
lection and dissemination of all official information relative to the
mineral resources, and mines and mining projects of the state, and
the administration of the laws with respect to all kinds of mining.
(§ 47-3-111 ACLA 1949)

Am. Jur. and C.J.S. references.—38 58 C.J.S. Mines and Minerals § 1
Am. Jur., Mines and Minerals, §§ 146, et seq.
152.

Alaska Statutes

Title 38. Public Lands.

Chapter 05. Alaska Land Act.

Sec. 38.05.020. Authority and duties of the commissioner. (a) The commissioner shall supervise the administration of the division of lands.

(b) The commissioner may

(1) establish reasonable procedures and adopt reasonable regulations necessary to carry out this chapter and, whenever necessary, issue directives or orders to the director to carry out specific functions and duties; regulations adopted by the commissioner shall be adopted under the Administrative Procedure Act (AS 44.62); orders by the commissioner classifying land, issued after January 3, 1959, are not required to be adopted under the Administrative Procedure Act (AS 44.62);

(2) enter into agreements considered necessary to carry out the purposes of this chapter, including agreements with federal and state agencies;

(3) review any order or action of the director;

(4) exercise the powers and do the acts necessary to carry out the provisions and objectives of this chapter;

(5) notwithstanding the provisions of any other section of this chapter, grant an extension of the time within which payments due on any lease or sale of state land, minerals, or materials may be made, including payment of rental and royalties, on a finding that compliance with the requirements is or was prevented by reason of war, riots, or acts of God;

(6) classify tracts for agricultural uses and require the prequalification, including the submission of conservation plans, development plans, or other plans, schedules, or programs, of persons who apply to participate in an agricultural development project under AS 44.33.475;

(7) waive, postpone, or otherwise modify the development requirements of a contract for the sale of agricultural land if

(A) the land is inaccessible by road; and

(B) transportation, marketing, and development costs render the required development uneconomic. (§ 4 art II ch 169 SLA 1959; am § 1 ch 31 SLA 1964; am § 1 ch 76 SLA 1964; am § 3 ch 72 SLA 1972; am §§ 25 — 27 ch 3 FSSLA 1973; am § 1 ch 129 SLA 1982; am § 15 ch 152 SLA 1984)

Reviser's notes. — In 1984, former (c) of this section was renumbered as AS 38.05.015.

Effect of amendments. — The 1982 amendment added paragraph (6) to subsection (b).

The 1984 amendment, in subsection (b), in paragraph (1) deleted "rules and" preceding "regulations necessary" and "all rules and" preceding "regulations adopted," added paragraph (7), and made a series of technical changes throughout the rest of the subsection.

Legislative history reports. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Opinions of attorney general. — Commissioner has the authority to lease Alaska lands, as defined in AS 38.05.190, it should go without saying that he has the authority to amend said lease so long as such amendment is not in contravention of the statutes and regulations. 1967 Op. Att'y Gen., No. 6.

Inclusion of directional drilling clause in state lease forms recommended. It is recommended that the commissioner of the Department of Natural Resources take the necessary steps to include a directional drilling clause in the state lease forms, for both uplands and offshore lands. There is no authority in the Alaska Statutes nor in the appropriate regulations which would prevent the commissioner from taking these steps. This action should be accomplished by the commissioner promulgating a regulation providing for a directional

drilling clause in the state lease form because of the "definitions" provided in AS 44.62.640. A suggested regulation would be as follows: "The Director may include a directional drilling clause in all oil and gas leases that have been issued or that may be subsequently issued by the State. The clause may provide that drilling from a well located off the leased premises but to be completed or bottoomed on the leased premises may be considered as actual drilling under the lease terms." 1967 Op. Att'y Gen., No. 6.

Situation: A well is drilling from a platform in Cook Inlet under an approved drilling permit. The bottom hole location of the well is on lease "A", and the platform is on lease "B". Diligent drilling operations are continued until the well is completed. Lease "A" expires before the well is completed.

Question: Does lease "A" continue in full force and effect until 90 days after such drilling has ceased and for so long thereafter as oil or gas is produced in paying quantities? Does lease "A" terminate if the well has not actually reached it upon the expiration date even though the drilling operation is continued with reasonable diligence? With a proper directional drilling clause included in the state lease form, the question could be answered in the affirmative. Without such a clause, the question would be answered in the negative. 1967 Op. Att'y Gen., No. 6.

Form of directional drilling clause. For suggested form of directional drilling clause to be used in Alaska competitive and noncompetitive lease forms, see 1967 Op. Att'y Gen., No. 6.

NOTES TO DECISIONS

- I. General Consideration.
- II. Administrative Regulations.

I. GENERAL CONSIDERATION.

The leasing of state lands is governed by regulations promulgated by the commissioner of the Department of Natural Resources, pursuant to subsection (b)(1), and executed by the director of the Division of Lands, pursuant to AS 38.05.035 (a)(3). *Swindel v. Kelly*, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 499 P.2d 291 (1972).

Applied in *Chevron U.S.A., Inc. v. LeResche*, Sup. Ct. Op. No. 2659 (File Nos. 6396, 6648), 663 P.2d 923 (1983).

Quoted in *Alvaska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967); *Pan Am. Petroleum Corp. v. Shell Oil Co.*, Sup. Ct. Op. No. 553 (File No. 918), 455 P.2d 12 (1969).

Cited in *City of Juneau v. Cropley*, Sup. Ct. Op. No. 415 (File No. 752), 429 P.2d 21 (1967).

II. ADMINISTRATIVE REGULATIONS.

Regulations are subject to rule-making provisions of Administrative Procedure Act. — Regulations adopted by the commissioner of natural resources are subject to the rule-making provisions of Alaska's Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1253, 1256), 486 P.2d 906 (1971).

The rule-making function of an administrative agency frequently resembles the legislative process of passing a statute. Each entity determines

the need for a particular enactment in light of chosen policies; each has procedures for the expression of views upon the merits of the proposal; and each, after consideration of the relevant policies and arguments, decides whether to adopt the proposed amendment. When administra-

tive rule-making is based upon clear authority from the legislature to formulate policy in the adoption of regulations, the rule-making activity takes on a quasi-legislative aspect. Under proper standards, such delegations of legislative power to administrative agencies are constitutional. *Kelly v. Zamareilo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Judicial review of administrative regulation. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act (AS 44.62), and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the supreme court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. *Kelly v. Zamareilo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Scope of review. — When a regulation has been adopted under a delegation of authority from the legislature to the administrative agency to formulate policies and to act in the place of the legislature, the supreme court should not examine the content of the regulation to judge its wisdom, but should exercise a scope of review not unlike that exercised with respect to a statute. *Kelly v. Zamareilo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review generally. — AS 44.62.020 and AS 44.62.030 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. *Kelly v. Zamareilo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

"Reasonable basis" standard of review. — See *Kelly v. Zamareilo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

The reasonable basis approach should be used for the most part in cases concerning administrative expertise as to either complex subject matter or fundamental policy formulations. *Kelly v. Zamareilo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Application of the reasonable basis test is extremely useful where the administrative action under review resembles executive as opposed to legislative or judicial activity. *Kelly v. Zamareilo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Review of decision of director of division of lands not precluded by AS 44.62.540(a). — AS 44.62.540(a) does not preclude the kind of intra-departmental review presented where the commissioner of the Department of Natural Resources reviews the decision of the director, division of lands, denying an application for discovery well certification, particularly where such review is authorized by statute. *Union Oil Co. v. State Dept. of Natural Resources*, Sup. Ct. Op. No. 1087 (File No. 2025), 528 P.2d 1357 (1974).

AS 44.62.540(a) applies only to reconsideration by the specific "agency" that actually made the decision, not the more comprehensive agency. *Union Oil Co. v. State Dept. of Natural Resources*, Sup. Ct. Op. No. 1087 (File No. 2025), 528 P.2d 1357 (1974).

Even though administrative code refers to such action as "reconsideration", — Even though the administrative code provisions refer to the commissioner's action on petition for reconsideration, where the director, division of lands, has denied an application for discovery well certification, as "reconsideration," the actual process is that of the "review" authorized by subsection (b)(3). *Union Oil Co. v. State Dept. of Natural Resources*, Sup. Ct. Op. No. 1087 (File No. 2025), 528 P.2d 1357 (1974).

"Review" and "reconsideration" compared. — Both "review" and "reconsideration" in a broad sense refer to a reexamination of acts or a course of proceedings. But as normally used in the context of administrative adjudication, "review" implies a consideration of a case by one other than the entity which in-

ually decides it, while "reconsideration" implies a reexamination, and possibly a different decision, of a case by the entity which initially decides it. *Union Oil Co. v. State Dep't of Natural Resources*, Sup. Ct. Op. No. 1087 (File No. 2025), 528 P.2d 1357 (1974).

Alternatives available as to review. — *Pan Am. Petroleum Corp. v. Shell Oil Co.*, Sup. Ct. Op. No. 553 (File No. 918), 455 P.2d 12 (1969), establishes the propriety of seeking judicial review of a division of lands decision without exhausting further remedies within the Department of Natural Resources. But it does not prohibit the pursuit of further remedies within the department, where those remedies exist pursuant to statutory authority and promulgated regulations, such as this section and 11 AAC 516.32. *Union Oil Co. v. State Dep't of Natural Resources*, Sup. Ct. Op. No. 1087 (File No. 2025), 528 P.2d 1357 (1974).

These are situations in which one may possess the alternatives of either seeking judicial review directly from a decision of the division of lands or seeking review by the commissioner and then invoking judicial review. *Union Oil Co. v. State Dep't of Natural Resources*, Sup. Ct. Op. No. 1087 (File No. 2025), 528 P.2d 1357 (1974).

The statutory authority for 11 AAC 516.32(b) is subsection (b)(3). *Union Oil Co. v. State Dep't of Natural Resources*, Sup. Ct. Op. No. 1087 (File No. 2025), 528 P.2d 1357 (1974).

Sec. 38.05.027. Cooperative resource management or development agreements. (a) Consistent with the authority of the

commissioner under law, the commissioner, after determining that the agreement is in the best interests of the public and the state, may enter into cooperative resource management or development agreements with the federal government, a state agency, a village or municipality, or a person. Specific guidelines to protect the state and public interest shall be established, if necessary, by the commissioner before entering into an agreement under this section.

(b) A summary of agreements entered into under this section shall be submitted to the legislature within 30 days of the beginning of each regular session. (§ 2 ch 143 SLA 1976)

Editor's note. — Section 1, ch. 143, SLA 1976 provides: "Intent. The legislature recognizes the changing resource ownership patterns and increasing complexity of natural resource management and development in the state and the reality that use and enjoyment of land and resources by one possessor or owner may

significantly affect rights of other adjacent or remote possessors or owners. It is the intent of this Act to clearly authorize the state to enter into cooperative resource management or development agreements when in the state and public interest, and under specific guidelines designed to protect the public and state interest."

Sec. 38.05.030. Exceptions. (a) [Repealed. § 88 ch 152 SLA 1984.]

(b) The provisions of this chapter do not apply to any power, duty or authority now or in the future granted to the Department of Transportation and Public Facilities in the name of the state, to acquire, use, lease, dispose of, or exchange real property, or any interest in real property. Land assigned by the division of lands to the Department of Transportation and Public Facilities shall be returned to the management of the division of lands when it is no longer needed for the purposes assigned

(c) In addition to the requirements specified in AS 38.50.090, the agencies referred to in (b) of this section and other state agencies with authority to acquire or dispose of land shall give written notification of the fact of acquisition, lease, disposal, or exchange to the commissioner within three months after the date that they make the acquisition, lease, disposal, or exchange.

(d) Real property acquired by and under the management of the agencies referred to in (b) of this section that is no longer needed for its intended use shall be transferred to the commissioner, except that the Department of Transportation and Public Facilities may dispose of real property acquired by it under AS 19.05.040(2) and AS 19.05.080 — 19.05.120.

(e) *(Repealed. § 20 ch 182 SLA 1978.)*

(f) Land owned by the Board of Regents of the University of Alaska is not subject to this chapter. (§ 3(a) — (d) art XIII ch 169 SLA 1959; am §§ 20, 21 ch 61 SLA 1960; am § 1 ch 27 SLA 1967; am § 1 ch 253 SLA 1970; am §§ 1, 2 ch 35 SLA 1971; am § 2 ch 240 SLA 1976; am § 2 ch 267 SLA 1976; am § 20 ch 182 SLA 1978; am §§ 16 — 18, 88 ch 152 SLA 1984)

Effect of amendments. — The 1984 amendment added subsection (f) and, in subsection (c), deleted "(a) and" preceding "(b)"; inserted "disposal" twice, and substituted "commissioner" for "division of land"; in subsection (d), substituted "transferred to the commissioner" for "returned to the jurisdiction of the division of lands" and "Transportation and Public Facilities" for "Highways" and made a series of technical changes; and repealed former subsection (a), relating to the sale, lease, or other disposal of university land.

Legislative history reports. — For report on ch. 267, SLA 1976 (FCCS SCSHB 139), see 1976 Senate Journal, p. 1461.

Opinions of attorney general. — The interaction of AS 38.05.030(b), 38.05.035(a)(7) and (12), AS 35.05.040(1), and AS 35.20.010 was examined to determine (1) which agency of the state had authority to accept title to land transferred by the federal government and (2) which agency had authority to manage the land, which was conveyed for airport and other purposes. The division of lands is the proper agency for acceptance of title. The division of aviation in the (former) Department of Public Works possesses the authority to manage the granted land for airport and directly related purposes while the division of lands possesses the authority to manage the land for other public purposes. April 14, 1977. Op Atty Gen.

NOTES TO DECISIONS

Scope of subsection (a). — Subsection (a) of this section only covers disposals of land by the commissioner of natural resources. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

Creation of state park including university lands. — Since creation of a state park which included university lands was a disposal by the legislature, not by administrative action, subsection (a) of this section was inapplicable. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

By enacting AS 41.20.210 (now see AS 41.21.121), creating Chugach State Park, the legislature did not impliedly repeal subsection (a) of this section, which prevents disposal of university lands by the commissioner of natural resources without the approval of the Board of Regents of the University of Alaska. AS 41.20.210 with respect to the particular university land involved from the operation of the management mechanism created by subsection (a) and AS 14.40.170(a)(4), which grants certain management powers to the Board of Regents. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

Construction of state lease provision reserving right to grant right-of-way. — Provision in a lease issued by the State of Alaska, Division of Lands, expressly reserving the right to grant an easement or right-of-way across the leased property was construed to include an interagency transfer of a right-of-way to the Department of Transportation and Public Facilities. *Wessells v. State, Dept of Hwys.*, Sup. Ct. Op. No. 1402 (File No. 2634), 562 P.2d 1042 (1977).

Sec. 38.05.035. Powers and duties of the director. (a) The director shall

(1) have general charge and supervision of the division and may exercise the powers specifically delegated to the director; may employ and fix the compensation of assistants and employees necessary for the operations of the division; and is the certifying officer of the division, with the consent of the commissioner, and may approve vouchers for disbursements of money appropriated to the division;

(2) manage, inspect and control state land and improvements on it belonging to the state and under the jurisdiction of the division;

(3) execute laws, rules, regulations and orders adopted by the commissioner;

(4) prescribe application procedures and practices for the sale, lease or other disposition of available land, resources, property, or interest in them;

(5) prescribe fees or service charges, with the consent of the commissioner, for any public service rendered;

(6) under the conditions and limitations imposed by law and the commissioner, issue deeds, leases or other conveyances disposing of available land, resources, property or any interests in them;

(7) have jurisdiction over state land, except that land acquired by the Alaska World War II Veterans Board and the Agricultural Loan Board or the departments or agencies succeeding to their respective functions through foreclosure or default; to this end the director possesses the powers and, with the approval of the commissioner, shall perform the duties necessary to protect the state's rights and interest in state land, including the taking of all necessary action to protect and enforce the state's contractual or other property rights;

(8) *(Repealed. § 20 ch 182 SLA 1978.)*

(9) maintain such records as the commissioner considers necessary, administer oaths, and do all things incidental to the authority imposed; the following records and files shall be kept confidential upon request of the person supplying the information:

(A) the name of the person nominating or applying for the sale, lease, or other disposal of land by competitive bidding;

(B) before the announced time of opening, the names of the bidders and the amounts of the bids;

(C) all geological, geophysical and engineering data supplied, whether or not concerned with the extraction or development of natural resources;

(D) except as provided in AS 38.05.036, cost data and financial information submitted in support of applications, bonds, leases and similar items;

(E) applications for rights-of-way or easements;

(F) requests for information or applications by public agencies for land which is being considered for use for a public purpose;

(10) account for the fees, licenses, taxes or other money received in the administration of this chapter including the sale or leasing of land, identify their source, and promptly transmit them to the proper fiscal department after crediting them to the proper fund; receipts from land application filing fees and charges for copies of maps and records shall be deposited immediately in the general fund of the state by the director;

(11) select and employ or obtain at reasonable compensation cadastral, appraisal, or other professional personnel the director considers necessary for the proper operation of the division;

(12) be the certifying agent of the state to select, accept and secure by whatever action is necessary in the name of the state, by deed, sale,

gift, devise, judgment, operation of law, or other means any land, of whatever nature or interest, available to the state; and be the certifying agent of the state, to select, accept or secure by whatever action is necessary in the name of the state any land, or title or interest to land available, granted, or subject to being transferred to the state for any purpose:

(13) *[Repealed, § 15 ch 181 SLA 1978; § 20 ch 182 SLA 1978.]*

(14) *[Repealed, § 88 ch 152 SLA 1984.]*

(b) The director may

(1) delegate the administrative duties, functions or powers imposed upon the director to a responsible employee in the division;

(2) grant preference rights for the lease or purchase of state land without competitive bid in order to correct errors or omissions of a state or federal administrative agency when inequitable detriment would otherwise result to a diligent claimant or applicant due to situations over which the claimant or applicant had no control; the exercise of this discretionary power operates only to divest the state of its title to or interests in land and may be exercised only

(A) with the express approval of the commissioner; and

(B) if the application for the preference right is filed with the director within three years from

(i) the occurrence of the error or omission;

(ii) the date of acquisition by the state of the land; or

(iii) the date of a court decision or settlement nullifying a disposal of state land;

(3) grant a preference right to a claimant who shows bona fide improvement of state land or of federal land subsequently acquired by the state and who has in good faith sought to obtain title to the land but who, through error or omission of others occurring within the three years before (A) the application for the preference right, (B) the date of acquisition by the state of the land, or (C) the date of a court decision or settlement nullifying a disposal of state land, has been denied title to it; upon a showing satisfactory to the commissioner, the claimant may lease or purchase the land at the price set on the date of original entry on the land or, if a price was not set at that time at a price determined by the director to fairly represent the value of unimproved land at the time the claim was established, but in no event less than the cost of administration including survey; the error or omission of a predecessor in interest or an agent, administrator, or executor which has clearly prejudiced the claimant may be the basis for granting a preference right;

(4) sell land by lottery for less than the appraised value when, in the judgment of the director, past scarcity of land suitable for private ownership in any particular area has resulted in unrealistic land values;

(5) when the director determines it is in the best interest of the state and will avoid injustice to a person or the heirs or devisees of a person, dispose of land, by direct negotiation to that person who presently uses and who used and made improvements to that land before January 3, 1959 or to the heirs or devisees of the person; the amount paid for the land shall be its fair market value on the date that the person first entered the land, as determined by the director; a parcel of land disposed of under this paragraph shall be of a size consistent with the person's prior use, but may not exceed five acres;

(6) dispose of an interest in land limited to use for agricultural purposes by lottery;

(7) convey to an adjoining landowner for its fair market value a remnant of land that the director considers unmanageable or a parcel of land created by a highway right-of-way alignment or realignment, or a parcel created by the vacation of a state-owned right-of-way if

(A) the director determines that it is in the best interests of the state;

(B) the parcel does not exceed the minimum lot size under an applicable zoning code; and

(C) the director and the platting authority having land use planning jurisdiction agree that conveyance of the parcel to the adjoining landowner will result in boundaries that are convenient for the use of the land by the landowner and compatible with municipal land use plans;

(8) for good cause extend for up to 90 days the time for rental or installment payments by a lessee or purchaser of state land under this chapter if reasonable penalties and interest set by the director are paid;

(9) quitclaim land or an interest in land to the federal government on a determination that the land or the interest in land was wrongfully or erroneously conveyed by the federal government to the state.

(c) A parcel of land may be conveyed under (b) of this section without classification or reclassification under AS 38.05.300.

(d) A parcel of land described in (b) (7) of this section must be sold at its fair market value as determined by the director on the basis of an appraisal completed as provided in AS 38.05.840. Nothing in this subsection prevents the sale of land under AS 38.05.055 or 38.05.057 to a person not qualifying as an adjoining landowner if the adjoining landowner declines to purchase the land.

(e) Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property or interests in them, and, in addition to the conditions and limitations imposed by law, may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will best serve the interests of the state. A contract for the sale, lease, or other disposal of available land or an interest in land is not legally binding on the state until the

commissioner approves the contract but if the appraised value is not greater than \$50,000 in the case of the sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or interest in land, the director may execute the contract without the approval of the commissioner. Before a public hearing, if held, or in any case no less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them, the director shall make available to the public a written finding that sets out the facts and applicable law upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based. A written finding is not required before the approval of

- (1) a contract for a negotiated sale authorized under AS 38.05.115;
- (2) a lease of land for a shore fishery site under AS 38.05.082;
- (3) a permit or other authorization revocable by the commissioner;
- (4) a mineral claim located under AS 38.05.195;
- (5) a mineral lease issued under AS 38.05.205; or
- (6) a production license issued under AS 38.05.207.

(f) The director shall grant a preference right to the purchase or lease without competitive bid of up to five acres of state land to an individual who has erected a building on the land and used the land for bona fide business purposes for five or more years under a federal permit or without the need for a permit and, after selection by the state, under a state use permit or lease, if the business produced no less than 25 percent of the total income of the applicant for the five years preceding the application to purchase or lease the land. The director shall sell or lease the land at a price determined by the director to represent the current fair market value of the unimproved land but in no event less than the cost of administration including survey if required. If the director determines in a written finding that the purchase or lease of the land would interfere with public use by residents of the area, the director may condition the purchase or lease to mitigate the adverse effects on the public use or may reject the application for the preference right. A lease granted under this subsection may not be for a period in excess of 50 years. In this subsection, "business purposes" means a purpose permitted under the classification of the land at the time the land was entered. (§ 5 art II ch 169 SLA 1959; am § 1 ch 57 SLA 1960; am §§ 2 — 4 ch 61 SLA 1960; am § 1 ch 55 SLA 1962; am § 1 ch 56 SLA 1964; am § 1 ch 98 SLA 1964; am § 1 ch 5 SLA 1965; am § 1 ch 58 SLA 1965; am § 1 ch 194 SLA 1968; am § 1 ch 164 SLA 1972; am §§ 2, 3 ch 257 SLA 1976; am §§ 1, 2 ch 176 SLA 1978; am § 15 ch 181 SLA 1978; am § 20 ch 182 SLA 1978; am § 1 ch 61 SLA 1980; am §§ 9 — 13 ch 113 SLA 1981; am §§ 19, 20, 88 ch 152 SLA 1984)

Revisor's notes. — In 1981, in subsection (b)(7), the word "convey" was substituted for "dispose" at the beginning of the

paragraph and in subsection (d), the words "of land" were added following "parcel" under AS 01.05.031.

Effect of amendments. — The 1990 amendment added "except as provided in AS 38.05.036" at the beginning of subparagraph (a)(9)(D).

The 1981 amendment substituted "\$50,000" for "\$10,000" preceding "in the case of the sale of land," substituted "\$5,000" for "\$1,000" preceding "in the case of the annual rental of land," substituted semicolons for periods preceding "the written finding" and preceding "before a public hearing," added "a written finding is not required before the approval of" following "interest of the state" and added subparagraphs (A)-(C) in former subsection (a)(14). In subsection (b)(3), the amendment added "the price set on the date of original entry on the land or, if a price was not set at that time at" preceding "a price determined by the division." In subsection (b)(5), the amendment substituted "on the date that the person first entered the land" for "as of that date" preceding "as determined by the director." The amendment also added paragraphs (7) and (8) of subsection (b) and added subsections (c) and (d).

The 1984 amendment repealed former paragraph (14) of subsection (a), added subsection (e) to replace former paragraph (14) of subsection (a), and added subsection (f). The 1984 amendment also, in paragraph (2) of subsection (b), divided the language into introductory language and subparagraph (A), deleted "the past or future" following "correct" in the introductory language, added "and" at the end of subparagraph (A), and added subparagraph (B); in paragraph (3) of subsec-

tion (b), inserted "occurring within the three years before (A) the application for the preference right, (B) the date of acquisition by the state of the land, or (C) the date of a court decision or settlement nullifying a disposal of state land" and substituted "director" for "division"; in paragraph (4) of subsection (b), substituted "the judgment of the director" for "his judgment"; in paragraph (5) of subsection (b), substituted "the director" for "he" near the beginning of the paragraph; in paragraph (7) of subsection (b), inserted "for its fair market value a remnant of land that the director considers unmanageable or" in the introductory language and substituted "the director" for "he" in subparagraph (A); added paragraph (9) to subsection (b); and made a series of technical changes throughout subsection (b).

Opinions of attorney general. — The interaction of AS 38.05.030(b), 38.05.035(a)(7) and (12), AS 38.05.040(1), and AS 38.20.010 was examined to determine (1) which agency of the state had authority to accept title to land transferred by the federal government and (2) which agency had authority to manage the land, which was conveyed for airport and other purposes. The division of lands is the proper agency for acceptance of title. The division of aviation in the (former) Department of Public Works possesses the authority to manage the granted land for airport and directly related purposes while the division of lands possesses the authority to manage the land for other public purposes. April 14, 1977, Op. Att'y Gen.

NOTES TO DECISIONS

The leasing of state lands is governed by regulations promulgated by the commissioner of the Department of Natural Resources, pursuant to AS 38.05.020(b)(1), and executed by the Director of the Division of Lands, pursuant to subsection (a)(3) of this section. *Swindel v. Kelly*, Sup. Ct. Op. No. 812 (File No. 1416, 1418), 499 P.2d 291 (1972).

Construction of state lease provision reserving right to grant right-of-way. — Provision in a lease issued by the State of Alaska, Division of Lands, expressly reserving the right to grant an easement or right-of-way across the leased property was construed to include an interagency transfer of a right-of-way to the Department of Transportation and Public Facilities. *Wessells v. State, Dep't of Hwys.*, Sup. Ct. Op. No. 1402 (File No. 2834), 562 P.2d 1042 (1977).

Applied in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File No. 3550, 3558), 645 P.2d 750 (1982); *Hoblit v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 2797 (File No. 7148), 678 P.2d 1337 (1984).

Quoted in *Alyaska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 428 P.2d 1006 (1967).

Cited in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File No. 3550, 3558), 645 P.2d 750 (1982); *State v. Bering Strait Regional Educ. Attendance Area School Dist.*, Sup. Ct. Op. No. 2625 (File No. 6381), 658 P.2d 754 (1983); *Chevron U.S.A., Inc. v. LaRocche*, Sup. Ct. Op. No. 2659 (File No. 6396, 6648), 663 P.2d 923 (1983).

Sec. 38.05.036. Audit of royalty and net profit payments. (a) The Department of Revenue shall audit reports, payments, and payments due relating to royalty and net profits under oil and gas contracts, agreements, or leases under this chapter.

(b) The Department of Revenue may inspect all reports and other information filed in support of or relating to royalty and net profits payments, whether or not that information is confidential, and shall hold that information confidential to the extent required under oil and gas agreements, contracts, or leases, or by this chapter or AS 43.05.230.

(c) All information obtained by the Department of Revenue relating to royalty and net profits payments, including information obtained under AS 43, may be made available to the department, in the form of summaries and, when in furtherance of the department's royalty and net profits functions, relevant portions of the audits. Information made available to the department that was obtained under AS 43 is confidential and subject to the provisions of AS 43.05.230.

(d) The Department of Revenue may conduct audits under this section concurrently with audits or investigations under AS 43, and may use information obtained from the department in tax audits, investigations, or proceedings under AS 43.

(e) In this section, "audit" means the process of obtaining sufficient competent evidentiary matter through inspection, observation, inquiry, and confirmation to afford a reasonable basis for ascertaining the compliance by the subject of the audit with the applicable law, regulation, lease, agreement, and contract terms; it does not include any other actions necessary to administer this chapter pertaining to oil and gas royalty and net profits payments, including daily accounting functions, certification procedures associated with those accounting functions, and enforcement of payments of royalties and net profits. (§ 2 ch 61 SLA 1980)

Sec. 38.05.125. Reservation. Each contract for the sale, lease or grant of state land, and each deed to state land, properties or interest in state land, made under AS 38.05.315 — 38.05.325, 38.05.045 — 38.05.120, 38.08.010 — 38.08.120, or 38.50.010 — 38.50.170 except as provided in AS 38.50.050 is subject to the following reservations: "The party of the first part, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times for the purpose of opening, developing, drilling, and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and to that

and it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved. (§ 1 art VII ch 169 SLA 1959; am § 14 ch 61 SLA 1960; am § 1 ch 42 SLA 1966; am § 3 ch 240 SLA 1976; am § 2 ch 175 SLA 1980)

Effect of amendments. — The 1980 amendment inserted the reference to AS 38.08.010 — 38.08.120, and "as" preceding "provided in AS 38.05.050" near the beginning of the section, inserted "geothermal resources" wherever it appears throughout the section, and substituted "attorneys" for "attorney" near

the middle of the section.

Editor's notes. — As to declaration of legislative policy, see § 1, ch. 175, SLA 1980, in the 1980 Temporary and Special Acts and Resolves.

AS 38.05.325, referred to above, was repealed by § 45, ch. 85, SLA 1979.

Sec. 38.05.127. Access to navigable or public waters. (a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the commissioner shall,

(1) determine if the body of water or waterway is navigable water, public water, or neither;

(2) upon finding that the body of water or waterway is navigable or public water, provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or limiting access is necessary for other beneficial uses or public purposes.

(b) The department shall adopt regulations implementing this section.

(c) Nothing in this section affects valid existing rights or limits in any way the constitutional right of the public to use and have free access to the navigable or public waters of the state.

(d) [Effective January 1, 1986] Upon application by a municipality or an affected owner of land, the department may vacate, release, modify, or relocate an easement and right-of-way for public access to or along navigable or public waters reserved by the department in a patent issued under AS 29.65 or former AS 29.18, if the commissioner determines the action is consistent with the public interest.

(e) The establishment of easements or rights-of-way for oil and gas and mineral leases under (a) of this section need not be made until the leases are ready to be developed. (§ 2 ch 117 SLA 1976; am § 32 ch 113 SLA 1981; am §§ 37, 38 ch 152 SLA 1984; am § 57 ch 74 SLA 1985; am § 3 ch 82 SLA 1985)

Cross references. — For legislative findings and purpose in connection with the 1985 amendment to (c) of this section, see § 1, ch. 82, SLA 1985 in the Temporary and Special Acts.

Effect of amendments. — The first 1985 amendment, effective January 1,

1986, in subsection (d) substituted "AS 29.65 or former AS 29.18.211 — 29.18.460" for "AS 29.18."

The second 1985 amendment, effective June 3, 1985, in subsection (c) added the language following "existing rights."

Sec. 38.05.130. Damages and posting of bond. No rights shall be exercised by the state, its lessees, successors or assigns under the reservation as set out in AS 38.05.125 until the state, its lessees, successors, or assigns make provision to pay the owner of the land full payment for all damages sustained by the owner, by reason of entering upon the land. If the owner for any cause refuses or neglects to settle the damages, the state, its lessees, successors, assigns, or an applicant for a lease or contract from the state for the purpose of prospecting for valuable minerals, or option, contract or lease for mining coal or lease for extracting geothermal resources, petroleum or natural gas, may enter upon the land in the exercise of the reserved rights after posting a surety bond determined by the director, after notice and an opportunity to be heard, to be sufficient as to form, amount, and security to secure to the owner payment for damages, and may institute legal proceedings in a court where the land is located, as may be necessary to determine the damages which the owner may suffer. (§ 2 art VII ch 169 SLA 1959; am § 15 ch 61 SLA 1960; am § 3 ch 175 SLA 1980)

Effect of amendments. — The 1980 amendment deleted "or" preceding "until the state," and substituted "provision" for "provisions" near the beginning of the sec-

tion, inserted a comma between "option" and "contract," and inserted "geothermal resources" near the middle of the section.

Sec. 38.05.135. Generally. (a) Except as otherwise provided valuable mineral deposits in land belonging to the state shall be open to exploration, development, and the extraction of minerals. All land, together with tida, submerged, or shoreland, to which the state holds title to or to which the state may become entitled, may be obtained by permit or lease for the purpose of exploration, development, and the extraction of minerals. Except as specifically limited by AS 38.05.135 — 38.05.181, land may be withheld from lease application on a first-come, first-served basis, and offered only on a competitive bid basis when determined by the commissioner to be in the best interests of the state. In unproven areas the commissioner may offer additional incentives, including a reduction of royalty to a minimum of five percent in the case of oil and gas, and other terms in and granting permit or lease for exploration and development whenever it appears to be in the best interests of the state to do so.

(b) When mineral land is to be leased, in addition to any other notice given, notice must also be given as provided in AS 38.05.945. (§ 1 art VIII ch 169 SLA 1959; am § 1 ch 30 SLA 1964; am § 1 ch 91 SLA 1967; am § 2 ch 71 SLA 1971; am § 10 ch 257 SLA 1976; am § 2 ch 153 SLA 1978)

NOTES TO DECISIONS

Cited in *Kirkpatrick v. Commissioner, Dept of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P 2d 7 (1964)*; *Moore v State, Sup. Ct. Op. No. 1284 (File Nos. 2531, 2587), 553 P.2d 8 (1976)*.

Collateral references. — 38 Am. Jur. 2d, Gas and Oil, §§ 54 to 77, 103 to 130, 206 to 227, 54 Am. Jur. 2d, Mines and Minerals, §§ 2, 11 to 50, 97 to 101, 120 to 145; 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 66 to 72; 73A C.J.S., Public Lands, § 197

Prohibiting or regulating removal or exploitation of oil and gas, minerals, soil, or other natural products within municipal limits. 10 ALR3d 1226.

Grant, lease, exception, or reservation of oil and or gas rights as including oil shale. 61 ALR3d 1109.

Sec. 38.05.137. Leasing agreements. The commissioner is authorized to enter into cooperative mineral leasing agreements with the United States regarding land which is the subject of a title dispute between federal and state authorities. Any such lease need not conform to the provisions of state law applicable to state leases issued under the authority of this chapter. (4 2 ch 30 SLA 1964)

Sec. 38.05.140. Limitations. (a) No person may take or hold coal leases or permits during the life of coal leases on state lands exceeding an aggregate of 46,080 acres, except that a person may apply for coal leases or permits for acreage in addition to 46,080 acres, not exceeding a total of 5,120 additional acres of state land. The additional area applied for shall be in multiples of 40 acres and the application shall contain a statement that the granting of a lease for additional lands is necessary for the person to carry on business economically and is in the public interest. On the filing of the application, the coal deposits in the lands covered by the application shall be temporarily set aside and withdrawn from all other forms of disposal provided under AS 38.05.135 — 38.05.181.

(b) The commissioner shall, after posting notice of the pending application in the local land office, conduct public hearings on the application for additional acreage. After public hearings, to the extent he finds to be in the public interest and necessary for the applicant in order to carry on business economically, the commissioner may, under regulations he prescribes, permit the person to take or hold coal leases or permits for an additional aggregate acreage of not more than 5,120 acres.

(c) No person may take or hold at one time phosphate leases on state land exceeding in the aggregate 10,240 acres. No person may take or hold sodium leases or permits during the life of sodium leases on state land exceeding in the aggregate acreage 5,120 acres, except that the commissioner may, where it is necessary in order to secure the economic mining of sodium compounds, permit a person to take or hold sodium leases or permits for up to 15,360 acres. No person may take or hold at any one time oil or gas leases exceeding in the aggregate 500,000 acres granted on tide and submerged land and 500,000 acres on all land other than tide and submerged land, including leases held both as lessee and under option or operating agreement from others.

Where more than a single person holds an interest in an oil or gas lease, each person shall be charged only with that percentage of the total acreage which corresponds to its percentage share of the total beneficial interest in the lease.

(d) The commissioner, for the purpose of encouraging the greatest ultimate recovery of coal, oil shale, phosphate, sodium, potassium, sulphur, and geothermal resources and in the interest of conservation of natural resources, after public hearing, or, when the state's title to land beneath navigable waters has been legally challenged by the United States and litigation initiated, may waive, suspend, refund, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion of a leasehold segregated for royalty purposes, whenever in his judgment it is necessary to do so in order to promote development, or whenever in his judgment the lease cannot be successfully operated under its terms. If the commissioner, in the interest of conservation, directs or assents to the suspension of operations and production under a lease granted, the payment of acreage rental or of minimum royalty prescribed by the lease may be suspended during the period of suspension of operations and production. The term of the lease shall be extended by adding the period of suspension to the lease.

