

SB

142

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 3/12/03

FURTHER:

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Resources Committee considered SENATE BILL NO. 142

SB 142 DNR LEAD RESOURCE DEVELOPMENT PROJECTS

"An Act designating the Department of Natural Resources as lead agency for resource development projects; making conforming amendments; and providing for an effective date."

and recommends:

be replaced with _____ CS SB142 (RES)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DEC	3/3/03		✓	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DNR	3/11/03	✓	✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>Ben Stearns</i>	✓			
<i>Tom Pharo</i>	✓			
<i>Paul [Signature]</i>	✓			
<i>[Signature]</i>			✓	
CHAIR: <i>[Signature]</i>	✓			

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 142
(S) Publish Date: 3/12/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title: Designating Dept. of Natural Resources as BRU: Resource Development
lead agency for resource development projects Component: Development Special Projects
Sponsor: Rules
Requester: Governor Component No.: 2039

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 36.2

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Funding for this legislation is included in the FY04 Governor's operating budget request. Under this legislation, DNR will establish an Office of Project Management and Permitting. This office will lead and coordinate all matters relating to the state's review and authorization of resource development projects. The purpose of the office is to facilitate and expedite resource development of large projects by coordinating and streamlining the permitting activities of all state agencies with authority over a project. To accomplish this DNR is requesting funding to establish the office and develop the program base for an on-going program. DNR is requesting five positions that will serve as project managers and coordinators.

Prepared by: Dick LeFebvre, Deputy Commissioner Phone: 269-8427
Division: Commissioner's Office Date/Time: 3/11/2003
Approved by: Tom Irwin, Commissioner Date: 3/11/2003
Agency: Natural Resources

FISCAL NOTE

**STATE OF ALASKA
2003 LEGISLATIVE SESSION**

BILL NO. SB 142 FN #1

ANALYSIS CONTINUATION

These positions will be responsible for negotiating agreements and managing the overall state project review and permitting activities of all agencies with jurisdiction over a project. These positions will work with other state and federal agencies and local government to facilitate review and permitting.

Funding for the remainder of FY03 (May and June) is requested in the amount of \$36.2. This allows DNR to establish two of the requested positions to get the office started and begin the effort of streamlining the permitting process. Position costs are estimated at \$7.8/month per position for a total of \$31.2. Additional start up costs for space and computers are estimated at \$5.0.

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 142
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DEC
Title DNR lead for Resource Development Projects BRU Administrative Services
Component Office of the Commissioner
Sponsor Rules
Requester Senate Resources Component No. 633

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the department.

Prepared by: Mary Siroky, Legislative Liaison Phone 465-5355
Division Statewide Public Services Date/Time 3/31/03 11:28 AM
Approved by: Kurt Fredriksson, Deputy Commissioner Date 3/31/2003
Agency Department of Environmental Conservation



SENATOR SCOTT OGAN Alaska State Legislature

Senate District H Lazy Mountain * Butte * Chugiak * Peters Creek
Knik-Goose Bay * Big Lake * Houston * Willow * Talkeetna * Trapper Creek

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Senator_Scott_Ogan@legis.state.ak.us

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FACSIMILE TRANSMITTAL SHEET

TO: <u>Kathryn Kurtz</u>	FROM: <u>Linda Hay</u>
COMPANY:	DATE: <u>4-17-03</u>
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER: <u>1</u>
PHONE NUMBER:	RE:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Please send over the final version of CSSB 142 (RES)

23-GS 10701D Kurtz 4-15-03

as soon as possible.

Thank you.
Linda Hay

23-GS1070D
Kurtz
4/15/03

CS FOR SENATE BILL NO. 142(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act designating the Department of Natural Resources as lead agency for resource
2 development projects; making conforming amendments; and providing for an effective
3 date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 38.05.020(b) is amended to read:

6 (b) The commissioner may

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

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

- 1 (3) review any order or action of the director;
- 2 (4) exercise the powers and do the acts necessary to carry out the
- 3 provisions and objectives of this chapter;
- 4 (5) notwithstanding the provisions of any other section of this chapter,
- 5 grant an extension of the time within which payments due on any exploration license,
- 6 lease, or sale of state land, minerals, or materials may be made, including payment of
- 7 rental and royalties, on a finding that compliance with the requirements is or was
- 8 prevented by reason of war, riots, or acts of God;
- 9 (6) classify tracts for agricultural uses;
- 10 (7) after consulting with the Board of Agriculture and Conservation
- 11 (AS 03.09.010), waive, postpone, or otherwise modify the development requirements
- 12 of a contract for the sale of agricultural land if
- 13 (A) the land is inaccessible by road; or
- 14 (B) transportation, marketing, and development costs render
- 15 the required development uneconomic;
- 16 (8) reconvey or relinquish land or an interest in land to the federal
- 17 government if
- 18 (A) the land is described in an amended application for an
- 19 allotment under 43 U.S.C. 1617; and
- 20 (B) the reconveyance or relinquishment is
- 21 (i) for the purposes provided in 43 U.S.C. 1617; and
- 22 (ii) in the best interests of the state;

23 **(9) lead and coordinate all matters relating to the state's review**
 24 **and authorization of resource development projects.**

25 * Sec. 2. AS 41.17.085 is amended by adding a new subsection to read:

26 (c) An operator may apply through the commissioner for permits required by
 27 other state agencies to operate on forest land. The applications may be forwarded to
 28 the commissioner of environmental conservation for procedures under AS 46.35. The
 29 commissioner shall notify the operator of the action taken.

30 * Sec. 3. AS 46.03.020 is amended by adding a new paragraph to read:

31 (13) after consultation with other state agencies and local government

*put back
in (a)*

*put back
in (11)*

??
}

officials, identify and propose for addition or deletion, by regulation, other licenses, permits, or authorizations for which the provisions of AS 46.35 are applicable.

Sec 2

* Sec. 4. AS 46.03.880 is amended by adding a new subsection to read:

(b) Notwithstanding AS 44.62.330(a)(44), adjudicatory hearing procedures to review permit decisions under this chapter need not conform to AS 44.62.330 - 44.62.630 (Administrative Procedure Act).

Sec 3

* Sec. 5. AS 46.04 is amended by adding a new section to article 3 to read:

Sec. 46.04.890. Applicability of Administrative Procedure Act.

Notwithstanding AS 44.62.330(a)(44), adjudicatory hearing procedures to review permit decisions under this chapter need not conform to AS 44.62.330 - 44.62.630 (Administrative Procedure Act).

