

Gravel Summit

BLM Management and Regulations

2011
Site Authorized for
150,000 cy in 2010
DHMP 169

Central Yukon Resource Management Plan (CYRMP)
Public Meeting, Fairbanks District Office - March 31, 2015

Mineral Materials Law and Policy

1947 Mineral Materials Act

- Provides for disposal of common variety mineral materials through sales and permits.
- Established fair market value and competitive bidding requirements

Federal Aid Highway Act of August 27, 1958

- This act authorized easement deeds the States' Departments of Transportation, through the Federal Highway Administration (FHWA)
- Provides exclusive use of mineral materials - free-of-charge, for Federal Aid Highway construction and maintenance.
- BLM and FHWA entered into an Interagency Agreement in 1982, and an MOU in 1983, to outline the processing of the ROW application.

BLM Management Process

43 CFR 3600 – Mineral Materials Disposal Regulations

- 43 CFR provides BLM’s administrative law (or regulations); Part 3600 deals with the disposal of mineral materials.
- These regulations describe the limitations on the types of disposals and also describes the rights of authorized parties.
- Since 2002, presented in a “Q&A” format to ease public use

H-3600 Policy Handbook

- Mineral Materials Policy - the How of BLMs Mineral Materials Disposal
- The Handbook implements the procedures BLM will follow to meet its directive to dispose of mineral materials.

TAPS

- Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline
- Under Title II of TAP Act,
 - Authorized Officer is to *“issue and take all necessary action to administer and enforce rights-of-way, permits, leases, and other authorizations that are necessary for or related to the construction, operation, and maintenance of”* TAPS.

Material Sites: Full BLM cost of authorization and administration is paid for by the TAPS operator, APSC, as well as royalty. APSC is self-bonded. Process is generally guided by 3600 Regulations

Dalton Highway Right of Way

December 5, 1973: Dalton Highway south of Prospect Creek was placed on Federal Aid Highway System, the remainder of the highway was added to the system in 1974.

May 2, 1974: Dalton ROW Issued by BLM

Item 4 in the grant of ROW states that the State shall comply with the Exhibit "A" (Highway and Airport Stipulations) attached to an earlier cooperative agreement between APSC-State-BLM.

Material Sites: Exhibit "A" stipulation instructs the State to make a Free Use application in accordance with 3600 regulations. Contractor shall submit a mining plan as guided by 43 CFR Part 23

BLM Materials Disposal

Unauthorized Use
& Trespass

43 CFR 3601.70

BLM Program
Authorizations

43 CFR 3600

Federal Highway Act
Realty Program
Disposals

Federal Aid Site

Free Use Permits (FUPs)

No Administrative Fee Recovered
No Royalty Paid

Exploration Permits

Contract Sales

Recovery of Administrative Fees
Royalty Paid to Treasury

Exclusive Sales

Non-exclusive Sales

Contract Sales – Exclusive Sales

Exclusive Sales in general:

- Contract offered to a single customer, for their exclusive use of a production area
- Recovery of all BLM administrative fees (Cost Recovery) is **generally required**
- Sales >200K cy **must be competitive**,
 Exceptions:
 - **Sales made in support of TAPS/ANGTS**
 - Emergency Use
 - When it is impractical to obtain competition

Competitive Sale

- Maximum 10-year term, potential 1-year extension
- Competitive sale process is laid out under §3602.42

Noncompetitive (Negotiated) Sale

- Sale must be in the Public Interest
- Maximum 5-year term
- Sale price must not be not less than *Fair Market Value*
- **Maximum limit of 300K cy total in negotiated contracts per year, to same customer in one state (excluding TAPS/ANGTS)**



Contract Sales – Nonexclusive Sales

Nonexclusive sales in general

- Authorization covers a general area
- BLM formulates Mining Plan and provides Administrative Authorization
- Multiple materials disposals with area
- Cost Recovery of Administrative Appraisal, and Reclamation Fee, which is based on cost per cy disposed (Reclamation fee may be paid or done *in-kind*)

Community Pits (CP)

May issue Exclusive Sales and Free Use Permits out of Community Pits

Common Use Areas (CUA)

Generally large areas with dispersed resources, typically no reclamation required after use



Permits

Free Use Permits (FUPs)

- Use authorization and material is provided free of charge
- Reclamation fees and bonding are discretionary
- **Materials cannot be sold, bartered, nor used for commercial purposes**
- **May be denied when Permittee owns or controls an adequate supply of suitable materials**