(e) The provisions of (d) of this section that apply to waiver, suspension, refund or reduction of rental of minimum royalty apply to rental or minimum royalty paid before or after June 19, 1970 on any lease covering land beneath navigable waters which, according to the records of the division of lands, is in effect on June 19, 1970.

(f) The submerged and shorelands lying north of 57°, 30 minutes north latitude and east of 159°, 49 minutes west longitude within the Bristol Bay drainage are designated as the Bristol Bay Fisheries Reserve. Within the Bristol Bay Fisheries Reserve no surface entry permit to develop an oil or gas lease may be issued on state owned or controlled land until the legislature by appropriate resolution specifically finds that the entry will not constitute danger to the fishery. (§ 2 art VIII ch 169 SLA 1959; am § 1 ch 68 SLA 1969; am §§ 1, 2 ch 208 SLA 1970; am §§ 3, 4 ch 71 SLA 1971; am § 1 ch 102 SLA 1972; am §§ 3, 5 ch 153 SLA 1978)

Effect of amendments. — The 1978 amendment, in subsection (c), substituted "land" for "lands" in the first sentence, in the second sentence, and in three places in the third sentence. The amendment also deleted "oil, gas" preceding "oil shale, phosphate" near the beginning of subsection (d).

Sec. 38.05.145. Leasing procedure. (a) Deposits of coal, phosphates, oil shale, sodium, potassium, oil, gas, geothermal resources and state lands containing these deposits are subject to disposition under rules and regulations, recommended by the director and adopted by the commissioner, and the provision of AS 38.05.145 — 38.05.181. In applying the acreage limitations the commissioner may apply the rule of approximation. The uses of the rule of approximation made before March 31, 1960, by the commissioner are ratified.

(b) Repealed by § 6 ch 153 SLA 1978. (§ 3 art VIII ch 169 SLA 1959; am § 16 ch 61 SLA 1960; am § 3 ch 30 SLA 1964; am §§ 5, 6 ch 71 SLA 1971; am § 33 ch 71 SLA 1972; am § 6 ch 153 SLA 1978)

Effect of amendments. — The 1978 amendment repealed subsection (b), which related to priorities where the state selected or otherwise required land other than shorelands, title to which had been in

the federal government and which, at the effective date of the selection or acquisition, was subject to certain valid existing offers for applications.

Sec. 38.05.150. Coal. (a) The commissioner may, and upon the petition of a qualified applicant, shall divide coal land or the deposits of coal owned by the state into leasing tracts of 40 acres each, or multiples of 40 acres, and in the form which will permit the economical mining of the coal in the tract.

(b) Thereafter the commissioner may, upon the request of a qualified applicant or otherwise, from time to time, offer the land or deposits of coal for leasing. Each lease shall be awarded to a qualified applicant by competitive bidding or by the method prescribed by regulation.

(c) Where prospecting or exploration work is necessary to determine the existence or workability of coal deposits in an unclaimed and undeveloped area, the commissioner may issue to qualified applicants prospecting permits for a term of three years, covering not more than 5.120 acres with each permit. The commissioner shall grant a two-year extension of the initial three-year term of the permit if the permittee has conducted reasonably diligent prospecting or exploration activities in the area covered by the permit, has not been able to determine the existence and workability of coal deposits in the area, and wishes to continue prospecting or exploring in the area. The commissioner may grant up to three two-year extensions of the initial three-year term of the permit. At any time during the period of the permit, the permittee is entitled to a lease after submitting a mining plan satisfactory to the commissioner for that portion of the land in the permit as is shown to the satisfaction of the commissioner to contain coal in commercial quantities or to be needed for mining, reclamation, or processing the coal.

(d) For the privilege of mining or extracting the coal in the land covered by the lease, the lessee shall pay to the state the royalties specified in the lease. The royalties shall be fixed before offering the lease, and shall be effective for a period of not more than 20 years. The royalties shall be not less than five cents a ton of 2,000 pounds. The lessee shall also pay an annual rental, payable at the date of the lease and annually thereafter, on the land or coal deposits covered by the lease, at a rate fixed by the commissioner before offering the lease. The annual rental shall be effective for a period of not more than 20 years. The annual rental shall be not less than 25 cents an acre for the first year of the lease, not less than 50 cents an acre for the second year, third year, fourth year and fifth year, and not less than \$1 an acre for each year thereafter during the continuance of the lease. The rental for each year shall be credited against the royalties as they accrue for that year. Each lease shall provide that the annual rental payment is subject to adjustment at intervals of no more than 20 years and adjustments shall be based on the current rates for properties similarly situated.

(e) Each lease shall be for an indeterminate period upon condition of diligent development and continued operation of the mine, except when operation is interrupted by strikes, the elements, or casualties not attributed to the lessee. (§ 3(1) art VIII ch 169 SLA 1959; am § 17 ch 61 SLA 1960; am § 1 ch 71 SLA 1966; am §§ 2, 3 ch 68 SLA 1969; am § 1 ch 93 SLA 1984)

Effect of amendments. — The 1984 amendment, in subsection (c), substituted "three years, covering not more than 5,120 acres with each permit" for "two years, not exceeding five, 5,120 acres" in the first sentence and substituted the present last three sentences for the former last two sen-

tences, relating to the same subject matter.

Collateral references. — Grant, lease, exception, or reservation of "oil, gas, and other minerals, or the like," as including coal or metallic ores, 59 ALR3d 1146.

Sec. 38.05.155. Phosphates. (a) The commissioner may lease to qualified applicants land belonging to the state which contains deposits of phosphates and associated and related minerals, when it is in the public interest to do so. The commissioner may lease land through advertisement, competitive bidding, or other methods prescribed by regulation. The land shall be leased in units reasonably compact in form and not exceeding 2,560 acres in each unit.

(b) Each lease shall be conditioned upon the payment to the state of the royalties specified in the lease. The commissioner shall fix the royalties in advance of offering the lease. The royalties shall be not less than five per cent of the gross value, at the point of shipment to market, of the output of phosphates or phosphate rock, and associated or related minerals. Each lease shall provide for the payment of a rental payable at the date of the lease and annually thereafter. The rental shall be not less than 25 cents an acre for the first year, 50 cents an acre for the second year and third year, and \$1 an acre for each year thereafter. The rental paid for any year shall be credited against the royalties for that year. Each lease shall be for a term of 20 years and so long thereafter as the lessee complies with the terms and conditions of the lease. (§ 3(2) art VIII ch 169 SLA 1959)

Sec. 38.05.160. Oil shale. (a) The commissioner may lease to a qualified person deposits of oil shale belonging to the state and the surface of as much of the land containing these deposits, or land adjacent to it, as may be required for the extraction and reduction of the lease minerals. The lease may not exceed 5,120 acres of land, and the terms of the lease shall be limited to the extraction of minerals from the oil shale so leased. The lease may be for indeterminate periods upon the conditions imposed by the commissioner.

(b) For the privilege of mining, extracting, and disposing of the oil or other minerals covered by the lease, the lessee shall pay to the state the royalties specified in the lease and an annual rental at the rate of 50 cents an acre for the lands included in the lease. The rental paid for any one year shall be credited against the royalties accruing for that year. For the purpose of encouraging the production of petroleum products from shales, the commissioner may waive the payment of royalty and rental during the first five years of the lease. (§ 3(3) art VIII ch 169 SLA 1959)

Sec. 38.05.163. Sodium. (a) The commissioner may grant a prospecting permit to a qualified applicant. The permit gives the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium in lands belonging to the state for a period of not exceeding two years. The area included in a prospecting permit shall not exceed 2,560 acres of land in reasonably compact form. Upon showing to the satisfaction of the commissioner that valuable deposits of sodium minerals have been discovered by the permittee within the area covered by his permit, and that the land is chiefly valuable for these deposits, the permittee is entitled to a lease for all or a part of the land embraced in the prospecting permit at a royalty of not less than two per cent of the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market. The commissioner may lease lands known to contain valuable deposits of sodium compounds which are not covered by permits or leases through advertisement, competitive bidding, or other methods which he adopts by general regulation. The area covered by a lease may not exceed 2,560 acres.

(b) Each lease shall be conditioned upon the same royalty payment specified in paragraph (a) and the payment in advance of a rental of 25 cents an acre for the first calendar year or fraction of it, 50 cents an acre for the second calendar year, third calendar year, fourth calendar year, and fifth calendar year, and \$1 an acre a year thereafter during the continuance of the lease. The rental for any one year shall be credited against royalties accruing for that year.

(c) A lease shall be for a period of 20 years with preferential right in the lessee to renew for successive periods of 10 years upon terms and conditions prescribed by the commissioner. (§ 3(4) art VIII ch 169 SLA 1959)

Sec. 38.05.170. Sulphur. (a) Under rules and regulations prescribed by the commissioner, the commissioner shall grant a prospecting permit for sulphur to a qualified applicant. The permit gives the applicant the exclusive right to prospect for sulphur, in lands belonging to the state, for a period not exceeding two years. The area included in a permit shall not exceed 2,560 acres of land in reasonably compact form. Upon showing to the satisfaction of the commissioner that valuable deposits of sulphur have been discovered by the permittee within the area covered by his permit, and that the land is chiefly valuable for these deposits, the permittee is entitled to a lease for all or a part of the land embraced in the prospecting permit, at a royalty of five per cent of the quantity or gross value of the output of sulphur at the point of shipment to market. The commissioner may lease lands known to contain valuable deposits of sulphur which are not covered by permits or leases through advertisement, competitive bidding, or other methods which he adopts by general regulation. The area covered by the lease may not exceed 2,560 acres.

(b) Each lease shall be conditioned upon the payment by the lessee of the royalty fixed in the lease and the payment in advance of a rental of 50 cents an acre a year. The rental for any one year shall be credited against the royalties accruing for that year. (§ 3(5) art VIII ch 169 SLA 1959)

Sec. 38.05.175. Potassium. (a) Under rules and regulations prescribed by the commissioner, the commissioner may grant a prospecting permit to a qualified applicant. The permit gives the applicant the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium, in lands belonging to the state, for a period not exceeding two years. The area included in a permit may not exceed 2,560 acres of land in reasonably compact form. Upon showing to the satisfaction of the commissioner that valuable deposits of potassium compounds have been discovered by the permittee within the area covered by his permit, and that the land is chiefly valuable for these deposits, the permittee is entitled to a lease for all or a part of the land embraced in the prospecting permit, at a royalty of not less than two per cent of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market. The commissioner may lease lands known to contain valuable deposits of potassium compounds which are not covered by permits or leases through advertisement, competitive bidding, or other methods as he adopts by general regulation. The area covered by the lease may not exceed 2,560 acres.

(b) Each lease shall be conditioned upon payment by the lessee of a royalty of not less than two per cent of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market, and the payment in advance of a rental of 25 cents an acre for the first calendar year or fraction of it, 50 cents an acre for the second calendar year, third calendar year, fourth calendar year, and fifth calendar year, and \$1 an acre a year thereafter during the continuance of the lease. The rental for any one year shall be credited against royalties accruing for that year.

(c) Each lease shall be for a term of 20 years and so long thereafter as the lessee complies with the terms and conditions of the lease. (§ 3(6) art VIII ch 169 SLA 1959)

Article 6. Leasing of Mineral Lands.**Section**

180. Oil and gas leasing

183. Sale of royalty

Sec. 38.05.180. Oil and gas leasing. (a) The legislature finds that (1) the people of Alaska have an interest in the development of the state's oil and gas resources to

(A) maximize the economic and physical recovery of the resources;
(B) maximize competition among parties seeking to explore and develop the resources;

(C) maximize use of Alaska's human resources in the development of the resources;

(2) it is in the best interests of the state to encourage an assessment of its oil and gas resources and to allow the maximum flexibility in the methods of issuing leases to

(A) recognize the many varied geographical regions of the state and the different costs of exploring for oil and gas in these regions;

(B) minimize the adverse impact of exploration, development, production, and transportation activity.

(b) The commissioner shall annually prepare and submit to the legislature, between the first and the fifteenth day of each regular legislative session, a five-year proposed oil and gas leasing program consisting of a schedule of proposed lease sales and specifying as precisely as practicable the location of tracts proposed to be offered for oil and gas leasing during the calendar year in which the proposed program is submitted to the legislature and the following four calendar years.

(c) Except as provided in (d) and (w) of this section, an oil and gas lease sale may not be held unless it was included in the proposed leasing programs submitted to the legislature during the two calendar years preceding the year in which the sale is held. A lease sale shall be held during the calendar quarter for which it is scheduled in the proposed oil and gas leasing program but may be delayed by the commissioner for not more than 90 days after the last day of the calendar quarter for which it was scheduled if the commissioner determines that a delay is in the best interest of the state. A lease sale which is not held during the calendar quarter for which it was scheduled in the oil and gas leasing program, or in the following 90-day period authorized by this subsection, may be held only if rescheduled as provided in (b) of this section. A lease sale may not be

held before the date it is scheduled in the proposed oil and gas leasing program.

(d) The commissioner may issue oil and gas leases in an area that has not been included in a leasing program submitted, in accordance with (b) of this section, to the legislature if

(1) the land to be leased was previously subject to a valid state or federal oil and gas lease; or

(2) the land to be leased is contiguous to land already under state, federal or private lease and the commissioner makes a written finding, after hearing, that leasing of the land would result in a substantial probability of early evaluation and development of the land to be leased; or

(3) the land to be leased is adjacent to land owned or controlled by another party on which a discovery of commercial quantities of oil or gas has been made, and the commissioner finds, after hearing, that there is a reasonable probability that the land to be leased contains oil or gas in communication with the oil or gas discovered on the land of the other party; or

(4) the land to be leased is adjacent to land included in the federal five-year Outer Continental Shelf leasing program under 43 U.S.C. sec. 1344, and the commissioner makes a written finding, after hearing, that coordinated or simultaneous leasing with the federal government is in the public interest.

(e) Simultaneously with submission of the leasing program required under (b) of this section, the commissioner shall submit to the legislature a report containing the following:

(1) the schedule of all lease sales held during the preceding calendar year, the bidding method or methods utilized, and an analysis of the results of the bidding;

(2) if determined, a description of the bidding methods to be used for all lease sales to be held during the current and next two succeeding calendar years;

(3) the reasons a particular bidding method has been selected.

(f) The commissioner may issue oil and gas leases on state land to the highest responsible qualified bidder determined by competitive bidding under regulations adopted by the commissioner. Bidding may be by sealed bid or according to any other bidding procedure the commissioner determines is in the best interests of the state. Whenever, under any of the leasing methods listed in this subsection, a royalty share is reserved to the state, it shall be delivered in pipeline quality and free of all lease or unit expenses, including but not limited to separation, cleaning, dehydration, gathering, salt water disposal, and preparation for transportation off the lease or unit area. Following a pre-sale analysis, the commissioner may choose at least one of the following leasing methods:

(1) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12½ per cent in amount or value of the production removed or sold from the lease;

(2) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12½ per cent in amount or value of the production removed or sold from the lease and a fixed share of the net profit derived from the lease of not less than 30 per cent reserved to the state;

(3) a fixed cash bonus with a royalty share reserved to the state as the bid variable but no less than 12½ per cent in amount or value of the production removed or sold from the lease;

(4) a fixed cash bonus with the share of the net profit derived from the lease reserved to the state as the bid variable;

(5) a fixed cash bonus with a fixed royalty share reserved to the state of not less than 12½ per cent in amount or value of the production removed or sold from the lease with the share of the net profit derived from the lease reserved to the state as the bid variable;

(6) a cash bonus bid with a fixed royalty share reserved to the state based on a sliding scale according to the volume of production or other factor but in no event less than 12½ per cent in amount or value of the production removed or sold from the lease;

(7) a fixed cash bonus with a royalty share reserved to the state based on a sliding scale according to the volume of production or other factor as the bid variable but not less than 12½ per cent in amount or value of the production removed or sold from the lease.

(g) The share of the net profit derived from a lease reserved to the state under (f) of this section is royalty sale proceeds for the purposes of the Alaska permanent fund under AS 37.13.010.

(h) The commissioner may include terms in any oil and gas lease imposing a minimum work commitment on the lessee. These terms shall be made public before the sale, and may include appropriate penalty provisions to take effect in the event the lessee does not fulfill the minimum work commitment. If it is demonstrated that a lease has been proven unproductive by actions of adjacent lease holders, the commissioner may set aside a work commitment. The commissioner may waive for a period not to exceed one two-year period any term of a minimum work commitment if the commissioner makes a written finding either that conditions preventing drilling or exploration were beyond the lessee's reasonable ability to foresee or control or that the lessee has demonstrated through good faith efforts an intent and ability to drill or develop the lease during the term of the waiver.

(i) The commissioner may provide for the establishment of an exploration incentive credit system under which a lessee of state land drilling an exploratory well on that land may earn credits based upon the footage drilled and the region in which the well is situated. The commissioner may also provide for credits to be earned by persons

performing geophysical work on state land, if that work is performed during the two seasons immediately preceding an announced lease sale and on land included within the sale area and the geophysical information is made public following the sale. Credits may not exceed 50 percent of the cost of the drilling or geophysical work. Credits may be used during a limited period established by the commissioner and may be assigned during that period. Credits may be applied against (1) oil and gas royalty and rental payments payable to the state or (2) taxes payable under AS 43.55. A credit may not exceed 50 percent of the payment toward which it is being applied. Amounts due the Alaska permanent fund (AS 37.13.010) shall be calculated before the application of credits under this subsection.

(j) To prolong the economic life of an oil and gas field, the commissioner shall adopt regulations for all bidding methods to allow reduction of royalty on leases within the field to compensate for increasing costs in the later stages of production decline. The commissioner may not grant a reduction of royalty until two years' initial production from the field has occurred and each lessee requesting the reduction has made a clear showing that the revenue from all hydrocarbons produced from the field is insufficient to produce a reasonable rate of return with respect to that lessee's total investment in the field.

(k) The commissioner shall define all terms and adopt all regulations necessary for a reasonable understanding and evaluation of a particular bidding method before the public announcement of the terms of proposed sale employing that method.

(l) Subject to the provisions of AS 31.05, the commissioner has discretion to enter into an agreement whereby, with the consent of the lessee, the state's royalty share of oil and gas production may be stored or retained in storage by the lessee, or the commissioner may enter into an agreement with one or more of the affected field lease holders to trade current royalty production from a field for a like amount, kind, and quality of future production, on the condition that the state receives back its stored or traded royalty share during the first half of the estimated field life or no later than 15 years after start of production, whichever is sooner.

(m) An oil and gas lease must cover a reasonably compact area not exceeding 5,760 acres, and may be for a maximum period of 10 years, except that the commissioner may issue a lease for a period not less than five years upon a finding that it is in the best interests of the state. An oil and gas lease shall be automatically extended if and for so long thereafter as oil or gas is produced in paying quantities from the lease or if the lease is committed to a unit approved by the commissioner. A lease issued under this section covering land on which there is a well capable of producing oil or gas in paying quantities does not expire because the lessee fails to produce oil or gas

unless the lessee is allowed reasonable time to place the well on a producing status. Upon extension, the commissioner may increase lease rentals so long as the increased rental rate does not exceed 150 per cent of the rate for the preceding year. If drilling has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, including such operations as redrilling, sidetracking, or other means necessary to reach the originally proposed bottom hole location, the lease continues in effect until 90 days after drilling has ceased and for so long thereafter as oil or gas is produced in paying quantities. An oil and gas lease issued under this section which is subject to termination by reason of cessation of production does not terminate if, within 60 days after production ceases, reworking or drilling operations are commenced on the land under lease and are thereafter conducted with reasonable diligence during the period of nonproduction.

(n) The commissioner may establish by regulation that after a well has been plugged and abandoned, the rental rate which was in effect during the year of abandonment is maintained for the remainder of the term. Rental is payable in advance and continues until income to the state from royalty or net profit share exceeds rental income to the state for that year. Oil and gas leases shall provide for payment to the state of rental on the following basis:

- (1) for the first year, \$1.00 per acre;
- (2) for the second year, \$1.50 per acre;
- (3) for the third year, \$2.00 per acre;
- (4) for the fourth year, \$2.50 per acre;
- (5) for the fifth and following years, \$3.00 per acre.

(o) Upon timely application as provided by regulation, the state may issue to the holder of a federal or private lease, a state shoreland lease covering land within the exterior boundaries of the federal or private lease which has been excluded on the basis of navigability or which is later administratively or judicially determined to be shoreland. The term of such a state shoreland lease shall be the same as the term of the federal or private lease.

(p) To conserve the natural resources of all or a part of an oil or gas pool, field, or like area, the lessees and their representatives may unite with each other, or jointly or separately with others, in collectively adopting or operating under a cooperative or a unit plan of development or operation of the pool, field, or like area, or a part of it, when determined and certified by the commissioner to be necessary or advisable in the public interest. The commissioner may, with the consent of the holders of leases involved, establish, change, or revoke drilling, producing, and royalty requirements of the leases and adopt regulations with reference to the leases, with like consent on the part of the lessees, in connection with the institution and operation of a cooperative or unit plan as the commissioner determines necessary or

proper to secure the proper protection of the public interest. The commissioner may require oil and gas leases issued under this section to contain a provision requiring the lessee to operate under a reasonable cooperative or unit plan, and may prescribe a plan under which the lessee must operate. The plan must adequately protect all parties in interest, including the state.

(q) A plan authorized by (p) of this section, which includes land owned by the state, may contain a provision vesting the commissioner, or a person, committee, or state agency, with authority to modify from time to time the rate of prospecting and development and the quantity and rate of production under the plan. All leases operated under a plan approved or prescribed by the commissioner are excepted in determining holdings or control under AS 38.05.140. The provisions of this section concerning cooperative or unit plans are in addition to and do not affect AS 31.05.

(r) Producing acreage on a known geologic structure of a producing oil or gas field is excluded from chargeability as against the acreage limitation provisions of AS 38.05.140.

(s) When separate tracts cannot be individually developed and operated in conformity with an established well-spacing or development program, a lease, or a portion of a lease, may be pooled with other land, whether or not owned by the state, under a communization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the commissioner to be in the public interest. Operations or production under the agreement are considered as operations or production as to each lease committed to the agreement.

(t) The commissioner may prescribe conditions and approve, on conditions, drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, when, in the discretion of the commissioner, the conservation of natural resources or the public convenience or necessity requires it or the interests of the state are best served. All leases operated under approved drilling or development contracts and interests under them, are excepted in determining holding or control under AS 38.05.140.

(u) To avoid waste or to promote conservation of natural resources, the commissioner may authorize the subsurface storage of oil or gas whether or not produced from state land, in land leased or subject to lease under this section. This authorization may provide for the payment of a storage fee or rental on the stored oil or gas, or, instead of the fee or rental, for a royalty other than that prescribed in the lease when the stored oil or gas is produced in conjunction with oil or gas not previously produced. A lease on which storage is so authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(v) *(Repealed, § 36 ch 94 SLA 1980.)*

(w) Notwithstanding any other provisions of this section, land which has been offered for lease within the previous five years and which received no bids at competitive sale or for which no bid was accepted may be, at the discretion of the commissioner, immediately offered for lease, under regulations adopted by the commissioner, upon terms appearing most advantageous to the state; however, noncompetitive leasing is prohibited. The commissioner shall establish a royalty determined to be in the public interest but not less than 12½ percent. A lease must provide for payment to the state or rental but need not adhere to the rental schedule in (n) of this section nor to the 5,760-acres-per-lease limitation in (m) of this section. The lease term may not exceed five years except as provided in (m) and (o) of this section.

(x) A lessee conducting or permitting any exploration for, or development or production of, oil or gas on state land shall provide the commissioner access to all noninterpretive data obtained from that lease and shall provide copies of that data, as the commissioner may request. The confidentiality provisions of AS 38.05.035 apply to the information obtained under this subsection.

(y) A noncompetitive lease existing at October 10, 1978 shall be extended for a period of two years and so long thereafter as oil and gas is produced in paying quantities. A noncompetitive lease extended under this subsection is subject to the regulations in force at the expiration of the initial five-year term of the lease. No extension may be granted, however, unless within a period of 90 days before the expiration date an application for extension is filed by the record title holder or an assignee whose assignment has been filed for approval, or an operator whose operating agreement has been filed for approval.

(z) No leases may be issued under this section without the inclusion of the following language: "The landowners' royalty share of the unit production allocated to each separately owned tract shall be regarded as royalty to be distributed to and among, or the proceeds of it paid to, the landowners, free and clear of all unit expense and free of any lien for it." Leases issued in violation of this subsection shall, for all purposes, be construed as containing the language required by this subsection. (§ 3(7) art VIII ch 169 SLA 1959; am § 18 ch 61 SLA 1960; am § 1 ch 124 SLA 1962; am §§ 4 — 7 ch 30 SLA 1964; am § 20 ch 70 SLA 1964; am § 2 ch 91 SLA 1967; am § 1 ch 65 SLA 1969; am § 1 ch 86 SLA 1970; am § 1 ch 155 SLA 1978; am § 16 ch 160 SLA 1978; am §§ 3, 4 ch 65 SLA 1979; am § 6 ch 18 SLA 1980; am § 36 ch 94 SLA 1980; am §§ 1 — 5 ch 111 SLA 1980; am §§ 11, 12 ch 161 SLA 1984; am § 1 ch 89 SLA 1985)

Cross references. — For establishment of drilling units for pools, see AS 31.05.100.

Effect of amendments. — The first

The second 1980 amendment repealed subsection (v).

The third 1980 amendment, in subsection (b), inserted "five-year" and "consisting of a schedule of proposed lease sales and," deleted "third and fourth calendar years following the" preceding "calendar year," and added at the end of the subsection "and the following four calendar years"; rewrote subsection (c), in subsection (d), added "or" at the end of paragraph (3), and added paragraph (4); in paragraph (2) of subsection (e), added "if determined" at the beginning of the paragraph, inserted "the bidding methods to be used for," and deleted "and, if determined, the bidding methods to be used" following "calendar years" at the end of the paragraph; and in subsection (w), inserted "or for which no bid was accepted" near the beginning of the subsection.

The 1984 amendment deleted a reference to the Alaska renewable resources development fund under AS 37.11.020 at the end of subsection (g) and in the last sentence of subsection (i), and made a

Effect of amendments. — The 1985 amendment, effective June 3, 1985, in subsection (h) substituted "If it is" for

1980 amendment substituted "AS 37.13.010" for "AS 37.10.065" following "permanent fund under" near the middle of subsection (g).

minor stylistic change in the next-to-last sentence of subsection (i).

Opinions of attorney general. — Former AS 38.05.305(a) did not apply to actions approving unit agreements in which one automatic consequence of unitization would be extension of the lease terms where the leases were issued prior to September 22, 1977, since extension of a lease term upon unitization did not constitute "renewal" within the meaning of former AS 38.05.305(a); moreover, there was good reason to believe that former AS 38.05.305(a) would also be inapplicable in the case of a unit involving state leases issued after September 22, 1977, November 25, 1977. Op. Att'y Gen.

The public notice requirement of AS 38.05.945 probably does not apply to the automatic lease term extension that occurs as a consequence of unitization since such extension is a measure to enhance the feasibility of unitized operation, not a disposal action. November 25, 1977. Op. Att'y Gen.

"Should it be" at the beginning of the third sentence and added the last sentence.

NOTES TO DECISIONS

Purpose of subsection (a). — The provisions of subsection (a) of this section were intended to insure that leases on valuable oil and gas producing state lands will be made available to the public on a fair and equitable basis, that the state will be adequately compensated for its natural resources, and that the state's resources are developed in an orderly fashion. For the commissioner to decide that these purposes are furthered by providing for bidding by cash bonus cannot be said to be unreasonable. *Kelly v. Zamarelli*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

And construction thereof. — The only reasonable construction that can be placed on subsection (a) of this section is that the legislature intended to give the commissioner broad authority to determine the kind of bonus he will accept. The legislature at the time it passed subsection (a) was undoubtedly aware that under competitive bidding procedures different forms of bonuses might be offered. It did not itself prescribe a particular form, but instead provided that competitive bidding shall be "under general regulations," and that lands shall be leased upon the payment of "such bonus as may be accepted by the commissioner." The plain language of the statute shows that royalties were to be

fixed independently of the acceptance of the highest bonus. *Kelly v. Zamarelli*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

The legislature has given the commissioner "broad authority" concerning competitive bidding procedures. *Champion Oil Co. v. Herbert*, Sup. Ct. Op. No. 1621 (File No. 3385), 578 P.2d 961, cert. denied, 439 U.S. 980, 99 S. Ct. 565, 58 L. Ed. 2d 650 (1978).

Subsection (a) of this section does not embody an overbroad delegation of legislative authority to the commissioner. *Champion Oil Co. v. Herbert*, Sup. Ct. Op. No. 1621 (File No. 3385), 578 P.2d 961, cert. denied, 439 U.S. 980, 99 S. Ct. 565, 58 L. Ed. 2d 650 (1978).

Power to change law respecting lease extensions is vested in state. — The governmental power to change the law respecting the granting of lease extensions, vested in Congress prior to statehood and preserved by § 6(k) of the Alaska Statehood Act, became vested in the state when the lands subject to the lease were granted to the state as its property. *Kirkpatrick v. Commissioner, Dep't of Natural Resources*, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).

And has been exercised by the Alaska Land Act. — The state has exer-

cised its power to change the law respecting lease extensions by the Alaska Land Act and by regulations adopted under its authority. *Kirkpatrick v. Commissioner, Dept. of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).*

Subsection (c) has no application to pre-statehood federal leases. — Read in the context of article 6 of this chapter, it becomes apparent that subsection (c) of this section, as to extensions, relates only to leases issued by the state under the authority of the Alaska Land Act, and is not pertinent with respect to pre-statehood federal leases. *Kirkpatrick v. Commissioner, Dept. of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).*

Subsection (c) of this section, relating to extensions of state oil and gas leases, has no application to federal leases of lands granted to the state by the Alaska Statehood Act. Hence, appellant had no right to an extension of its federal lease, but only a right, which it was granted under the commissioner's regulations, to a state lease for a period of two years following expiration of the original five-year term of its federal lease. *Kirkpatrick v. Commissioner, Dept. of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).*

Nor to lands classified by Statehood Act as competitive. — The language of this section is not directed to a situation where lands have been classified as competitive by the Alaska Land Act itself, and where there is no room for the exercise of the commissioner's authority to make classifications. *Kirkpatrick v. Commissioner, Dept. of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).*

Effect of Alaska Statehood Act and statutes on pre-statehood federal leases. — For effect of the Alaska Statehood Act and statutes enacted by the Alaska State Legislature on oil and gas leases of Alaska lands issued by the United States Department of the Interior while Alaska was a territory of the United States, see *Kirkpatrick v. Commissioner, Dept. of Natural Resources, Sup. Ct. Op. No. 201 (File No. 388), 391 P.2d 7 (1964).*

"Commercial quantities" construed. — See *Pan Am. Petroleum Corp. v. Shell Oil Co., Sup. Ct. Op. No. 553 (File No. 918), 485 P.2d 12 (1969).*

The words "bonus" and "royalty" in their broadest concepts and meanings are conflicting and overlapping. On the other

hand, when it is necessary that they be distinguished, there is a narrower concept of the two terms as they are ordinarily and commonly used and understood in the oil and gas industry in which they do not conflict but are harmonious. In this narrower sense, a reservation or a payment of a part or percentage of production under a lease which is to continue throughout the life of the lease is regarded as "royalty," and a sum certain to be paid in cash or out of production is regarded as "bonus." *Kelly v. Zamarelio, Sup. Ct. Op. No. 706 (File Nos. 1255, 1256), 486 P.2d 906 (1971).*

In its broadest sense, "bonus" is any consideration given for a lease over and beyond the usual $\frac{1}{2}$ th royalty, whether the additional consideration be paid or payable and whether paid in cash or payable out of production. *Kelly v. Zamarelio, Sup. Ct. Op. No. 706 (File Nos. 1255, 1256), 486 P.2d 906 (1971).*

In its broadest aspect, "royalty" is a share of the product or profit reserved by the owner for permitting another to use the property. In this broad sense, a sum certain to be paid out of production, although "bonus" in that it is consideration in addition to the usual $\frac{1}{2}$ th royalty, would also be "royalty." *Kelly v. Zamarelio, Sup. Ct. Op. No. 706 (File Nos. 1255, 1256), 486 P.2d 906 (1971).*

Choosing concept of "bonus" most commonly encountered. — In choosing the concept of "bonus" most commonly encountered in the oil and gas industry, defendants acted neither unreasonably nor arbitrarily. *Kelly v. Zamarelio, Sup. Ct. Op. No. 706 (File Nos. 1255, 1256), 486 P.2d 906 (1971).*

Requiring compensation for lease immediately upon award of lease. — It is not unreasonable for the commissioner to determine that it is in the state's best interest to receive compensation for the leases immediately upon the award of the lease, rather than to wait for uncertain sums to arrive in the form of premium royalties. *Kelly v. Zamarelio, Sup. Ct. Op. No. 706 (File Nos. 1255, 1256), 486 P.2d 906 (1971); Champion Oil Co. v. Herbert, Sup. Ct. Op. No. 1621 (File No. 3385), 578 P.2d 961, cert. denied, 439 U.S. 960, 99 S. Ct. 565, 58 L. Ed. 2d 650 (1978).*

Considering only cash portions of bids. — In considering only the cash portion of plaintiffs' 33 bids, defendants acted pursuant to valid regulations which provided that a lease would be awarded to the bidder offering the highest cash bonus. Since other bids on the 33 tracts contained higher cash offerings than plaintiffs' bids,

the defendants acted properly in determining that the high cash bids on those 33 tracts were the apparent high bids, not plaintiffs' bids. *Kelly v. Zamareilo*, Sup. Ct. Op. No. 703 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Commissioner empowered to grant royalty reduction. — This section empowers the commissioner of the Department of Natural Resources, not the director, division of lands, to grant the specified royalty reduction. *Union Oil Co. v. State Dept. of Natural Resources*, Sup. Ct. Op.

No. 1087 (File No. 2025), 526 P.2d 1357 (1974).

Applied in *Union Oil Co. v. State*, Sup. Ct. Op. No. 1563 (File No. 2650), 574 P.2d 1266 (1978); *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 845 P.2d 750 (1982); *Chevron U.S.A., Inc. v. LeResche*, Sup. Ct. Op. No. 2659 (File Nos. 6396, 6648), 663 P.2d 923 (1983).

Stated in *McKinnon v. Alpetco Co.*, Sup. Ct. Op. No. 2413 (File No. 5546), 633 P.2d 281 (1981).

Collateral references. — Abandonment of oil or gas lease by parol declaration, 13 ALR2d 951.

Validity of compulsory pooling or unitization statute or ordinance requiring owners or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, 37 ALR2d 434.

Oil and gas as "minerals" within deed, lease, or license, 37 ALR2d 1440.

Secondary recovery of oil and gas, 93 ALR2d 451.

Rights of parties to oil and gas lease or royalty deed after expiration of fixed term where production temporarily ceases, 100 ALR2d 685.

Right and measure of recovery for breach of obligation to drill exploratory oil or gas wells, 4 ALR3d 284.

"Dry hole" as "well" within undertaking to drill well, 15 ALR3d 450.

Water use: construction of oil and gas lease provision giving lessee free use of water from lessor's land, 23 ALR3d 1434.

Construction of oil and gas lease as to

the lessee's right and duty of geophysical or seismograph exploration or survey, 28 ALR3d 1426.

Distillate: rights, under oil and gas lease, deed, or sales contract, to "distillate," "condensate," or "natural gasoline", 38 ALR3d 983.

Meaning of "paying quantities" in oil and gas lease, 43 ALR3d 8.

Validity, construction, and application of entirety clause in gas and oil lease, 48 ALR3d 706.

Abandoned well: duty and liability as to plugging oil or gas well abandoned or taken out of production, 50 ALR3d 240.

Grant, lease, exception, or reservation of "oil, gas, and other minerals, or the like," as including coal or metallic ores, 59 ALR3d 1146.

Market value: meaning of, and proper method for determining, market value or market price in oil and gas lease requiring royalty to be paid on standard measured by such terms, 10 ALR4th 732.

Sec. 38.05.181. Geothermal resources. (a) The commissioner may, under regulations adopted by the commissioner, grant prospecting permits and leases to a qualified person to explore for, develop, or use geothermal resources. When title to the surface parcel is held by a person other than the state, that person shall have a preferential right to a geothermal prospecting permit or lease for the area underlying the surface parcel. The surface owner must exercise the preference right within 30 days after receiving notice of the application for a permit, or by agreeing to meet the terms of a bid within 60 days after receiving notice of the acceptance of the bid for a lease.

(b) The commissioner may designate a geothermal area or portion of it a competitive geothermal area. A designation as a competitive geothermal area must be on the basis of substantial geologic indications of geothermal resources or on the basis of competitive interest in geothermal resources of the area.