* Sec. 6. AS 46.35 is amended by adding new sections to read:

Sec. 46.35.011. Legislative determination. The legislature determines that the substantial burdens placed upon persons who are proposing to undertake certain types of projects in this state through requirements to obtain numerous permits and related documents from various federal, state, and local agencies are undesirable and should be alleviated. The legislature further finds that present methods for obtaining public views relating to applications to state and local agencies pertaining to these projects are cumbersome and place undue hardships on members of the public with the result that the public ability to express its views is hindered and not facilitated.

puts back in. Chapter 35

Sec. 46.35.021. Purpose. It is the purpose of AS 46.35.011 - 46.35.211 to

(1) establish a simplified procedure to assist those who, to satisfy the requirements of federal, state, and local law, must obtain a permit from one or more federal, state or local government agencies by establishing a procedure to coordinate the administrative decision-making process;

(2) provide to the members of the public a better opportunity to present their views on proposed uses of the state's natural resources and related environmental concerns before federal, state, and local agencies decide on applications for permits;

(3) provide to applicants for the use of the air, land, or water resources of the state a greater degree of certainty on permit requirements of federal, state, and local governments;

1 (4) increase the coordination between federal, state, and local agencies
2 in their administration of programs affecting the state's air, land, and water resources;

3 (5) establish an opportunity for members of the public to obtain
4 information pertaining to requirements of federal, state, and local law that must be
5 satisfied before undertaking a project in this state.

6 **Sec. 46.35.031. Master application.** (a) A person proposing a project that
7 requires the issuance of one or more permits may submit a master application to the
8 department requesting the issuance of all permits and documents necessary before the
9 construction and operation of the project in the state. The master application must be
10 on a form established by the department and must contain sufficient information as to
11 the location and the nature of the project, including discharge of wastes and use of or
12 interference with natural resources of the state.

13 (b) Upon receipt of a properly completed master application, the department
14 shall immediately forward a copy of the application to all heads of executive
15 departments of the state and the chief elected official of all municipalities in which a
16 portion of the project is proposed to be constructed, together with the date by which
17 the agency shall respond to the master application.

18 (c) Each agency notified shall respond in writing to the department by the
19 specified date, not exceeding 15 days from receipt, as determined by the department,
20 advising

21 (1) whether the agency has an interest in the master application;

22 (2) if the response to (1) of this subsection is affirmative, the permit
23 program under the agency's jurisdiction to which the project described in the master
24 application is pertinent; and

25 (3) whether, in relation to the master application, a public hearing as
26 provided in AS 46.35.051 and 46.35.061 would be in the public interest.

27 (d) Each notified agency that (1) responds within the specified date that it does
28 not have an interest in the master application; or (2) does not respond as required
29 within the specified date, may not subsequently require a permit of the applicant for
30 the project described in the master application unless the master application contained
31 false, misleading, or deceptive information, or other information or lack of

1 information that would reasonably lead an agency to misjudge its interest in the master
2 application.

3 (e) The department shall submit application forms relating to permit programs
4 identified in affirmative responses under (c) of this section to the applicant with a
5 direction to complete and return them to the department within a reasonable time as
6 specified by the department.

7 (f) When the applications, properly completed, have been returned to the
8 department, each of the applications shall be transmitted to the appropriate state
9 agency for the performance of its responsibilities of decision making in accordance
10 with the procedures of AS 46.35.011 - 46.35.211.

11 **Sec. 46.35.041. Withholding final permit.** When it appears that the
12 applicant does not own or control the land or water necessary for the siting of the
13 project in the master application, the department shall continue the proceedings under
14 AS 46.35.011 - 46.35.211 but may withhold the final permit until the applicant has
15 obtained ownership or control of the land or water necessary for the site of the project.
16 If the applicant has applied for land or water necessary for the siting of the project
17 from the state or a municipality of the state, the state agency or municipality shall
18 promptly adjudicate the application for the land or water filed by applicant.

19 **Sec. 46.35.051. Notice of proposed project.** (a) The department, within 30
20 days after transmittal under AS 46.35.031(f), shall cause a notice to be published at the
21 applicant's expense once each week for three consecutive weeks in a newspaper of
22 general circulation within each municipality in which the project is proposed to be
23 constructed or operated. The notice must describe the nature of the master application,
24 including, with reasonable specificity, the project proposed, its location, the various
25 permits or documents applied for, and the state agency having jurisdiction over each
26 permit or document. Except as provided in (c) of this section, the notice must also
27 state the time and place of the public hearing, which shall be scheduled not less than
28 20 or more than 30 days after the date of last publication of the notice. It must further
29 state that a copy of the master application and a copy of all applications for the project
30 are available for public inspection in the regional office of the department nearest to
31 where the project is proposed to be constructed or operated, as well as at the

1 department office in the capital and any other locations the department may designate
2 in the notice.

3 (b) If no part of the project is to be constructed or operated in a municipality,
4 or if there is no regularly published newspaper of frequency at least weekly, the public
5 notice shall be published in a newspaper in the judicial district in which the project is
6 proposed.

7 (c) If the responses received by the department from state agencies under
8 AS 46.35.031(f) unanimously state the position that a public hearing concerning a
9 master application is not necessary in the public interest, and the department, after a
10 careful evaluation, taking into consideration all interests involved, including the
11 opportunity for members of the public to present views, agrees, the provisions of (a) of
12 this section pertaining to the time and place of a public hearing need not be included in
13 the notice. In that case the notice must state that members of the public may present
14 their views and supporting materials in writing to the department regarding any of the
15 permits applied for within 30 days after the last date of publication of the notice in a
16 newspaper.

17 **Sec. 46.35.061. Public hearing.** (a) Except as provided in AS 46.35.051(c),
18 before a final decision is made on a permit application relating to a project subject to
19 the procedures of AS 46.35.011 - 46.35.211, a public hearing shall be held in or near
20 the municipality in which all or a major part of the proposed project is to be
21 constructed or operated, or, if the project is not to be constructed or operated in a
22 municipality, the hearing shall be held at a location reasonably convenient to the site
23 of the proposed project. The hearing shall be held in accordance with the notice given
24 under AS 46.35.051(a). At the hearing the applicant may submit any relevant
25 information and material in support of the applications, and members of the public
26 may present relevant views and supporting materials relating to any or all of the
27 applications being considered.

28 (b) Each state agency having an application for a permit before it under
29 AS 46.35.051(a) shall be represented at the public hearing by its commissioner or a
30 designee of the commissioner. The commissioner of the department, a designee of the
31 commissioner, or a hearing officer appointed by the governor, shall chair the hearing;

1 however, the representative of any state agency other than the department within
2 whose jurisdiction a specific application lies shall conduct the portion of the hearing
3 pertaining to submission of information, views, and supporting materials that concern
4 that application. The chair may continue a hearing from time to time and place to
5 place.

6 (c) The provisions of AS 44.62 do not apply to the hearing conducted under
7 this section, and the hearing shall be conducted for the purpose of obtaining
8 information for the assistance of state agencies and not as a trial or adversary
9 proceeding.

10 (d) Federal and local government agencies may be represented at the hearings,
11 at their option, by their chief executive officer or the officer's designee.

12 (e) The hearing shall be electronically recorded, and copies of the recording
13 shall be made available to state, federal and local agencies upon request.

14 **Sec. 46.35.071. Final decision.** (a) Upon completion of the public hearing
15 the chair, after consultation with the state agency representatives, shall establish the
16 date by which all state agencies shall forward their final decisions on applications
17 before them to the department. The date established shall be within the following 90-
18 day period after the public hearing.

19 (b) In a situation where a notice is provided under AS 46.35.051(c), the
20 department shall, 30 days after the last notice publication in the newspaper, submit a
21 copy of all views and supporting material received by it to each agency as described in
22 the notice as having an application before it. At the same time, the department shall
23 notify each state agency, in writing, of the date by which final decisions on
24 applications shall be forwarded to the department. That date shall be not later than 90
25 days after the date of last publication of the notice, but may be extended by the
26 department for reasonable cause.

