

# Fact Sheet



Division of Mining, Land & Water – September, 2004

## Abandonment of a Mining Location and Options Available under Law

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### *Abandonment Law*

AS 38.05.265 states:

Failure to properly record a certificate of location or a statement of annual labor, pay any required annual rental, or pay any required production royalty as required by AS 38.05.185 - 38.05.200, 38.05.210 - 38.05.245, 38.05.252 - 38.05.275, and by regulations adopted under these sections constitutes abandonment of all rights acquired under the mining claim, leasehold location, or prospecting site involved, and the claim, leasehold location, or prospecting site is subject to relocation by others, unless the failure constituting the abandonment is cured under (b) of this section. A locator or claimant of an abandoned location or a successor in interest may not relocate the claim, leasehold location, or prospecting site until one year after abandonment. The locator of an abandoned prospecting site may locate a claim or leasehold location on that site at any time. A statement of annual labor that does not accurately set out the essential facts is void and of no effect. If an annual rental or a royalty payment is deficient but is otherwise timely paid, abandonment does not result if full payment is made within

- (1) The period prescribed by a deficiency notice from the commissioner; or
- (2) 30 days after a final judgment establishing the amount due if the deficiency amount due was contested.

(b) Unless another person has located a mining claim or leasehold location that includes all or part of the mining claim or leasehold location abandoned under (a) of this section or the area is closed to mineral location under AS 38.05.185 - 38.05.275, a person may cure the failure to record or pay that constituted the abandonment and cure the abandonment by

- (1) properly recording a certificate of location or a statement of annual labor, paying any required annual rental, and paying any required production royalty; and
- (2) paying a penalty equal to the annual rent for the mining claim or leasehold location that was abandoned under (a) of this section.

### *What Triggers Abandonment?*

The following situations will result in abandonment of a location by operation of law.

- Failure to timely record a new location within 45 days of the posting date. (Law requirement)
- Failure to timely pay the first required rental payment within 45 days of the posting date. (Law Requirement)
- Failure to timely record an affidavit of annual labor (if due) within 90 days of September 1 each year. (Law Requirement)

- Failure to timely file a Production Royalty Return if production occurs on a location by May 1 each year. (Law Requirement)
- Failure to timely pay recurring annual rental within 90 days of September 1 each year. (Law Requirement)
- Failure to make an optional timely cash-in-lieu of annual labor payment by September 1. (Regulation Requirement)
- Failure to include a claim name, posting date, locator name and address, adequate legal description or sketch map or signature on a new location certificate of location. (Regulation Requirement)

## ***Options under Law***

If a location becomes inadvertently abandoned by operation of law due to one of the situations above, the locator has three (3) options under law to reacquire the mineral rights.

1. Wait one year from the date of abandonment and re-locate the mineral rights with a new claim if the rights are still available and nobody else has laid claim to the mineral rights. (AS 38.05.265)
2. If you as locator think you substantially complied with the law, ask the department for a copy of “Policy Memorandum 02” *Standards for Issuance of a Certificate of Substantial Compliance for Untimely Payment of Annual Rent, Production Royalty, or Untimely Recording of a Document* and see if you think you qualify for issuance of a Certificate of Substantial Compliance to cure the abandonment. If so, contact the division for instructions on how to apply. (AS 38.05.185 and 11 AAC 86.125) (Fee for this is \$250)
3. Pay a penalty equal in amount to the annual rental as indicated by the department for the location abandoned. This option is only available if there are no conflicting mineral rights asserted by any other overlying or conflicting locator with active mineral locations. The department will determine this as well.

## ***How to Obtain Additional Information?***

Contact one of the Public Information Offices listed below. These offices will assist you or forward you to a particular staff person in the Mining Section of the Division of Mining, Land and Water who can assist you.

### ***Public Information Offices***

#### **Anchorage**

Public Information Center  
550 West 7<sup>th</sup> Ave., Suite 1260  
Anchorage, AK  
(907) 269-8400 TDD: (907) 269-8411  
Office Hours: M thru F; 10:00 AM to 5:00 PM

#### **Fairbanks**

Public Information Center  
3700 Airport Way  
Fairbanks, AK  
(907) 451-2705  
Office Hours: M thru F; 10:00 AM to 5:00 PM