(c) On state land that has not been declared a competitive geothermal area or withdrawn from geothermal prospecting, the commissioner may issue a prospecting permit to the first qualified applicant. The permit conveys an exclusive right, for a period of two years, to prospect for geothermal resources on state land included under the permit. The commissioner has discretion to renew the permit for an additional one-year term. A holder of a prospecting permit has the right, upon the showing of a discovery of geothermal resources in commercial quantities and the submission of a development plan acceptable to the commissioner, to convert the permit to a noncompetitive lease at a royalty rate under (g) of this section. The conversion privilege must be exercised not later than 30 days after the expiration of the permit. If the land included within the permit is designated a competitive geothermal area during the permit term, the permittee must apply for a noncompetitive lease within 30 days after notification of the designation or forfeit the conversion privileges and the exclusive right to prospect.

(d) On state land that is designated a competitive geothermal area and is not subject to an existing prospecting permit, the commissioner may issue geothermal leases to the highest bidder by competitive bidding procedures established by regulations adopted by the commissioner. At the discretion of the commissioner, competitive lease sales may be by oral or sealed bid, on the basis of a cash bonus, profit share, or royalty share.

(e) Prospecting permits and geothermal leases granted under this section must, except in the case of parcels subject to a preference right under (b) of this section, be issued for at least 40 acres but not more than 2,560 acres. A person may not own, or hold an interest in, geothermal leases covering more than 51,200 acres. However, geothermal leases in commercial production, individually or under a unit operation or well spacing or pooling arrangement, do not count against the acreage limitation. All prospecting permits and geothermal leases are subject to an annual rental, payable in advance, of \$3 per acre. The rental for a year shall be credited against royalties accruing for that year.

(f) A geothermal lease shall be issued for a primary term of 10 years and may be renewed for an additional term of five years if the lessee is actively engaged in drilling operations. A geothermal lease is valid for the duration of commercial production. Beginning 20 years after the initiation of commercial production and at 10-year intervals thereafter, the commissioner may renegotiate the rentals and royalties due on a geothermal lease.

(g) Each geothermal lease shall be conditioned upon payment by the lessee of a royalty of not less than 10 percent but not more than 15 percent of the gross revenues derived from the production, sale, or use of geothermal resources under the lease. Royalties may be taken in

kind rather than in value if the commissioner determines that taking in kind would be in the best interest of the state.

(h) Regulations adopted by the commissioner to implement this section shall be adopted in accordance with the Administrative Procedure Act (AS 44.62.010 — 44.62.650). (§ 1 ch 71 SLA 1971; am § 6 ch 104 SLA 1971; am §§ 34 — 36 ch 71 SLA 1972; am §§ 40, 41 ch 127 SLA 1974; am § 4 ch 175 SLA 1980)

Cross references. — For geothermal resources generally, see AS 41.06. For legislative policy with respect to geothermal resources, see § 1, ch. 175, SLA 1980 in the Temporary and Special Acts.

Effect of amendments. — The 1980 amendment rewrote the section.

Collateral references. — Construction and application of Geothermal Steam Act of 1970 (30 USCS § 1001 et seq.), pertaining to leases of government lands for development of geothermal steam resources, 40 ALR Fed 814.

Sec. 38.05.182. Royalty on natural resources. (a) Any royalty provided for in AS 38.05.135 — 38.05.181 may be taken in kind rather than in money if the commissioner determines that the taking in kind would be in the best interest of the state. However, royalties on oil and gas shall be taken in kind unless the commissioner determines that the taking in money would be in the best interest of the state.

(b) The commissioner shall submit a determination to take royalty in money to the legislature at the first opportunity during a current session or, if the legislature is not in session, at the next regular session. The legislature, within 60 days or by the adjournment of the session, whichever comes sooner, may revoke the determination by concurrent resolution. (§ 1 ch 56 SLA 1970; am § 7 ch 71 SLA 1971; am § 1 ch 9 SSSLA 1974; am § 5 ch 218 SLA 1976; am § 1 ch 146 SLA 1977; am § 3 ch 112 SLA 1980)

Revisor's notes. — Enacted as AS 38.05.362. Renumbered in 1970.

Effect of amendments. — The 1980 amendment deleted "(1)" following "in kind unless," and deleted "and (2) the Alaska Royalty Oil and Gas Development

Advisory Board approves the taking in money" following "best interest of the state," and in subsection (b), deleted "approved under (a) of this section" following "to take royalty in money."

NOTES TO DECISIONS

Quoted in *McKinnon v. Alpetco Co.*, Sup. Ct. Op. No. 2413, File No. 5546, 633 P.2d 281 (1981).

Collateral references. — 38 Am Jur. 2d, Gas and Oil, §§ 189-198.

38 C.J.S., Mines and Minerals, §§ 185 to 192, 213 to 219

Acceptance of rents or royalties under oil and gas lease as waiver of forfeiture for

breach of covenant or condition regarding drilling of wells, 50 ALR 461.

Lessor's acceptance of royalty under gas and oil lease after lease has expired as precluding him from insisting upon expiration, 113 ALR 396

Overriding royalty as affected by surrender, forfeiture, abandonment, or loss of lease, 135 ALR 557.

What constitutes "royalty" on oil or gas production within language of conveyance, exception or reservation, 4 ALR2d 492.

Construction and effect of provision in mineral lease excusing payment of minimum rent or royalty, 28 ALR2d 1013.

Solid mineral royalty as real or personal property, 68 ALR2d 728.

Solid mineral royalty under mining lease as real or personal property for purpose of payment of damages in condemnation proceedings, 68 ALR2d 735.

Expenses and taxes deductible by lessee in computing lessor's oil and gas royalty or other return, 73 ALR2d 1066.

Payment of stipulated minimum royalties or annual rental under solid mineral lease as precluding lessor's claim of forfeiture or abandonment, 87 ALR2d 1076.

"Shut-in royalty" payment provisions in oil and gas leases, 96 ALR2d 345.

Rights of parties to oil and gas lease or royalty deed after expiration of fixed term where production temporarily ceases, 100 ALR2d 885.

Sec. 38.05.183. Sale of royalty. (a) The sale, exchange or other disposal of a mineral obtained by the state as a royalty under AS 38.05.182, or the sale, exchange or other disposal in whole or in part of a right to receive future mineral production under a state lease under this chapter, shall be by competitive bid and the sale, exchange or other disposal made to the highest responsible bidder, except that competitive bidding is not required when the commissioner, after prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board under AS 38.06.050, determines that the best interest of the state does not require it or that no competition exists.

(b) When competitive bids are required, the commissioner, after prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board, may reject all bids on a determination that because of the amount of the bids, the lack of responsibility on the part of the bidders, or for reasons consistent with the criteria set out in AS 38.06.070, the acceptance of the bids would not be in the best interest of the state.

(c) If the commissioner determines that a sale, exchange or other disposal of a mineral obtained by the state as a royalty under AS 38.05.182 or of a right to receive future mineral production under a state lease under this chapter shall be made otherwise than by competitive bid, and the Alaska Royalty Oil and Gas Development Advisory Board has been notified in writing of that determination, the commissioner shall make public in writing the specific findings and conclusions upon which that determination is based.

(d) Oil or gas taken in kind by the state as its royalty share may not be sold or otherwise disposed of for export from the state until the commissioner determines that the royalty-in-kind oil or gas is surplus to the present and projected intrastate domestic and industrial needs. The commissioner shall make public, in writing, the specific findings and reasons on which the determination is based and shall, within 10 days of the convening of a regular session of the legislature, submit a report showing the immediate and long-range domestic and industrial needs of the state for oil and gas and an analysis of how these needs are to be met.

(e) When a sale, exchange or other disposal of oil or gas taken in kind by the state as its royalty share, or a sale, exchange or other disposal in whole or in part of a right to receive future royalty oil or gas, under a state lease under this chapter is made other than by competitive bid, the sale, exchange or other disposal shall be awarded by the commissioner to the prospective buyer whose proposal offers the maximum benefits to citizens of the state. The commissioner shall consider

- (1) the cash value offered;
- (2) the projected effects of the sale, exchange or other disposal on the economy of the state;
- (3) the projected benefits of refining or processing the oil or gas in the state;
- (4) the ability of the prospective buyer to provide refined products or by-products for distribution and sale in the state with price or supply benefits to the citizens of the state; and
- (5) the criteria listed in AS 38.06.070(a).

(f) The commissioner may not enter into a contract for the sale of royalty oil unless the contract provides that any material amendment to the contract that appreciably reduces the consideration received by the state requires prior approval of the legislature.

(g) AS 38.05.035(e) does not apply to a sale, exchange, or other disposal of oil or gas under this section. (§ 1 ch 56 SLA 1970; am § 3 ch 9 SSSLA 1974; am §§ 9, 10 ch 112 SLA 1980; am § 2 ch 68 SLA 1984; am § 2 ch 105 SLA 1984; am § 1 ch 64 SLA 1985)

Revisor's notes. — Enacted as AS 38.05.363. Renumbered in 1970.

Effect of amendments. — The 1980 amendment, in subsection (a), substituted "after prior written notice to" for "with the prior written approval of" and "under AS 38.06.050" for "where applicable," near the end of the subsection; in subsection (b), substituted "after prior written notice to" for "with the prior written approval of"; in

subsection (c), substituted "has been notified in writing of" for "where applicable has approved"; in subsection (d), deleted "with the approval of the Alaska Royalty Oil and Gas Development Advisory Board" following "until the commissioner"; and added subsection (e).

The 1984 amendments added an identical subsection (f).

Effect of amendments. — The 1985 amendment, effective May 31, 1985, added subsection (g).

NOTES TO DECISIONS

Waiver of competitive bidding. — An initial waiver of competitive bidding and a second waiver at the time of amendment removed any obligation to open the

contract to competitive bidding. *McKinnon v Alpetco Co.*, Sup. Ct. Op. No. 2413 (File No. 5546), 633 P 2d 281 (1981).

Sec. 38.05.190. Qualifications. (a) The right to acquire exploration and mining rights under AS 38.05.185 — 38.05.275 may be acquired or held only by

- (1) citizens of the United States at least 18 years of age;
- (2) legal guardians or trustees of citizens of the United States under 18 years of age on behalf of the citizens;
- (3) persons at least 18 years of age who have declared their intention to become citizens of the United States;
- (4) aliens at least 18 years of age if the laws of their country grant like privileges to citizens of the United States;

(5) corporations organized under the laws of the United States or of any state or territory of the United States and qualified to do business in this state, except that if more than 50 percent of the stock of a corporation is owned or controlled by aliens who are not qualified, the corporation is not qualified to acquire or hold the rights;

(6) associations of persons described in (1) — (5) of this subsection.

(b) An unqualified person who acquires an interest in exploration or mining rights by operation of law shall be allowed two years in which to become qualified or to dispose of the interest to a qualified person. (§ 2 art IX ch 169 SLA 1969; am § 1 ch 123 SLA 1961; am § 2 ch 93 SLA 1984)

Revisor's notes. — In 1984, former (a)(5) and (a)(6) of this section were reorganized as (a)(6) and (a)(5) respectively. A corresponding change in the internal reference in present (a)(6) was made.

Effect of amendments. — The 1984

amendment in subsection (a), substituted "18" for "19" in paragraphs (1)-(4), "the" for "such" near the end of paragraphs (2) and (6), and "persons described in (1) — (6) of this subsection" for "such persons" in paragraph (5).

Sec. 38.05.306. Classification of lands. (a) The commissioner shall classify for surface use land in areas considered necessary and proper. This section does not prevent reclassification of land where the public interest warrants reclassification, nor does it preclude multiple purpose use of land whenever different uses are compatible. State land, water, or land and water area may not, except by act of the state legislature, be closed to multiple purpose use if the area involved contains more than 640 acres.

(b) Not later than February 1 of each year, the commissioner shall submit a written report to each house of the legislature which describes and shows the location of all classifications of state land made under (a) of this section during the preceding year. (§ 1 art III ch 169 SLA 1969; am § 2 ch 31 SLA 1964; am §§ 33, 34 ch 85 SLA 1979; am § 40 ch 152 SLA 1984)

Cross references. — For state land and water restricted to use as public recreation areas and state parks, see AS 41.21.

Effect of amendments. — The 1984 amendment made a series of technical changes throughout subsection (a).

NOTES TO DECISIONS

Department of Natural Resources agricultural classification of lottery parcels proper. — The requirement that an act of the legislature is required where multiple purposes are closed in parcels exceeding 640 acres applied to the management of retained state land, not the disposal of it; thus, Department of Nat-

ural Resources agricultural classification of lottery parcels was proper, even though it did foreclose multiple purposes. *State v. Weidner*, Sup. Ct. Op. No. 2758 (File Nos. 8220, 8240, 8272), P.2d (1984).

Quoted in *Southeast Alaska Conservation Council, Inc. v. State*, Sup. Ct. Op. No. 2662 (File No. 5855), P.2d (1983).

AS 38.05.301 was renumbered in 1984 and replaced with AS 38.05.830.
AS 38.05.330 was renumbered in 1984 and replaced with AS 38.05.850.
AS 38.05.335 was renumbered in 1984 and replaced with AS 38.05.860.
AS 38.05.340 was renumbered in 1984 and replaced with AS 38.05.920.
AS 38.05.345 was renumbered in 1984 and replaced with AS 38.05.945.
AS 38.05.346 was renumbered in 1984 and replaced with AS 38.05.946.
AS 38.05.365 was renumbered in 1984 and replaced with AS 38.05.965.

Sec. 38.05.502. Property of the people. Subject to valid existing rights of applicants for land, upon February 21, 1983, all land in the state and all minerals not previously appropriated are the exclusive property of the people of the state and the state holds title to the land and minerals in trust for the people of the state. (1983 Initiative Proposal No. 5, § 1)

Sec. 38.05.504. Proceeds to the general fund. The proceeds of sales, fees, rents, royalties or other receipts from the land paid to the state under the provisions of AS 38.05.500 — 38.05.505 shall be deposited in the general fund, and the legislature may provide for payments in lieu of taxes to local governments. (1983 Initiative Proposal No. 5, § 1)

Sec. 38.05.810. Public and charitable use. (a) The lease, sale, or other disposal of state land or resources may be made to a state or federal agency or political subdivision, or the lease, sale, or disposal of coal deposits suitable for mining may be made to a utility owned and operated by a government agency or nonprofit cooperative association organized to participate under the Federal Rural Electrification Act for the purpose of generating electric power and energy or the production of process steam, or both, for less than the appraised value as determined by the director and approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration given to the nature of the public services or function rendered by the agency, subdivision, or utility making application, and of the terms of the grant under which the land was acquired by the state.

(b) Notwithstanding AS 38.05.070 — 38.05.080 and 38.05.095, the director, upon application filed by an applicant eligible under (b) — (d)

of this section, may, by negotiation and without public auction in the manner prescribed in (b) — (d) of this section, lease state land for a term of not more than 55 years. Before leasing, the director shall prepare a land use plan and a land classification to insure that the proposed use is compatible with area utilization. Before the land may be leased under (b) — (d) of this section, it must be shown to the satisfaction of the director that the land is to be used for an established or definitely proposed project, and that the eligible applicant has the financial ability to carry out the project. The commissioner may establish limitations on the acreage which may be leased under (b) — (d) of this section to an applicant.

(c) Eligible applicants under (b) — (d) of this section are limited to nonprofit corporations, associations, clubs, or societies organized and operated exclusively for charitable, religious, scientific, or educational purposes, or for the promotion of social welfare, if the project for which the land is desired conforms to those objectives and not commercial development. No lease of land may be granted under this section for a project closed to the use and enjoyment of the general public. In every case the applicant shall submit evidence that it is exempt from payment of federal income tax. As a condition of and in consideration of the rights acquired under a lease granted under (b) — (d) of this section, each eligible organization and its parent or subsidiary organizations shall (1) maintain and preserve books, accounts, and records that the director prescribes by regulation as necessary and appropriate; and (2) accord at all reasonable times to the state and its authorized agents and auditors the right of access to those books, accounts and records for the purpose of inspecting, examining and copying them. Any information provided the state in the course of an audit becomes a matter of public record.

(d) The director may lease the land to an eligible applicant at a reasonable annual rental, taking into consideration the purposes for which the land is to be used and the financial resources of the applicant. The rental may not be less than one percent of the fair market value on land acquired primarily for development, or less than five percent of the fair market value on acquired land. Rent may not be charged for state land leased for a youth encampment. For the purposes of this subsection, "youth encampment" shall be defined by the commissioner by regulation. Renewal leases may be issued at the discretion of the director upon the expiration of a primary or renewal term. Each lease shall contain a provision for its termination as to all or part of the land upon a finding by the director that the land or a part of it has not been used by the lessee for the purpose specified in the lease for a period of two years. No lease may be assigned or subleased except with the consent of the director, and in any case may only be transferred to an applicant eligible under (b) — (d) of this section. A lessee may not change the use specified in the lease to another or additional use except with the consent of the director. If, at any time after the land is leased, the lessee attempts to assign the lease or transfer control over the land to another, or if the land is devoted to a use other than that for which the land was leased without the consent of the director, the lease automatically terminates.

(e) The lease, sale, or other disposal of state land at appraised fair market value may be negotiated with a licensed public utility or a licensed common carrier by the director with the approval of the commissioner if the utility or carrier reasonably requires the land for the conduct of its business under its license.

(f) The commissioner shall lease state land for telephone or electric transmission and distribution lines for less than the appraised value of the land if the lessee is a nonprofit cooperative association organized under AS 10.25. The commissioner may lease state land that is not located within the boundary of a municipality for the disposal of garbage, refuse, trash, or other waste material for less than the appraised value of the land if the lessee is a licensed public utility authorized to collect and dispose of garbage, refuse, trash, or other waste material outside the boundaries of a municipality. Before determining the annual rental, the commissioner shall consider the nature of the public service rendered by the nonprofit cooperative association or licensed public utility and the terms of the grant under which the land was acquired by the state. A nonprofit cooperative association may not construct improvements other than transmission or distribution lines and substations on land leased under this subsection. A licensed public utility may not construct permanent improvements on land leased under this subsection that are not related to the purpose of the lease. § 4 art III ch 169 SLA 1959; am § 1 ch 155 SLA 1960; am § 1 ch 137 SLA 1962; am § 1 ch 36 SLA 1976; am § 12 ch 257 SLA 1976; am § 1 ch 76 SLA 1980; am §§ 34, 35 ch 113 SLA 1981; am § 1 ch 86 SLA 1984; am § 42 ch 152 SLA 1984.

Revisor's notes. — Formerly AS 38.05.315 Renumbered in 1984

Cross references. — For reservation to which contracts for sale, lease or grant of state land and deeds to state land, properties or interest in state land are subject, see AS 38.05.125

Effect of amendments. — The 1980 amendment added subsection (f)

The 1981 amendment added "and" preceding "38.05.095" and deleted "and AS 38.05.100" preceding "the director" in the first sentence of subsection (b). In subsection (d), the amendment substituted "the" for "but in no case may the" preceding "rental," added "may not" preceding "be less than one," deleted "school" preceding "university" and deleted "mental health" preceding "or acquired lands" in the second sentence and added the present third and fourth sentences.

The first 1984 amendment, in subsec-

tion (f), inserted the second sentence, added the last sentence, and, in the third sentence, substituted "determining" for "he determines" and inserted "or licensed public utility."

The second 1984 amendment, in subsection (d), substituted "land" for "lands" in the sixth sentence and, in the second sentence, substituted "land" for "lands" in the first place it occurs and "acquired land" for "university or acquired lands."

NOTES TO DECISIONS

Cited in Moore v. State, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 563 P.2d 8 (1976); State v. Bering Strait Regional

Educ. Attendance Area School Dist., Sup. Ct. Op. No. 2825 (File No. 6381), 658 P.2d 784 (1983).

Sec. 38.05.820. Occupied tide and submerged land. (a) It is the policy of the state to allow preference rights for the acquisition of tide and submerged land occupied or developed for municipal business, residential or other beneficial purposes on or before the date of admission of Alaska into the Union. Nothing in this section vests the right in a person to acquire the land until a conveyance from the state is delivered to the grantee.

(b) Home rule cities and cities of the first class incorporated on or before April 1, 1964, may apply, in the manner prescribed by the director, and in accordance with such regulations as the director may adopt, for a conveyance to them of all land seaward of the home rule cities and cities of the first class which is between the mean high tide line in, or forming the boundary of, the home rule cities and cities of the first class, and a line to be shown on a plat made a part of the application which shall be the pierhead line established under the Act of September 7, 1957, or the harbor line established under the Act of March 3, 1899, or if no pierhead line or harbor line is established then a line subject to approval by the director, with the concurrence of the commissioner, which shall be seaward of all tide and submerged land occupied or suitable for occupation and development without unreasonable interference with navigation. The director shall convey that tide and submerged land to home rule cities and cities of the first class. Applications by preference right claimants filed with the director before June 30, 1964, shall continue to be processed to a final determination and conveyance, if any, by the director, if such preference right claimants are entitled to a conveyance from the director under the laws existing previous to July 22, 1964.

(1) Each home rule city and city of the first class granted a conveyance shall prepare an official subdivision plat of the area conveyed showing all structures and improvements and the boundaries of each tract occupied or developed, together with the name of the owner or claimant. The subdivisional plat shall include within the boundaries of each tract occupied or developed such surrounding tide and submerged land as is reasonably necessary in the opinion of the governing body of the home rule cities and cities of the first class for the use and enjoyment of the structures and improvements by the owner or claimant, but shall not include tide or submerged land which if granted to the occupant would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it.

(2) An occupant of land included in the conveyance to home rule cities and cities of the first class, who occupied or developed the land on and before September 7, 1957, has a class I preference right to the land from the home rule cities and cities of the first class upon the execution of a waiver to the state and the home rule cities and cities of the first class of all rights the occupant may have acquired under Public Law 85-303 (71 Stat. 623).

(3) An occupant of land included in the conveyance to home rule cities and cities of the first class, who has a class II preference right by reason of the conveyance to home rule cities and cities of the first class, and is unwilling to waive the right has a preference right to the land which it is mandatory for the home rule cities and cities of the first class to expeditiously honor upon application from the occupant after the Secretary of the Army has submitted to the Secretary of the Interior and the governor of the state maps showing the pierhead line established by the corps of engineers with respect to the tract so granted.

(4) An occupant of land included in the conveyance to home rule cities and cities of the first class, who occupied or developed the land after September 7, 1957, and before January 3, 1959, and who continued to occupy it on January 3, 1959, has a class III preference right to the land from the home rule cities and cities of the first class.

(5) In making a conveyance to an occupant, the home rule cities and cities of the first class shall include as a part of the tract conveyed and in addition to the occupied or developed land, such additional tide and submerged land as is reasonably necessary in the opinion of the governing body of the home rule cities and cities of the first class for the occupant's use and enjoyment of the occupied or developed land, but the conveyance shall not include any area which would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it or which, if developed, will interfere with navigation.

(6) Each home rule city and city of the first class receiving conveyances shall by ordinance provide for reasonable regulations governing the filing and processing of applications, publication of notices, and the adjudication of disputes between claimants by the governing body of the home rule cities and cities of the first class. A party aggrieved by its determination may appeal to the superior court.

(7) When no preference right has been granted to purchase or lease tideland, the home rule cities and cities of the first class may sell or lease the tideland conveyed to them, and may impose terms or conditions for the sale or lease. Such terms and conditions shall include such reservation of rights-of-way as are necessary to provide reasonable access to public waters.

(c) An occupant of tide or submerged land which is not seaward of a municipal corporation, who occupied or developed it on and prior to September 7, 1957, has a class I preference right to the land from the state. However, if the land is seaward of a surveyed townsite, the occupant shall execute a waiver to the state of all rights which the occupant may have acquired under Public Law 85-303 (71 Stat. 623), before the preference right may be exercised.

(1) A person who has a class II preference right in the disposition of land by the state not provided for under paragraph (b)(3), and who is unwilling to waive that right, has a preference right to the land which it is mandatory for the director to expeditiously honor upon application from the occupant after the Secretary of the Army has submitted to the Secretary of the Interior and the governor of the state maps showing the pierhead line established by the corps of engineers with respect to the tract so granted.

(2) An occupant of tide or submerged land which is not seaward of a municipal corporation, who occupied or developed it after September 7, 1957, and before January 3, 1959, and who continued to occupy it on January 3, 1959, has a class III preference right to the land from the state.

(3) The preference right granted an occupant in (c) of this section is lost unless the occupant of tide or submerged land not seaward of a home rule or first class city makes application to the director to exercise the preference right by July 1, 1967.

(4) Each occupant shall furnish at the cost of the occupant a plat showing the exterior boundaries of the tide and submerged land covered by the application, in form and with proof of accuracy as set out in regulations of the director, and shall show the location and nature of all fill material, buildings, structures and improvements, which form the basis of the application and which are situated upon the tract applied for. The applicant may include within the boundaries of the tract applied for such surrounding tide and submerged land as is reasonably necessary in the opinion of the applicant for the use and enjoyment of the structures and improvements by the occupant, but may not include any tide or submerged land which if granted to the occupant would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it.

(5) In making a conveyance to an occupant, the director shall include as a part of the tract conveyed, and in addition to the occupied or developed land, such additional tide and submerged land as is reasonably necessary in the opinion of the director for the occupant's use and enjoyment of the occupied or developed land, but the conveyance shall not include any area which would unjustly deprive an occupant of adjoining land from reasonable use and enjoyment of it or which, if developed, will interfere with navigation.

(6) The director shall by regulation provide for reasonable procedures governing the filing and processing of applications, the publication of notices and the adjudication of disputes between claimants. A party aggrieved by an adjudication may appeal to the superior court.

(7) The holder of a valid corps of engineers permit issued before November 15, 1959, may be given a preference to a lease or permit by the state if justified in accordance with the policy of this chapter and if in the best interests of the state. This preference is subordinate to all other preferences recognized under this chapter.

(d) For the purposes of this section, unless the context otherwise requires,

(1) "class I preference right" means the right of an occupant to acquire tide and submerged land for a consideration not exceeding the costs of surveying, transferring and conveying the title to it;

(2) "class II preference right" means the right to acquire tide or submerged land as defined in Public Law 85-303 (71 Stat. 623) for a consideration not exceeding the costs of surveying, transferring and conveying the title to it;

(3) "class III preference right" means the right of an occupant to acquire tide and submerged land for a consideration not exceeding the cost of appraisal, administration and transfer plus the appraised fair market value, exclusive of value accruing from improvements or development, such as fill material, buildings or structures, by the occupant or predecessor in interest of the occupant or reflecting, equities of the occupant;

(4) "home rule cities and cities of the first class" do not include a borough;

(5) "occupant" means a person or the successor in interest of a person, who actually occupied for business, residential or other beneficial purpose, tideland, or tide and submerged land contiguous to tideland, in the state, on and before January 3, 1959, with substantial permanent improvements. The holder of a permit or clearance in respect to interference of navigation, or of a special use permit from a government agency does not qualify as an "occupant" unless entry on the land had, through exercise of reasonable diligence, resulted in occupancy and substantial permanent improvements; no person is an occupant by reason of having (A) placed a fish trap in position for operation or upon the tide or submerged land for storage, (B) placed a set net or piling for a set net, or any other device or facility for taking fish, (C) placed pilings or dolphins for log storage or other moorage, (D) placed floats or vessels upon the tide or submerged land, (E) placed telephone, power or other transmission facilities, roads, trails or other improvements not requiring exclusive use or possession of tide or submerged land, or (F) claimed the land by virtue of some form of constructive occupancy; where land is occupied by a person other than the owner of the improve-

ments on it, the owner of the improvements is, for the purposes of this section, the occupant of the land;

(6) "occupied or developed" means the use, occupancy and control of tide or submerged land by the establishment on it of substantial permanent improvements other than those uses, facilities and improvements not qualifying a person to be an occupant;

(7) "person" means a person, firm, corporation, cooperative association, partnership or other entity legally capable of owning land or an interest in land;

(8) "preference right," subject to the classification of preference right established in this section, means the right of an occupant to acquire, by lease, purchase, or otherwise, at the election of the occupant, except as otherwise limited or prescribed in this chapter, a tract of tideland, or tide and submerged land contiguous to tideland, occupied or developed by the occupant on and before January 3, 1959. (§ 5 art III ch 169 SLA 1959; am § 6 ch 61 SLA 1960; am § 1 ch 18 SLA 1962; am §§ 1, 2 ch 81 SLA 1964; am § 1 ch 4 SLA 1966)

Revisor's notes. — Formerly AS 38.05.320. Renumbered in 1984. Subsection (d) was reorganized in 1984 to alphabetize the defined terms.

Cross references. — For reservation to which contracts for sale, lease or grant of state land and deeds to state land, properties or interest to state land are subject, see AS 38.05.125.

Opinions of attorney general. — The occupants of tidelands lying offshore of cities have present vested property rights

under the 1957 federal Tidelands Act. — 1961 Op. Att'y Gen., No. 18.

Which the state must recognize in acquiring rights-of-way for state roads. 1961 Op. Att'y Gen., No. 18.

Compensation for use of such lands by state. Before the state uses tidelands lying offshore of cities, the tideland occupants must be paid for the full value of the property they occupy. 1961 Op. Att'y Gen., No. 18.

NOTES TO DECISIONS

Purpose of section. — One purpose of the Alaska Land Act was to establish equitable methods of disposing of certain tidelands. Toward this end, and within the federal parameters requiring the recognition of "preference rights," this section was included in the Act. *City of Homer v. State*, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

Due process required. — Private parties are entitled to due process of law before property rights may be removed; therefore, the minimal protection provided by adjudicatory procedures of the Department of Natural Resources must meet that standard. *City of Homer v. State*, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

Municipalities are entitled to due process in the adjudication of claims to tide and submerged lands. *City of Homer v. State*, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

With respect to the disposition of tidelands, municipal corporations are to be afforded the same rights of due process as are private parties. *City of Homer v. State*, Sup. Ct. Op. No. 1455 (File No. 3009), 566 P.2d 1314 (1977).

The language of subsection (b) is clear and unambiguous. *State Dep't of Nat'l Resources v. City of Haines*, Sup. Ct. Op. No. 2342 (File No. 5067), 627 P.2d 1047 (1981).

Scope of subsection (b) grant. — The grant in subsection (b) of this section encompasses tideland adjacent to subsequently expanded municipal boundaries. *State, Dep't of Nat'l Resources v. City of Haines*, Sup. Ct. Op. No. 2342 (File No. 5067), 627 P.2d 1047 (1981).

In order for easement under subsection (b)(6) of this section to be established, it must appear that it is reasonably necessary for the enjoyment of the property, the term "necessary" meaning that there could be no other reasonable mode of

enjoying the dominant tenement without the easement. An easement by implication does not arise merely because its use is convenient to the beneficial enjoyment of the dominant portion of the property. *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 566 P.2d 1320 (1977).

While strict or absolute necessity is not required, something more than mere convenience must be shown before an occupant of tidelands is entitled to an easement under subsection (b)(6) of this section. *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 566 P.2d 1320 (1977).

Liberal construction. — A liberal construction of this section in favor of an applicant's asserted beneficial use of tidelands fill is appropriate. *City of Juneau v. Cropley*, Sup. Ct. Op. No. 415 (File No. 752), 429 P.2d 21 (1967).

In light of the provisions of paragraphs (1) and (5) of subsection (b) of this section of the Alaska Land Act, which reflect the State of Alaska's policy of permitting inclusion within the boundaries of occupied or developed tracts of such additional surrounding tide or submerged lands as are reasonably necessary for the occupant's use and enjoyment, the superior court was correct in according a liberal construction to the term "occupant" and to the requirement that "beneficial use" be made of fill material before such material qualifies as a "permanent improvement." *City of Juneau v. Cropley*, Sup. Ct. Op. No. 415 (File No. 752), 429 P.2d 21 (1967).

Discussion of preference rights given under Federal Tidelands Act. — See *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 998 (File No. 1735), 518 P.2d 1064 (1974).

A city is given title to dispose of strictly according to the terms of this section. *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 998 (File No. 1735), 518 P.2d 1064 (1974).

And it cannot depart from its terms or the terms of its own ordinance, adopted pursuant to this section, which ordinance adopted a tidelands subdivision plat. *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 998 (File No. 1735), 518 P.2d 1064 (1974).

Power to include or remove tide, etc., lands from occupied boundaries. — The governing body of a city is delegated the power to include or remove tide and submerged lands from the various occupied boundaries. *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 998 (File No. 1735), 518 P.2d 1064 (1974).

When power is invoked. — The power to include or remove tide and submerged lands from the various occupied boundaries is invoked when it is deemed necessary for an adjoining owner to have reasonable use and enjoyment of his occupied tidelands. *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 998 (File No. 1735), 518 P.2d 1064 (1974).

Thus, there is latitude to settle competing claims of use. *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 998 (File No. 1735), 518 P.2d 1064 (1974).

City may include land as is reasonably necessary to occupant's use. — A city is authorized to include in an occupant's conveyance such other parts of the whole available land as are reasonably necessary to the occupant's use. *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 998 (File No. 1735), 518 P.2d 1064 (1974).

The only limit upon this power is the requirement that an occupant of adjoining land not be unjustly deprived of reasonable use and enjoyment. *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 998 (File No. 1735), 518 P.2d 1064 (1974).

Interest adjoining occupant may justly be deprived of. — By inference, the adjoining occupant may be deprived, justly, of such interest as does not interfere unduly with his use and enjoyment. *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 998 (File No. 1735), 518 P.2d 1064 (1974).

Incorporeal hereditament may be imposed on adjoining property. — If additional land may be carved out of an adjoining occupant's property, certainly an incorporeal hereditament may be imposed, being a lesser burden. *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 998 (File No. 1735), 518 P.2d 1064 (1974).

By "justly" one would understand that the alteration of interests must be supported by reasonable necessity, concluded in a proceeding affording due process, and conformed to the requirement that undue hardship not be worked upon the adjoining owner. *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 998 (File No. 1735), 518 P.2d 1064 (1974).

In effect, this section gives the authorities of a city the power to adjudicate an easement by reasonable necessity on application for a conveyance. The adjoining occupant may contest the determination in an adversary adjudicatory proceeding from which appeal to the superior court is guaranteed by subsection (b)(6). The initial inquiry thus is whether the pleadings and the trial herein established the competing property interests. *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 998 (File No. 1735), 518 P.2d 1064 (1974); *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 1462 (File Nos. 2561, 2671), 666 P.2d 1320 (1977).

Sufficient interests established for determination if easement reasonably necessary. — Sufficient interests were established by both a landowner and an adjoining landowner to call for the city engineer to decide, under subsection (b)(6), whether an easement across the former's land was reasonably necessary to the latter's use of its adjoining land. *Talbot's, Inc. v. Cessnun Enters., Inc.*, Sup. Ct. Op. No. 998 (File No. 1735), 518 P.2d 1064 (1974).

The language following the semicolon in subsection (d)(1)(F) creates an exception to the restriction of (F) immediately preceding it. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

Occupant must have improved land. — An occupant of the tide and submerged lands for which he is seeking a preference right must have improved the land. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

Beneficial uses made by lessee accrue to benefit of lessor by reason of subsection (d)(1)(F). *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 177), 397 P.2d 280 (1964).

Fill as permanent improvement. — Fill which is placed solely for the purposes of disposing of waste or spoils cannot qualify as a permanent improvement. On the other hand, fill in place to a level above the line of mean high tide and actually utilized for beneficial purposes is intended to qualify as a permanent improvement. *City of Juneau v. Cropley*, Sup. Ct. Op. No. 415 (File No. 752), 429 P.2d 21 (1967).

Nonbeneficially used sloping fill, which only furnished lateral support, was not intended to be encompassed within the category of permanent improvement. *City of Juneau v. Cropley*, Sup. Ct. Op. No. 415 (File No. 752), 429 P.2d 21 (1967).

Rock fill was put to beneficial use to the extent that it was used for the sale of fill materials. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

And became a permanent improvement. — Rock fill, by reason of its suitability and utilization for a business use and the procurement of such a use by applicant, became a permanent improvement owned by applicant to the extent that it could be owned within the meaning of this section. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

Open storage of machinery and equipment did not establish existence of permanent improvement. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

But it did establish a beneficial use, directly related to the business activities of applicant and its lessees, and to this extent accrued to the benefit of applicant in determining whether it was entitled to a preference right. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

A barge ramp installation, its use and its maintenance were all factors that accrued to defendant's benefit for the purpose of determining whether it was entitled to preference rights. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

A shed, abandoned by the Army when it terminated its activities, and taken over by applicant constituted a permanent improvement which, although not established or constructed by applicant, was under its control and being put to a beneficial use. *State v. A.J. Indus., Inc.*, Sup. Ct. Op. No. 263 (File No. 477), 397 P.2d 280 (1964).

Applied in *United States v. Alaska*, 201 F. Supp. 796 (D. Alaska 1962).

Collateral references. — 63 Am. Jur. 2d, Public Lands, § 42.

Sec. 38.05.821. Tidelands seaward of public recreational sites.