27 (c) Each final decision shall state the basis for the conclusion together with a
28 final order denying the application for a permit or granting it, subject to a condition of
29 approval as the deciding agency may have the power to impose. An agency that
30 denies an application shall, with its final decision denying the application, provide a
31 written summary suggesting alternate means of completing the project, or, if no

1 alternative is feasible, the agency shall provide a written summary of its reasons for
2 that conclusion.

3 (d) As soon as all final decisions are received by the department under (b) and
4 (c) of this section, the department shall incorporate them, without modification, into
5 one document and transmit it to the applicant either personally or by registered mail.

6 (e) Each state agency having jurisdiction to approve or deny an application for
7 a permit shall have the power vested in it by law to make such determinations.
8 Nothing in AS 46.35.031 - 46.35.071 lessens or reduces these powers, and
9 AS 46.35.031 - 46.35.071 modify only the procedures to be followed in the carrying
10 out of the powers.

11 (f) A state agency, in the performance of its responsibilities of decision
12 making under AS 46.35.011 - 46.35.211, may request or receive additional
13 information from an applicant and others before or after the public hearing.

14 **Sec. 46.35.081. Withdrawal of agency from participation.** (a) A state
15 agency responding affirmatively under AS 46.35.031(c) may withdraw from
16 participation in the processing provided in AS 46.35.031 - 46.35.071 at any time, by
17 written notification to the department, if it subsequently appears to the state agency
18 that it has no permit programs under its jurisdiction applicable to the project.

19 (b) A decision by a state agency to withdraw from the proceeding is
20 irreversible, and the state agency may not subsequently require a permit of the
21 applicant for the project described in the master application unless the master
22 application contained false, misleading, or deceptive information, or other information
23 or lack of information which would reasonably lead an agency to misjudge its interest
24 in the master application.

25 **Sec. 46.35.091. Administrative and judicial review.** (a) A person aggrieved
26 by a final decision issued under AS 46.35.071(d) may file a notice of appeal with the
27 commissioner requesting an adjudicatory hearing within 30 days of transmittal of the
28 final decision to the person. A failure to file a timely notice of appeal constitutes a
29 waiver of the person's right to review the final decision, unless the failure was due to
30 circumstances beyond the applicant's control.

31 (b) The commissioner shall grant a request for an adjudicatory hearing within

1 20 days of filing of the notice of appeal if the commissioner determines that the notice
2 raises a reasonable issue of fact or law material to the final decision.

3 (c) A hearing officer appointed under AS 44.62.350 shall preside at hearings
4 under this section, rule on the admission and exclusion of evidence, advise the
5 deciding officers on matters of law, and participate in posthearing deliberations.

6 (d) Appeals shall be heard jointly by the commissioner, or a designee, of each
7 agency that rendered a final decision under AS 46.35.071 for which the person
8 requesting the hearing is aggrieved. The commissioner, or the designee, of each
9 agency shall decide only that portion of the appeal that involves that agency.

10 (e) The commissioner, after consultation with other state agencies and local
11 government, shall adopt regulations governing the conduct of adjudicatory hearings
12 under this section. The commissioner may enter into cooperative agreements with
13 local governments and federal agencies for the joint holding of adjudicatory hearings.
14 To the extent feasible, regulations adopted under this section must conform to
15 adjudicatory hearing procedures for the review of permit decisions under AS 46.03
16 and AS 46.04. Notwithstanding AS 44.62.330(a)(44), adjudicatory hearing procedures
17 to review permit decisions under AS 46.35.011 - 46.35.211, or under AS 46.03 or
18 AS 46.04, need not conform to AS 44.62.330 - 44.62.630 (Administrative Procedure
19 Act).

20 (f) A person aggrieved by a final decision of the commissioner under this
21 section may appeal the decision to the superior court in the manner provided by
22 AS 44.62.560 - 44.62.570.

23 **Sec. 46.35.101. Time; extensions.** It is the sense of the legislature that time is
24 of the essence in the processing of applications under AS 46.35.011 - 46.35.211.
25 Whenever a section in AS 46.35.011 - 46.35.211 states a time within which an act or a
26 review is to be completed, the legislature has determined that the time allotted is
27 adequate for a responsive state agency or municipality to complete the act or review. If
28 unusual conditions prevent this from happening, it is the sense of the legislature that
29 minimum extensions of the period established in AS 46.35.011 - 46.35.211 may be
30 granted upon a determination that the delay occurred beyond the control of the
31 reviewing agency or municipality.

1 **Sec. 46.35.111. Application.** Notwithstanding any other provisions of
2 regulation or statute relating to the processing of application for permits, the
3 procedures set out in AS 46.35.011 - 46.35.211 are exclusive for applications filed
4 under AS 46.35.031. The procedures of AS 46.35.011 - 46.35.211 are in lieu of any
5 procedures otherwise provided by law or regulation, and are to be followed by a state
6 agency in ruling upon those applications.

7 **Sec. 46.35.121. Fee schedules.** Fee schedules previously established or
8 authorized by law for an application for a permit continue to apply. The department
9 shall collect the fees and forward them to the appropriate state agency.

10 **Sec. 46.35.131. Compliance with local zoning ordinances and plans.** (a) A
11 permit for a project filed under AS 46.35.031 may not be issued unless the application
12 has provided a certification from the appropriate local government that the project is in
13 compliance with the zoning ordinances and associated comprehensive plans
14 administered by the local government regarding the project. If the local government
15 has no ordinances or plans, the local government shall certify that fact. A local
16 government may accept applications for certification under this section and shall rule
17 upon them within 30 days. A local government may impose stipulations of
18 performance in its approval, but, upon certification, the local government may not
19 change the zoning ordinances as to the proposed project until the procedures of
20 AS 46.35.011 - 46.35.211, including an appeal, are completed.

21 (b) Approval of an application for certification as provided in this section does
22 not eliminate any requirements of ordinances administered by a local government. A
23 ruling by local government denying an application for certification is not appealable
24 under AS 46.35.011 - 46.35.211, except that the denial of an application for
25 certification under (a) of this section does not preclude the applicant from filing an
26 application under a different statute or procedure.

27 **Sec. 46.35.141. Applicability of other laws.** AS 46.35.011 - 46.35.211 do
28 not modify in any manner the applicability of a land use law or regulation or local
29 zoning ordinances to land of a state agency.

30 **Sec. 46.35.151. Regulations.** The department may adopt regulations to
31 implement the provisions of AS 46.35.011 - 46.35.211.

1 **Sec. 46.35.161. Permit requirement information centers.** (a) The
2 department shall establish permit requirement information centers at the
3 commissioner's office and in all of its regional offices and may enter into an
4 agreement with the governing body of any municipality having a population of more
5 than 1,000 persons to establish and maintain local information centers to provide
6 information to the public, in readily understandable form, regarding the requirements
7 of federal, state, and local governments for permits which must be acquired before
8 initiating projects in this state and to provide assistance in the completion of permit
9 applications.

