

Mead Treadwell
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520 465.5400 Fax
WWW.LTGOV.ALASKA.GOV



530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460 269.0263
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Gary Mendivil, AAC Contact
Department of Environmental Conservation

FROM: Scott Meriwether
Special Assistant
907.465.3509

A handwritten signature in black ink, appearing to be "SM", written over the name and title of the sender.

DATE: February 6, 2013

RE: Filed Permanent Regulations: Department of Environmental Conservation

Regulations re: application of pesticides on state-owned or state-leased property: 18 AAC 90.500; 18 AAC 90.640 - 18 AAC 90.650

Attorney General File: JU2012200148

Regulation Filed: 2/5/2013

Effective Date: 3/7/2013

Print: 205, April 2013

cc with enclosures:

Linda Miller, Department of Law
Robert Pearson, Administrative Regulation Review Committee
Judy Herndon, LexisNexis

JU2012200148

ORDER ADOPTING CHANGES TO REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The attached 5 pages of regulations, dealing with 18 AAC 90, Pesticides, and Integrated Pest Management Plans are adopted and certified to be a correct copy of the regulation changes that the Department of Environmental Conservation adopts under the authority of AS 37.10.050, AS 37.10.052, AS 41.17.100, AS 44.46.025, AS 46.03.020, AS 46.03.320, AS 46.03.330, and AS 46.03.730, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Environmental Conservation paid special attention to the cost to private persons of the regulatory action being taken.

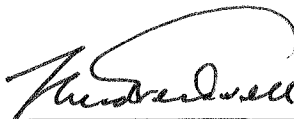
The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

DATE: January 22, 2013
Anchorage, Alaska


Larry Hartig, Commissioner

FILING CERTIFICATION

I, Mead Treadwell, Lieutenant Governor for the State of Alaska, certify that on February 5, 2013, at 4:55 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.


Mead Treadwell, Lieutenant Governor

Effective: March 7, 2013.

Register: 205, April 2013.

18 AAC 90.500 is repealed and readopted to read:

18 AAC 90.500. Permit for certain public pesticide programs or projects. Except as provided in 18 AAC 90.510, the state or a borough or city of any class may not, without first obtaining a permit issued by the department, initiate a public pesticide program or project that affects property owned separately by two or more persons. (Eff. 2/15/1998, Register 145; am 3/31/2002, Register 161; am 11/30/2003, Register 168; am 9/30/2007, Register 183; am 3/7/2013, Register 205)

Authority: AS 46.03.010 AS 46.03.320 AS 46.03.730
 AS 46.03.020 AS 46.03.330

18 AAC 90 is amended by adding new sections to read:

18 AAC 90.640. Pesticide applications on state land. (a) Except as provided under 18 AAC 90.500 and 18 AAC 90.505, the application of one or more pesticides on land owned or leased by an agency of the state, or on a right-of-way managed by the agency, is authorized if

(1) the application follows an integrated pest management plan appropriate for the pest of concern in accordance with 18 AAC 90.645, and adopted by the agency applying a pesticide;

(2) the integrated pest management plan is published on the department's website;

(3) not later than 30 days before the application, or 30 days before the first application of a multi-application project, notification has been provided by mail, return receipt requested, to owners of public water systems if the application will occur within 200 feet of the

water source; in this paragraph, "public water system" has the meaning given in 18 AAC 80.1990;

(4) a pesticide will be applied by an applicator certified by the department;

(5) public notice of the application is provided in accordance with (b) of this section;

(6) the department is notified not later than 15 days before an application; notification is required under this paragraph before each application of a multi-application project;

(7) the person in charge described in 18 AAC 90.650 keeps an accurate written record of each application of each pesticide for at least two years after that use; the record must be available to the department upon request and must contain

(A) the information listed in 18 AAC 90.415(2); and

(B) a record of all notifications issued under (a)(3) and (6) and (b) of this section;

(8) for each pesticide applied to more than a total of 20 acres in a calendar year, the person in charge described in 18 AAC 90.650 posts a report on the agency's website that describes the complete product name, EPA registration number, quantity of mixed pesticide applied, and location of each application; and

(9) the department is granted access to the property at reasonable times without prior approval during pesticide applications.

(b) If specific notice requirements under 18 AAC 90.625 or 18 AAC 90.630 do not apply, the agency applying a pesticide must publish two consecutive notices of the pesticide

application in a newspaper of general circulation in the affected area. The notice must be completed not later than 30 days before application, or 30 days before the first application of a multi-application project, and must include

- (1) the location of the proposed activity;
- (2) the complete name and EPA registration number of each pesticide to be used;
- (3) the target pest for the pesticide application;
- (4) the method of applying each pesticide; and
- (5) how the public can receive more information.

(c) The agency may perform multiple applications of one or more pesticides during one calendar year. Before the first application of the year during a multi-application project, notice must be provided under (a)(3) and (b) of this section. The notice must also provide an approximate number of applications for the proposed project.

(d) For the purposes of this section, multiple applications of one or more pesticides are considered a single public pesticide program or project if each application of each pesticide

- (1) is intended to control the same pest or group of pests;
- (2) is conducted in the same calendar year;
- (3) is conducted by the same agency;
- (4) uses only the pesticides designated in a single integrated pest management plan, and uses those pesticides at the same or a similar concentration, within 10 percent; and
- (5) is applied using the same or a similar method.

(e) The following pesticide applications on state land are not subject to the requirements of this section:

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- (1) application of antimicrobial pesticides;
- (2) application of pesticides on a total of less than one acre of land during a calendar year; and
- (3) application of pesticides inside buildings or structures. (Eff. 3/7/2013)

Register 205)

Authority: AS 46.03.010 AS 46.03.320 AS 46.03.730
AS 46.03.020 AS 46.03.330

18 AAC 90.645. Integrated pest management plan. An integrated pest management plan must establish a procedure for the use of one or more pesticides in a manner that poses the least possible hazard to people, property, and the environment, by using pesticides only after nonchemical practices, sanitation, and other preventive methods have failed or are impractical. The integrated pest management plan must include a description of

- (1) the preventive methods used to keep pest problems from occurring;
- (2) the activities to monitor for the presence of pests;
- (3) the thresholds for allowable pest presence;
- (4) when appropriate, the use of mechanical and physical controls to reduce pest presence;
- (5) the complete name and EPA registration number of each pesticide product used when determined necessary under the integrated pest management plan; and
- (6) the identity of the person in charge described in 18 AAC 90.650. (Eff.

3/7/2013, Register 205)

Authority: AS 46.03.010 AS 46.03.320 AS 46.03.730
AS 46.03.020 AS 46.03.330

18 AAC 90.650. Person in charge. The agency initiating a public pesticide program or project shall identify a person in charge to oversee pest control. That person shall

- (1) develop and implement an integrated pest management plan in accordance with 18 AAC 90.645;
- (2) ensure compliance with the integrated pest management plan;
- (3) review and update the integrated pest management plan every two years;
- (4) act as the point of contact for information on the public pesticide program or project for the department and for the public; and
- (5) when appropriate under the integrated pest management plan, approve the use of pesticides and ensure that they are used in compliance with this chapter. (Eff. 3/7/2013, Register 205)

Authority: AS 46.03.010 AS 46.03.320 AS 46.03.730
AS 46.03.020 AS 46.03.330