(a) Notwithstanding any other provision of law, a home rule or general law municipality which accepts by conveyance or other disposition

from the state a public recreation area facility developed under the terms of P.L. 507 (70 Stat. 130), upon application, shall receive by conveyance from the director all land owned by the state seaward of the public recreation area facility which is between the mean high tide line and the mean low tide line. The director may adopt necessary regulations providing for the conveyance of land under this section.

(b) Interests obtained by lease for shore fisheries development, sale, permit or lease for mineral exploration, development, or extraction, or for any other purpose, before August 13, 1974, are affected by this section only on the date of their expiration or termination. (§ 1 ch 108 SLA 1974)

Revisor's notes. — Formerly AS 38.05.323. Renumbered in 1984.

Sec. 38.05.830. Land disposal in the unorganized borough. Before a sale, lease under AS 38.05.070 — 38.05.105, or other disposal of state land in the unorganized borough, the commissioner shall consider the effect that the sale, lease, or other disposal may be expected to have on the density of the population in the vicinity of the land, and potential for conflicts with the traditional uses of the land that could result from the sale, lease, or disposal. If necessary, the commissioner shall develop a plan to resolve or mitigate the conflicts in a manner consistent with the public interest and the provisions of this chapter. (§ 33 ch 113 SLA 1981)

Revisor's notes. — Formerly AS 38.05.301. Renumbered in 1984.

Sec. 38.05.840. Appraisal. (a) Land may not be sold or leased, or a renewal lease issued, except in the case of an oil or gas or mineral lease, unless it has been appraised within one year before the date fixed for the sale or lease. When land is offered at public sale but is not sold and is available at private sale, a reappraisal is not required unless the director considers that a change in value of the land may have occurred. A grazing lease may be granted to a lessee of federal grazing land without prior appraisal, if the federal lease was cancelled to allow the state to select the land under lease. Land may not be sold or leased for less than the approved, appraised market value, except as provided in AS 38.05.055, 38.05.057, 38.05.075 — 38.05.085, 38.05.097, 38.05.810, and 38.05.820.

(b) Appraisals required by this section may be made by employees of the department who are qualified to determine the value of land under standards set by the commissioner. (§ 3 art III ch 169 SLA 1959; am § 5 ch 61 SLA 1960; am § 14 ch 182 SLA 1978; am §§ 37, 38 ch 85 SLA 1979; am § 41 ch 152 SLA 1984)

Revisor's notes. — Formerly AS 38.05.310. Renumbered in 1984.

Effect of amendments. — The 1984 amendment, in subsection (a), substituted

"one year" for "120 days" in the first sentence and made a series of technical and internal reference changes throughout the rest of the subsection.

NOTES TO DECISIONS

Inadequate appraisal. — Routine application of \$100 minimum without making any inquiry into the market value of parcels was not such an appraisal as would satisfy the requirements of this section. *State v. Weidner*, Sup. Ct. Op. No. 2788 (File Nos. 6220, 6240, 6272), P.2d (1984).

Applied in *Moore v. State*, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

Cited in *State v. Aleut Corp.*, Sup. Ct. Op. No. 1198 (File No. 2215), 541 P.2d 730 (1976); *Wessells v. State*, Dep't of Hwys., Sup. Ct. Op. No. 1402 (File No. 2834), 562 P.2d 1042 (1977).

Sec. 38.05.850. Permits. (a) The director, without the prior approval of the commissioner, may issue permits, rights-of-way or easements on state land for roads, trails, ditches, field gathering lines or transmission and distribution pipelines not subject to AS 38.35, telephone or electric transmission and distribution lines, log storage, oil well drilling sites and production facilities for the purposes of recovering minerals from adjacent land under valid lease, and other similar uses or improvements, or for the limited personal use of timber or materials. The commissioner, upon recommendation of the director, shall establish a reasonable rate or fee schedule to be charged for these uses, subject to the exception for nonprofit cooperative associations specified in (b) of this section. In the granting, suspension or revocation of a permit or easement of land, the director shall give preference to that use of the land which will be of greatest economic benefit to the state and the development of its resources. However, first preference shall be granted to the upland owner for the use of a tract of tideland, or tideland and contiguous submerged land, which is seaward of the

upland property of the upland owner and which is needed by the upland owner for any of the purposes for which the use may be granted.

(b) The fee charged for a right-of-way approved under (a) of this section shall be waived by the commissioner if the right-of-way is for a transmission or distribution line established by a nonprofit cooperative association organized under AS 10.25 for the purpose of supplying electric energy and power, or telephone service, to its members, and the waiver is considered by the commissioner to be in the best interests of the state. (§ 7 art III ch 169 SLA 1959; am § 7 ch 61 SLA 1960; am § 4 ch 72 SLA 1972; am § 28 ch 3 FSSLA 1973; am § 13 ch 257 SLA 1976; am §§ 1, 2 ch 25 SLA 1979)

Revisor's notes. — Formerly AS 38.05.330. Renumbered in 1984.

NOTES TO DECISIONS

<p>Quoted in <i>Swindel v Kelly</i>, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 499 P 2d 291 (1972)</p>	<p>Cited in <i>Chevron U.S.A., Inc. v. LeRasche</i>, Sup. Ct. Op. No. 2659 (File Nos. 6396, 6648), 663 P 2d 923 (1983)</p>
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Collateral references. — 63 Am. Jur 2d, Public Lands, §§ 27, 28.

Sec. 38.05.860. Deposits. (a) The director may require an applicant seeking the sale, lease or other disposal of land, other than under an oil and gas or mineral lease, to deposit an amount covering the estimated cost of an appraisal, survey and necessary advertising. All deposited funds not expended shall be refunded to the applicant. If land is sold or leased to other than the applicant making the deposit, the party awarded the land shall pay the total actual cost of appraising and surveying the land, together with the total actual cost of advertising, and the deposit shall be returned to the original applicant.

(b) Except as provided in (c) of this section, if a competitive sale or lease of state land, minerals, timber or materials is to be made by sealed bid, the director may require each bidder to submit an earnest money deposit with each bid. If the sale or lease is by public auction, the director may require each person desiring to bid to make an earnest money deposit before bidding. The earnest money deposit of the highest qualified bidder shall be applied toward the sale or lease price. If the successful bidder defaults in the payment of the amount bid, the deposit shall be forfeited to the state. All other earnest money deposits shall be returned unless the commissioner decides to award the contract to the second highest qualified bidder upon default by the highest bidder rather than call for new bids, in which case the commissioner may retain the deposit of the second highest qualified bidder until final disposition of the land is made. A successful bidder for a mineral lease who can prove to the satisfaction of the commissioner within 45 days after notification of the lease award that there is a reasonable doubt as to the ability of the state to grant a valid lease to the land may withdraw the amount bid and have the earnest money deposit returned.

(c) The commissioner shall require each bidder for the competitive leasing of oil and gas land to submit with each bid a deposit of money equal to 20 per cent of the bonus. (§ 8 art III ch 169 SLA 1959; am § 1 ch 145 SLA 1966; am § 4 ch 155 SLA 1978)

Revisor's notes. — Formerly AS 38.05.349. Renumbered in 1964.

Sec. 38.05.920. Assignment. (a) Except as provided in (b) of this section, all contracts of purchase or lease of land or interest in land may be, on the affirmative approval of the director, assigned or subleased in whole or in part in writing by the contract holder or lessee, and the assignee or sublessee is subject to the provisions of laws and regulations applicable to the contract or lease.

(b) A nonprofit organization that is exempted from paying rent on state land under AS 38.05.097 may not assign or sublease the land or a portion of it on which it has a lease. (§ 9 art III ch 169 SLA 1959; am § 15 ch 182 SLA 1978)

Sec. 38.05.945. Notice. (a) This section establishes the requirements for notice given by the department for the following actions:

- (1) classification or reclassification of state land under AS 38.05.300 and the closing of land to mineral leasing or entry under AS 38.05.185;
- (2) zoning of land under applicable law;
- (3) a decision under AS 38.05.035(e) regarding the sale, lease, or disposal of an interest in state land or resources; and
- (4) a competitive disposal of an interest in state land or resources after final decision under AS 38.05.035(e).

(b) Notice of one or more actions described in (a) of this section shall be given at least 30 days before the action by publication in newspapers of statewide circulation and in newspapers of general circulation in the vicinity of the proposed action and one or more of the following methods:

- (1) publication through public service announcements on the electronic media serving the area affected by the action,
- (2) posting in a conspicuous location in the vicinity of the action,
- (3) notification of parties known or likely to be affected by the action,

or

(4) another method calculated to reach affected persons. A notice shall contain sufficient information in commonly understood terms to inform the public of the nature of the action and the opportunity of the public to comment on the action.

(c) Notice at least 30 days before action under (a) of this section shall also be given to the following:

- (1) to a municipality if the land is within the boundaries of the municipality;
- (2) to a regional corporation if the boundaries of the corporation as established by sec. 7(a) of the Alaska Native Claims Settlement Act encompass the land and the land is outside a municipality;
- (3) to a village corporation organized under sec. 8(a) of the Alaska Native Claims Settlement Act if the land is within six miles of the village for which the corporation was established and the land is located outside a municipality;

(4) to the postmaster of a permanent settlement of more than 25 persons located within six miles of the land if the land is located outside a municipality, with a request that the notice be posted in a conspicuous location.

(d) Notice is not required under this section for a permit or other authorization revocable by the department.

(e) The provisions of this section do not apply to a lease issued under AS 38.05.205.

(f) The provisions of this section do not apply to a production license issued under AS 38.05.207. (§ 10 art III ch 169 SLA 1959; am § 8 ch 61 SLA 1960; am § 2 ch 74 SLA 1961; am § 3 ch 117 SLA 1976; am § 14 ch 257 SLA 1976; am §§ 39, 40 ch 85 SLA 1979; am § 4 ch 108 SLA 1981; am § 36 ch 113 SLA 1981; am § 3 ch 87 SLA 1982; am §§ 44 — 46 ch 152 SLA 1984)

Revisor's notes. — Formerly AS 38.05.345. Renumbered in 1984.

Effect of amendments. — The first 1981 amendment added a subsection (h) to the section as it appeared before the second 1981 amendment rewrote the section. Subsection (h) now appears as subsection (e).

The second 1981 amendment rewrote this section.

The 1982 amendment added subsection (f).

The 1984 amendment, in subsection (a), changed the internal references in paragraphs (3) and (4); in subsection (b), inserted "in commonly understood terms" in the second sentence and, in the first sentence, substituted "publication in newspapers of statewide circulation and in newspapers" for "(1) publication in

newspapers of statewide circulation and in a newspaper," "and one or more of the following methods: (1) for "(2)," "(2)" for "(3)," "(3)" for "(4)," and "(4)" for "(5)", and rewrote and restructured subsection (d), which formerly contained an introductory paragraph and paragraphs (1) and (2).

Opinions of attorney general. — It must be assumed that the public notice requirement of this section applies equally to surface and minerals disposals actions. November 25, 1977, Op. Att'y Gen.

The public notice requirement of AS 38.05.945 probably does not apply to the automatic lease term extension that occurs as a consequence of unitization since such extension is a measure to enhance the feasibility of unitized operation, not a disposal action. November 25, 1977, Op. Att'y Gen.

NOTES TO DECISIONS

Chapter enacted pursuant to Alaska Const., art. VIII, § 10. — Pursuant to Alaska Const., art. VIII, § 10, the legislature enacted the Alaska Land Act, the provisions of which are now found in AS 38.05.006 through 38.05.370 (now 38.05.940). *Moore v. State*, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

The supreme court is unwilling to hold that notice is purely a matter of agency regulation under this chapter, especially in light of the constitutional concern with notice expressed in Alaska Const., art. VIII, § 10. *Moore v. State*, Sup.

Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

Insufficient notice. — Where the last publication in a newspaper was less than a week prior to the sale, there was not sufficient notice pursuant to this section. *Moore v. State*, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

When newspaper is one of general circulation. — A newspaper which contains news of general interest to the community and reaches a diverse readership is one of general circulation. *Moore v. State*, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

Sec. 38.05.946. Hearings. A municipality or a corporation entitled to receive notice under AS 38.05.945(c) may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the commissioner shall attend the hearing. The commissioner has discretion to hold a public hearing. (§ 36 ch 113 SLA 1981)

Revisor's notes. — Enacted as AS 38.05.346(d) and renumbered as AS 38.05.346 in 1981. Renumbered again in 1984.

The expression "AS 38.05.945(c)" was substituted for "(c) of this section" in the first sentence by the revisor of statutes in 1981 under AS 01.05.031.

Sec. 38.05.965. Definitions. In this chapter, unless the context otherwise requires.

(1) "acquired land" means land belonging to the state including tide, submerged and shoreland which has been obtained by escheat, purchase, or any means other than by general land grant;

(2) "agricultural land" means land chiefly valuable for agricultural purposes;

(3) "commissioner" means the commissioner of natural resources;

(4) "department" means the Department of Natural Resources;

(5) "director" means the director of the division of lands of the Department of Natural Resources;

(6) "geothermal resources" means the natural heat of the earth at temperatures greater than 120 degrees Celsius, measured at the point where the highest-temperature resources encountered enter or contact a well or other resource extraction device, and includes

(A) the energy, including pressure, in whatever form present in, resulting from, created by, or that may be extracted from that natural heat;

(B) the material medium, including the geothermal fluid naturally present, as well as substances artificially introduced to serve as a heat transfer medium; and

(C) all dissolved or entrained minerals and gases that may be obtained from the material medium, but excluding hydrocarbon substances and helium;

(7) "grazing land" means land chiefly valuable for grazing purposes;

(8) "industrial and commercial land" means land chiefly valuable for industrial trade, manufacturing or business use;

(9) "lieu and indemnity land" means land which the state is entitled to select under the provisions of 38 Stat. 1214, as amended (48 USC 353) or a similar statute to compensate for land in place of surveyed rectangulars, which have been lost to the state by reason of deficient sections, prior rights, claims, withdrawals, reservations and other appropriations;

(10) "mineral land" means land prospectively valuable for mineral deposits;

(11) "multiple use" has the meaning given in AS 38.04.910;

(12) "navigable water" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes;

(13) "park and recreation land" means land chiefly valuable for public park and recreation use:

(14) "preference right forest lease" means a lease granted to a lessee whose United States Forest Service term special use permit was cancelled to allow the land under permit to be selected by the state:

(15) "preference right grazing lease" means a grazing lease granted to a lessee whose federal grazing lease was cancelled to allow the land under lease to be selected by the state:

(16) "public water" means navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest:

(17) "rule of approximation" is the rule which is applied in determining whether or not a lease complies with the area limits set forth in this chapter and regulations adopted under it and in keeping the boundaries of leased land coincidental with legal subdivisions: under the rule, if the area covered by a lease in excess of the permitted maximum is smaller than the area of any deficiency that would result by eliminating from the lease the smallest legal subdivision covered by the lease or application for lease, the excess area will be permitted to remain in the lease: if the excess area is greater than the deficient area would be, then the smallest legal subdivision will be eliminated from the lease:

(18) "shoreland" means land belonging to the state which is covered by nontidal water that is navigable under the laws of the United States up to ordinary high water mark as modified by accretion, erosion, or reliction:

(19) "state land" or "land" means all land, including shore, tide and submerged land, or resources belonging to or acquired by the state:

(20) "submerged land" means land covered by tidal water between the line of mean low water and seaward to a distance of three geographical miles or further as may hereafter be properly claimed by the state:

(21) "tideland" means land which is periodically covered by tidal water between the elevation of mean high and mean low tides:

(22) "timber land" and "material land" mean state land chiefly valuable for materials, including, but not limited to, sand, stone, gravel, pumice, common clay, or timber and other forest products:

(23) "university land"

(A) means

(i) all sections 33 reserved to the university under 38 Stat. 1214, as amended;

(ii) all land granted to or reserved for the benefit of the university that retains its designation as university land:

(iii) all other land owned in fee by the University of Alaska including land transferred in fee to the Board of Regents of the University of Alaska to replace land formerly designated as university land;

(B) does not include former university land that has been conveyed to the Department of Natural Resources under the settlement approved by the legislature in ch. 41, SLA 1983. (§ 2 art I ch 1698 SLA 1959; am § 1 ch 61 SLA 1960; am § 1 ch 74 SLA 1961; am § 3 ch 31 SLA 1964; am §§ 2, 3 ch 72 SLA 1966; am § 8 ch 143 SLA 1968; am § 4 ch 117 SLA 1976; am § 15 ch 181 SLA 1978; am § 5 ch 175 SLA 1980; am § 47 ch 152 SLA 1984)

Revisor's notes. — Formerly AS 38.05.365. Renumbered and reorganized to alphabetize the defined terms in 1984.

Effect of amendments. — The 1980 amendment added paragraph (24).

The 1984 amendment deleted "of the department" following "commissioner" in paragraph (3), inserted paragraph (11), rewrote and restructured paragraph (23), which formerly read "university lands" means all sections 33 reserved to the university under 38 Stat. 1214, as amended (48 USC 353) and all lands granted to or reserved for the benefit of the university,"

and made a series of technical changes throughout the rest of the section.

Legislative history reports. — For report on ch. 117, SLA 1976 (HCS 2d CSSB 215), see 1975 Senate Journal, p. 452; 1975 House Journal, p. 1296.

Opinions of attorney general. — Reference to "laws of the United States" in paragraph (15)'s definition of "shoreland" simply indicates that the legislature recognizes that federal law applies in determining navigability for title purposes. June 10, 1982. Op. Att'y Gen.

NOTES TO DECISIONS

Applied in *Moore v. State*, Sup. Ct. Op. No. 1284 (File Nos. 2351, 2587), 543 P.2d 8 (1976).

Quoted in *Schafer v. Schnabel*, Sup. Ct. Op. No. 774 (File No. 1386), 494 P.2d 802 (1972).

Chapter 35. Right-of-Way Leasing Act

Sec. 38.35.015. Powers of the commissioner. The commissioner has all powers necessary and proper to implement the policy, purposes, and provisions of this chapter, so as to subserve, as the exercise of reasoned discretion determines, the public interest, convenience and necessity, including but not limited to

- (1) granting leases of state land for pipeline right-of-way purposes;
- (2) leasing, purchasing, or otherwise acquiring (including condemning by declaration of taking), easements or other interests in land in this state for the purpose of utilizing or granting leases of the land, easements or interests for pipeline right-of-way purposes;
- (3) purchasing interests in pipelines in accordance with options included in right-of-way leases;
- (4) investigating any matters concerning any lessee with a view to assuring compliance by it with its right-of-way lease, this chapter, and any other applicable state or federal law;
- (5) developing from time to time and maintaining a comprehensive master plan for pipeline transportation development;
- (6) developing and promoting programs to foster efficient, economical, and safe pipeline transportation services in the state;
- (7) coordinating the activities of the commissioner under this chapter with the transportation and other relevant activities of other public agencies and authorities;
- (8) constructing, extending, enlarging, improving, repairing, acquiring, operating, or engaging in transportation, service, or sale by any pipeline or providing for these by contract, lease, or other arrangement on those terms that the commissioner may consider necessary, convenient or desirable with any agency, corporation, or person, including but not limited to any carrier or any state agency, when the commissioner determines that a lessee carrier is not willing to undertake and complete the action within a reasonable time, and to sell, lease, grant, and dispose of any property constructed or acquired in the exercise of this power. (§ 3 ch 72 SLA 1972; am §§ 25 — 27 ch 3 FSSLA 1973; am § 38 ch 127 SLA 1974)

Revisor's notes. — Formerly AS 38.05.020(c). Renumbered in 1984.

NOTES TO DECISIONS

Construction of state lease provision reserving right to grant right-of-way. — Provision in a lease issued by the State of Alaska, division of lands, expressly reserving the right to grant an easement or right-of-way across the leased property

was construed to include an interagency transfer of a right-of-way to the Department of Transportation and Public Facilities. *Weesella v. State, Dep't of Hwys.*, Sup. Ct. Op. No. 1402 (File No. 2834), 562 P.2d 1042 (1977).

Alaska Statutes

Title 41. Public Resources.

Chapter 06. Geothermal Resources.

Cross references. — As to discovery and development of geothermal resources, see AS 38.05.181.

Sec. 41.06.010. Waste prohibited. The waste of geothermal resources in the state is prohibited. (§ 6 ch 175 SLA 1980)

Sec. 41.06.020. Application. (a) The commissioner has jurisdiction over all persons and property, public and private, necessary to carry out the purposes and intent of AS 41.06.010 — 41.06.060.

(b) The authority of the commissioner applies to all private, municipal, state, and federal land in the state lawfully subject to the police power of the state. When any of that land is committed to a unit agreement involving land subject to federal jurisdiction, the operation of AS 41.06.010 — 41.06.060 or a part of AS 41.06.010 — 41.06.060 may be suspended, if the unit operations are regulated by the United States and if the conservation of geothermal resources is accomplished under the unit agreement.

(c) The provisions of AS 41.06.010 — 41.06.060 apply

(1) when a person engaged in drilling activity not subject to the provisions of AS 41.06.010 — 41.06.060 encounters geothermal fluid or water of sufficient heat or pressure to constitute a threat to human life or health, unless the drilling operation is subject to oil and gas drilling regulation under AS 31.05.005 — 31.05.170;

(2) in areas and under conditions in which the commissioner determines that drilling activity may encounter geothermal fluid or water of sufficient heat or pressure to constitute a threat to human life or health. (§ 6 ch 175 SLA 1980)

Editor's notes. — As to declaration of legislative policy, see § 1, ch. 175, SLA 1980, in the 1980 Temporary and Special Acts and Resolves.

Sec. 41.06.030. Reservoir management. (a) The commissioner shall require the filing and approval of a plan of development and operation on each producing geothermal system and may issue well-spacing and pooling orders, limits on production, and reinjection requirements, in order to prevent waste, promote maximum economic recovery, and protect correlative rights.

(b) Lessees of all or part of a geothermal system may enter into a unit agreement for cooperative development, with the approval of the commissioner. The commissioner may suspend or modify the approved development plan in accordance with the unit agreement.

(c) If the owners of at least two-thirds of the leasehold interests in a geothermal system ratify a unit agreement approved by the commissioner, the commissioner may enforce the agreement as to lessees not a party to the agreement by allocating production under the principle of correlative rights and by apportioning costs and revenues.

(d) Lease operations under an approved development plan or unit agreement are considered to be in compliance with individual lease requirements. (§ 6 ch 175 SLA 1980)

Sec. 41.06.040. Drilling regulations. (a) The commissioner shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62.010 — 44.62.650) relating to the siting, spacing, drilling, casing, cementing, testing, logging, operating, producing, and abandonment of geothermal wells so as to prevent

- (1) geothermal resources, water or other fluids, and gases from escaping into strata other than that in which they are found (unless in accordance with an approved reinjection program);
- (2) contamination of surface and groundwater;
- (3) premature degradation of a geothermal system by water encroachment or otherwise;
- (4) blowouts, cavings and seepage; and
- (5) unreasonable disturbance or injury to neighboring properties, prior water rights, human life, health and the natural environment.

(b) The commissioner shall cause the operator of a geothermal well or wells to file adequate individual or blanket surety bonds to ensure compliance with his regulations.

(c) The commissioner shall require a geothermal operator to notify the department if the operator discovers significant quantities of hydrocarbon substances, helium or fissionable materials.

(d) The commissioner may enter upon any property, public or private, to inspect a geothermal operation for compliance with his regulations.

(e) Geothermal fluid and water of sufficient heat or pressure to constitute a threat to human life or health, which are regulated by the commissioner under this chapter, are exempt from the jurisdiction of the Alaska Oil and Gas Conservation Commission under AS 31.05.030(g). (§ 6 ch 175 SLA 1980)

Sec. 41.06.050. Relationship of geothermal resources to water.

(a) An operator shall, before drilling or constructing a geothermal well or group of wells to be operated in concert, file an application with the commissioner for approval to drill the well or wells. The date of filing of the application establishes priority as to later appropriators of nongeothermal fluids. The application must contain sufficient information to enable the commissioner to determine whether the operation of the well or wells will interfere with or impair a prior water right.

(b) An operator may not begin well drilling or construction without the approval of the commissioner. The commissioner shall approve the well construction upon the conditions he considers necessary to protect the public interest, if

(1) the proposed geothermal operation will not significantly interfere with or substantially impair a prior water right;

(2) the geothermal owner has acquired through purchase or condemnation adequate water rights to offset the potential interference or impairment; or

(3) the geothermal owner has obtained and dedicated to the affected party or parties an equivalent amount of replacement water of comparable quality.

(c) Geothermal fluid is not subject to appropriation under AS 46.15.010 — 46.15.270 and no priority may be established among geothermal owners in a geothermal system. (§ 6 ch 175 SLA 1980)

Sec. 41.06.060. Definitions. In AS 41.06.010 — 41.06.060

(1) "commissioner" means the commissioner of natural resources;

(2) "correlative rights" means the right of each geothermal owner in a geothermal system to produce without waste his just and equitable share of the geothermal resources in the geothermal system;

(3) "geothermal fluid" means liquids and steam at temperatures greater than 120 degrees Celsius naturally present in a geothermal system;

(4) "geothermal resources" means the natural heat of the earth at temperatures greater than 120 degrees Celsius, measured at the point where the highest-temperature resources encountered enter or contact a well or other resource extraction device, and includes

(A) the energy, including pressure, in whatever form present in, resulting from, created by, or that may be extracted from that natural heat;

(B) the material medium, including the geothermal fluid naturally present, as well as substances artificially introduced to serve as a heat transfer medium; and

(C) all dissolved or entrained minerals and gases that may be obtained from the material medium, but excluding hydrocarbon substances and helium;

(5) "geothermal system" means a stratum, pool, reservoir, or other geologic formation containing geothermal resources;

(6) "operator" means a person drilling, maintaining, operating, producing, or in control of a well;

(7) "owner" means a person who, by reason of an interest in real property, has the right to drill into, produce, and make use of geothermal resources;

(8) "waste" means an inefficient, excessive, or improper production, use, or dissipation of geothermal resources, including, but not limited to,

(A) drilling, transporting, or storage methods that cause or tend to cause unnecessary surface loss of geothermal resources;

(B) locating, spacing, drilling, equipping, operating, producing, or venting of a well in a manner that results or tends to result in reducing the ultimate economic recovery of geothermal resources;

(9) "well" means a well drilled, converted, or reactivated for the discovery, testing, production, or subsurface injection of geothermal resources. (§ 6 ch 175 SLA 1980)

Alaska Statutes

Title 41. Public Resources.

Chapter 20. Parks and Recreational Facilities.

[Renumbered as AS 41.21.010 — 41.21.990.]

Chapter 21. Parks and Recreational Facilities.

Sec. 41.21.020. Duties of Department of Natural Resources.
The Department of Natural Resources shall

(1) develop a continuing plan for the conservation and maximum use in the public interest of the scenic, historic, archaeological, scientific, biological, and recreational resources of the state;

(2) plan for and develop a system of state parks and recreational facilities, to be established as the legislature authorizes and directs;

(3) acquire by gift, purchase, or transfer from state or federal agencies, or from individuals, corporations, partnerships or associations, land necessary, suitable and proper for roadside, picnic, recreational or park purposes;

(4) control, develop and maintain state parks and recreational areas;

(5) provide for the acquisition, care, control, supervision, improvement, development, extension and maintenance of public recreational land, and make necessary arrangements, contracts or commitments for the improvement and development of land acquired under AS 41.21.010 — 41.21.040;

(6) adopt, in accordance with this section and the Administrative Procedure Act (AS 44.62), regulations governing the use and

designating incompatible uses within the boundaries of state park and recreational areas to protect the property and to preserve the peace;

(7) cooperate with the United States and its agencies and local subdivisions of the state to secure the effective supervision, improvement, development, extension, and maintenance of state parks, state monuments, state historical areas, and state recreational areas, and secure agreements or contracts for the purpose of AS 41.21.010 — 41.21.040;

(8) encourage the organization of state public park and recreational activities in the local political subdivisions of the state;

(9) provide for consulting service designed to develop local park and recreation facilities and programs;

(10) provide clearing-house services for other state agencies concerned with park and recreation matters; and

(11) perform other duties as are prescribed by executive order or by law;

(12) maintain memorials to Alaska veterans located in state parks;

(13) adopt, in accordance with the Administrative Procedure Act (AS 44.62), regulations governing the use of the Chena River State Recreation Area and designating incompatible uses within the boundaries of the Chena River State Recreation Area in accordance with AS 41.21.490. (§ 2 ch 158 SLA 1959; am § 1 ch 233 SLA 1970; am § 3 ch 30 SLA 1981; am §§ 1, 2 ch 78 SLA 1981)

Revisor's notes. — Formerly AS 41.20.020. Renumbered in 1983.

The present second sentence of AS 41.21.490 was originally enacted as part of (13) of this section and was transferred, with appropriate minor word changes in (13) of this section in 1981. Two paragraphs (12) were added by the 1981 amendments. The paragraph added by the second amendment was renumbered as (13).

Cross references. — For power of the department of military affairs to construct

memorials to veterans, see AS 44.35.030.

Effect of amendments. — The first 1981 amendment added paragraph (12).

The second 1981 amendment made minor word changes in paragraph (6) and added paragraph (13).

Collateral references. — Grant of licenses or special privileges in parks, 18 ALR 1263; 63 ALR 484; 144 ALR 486.

Use to which park property may be devoted; power of legislature or state officers, 18 ALR 1266; 63 ALR 484; 144 ALR 486.

Alaska Statutes

Title 46. Water, Air, Energy, and Environmental Conservation.

Chapter 15. Water Use Act.

Sec. 46.15.020. Authority and duties of the commissioner.

(a) The commissioner shall exercise all those powers and do all those acts necessary to carry out the provisions and objectives of this chapter. The commissioner may

(1) subject to AS 36.30 (State Procurement Code), enter into contractual agreements necessary to carry out the provisions of this chapter including agreements with federal, state and local agencies;

(2) apply for, accept, administer and expend grants, gifts, and loans from the federal government and any other public or private sources for the purposes of this chapter, and adopt procedures and do acts not otherwise restricted by law which are necessary to qualify the state to receive grants, gifts and loans;

(3) establish a division of water in the Department of Natural Resources and assign to that division the responsibility for carrying out the provisions of this chapter.

(b) The commissioner shall

(1) adopt procedural and substantive regulations to carry out the provisions of this chapter, taking into consideration the responsibilities of the Department of Environmental Conservation under AS 46.03 and the Department of Fish and Game under AS 16;

(2) keep a public record of all applications for permits and certificates and other documents filed in the commissioner's office; and shall record all permits and certificates and amendments and orders affecting them and shall index them in accordance with the source of the water and the name of the applicant or appropriator;

(3) cooperate with, assist, advise and coordinate plans with the federal, state and local agencies in matters relating to the appropriation, use, conservation, quality, disposal or control of waters and activities related thereto;

(4) prescribe fees or service charges for any public service rendered. (§ 1 ch 50 SLA 1966; am § 6 ch 104 SLA 1971; am § 50 ch 71 SLA 1972; am § 56 ch 106 SLA 1986)

Effect of amendments. — The 1986 amendment, effective January 1, 1988, added "subject to AS 36.30 (State Procurement Code)" at the beginning of paragraph (1) of subsection (a).

ALASKA ADMINISTRATIVE CODE

TITLE 11

NATURAL RESOURCES

CHAPTER 82

MINERAL LEASING PROCEDURES

**CHAPTER 82.
MINERAL LEASING PROCEDURES**

Article

1. Availability of Land
(11 AAC 82.100-11 AAC 82.120)
2. Qualifications
(11 AAC 82.200-11 AAC 82.205)
3. Acreage Limitations
(11 AAC 82.300-11 AAC 82.310)
4. Competitive Bidding
(11 AAC 82.400-11 AAC 82.475)
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(11 AAC 82.500-11 AAC 82.540)
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(11 AAC 82.800-11 AAC 82.815)

Editor's Note: The mineral-leasing regulations in chapters 82, 83, 84, 86 and 88 of this title, effective September 5, 1974, and distributed in Alaska Administrative Register 51, constitute a comprehensive reorganization and revision of this material, and thus the history line at the end of each section does not reflect the history of the provision before September 5, 1974, and the section numbering may or may not be related to the numbering before that date.

**ARTICLE 1.
AVAILABILITY OF LAND**

Section

100. Applicability
105. Classification for leasing
110. Opening noncompetitive land
115. Opening competitive land

11 AAC 82.100. **APPLICABILITY.** The provisions of this chapter apply to the leasing and administration of all land under AS 38.05.135 - 38.05.183, Leasing of Mineral Lands, except as may be specifically provided by the statute or the sections of the regulations dealing with a specific mineral. In the event of a conflict between this chapter and any express and specific provisions of a lease or permit carrying an interest in land issued before the effective date of the conflicting regulations, the provision of a lease or permit shall control, unless otherwise agreed by the lease holder and the commissioner. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020

AS 38.05.135

11 AAC 82.105. CLASSIFICATION FOR LEASING. All land not required to be leased competitively by law or not classified competitively by order of the commissioner is classified noncompetitive for mineral leasing purposes. A change of classification from noncompetitive to competitive rejects any pending application for noncompetitive lease or permit for the land reclassified. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.135
AS 38.05.180

11 AAC 82.110. OPENING NONCOMPETITIVE LAND. (a) Noncompetitive land, including shoreland, is not open for lease or permit until the commissioner has published a notice declaring land open for lease or permit.

(b) The notice of opening must describe the areas and minerals open. In addition, for any land made available by the opening, the notice must

(1) describe the area or areas available;

(2) specify the method of land description to be followed in making applications for leases or permits;

(3) state the date upon which application may first be received;

(4) state that all applications received within 30 days after the stated date are considered to be filed simultaneously and that the first three priorities among those applications is determined by public drawing;

(5) state that the lease or permit form and forms for lease or permit applications may be obtained and the applicable regulations examined at a designated office of the Department of Natural Resources and state the address of the office. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.115. OPENING COMPETITIVE LAND. Competitive land is not open to leasing until the commissioner publishes a notice of

lease offer as prescribed in 11 AAC 82.415. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.135
AS 38.05.345

ARTICLE 2. QUALIFICATIONS

Section

200. Qualifications
205. Statement of qualifications

11 AAC 82.200. QUALIFICATIONS. Mineral permits and leases may be applied for, issued to, or held by

(1) any person who has reached the age of majority and who is a citizen of the United States or who has filed a declaration of intention to become a citizen, or who is a citizen of any country, dependency, colony, or province, the laws, customs, and regulations of which grant similar privileges to a citizen of the United States;

(2) any corporation organized and existing under and by virtue of the laws of the United States or of any state, territory or the District of Columbia and qualified to do business in Alaska;

(3) any alien person entitled to a similar or like permit or lease by virtue of a treaty between the United States and the nation or country of which the alien is a citizen or subject;

(4) a legal guardian or trustee of a qualified citizen of the United States;

(5) any association of the above. (Eff. 9/5/74, Reg. 51; am 3/27/82, Reg. 81; am 3/18/83, Reg. 85)

Authority: AS 38.05.020
AS 38.05.145(a)
AS 38.05.190

11 AAC 82.205. STATEMENT OF QUALIFICATIONS. (a) An individual, in order to be qualified to apply for, obtain, or transfer an interest in a permit or lease must submit to the department, if applicable

(1) a signed, dated statement including the applicant's name, address and telephone number and certifying that the applicant is of the age of majority and a citizen of the United States, or has filed a declaration of intention to become a citizen, or is an alien entitled to a similar permit or lease by virtue of a treaty between the United States and the nation or country of which the alien is a citizen or subject; or

(2) in the case of a guardian, trustee, or legal representative of a person, a certified copy of the court order authorizing him to act in that capacity and to fulfill on behalf of the person all obligations arising under the lease or permit, and his signed statement as to the citizenship and age of the person and himself; or

(3) in the case of an agent acting on behalf of an individual, an original or certified copy of a notarized power of attorney evidencing the authority of the agent to act on behalf of the individual.

(b) A corporation, in order to be qualified to apply for, obtain, or transfer an interest in a permit or lease, must submit to the department, if applicable

(1) the current address of the corporation;

(2) a list of the individuals authorized to sign with respect to the mineral specified in the permit or lease;

(3) an original or certified copy of a notarized power of attorney authorizing any agent who is not a current officer but who has been designated by the corporation to sign on its behalf with respect to the mineral specified in the permit or lease;

(4) a certificate of compliance for a corporation qualified to do business in Alaska or, if filing for a lease or permit for the first time, either

(A) a certificate of authority for a foreign corporation qualified to do business in Alaska, or

(B) a certificate of incorporation for a domestic corporation qualified to do business in Alaska.

(c) A partnership or other unincorporated association, in order to be qualified to apply for, obtain, or transfer an interest in a permit or lease, must submit to the department, if applicable

(1) a statement describing the business relationships between the members of the association or partnership;

(2) a statement of qualifications for each partner or member of the association as described in (a) of this section; and

(3) in the case of an agent, an original or certified copy of a notarized power of attorney defining the agent's authority to sign with respect to the mineral specified in the permit or lease on behalf of the partnership or association.