10 (b) Each regional office of the department and other offices as the department
11 may establish shall provide a master application to any person requesting it. The
12 department shall provide information, forms, instructions, and assistance in the
13 completion of a master application under AS 46.35.011 - 46.35.211 to a person
14 requesting assistance.

15 **Sec. 46.35.171. Conflicts and compliance with federal requirements.** (a)
16 If any part of AS 46.35.011 - 46.35.211 is found in conflict with federal requirements
17 regarding the allocation of federal funds to the state, that part of AS 46.35.011 -
18 46.35.211 is inoperative to the extent of the conflict regarding the agencies affected,
19 and the determination does not affect the operation of the remainder of AS 46.35.011 -
20 46.35.211.

21 (b) The department, to the extent necessary to comply with procedural
22 requirements of federal law relating to permit systems operated by the state, may
23 modify the notice, timing, hearing, and related procedural matters provided in
24 AS 46.35.011 - 46.35.211.

25 **Sec. 46.35.201. Definitions.** In AS 46.35.011 - 46.35.211,

26 (1) "commissioner" means the commissioner of environmental
27 conservation;

28 (2) "department" means the Department of Environmental
29 Conservation;

30 (3) "local government" means a city or borough including a unified
31 municipality;

1 (4) "permit" means each of the following licenses, permits or
2 authorizations required to be obtained from a state agency before constructing or
3 operating a project in the state, or any other license, permit or authorization which
4 may be designated by the commissioner:

- 5 (A) emission control permit - AS 46.14, 18 AAC 50.120;
6 (B) open burning permit - AS 46.03.020, 18 AAC 50.120;
7 (C) burning permit during fire season - AS 41.15.050, 11
8 AAC 92.010;
9 (D) waste water disposal permit - AS 46.03.100, 18 AAC 72;
10 (E) solid waste disposal permit - AS 46.03.100, 18 AAC 60;
11 (F) brine or other salt water waste disposal permit -
12 AS 31.05.030, 11 AAC 22.250;
13 (G) tidelands permit - AS 38.05.820, 11 AAC 62.710;
14 (H) tidelands right-of-way or easement permit -
15 AS 38.05.820, 11 AAC 62.810;
16 (I) authorization for tidelands transportation - AS 38.05.110,
17 11 AAC 76.205;
18 (J) tide and submerged lands prospecting permit -
19 AS 38.05.250;
20 (K) mineral and geothermal prospecting permits -
21 AS 38.05.145;
22 (L) coal development permit - AS 27.20.010, 11 AAC 46.010;
23 (M) dam construction permit - AS 46.15.040, 11 AAC
24 72.060;
25 (N) water well permit - AS 31.05.030, 11 AAC 22.140;
26 (O) permit to appropriate water - AS 46.15.040, 11 AAC
27 72.050;
28 (P) permit for use of timber or materials - AS 38.05.110, 11
29 AAC 76.185;
30 (Q) special material use permit - AS 38.05.115, 11 AAC
31 76.540;

- 1 (R) special land use permit - AS 38.05.035, 11 AAC 58.210;
2 (S) limited personal use permit - AS 38.05.820, 11 AAC
3 62.820;
4 (T) preferred use permit - AS 46.15.040, 11 AAC 72.160;
5 (U) surface use permit - AS 38.05.255, 11 AAC 86.600;
6 (V) miscellaneous state land use permit - AS 38.05.035, 11
7 AAC 96.010;
8 (W) anadromous fish protection permit - AS 16.05.870, 5
9 AAC 95.100;
10 (X) critical habitat area permit - AS 16.20.520 - 16.20.530;
11 (Y) state game refuge land permit - AS 16.20.050 -
12 16.20.060;
13 (Z) state park incompatible use permit - AS 41.21.020, 11
14 AAC 18.010;
15 (AA) pesticides permit - AS 46.03.320, 18 AAC 90;
16 (BB) surface oiling permit - AS 46.03.740, 18 AAC 75;
17 (CC) encroachment permit - AS 19.25.200;
18 (DD) utility permit - AS 19.25.010;
19 (EE) driveway permit - AS 19.05.020, 17 AAC 10.020;
20 (FF) access roads permit - AS 41.21.020, 11 AAC 18.020;
21 (GG) right-of-way and easement permits - AS 38.05.850, 11
22 AAC 58.200;
23 (HH) right-of-way permit - AS 38.05.850;
24 (5) "person" means an individual, municipal, public, or private
25 corporation, or other entity, and includes a state agency and a local government;
26 (6) "processing" and "processing of applications" means the entire
27 process followed in relation to the making of decisions on an application for a permit
28 and review of it as provided in AS 46.35.031 - 46.35.081;
29 (7) "project" means any new activity or expansion of or addition to an
30 existing activity, fixed in location, for which permits are required before construction
31 or operation;

1 (8) "state agency" means a state department, commission, board or
 2 other agency of the state; for the purposes of AS 46.35.011 - 46.35.211, "state agency"
 3 also means a local or regional air pollution control authority established under
 4 AS 46.14.400.

5 **Sec. 46.35.211. Short title.** AS 46.35.011 - 46.35.211 may be cited as the
 6 Environmental Procedures Coordination Act.

*old
 Sec 4*

7 * **Sec. 7.** AS 41.17.085(a); AS 46.03.020(11); AS 46.35.010, 46.35.020, 46.35.030,
 8 ~~46.35.040, 46.35.050, 46.35.060, 46.35.070, 46.35.080, 46.35.090, 46.35.100, 46.35.110,~~
 9 ~~46.35.120, 46.35.130, 46.35.140, 46.35.150, 46.35.160, 46.35.170, 46.35.200, and 46.35.210~~
 10 are repealed.

11 * **Sec. 8.** AS 38.05.020(b)(9); AS 46.03.880(b); and AS 46.04.890 are repealed.

12 * **Sec. 9.** Sections 1, 4, 5, and 7 of this Act take effect immediately under AS 01.10.070(c).

13 * **Sec. 10.** Sections 2, 3, 6, and 8 of this Act take effect July 1, 2007.

*old
 language*

L



SENATOR SCOTT OGAN Alaska State Legislature

Senate District H Lazy Mountain * Butte * Chugiak * Peters Creek
Knik-Goose Bay * Big Lake * Houston * Willow * Talkeetna * Trapper Creek

State Capitol, Room 103, Juneau Alaska 99801 * (907) 465-3878 * 1 (800) 862-3878 * Fax (907) 465-3265
Senator_Scott_Ogan@legis.state.ak.us Http://www.akrepublicans.org/ogan

FACSIMILE TRANSMITTAL SHEET

TO: <i>heg legal</i>	FROM: <i>Linda Hay</i>
COMPANY:	DATE: <i>4-12-03</i>
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
PHONE NUMBER:	RE: <i>SB142 23-651070\A</i>

- URGENT
- FOR REVIEW
- PLEASE COMMENT
- PLEASE REPLY
- PLEASE RECYCLE

NOTES/COMMENTS:

SB142 moved out of Senate Resources on Friday with a conceptual amendment. On page 3 new section, please insert @ the appropriate place language that will create a sunset date of 6/30/07 for this piece of legislation. Please send over a draft for review or call if there are questions

Department of Natural Resources
SB 142, DNR Lead Agency for resource development projects
Senate Resource Hearing, 4/9/03

The purpose of the bill is to better facilitate and expedite resource development in Alaska. In recent years, the laws governing resource development have proliferated, and there are more agencies than ever with permitting authority over large resource development projects. Resource development should not be held up by the sheer complexity of government. This bill is intended to alleviate that problem.