Governmental Agencies

- Some governmental agencies may be legally unable to post a bond.
- **No limitations on volume or number of permits**
- 10-yr term limit, 1-yr extension

Non-Profit Organizations

- Maximum of 5,000 cy in 12 consecutive months; 1-yr term, 1-yr extension

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it 2007)

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|--|-------|----------------------------|---|
| UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT | | | FORM APPROVED OMB NO. 1004-0001 Expires: March 31, 2010 |
| FREE USE APPLICATION AND PERMIT VEGETATIVE OR MINERAL MATERIAL | | | Permit Number |
| APPLICATION | | | Expiration Date |
| | | | District |
| Name of applicant | | Address (include zip code) | |
| Kind of material | | | Estimated quantity |
| Give legal land description | | | |
| TOWNSHIP | RANGE | SECTION | SUBDIVISION |
| | | | County of |

Exploration Permits

- *“Pre-application sampling and testing”*
- **Complete results are to be provided to BLM**

conditions as set forth below. I CERTIFY That the: (a) materials to be removed are to be used for the purpose noted or bartered; (c) removal of materials can begin only upon receipt of an approved copy of this permit; and, (d) the tied upon completion of removal.

and of the age of majority in the State in which I reside.

BLMs Authorization Process – Permits/Contracts

1. Determination of site availability; review term and volume limitations; determine applicability of Free Use or Recovery of Administrative Costs.
2. The following steps are provided by BLM for Permits; if a Contract Sale the applicant pays, upfront, for:
 - a) Review/Approval of submitted Mining Plan
 - b) NEPA Analysis and Processing
 - c) Determine royalty and appraisal costs
 - d) Prepare an authorization (decision) and stipulations of approval.
 - e) Issue Authorization
3. Compliance and Production Verification Inspections

BLMs Authorization Process – Permits/Contracts

Let's take a little closer look at the following:

- **Mining and Reclamation Plan (MRP)**
- **NEPA Analysis and Processing**
 - **Production Verification**

What does a **Mining and Reclamation Plan** provide?

Project Description

Timeline of mining and reclamation actions

Production verification requirements

A basis for Bond Calculation and Royalty Rate Assessment

Others? We can require any pertinent mining information to be included

A Legal Compliance Document

BLMs Authorization Process - Mining Plans

§ 3601.41 What information must I include in my mining plan?

- *Map, sketch or aerial photo showing area and depth of disturbance, access, and major topographic and cultural features;*
- *Describe methods and periods of operation;*
- *Mitigation measures for public safety hazards environmental impacts*
- *Such other information as BLM may require*

BLMs Authorization Process – NEPA

NEPA requirements for 3600 Material Disposals

- For sales and permits over **50,000 cubic yards** or **disturbing greater than 5 acres**, an environmental analysis (EA) is required.
- For sales that do not meet these thresholds, and are not in a riparian zone, at a minimum a **categorical exclusion (CX) review** is done and an EA is performed, if necessary.
- An Environmental Impact Statement (EIS) is required for a proposed mining operation exceeds **640 acres disturbance**

Generally, a CX takes 1/2 the level of effort of an EA.

BLMs Authorization Process – Production Verification

How will operator determine the volume produced:

Standard production verification methods:

- Truck Counts - based on trucks size and ensure proper loading
- Scales - based on pounds of material is in a cubic yard, review a copy of the most recent State Scale Certification
- Volumetric Survey - must be completed by State Registered Surveyor
- End use survey, in the case of airstrip or other such major project.

Activities under a 3600 Authorization

Allowable activities are those:

- Specified and approved in the terms and conditions of the contact/permit and contained in the approved Mining and Reclamation Plan (MRP).

These typically include:

- Reasonable access across Federal lands
- Processing equipment including basic screening, crushing, sizing, and handling equipment.
- Vehicle and equipment yarding areas related to mining on the site
- Stockpile areas for overburden, soil, and processed products – **these materials must have originated at that site**

Activities under a 3600 Authorization

Examples of activities which require a Specific Authorization or are generally Not Allowed:

- *Asphalt and concrete batch plants* require specific authorization within the mine plan
- *Back hauling and stockpiling of minerals (or trash)* originating from outside the site is prohibited
- *Commercial Camping:* At the discretion of the issuing office, 'overnight' mine site occupancy by operators during non-operating hours:
 - a) may be pre-approved under the authorized Mining and Reclamation Plan (MRP), or
 - b) must involve a commercial camping permit authorized under the BLM Realty regulations.