(d) If still current, material previously filed with the department satisfying all or part of the requirements of this section may be incorporated in an application by appropriate reference together with a statement as to any material changes or amendments. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71; am 3/27/82, Reg. 81; am 3/18/83, Reg. 85)

Authority: AS 38.05.020
AS 38.05.145(a)
AS 38.05.190

ARTICLE 3. ACREAGE LIMITATIONS

Section	
300.	Chargeable acreage
305.	Statements
310.	Reduction of holdings

11 AAC 82.300. CHARGEABLE ACREAGE.
(a) The acreage limitations imposed by AS 38.05 apply to all acreage held or controlled, directly or indirectly, whether

(1) by lease or permit interest in it;

(2) by ownership or control of stock in a corporation or corporations holding or controlling chargeable acreage; or

(3) under option, operating agreement,

sublease, trust, contract or written or oral understanding of any kind from others.

(b) The acreage limitations do not apply to applications or bids prior to the issuance of a lease or permit.

(c) If two or more persons hold or control interests in any lease or permit, each of the persons is charged only with that percentage of the total acreage which corresponds to his percentage of interest in the lease.

(d) If a person holds or controls an interest in a lease or permit as a stockholder of a corporation holding or controlling leases or an interest in them, the person is charged his proportionate share of the corporation's chargeable acreage, except that if a stockholder owns or controls less than five percent of the stock of a corporation whose stock is held by the public, he is not regarded as holding or controlling any portion of any chargeable acreage held or controlled by the corporation. If a stockholder is charged with a portion of a corporation's chargeable acreage, the corporation must nevertheless include the acreage in any report required under 11 AAC 82 - 11 AAC 84.

(e) When a lease or permit or any direct or indirect interest in one or control of one is transferred, any resulting change in the chargeability of acreage is effective on the date of filing an application for approval of the transfer, subject to readjustment if the transfer is disapproved. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.140
AS 38.05.145(a)

11 AAC 82.305. STATEMENTS. At any time any person holding or controlling chargeable acreage may be required by the commissioner to file with the department a statement showing, as of a specified date, the serial number and the date of each lease or permit in which he holds or controls any interest, setting forth the acreage covered by it, the nature and extent of his interest in it and the acreage chargeable to him by virtue of that interest. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.140
AS 38.05.145(a)

11 AAC 82.310. REDUCTION OF HOLDINGS. If any person holds or controls acreage in excess of the prescribed limitations, the commissioner will give notice of the excess acreage to the person. The person shall, within 90 days following receipt of the notice, by assignment or surrender, reduce the acreage held or controlled to the prescribed limitation and file proof of the reduction with the commissioner. If any person fails to reduce his acreage within the allowed time, the last interest or interests acquired by him which created the excess acreage holding become in default and subject to forfeiture in their entirety, even though only part of the acreage in the lease or interest constitutes excess holding. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.140
AS 38.05.145(a)

ARTICLE 4. COMPETITIVE BIDDING

Section

- 400. Parcels offered for competitive lease
- 405. Method of bidding
- 410. Minimum bid
- 415. Public notice
- 420. Bid form
- 425. Bid deposit
- 428. Qualification of bidders
- 430. Joint bids
- 435. Bids at public auction
- 440. Opening bids, holding auctions
- 445. Incomplete bids
- 450. Rejection of bids
- 455. Tie bids
- 460. Additional information
- 465. Bonus; rental; bond
- 470. Issuance of lease
- 475. Return of deposits

11 AAC 82.400. PARCELS OFFERED FOR COMPETITIVE LEASE. Competitive land will be offered for lease at the discretion of the commissioner in lease parcels which he may determine to be as nearly compact in form as possible. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.135

11 AAC 82.405. METHOD OF BIDDING. Bidding may be by sealed bid or at public outcry auction unless otherwise prescribed by law or regulation dealing with the subject. If not so

11 AAC 82.405
11 AAC 82.440

prescribed, the method of bidding is at the discretion of the commissioner. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020(b)
AS 38.05.145(a)

11 AAC 82.410. MINIMUM BID. The commissioner may prescribe the minimum bid that will be considered at any lease sale. Prescribing a minimum bid does not prevent the rejection of bids as provided in 11 AAC 82.450. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.415. PUBLIC NOTICE. (a) At the time notice under AS 38.05.345(a) (3) is given by the department in a competitive sale, the notice must specify all the proposed terms and conditions of the sale that are known at the time the notice is given.

(b) At the time the notice under AS 38.05.345(a) (4) is given by the department, the notice must include a description of the land proposed to be offered for sale and the time and place of sale, and must specify all the final terms and conditions of the sale relating to rentals, royalties, leasing methods, bond requirements, and surface entry.

(c) Notices given by the department under (a) and (b) of this section must specify any other terms or conditions the director determines are necessary to inform the public of the nature of the action, and the opportunity for the public to comment. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71; am 3/26/81, Reg. 77; am 10/24/81, Reg. 80)

Authority: AS 38.05.010 AS 38.05.145
AS 38.05.020 AS 38.05.180
AS 38.05.035 AS 38.05.345
AS 38.05.135

11 AAC 82.420. BID FORM. Bids must be signed and submitted on a bid form supplied by the department for the particular lease offer or on a verbatim copy of one. No bid containing or accompanied by any condition, qualification, or material alteration may be considered. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.145(a)

11 AAC 82.425. BID DEPOSIT. Any bid deposit required by statute, regulation or the sale notice must be by cashier's or certified

check drawn on any solvent bank in the United States, by money orders, or by cash or any combination of these. The checks and money orders shall be made payable to the Department of Revenue of the State of Alaska. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)
AS 38.05.335

11 AAC 82.428. QUALIFICATION OF BIDDERS. Before the date of a competitive lease sale, a bidder must comply with 11 AAC 82.200 and 11 AAC 82.205. (Eff. 3/27/82, Reg. 81)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.430. JOINT BIDS. Joint bids must

(1) disclose, and the bid form must be signed by or on behalf of, each person who has a working interest in the bid or who will receive a working interest in any lease issued in response to the bid by virtue of any agreement or understanding, oral or written;

(2) state the percentage of interest of each bidder; and

(3) designate one person who is authorized to receive notices on behalf of all the bidders. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71; am 3/27/82, Reg. 81)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.435. BIDS AT PUBLIC AUCTION. Each bidder at a sale by public auction shall deposit with the commissioner or other officer conducting the sale the deposit and information required by 11 AAC 82.425 - 11 AAC 82.430. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71; am 6/28/81, Reg. 78)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.335

11 AAC 82.440. OPENING BIDS, HOLDING AUCTIONS. Sealed bids must be opened publicly, and public auctions must be held at the time and place specified in the notices. No bid which the commissioner determines to be nonresponsive to the sale notice may be given further consideration at the public sale proceedings. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.445. **INCOMPLETE BIDS.** No bid may be considered unless supported by the deposit and information required by 11 AAC 82.425; 11 AAC 82.428, and 11 AAC 82.430 unless the commissioner determines that any omission was immaterial or due to excusable inadvertence and if the omission is corrected in the manner provided by notice of sale. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71; am 3/27/82, Reg. 81)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.450. **REJECTION OF BIDS.** The commissioner will, in his discretion, reject any or all bids on any tract or tracts. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.135
AS 38.05.145(a)

11 AAC 82.455. **TIE BIDS.** If two or more sealed bids are equal in amount and are the highest received at any lease sale, the commissioner will promptly notify the highest bidders and invite them to submit new bids, not lower than the original bids, within 30 days after the notice. If the new bids fail to break the tie, the commissioner will, in his discretion, issue new invitations in like manner until the tie is broken, or will at any time notify the bidders that a drawing will be held at a time and place stated in the notice and award the lease by lot. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.460. **ADDITIONAL INFORMATION.** Before the right to a lease is awarded, any bidder may, on his own initiative or at the request of the commissioner, submit additional information regarding his financial responsibility and his qualifications. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.465. **BONUS; RENTAL; BOND.** When the right to a lease is awarded, the commissioner will notify the interested parties. Within the period of time specified in the notice of sale, the successful bidder must pay the balance of the bonus bid and the first year's

rental if required, submit two fully executed copies of the lease form and, if required, file a bond. If a successful bidder fails to comply with the provisions of this section, the amount deposited with his bid is forfeited to the state. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.470. **ISSUANCE OF LEASE.** Upon compliance with sec. 465 of this chapter, the commissioner will sign the lease on behalf of Alaska and mail one fully executed copy to the lessee. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.475. **RETURN OF DEPOSITS.** The commissioner will return the bid deposit of all unsuccessful bidders within five working days after a lease sale. If the high bid is disqualified after bid deposits have been returned, the commissioner may award the second and third highest bidders the opportunity to restore their bids and deposits within 10 days after receipt of the notice of the award. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 5. NONCOMPETITIVE PROCEDURES

Section

- 500. Applications
- 505. Description of land
- 510. Area
- 515. Terminated permits and leases
- 520. Applications in simultaneous filing periods
- 525. Drawings
- 530. Material to accompany applications
- 535. Default
- 540. Filing after simultaneous filing period

11 AAC 82.500. **APPLICATIONS.** (a) Applications for noncompetitive leases or permits for a mineral may be filed on any noncompetitive land opened for leasing of that mineral in accordance with secs. 100-120 of this chapter.

(b) Applications filed during a simultaneous filing period must be filed by mail or by personal delivery. Applications for land available on a first-come, first-served basis may also be

11 AAC 82.445. **INCOMPLETE BIDS.** No bid may be considered unless supported by the deposit and information required by 11 AAC 82.425; 11 AAC 82.428, and 11 AAC 82.430 unless the commissioner determines that any omission was immaterial or due to excusable inadvertence and if the omission is corrected in the manner provided by notice of sale. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71; am 3/27/82, Reg. 81)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.450. **REJECTION OF BIDS.** The commissioner will, in his discretion, reject any or all bids on any tract or tracts. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.135
AS 38.05.145(a)

11 AAC 82.455. **TIE BIDS.** If two or more sealed bids are equal in amount and are the highest received at any lease sale, the commissioner will promptly notify the highest bidders and invite them to submit new bids, not lower than the original bids, within 30 days after the notice. If the new bids fail to break the tie, the commissioner will, in his discretion, issue new invitations in like manner until the tie is broken, or will at any time notify the bidders that a drawing will be held at a time and place stated in the notice and award the lease by lot. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.460. **ADDITIONAL INFORMATION.** Before the right to a lease is awarded, any bidder may, on his own initiative or at the request of the commissioner, submit additional information regarding his financial responsibility and his qualifications. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.465. **BONUS; RENTAL; BOND.** When the right to a lease is awarded, the commissioner will notify the interested parties. Within the period of time specified in the notice of sale, the successful bidder must pay the balance of the bonus bid and the first year's

rental if required, submit two fully executed copies of the lease form and, if required, file a bond. If a successful bidder fails to comply with the provisions of this section, the amount deposited with his bid is forfeited to the state. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.470. **ISSUANCE OF LEASE.** Upon compliance with sec. 465 of this chapter, the commissioner will sign the lease on behalf of Alaska and mail one fully executed copy to the lessee. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.475. **RETURN OF DEPOSITS.** The commissioner will return the bid deposit of all unsuccessful bidders within five working days after a lease sale. If the high bid is disqualified after bid deposits have been returned, the commissioner may award the second and third highest bidders the opportunity to restore their bids and deposits within 10 days after receipt of the notice of the award. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 5. NONCOMPETITIVE PROCEDURES

Section

- 500. Applications
- 505. Description of land
- 510. Area
- 515. Terminated permits and leases
- 520. Applications in simultaneous filing periods
- 525. Drawings
- 530. Material to accompany applications
- 535. Default
- 540. Filing after simultaneous filing period

11 AAC 82.500. **APPLICATIONS.** (a) Applications for noncompetitive leases or permits for a mineral may be filed on any noncompetitive land opened for leasing of that mineral in accordance with secs. 100-120 of this chapter.

(b) Applications filed during a simultaneous filing period must be filed by mail or by personal delivery. Applications for land available on a first-come, first-served basis may also be

filed by telegram, radiogram, or cablegram if

(1) the name and address of the applicant and the area applied for are clearly identified; and

(2) the application is confirmed within 15 days after the initial filing by a signed application meeting all the requirements of chs. 82-84 and 88 of this title.

(c) Applications must be filed on forms provided by the department or exact image copies of them.

(d) Applications must be signed by or on behalf of each person who will receive any interest in any lease or permit if issued, by virtue of any agreement or understanding, oral or written. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.135
AS 38.05.145(a)

11 AAC 82.505. DESCRIPTION OF LAND.

(a) Applications for land available in a simultaneous filing period must describe the land as specified in the notice providing for the simultaneous filing period.

(b) Application for land available on a first-come, first-served basis must describe the land by legal subdivision, section, township, range, and meridian if the land has been surveyed under the public land rectangular system or is included in protracted surveys approved by the department or by the Bureau of Land Management. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.510. AREA. The land requested in an application must be compact in form. Unless specified otherwise in the section dealing with the subject of the application, the land in an application will not be considered compact in form unless

(1) full sections are requested (the lease or permit being issued only for the available land);

(2) all sections applied for are contiguous and

not merely "adjacent," as defined in 11 AAC 38.185 (sections touching only at a point are not considered contiguous); and

(3) the length of the land requested does not exceed four times the width. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.515. TERMINATED PERMITS AND LEASES. Noncompetitive land on which a permit or lease or a part of one is expired, relinquished, or otherwise terminated may be offered at a noncompetitive drawing. The commissioner will post a notice listing the land to be offered at a noncompetitive drawing in the place provided for such postings. The notice will provide for a 30-day simultaneous filing period to file applications for the land listed in the notice. The notice might also state that adjacent noncompetitive land has been removed from filing on a first-come, first-served basis and is included with the terminated tracts for the purpose of making more compact tracts. Only applications filed during the simultaneous filing period may be included in the noncompetitive drawing. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.135
AS 38.05.145(a)

11 AAC 82.520. APPLICATIONS IN SIMULTANEOUS FILING PERIODS. (a) No applicant may file, or cause to be filed, applications which will give him more than one chance on any tract in a simultaneous filing period, whether by written or oral agreement or contract.

(b) The filing fee may be paid by cash, certified check, cashier's check, money order, or personal check. A filing fee paid by personal check which is returned by the bank because of insufficient funds gives an applicant no priority and any lease or permit issued is void from its inception.

(c) An application may be withdrawn at any time before the drawing; however, if there are conflicting applications, the withdrawal does not correct the conflict unless the commissioner is satisfied that the conflict was unintentional or due to excusable inadvertence.

(d) Any application that fails to comply with the requirements of the notice must be rejected and gives the applicant no priority. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.525. DRAWINGS. (a) Whenever proper applications filed simultaneously or during any simultaneous filing period cover the same land, the commissioner will cause a public drawing or drawings to be held to determine the priorities among those applications, but the drawing is limited to three priorities when more than three applications are included in the same drawing. All remaining applications are rejected and closed of record following the drawing without further notice to the applicant. Each drawing will be conducted in the manner the commissioner determines.

(b) The order or other notice by the commissioner providing for simultaneous filing periods will give the date, time, and place of drawing to determine priorities. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.530. MATERIAL TO ACCOMPANY APPLICATIONS. Noncompetitive applications must be accompanied by, or refer to, a previously filed statement of qualifications required by sec. 205 of this chapter. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.535. DEFAULT. If the applicant first drawn for any tract fails to timely comply with the requirements of the law, regulation or the filing notice, the remaining priorities in the order drawn, successively will be given notice and opportunity to secure the lease. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.540. FILING AFTER SIMULTANEOUS FILING PERIOD. If no applications are filed or if no lease or permit is issued as a result of a simultaneous filing period, the land becomes available on a first-come, first served basis, but only after notation of its availability

on the official records of the department. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 6. MISCELLANEOUS LEASING PROCEDURE

Section

- 600. Bonding
- 605. Assignments
- 610. Permits or leases segregated by partial assignment
- 615. Applications for approval of assignments
- 620. Transfer by death
- 625. Effective date of assignments
- 630. Responsibility
- 635. Surrenders
- 640. Survey requirement
- 645. Conforming protracted description to official surveys
- 650. Control
- 655. Rule of approximation
- 660. Excess area; partial termination
- 665. Rental and royalty relief
- 670. Suspension of production or operations
- 675. Effective date of leases and permits

11 AAC 82.600. BONDING. (a) Every mineral lease and permit may contain a provision requiring that an acceptable bond in the minimum amount required by the section of this title dealing with the specific mineral involved be filed before beginning any permit or lease operation.

(b) The amount of the bond is the amount determined by the commissioner to be justified by the nature of the surface, its uses and improvements in the vicinity of the lands, and the degree of the risks involved in the types of operations to be carried on under the lease or permit.

(c) Every bond must be either

(1) a corporate surety bond with a corporate surety qualified to do business as such in Alaska; or

(2) a personal bond accompanied by a deposit of cash in the amount of the bond, or negotiable federal or Alaska securities in a sum

equal at par value to the amount of the bond together with a sufficient conveyance to the commissioner of full authority to sell the securities in the event of default in the performance of the conditions of the bond.

(d) Every bond must be conditioned upon faithful compliance with all the provisions of the lease or permit.

(e) The principal on any bond must be the lessee of record unless the lease is subject to an operating agreement which has been approved by the commissioner, in which case the operator may be the principal in place of the lessee of record.

(f) Bonds must be furnished on forms provided by the department. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.605. ASSIGNMENTS. (a) Leases, permits, or interests in leases or permits may, with the approval of the commissioner, be assigned or subleased as provided in this section to any person or persons qualified to hold a lease.

(b) No transfer of an interest in a lease or permit, including assignments of working or royalty interest, operating agreements, and subleases, is binding upon the state unless approved by the commissioner. The transferor is liable for all obligations under the lease accruing before the approval of the transfer. When transfers of overriding royalty are made after the initial separation from the working interest of the lease, executed or image copies of these transfers must be transmitted to the department without charge for filing in the appropriate case file. However, the commissioner will take no action and official status records will not be posted to reflect these transfers.

(c) The commissioner will approve a transfer of an undivided interest in a lease or permit unless he or she makes a written finding that the transfer would adversely affect the interests of Alaska or the application does not comply with applicable regulations. The commissioner will state the reasons for denial of an application in the finding.

(d) The commissioner will disapprove a transfer of a divided interest in a lease or permit if the transfer covers only a portion of the lease or permit or a separate and distinct zone or geological horizon, unless the transfer would not adversely affect the interests of Alaska, the transfer complies with applicable regulations, and

(1) the applicant demonstrates to the commissioner's satisfaction that the proposed transfer of a divided interest is reasonably necessary to accomplish exploration or development of the lease or permit;

(2) the lease is committed to a unit agreement approved by the commissioner;

(3) the lease is allocated production within a participating area approved by the commissioner; or

(4) the lease has an oil, gas, or geothermal well certified as capable of production in paying quantities.

(e) The commissioner will make a written finding stating the reasons for disapproval of a transfer of a divided interest under (d) of this section. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71; am 3/30/84, Reg. 89)

Authority: AS 38.05.020
AS 38.05.920

11 AAC 82.610. PERMITS OR LEASES SEGREGATED BY PARTIAL ASSIGNMENT. If a transfer is made of all or a part of the lessee's or permittee's working interest in a portion of the acreage in a lease or permit, the acreage as to which the transfer is made will, at the option of the commissioner, and may, upon the request of the transferee and with the approval of the commissioner, be segregated into a separate and distinct lease having the same effective date as the original lease or permit. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020

11 AAC 82.615. APPLICATIONS FOR APPROVAL OF ASSIGNMENTS. (a) All applications for approval of transfers must

(1) be filed in triplicate and comply with 11 AAC 88.105;

(2) be filed within 90 days after the date of final signing of the transfer by the assignor, except that an assignment not filed within 90 days may be approved, at the discretion of the commissioner, where no intervening interest is filed;

(3) unless filed on forms provided by the department, be accompanied by a request for approval of assignment essentially like that used in the appropriate department form; and

(4) be accompanied by a bond, if required by the commissioner, which clearly binds the assignee and his surety to any unperformed obligations of the assignor.

(b) If the transfer is solely an assignment by the lessee of record of all or a divided or undivided portion of the record title to a lease, forms provided by the department must be used whenever possible if the form contains all the terms and conditions agreed upon by the assignor and assignee.

(c) If a single instrument affects two or more leases or permits, the applicant must file three signed counterparts of the instrument and sufficient exact image copies of it to provide one copy for each lease or permit covered by the application. A filing fee is required for each lease or permit affected.

(d) The assignee must also file or refer to the statement of qualifications required by 11 AAC 82.205. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.920

11 AAC 82.620. TRANSFER BY DEATH. If the applicant claims to be the heir or devisee of a deceased holder of a lease or permit or interest in it, he must furnish evidence satisfactory to the commissioner of his status and identity as an heir or devisee. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.920

11 AAC 82.625. EFFECTIVE DATE OF ASSIGNMENTS. If the commissioner approves or disapproves an application for transfer, he will mail notice of the action taken to the applicant and the lessee or permittee. If the transfer is approved, the effective date of the transfer is the date of filing the application, or the effective date of the lease or permit concerned if filed before that date. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.920

11 AAC 82.630. RESPONSIBILITY. (a) The assignor of a permit or lease and his surety continue to be responsible for the performance of any obligation under the permit or lease until the effective date of the assignment. If the transfer is not approved, their obligation continues as though no transfer had been filed for approval.

(b) After the effective date of the transfer, the assignee and his surety are responsible for the performance of all permit or lease obligations notwithstanding any terms in the transfer to the contrary. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)
AS 38.05.920

11 AAC 82.635. SURRENDERS. (a) All of the rights in land held under a lease or prospecting permit may be surrendered by the lessee or permittee of record by filing a written surrender at the appropriate office of the department. A surrender of any legal subdivision of the land held under a lease or prospecting permit, or of a separate and distinct zone or geological horizon in all or a portion of the land, is not effective unless approved by the commissioner.

(b) A surrender takes effect on the date it is filed, or on the date of approval if approval is required, subject in either case to the continued obligation of the lessee or permittee and his surety to make payment of all accrued royalties and rentals and to place the surrendered land in condition satisfactory to the commissioner for abandonment.

(c) A surrender must be filed in accordance with 11 AAC 88.105, but a filing fee is not required. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71; am 5/30/85, Reg. 94)

Authority: AS 38.05.020

AS 38.05.145

11 AAC 82.640. SURVEY REQUIREMENT.

(a) A survey or monumentation of lease boundaries may be required by the commissioner when he determines that survey or monumentation is necessary to determine compliance with the lease or to determine the extent of possible damage to adjacent lands from lease operations. However, the lessee is not required to pay the costs of a survey in excess of that required to establish that its operations are in compliance with the terms of the lease.

(b) Within one year after notice of the survey or monumentation requirement, the lease holder shall provide the commissioner with a plat of survey or other evidence showing that the survey or monumentation has been completed in accordance with the notice. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020

AS 38.05.035

AS 38.05.145

11 AAC 82.645. CONFORMING PROTRACTED DESCRIPTION TO OFFICIAL SURVEYS.

(a) If a lease is issued describing land according to a protracted survey and if thereafter the leased land is surveyed under the public land rectangular system, the boundaries of the lease land are those established by the latter survey when it is approved by the commissioner. Before conforming the lease boundaries, the department will notify each lessee of land affected by the survey and permit those lessees to examine the plat of survey and the field notes. If such a lessee believes that the survey is erroneous and would because of an error move any boundary of a lease held by him more than 10 feet, or in the case of an oil and gas lease on which there is no well capable of producing in paying quantities, one-quarter of a mile, then he may, within 30 days after that notice, file with the department written objections to the survey specifying in detail the error alleged, the boundary affected and the effect on it, and stating whether a hearing is demanded.

(b) If a hearing is demanded under (a) of this section, the commissioner will establish a time and place for the hearing and mail reasonable notice of it to all lessees of record affected by the survey.

(c) The commissioner will consider all written objections and all evidence presented at the hearing, and if he finds that any lease boundary, as established by the lessee, would be affected in excess of the limits specified in (a) of this section, and he finds reasonable cause to believe that the effect may be the result of an error in the survey, whether or not within the allowable limits of error according to the generally accepted standards of surveying, and any lessee or lessees agree to bear the cost of a resurvey as provided for in (d) of this section, the survey is not approved and the commissioner will order a resurvey.

(d) A resurvey ordered under (c) of this section must be made by an independent professional land surveyor licensed in Alaska and

appointed by the commissioner, who will consult with any interested lessees before making the appointment. The commissioner will fully apprise the surveyor of any alleged errors and furnish him copies of all written objections and other evidence submitted concerning the original survey.

(e) Upon receipt of the resurvey, the commissioner will notify all affected lessees of it and permit the lessees to examine the plat of resurvey and the field notes. A lessee may within 30 days after receipt of the notice file written objections in the manner provided in (a) of this section. If objections are received, the commissioner may, at his discretion, order a further hearing or a further resurvey in the manner provided in (d) of this section. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.145(a)

11 AAC 82.650. CONTROL. (a) The physical location of the boundaries of any legal subdivision subject to a lease describing land according to a protracted survey, is, for the purposes of sec. 645 of this chapter, controlled by the latitudes and longitudes indicated on the protracted survey, if no portion of the protracted survey has been surveyed by the department or by the Bureau of Land Management, Department of the Interior, under the public land rectangular system. If a portion has been surveyed by the department or the Bureau of Land Management, that survey applies. When locating the unsurveyed remainder of a section of land, a projection of the section lines from the surveyed portion as monumented under the public rectangular system to the first protracted section corner position determines the remainder of the surveyed section. If the first protracted section corner position can be closed into by the public land rectangular survey system within the accuracies and standards established by the Bureau of Land Management's 1947 Manual of Surveying Instructions and in accordance with the department's survey requirements, the protracted corner becomes a common corner for description purposes. Otherwise the surveyed section of land is closed into the protracted section line position as defined by protracted data.

(b) The boundaries of leases issued before July 22, 1979 will be controlled by this section upon approval of the commissioner with the consent of the lessees of record. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.145(a)

11 AAC 82.655. RULE OF APPROXIMATION. The "rule of approximation" as defined in AS 38.05.965 shall be used in determining if a lease or permit complies with the area requirements of AS 38.05. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.660. EXCESS AREA; PARTIAL TERMINATION. If for any reason a permit or lease covers more acreage than the maximum permitted by AS 38.05 or the regulations to be included in one lease or permit of its kind, the lease or permit is not void, but the acreage covered must be reduced to the permitted maximum. Whenever the commissioner determines that a lease exceeds the permitted acreage, he will promptly mail notice to the lessee or permittee, stating the amount of acreage that must be eliminated. Within 60 days after the receipt of the notice, the lessee or permittee of record may file an instrument surrendering or assigning in full at least the amount of acreage that must be eliminated which must be one or more legal subdivisions or in such other shape or shapes as the commissioner approves. The surrender or assignment is effective when filed. If the surrender or assignment is not filed within 60 days, the commissioner will eliminate the minimum necessary and promptly mail notice to the lessee or permittee, specifying the parcels eliminated. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

11 AAC 82.665. RENTAL AND ROYALTY RELIEF. (a) Application for relief under AS 38.05:140 must comply with 11 AAC 88.105 and

(1) state all the facts entitling the applicant to relief;

(2) state location and status of all past and present activities on the lease;

(3) include a detailed report of all production during the six months preceding the filing of the application;

(4) contain a detailed statement covering the entire life of the lease showing all expenses and costs of operating the lease including all royalties and overriding royalties and all income from all produced minerals from the lease; and

(5) include an agreement by the applicant to defray the cost of publishing a notice as provided in (b) of this section.

(b) Upon receipt of an application complying with (a) of this section, the commissioner will cause to be published a notice of public hearing if required on the application. The notice must

(1) state the time and place of hearing;

(2) describe the lands involved; and

(3) state the name of the applicant and the nature of the relief applied for.

(c) The notice must be published at least once a week for at least two consecutive weeks in advance of the hearing date, which must be at least 15 days after the last date of publication, in at least one newspaper of general circulation in the vicinity of the principal office of the department, and must be posted at that office for the same period.

(d) At the time and place specified in the published notice, the commissioner will hear evidence offered by the applicant and any other interested party.

(f) The commissioner must give notice of the findings and determination to the lessee and to any other person who has filed a written request for it. The action taken is effective on the date specified in the notice. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.140
AS 38.05.145(a)

11 AAC 82.670. SUSPENSION OF

PRODUCTION OR OPERATIONS. (a) Applications for suspension of production or operations under AS 38.05.140 must comply with 11 AAC 88.105 and must contain complete information showing the necessity or justification for the suspension.

(b) Whenever the commissioner takes an action under AS 38.05.140, he will give notice to the lessee, specifying the action taken, the effective date of it, and the duration of any suspension, and note the action in the status record.

(c) No lease expires because operations or production or both are suspended under any order or with the assent of the commissioner. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.140
AS 38.05.145(a)

11 AAC 82.675. EFFECTIVE DATE OF LEASES AND PERMITS. The effective date of a lease or permit is the first day of the month following the date on which the lease or permit was signed on behalf of the state or upon prior written request on the first day of the month in which it was signed on behalf of Alaska. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 7. ROYALTY PRODUCTS

Section

- 700. Taking royalty in kind
- 705. Bidding method
- 710. Notice of sale
- 715. Qualifications

11 AAC 82.700. TAKING ROYALTY IN KIND. Royalty products taken in kind as provided by AS 38.05.182 must be taken pursuant to the provisions of the lease which reserves the royalty to the state. If no provision is made in the lease or in the regulations dealing with the products to be taken, all or any portion of the state's share may, at the option of the commissioner, be taken in kind in accordance with the following:

- (1) 90 days' written notice will be given to

each lessee of the state's election to take the royalty products in kind; however, if the proportion of the state's share to be taken in kind exceeds 50 percent of the state's share, 180 days' notice will be given;

(2) after taking has actually commenced, the amount to be taken in kind may be increased or decreased from time to time by not more than 10 percent upon 30 days' written notice to each lessee of record, from 10 percent to 50 percent upon 90 days' written notice, and over 50 percent upon 180 days' written notice;

(3) the products must be delivered to the state or its designated purchaser free of charge at the point provided in the lease for determination of the value of the royalty product if the production to be taken were paid in money rather than taken in kind; the condition of the product must be the same as the non-royalty share at the point of taking; the lessee shall, if necessary, furnish safe storage for the royalty share free of charge for the same duration and in the same manner as storage is provided for the non-royalty share; when all or part of the royalty product to be taken consists of gas, the commissioner will take into consideration the effect this taking may have on the long-term gas supply contracts that the lessee has entered into. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)
AS 38.05.182

11 AAC 82.705. BIDDING METHOD. Royalty products which the commissioner determines are to be sold by competitive bid will be offered for sale by sealed bid or at public auction. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)
AS 38.05.183

11 AAC 82.710. NOTICE OF SALE. If the commissioner determines that royalty products will be offered for competitive sale, notice of the sale will be given as provided by AS 38.05.945. The notice must specify all the terms and conditions of the sale, including the royalty products to be sold, bidding method, bond requirements, sale place and time, minimum bid, if prescribed, and any other term or condition which the commissioner determines necessary

to carry out the purposes of AS 38.05.183. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71; am 3/18/83, Reg. 85; am 3/30/83, Reg. 85)

Authority: AS 38.05.020(b) AS 38.05.145
AS 38.05.135(b) AS 38.05.180

11 AAC 82.715. QUALIFICATIONS. A purchaser of the state royalty products must comply with the qualification requirements of 11 AAC 82.200 and must supply the showing of qualification required of mineral permittees and lessees by 11 AAC 82.205. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 8. RECORDS AND REPORTS

Section

- 800. Production records
- 805. Test results
- 810. Confidentiality of data
- 815. Cross-referencing

11 AAC 82.800. PRODUCTION RECORDS.

(a) Mineral lessees of state land shall keep in their possession accurate books and records showing the production and disposition of all minerals produced from the leased land and shall permit the commissioner or his agents at all reasonable hours to examine them.

(b) The commissioner will, in his discretion, require copies of sales contracts and other agreements with the first bona fide purchaser affecting produced minerals which are subject to royalties. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020(b)(1)
AS 38.05.145(a)

11 AAC 82.805. TEST RESULTS. The lessee of a state-issued mineral lease shall furnish, upon request of the commissioner, a copy of all geological, geophysical, engineering, and other factual data obtained from the lease, including all pertinent tests, records, surveys, and analyses conducted on or pertaining to the leased land or products from it, but not including interpretations of these items or proprietary research data

or techniques. (Eff. 9/5/74, Reg. 51, am 7/22/79, Reg. 71; am 3/18/83, Reg. 85)

Authority: AS 38.05.020(b)(1)
AS 38.05.145(a)

11 AAC 82.810. CONFIDENTIALITY OF DATA. (a) Geological, geophysical, and engineering data, including well and bore hole data, and interpretations of those data, will be kept confidential at the written request of the person supplying the information. Cost data and financial information submitted in support of applications, bonds, leases, and similar items will be kept confidential at the written request of the person supplying the information except as provided in AS 38.05.036.

(b) Information for which confidentiality is requested must be identified as "confidential" on the outer envelope and on each page, and must be submitted separately from information not entitled to confidential status. (Eff. 3/18/83, Reg. 85)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.145

11 AAC 82.815. CROSS-REFERENCING. A party who is required to submit information to the commissioner under this title may cross-reference information which it or other parties, including agencies of state or federal government, have previously filed with the commissioner. A party making a cross-reference shall precisely identify the referenced information, the approximate date, and the office with which it was filed. If the information cannot be located in departmental files, or if inaccessibility of the information would delay processing of the application, the commissioner will, in his discretion, require that the information be submitted. (Eff. 3/18/83, Reg. 85)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.145

CHAPTER 84

OTHER LEASABLE MINERALS

**CHAPTER 84.
OTHER LEASABLE MINERALS**

Article

1. Coal (Repealed)
2. Phosphates (11 AAC 84.200),
3. Oil Shale (11 AAC 84.300)
4. Sodium (11 AAC 84.400)
5. Sulphur (11 AAC 84.500)
6. Potassium (11 AAC 84.600)
7. Geothermal Resources
(11 AAC 84.700 - - 11 AAC 84.790)
8. Geothermal Unitization
(11 AAC 84.810 - - 11 AAC 84.950)

Editor's Note: The mineral-leasing regulations in 11 AAC 82, 11 AAC 83, 11 AAC 84, 11 AAC 86 and 11 AAC 88, effective September 5, 1974, and distributed in Alaska Administrative Register 51, constitute a comprehensive reorganization and revision of this material, and thus the history line at the end of each section does not reflect the history of the provision before September 5, 1974, and the section numbering may or may not be related to the numbering before that date.

**ARTICLE 1.
COAL**

Repealed 6/18/82.

Editor's Note: The former Article 1 relating to coal leasing was replaced by 11 AAC 85, effective 6/18/82 and distributed in Register 82.

**ARTICLE 2.
PHOSPHATES**

Section

200. Phosphate leasing method

11 AAC 84.200. PHOSPHATE LEASING METHOD. Phosphate leases authorized by AS 38.05.155 are subject to disposition under 11 AAC 82. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

**ARTICLE 3.
OIL SHALE**

Section

300 Oil shale leasing method

11 AAC 84.300. OIL SHALE LEASING METHOD. Oil shale leases authorized by AS 38.05.160 are subject to disposition under 11 AAC 82. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 4. SODIUM

Section

400. Sodium leasing method

11 AAC 84.400. **SODIUM LEASING METHOD.** (a) Sodium leases authorized under AS 38.05.165 for land which the director determines is known to contain valuable deposits of sodium compounds are issued competitively under 11 AAC 82.

(b) Prospecting permits authorized under AS 38.05.165 for land not known to contain valuable deposits of sodium compounds are issued noncompetitively under 11 AAC 82. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 5. SULPHUR

Section

500. Sulphur leasing method

11 AAC 84.500. **SULPHUR LEASING METHOD.** (a) Sulphur leases authorized under AS 38.05.170 for land which the director determines is known to contain valuable deposits of sulphur are issued competitively under 11 AAC 82.

(b) Prospecting permits authorized under AS 38.05.165 for land not known to contain valuable deposits of sulphur are issued noncompetitively under 11 AAC 82. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 6. POTASSIUM

Section

600. Potassium leasing method

11 AAC 84.600. **POTASSIUM LEASING METHOD.** (a) Potassium leases authorized under AS 38.05.175 for land which the director determines is known to contain valuable deposits of potassium compounds are issued competitively under 11 AAC 82.

(b) Prospecting permits authorized under AS 38.05.175 for land not known to contain valuable deposits of potassium compounds are issued noncompetitively under 11 AAC 82. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.145(a)

ARTICLE 7. GEOTHERMAL LEASING

Section

- 700. Purpose
- 710. Call for applications
- 720. Determination of tracts as competitive or noncompetitive
- 725. Competitive geothermal leases
- 730. Noncompetitive geothermal prospecting permits
- 740. Noncompetitive geothermal leases
- 745. Geothermal lease renewal and extension
- 750. Plan of operations
- 755. Plan of exploration
- 760. Plan of development
- 770. Royalty
- 780. Confidentiality
- 790. Bond

11 AAC 84.700. **PURPOSE.** (a) 11 AAC 84.700 – 11 AAC 84.790 establish procedures for the disposal by competitive lease and by noncompetitive prospecting permit of geothermal resources as defined by AS 38.05.965(24).