The Department of Natural Resources (DNR) presently has statutory authority as lead agency for mining projects. The bill authorizes DNR to lead and coordinate the permitting activities of all agencies with jurisdiction over all resource development projects and repeals existing statutes in AS 46.35 regarding permit coordination.

DNR will establish the Office of Project Management and Permitting to carry out its lead responsibilities. This office will lead and coordinate all matters relating to the state's review and authorization of resource development projects. The purpose of the office is to facilitate and expedite resource development of large projects by coordinating and streamlining the permitting activities of all state agencies with authority over a project. The results of the DNR's efforts as lead agency will be better communication, better coordination among departments, more efficient permitting, consolidated public process, and stable funding for the state's permitting process.

The repeal of the AS 46.35 provision necessitates the relocation of unrelated language specific to the Department of Environmental Conservation permit decision to more appropriate locations in AS 46.03 and AS 46.04 as set out in Sections 2 and 3 of the bill.

SB 142/ HB 192

Sectional Analysis

8 April, 2003

Sec. 1 -

This section is simple and self-explanatory.

Sec. 2 & Sec. 3 -

These two sections preserve, rather than change, current law. One of the current statutes to be deleted under Sec. 4, AS 46.35.090, includes this same exemption of ADEC permit decisions from the APA hearing procedures. *See* AS 46.35.090 (e). Sections 3 and 4 of this bill simply transplant that provision to AS 46.03 and AS 46.04, respectively. Detailed procedures governing ADEC's hearings are set out at 18 AAC 15.195 *et seq.*

Sec. 4 -

This section repeals almost all of the current Environmental Procedures Coordination Act, AS 46.35. Enacted in 1977, that Act gave ADEC the role of coordinating the state's authorization of projects requiring multiple permits from different agencies. However, in practice, the Act has seen little or no use. This bill would repeal that Act to reflect that DNR, rather than DEC, should assume the lead agency role. This section also deletes two other provisions in existing law that reference AS 46.35.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
COMMISSIONER BALLARD SB 142 TESTIMONY
SENATE RESOURCES COMMITTEE

Governor Murkowski is committed to enhancing Alaska's economy through resource development. He is equally committed to protecting Alaska's environment. A strong economy will generate the revenue base to continue funding our important regulatory and development projects. Without a strong economy we cannot hope to have a strong government.

I have been before this committee to speak on behalf of other governor's bills and have opened with that same message. It is a fundamental principle to this administration and bears repeating.

In any undertaking, be it your home, your office, a small business or a large complex organization like state government – critical path planning is fundamental; without it time is wasted. This bill, SB 142, is about critical path planning. It directs the Department of Natural Resources to lead and coordinate resource development projects. It directs the permitting agencies to sequence actions and requirements so time lines are met. Armed with sequenced and prioritized project plans we can insure that each of our own department's permitting requirements are met without delay.

The genesis of this bill goes back several years. The resource agencies came together to coordinate permitting issues on large mine projects. They discussed, planned and communicated, and found that the permitting process became more efficient. It was not only more efficient for the agencies; it was more productive for industry. Why? Because, we, the permitting agencies, identified our regulatory requirements in a systematic and sequenced manner insuring that the most critical needs and timelines for the project were established. Because we, DNR, Fish and Game and DEC had identified and articulated the critical points and times in our regulatory processes, industry understood its responsibilities and provided the needed information on time. Additionally by evaluating its regulatory responsibilities as a whole industry can gain what synergies are possible.

Critical path planning provides efficiencies for the departments as well. We hold joint meetings. We use staff resources efficiently. Industry provides information we can all use because we agreed, at the outset, on data standards acceptable to all.

The state's citizens benefit from this approach. The agencies hold joint public meetings giving concerned citizens the entire regulatory picture. Without critical path planning, public participation happens based in the public notice requirement of individual permits, which can be months even years apart depending on the project.

It is also important to understand what SB 142 does not do. SB 142 bill does not change the protective standards that the state has developed and fine-tuned over the last decade. It does not change the Department of Environmental Conservation's permitting requirements nor its regulatory discretion. This bill simply insures critical path planning.

Commissioner Irwin Testimony
SB 142, DNR Lead Agency
Senate Resources, 4/9/03

Mr. Chairman, members of the Committee, my name is Tom Irwin. I am the Commissioner of the Department of Natural Resources. I'd like to introduce those who are with me today, Commissioner Ballard from DEC, Dick LeFebvre, DNR Deputy Commissioner, Cam Leonard from the Department of Law, on teleconference, Mary Siroky and Janet Burleson Baxter, DEC's and DNR's Legislative Liaisons. I appreciate the opportunity to testify in support of Senate Bill 142, An Act designating the Department of Natural Resources as lead agency for resource development projects.

The purpose of this bill is to help facilitate and expedite resource development in Alaska. This bill would specifically provide the Commissioner of the Department of Natural Resources with statutory authority under AS 38.05.020(b) to lead and coordinate all matters relating to the state's review and authorization of resource development projects.

As the state focuses more on development of its resources the department needs clear and explicit authority to carry out its role to lead and coordinate the state's review and authorization of resource development projects. Even though the department has and will continue to serve as lead for mining projects, the department's authority to serve as lead agency for other resource development projects is not as explicit. This bill will provide the necessary clarity as the state moves forward in the development of its resources.

The primary responsibility in the Department of Natural Resources for carrying out lead agency coordination functions will rest with the Office of Project Management and Permitting. This new Office within the department includes the project management function and the Alaska Coastal Zone Management program.

Large resource development projects, because of their scope and complexity, are more efficiently reviewed and authorized using a lead agency to coordinate and integrate, to the extent possible, the various permitting processes of the agencies involved using the project team approach. Smaller projects, normally less complex and requiring fewer permits, may benefit from lead agency coordination for review but may not require the establishment of a project team.

Resource development projects utilizing the lead coordinating agency and project review team approach will go through a three phase process. Phase I focuses on evaluating a proposed project to determine if the lead agency project team approach would best address the review and permitting needs of the project. Phase II results in establishment of the project team, development of an integrated agency review schedule, delineation of information requirements, and completion of any necessary agreements amongst the agencies and applicant. Phase III is the actual project review and authorization process, including public participation, tailored specifically to the requirements for permitting the project

Additionally, we view this bill as assisting in our efforts to streamline project review and authorization. This bill will help to facilitate:

The state's ability to pull together agencies to address project specific concerns, and to facilitate and expedite the review and authorization process;

A more cohesive working relationship amongst agency representatives;

Better communication, more efficient permitting, consolidated public process where possible, and to assist in integrating the state's process with that of the federal agencies.