Activities under a 3600 Authorization

43 CFR § 3601.21 What rights does a person have under a materials sales contract or use permit? Purchaser/permittee has the right to:

(1) Extract, remove, process, and stockpile the material until the contract or permit terminates, regardless of any rights others acquire later under the provisions of the general land laws; and

(2) Use and occupy the described lands to the extent necessary for fulfillment of the contract or permit.

Failure to follow this guidance may be grounds for cancellation of your permit/contract.

Management Options

- Current: FUPs and Contacts issued to APSC, ADOT, the occasional contractor.
- Exclusive contract issued to site operator
- Federal Aid Highway easement deed
- Community Pit
- Programmatic alternatives developed as part of CYRMP process.

Exclusive contracts issued to site operator

- For specific sites, using a Negotiated or Competitive Process issue the site operator a 5-year contract, with potential to extend 5 years
- Operator Provides and BLM Approves
 - Complete Mining and Reclamation Plan
 - NEPA analysis
 - Production verification: Surveys, tickets, other documentation
- PROs: One operator with one complete site development strategy; materials available to all users
- CONs: How to deal with royalty-free Free Use
 - Potential for Price Gouging (monopoly)
 - How to deal with existing Reclamation Liabilities from Current Users

Federal Aid Highway Easement Deed (ADOT&PF)

- Use of these realty sites, once authorized, is *in perpetuity*
- Process (generally):
 1. ADOT prepares NEPA analysis and makes request to FHWA
 2. FHWA determines necessity, and makes request to BLM
 3. Within 4 months of FHWA request, BLM determines NEPA adequacy, and considers whether easement is consistent with Land Management Goals
 4. Determine any necessary restrictions or stipulations, and consults with ADOT regarding these items
 5. Deed and signed and the site is surveyed & platted.
 6. Operation is subject to periodic BLM realty inspection and reporting requirements.
 7. Reclamation is required at end of use.

Federal Aid Highway Easement Deed (ADOT&PF)

- PROs:
 - No need for periodic reauthorization
- CONS
 - Legally, materials from these easements may not be available for other users (use restricted to Federal Aid Highway)

Community Pit

- **Community Pits** are established based on a need for multiple small disposals of a particular type of commodity in a given area. There is no limitation on the size of community pits.
- BLM Drafts a mining and Reclamation Plan for all users to follow; Users are given operating instructions which conform to the mining plan
- Users are charged a per unit Reclamation Fee, or at the Authorized Officer's discretion, reclamation is performed in-kind.
- A combined fee, per unit, pays for royalty, cost of Community Pit authorization, and appraisal.

Community Pit

- **PROs:**

- One mining plan for all disposals
- Multiple users can be accommodated
- Pre-authorized site allow 'over-the-counter' type sales
- Exclusive sales and FUPs can also be processed from the pit

- **CONs:**

- Is there adequate exploration data available
- Not intended for high volume disposals
- The situation on the Dalton is not ideal for what these Community Pits are intended
- How to deal with existing reclamation liabilities

Programmatic analysis as part of CYRMP process

- Programmatic NEPA analyses can reduce or eliminate redundant and duplicative analyses and effectively address cumulative effects
- To meet a need for eventual preparation of NEPA documents for similar projects.
- A single programmatic document can be prepared to cover those similar projects and to facilitate focused public involvement

Programmatic analysis as part of CYRMP process

- PROs:
 - A streamlined Determination of NEPA adequacy (DNA) can be used to authorize specific projects.
 - BMPs/SOPs included in RMP to mitigate those expected impacts
- CONs:
 - Workload added to already significant plan development effort
 - Need for good existing resource data and reasonable foreseeable development data

Additional discussion?

- Navigability of watercourses and relationship to minerals ownership/use
- Volumes available within authorized sites
- Site Housekeeping
- Access control
- Update/provide Reclamation Plans
- ACECs
- HazMat sites, naturally occurring asbestos
 - Legacy Solid waste sites, regarding: exploration, unexploded ordinance, landfills, asbestos disposal areas. These areas will be discussed in the CYRMP range of alternatives as likely avoidance areas.