(b) Both a noncompetitive prospecting permit and a competitive lease for geothermal resources constitute a disposal of an interest in state land. Any disposal of geothermal resources must be preceded by a determination under AS 38.05.035(e) that the disposal is in the best interest of the state.

(c) The provisions of 11 AAC 82.200 and 11 AAC 82.205 apply to persons who apply for, obtain, or transfer an interest in a geothermal prospecting permit or lease. (Eff. 9/5/74, Reg. 51; am 8/22/82; Reg. 83; am 5/8/83, Reg. 86)
Authority: AS 38.05.020 AS 38.05.145
AS 38.05.035 AS 38.05.181

11 AAC 84.710. **CALL FOR APPLICATIONS.** (a) In the absence of substantial geologic indications of geothermal resources, a disposal of geothermal resources will be preceded by a call

for applications. The commissioner will, in his discretion, commence a call for applications on his own initiative or in response to requests from persons interested in disposals of geothermal resources.

(b) To commence a call for applications, the commissioner will designate a proposed geothermal disposal area, comprised of identified tracts which are compact, contiguous, and consistent with the acreage limitations of AS 38.05.181. The commissioner will invite applications for the tracts during a specified period. (Eff. 9/5/74, Reg. 51; am 8/22/82, Reg. 83; am 5/8/83, Reg. 86)

Authority: AS 38.05.020 AS 38.05.145
AS 38.05.035 AS 38.05.181

11 AAC 84.720. DETERMINATION OF TRACTS AS COMPETITIVE OR NONCOMPETITIVE. (a) At the conclusion of the call for applications, the commissioner will determine which tracts within the area subject to the call will be disposed of by competitive lease or noncompetitive prospecting permit, after reviewing available geologic information and the response to the call for applications.

(b) The commissioner will, in his discretion, designate any or all tracts for disposal by competitive lease provided at least two applications have been received for the area in response to the call for applications. However, the commissioner will designate for disposal by competitive lease any tracts which received two or more applications in response to the call for applications.

(c) The commissioner will, in his discretion and subject to a determination under AS 38.05.035(e), issue a noncompetitive prospecting permit under 11 AAC 84.730 for a tract not designated for disposal by competitive lease but receiving an application in response to the call for applications. A tract not designated for disposal by competitive lease and receiving no applications in response to the call for applications is eliminated from further consideration for disposal absent another call for applications including that tract.

(d) The commissioner will, in his discretion, designate an area for disposal by competitive lease and conduct the disposal without a call

for applications if the commissioner determines that available geologic information indicates a substantial likelihood of commercial geothermal resources in the area. (Eff. 9/5/74, Reg. 51; am 8/22/82, Reg. 83; am 5/8/83, Reg. 86)

Authority: AS 38.05.020 AS 38.05.145
AS 38.05.035 AS 38.05.181

11 AAC 84.725. COMPETITIVE GEOTHERMAL LEASES. The competitive bidding procedures established in 11 AAC 82.400 - 11 AAC 82.475 apply to areas designated as competitive geothermal areas under 11 AAC 84.720. (Eff. 5/8/83, Reg. 86)

Authority: AS 38.05.020 AS 38.05.145
AS 38.05.035 AS 38.05.181

11 AAC 84.730. NONCOMPETITIVE GEOTHERMAL PROSPECTING PERMITS. (a) The commissioner will, in his discretion, issue a noncompetitive geothermal prospecting permit for an initial two-year term to a person exercising a preference right under AS 38.05.181(a), and to a person who submits an application for a tract subject to a call for applications, if the tract is not designated for disposal by competitive lease.

(b) The commissioner will, in his discretion, renew a geothermal prospecting permit issued under this section once for a one-year term, if he finds that the permittee has been unable, despite the exercise of reasonable diligence, to show a discovery of geothermal resources in commercial quantities. In this subsection, "reasonable diligence" means the performance of at least \$50 per acre worth of drilling, geological, geochemical, or geophysical work on the permit area for the benefit of the permit area during the initial two-year term.

(c) An application for a geothermal prospecting permit renewal under (b) of this section must be submitted no later than 60 days preceding the date on which the geothermal prospecting permit would otherwise expire and must be accompanied by a copy of all geothermal survey data obtained from the lands under permit. The data must include pertinent tests, records, data surveys, and analyses.

(d) If the application for renewal of a geothermal prospecting permit meets the conditions of (b) and (c) of this section, the commissioner will issue the renewal of the permit after receipt of rental fees at the rate of \$3 per acre of the permit area for the one year. (Eff. 8/22/82, Reg. 83)
Authority: AS 38.05.020 AS 38.05.145
AS 38.05.035 AS 38.05.181

11 AAC 84.740. NONCOMPETITIVE GEOTHERMAL LEASES. (a) The commissioner will issue a noncompetitive geothermal lease to a geothermal prospecting permittee if the commissioner determines that the permittee has

(1) submitted information to the commissioner from subsurface test results showing geothermal resources at a temperature and pressure sufficient to meet the requirements of the permittee's proposed development;

(2) discovered geothermal resources in commercial quantities;

(3) complied with the provisions of AS 38.05.181(c) governing conversion from permits to leases; and

(4) received approval of a plan of development under 11 AAC 84.760.

(b) If the term of a geothermal prospecting permit expires while the commissioner is reviewing an application for a noncompetitive geothermal lease under this section, the permit is extended until the permittee is either granted or denied a noncompetitive lease.

(c) In this section, "commercial quantities" means quantities sufficient to yield a return in excess of operating costs, even if drilling and equipment costs may never be repaid and the undertaking considered as a whole may ultimately result in a loss. Quantities are insufficient to yield a return in excess of operating costs unless those quantities, less the costs of transportation and marketing, would produce sufficient revenue to induce a prudent operator to produce and market those quantities. (Eff. 8/22/82, Reg. 83)

Authority: AS 38.05.020 AS 38.05.145
AS 38.05.035 AS 38.05.181

11 AAC 84.745. GEOTHERMAL LEASE RENEWAL AND EXTENSION. (a) If, at the expiration of the 10-year primary term of a geothermal lease, the lessee has begun operations necessary to drill a geothermal well using equipment located at the lease area of sufficient size and capacity to drill to the total depth proposed in the plan of exploration for the well, the commissioner will, in his discretion, extend the geothermal lease for one five-year term. In this subsection, "operations necessary to drill a geothermal well" includes drilling, re-drilling, sidetracking, or other techniques necessary to reach the bottom hole location proposed in the plan of exploration.

(b) Upon notice to the state that production of geothermal resources in commercial quantities from the lease has begun, the commissioner will extend the lease for the duration of commercial production. (Eff. 8/22/82, Reg. 83)
Authority: AS 38.05.020 AS 38.05.145
AS 38.05.035 AS 38.05.181

11 AAC 84.750. PLAN OF OPERATIONS. (a) Except as provided in (b) of this section, a holder of a geothermal lease or prospecting permit shall have a plan of operations for all or part of the leased area approved by the commissioner before any operations may be undertaken on the area of the geothermal lease or prospecting permit if

(1) the state owns all or part of the surface estate of the lease or prospecting permit area;

(2) the lease reserves a net profit share to the state; or

(3) the state owns all or part of the mineral estate, but the entire surface estate is owned by a party other than the state, and a surface owner requests that the commissioner require and approve a plan of operations for the portion of the leased area owned by that surface owner.

(b) A lease plan of operations is not required for

(1) activities that would not require a land use permit under this title; or

(2) operations undertaken under an approved unit plan of operations in accordance with this title.

(c) Before undertaking operations on the geothermal lease or prospecting permit area, the holder of a geothermal lease or prospecting permit shall provide for full payment of all damages sustained by the owner of the surface estate as well as by the surface owner's lessees and permittees, by reason of entering the land. If the surface estate is owned by a party other than the state, the holder of a geothermal lease or prospecting permit shall also notify the surface owner of his opportunity to request that the commissioner require a plan of operations before allowing operations to be undertaken on the portion of the leased area owned by the requesting surface owner.

(d) Application for approval of a plan of operations must contain sufficient information, based on data reasonably available at the time the plan is submitted for approval, for the commissioner to determine the surface use requirements and impacts directly associated with the proposed operations. An application must include statements and maps or drawings setting out the following:

(1) the sequence and schedule of the operations to be conducted on the lease or prospecting permit area, including the date operations are planned to begin and their planned duration;

(2) projected use requirements directly associated with the proposed operations, including but not limited to the location and design of camps, well sites, test hole sites, pipelines, material sites, water supplies, waste disposal sites, buildings, roads, power operating facilities, utilities, airstrips, and all other facilities and equipment necessary to conduct the proposed operations;

(3) plans for rehabilitation of the affected leased area after completion of operations or phases of those operations;

(4) a description of operating procedures designed to prevent or minimize adverse effects on other natural resources and other uses of the leased area and adjacent areas, including fish and wildlife habitats, historic and archeological sites, and public use areas; and

(5) plans to prevent or control the release of combustible liquids and gases and toxic or noxious liquids or gases.

(e) In approving a plan of operations or an amendment of a plan, the commissioner will require amendments he determines necessary to protect the state's interest. The commissioner will not require any amendment that would be inconsistent with the terms of sale under which the lease was obtained, or with the terms of the lease or prospecting permit itself, or which would deprive the holder of the permit or lease of his right reasonably to explore for and develop geothermal resources on the area of the prospecting permit or lease.

(f) The holder of a geothermal prospecting permit or lease may, with the approval of the commissioner, amend an approved plan of operations.

(g) Upon completion of operations, the holder of a geothermal prospecting permit or lease shall inspect the area of operations and submit a report indicating the completion date of operations and stating any noncompliance of which the permittee or lessee knows, or should reasonably know, with requirements imposed as a condition of approval of the plan.

(h) In submitting a proposed plan of operations for approval, the holder of a geothermal prospecting permit or lease shall provide 10 copies of the plan if activities proposed are within the coastal zone, or five copies if activities proposed are not within the coastal zone. (Eff. 8/22/82, Register 83; am 5/8/83, Register 86)

Authority: AS 38.05.020
 AS 38.05.035
 AS 38.05.130
 AS 38.05.145
 AS 38.05.181

11 AAC 84.755. PLAN OF EXPLORATION.

(a) Before initiating exploration or prospecting activities that require a land use permit under 11 AAC, a holder of a competitive geothermal lease or a holder of a prospecting permit must submit and receive approval of a plan of exploration.

(b) A plan of exploration must include

(1) a description of the proposed exploration or prospecting activities;

(2) the types of exploratory wells planned, including drilling methods to be used, drilling sequence to be followed, proposed safety measures, drill site and bottom hole locations, and depths of proposed wells; and

(3) the estimated date drilling will commence.

(c) The holder of a geothermal lease issued competitively must update the plan of exploration every two years after issuance of the lease and must

(1) describe in detail the extent to which the lessee carried out the previous plan; and

(2) show, to the satisfaction of the commissioner, that the lessee plans to exercise diligence in the exploration of the area covered by the lease.

(d) A plan of exploration must be modified and reapproved if actual exploration or prospecting activity deviates significantly from that authorized by a previously approved plan.

(e) Within 65 days after receiving a plan of exploration, an updated plan, or a modified plan, the commissioner will approve or disapprove it. If the plan is disapproved, the commissioner will state the reasons for disapproval and will, in his discretion, propose modifications which, if accepted by the holder of the lease or prospecting permit, would qualify the plan for approval. (Eff. 8/22/82, Reg. 83)

Authority: AS 38.05.020 AS 38.05.145
 AS 38.05.035 AS 38.05.181

11 AAC 84.760. PLAN OF DEVELOPMENT.

(a) Before the issuance of a noncompetitive geothermal lease or before the commencement of the development of geothermal resources, the submission and approval of a plan of development is required of

(1) a holder of a prospecting permit who discovers geothermal resources in commercial quantities and who applies for a noncompetitive geothermal lease under 11 AAC 84.740; and

(2) a holder of a competitive geothermal lease who has discovered geothermal resources.

(b) A plan of development must include

(1) a description of long-range proposed development activities, including plans to drill for underlying geothermal resources, bring the resources into production, and maintain and enhance production once established;

(2) the details of the proposed operations;

(3) the surface location of proposed facilities, drill pads, roads, docks, causeways, material sites, camps, waste disposal sites, water supplies, airstrips, power generating facilities, pipelines, power lines, and any other operation or facility necessary for development of the lease;

(4) the details of the proposal to rehabilitate the area after development ceases; and

(5) a description of plans to prevent or control the release of combustible liquids and gases and toxic or noxious liquids or gases.

(c) The plan of development must be updated whenever it becomes apparent that the actual development will deviate from that outlined in the previously approved plan of development. The update must describe in detail the extent to which the previously approved plan was carried out and, if actual operations have not complied with the previously approved plan, the update must include an explanation of and justification for the noncompliance.

(d) Within 65 days after receiving the proposed update of a plan of development, the commissioner will approve or disapprove the updated plan. If the plan is disapproved, the commissioner will state the reasons for disapproval and will, in his discretion, propose modifications which, if accepted by the permittee or lessee, would qualify the plan for approval.

(e) If a proposed update of a plan of development is disapproved by the commissioner and the lessee does not accept modifications proposed by the commissioner, or if the commissioner determines that there has been an unjustified failure by the lessee to comply with the requirements of the previous plan of development, the commissioner may terminate the lease after 90 days' notice and opportunity to be heard.

(f) The lessee may propose to modify an approved plan of development at any time. The commissioner must approve the modification for it to be effective. (Eff. 8/22/82, Reg. 83)

Authority: AS 38.05.020 AS 38.05.145
AS 38.05.035 AS 38.05.181

11 AAC 84.770. ROYALTY. The commissioner will determine before the issuance of a prospecting permit the royalty rate to be applied to the gross revenues derived from the sale, production, or use of geothermal resources, subject to the limitations of AS 38.05.181(g). (Eff. 8/22/82, Reg. 83)

Authority: AS 38.05.020 AS 38.05.145
AS 38.05.035 AS 38.05.181

11 AAC 84.780. CONFIDENTIALITY. The commissioner will keep confidential the following records, files and materials submitted under 11 AAC 84.700 - 11 AAC 84.790 upon request of the applicant, nominator, permittee or lessee under AS 38.05.035(9):

(1) the name of the person applying for a designated individual tract under 11 AAC 84.710(b) until the commissioner determines to proceed with a noncompetitive geothermal disposal for that tract;

(2) the names of the bidders and the amounts of the bids at a geothermal lease sale before the announced time of opening of the bids;

(3) all geological, geophysical and engineering data; and

(4) except as provided in AS 38.05.036, all cost and financial information submitted in support of applications, bonds, leases and similar items. (Eff. 8/22/82, Reg. 83)

Authority: AS 38.05.020 AS 38.05.145
AS 38.05.035 AS 38.05.181

11 AAC 84.790. BOND. (a) For any geothermal operation under a prospecting permit or lease, a surface-damage bond is required in the amount of at least \$10 per acre or \$10,000, whichever is greater.

(b) The bond required under (a) of this section will be released upon the following conditions:

(1) the expiration or relinquishment of a geothermal prospecting permit or lease; and

(2) the rehabilitation of the prospecting permit area or the lease area to the satisfaction of the commissioner.

ARTICLE 8. GEOTHERMAL UNITIZATION

(c) The commissioner will, in his discretion, after notice to the holder of a geothermal prospecting permit or lease and a reasonable opportunity for the holder to be heard, require a bond in a reasonable amount greater than the amount specified in (a) of this section if a greater amount is justified by the nature of the surface and its uses and by the degree of risk involved in the types of operations carried out under a prospecting permit or lease.

(d) A statewide bond does not satisfy the requirements of a bond imposed by (a) of this section but it may be considered by the commissioner in determining the need for and the amount of any additional bond under (c) of this section. (Eff. 8/22/82, Rec. 83)

Authority: AS 36.05.020 AS 38.05.145
AS 38.05.035 AS 38.05.181

Section

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- 820. Application for unit approval
- 825. Public notice
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- 950. Definitions

11 AAC 84.810. PURPOSE. 11 AAC 84.810 – 11 AAC 84.950 establish standards and procedures governing the submission of applications to the commissioner and criteria for approval of unit agreements for the exploration and development of geothermal resources, and standards to be followed in conducting lease operations under a geothermal unit agreement approved by the commissioner. (Eff. 5/8/83, Reg. 86)

Authority: AS 38.05.020 AS 38.05.181
AS 38.05.145 AS 41.06.020

11 AAC 84.815. CRITERIA. (a) The commissioner will approve a proposed unit agreement for geothermal leases if he makes a written finding that the agreement is necessary or advisable to protect the public interest. The commissioner will approve a proposed unit agreement upon a written finding that it will

(1) promote the conservation of all natural resources, including those of all or part of a geothermal system;

(2) promote the prevention of economic and physical waste; and

(3) provide for the protection of all parties of interest, including the state.

(b) In evaluating the above criteria, the commissioner will consider

(1) the environmental costs and benefits of unitized exploration or development;

(2) the geological and engineering characteristics of the potential geothermal system proposed for unitization;

(3) prior exploration activities in the proposed unit area;

(4) the applicant's plans for exploration or development of the unit area;

(5) the economic costs and benefits to the state and affected parties; and

(6) any other relevant factors, including measures to mitigate impacts identified above, the commissioner determines necessary or advisable to protect the public interest.

(c) The commissioner will consider the criteria in (a) and (b) of this section when evaluating each requested authorization or approval under 11 AAC 84.810 – 11 AAC 84.950, including

(1) an approval of a unit agreement;

(2) an extension or amendment of a unit agreement;

(3) a plan or amendment of a plan of exploration, development, or operations;

(4) a participating area; or

(5) a proposed or revised production or cost allocation formula. (Eff. 5/8/83, Reg. 86)

Authority: AS 38.05.020 AS 41.06.010
AS 38.05.145 AS 41.06.020
AS 38.05.181 AS 41.06.030

11 AAC 84.820. APPLICATION FOR UNIT APPROVAL. Any person owning an interest in a geothermal system which is proposed to be committed to a unit which would include a state geothermal lease may propose a unit agreement by applying to the commissioner for approval of the agreement. The following items constitute a complete application for approval:

(1) the unit agreement, including exhibits required under 11 AAC 84.860 and 11 AAC 84.865, executed by the proper parties;

(2) the unit operating agreement executed by the working interest owners, which is submitted for information only and does not require the commissioner's approval for adoption or amendment;

(3) evidence of reasonable efforts made to obtain joinder of any proper party who has refused to join the unit agreement;

(4) all pertinent geological, geophysical, engineering, and well data, and interpretations of those data, directly supporting the application;

(5) an explanation of proposed modifications, if any, of the standard state unit agreement form; and

(6) the application fee prescribed by 11 AAC 05.010. (Eff. 5/8/83, Reg. 86; am 1/1/86, Reg. 96)

Authority: AS 38.05.020 AS 38.05.145
 AS 38.05.035 AS 41.06.030

11 AAC 84.825. PUBLIC NOTICE. Within 10 days after receipt of a complete application for approval of a unit agreement, expansion of an approved unit under 11 AAC 84.880, or extension of the unit term under 11 AAC 84.855 (a)(2), the commissioner will publish notice of the application in a newspaper of general statewide circulation and in a newspaper serving the locality in which the unit or proposed unit is located. In addition, the commissioner will, in his discretion, publish notice by radio, television, or other electronic media. If the unit or proposed unit is within the boundary of an organized borough, municipality, regional corporation, or a village corporation organized under Section 8(a) of the Alaska Native Claims Settlement Act, the notice will be mailed to the chief executive officer of the borough or municipality or designated representative of the corporate entity. The notice will also be mailed to the postmaster of each permanent settlement of more than 25 persons located within six miles of the proposed unit area. In the case of a proposed unit expansion, a copy of the notice will be mailed to the unit operator. The notice will include

(1) the name and address of the applicant, and the location of the unit or proposed unit;

(2) a statement explaining the nature of the approval sought;

(3) a statement indicating where copies of the nonconfidential portions of the application may be obtained; and

(4) a statement that any person may file written comments on the application with the commissioner within 30 days after publication of the notice. (Eff. 5/8/83, Reg. 86)

Authority: AS 38.05.020 AS 38.05.181
 AS 38.05.145 AS 38.05.945

11 AAC 84.830. UNIT APPROVAL. (a) Within 60 days after the close of the public comment period required by 11 AAC 84.825, the commissioner will issue a written decision, approving or disapproving the unit agreement, in which he states the basis for his decision after considering the provisions of 11 AAC 84.815.

(b) If the commissioner determines that the provisions of 11 AAC 84.815 are not met, the commissioner will, in his discretion, propose modifications which, if accepted by the parties to the proposed unit agreement, would qualify the agreement for approval.

(c) No unit will be approved unless parties to the unit agreement hold sufficient interests in the unit area to give reasonably effective control of operations. (Eff. 5/8/83, Reg. 86)

Authority: AS 38.05.020 AS 38.05.181
 AS 38.05.145 AS 41.06.030

11 AAC 84.835. COPIES OF APPLICATION REQUIRED. In submitting an application under 11 AAC 84.810 - 11 AAC 84.950, the applicant must provide five copies of the nonconfidential portions of the pertinent agreement, plan, modification, or other instrument or document for which approval is sought and two copies of any confidential material submitted. Ten copies of unit plans of operations are required for activities within the coastal zone. (Eff. 5/8/83, Reg. 86)

Authority: AS 38.05.020
 AS 38.05.145

11 AAC 84.840
11 AAC 84.855

11 AAC 84.845. PARTIES. The record owners of any right, title, or interest in the geothermal system or potential geothermal system to be included in a unit are the proper parties to the unit agreement. All proper parties must be invited to join the unit agreement. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181
AS 41.06.030

11 AAC 84.840. STANDARD UNIT AGREEMENT. (a) Except as provided in 11 AAC 84.945, and as otherwise provided in this section, a unit agreement must be executed on, or in a manner consistent with, a standard state unit agreement form.

(b) The commissioner will allow a modification of the standard state unit agreement form upon request by the unit applicant, when the commissioner determines that the modification is reasonably required to meet the needs and requirements of the particular unit considering the facts and conditions found to exist with respect to that unit, and the proposed modification meets the provisions of 11 AAC 84.815. The commissioner will require a modification of the standard state unit agreement form if required to meet the provisions of 11 AAC 84.815. Any request by the unit applicant for modification of the standard state unit agreement form must be made in writing not later than the time an application is submitted for approval under 11 AAC 84.820 and must include an explanation of proposed modifications. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181

11 AAC 84.850. UNIT OPERATOR. (a) A unit operator must be qualified to hold a lease as provided in 11 AAC 82.200 -- 11 AAC 82.205, and must be qualified to fulfill the duties and obligations prescribed in the unit agreement.

(b) The unit operator may be a working interest owner in the unit area or may be a party selected by the working interest owners.

(c) No designation or change of the unit operator becomes effective until approved by the commissioner. The commissioner will approve or disapprove a proposed change of the unit operator within 30 days after receipt of the request and will explain in writing his basis for disapproval. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181
AS 41.06.020

11 AAC 84.855. EFFECTIVE DATE AND TERM OF UNIT AGREEMENT. (a) A unit agreement becomes effective upon approval by the commissioner and automatically terminates five years from the effective date unless

(1) a geothermal well in the unit area has been certified as capable of producing geothermal resources in paying quantities, in which case the unit agreement will remain in effect for so long as geothermal resources are produced in paying quantities from the unit area, or for so long as geothermal resources can be produced in paying quantities and unit operations are being conducted in accordance with an approved unit plan of exploration or development, or, should production cease, for so long after that as diligent operations are in progress to restore production and then so long after that as geothermal resources are produced in paying quantities; or

(2) exploration operations have been conducted in accordance with an approved unit plan of exploration, and the commissioner, after issuing written notice under 11 AAC 84.825, issues a written decision extending the unit term in which he states the basis for his decision, considering the provisions of in 11 AAC 84.815; no single extension will exceed five years.

(b) If a suspension of unit operations or production on all or part of the unit area has been ordered or approved under federal, state, or local law, or, if the commissioner determines that the unit operator has been prevented, despite good faith efforts, from complying with any express or implied promise, term, condition, or covenant of the unit agreement, or from conducting exploration, development, production, transportation, or marketing operations on or from the unitized area by reason of force majeure, the unit operator's obligation to comply with that provision will be held in abeyance, but not voided, and the commissioner will extend the term of the unit agreement for a period of time equal to the time lost under the unit term due to the suspension or

prevention by force majeure. If unit operations or production are prevented under this subsection and the continuation of those operations or production without suspension or prevention would have had the effect of extending the unit agreement, the unit agreement does not terminate during the period in which operations or production are suspended or prevented plus a reasonable time after that, which will not be less than six months, for the unit operator to resume operations or production. Nothing in this subsection holds in abeyance the obligation to pay rentals, royalties, or other production or profit-based payments to the State of Alaska from operations or production in the unitized area which are not suspended or prevented, or from operations or production which are unrelated to any suspension or prevention. For the purposes of this subsection, any seasonal restriction on operations or production or other conditions specifically required or imposed as a term of sale of an original lease, or as a condition required for unit agreement approval will not be considered a suspension of operations or production ordered under law, or prevention due to force majeure. However, upon application to the commissioner, seasonal restrictions on operations or production imposed after approval of a unit agreement will be considered a suspension of operations or production ordered under law.

(c) A unit agreement may be terminated at any time with the approval of the commissioner.

(d) Upon termination of a unit, each lease or portion of a lease committed to the unit may be continued in effect only in accordance with the terms and conditions of the lease, statutes and regulations, or as provided in the unit agreement. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181
AS 41.06.020

11 AAC 84.860. UNIT PLAN OF EXPLORATION. (a) Unless a unit plan of development is filed under 11 AAC 84.865, a unit plan of exploration must be filed for approval by the commissioner as an exhibit to the unit agreement under 11 AAC 84.820. The plan must describe the applicant's proposed exploration activities, including the proposed bottom-hole locations, and well depths, and the estimated date drilling will commence. All exploration operations must be conducted under an approved plan of exploration. The commissioner will approve a unit plan of exploration if it complies with the provisions of 11 AAC 84.815. If the proposed unit plan of exploration is disapproved, the commissioner will, in his discretion, propose modifications which, if accepted by the unit operator, would qualify the plan for approval.

b) The unit plan of exploration must be updated and submitted to the commissioner for approval at least 60 days before the expiration date of the previously approved plan, as set out in that plan. The update must describe the extent to which requirements of the previously approved plan were achieved; if actual operations deviated from or did not comply with the previously approved plan, an explanation of the deviation or non-compliance must be included in the update. Within 10 days after receipt of plans of exploration, the commissioner will inform the unit operator as to whether a proposed unit plan of exploration is complete. After the commissioner has determined that a unit plan of exploration is complete, as submitted or modified by the unit operator following the commissioner's suggestions, the commissioner will have an additional 30 days in which to approve or disapprove the plan; if no action is taken by the commissioner, the unit plan of exploration is approved.

(c) The commissioner will approve an update of the unit plan of exploration if it complies with the provisions of 11 AAC 84.815. If the proposed update of a unit plan of exploration is disapproved, the commissioner will, in his discretion, propose modifications which, if accepted by the unit operator, would qualify the plan for approval.

(d) The unit operator shall submit an annual report to the commissioner describing the operations conducted under the unit plan of exploration during the preceding year.

(e) The unit operator may, with the approval of the commissioner, amend an approved plan of exploration. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181
AS 41.06.020

11 AAC 84.865. UNIT PLAN OF DEVELOPMENT. (a) A unit plan of development must be filed for approval as an exhibit to the unit agreement if a participating area is proposed for the unit area in accordance with 11 AAC 84.875, or when a geothermal system has become sufficiently delineated so that a prudent operator would initiate development activities in that geothermal system. All development operations must be conducted under an approved unit plan of development. A unit plan of development must contain sufficient information for the commissioner to determine whether the plan is consistent with the provisions of 11 AAC 84.815. The plan must include a description of the proposed development activities based on data reasonably available at the time the plan is submitted for approval as well as plans for the exploration or delineation of any land in the unit not included in a participating area. The plan must include, to the extent available information exists,

(1) long-range proposed development activities for the unit, including plans to delineate all underlying geothermal systems, bring the geothermal systems into production, and maintain and enhance production once established;

(2) plans for the exploration or delineation of any land in the unit not included in a participating area;

(3) details of the proposed operations for at least one year following submission of the plan;

(4) the surface location of proposed facilities, drill pads, roads, docks, causeways, material sites, base camps, waste disposal sites, water supplies, airstrips, power generating facilities, pipelines, power lines, and any other operations or facilities necessary for unit operations; and

(5) a description of plans to prevent or control the release of combustible liquids and gases, and toxic or noxious liquids or gases.

(b) The commissioner will approve the unit plan of development if it complies with the provisions of 11 AAC 84.815. If the proposed unit plan of development is disapproved, the commissioner will, in his discretion, propose modifications which, if accepted by the unit operator, would qualify the plan for approval.

(c) The unit plan of development must be updated and submitted to the commissioner for approval at least 90 days before the expiration date of the previously approved plan, as set out in that plan. The update must describe the extent to which the requirements of the previously approved plan were achieved; if actual operations deviated from or did not comply with the previously approved plan, an explanation of the deviation or non-compliance must be included in

the update. The commissioner will approve the updated unit plan of development if it complies with the provisions of 11 AAC 84.815. If the proposed update of a unit plan of development is disapproved, the commissioner will, in his discretion, propose modifications which, if accepted by the unit operator, would qualify the plan for approval. Within 10 days after filing an updated unit plan of development, the commissioner will inform the unit operator as to whether the proposed unit plan of development is complete. After the commissioner has determined that a unit plan of development is complete as submitted, or as modified by the unit operator following the commissioner's suggestions, the commissioner will have an additional 60 days in which to approve or disapprove the plan; if no action is taken by the commissioner, the unit plan of development is approved.

(d) The unit operator shall submit an annual report to the commissioner describing the operations conducted under the unit plan of development during the preceding year.

(e) The unit operator may, with the approval of the commissioner, amend an approved plan of development. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181
AS 41.06.020

11 AAC 84.870. UNIT PLAN OF OPERATIONS. (a) Except as provided in (b) of this section, a unit plan of operations for all or part of the unit area must be approved by the commissioner before any operations may be undertaken on the unit area if

(1) the state owns all or part of the surface estate of the unit area;

(2) the unit includes a lease that reserves a net profit share to the state; or

(3) the state owns all or part of the mineral estate, but the entire surface estate of the unit area is owned by a party other than the state, and a surface owner requests that a unit plan of operations be required by the commissioner for the portion of the unit area owned by that surface owner.

(b) A unit plan of operations will not be required by the commissioner for activities that would not require a land use permit under this title.

(c) Before undertaking operations on the unit area, the unit operator shall provide for full payment of all damages sustained by the owner of the surface estate as well as by the surface owner's lessees and permittees, by reason of entering the land. If the surface estate is owned by a party other than the state, the unit operator shall also notify the surface owner of his opportunity to request that the commissioner require a plan of operations before allowing operations to be undertaken on the portion of the unit area owned by the requesting surface owner.

(d) An application for approval of a plan of operations must contain sufficient information, based on data reasonably available at the time the plan is submitted for approval, for the commissioner to determine the surface use requirements and impacts directly associated with the proposed operations. An application must include statements, and maps or drawings, setting out the following:

(1) the sequence and schedule of the operations to be conducted in the unit area, including the date operations are proposed to begin and their proposed duration;

(2) projected use requirements directly associated with the proposed operations, including but not limited to the location and design of well sites, material sites, water supplies, solid waste sites, buildings, roads, utilities, airstrips, and all other facilities and equipment necessary to conduct the proposed operations;

(3) plans for rehabilitation of the affected unit area after completion of operations or phases of those operations; and

(4) a description of operating procedures designed to prevent or minimize adverse effects on other natural resources and other uses of the unit area and adjacent areas, including fish and wildlife habitats, historic and archeological sites, and public use areas.

(e) In approving a unit plan of operations or an amendment of a plan, the commissioner will require amendments he determines necessary to protect the state's interest. The commissioner will not require any amendment that would be inconsistent with the terms of sale under which the lease was obtained, or with the terms of the lease itself, or which would deprive the lessee of reasonable use of the leasehold interest.

(f) The unit operator may, with approval of the commissioner, amend an approved plan of operations.

(g) Upon completion of operations, the unit operator shall inspect the area of operations and submit a report indicating the completion date of operations and stating any known noncompliance of which the unit operator knows, or should reasonably know, with requirements imposed as a condition of approval of the plan. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.130
AS 38.05.145
AS 38.05.181
AS 41.06.020
AS 41.06.030

11 AAC 84.875. PARTICIPATING AREA. (a) At least 90 days before sustained unit production from a geothermal system, the unit operator shall submit to the commissioner for approval a description, based on subdivisions of the public land survey or its aliquot parts, of the proposed participating area. The participating area may include only the land reasonably known to be underlain by geothermal resources and known or reasonably estimated through use of geological, geophysical, and engineering data to be capable of producing or contributing to production of geothermal resources in paying quantities. Under 11 AAC 84.905(a), the unit operator shall also submit to the commissioner for approval a proposed division of interest or formula setting out the percentage of production and costs to be allocated to each lease and portion of a lease within the participating area. Upon approval by the commissioner, the area of productivity constitutes the participating area.

(b) A separate participating area must be established as provided in (a) of this section for each geothermal system delineated, except that with the consent of the commissioner and all working interest owners, any two or more reservoirs or participating areas within the unit may be combined into one participating area.

(c) A participating area must be expanded to include acreage reasonably estimated through use of geological, geophysical, and engineering data to be capable of producing or contributing to the production of geothermal resources in paying quantities or contracted to exclude acreage reasonably proven through use of geological, geophysical, and engineering data to be incapable of producing geothermal resources in paying quantities, subject to approval by the commissioner. A revised division of interest or formula

allocating production and costs must be submitted for approval under 11 AAC 84.905 at the time of expansion or contraction of a participating area. A revision of a participating area becomes effective the first day of the month in which the revision is approved by the commissioner. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181
AS 41.06.020
AS 41.06.030

11 AAC 84.880. UNIT AREA; CONTRACTION AND EXPANSION. (a) A unit must encompass the minimum area required to include all or part of one or more geothermal systems, or all or part of one or more potential geothermal systems.

(b) Ten years after sustained unit production begins, the unit area must be contracted to include only those lands then included in an approved participating area and lands that facilitate production including the immediately adjacent lands necessary for secondary or tertiary recovery, pressure maintenance, reinjection, or cycling operations. The commissioner will, in his discretion, after considering provisions of 11 AAC 84.815, delay contraction of the unit area if the circumstances of a particular unit warrant. If any portion of a lease is included in the participating area, the entire lease will remain committed to the unit.

(c) Any expansion or contraction of the unit area must be based on legal subdivisions of land as defined in 11 AAC 88.185.

(d) No land will be excluded from a unit area due to the depletion of geothermal resources.

(e) Not sooner than 10 years from the effective date of the unit agreement, the commissioner will, in his discretion, contract the unit area to include only that land covered by an approved unit plan of exploration or development, or that land underlain by one or more potential geothermal systems and lands that facilitate production as set out in (b) of this section. Before any contraction of the unit area under this subsection, the commissioner will give the unit operator, the working interest owners, and royalty owners of the leases or portions of leases being excluded, reasonable notice and an opportunity to be heard. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
 AS 38.05.145
 AS 38.05.181
 AS 41.06.020
 AS 41.06.030

11 AAC 84.885. CERTIFICATION OF WELL TEST RESULTS. For the purposes of 11 AAC 84.810 -- 11 AAC 84.950, a well will be considered capable of producing geothermal resources in paying quantities, as defined in 11 AAC 84.950, when so certified by the commissioner following application by the lessee or unit operator. The commissioner will require the submission of data necessary to make the certification, including all results of the flow test or tests, supporting geological data, and cost data reasonably necessary to show that the production capability of the well satisfies the economic requirements of the paying quantities definition. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
 AS 38.05.145
 AS 38.05.181
 AS 41.06.020

11 AAC 84.890. HYDROCARBON NOTIFICATION. If quantities of hydrocarbons, helium, or fissionable materials are discovered during exploration or development of a geothermal system, the unit operator shall notify the commissioner within 30 days after discovery. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
 AS 38.05.145
 AS 38.05.181
 AS 41.06.020
 AS 41.06.040

11 AAC 84.895. WATER RIGHTS. (a) Before drilling or constructing a geothermal well or group of wells to be operated in concert, the unit operator shall file an application with the commissioner for approval to drill. The application must contain sufficient information to enable the commissioner to determine whether the operation of any well will interfere with or impair a prior water right. The commissioner will approve construction and operation of any well upon the conditions he considers necessary to protect the public interest if

(1) the proposed geothermal operation will not significantly interfere with or substantially impair a prior water right;

(2) the geothermal owner has acquired through purchase or condemnation adequate water rights to offset the potential interference or impairment; or

(3) the geothermal owner has obtained and dedicated to all affected parties an equivalent amount of replacement water of comparable quality.