Speaking from personal experience, the laws governing resource development have proliferated, and there are now more agencies than ever with permitting authority over resource development projects. Resource development should not be held up by the sheer complexity of government. This bill is intended to help alleviate that problem as this bill would authorize DNR to lead and coordinate the permitting activities of all agencies with jurisdiction over the project.

Thank you for the opportunity to provide our comments in support of this bill.

FRANK H. MURKOWSKI
GOVERNOR

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March 11, 2003

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 107
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill designating the Department of Natural Resources (DNR) as the lead state agency in the permitting of resource development projects in this state.

The purpose of this bill is to facilitate and expedite resource development in Alaska. In recent years, the laws governing resource development have proliferated, and there are now more agencies than ever with permitting authority over large projects. Resource development should not be held up by the sheer complexity of government. This bill is intended to alleviate that problem.

This bill would authorize the DNR to lead and coordinate the permitting activities of all agencies with jurisdiction over the project and would repeal existing statutes in AS 46.35 regarding permit coordination. The result of the DNR's efforts as lead agency will be better communication, more efficient permitting, consolidated public process, and stable funding for the state's permitting process.

The repeal of the AS 46.35 provisions necessitates the relocation of unrelated language, specific to Department of Environmental Conservation permit decisions, to more appropriate locations in AS 46.03 and AS 46.04, as set out in secs. 2 and 3 of the bill.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank H. Murkowski".
Frank H. Murkowski
Governor

THE
FOLLOWING
DOCUMENT(S)
ARE
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- (6) salvage logging;
- (7) vegetative management; and
- (8) fire and flood hazard management.

(b) The commissioner shall adopt regulations specifying the information to be submitted under AS 41.17.090(c) in the detailed plan of operations to enable the division to determine whether the activities comply with the requirements of this chapter.

(c) The commissioner may establish regions, districts, or other subdivisions of forest land in the state in which different regulations apply to reflect varying conditions in the state or to facilitate administration. In adopting regulations, the commissioner shall make appropriate distinctions between public and private land.

(d) The commissioner shall adopt only those regulations necessary to accomplish the purposes of this chapter and shall avoid regulations that increase operating costs without yielding significant benefits to public resources. (§ 1 ch 108 SLA 1978; am § 9 ch 34 SLA 1990)

Effect of amendments. — The 1990 amendment, effective October 1, 1990, rewrote this section.

Sec. 41.17.082. Control of infestations and disease. (a) All forest clearing operations and silvicultural systems shall be designed to reduce the likelihood of increased insect infestation and disease infections that threaten forest resources.

(b) A forest landowner may not conduct or approve timber clearing activities that create conditions fostering outbreaks of infestation or infection that threaten forest resources on forest land belonging to another person. If the commissioner finds, after notice and hearing, that there has been a violation of this subsection, the commissioner may require the forest landowner, at that person's expense, to

(1) remove promptly or cure the conditions fostering outbreaks of infestation or infection; and

(2) undertake environmentally sound, effective, and cost-efficient actions to control the infestation or infection in the immediate vicinity of the improper timber clearing activity.

(c) If a forest landowner does not comply with a final order of the commissioner under (b)(1) or (b)(2) of this section, the commissioner may enter onto the land and undertake the actions ordered and the landowner is liable for the cost of the actions. The commissioner shall deliver to the landowner an itemized statement of expenses incurred.

(d) The commissioner may undertake surveys and appraisals to obtain data on regional insect infestations and disease conditions. Upon a determination that an area is infested with forest insects or infected with diseases injurious to forest resources and that the infestation or infection threatens the forest land or timber of adjacent owners, the commissioner may establish the boundaries of an infestation or infection zone. The commissioner may enter into an agreement with an owner or with a governmental agency to control or suppress infestation or infection within the zone. Upon a determination by the commissioner that insect and disease control work within the zone is no longer necessary or feasible, the commissioner shall terminate the zone. (§ 10 ch 34 SLA 1990)

Sec. 41.17.083. Clearing of forest land for non-timber purposes. A state agency, municipality, or public utility shall determine whether the timber to be removed has significant salvage value before approving or conducting clearing of forest land for purposes other than timber harvest. If the timber has significant salvage value, the agency or utility shall salvage the timber as part of the clearing process. (§ 10 ch 34 SLA 1990)

#1 **Sec. 41.17.085. Permit applications.** (a) An operator may apply through the commissioner for permits required by other state agencies to operate on forest land, which applications may be forwarded to the commissioner of environmental conservation for

procedures under taken.

(b) Where prac agreements with point for federal p

Revisor's notes. — numbered and reorga:

Sec. 41.17.087. owner, or operator imposed by this forester determin to occur because o likely to cause sig agree to the prop variation, a forest The appellants sh

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Sec. 41.17.090. land shall be revie of this chapter an

(b) A forest lan voluntary plan of The purpose of a v to review plans, to provide local knov timber owner, or c

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procedures under AS 46.35. The commissioner shall notify the operator of the action taken.

(b) Where practicable and desirable, the commissioner may enter into cooperative agreements with federal agencies authorizing the department to serve as a collection point for federal permit applications. (§ 1 ch 108 SLA 1978)

Revisor's notes. — Formerly AS 41.17.080(b). Renumbered and reorganized in 1983.

Sec. 41.17.087. Variation from requirements. (a) A forest landowner, timber owner, or operator may propose for a particular activity a variation from a requirement imposed by this chapter or the regulations adopted under this chapter. If the state forester determines that the harm intended to be avoided by the requirement is not likely to occur because of site-specific circumstances relating to the particular activity and is not likely to cause significant harm to fish habitat or water quality, the state forester shall agree to the proposed variation. If the state forester does not agree to the proposed variation, a forest landowner, timber owner, or operator may appeal to the commissioner. The appellants shall conform to the requirement during the pendency of the appeal.

(b) The commissioner shall adopt regulations that specify the standards under which a variation will be granted for harvesting timber within the riparian area of

- (1) a low gradient Type A water body with a width of five feet or less; and
- (2) other appropriate water body types.

(c) A determination by the state forester under (a) of this section and regulations by the commissioner under (b) of this section shall give due deference under AS 41.17.098. (§ 11 ch 34 SLA 1990)

Sec. 41.17.090. Notification of plans to harvest timber. (a) Operations on forest land shall be reviewed under this section for consistency with the policies and provisions of this chapter and regulations adopted under this chapter.

(b) A forest landowner, timber owner, or operator may provide to the commissioner a voluntary plan of operations that describes the long-term plans for timber harvesting. The purpose of a voluntary plan is to give the division and the public an early opportunity to review plans, to identify areas of concern, and to allow the agencies and the public to provide local knowledge and early notice of potential problems to the forest landowner, timber owner, or operator.

(c) Before beginning operations on municipal or private forest land or on state land not managed by the division, the operator shall provide the state forester with a detailed plan of operations. The detailed plan of operations must include

(1) a description of the proposed operations, identifying the land involved and the action proposed in sufficient detail to inform the public of the nature and location of the proposed operations; the description must include a map and must be in a form suitable for duplication;

(2) the name, address, and approving signature of the forest landowner, timber owner, and operator; and

(3) other information required in the regulations adopted under this chapter.