(b) The date of filing of the application with the commissioner for approval to drill a geothermal well establishes priority as to later appropriators of nongeothermal fluids.

(c) Geothermal fluids are not subject to appropriation under AS 46.15. No priority of geothermal resources may be established among geothermal owners in a geothermal system. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181
AS 41.06.020
AS 41.06.050
AS 46.15.020

11 AAC 84.900. UNIT OPERATING AGREEMENT. Any revision of the unit operating agreement must be submitted to the commissioner before it takes effect. The unit agreement controls the respective rights and obligations of the unit operator, the working interest owners, the State of Alaska, and royalty interest owners other than the State of Alaska in case of conflict between the unit agreement and the unit operating agreement. Where conflicts exist solely between working interest owners, the unit operating agreement shall control. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181
AS 41.06.020

11 AAC 84.905. ALLOCATION OF PRODUCTION AND COSTS. (a) The proposed or revised division of interest or the formula allocating geothermal resource production and unit operating costs among the leases within the unit area may not take effect until approved by the commissioner in writing. When requested by the commissioner, the lessees or unit operator shall promptly file with the commissioner all data that relates to the proposed or revised division of interest or the allocation formula for all leases in the participating area. Before any disapproval of the proposed or revised division of interest or the allocation

formula, the commissioner will give the working interest and royalty owners reasonable notice and an opportunity to be heard. After the hearing, the commissioner will approve the proposed or revised division of interest or allocation formula-as submitted unless he finds in writing that the formula does not equitably allocate production and costs among the leases.

(b) If there is a separate division of interest or allocation formula among any of the parties holding an interest in the unit that is different from the division of interest or allocation formula approved by the commissioner, the parties to the separate division of interest or allocation formula not approved by the commissioner shall submit a copy of that formula to the commissioner with a statement explaining the reasons for the difference. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181
AS 41.06.020

11 AAC 84.910. SEVERANCE. (a) Except as otherwise provided in this section and in 11 AAC 84.880, where only a portion of a lease is committed to a unit agreement approved or prescribed by the commissioner, that commitment constitutes a severance of the lease as to the unitized and nonunitized portions of the lease. The portion of the lease not committed to the unit will be treated as a separate and distinct lease having the same effective date and term of the original lease and may be maintained after that only in accordance with the terms and conditions of the original lease, statutes, and regulations. Any portion of the lease not committed to the unit agreement will not be affected by the unitization or pooling of any other portion of the lease by operations in the unit, or by suspension approved or ordered by the commissioner for the unit under 11 AAC 84.855(b).

(b) The commissioner will, in his discretion, grant up to a two-year extension of the lease term for that portion of a lease not committed to the unit agreement under this section.

(c) A lease having a well certified as capable of production of geothermal resources in paying quantities before commitment to the unit agreement will not be severed. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181
AS 41.06.020

11 AAC 84.915. DEFAULT. (a) Failure to comply with any of the terms of an approved unit agreement, including any plans of exploration, development or operations which are a part of the unit agreement, is a default under the unit agreement.

(b) The commissioner will give notice of the default to the unit operator and the defaulting party, if other than the unit operator. The notice will state the nature of the default and include a demand to cure the default by a specific date, which, in the case of failure to pay rentals or royalties, will be a date not less than 90 days after the date of the commissioner's notice of default.

(c) If a default occurs with respect to a unit in which there is no well capable of producing geothermal resources in paying quantities and the default is not cured by the date indicated in the demand, the commissioner will, in his discretion, and after giving the unit operator and defaulting party, if other than the unit operator, reasonable notice and opportunity to be heard, terminate the unit agreement by mailing notice of the termination to the unit operator and defaulting party. Termination is effective upon mailing the notice.

(d) If a default occurs with respect to a unit in which there is a well capable of producing geothermal resources in paying quantities and the default is not cured by the date indicated in the demand, the commissioner will, in his discretion, seek to terminate the unit agreement by judicial proceedings. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181
AS 41.06.020

11 AAC 84.920. SIGNATURES. Each signature on the unit agreement must be notarized or attested by at least two witnesses. Corporate or other signatures made in a representative capacity must be accompanied by evidence of the authority of the signatory to act on behalf of the principal or by a reference to such evidence previously filed. The printed or typed name and address of each signatory to the unit agreement must be set out below the signature. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181
AS 41.06.020

11 AAC 84.925. COUNTERPARTS. The parties may execute any number of counterparts of a unit agreement or may execute a ratification, joinder or consent in a separate instrument. The documents have the same effect as if all parties signed the same instrument. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181
AS 41.06.020

11 AAC 84.930. NOTATION OF APPROVAL. If approved by the commissioner, the counterparts of each instrument or document submitted for approval will be returned to the applicant with the commissioner's approval noted on the approved instrument. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181
AS 41.06.020

11 AAC 84.935. MODIFICATION OF UNIT AGREEMENT. Any modification of an approved unit agreement is subject to the commissioner's approval. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.181
AS 41.06.020

11 AAC 84.940. UNIT BONDS. In place of separate bonds required for each lease committed to a unit agreement, the unit operator shall furnish and maintain a statewide geothermal bond under 11 AAC 84.790. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.145
AS 38.05.181

11 AAC 84.945. APPROVAL OF FEDERAL UNITS. (a) If the State of Alaska selects or otherwise acquires any federal land which, at the effective date of selection or acquisition, is subject to a federal geothermal resources lease committed to a unit agreement approved in accordance with federal laws and regulations, the unit agreement will be considered to have been approved by the commissioner for all of the purposes of 11 AAC 84.810 -- 11 AAC 84.950.

(b) The commissioner will, in his discretion, enter into agreements with the federal government to provide for unitization of state and federal geothermal resource leases overlying a common reservoir or geothermal system. If the agreement permits or requires the commissioner to take any action or enter into any unit agreement which is contrary to or inconsistent with 11 AAC 84.810 -- 11 AAC 84.950, the commissioner will, in his discretion, do so after making a written finding that his action or the unit agreement is necessary or advisable to protect the public interest, and will, in all cases, comply with the requirements of AS 38.05, AS 41.06, 11 AAC 84.815 and 11 AAC 84.825. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.181
AS 41.06.020

11 AAC 84.950. DEFINITIONS. Unless the context clearly requires a different meaning, in 11 AAC 84.810 -- 11 AAC 84.950 and in the applicable unit agreements,

(1) "conservation of the natural resources of all or part of a geothermal system" means maximizing the efficient recovery of geothermal resources and minimizing the adverse impacts on surface and other resources;

(2) "commissioner" means the commissioner of the state Department of Natural Resources or his designee;

(3) "force majeure" means war, riots, acts of God, unusually severe weather, or any other cause beyond the unit operator's reasonable ability to foresee or control, and includes operational failure of existing transportation facilities and delays caused by judicial decisions or lack of them;

(4) "paying quantities" means quantities sufficient to yield a return in excess of operating costs, even if drilling and equipment costs may never be repaid and the undertaking considered as a whole may ultimately result in a loss; quantities are insufficient to yield a return in excess of operating costs unless those quantities, not considering the costs of transportation and marketing, will produce sufficient revenue to induce a prudent operator to produce those quantities;

(5) "unit" means a group of leases covering all or part of one or more geothermal systems subject to a unit agreement; and

(6) "unit agreement" means the agreement executed by the working interest owners and royalty owners creating the unit. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.145
AS 38.05.180
AS 41.06.020
AS 41.06.060

CHAPTER 87

GEOHERMAL DRILLING

AND CONSERVATION

**CHAPTER 87.
GEOTHERMAL DRILLING AND
CONSERVATION**

Article

- 1. Applicability (11 AAC 87.010)
- 2. Exploratory Operations
(11 AAC 87.030 ~ 11 AAC 87.050)
- 3. Drilling of Geothermal Wells
(11 AAC 87.070 – 11 AAC 87.190)
- 4. Production
(11 AAC 87.210 – 11 AAC 87.260)
- 5. General Provisions
(11 AAC 87.280–11 AAC 87.290)

**ARTICLE 1.
APPLICABILITY**

Section

10. Applicability

11 AAC 87.010. **APPLICABILITY.** This chapter applies to the exploration of geothermal systems and the drilling of all geothermal wells in the state. (Eff. 5/8/83, Reg. 86)

Authority: AS 38.05.020 AS 41.06.020
 AS 38.05.181 AS 41.06.040

**ARTICLE 2.
EXPLORATORY OPERATIONS**

Section

- 30. Geothermal exploration permit for shallow holes
- 40. Completion of geothermal exploration
- 50. Exploration bond

11 AAC 87.030. **GEOTHERMAL EXPLORATION PERMIT FOR SHALLOW HOLES.** (a) An operator shall file an application for a geothermal exploration permit before drilling shallow holes for purposes of measuring heat flow or temperature gradient.

(b) The application fee prescribed by 11 AAC 05.010 must accompany each application for an exploration permit. The application must include the following information:

- (1) the name and address of the landowner;
- (2) the name and address of the operator;

(3) the legal description and map of the exploration area;

(4) the approximate location of each proposed hole;

(5) the type and size of drilling rig;

(6) the proposed drilling program, including the drilling system or type of circulating medium for, approximate depth of, and casing program for each hole;

(7) the type of drilling sump and proposed method of sump abandonment at each location;

(8) the approximate length of time that each hole will be used for observation;

(9) the proposed method of abandonment for each hole;

(10) sufficient information to enable the commissioner to determine whether the proposed operation will comply with 11 AAC 84.895; and

(11) any other relevant information the commissioner determines necessary.

(c) A geothermal exploration permit will be granted for a term not to exceed two years. A permit may be extended for any number of consecutive periods, each period not to exceed one year. Modifications to the original proposal must receive prior approval from the commissioner. The commissioner will, in his discretion, modify permit stipulations.

(d) Each geothermal exploration permit issued is subject to the following provisions and any other provisions the commissioner determines necessary to assure compliance with this chapter:

(1) The drilling of shallow holes may not exceed 1500 feet.

(2) Flowline temperatures must be taken at a minimum of 30-foot intervals during drilling operations. If the fluid return temperature reaches 85°C (185°F), drilling must cease immediately and the hole must be

(A) completed as an observation hole by running iron or steel tubing as deep as possible and filling the annulus with drilling mud from total depth to 10 feet below the surface and with cement from a depth of 10 feet to the surface;

(B) abandoned; or

(C) equipped with mud cooling and well-head control devices to maintain well control and mud return temperature at or below 85° C (185°F).

(3) If steam or hot water at 85°C (185°F) or greater, as measured at the surface or at the depth drilled, is encountered, further drilling must stop immediately and the hole must be

(A) completed as an observation hole, using iron or steel tubing cemented from total depth to surface;

(B) abandoned in compliance with 11 AAC 87.160; or

(C) after compliance with 11 AAC 87.070 – 11 AAC 87.190, completed or tested as a geothermal resource well.

(4) If artesian water is encountered

(A) the hole must be plugged to the satisfaction of the commissioner; or

(B) developed as a water well for water use or hydrothermal use under AS 46.15.

(5) If the conditions outlined in (2) – (4) of this subsection are encountered, the commissioner must be notified immediately.

(6) Locations proposed in natural thermal areas within a quarter mile radius of hot springs, fumaroles, or other geothermal surface expression or in areas of known artesian water flow must be identified. The commissioner will, in his discretion, require special drilling and completion techniques, such as cemented surface casing and expansion-type blowout preventers, for those holes.

(7) An adequate supply of mud and lost circulation material must be kept on hand.

(8) Observation holes must be completed in a manner allowing satisfactory subsequent abandonment. At a minimum, the annular space must be filled with mud or cuttings from total depth to 10 feet below the surface and with cement from a depth of 10 feet to the surface. Tubing must be capped when not in use.

(9) Abandonment of holes must be done in a manner that will protect freshwater aquifers and prevent subsurface interzonal migration of fluids and surface leakage. At a minimum, the boring must be filled with mud or cuttings from total depth to 10 feet below the surface and with cement from a depth of 10 feet to the surface. For observation holes, the top 10 feet of tubing below the surface must be filled with cement and the tubing cut off at ground level or in a manner otherwise directed by the commissioner. (Eff. 5/8/83, Register 86)

- Authority: AS 38.05.020
- AS 38.05.181
- AS 41.06.020
- AS 41.06.040
- AS 41.06.050
- AS 46.15.020

11 AAC 87.040. COMPLETION OF GEOTHERMAL EXPLORATION. The operator shall submit a report to the commissioner within 60 days after completion of geothermal exploration and include the following information:

(1) final hole designation and location;

(2) a drilling log noting any water table, aquifers, and salt and mineral deposits encountered;

(3) methods of cementing and completion, and types of casing and tubing used;

(4) complete details of abandonment procedures;

(5) any information on drilling difficulties or unusual circumstances encountered which may be helpful in assuring future safety of operations or protection of the environment in the area concerned; and

(6) temperature data and logs for each hole surveyed. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.181
AS 41.06.020
AS 41.06.040
AS 41.06.050

11 AAC 87.050. EXPLORATION BOND. The permittee may be required to furnish a personal or corporate surety bond acceptable to the commissioner and conditioned upon compliance with all the terms of the permit. The commissioner will determine the amount of the bond based on the scope of the activity planned. Operations requiring a bond may not commence until an acceptable bond has been filed. Within 30 days after receipt of a completed application, the commissioner will notify the applicant whether a bond will be required. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 38.05.181
AS 41.06.020
AS 41.06.040(b)

ARTICLE 3. DRILLING OF GEOTHERMAL WELLS

Section

- 070. Drilling permit
- 080. Drilling bond
- 090. Change of operator
- 100. Well identification
- 110. Records
- 120. Casing and cementing
- 130. Blowout prevention
- 140. Well spacing and production rates
- 150. Deviation
- 160. Abandonment
- 170. Plugging requirements for geothermal wells
- 180. Water wells
- 190. Completion of drilling operation

11 AAC 87.070. DRILLING PERMIT. (a) Unless authorized under 11 AAC 87.030, a drilling permit is required before the drilling, redrilling, or deepening of any well and before the reentry of an abandoned well. However, in an emergency, oral approval by the commissioner of any operation covered by 11 AAC 87.070 - 11 AAC 87.190 is sufficient.

(b) The application fee prescribed by 11 AAC 05.010 must accompany each application for a drilling permit. The application must include the following:

- (1) the name and address of the landowner or lessee;
- (2) a legal description and map of the parcel and well location;
- (3) the name and address of the operator;
- (4) the well name and number;
- (5) the proposed bottom-hole coordinates for a directionally drilled well;

(6) the datum elevation or elevation of the derrick floor, rotary table, or kelly bushing, relative to surface level;

(7) the elevation of the ground, relative to sea level;

(8) the estimated depth of the intended zone of completion, relative to datum;

(9) the estimated planned total depth, relative to datum;

(10) a description of the proposed casing program as required in 11 AAC 87.120;

(11) a description of the blowout prevention equipment to be used and the information required by 11 AAC 87.130;

(12) a description of the proposed sump plan and method of sump abandonment;

(13) an indemnity bond as required by 11 AAC 87.080; and

(14) any other relevant information the commissioner determines necessary.

(c) For a well which is to be intentionally deviated, the application for the drilling permit must also include

(1) the surface and proposed producing interval locations;

(2) a plat drawn to an appropriate scale showing the path of the proposed wellbore in relation to all other vertical and deviated wellbores which are within a distance of 2000 feet from the proposed wellbore; the true vertical depths must be shown at frequent intervals along each wellbore; and

(3) a neat and accurate plat of the lease and all affected leases, showing the names of all affected owners and the surface and proposed producing interval locations of the well and all other wells within one-half mile of any portion of the new well; the plat must be drawn to a scale which will permit easy observation of all pertinent data.

(d) If drilling is not commenced within 24 months after approval, the drilling permit expires.

(e) Any proposed changes to the drilling permit must be approved by the commissioner. (Eff. 5/8/83, Reg. 86; am 1/1/86, Reg. 96)
Authority: AS 38.05.035 AS 41.06.040
AS 41.06.020 AS 41.06.050

11 AAC 87.080. DRILLING BOND. (a) An applicant for a drilling permit shall file an indemnity bond for each well drilled, redrilled, or deepened, or a statewide bond for the drilling, redrilling, or deepening of one or more wells on the same lease or unit area. The bond must be in the amount the commissioner determines necessary to ensure compliance with the applicable provisions of this chapter.

(b) The bond may either be a personal bond or a corporate surety bond executed by an insurance company authorized to do business in Alaska.

(c) The bond must be conditioned upon compliance with all terms of the permit and must remain in effect until the abandonment of all wells covered by the bond is approved by the commissioner and the bond is released or until another valid bond for the well has been filed with the commissioner.

(d) The commissioner's approval of the abandonment of a well and the release of the bond constitutes a presumption of proper abandonment, but does not relieve an operator of liability to the state after the abandonment.

(e) If authorized by the commissioner, comparable security, such as a certificate of deposit, may be submitted instead of the bond required by this section. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.040

11 AAC 87.090. CHANGE OF OPERATOR. An operator wishing to relinquish the role of operator shall notify the commissioner in writing. The newly designated operator shall notify the commissioner in writing of acceptance of the obligations as operator and shall furnish a bond as provided in 11 AAC 87.080. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.020
AS 41.06.040

11 AAC 87.100. WELL IDENTIFICATION. (a) Every well and every operating geothermal drilling rig must be identified by a sign posted in a conspicuous place on or near the well. The sign must be of durable construction, large enough to be legible under normal conditions at a distance of 50 feet, and maintained in legible condition. Each sign must show

- (1) the name of the lease or ADL number, if applicable;
- (2) the name of the landowner or lessee;
- (3) the name of the operator;
- (4) the well number;
- (5) the well surface location by quarter section, township, range and meridian; and
- (6) the drilling permit number, if applicable.

(b) The name of each lease or unit must be different and distinct.

(c) The wells on each lease or property must be numbered in a logical and distinct sequence. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.020
AS 41.06.040

11 AAC 87.110. RECORDS. (a) An operator of a well shall keep detailed and accurate drilling and well logs, core records, production and inspection records, and, if taken, appropriately bagged and identified samples of drill cuttings.

(b) The logs for geothermal wells must show the lithologic characteristics and depth of formations encountered; the depths and temperatures of water-bearing and steam-bearing strata; any data obtained about the temperatures, chemical compositions and physical characteristics of fluids encountered; the amount, size, and weight of casing used; and the size, type, and density of perforated intervals.

(c) The temperature log must be obtained by either continuous temperature logging or by a comprehensive multiple point temperature survey.

(d) The core record must show the depth and character of cores obtained, as determined from the study and analysis of the core.

(e) The drilling log must describe in chronological order and on a daily basis all significant operations carried out and equipment used during all phases of drilling. The results of testing blowout prevention equipment must be recorded on the drilling log. A monthly report of drilling and workover operations which summarizes the daily record of well operation during the previous month must be filed with the department on or before the last day of each month.

(f) Records listed in (a) -- (e) of this section must be kept at the drill site or local office of the operator, available for inspection at reasonable times by the commissioner, and must be submitted to the department with the completion report required in 11 AAC 87.190.

(g) Monthly statements required by 11 AAC 87.210 and records of the inspections conducted under 11 AAC 87.250, for the preceding calendar month, must be filed with the department by the last day of each calendar month. (Eff. 5/8/83, Register 86)

Authority: AS 38.05.020
AS 41.06.040

11 AAC 87.120. CASING AND CEMENTING. (a) A proposed casing and cementing program must be included in the application for a drilling permit. A casing program must be designed to

(1) handle stress imposed by the maximum expected temperature and pressure and the physical effects of produced fluids and gases on casing and cement durability;

(2) provide suitable and safe operating conditions for the total depth proposed;

(3) confine fluids to the wellbore, unless slotted liners or perforated casings are used;

(4) prevent migration of fluids from one stratum to another;

(5) assure control of fluids at all well pressures and temperatures encountered;

(6) protect permafrost areas from thaw subsidence and freezeback effects;

(7) prevent contamination of strata bearing freshwater; and

(8) provide well control until the next string of casing is set.

(b) The conductor casing string may be set by drilling, driving or jetting; if the hole is drilled, a

sufficient quantity of cement must be used to fill the annular space to the surface or mud line.

(c) The surface casing string must

(1) extend below the base of any freshwater sands or permafrost to a depth that will insure proper anchorage;

(2) be set into a competent stratum with sufficient cement in the annulus to circulate to the surface; if cement does not circulate to the surface when required, the annulus must be cemented before drilling ahead or initiating tests; and

(3) be cemented through a sufficient series of low permeability, competent lithologic units, such as claystone or siltstone, to insure a solid anchor for blowout prevention equipment and to protect useable groundwater and surface water from contamination.

(d) Intermediate casing must be set to maintain well control, and cemented over its full length.

(e) The production casing string may be set through or just above the production or injection interval and must be

(1) cemented with sufficient cement to fill the annular space from the shoe to the surface or lapped a minimum of 100 feet into intermediate casing string, if run; and

(2) tested in accordance with (i) of this section.

(f) Liners may be set as an intermediate or production string. A cemented liner must have a minimum of 100 feet of cemented lap with the next larger casing string. Before drilling

ahead, cemented liner and lap must be tested by a fluid entry or pressure test, in accordance with (i) of this section, to determine that a seal between the liner and next larger string has been achieved.

(g) A cement plug or shoe in the casing strings required by (b) -- (f) of this section must not be drilled until a minimum compressive strength of 300 psig at bottom-hole conditions has been attained according to the manufacturer's cement strength tables for the particular cement being used. Casings must be tested before drilling ahead in accordance with (i) of this section.

(h) Within permafrost intervals, fluids which have a freezing point above the minimum permafrost temperature may not be left in the annulus between any two strings of pipe, or inside the casing upon completion or suspension of a well without the commissioner's approval.

(i) With the exception of the conductor casing, before drilling out the casing or liner after cementing, all casing strings, liners, and liner laps must be tested to a surface pressure of 50 percent of the minimum internal yield strength of the casing or 1500 psig, whichever is lower. If the pressure declines more than 10 percent in 30 minutes or if there are indications of improper cementing such as lost returns, cement channelling, or mechanical failure of equipment, corrective measures must be taken until a satisfactory test is obtained. Test reports must be filed with the department within 30 days after testing.

(j) Variances or additional restrictions may be imposed as the commissioner considers necessary for special or unusual conditions. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.010
 AS 41.06.020
 AS 41.06.030
 AS 41.06.040
 AS 41.06.050
 AS 41.06.060

11 AAC 87.130. BLOWOUT PREVENTION.

(a) All necessary precautions must be taken to keep all wells under control at all times. The following general procedures must be followed, unless waived or amended by the commissioner:

(1) Blowout preventers and related well control equipment must be installed, tested immediately after installation, and maintained ready for use until drilling operations are completed.

(2) Temperature-sensitive components, such as packing elements and ram rubbers, must be made of material that will resist as high a temperature as necessary.

(3) All kill lines, blowdown lines, manifolds, and fittings must be steel or iron and must have a minimum working pressure and temperature rating exceeding the maximum anticipated surface pressure and temperature.

(4) Subject to (b) and (c) of this section, blowout prevention equipment must have manually-operated position selectors, hydraulic actuating systems and accumulators of sufficient capacity to close all of the hydraulically-operated equipment, and must have a pressure of greater than 1,000 psig remaining on the accumulator.

(5) Dual control stations must be installed with a high-pressure backup system. One control panel must be located at the driller's station and

one control panel must be located on the ground at least 50 feet away from the wellhead or rotary table.

(6) Air or other gaseous fluid drilling systems must have blowout prevention assemblies. Assemblies may include, but are not limited to, a rotating head, a double ram blowout preventer or equivalent, or a blind ram blowout preventer or gate valve.

(b) A proposed blowout prevention program and blowout contingency plan must be submitted with the application for a drilling permit and meet the following minimum requirements:

(1) Before drilling below the conductor casing string, at least one remotely controlled annular preventer and flow diverter system must be installed. The annular preventer must permit the diversion of geothermal and other fluids.

(2) Before drilling below the surface casings or intermediate or production casings, the blowout prevention equipment must include a minimum of

(A) one expansion-type preventer and accumulator or a rotating head;

(B) both a manual and a remote-controlled hydraulically-operated double ram blowout preventer, or acceptable alternative having a minimum working pressure and temperature rating exceeding the maximum anticipated surface pressure and temperature;

(C) a drilling spool with side outlets, or the equivalent;

(D) a fillup line;

(E) a kill line equipped with at least one valve; and

(F) a blowdown line equipped with at least two valves and securely anchored at all bends and at the end.

(c) Blowout equipment must be tested or inspected in accordance with the following provisions and the results recorded in the drilling log:

(1) Ram-type blowout preventers and auxiliary equipment must be tested to a minimum of 1,000 psig or to the working pressure of the casing or assembly, whichever is less. Expansion-type blowout preventers must be tested to 70 percent of the above pressure testing requirements.

(2) The blowout prevention equipment must be pressure tested

(A) when installed;

(B) before drilling out plugs and casing shoes;

(C) not less than once each week, alternating the control stations; and

(D) following repairs that require disconnecting a pressure seal in the assembly.

(3) During drilling operations, blowout prevention equipment must be actuated to test proper functioning as follows:

(A) once each trip for blind and pipe rams but not less than once each day for pipe rams; and

(B) at least once each week on the drill pipe for expansion-type preventers.

(4) All flange bolts must be inspected at least weekly and tightened as necessary during drilling operations.

(5) The auxiliary control systems must be inspected daily to check the mechanical condition and effectiveness.

(6) Blowout prevention and auxiliary control equipment must be cleaned, inspected and, if necessary, repaired before installation.

(d) Blowout prevention controls must be plainly labeled. All crew members must be instructed on the function and operation of this equipment.

(e) A blowout prevention drill must be conducted weekly for each drilling crew.

(f) A drill string safety valve in the open position must be maintained on the rig floor at all times while drilling operations are being conducted. A kelly cock must be installed between the kelly and the swivel.

(g) The properties, use, and testing of drilling fluids and related drilling procedures must be adequate to prevent the blowout of any well. Sufficient drilling fluid materials to ensure well control must be maintained in the field area and be readily accessible for use at all times. Control and testing procedures are as follows.

(1) Before pulling drill pipe, the drilling fluid must be properly conditioned or displaced. The hole must be kept reasonably full at all times; however, in no event may the annular mud level be deeper than 30 meters (100 feet) from the rotary table when coming out of the hole with drill pipe. Mud cooling techniques must be utilized when necessary to maintain mud characteristics for proper well control and hole conditioning.

(2) Mud testing and treatment consistent with good operating practice must be performed daily or more frequently as conditions warrant. Mud testing equipment must be maintained on the drilling rig at all times.

(3) The following drilling fluid system equipment must be installed and operated continuously during drilling operations:

(A) high-low level mud pit indicator including a visual and audio-warning device;

(B) degassers, desilters, and desanders, or acceptable alternatives;

(C) a mechanical, electrical, or manual surface drilling fluid temperature monitoring device; the temperature of the drilling fluid going into and coming out of the hole must be monitored, read and recorded on the drilling log for a minimum of every 30 feet of hole drilled below the conductor casing; and

(D) a hydrogen sulfide indicator and alarm must be installed in areas suspected or known to contain hydrogen sulfide gas which may reach levels considered to be dangerous to the health and safety of personnel in the area.

(h) Unless the well is secured with blowout preventers or cement plugs, a member of the drilling crew or the toolpusher must monitor the rig floor from the time drilling operations are initiated and until the well is completed or abandoned.

(1) No exceptions to the requirements in this section are allowed without the specific prior approval of the commissioner. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.020
AS 41.06.040

11 AAC 87.140. WELL SPACING AND PRODUCTION RATES. The commissioner will approve a proposed well spacing and production rate program or prescribe modifications determined necessary for proper development and conservation of geothermal resources to qualify a proposed well spacing and production rate program for approval, considering factors such as

(1) the topography of the area;

(2) geologic and reservoir conditions;

(3) the minimum number of wells required for adequate development; and

(4) protection of the environment. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.010
AS 41.06.020
AS 41.06.040

11 AAC 87.150. DEVIATION. (a) Any well which is not intentionally deviated must be surveyed to determine the inclination from the vertical with surveys starting at 500 feet and no more than 500 feet apart to total depth. The commissioner will, in his discretion, require a complete continuous multi-shot directional survey if the validity of single shot data is questioned.

(b) Any well which will be intentionally deviated is subject to the following procedure.

(1) If drilling is in progress, the operator shall notify the commissioner immediately of the intention to deviate and obtain verbal or written approval, or proceed at the operator's own risk. The operator shall file an application as soon as practical and obtain another drilling permit as required in 11 AAC 87.070.

(2) If the applicant is the only affected owner and the commissioner does not object to the application, the commissioner will approve the requested deviation immediately. If there are other affected owners, the commissioner will notify those owners and hold the application for 15 days unless a letter of nonobjection from each affected owner is filed with the commissioner. If no objection from affected owners is filed with the commissioner in 15 days, the commissioner will approve the application and issue a drilling permit.

(3) The operator must run a complete, continuous directional survey at intervals not more than 100 feet apart, beginning within 100 feet of the point of deviation of the well. Survey points in the undeviated portion of the well may not be more than 300 feet apart. The commissioner will, in his discretion, require a continuous multi-shot survey if the validity of single shot data is questioned.

(c) Within 30 days after the completion, abandonment, or suspension of the well, a complete copy of each inclination and directional survey obtained or a composite survey must be filed with the commissioner. If a composite survey is filed, the operator shall specify the portion of each survey used in the composite.

(d) If the proposed or final location of the producing interval of the deviated well is not in compliance with 11 AAC 87.140, the operator shall apply to the commissioner for a waiver.

(e) For the purpose of this section, an affected owner is an owner in a quarter section contiguous with or touching at any point any quarter section upon which the operation is proposed. In areas where irregularly shaped leases are being drilled, the commissioner will determine which owners are affected.

(f) Inclination and directional survey reports must contain, where applicable, the following information:

(1) the name of the surveying company;

(2) the name, title, and signature of the person actually performing the survey;

(3) the date on which the survey was performed;

(4) the type of survey conducted;

(5) the method used in calculating the survey;

(6) a complete identification of the well indicating the name of the operator, the lease name, the well number, and the field name;

(7) the depth interval over which the survey was conducted;

(8) a certified plat showing the surface location, the plotted well course, and the nearest lease lines or unit lines; and

(9) a tabulation of the depth and drift angles for all inclination survey points.

(g) Certification requirements for survey reports are as follows:

(1) each directional survey report required in (a) of this section must be dated and certified by the person who has personal knowledge of the facts of the survey; and

(2) a certified plat as required in (f)(8) of this section must be included in the survey report.

(h) The commissioner will, in his discretion, require the submittal of copies of the film, time sheets, charts, graphs, discs, and other data used to compile the survey.

(i) The willful filing of a false or incorrect inclination survey or directional survey is grounds for penalty action under the applicable statutes. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.040

11 AAC 87.160. ABANDONMENT. (a) Well abandonment must be done in accordance with the requirements of this section and 11 AAC 87.170 -- 11 AAC 87.190. However, the commissioner will, in his discretion, modify these requirements as he considers necessary. The commissioner will, in his discretion, witness abandonment operations required by this chapter.

(b) The operator shall submit to the commissioner a notice of intention to abandon any geothermal well before abandonment.

(c) Before the commissioner will approve abandonment of a well, all required records must be filed with the commissioner and the site inspected after final cleanup. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.020
AS 41.06.040

11 AAC 87.170. PLUGGING REQUIREMENTS FOR GEOTHERMAL WELLS. All geothermal wells must be plugged before abandonment, using the following procedures:

(1) The hole must be filled with mud-laden fluid from bottom to top of the hole with the exception of intervals required to be plugged with cement.

(2) For each producing formation, a cement plug must be placed which extends either from the bottom of the hole or from 25 feet below the bottom of the producing formation upward to at least 50 feet above producing formation.

(3) If a well penetrates below a fresh water zone, a cement plug must extend from 25 feet below the bottom of the fresh water zone to at least 50 feet above the water zone.

(4) A 20-foot cement plug must be placed at the top of the casing in each hole plugged. A steel plate must be welded over the casing stub.

(5) If the surface string of casing is set below the deepest fresh water-bearing formation, a cement plug must be placed in the hole extending from a point at least 25 feet below the base of a surface string and 25 feet into the bottom of the casing. The hole must also be capped as provided in (d) of this section.

(6) The operator may place cement in the hole

(A) by using the dump bailer;

(B) by pumping through the tubing or drill pipe;

(C) by pump and plug displacement; or

(D) by any other comparable method approved by the commissioner. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.040

11 AAC 87.180. WATER WELLS. If a well drilled for geothermal resources is to be plugged and abandoned but may safely be used as a freshwater well and this use is desired by the landowner, the well need not be cemented above the required plug set below the freshwater as required by 11 AAC 87.170. The freshwater well must then comply with the provisions of AS 46.15. Written authority for this action must be obtained from the landowner, who must assume the full responsibility for the final plugging of the water well. The authorization must be filed with and approved by the commissioner. After the commissioner has approved of the plugging of the well to the base of the freshwater zone, the operator is relieved of further obligation and the bond will be released. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.040
AS 41.06.050
AS 46.15.020

11 AAC 87.190. COMPLETION OF DRILLING OPERATIONS. (a) A well is considered to be completed 30 days after

(1) drilling and testing operations have ceased and the well is capable of producing a geothermal resource;

(2) the well has begun to produce geothermal resources, unless drilling operations are resumed before the end of the 30 day period; or

(3) the well is plugged and abandoned.

(b) All required logs, records and test results must be submitted to the commissioner within 60 days after completion of drilling operations.

(c) A completion report must be submitted to the commissioner within 60 days after completion of drilling operations. The completion report must provide the following information:

(1) the actual depth of the well;

(2) the actual depth to zone of completion;

(3) the actual bottom-hole location for a directionally drilled well;

(4) method of completion or abandonment; and

(5) any information on drilling difficulties or unusual circumstances encountered which would be helpful in assuring future safety of operations or protection of the environment. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.020
AS 41.06.040

ARTICLE 4. PRODUCTION

Section

- 210. Production measurement
- 220. Commingling production
- 230. Injection
- 240. Maintenance
- 250. Corrosion
- 260. Tests

11 AAC 87.210. PRODUCTION MEASUREMENT. (a) All producing wells must be measured, using standard

equipment and industry practice, to determine quality and quantity of geothermal production.

(b) The operator of a producing geothermal well shall file a monthly statement of geothermal resource production with the commissioner. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.040

11 AAC 87.220. COMMINGLING PRODUCTION. The commissioner will, in his discretion, authorize the operator to commingle the production from different wells or leases subject to conditions the commissioner considers necessary. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.040

11 AAC 87.230. INJECTION. (a) A well drilled for the purpose of injection of fluids into a reservoir must be drilled in compliance with 11 AAC 87.070 -- 11 AAC 87.190.

(b) A permit must be obtained from the commissioner before any fluids are injected into any underground reservoir. The application for such a permit must include:

(1) a plan of injection explaining the proposed system, including a description of proposed facilities other than the injection well considered necessary to conduct the operations;

(2) a map of adequate scale showing all existing and proposed wells, distinguished by type of well, pipelines, and other surface facilities;

(3) the injection fluid characteristics, including quality, quantity, source, chemical analysis, chemical reactivity, toxicity, and temperature;

(4) the characteristics of the proposed injection zone, including estimates of volume, a description of the geologic formation and structure, a measurement of porosity and permeability, a chemical analysis of zonal water, static formation pressures and temperatures, anticipated zonal fluid reactivity to the injected fluids, any previous history of injection operations into the same or similar formations, any injectivity tests which may have been conducted, and any other pertinent data;

(5) the hydrology of the surrounding area, including shallow groundwater quality, quantity, analyses, and the predicted effects of contamination by injected fluids on the existing surface and groundwaters;

(6) columnar sections of the injection zone and any available logs or histories of any well penetrating the injection zone that have not previously been submitted;

(7) information regarding possible effects of the injection on such factors as potable water, seismicity, and local tectonic conditions;

(8) a representative injection well drilling program;

(9) a description of the proposed downhole and surface injection equipment and metering facilities with capacity and design capabilities and safety factors in sufficient detail to enable adequate analysis;

(10) a description of proposed injectivity surveys and other means to monitor injection performance; and

(11) any other pertinent information the commissioner determines necessary.

(c) Bonding is required for an injection well in accordance with 11 AAC 87.080.

(d) Injection operations must be monitored and tested to insure that there will be no escape of fluids from the casings through the annular space between casings and the open hole except in the zone for which injection is permitted. Monitoring and testing may include

- (1) gauging pressure between casings;
- (2) periodic testing for casing leaks;
- (3) surveys to detect movement of fluid in adjacent rock formations;
- (4) temperature measurements;
- (5) analyses of water chemistry; and
- (6) special wellhead equipment or other methods routinely employed by industry to monitor injection operations.