(d) Within five days after receipt of a detailed plan of operations under (c) of this section, the state forester shall distribute the information received under (c) of this section to affected state agencies and coastal districts, and shall distribute the information received under (c)(1) of this section to each member of the public who has asked to receive copies of notifications for the affected area.

(e) Within 30 days after receipt of a detailed plan of operations, the state forester shall review the plan to determine if the operations are consistent with this chapter and regulations adopted under this chapter. Operations may begin under the plan upon the expiration of the 30-day period or upon notice from the state forester that the review has

Sec. 46.03.020. Powers of the department. The department may

- (1) enter into contracts and compliance agreements necessary or convenient to carry out the functions, powers, and duties of the department;
- (2) review and appraise programs and activities of state departments and agencies in light of the policy set out in AS 46.03.010 for the purpose of determining the extent to which the programs and activities are contributing to the achievement of that policy and to make recommendations to the departments and agencies, including but not limited to, environmental guidelines;
- (3) consult with and cooperate with
 - (A) officials and representatives of any nonprofit corporation or organization in the state;
 - (B) persons, organizations, and groups, public and private, using, served by, interested in, or concerned with the environment of the state;
- (4) appear and participate in proceedings before any state or federal regulatory agency involving or affecting the purposes of the department;
- (5) undertake studies, inquiries, surveys, or analyses it may consider essential to the accomplishment of the purposes of the department; these activities may be carried out by the personnel of the department or in cooperation with public or private agencies, including educational, civic, and research organizations, colleges, universities, institutes, and foundations;
- (6) at reasonable times, enter and inspect with the consent of the owner or occupier any property or premises to investigate either actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with a regulation that may be adopted under AS 46.03.020 — 46.03.040; information relating to secret processes or methods of manufacture discovered during investigation is confidential;
- (7) conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books, and documents by the issuance of a subpoena;
- (8) advise and cooperate with municipal, regional, and other local agencies and officials in the state, to carry out the purposes of this chapter;
- (9) act as the official agency of the state in all matters affecting the purposes of the department under federal laws now or hereafter enacted;
- (10) adopt regulations necessary to effectuate the purposes of this chapter, including, by way of example and not limitation, regulations providing for
 - (A) control, prevention, and abatement of air, water, or land or subsurface land pollution;
 - (B) safeguard standards for petroleum and natural gas pipeline construction, operation, modification, or alteration;
 - (C) protection of public water supplies by establishing minimum drinking water standards, and standards for the construction, improvement, and maintenance of public water supply systems;
 - (D) collection and disposal of sewage and industrial waste;
 - (E) collection and disposal of garbage, refuse, and other discarded solid materials from industrial, commercial, agricultural, and community activities or operations;
 - (F) control of pesticides;
 - (G) other purposes as may be required for the implementation of the policy declared in AS 46.03.010;
 - (H) handling, transportation, treatment, storage, and disposal of hazardous wastes;
- (11) after consultation with other state agencies and local government officials, identify and propose for addition or deletion, by regulation, other licenses, permits, or authorizations for which the provisions of AS 46.35 are applicable;
- (12) inspect the premises of sellers and suppliers of paint, vessels, and marine and boating supplies, and take other actions necessary to enforce AS 46.03.715. (§ 3 ch 120 SLA 1971; am § 1 ch 220 SLA 1976; am § 2 ch 60 SLA 1977; am § 12 ch 172 SLA 1978;

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Sec. 46.30.120. Prohibited acts. It is unlawful

(1) for any potable water supply or wastewater system or facility subject to AS 46.30.040 to be operated unless the operator is certified under the provisions of this chapter;

(2) for any person to perform the duties of an operator without being certified under the provisions of this chapter. (§ 1 ch 244 SLA 1976; am § 131 ch 6 SLA 1984)

Sec. 46.30.130. Definitions. In this chapter

(1) "certificate" means certificate of competency issued by the department stating that the operator has met the requirements for the specified operator classification of the certification program;

(2) "department" means the Department of Environmental Conservation;

(3) "potable water supply system" means the system of pipes, structures, and facilities through which water is obtained, treated and sold, distributed or otherwise offered to the public for household use or any use by humans;

(4) "wastewater system" means the system of pipes, structures, equipment and processes required to collect, carry away, and treat domestic and industrial wastewater and dispose of the effluent. (§ 1 ch 244 SLA 1976)

Chapter 35. Permit Coordination and Extension.

Article

1. Environmental Procedures Coordination (§§ 46.35.010 — 46.35.210)
2. Permit Extension (§ 46.35.300)

Cross references. — For powers of Department of Environmental Conservation, see AS 46.03.020. 39A C.J.S., Health and Environment, §§ 115-124.

Collateral references. — 61 Am. Jur. 2d, Pollution Control, §§ 46-49.

Article 1. Environmental Procedures Coordination.

Section

10. Legislative determination
20. Purpose
30. Master application
40. Withholding final permit
50. Notice of proposed project
60. Public hearing
70. Final decision
80. Withdrawal of agency from participation
90. Administrative and judicial review
100. Time; extensions
110. Application

Section

120. Fee schedules
130. Compliance with local zoning ordinances and plans
140. Applicability of other laws
150. Regulations
160. Permit requirement information centers
170. Conflicts and compliance with federal requirements
200. Definitions
210. Short title

Sec. 46.35.010. Legislative determination. The legislature determines that the substantial burdens placed upon persons who are proposing to undertake certain types of projects in this state through requirements to obtain numerous permits and related documents from various federal, state, and local agencies are undesirable and should be alleviated. The legislature further finds that present methods for obtaining public views relating to applications to state and local agencies pertaining to these projects are cumbersome and place undue hardships on members of the public with the result that the public ability to express its views is hindered and not facilitated. (§ 1 ch 60 SLA 1977)

Sec. 46.35.020. Purpose. It is the purpose of AS 46.35.010 — 46.35.210 to

- (1) establish a simplified procedure to assist those who, to satisfy the requirements of

#3

entire section goes away

federal, state, and local law, must obtain a permit from one or more federal, state or local government agencies by establishing a procedure to coordinate the administrative decision-making process;

(2) provide to the members of the public a better opportunity to present their views on proposed uses of the state's natural resources and related environmental concerns before federal, state, and local agencies decide on applications for permits;

(3) provide to applicants for the use of the air, land, or water resources of the state a greater degree of certainty on permit requirements of federal, state, and local governments;

(4) increase the coordination between federal, state, and local agencies in their administration of programs affecting the state's air, land, and water resources;

(5) establish an opportunity for members of the public to obtain information pertaining to requirements of federal, state, and local law which must be satisfied before undertaking a project in this state. (§ 1 ch 60 SLA 1977)

Revisor's notes. — In 1994, a reference to AS 46.35.010 — 46.35.210 was substituted for "this chapter" in the introductory language in this section to reflect the 1994 enactment of Article 2.

Sec. 46.35.030. Master application. (a) A person proposing a project that requires the issuance of one or more permits may submit a master application to the department requesting the issuance of all permits and documents necessary before the construction and operation of the project in the state. The master application must be on a form established by the department and must contain sufficient information as to the location and the nature of the project, including discharge of wastes and use of or interference with natural resources of the state.