(e) The operator of an injection well shall file with the commissioner a monthly injection project report which outlines the previous month's monitoring and testing operations.

(f) Temporary disposal by injection of geothermal fluids produced as a result of production well testing are allowed. An application will be considered on a case-by-case basis upon the submission of all necessary data. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.040
AS 41.06.050

11 AAC 87.240. MAINTENANCE. All wellheads, separators, pumps, manifolds, mufflers, valves, pipelines, and other equipment used for the production of geothermal resources must be maintained in good condition in order to safeguard life, health, property and natural resources. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.020
AS 41.06.040

11 AAC 87.250. CORROSION. An inspection program to detect corrosion damage to wellhead equipment, pipelines, and subsurface casing and tubing must be periodically conducted by the operator in order to safeguard life, health, property, and natural resources. Records of all inspections must be made and filed in accordance with 11 AAC 87.110. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.020
AS 41.06.040

11 AAC 87.260. TESTS. The commissioner will require tests of equipment and remedial work necessary to prevent damage to life, health, property, and natural resources, to protect geothermal reservoirs from damage, and to prevent the infiltration of detrimental substances into underground or surface water. (Eff. 5/8/83, Register 86)

Authority: AS 41.06.020
AS 41.06.040
AS 41.06.050

ARTICLE 5. GENERAL PROVISIONS.

(b) Forms are available from, and must be submitted to,

Section

- 280. Forms
- 290. Definitions

Director
 State of Alaska, Department
 of Natural Resources
 Division of Minerals and
 Energy Management
 Pouch 7-034.
 Anchorage, AK 99510

11 AAC 87.280. FORMS. (a) Forms must be submitted in accordance with the following:

(1) An Application for Drilling Permit must be submitted for each well.

(2) A bond must be submitted before drilling each well unless a blanket bond is filed.

(3) A Monthly Report of Drilling and Workover Operations must be submitted monthly for active wells.

(4) A Monthly Production and Inspection Report must be submitted monthly for active wells in production.

(5) A Well Completion or Recompletion Report and Log must be submitted within 60 days after completion, suspension, or abandonment of a well.

(6) An Injection Project Report must be submitted monthly as long as injection activities are being conducted in a reservoir.

(7) An Exploratory Operations Completion Report must be submitted within 60 days after completion of exploratory operations.

(Eff. 5/8/83, Register 86)

- Authority: AS 38.05.020
 AS 38.05.181
 AS 41.06.020
 AS 41.06.040
 AS 41.06.050
 AS 46.15.020

11 AAC 87.290. DEFINITIONS. In this chapter,

(1) "blowout" means a sudden or violent uncontrolled escape of fluids;

(2) "department" means the Department of Natural Resources;

(3) "commissioner" means the Commissioner of the Department of Natural Resources or a designee;

(4) "psig" means pounds per square inch gauge;

(5) "reservoir" means an aquifer or zones containing a common geothermal resource. (Eff. 5/8/83, Register 86)

- Authority: AS 38.05.020
 AS 38.05.181
 AS 41.06.020
 AS 41.06.040
 AS 41.06.050
 AS 46.15.020

CHAPTER 88

PRACTICE AND PROCEDURE

**CHAPTER 88.
PRACTICE AND PROCEDURE**

Section

- 100. Applicability
- 105. Applications
- 110. Withdrawal of applications
- 115. Additional information
- 120. Deficient filings
- 125. Time for filing
- 130. Timely filing
- 135. Means of filing
- 140. Notices
- 145. Refunds
- 150. Mailing list
- 151. Notice required by AS 38.05.945(c)
- 155. Reconsideration
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- 165. Applications for reconsideration and appeal
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- 180. Notice of decision
- 185. Definitions

Editor's Note: The mineral-leasing regulations in 11 AAC 82, 11 AAC 83, 11 AAC 84, 11 AAC 86 and 11 AAC 88, effective September 5, 1974, and distributed in Alaska Administrative Register 51, constitute a comprehensive reorganization and revision of this material, and thus a history line at the end of each section does not reflect the history of the provision before September 5, 1974, and the section numbering may or may not be related to the numbering before that date.

11 AAC 88.100. APPLICABILITY. This chapter applies to 11 AAC 82 - 11 AAC 86 unless specifically provided otherwise by the sections dealing with the subject of the application, filing or payment. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 88.105. APPLICATIONS. All applications filed under 11 AAC 82 - 11 AAC 86 must comply with any requirements imposed by the regulations dealing with the subject of the applications, and must

- (1) be typewritten or printed in ink;
- (2) be signed by the applicant;
- (3) be filed by mail or personal delivery at any filing office of the division;
- (4) identify any affected lease, permit, or application by serial number or date of filing;

(5) describe the land affected by the application:

(6) state the address to which any notice concerning the application may be mailed; and

(7) be accompanied by the fee or fees prescribed by 11 AAC 05.010. (Eff. 9/5/74, Reg. 51; am 1/1/86, Reg. 96)

Authority: AS 38.05.020(b)(1)

11 AAC 88.110. WITHDRAWAL OF APPLICATIONS. At any time before a lease or permit is issued, the application may be withdrawn in whole or in part. If withdrawn in part, the application as modified must meet all the requirements of the applicable laws and regulations. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 88.115. ADDITIONAL INFORMATION. The director may require any additional information regarding an applicant's, claimant's, permittee's or lessee's compliance with the statutes and regulations except proprietary data not specifically authorized by other regulation or statute. Failure to comply results in rejection of the application and is a default under the terms of the permit or lease and the regulations applicable to it. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)
AS 38.05.035(a)(4)

11 AAC 88.120. DEFICIENT FILINGS. (a) Applications and documents filed with omissions or errors give the applicant no priority if

- (1) the land description is insufficient to identify the land or the description does not comply with the compactness requirements;
- (2) the total acreage exceeds the maximum established by law or regulation, except where the rule of approximation applies;
- (3) the total acreage is less than the minimum established by law or regulation;
- (4) the full filing fee and the first year's rental, where required, is not filed; and

(5) the application is not signed by or on behalf of each person having an interest in the application whether by written or oral agreement or contract.

(b) Applications with the defects listed in (a) of this section may be corrected without loss of filing fee if done within 15 days of receipt of notice of the defect, but the time of filing is the date of the receipt of the correct information.

(c) The director may allow the correction of any other omission or error in an application or document other than those listed in (a) of this section without affecting the original filing time if he determines that the omission or error is immaterial or due to excusable inadvertance. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 88.125. TIME FOR FILING. (a) Filing hours for payments and applications are from 10:00 a.m. to the end of posted office hours on business days, which are Mondays through Fridays, holidays excepted.

(b) Filing hours for all documents to be filed for record in the recording district in which the claim or site is located are from 8:30 a.m. to the end of posted office hours from Monday through Friday, holidays excepted.

(c) All documents, including payments and applications, received during filing hours on business days are stamped with the exact date and time of filing.

(d) Payments and applications received at any other time are filed at 10:00 a.m. on the next business day.

(e) Documents to be filed under (b) of this section received at any other time are considered to be filed at 8:30 a.m. on the next business day.

(f) Applications and documents showing the same time stamp are considered to have been filed simultaneously. (Eff. 9/5/74, Reg. 51; am 12/31/82, Reg. 84)

Authority: AS 38.05.020

11 AAC 88.130. TIMELY FILING. (a) Payments are timely if an affected lease or permit is identified by an Alaska Division of Lands' serial number, and is either (1) delivered at any of the division offices designated by the director as "filing offices" during filing hours within the time allowed by any notice, decision, regulation or law, or (2) mailed on or before the due date provided by any notice, decision, regulation or law and the mailing date can be verified by postmark or other post office record or notation.

(b) If the serial number is not identified, as required in (a) of this section, the time of filing is the time of receipt of correct information unless the director determines that the lack of such information is immaterial or due to excusable inadvertance.

(c) All other documents are timely filed if received during filing hours within the time allowed by any notice, decision, regulation, or law at any office designated by the director and posted in the office as a filing office.

(d) When the last day of the time for filing or payment falls on a day the designated filing office is officially closed, the time for filing is extended to the next day the office is open to the public. (Eff. 9/5/74, Reg. 51; am 12/31/82, Reg. 84)

Authority: AS 38.05.020(b)(1)

11 AAC 88.135. MEANS OF FILING. Filings and payments may be made by mail or personal delivery, unless provided otherwise by the section dealing with the subject of the filing or payment. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 88.140. NOTICES. (a) Any notice which the director gives to any person must be in writing and must be delivered in person or mailed by registered or certified mail, return receipt requested, to the person at his current address of record with the division.

(b) Any person may file his current mailing address with the division in writing and may change his address of record by written notice filed with the division at any time. "Current mailing address" is the most recent or permanent legal address of an applicant.

permittee, lessee or claimant. It is the responsibility of any person doing business with the division to notify the division of his most recent or permanent legal address.

(c) A notice is considered to be given and received on the date delivered to the current address of record.

(d) Whenever any notice is required to be given to a lessee, permittee or claimant, copies of the notice shall also be given, in the manner provided by (a) of this section, to any assignee whose assignment has been filed for approval. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 88.145. REFUNDS. (a) If an application on which rental has been submitted is rejected or withdrawn in whole or in part, the first year's rental will be refunded in whole or in pro rata part on an acreage basis.

(b) Notwithstanding any other provision of 11 AAC 82 - 11 AAC 88, no refund will be made for less than \$2.00. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 88.150. MAILING LIST. The division shall maintain a mailing list for the purpose of sending general notices, orders and other information which the director determines to be of public interest regarding mineral activities of the division to persons who file a written request to be put on a list. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 88.151. NOTICE REQUIRED BY AS 38.05.945(c). (a) A village corporation will be given notice under AS 38.05.945(c)(3) if it owns or has selected land within six miles of the state land proposed for disposal.

(b) A community will be given notice under AS 38.05.945(c)(4) if land within its boundaries is no more than six miles from the state land proposed for disposal. A community is an incorporated or unincorporated place with 25 or more inhabitants, according to the most recent census of the U.S. Census Bureau. An incorporated community's boundaries will be those reported to the department by the Local Boundary Commission. An unincorporated community's boundaries will be those delineated

by the U.S. Census Bureau in the most recent census. (Eff. 6/28/81, Reg. 78; am 12/31/82, Reg. 84)

Authority: AS 38.05.020
AS 38.05.945

11 AAC 88.155. RECONSIDERATION. (a) An order, decision or other action of the director or the division which may be made or taken without the advance approval, consent or concurrence of the commissioner is subject to reconsideration by the director. After reconsideration by the director, any person aggrieved by the decision of the director may appeal the decision to the commissioner.

(b) An order, decision or other action of the commissioner, or of the director with the advance approval, consent, or concurrence of the commissioner, is subject to reconsideration only by the commissioner. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 88.160. JUDICIAL APPEALS. A decision or other action of the division, the director or the commissioner becomes final for purposes of an appeal to the superior court 30 days after delivery as provided in 11 AAC 88.140 or as provided by applicable provisions of the Administrative Procedure Act, including AS 44.62.540, 44.62.560 and 44.62.570, and the Rules of Appellate Procedure of the State of Alaska, including Rule 44. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 88.165. APPLICATIONS FOR RECONSIDERATION AND APPEAL. An application for reconsideration or an appeal must

(1) be filed within 30 days after receipt of notice of the action;

(2) be filed at the principal office of the director;

(3) comply with 11 AAC 88.105 except that there is no filing fee;

(4) specify the action to be reconsidered or appealed; and

(5) specify the grounds on which the reversal or modification of the action is urged. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 88.170. BRIEFS. Written briefs in support of an application for reconsideration or an appeal may be filed with the division within 20 days after the filing of the application. The intention to file a brief must be specified in the application for reconsideration or appeal. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 88.175. ORAL ARGUMENT. Oral argument may be allowed at the discretion of the officer who is to reconsider the action if written request for it is filed with the division within the time allowed for filing written briefs. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 88.180. NOTICE OF DECISION. Following reconsideration of any action or final decision on appeal, the applicant will be given notice of the decision reached, specifying whether the action is affirmed, reversed, or modified, and, if the last, the details of the action as modified. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 88.185. DEFINITIONS. As used in 11 AAC 82 - 11 AAC 88 and unless the context clearly requires a different meaning or unless otherwise defined in these chapters

(1) "adjacent" means touching or lying in close proximity, as opposed to "contiguous" which requires a common boundary;

(2) "cash" means cashier's or certified checks drawn on any solvent bank in the United States, postal or telegraphic money orders or legal tender of the United States of America, or any combination of these;

(3) "commissioner" means the Commissioner of the Department of Natural Resources;

(4) "cooperative agreement" means an agreement or plan of development and operation for the recovery of oil and gas from any pool, field, or like area or any part thereof in which separate ownership units are independently operated pursuant to the agreement without allocation of production;

(5) "director" means the Director of the Division of Lands;

(6) "division" means the Division of Lands, Department of Natural Resources;

(7) "filing office" means any place designated by the director as a filing office for applications, payments and filings under 11 AAC 82 - 11 AAC 88;

(8) "gas" means all natural gas and all hydrocarbons produced at a well not defined herein as oil;

(9) "gas well" means (A) a well which produces natural gas only; (B) that part of a well where the gas producing stratum has been successfully cased off from the oil, and the gas and oil being produced through separate casing or tubing; (C) any well classed as a gas well by the Alaska Oil and Gas Conservation Commission in the administration of the Alaska Oil and Gas Conservation Act;

(10) "leasehold location" or "mining leasehold location" means the interests in land subject to a location under AS 38.05.205 before a lease has been issued;

(11) "legal subdivision" means an aliquot part of a section of land according to the public land rectangular survey system, not smaller than one-quarter of one-quarter of one section of land, containing approximately 40 acres; where a section of land contains section lots, "legal subdivision" also means those section lots; "legal subdivision" also means a protracted legal subdivision according to any protracted public land rectangular survey prepared by the division or Bureau of Land Management of the Department of the Interior, and made available to prospective applicants for leases;

(12) "lessee or permittee of record" means the original lessee or permittee under any lease or permit or, if an assignment has been approved at any time, the latest assignee whose assignment has been approved;

(13) "locatable minerals" means those minerals which, on January 3, 1959, were subject to location under the United States mining laws (Title 30, USC):

(14) "Mineral Leasing Act" means the Act of Congress of February 25, 1920 (41 Stat. 437, 30 USC § 181, et seq.), as amended;

(15) "offshore" means tide and submerged lands, that is, those lands lying seaward from the line of mean high tide;

(16) "oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced and saved in liquid form at the well by ordinary production methods;

(17) "oil well" means any well operated for the primary purpose of producing oil and which by the nature of its production cannot be classed as a gas well as defined in paragraph (6) of this section;

(18) "operating agreement" means an agreement giving the operator the right to carry on operations authorized by a lease or leases and to share in production obtained from the leased lands;

(19) "option" means an option to obtain an assignment of or an operating agreement covering a lease or portion of one;

(20) "order" means a determination made by the director or the commissioner in accordance with authority lawfully vested in him, issued in writing, filed in the permanent files of the division, posted in a conspicuous place in the offices of the division and made continuously available for inspection by the public;

(21) "participating area" means that part of an oil and gas lease unit area to which production is allocated in the manner described in a unit agreement;

(22) "person" includes a corporation and an association of persons;

(23) "pool" means an underground reservoir containing or appearing to contain a common accumulation of oil or gas or both; each zone of a general structure which is completely separated from any other zone in the structure is a pool;

(24) "primary term" means the initial term of an oil and gas lease and any extension of it;

(25) "smallest legal subdivision" means one-quarter of one-quarter of one section of land, containing 40 acres more or less, except where a section contains smaller section lots according to the public land rectangular survey or a protracted public land rectangular survey prepared by the division or by the Bureau of Land Management of the Department of the Interior, and made available to prospective applicants for leases, in which case "smallest legal subdivision" means those smaller section lots; as to unsurveyed land not covered by such a protracted survey, it means a square containing 40 acres, more or less;

(26) "status record" means the basic record maintained by the division to show the status of every tract of land and of leases and applications for leases on them;

(27) "unit agreement" means an agreement or plan of development and operation for the recovery of oil and gas from a pool, field or like area, or any part of one, as a single consolidated unit without regard to separate ownerships, and for the allocation of costs and benefits on a basis as defined in the agreement or plan; "unit agreement" also includes "cooperative agreement" unless the context clearly requires the more restricted meaning;

(28) "unit area" means the area described in a unit agreement as constituting the land logically subject to development under the agreement;

(29) "unit operator" means the person, corporation or association designated under a unit agreement to conduct operations on unitized lands as specified in the agreement;

(30) "unitized land" means the part of a unit area committed to a unit agreement;

(31) "unitized substance" means deposits of oil, gas and associated substances produced with them recoverable by operations pursuant to a unit agreement;

(32) "working interest" means the interest held in lands by virtue of a lease, operating agreement, fee title or otherwise, under which the owner of the interest is vested with the right to explore for, develop and produce minerals; the right delegated to a unit operator by a unit agreement is not a working interest;

(33) "qualified to do business in Alaska" means holding the state certificates necessary to lawfully conduct business within the state;

(34) "leasehold," "mining lease," or "upland mining lease" means the interests in land subject to a mining lease issued in accordance with AS 38.05.205;

(35) "location" or "mining location" means a mining claim made under AS 38.05.195, a leasehold location made under AS 38.05.205, or a prospecting site location made under AS 38.05.245. (Eff. 9/5/74, Reg. 51; am 3/27/82, Reg. 81; am 5/30/85, Reg. 94)

Authority: AS 38.05.020

CHAPTER 96

MISCELLANEOUS LAND USE

CHAPTER 96.
MISCELLANEOUS LAND USE

Article

1. Provisions for General Land Use Activity (11 AAC 96.010-11 AAC 96.150)
2. Additional Provisions for Geophysical Exploration and Stratigraphic Tests (11 AAC 96.210-11 AAC 96.240)
3. General Provisions (11 AAC 96.250)

ARTICLE 1.
PROVISIONS FOR GENERAL LAND USE
ACTIVITY

Section

10. Operations requiring permits
20. Equipment use not requiring a permit
30. Application
40. Term and conditions
50. Effective date
60. Bonds
70. Completion of operations
80. Confidential status of information
90. Inspection of operation
100. Penalty
110. Appeals
120. Purpose
130. Applicability
140. General stipulations
150. (Repealed)

11 AAC 96.010. OPERATIONS REQUIRING PERMITS. A permit is required for the following activities on state lands:

(1) activity requiring

(A) the use of explosives and explosive devices, except firearms;

(B) the use of any equipment not included in the list specified in 11 AAC 96.020;

(C) the use of hydraulic prospecting or mining equipment methods;

(D) drilling to a depth in excess of 300 feet, including exploratory drilling or stratigraphic test wells on state land not under oil or gas lease;

(E) geophysical exploration for minerals subject to lease under AS 38.05.135 — AS 38.05.181;

(2) activity that the director determines may result in unnecessary harm to land having special scenic, historic, archaeological, scientific, biological, recreational, or other special resource values; and

(3) activity on land under mineral permit, lease, or claim by a person other than the holder of the permit, lease or claim, or his authorized representative, if the parties cannot agree on what constitutes unnecessary or unreasonable interference as provided in 11 AAC 96.140(11).

(b) The activities for which a permit is required under (a)(2) of this section will be listed, and the land designated as special use lands on the official records of the division, the records will be available in all state land offices. Activities requiring a permit on land designated as special use land is not a violation of this chapter unless the user has received written notice of the designation or the designation has been effective for 90 days.

(Eff. 1/1/70, Register 32; am 3/2/81, Register 77; am 5/8/83, Register 86)

Authority: AS 38.05.020 AS 38.05.180
AS 38.05.035 AS 41.20.020

11 AAC 96.020. EQUIPMENT USE NOT REQUIRING A PERMIT. (a) A current list of equipment types the use of which does not require a permit under 11 AAC 96.010(1)(B) will be maintained and available in all state land offices. A permit is required for the use of all equipment types not appearing on this list unless otherwise authorized by the director.

(b) This list will include but is not limited to the following:

(1) light portable field equipment: such as, hand operated picks, shovels, pans, earth augers and backpack power drills and augers;

(2) vehicles such as snow machines, jeeps, pickups and weasels. Augers and drills may be mounted on such equipment;

(3) airborne equipment;

(4) marine equipment, except equipment which will disturb the submerged land;

(c) This section does not apply to areas

designated under 11 AAC 96.010(2). (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.030. APPLICATION. (a) The application for permit must contain the following information in sufficient detail to allow evaluation of the planned activities' effect on the land:

(1) a map showing the general location of all activities and routes of travel of all equipment for which a permit is required;

(2) a description of the proposed activity and the type of equipment that will be used.

(b) The permit application shall be acted on promptly. If the permit is not issued within 30 days of receipt of a proper application, the applicant may proceed with his operations subject to the provisions of 11 AAC 96.140 and the provisions of the permit when issued. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.040. TERM AND CONDITIONS. Permits will be granted for any term requested not to exceed one year. The permit may be extended for any number of consecutive periods, each period not to exceed one year. Proposed modifications in the original plan shall be indicated in writing. The director may modify existing stipulations or require additional stipulations in the approval of an extension or modification. Each permit issued is subject to the provisions of 11 AAC 96.140 and any other provisions the director determines necessary to assure compliance with these regulations. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.050. EFFECTIVE DATE. The effective date of the permit shall be the first day of the month following the date on which the permit was signed on behalf of Alaska; provided, however, upon request by the applicant, the permit may be dated the first day of the month in which the permit was signed on behalf of Alaska. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.060. BONDS. The permittee may be required to furnish a personal or corporate surety bond, acceptable to the director and conditioned upon compliance with all the terms of the permit. The director shall determine the amount of the bond, if required, based on the scope of the activity planned. The director shall maintain a schedule showing the amount of bond required by type of operation so that the permittee may submit the bond with the application. Operations requiring a bond shall not commence until an acceptable bond has been filed. The director shall give notice of any such bond required within 30 days of receipt of a proper application. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.070. COMPLETION OF OPERATIONS. Upon completion of the operations under a permit and its extensions, the permittee shall file a map showing the location of all permit activities which were not shown in the permit plan, or any modifications of the permit plan, and include a detailed statement of cleanup and restoration work at the site. Within 90 days of filing an acceptable completion statement, the permittee will be notified of any cleanup and restoration work required. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.080. CONFIDENTIAL STATUS OF INFORMATION. All information required to be filed under these regulations shall be held confidential as provided by AS 38.05.035(a)(9). (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.090. INSPECTION OF OPERATION. All operations under 11 AAC 96.010 - 11 AAC 96.150 are subject to inspection by the director. The permittee is not obligated to provide transportation or lodging for inspection personnel. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.100. PENALTY. Any activities on state lands done in violation of 11 AAC 96.010 - 11 AAC 96.150 shall be considered waste,

trespass, or injury to state lands under AS 38.05.360. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.110. APPEALS. A person aggrieved by an order, decision or other action of the director, may appeal to the Commissioner of the Department of Natural Resources. The notice of appeal must be received at the principal office of the Division of Lands within 20 days after receipt of notice of the director's decision. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.120. PURPOSE. The purpose of 11 AAC 96.010 - 11 AAC 96.150 is to provide controls over activities on State of Alaska lands in order to minimize adverse effects on the land and its resources. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035
AS 41.20.020

11 AAC 96.130. APPLICABILITY. 11 AAC 96.010 - 11 AAC 96.150 apply to all land use activities on Alaska state lands except activities authorized under any State Division of Lands administered permit, lease, or contract, by the permit, lease, or contract holder, or his authorized agent and except lands which have, by administrative action or act of the legislature, been reserved from multiple use management. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.140. GENERAL STIPULATIONS. All land use activities are subject to the following provisions:

(1) Activities employing wheeled or tracked vehicles shall be conducted in such a manner as to minimize surface damage.

(2) Existing roads and trails shall be used whenever possible. Trail widths shall be kept to the minimum necessary. Trail surface may be cleared of timber, stumps, and snags. Due care shall be used to avoid excessive scarring or removal of ground vegetative cover.

(3) All activities shall be conducted in a

manner that will minimize disturbance of drainage systems, changing the character, polluting, or silting of streams, lakes, ponds, water holes, seeps, and marshes, or disturbance of fish and wildlife resources. Cuts, fills, and other activities causing any of the above disturbances, if not repaired immediately, are subject to such corrective action as may be required by the director.

(4) The director may prohibit the disturbance of vegetation within 300 feet of any waters located in specially designated areas as prescribed in 11 AAC 96.010(2) except at designated stream crossings.

(5) The director may prohibit the use of explosives within one-fourth mile of designated fishery waters as prescribed in 11 AAC 96.010(2).

(6) Trails and campsites shall be kept clean. All garbage and foreign debris shall be eliminated by removal, burning, or burial, unless otherwise authorized.

(7) All survey monuments, witness corners, reference monuments, mining claim posts, and bearing trees shall be protected against destruction, obliteration, or damage. Any damaged or obliterated markers shall be re-established in accordance with accepted survey practice of the division.

(8) Every reasonable effort shall be made to prevent, control, or suppress any fire in the operating area. Uncontrolled fires shall be immediately reported.

(9) Holes, pits, and excavations shall be filled, plugged, or repaired to the satisfaction of the director. Holes, pits, and excavations necessary to verify discovery on prospecting sites, mining claims, and mining leasehold locations may be left open but shall be maintained as required by the director.

(10) No person may engage in mineral exploratory activity on land, the surface of which has been granted or leased by the State of Alaska, or on land for which the state has received the reserved interest of the United States until good-faith attempts have been made to agree with the surface owner or lessee on

settlement for damages which may be caused by such activity. If agreement cannot be reached, or lease or surface owner cannot be found within a reasonable time, operations may be commenced on the land only with specific approval of the director, and after making adequate provision for full payment of any damages which the owner may suffer.

(11) Entry on all lands under mineral permit, lease, or claim, by other than the holder of the permit, lease, or claim, or his authorized representative, shall be made in a manner which will prevent unnecessary or unreasonable interference with the rights of the permittee, lessee, or claimant. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.130

11 AAC 96.150. DEFINITIONS. Repealed 3/21/81.

ARTICLE 2. ADDITIONAL PROVISIONS FOR SEISMIC EXPLORATION AND STRATIGRAPHIC TESTS

Section

- 210. Submission of seismic exploration data and stratigraphic test data
- 220. Confidential status of information
- 230. Reimbursement for seismic exploration data
- 240. Liability

11 AAC 96.210. SUBMISSION OF SEISMIC DATA AND STRATIGRAPHIC TEST DATA. In order to assist the department in managing the leasing, exploration, and development of oil and gas resources underlying state land, and to achieve the purposes of AS 38.05.180(a), the director will, under the following circumstances, require submission of seismic exploration data and stratigraphic test data as a condition of the issuance of a land use permit to conduct seismic exploration field operations or to drill a stratigraphic test well:

(1) Within 30 calendar days after termination of any seismic exploration, the permittee shall notify the director, in writing, of all seismic exploration data obtained under the permit. Within 30 days after completion of the initial processing of the seismic exploration data, the permittee shall notify the director, in writing, of the availability of these processed seismic exploration data. The director reserves the right to inspect and require submission of seismic exploration data obtained under the permit for five years after notification by the permittee that initial processing has been completed. The permittee shall provide access to and upon request submit a reproducible copy of all seismic exploration data that are required by the director.

(2) Unless the director grants an extension upon the permittee's written request, the permittee shall provide access to and upon request submit a reproducible copy of all test data acquired from a stratigraphic test well not later than 30 days after the well is plugged or abandoned. (Eff. 3/21/81, Reg. 77; am 8/19/84, Reg. 91)

Authority: AS 38.05.020 AS 38.05.180
AS 38.05.035 AS 38.05.850

11 AAC 96.220. CONFIDENTIAL STATUS OF INFORMATION. All seismic exploration data and stratigraphic test data submitted under this chapter will be kept confidential upon the request of the person supplying the information. This confidentiality requirement is subject to the following provisions:

(1) The director will disclose confidential seismic exploration data or stratigraphic test data, submitted under this chapter, to a third party only if the disclosure is for the storage, processing, reprocessing, and interpretation of the data for the state. However, before the disclosure, the third party must agree in writing that it will not disclose the data or associated information derived or generated from the data to any other party and that it will not acquire any interest in the land evaluated by the data. The third party shall execute and post a bond in an amount to be determined by the director. The bond must be to the benefit of the state and the permittee.

(2) If the director obtains the consent of the permittee in writing, the director will, in his or

her discretion, disclose confidential seismic exploration data or stratigraphic test data submitted under this chapter to the Minerals Management Service and the Bureau of Land Management of the United States Department of the Interior, without reference to the purpose for which the disclosure is made. However, before the disclosure, a responsible officer of the United States Department of the Interior must agree in writing to keep the data and any associated information derived or generated from the data confidential. Copies of the data submitted under this chapter will not be given to the Minerals Management Service or the Bureau of Land Management; however, the Minerals Management Service and the Bureau of Land Management may, on the premises of the department, participate in the interpretation of the data. (Eff. 3/21/81, Reg. 77; am 8/19/84, Reg. 91)

Authority: AS 38.05.020 AS 38.05.180
AS 38.05.035 AS 38.05.850

11 AAC 96.230. REIMBURSEMENT FOR SEISMIC EXPLORATION DATA. (a) The state will reimburse the permittee for all reasonable costs directly incurred by the permittee because of the submission of seismic exploration data to the division under 11 AAC 96.210(1). Reimbursable expenditures are the costs of reproduction and shipping related to the submission of seismic exploration data to the division.

(b) The state will not reimburse the permittee for any indirect costs incurred by, or indirect effects on, the permittee for the time, personnel, or equipment used to prepare the seismic exploration data for submission to the division.

(c) The division will initiate reimbursement to the permittee for costs described in (a) of this section within 30 days after receipt of a legible copy of the seismic exploration data. (Eff. 3/21/81, Reg. 77; am 8/19/84, Reg. 91)

Authority: AS 38.05.020 AS 38.05.180
AS 38.05.035 AS 38.05.850

11 AAC 96.240. LIABILITY. (a) If, after submission of the seismic exploration data or stratigraphic test data, the permittee determines that errors exist in the data submitted, the permittee shall inform the division of the errors and, as soon as practicable, shall submit any corrected data.

(b) The permittee is not responsible for any actions the division takes in the interpretation or use of the seismic exploration data submitted by the permittee. (Eff. 3/21/81, Reg. 77; am 8/19/84, Reg. 91)

Authority: AS 38.05.020 AS 38.05.180
AS 38.05.035 AS 38.05.850

ARTICLE 3. GENERAL PROVISIONS

Section

250. Definitions

11 AAC 96.250. DEFINITIONS. In this chapter

(1) "land use activity" means any use of or entry on state land for any purpose, including but not limited to exploration, hunting, recreation, and access:

(2) "director" means the director of the division of lands in the Department of Natural Resources, or an authorized representative of the director:

(3) "department" means the Department of Natural Resources:

(4) "processing" means the preparation of data, by computer or other device, which enhances the data:

(5) "seismic exploration" means the survey of the earth's surface or the use of seismic methods to gather data that may be used to determine subsurface geologic characteristics:

(6) "seismic exploration data" means data, including information necessary to locate and identify that data, derived from seismic exploration of state land and initially processed to a level comparable to that of the data distributed to participants in a group seismic survey by use of techniques used to render the data in a format ready for geological interpretation for the first time: such techniques include but are not limited to amplitude recovery, deconvolution, static corrections, velocity analysis, normal moveout corrections, common depth point stacking, digital filtering and migration. "Seismic exploration data" may include navigation tapes, velocity spectra, final stack sections, true

amplitude sections and migrated sections: but does not include, and the applicant is not required to submit to the director

(A) magnetic tapes other than navigation tapes: and

(B) data that would otherwise be included, but which the permittee or a contractor working on behalf of the permittee does not obtain or prepare:

(7) "stratigraphic test" means the drilling of a well to a sufficient depth to measure the geologic, geophysical, and engineering parameters used for determining an area's oil and gas potential:

(8) "stratigraphic test data" means all logs, surveys, samples, and tests taken in association with the drilling and testing of a stratigraphic test well and includes but is not limited to, mud logs, electrical logs, density logs, sonic logs, neutron logs, gamma logs, dip-meter surveys, velocity surveys, directional surveys, core descriptions, sample descriptions (including descriptive palynology and paleontology), fluid analyses, drillstem tests, formation tests, and periodic drilling and operations reports. (Eff. 1/1/70, Reg. 32; am 3/21/81, Reg. 77; am 8/19/84, Reg. 91)

Authority: AS 38.05.020 AS 38.05.180
AS 38.05.035 AS 38.05.850

Editor's Note: 11 AAC 96.250(1) and (2) are derived from former 11 AAC 96.150 which was repealed in 3/21/71. The history note set out after this section includes the history of 11 AAC 96.150 before the repeal of that section.

AGENCY LIST

Alaska State Agencies dealing with any aspect
of Geothermal Resource Research and Development.

AGENCY

TASK

DEPARTMENT OF NATURAL RESOURCES

Commissioner's Office
400 Willoughby Street
5 th Floor
Juneau, Alaska 99801

The Commissioner's office is delegated all authority and responsibility for management of geothermal resources in the state.

Division of Geological
and Geophysical Surveys
Northern Office
794 University Ave.
Fairbanks, Alaska 99709

The Division of Geological and Geophysical Surveys is responsible for identifying, collecting data from, and evaluating the potential of all geothermal resources in the state and provide this information to other agencies and the public.

Division of Geological
and Geophysical Surveys
Dr. Roman J. Motyka
Southeastern Office
400 Willoughby 3rd Fl.
Juneau, Alaska 99801

Division of Geological
and Geophysical Surveys
South Central Office
P. O. Box 772116
Eagle River, Alaska 99577

Division of Oil & Gas
P. O. Box 107034
Anchorage, Alaska 99510

The Division of Oil & Gas is responsible for the Geothermal Leasing Program.

Division of Land & Water
Management, South Central
P. O. Box 107005
Anchorage, Alaska 99518

The Division of Land and Water Management is responsible for all permitting with regard to water. This agency aids coordinates with the Dept. of Environmental Conservation and the Dept. of Fish and Game so all requirements are met.

Division of Land & Water
Management, Northern
4420 Airport Way
Fairbanks, Alaska 99701

Division of Land & Water
Management, Southeastern
400 Willoughby Ave.
Juneau, Alaska 99801

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Commissioner's Office
P.O. Box 0
Juneau, Alaska 99811

Division of Environmental
Quality
Permitting Office
P.O. Box 2420
Juneau, Alaska 99803

The Department of
Environmental Conservation has some
permit requirements for geothermal
developers. This information is
available from the Division of Land
and Water Management in the
Department of Natural Resources.

DEPARTMENT OF FISH AND GAME

Commissioner's Office
P.O. Box 3-2000
Juneau, Alaska 99802

The Department of Fish and
Game has some permit requirements
for geothermal developers. This
information is available from the
Division of Land and Water
Management in the Department of
Natural Resources.

Division of Fisheries
Rehabilitation,
Enhancement, and
Development
P.O. Box 3-2000
Juneau, Alaska 99802

The FRED Program has examined
several geothermal areas as possible
fish hatchery sites.

Division of Fisheries
Rehabilitation,
Enhancement, and
Development
333 Raspberry Road
Anchorage, Alaska 99518

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

Commissioner's Office
P. O. Box D
Juneau, Alaska 99811

Alaska Power Authority
P. O. Box AM
Juneau, Alaska 99811

Alaska Power Authority
Public Information Office
P. O. Box 190869
Anchorage, Alaska 99519

The Department of Commerce and Economic Development has funded geothermal research by other state agencies, the University of Alaska, and private industry.

UNIVERSITY OF ALASKA

Geophysical Institute
Dr. Christopher Nye
Dr. Donald Turner
Dr. Eugene Mescott
Fairbanks, Alaska 99775

Department of Geology and Geophysics
Dr. Dan Hawkins
Dr. Samuel Swanson
Fairbanks, Alaska 99755

Petroleum Engineering
Department
Fairbanks, Alaska 99755

The University of Alaska, alone and in cooperation with the Division of Geological and Geophysical Surveys has conducted basic scientific research at the geothermal sites in the state of Alaska aimed at both understanding the physical systems and evaluating the economic potential of the resource.

The May 1983 Geothermal Leasing Regulations and Statutes booklet was prepared by the staff of the Division of Minerals and Energy Management which due to reorganization does not now exist. The personnel involved were:

Kay Brown, Director
Jim Eason, Deputy Director
Pam Rogers, Leasing Manager
Ron Beran, Chief Legal/Land Status Unit
Wayne Hanson, Cartographer
Marty Biggs, Regulations Specialist
Sharon Thomas, Clerk Typist III
Nancy Henderickson, Clerk Typist III

It was updated in December 1987 by the Division of Geological and Geophysical Surveys:

Robert B. Forbes, State Geologist
Thomas E. Smith, Deputy State Geologist
Roman J. Motyka, Geologist IV, manager geothermal program
Shirley A. Liss, Geologist I