(b) Upon receipt of a properly completed master application, the department shall immediately forward a copy of the application to all heads of executive departments of the state and the chief elected official of all municipalities in which a portion of the project is proposed to be constructed, together with the date by which the agency shall respond to the master application.

(c) Each agency notified shall respond in writing to the department by the specified date, not exceeding 15 days from receipt, as determined by the department, advising

(1) whether the agency has an interest in the master application;

(2) if the response to (1) of this subsection is affirmative, the permit program under the agency's jurisdiction to which the project described in the master application is pertinent; and

(3) whether, in relation to the master application, a public hearing as provided in AS 46.35.050 and 46.35.060 would be in the public interest.

(d) Each notified agency that (1) responds within the specified date that it does not have an interest in the master application; or (2) does not respond as required within the specified date, may not subsequently require a permit of the applicant for the project described in the master application unless the master application contained false, misleading, or deceptive information, or other information or lack of information that would reasonably lead an agency to misjudge its interest in the master application.

(e) The department shall submit application forms relating to permit programs identified in affirmative responses under (c) of this section to the applicant with a direction to complete and return them to the department within a reasonable time as specified by the department.

(f) When the applications, properly completed, have been returned to the department, each of the applications shall be transmitted to the appropriate state agency for the performance of its responsibilities of decision making in accordance with the procedures of AS 46.35.010 — 46.35.210. (§ 1 ch 60 SLA 1977)

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Revisor's notes. — In 1994, a reference to AS 46.35.010 — 46.35.210 was substituted for "this chapter" in subsection (f) to reflect the 1994 enactment of Article 2.

Sec. 46.35.040. Withholding final permit. When it appears that the applicant does not own or control the land or water necessary for the siting of the project in the master application, the department shall continue the proceedings under AS 46.35.010 — 46.35.210 but may withhold the final permit until the applicant has obtained ownership or control of the land or water necessary for the site of the project. If the applicant has applied for land or water necessary for the siting of the project from the state or a municipality of the state, the state agency or municipality shall promptly adjudicate the application for the land or water filed by applicant. (§ 1 ch 60 SLA 1977)

Revisor's notes. — In 1994, a reference to AS 46.35.010 — 46.35.210 was substituted for "this chapter" in the first sentence to reflect the 1994 enactment of Article 2.

Sec. 46.35.050. Notice of proposed project. (a) The department, within 30 days after transmittal under AS 46.35.030(f), shall cause a notice to be published at the applicant's expense once each week for three consecutive weeks in a newspaper of general circulation within each municipality in which the project is proposed to be constructed or operated. The notice must describe the nature of the master application, including, with reasonable specificity, the project proposed, its location, the various permits or documents applied for, and the state agency having jurisdiction over each permit or document. Except as provided in (c) of this section, the notice must also state the time and place of the public hearing, which shall be scheduled not less than 20 or more than 30 days after the date of last publication of the notice. It must further state that a copy of the master application and a copy of all applications for the project are available for public inspection in the regional office of the department nearest to where the project is proposed to be constructed or operated, as well as at the department office in the capital and any other locations the department may designate in the notice.

(b) If no part of the project is to be constructed or operated in a municipality, or if there is no regularly published newspaper of frequency at least weekly, the public notice shall be published in a newspaper in the judicial district in which the project is proposed.

(c) If the responses received by the department from state agencies under AS 46.35.030(f) unanimously state the position that a public hearing concerning a master application is not necessary in the public interest, and the department, after a careful evaluation, taking into consideration all interests involved, including the opportunity for members of the public to present views, agrees, the provisions of (a) of this section pertaining to the time and place of a public hearing need not be included in the notice. In that case the notice must state that members of the public may present their views and supporting materials in writing to the department regarding any of the permits applied for within 30 days after the last date of publication of the notice in a newspaper. (§ 1 ch 60 SLA 1977)

Revisor's notes. — In 1977, a reference to "(b) of this section" in (a) of this section was changed to read "(c) of this section" to correct a manifest error.

Sec. 46.35.060. Public hearing. (a) Except as provided in AS 46.35.050(c), before a final decision is made on a permit application relating to a project subject to the procedures of AS 46.35.010 — 46.35.210, a public hearing shall be held in or near the municipality in which all or a major part of the proposed project is to be constructed or operated, or, if the project is not to be constructed or operated in a municipality, the hearing shall be held at a location reasonably convenient to the site of the proposed project. The hearing shall be held in accordance with the notice given under AS 46.35.050(a). At the hearing the applicant may submit any relevant information and

material in support of the applications, and members of the public may present relevant views and supporting materials relating to any or all of the applications being considered.

(b) Each state agency having an application for a permit before it under AS 46.35.050(a) shall be represented at the public hearing by its commissioner or a designee of the commissioner. The commissioner of the department, a designee of the commissioner, or a hearing officer appointed by the governor, shall chair the hearing; however, the representative of any state agency other than the department within whose jurisdiction a specific application lies shall conduct the portion of the hearing pertaining to submission of information, views, and supporting materials that concern that application. The chairman may continue a hearing from time to time and place to place.

(c) The provisions of AS 44.62 do not apply to the hearing conducted under this section, and the hearing shall be conducted for the purpose of obtaining information for the assistance of state agencies and not as a trial or adversary proceeding.

(d) Federal and local government agencies may be represented at the hearings, at their option, by their chief executive officer or the officer's designee.

(e) The hearing shall be electronically recorded, and copies of the recording shall be made available to state, federal and local agencies upon request. (§ 1 ch 60 SLA 1977)

Revisor's notes. — In 1977, a reference in (a) of this section to "AS 46.35.050(b)" was changed to "AS 46.35.050(c)" to correct a manifest error. In 1994, a reference to AS 46.35.010 — 46.35.210

was substituted for "this chapter" in the first sentence in subsection (a) to reflect the 1994 enactment of Article 2.

Sec. 46.35.070. Final decision. (a) Upon completion of the public hearing the chairman, after consultation with the state agency representatives, shall establish the date by which all state agencies shall forward their final decisions on applications before them to the department. The date established shall be within the following 90-day period after the public hearing.

(b) In a situation where a notice is provided under AS 46.35.050(c), the department shall, 30 days after the last notice publication in the newspaper, submit a copy of all views and supporting material received by it to each agency as described in the notice as having an application before it. At the same time, the department shall notify each state agency, in writing, of the date by which final decisions on applications shall be forwarded to the department. That date shall be no later than 90 days after the date of last publication of the notice, but may be extended by the department for reasonable cause.

(c) Each final decision shall state the basis for the conclusion together with a final order denying the application for a permit or granting it, subject to a condition of approval as the deciding agency may have the power to impose. An agency that denies an application shall, with its final decision denying the application, provide a written summary suggesting alternate means of completing the project, or, if no alternative is feasible, the agency shall provide a written summary of its reasons for that conclusion.

(d) As soon as all final decisions are received by the department under (b) and (c) of this section, the department shall incorporate them, without modification, into one document and transmit it to the applicant either personally or by registered mail.

(e) Each state agency having jurisdiction to approve or deny an application for a permit shall have the power vested in it by law to make such determinations. Nothing in AS 46.35.030 — 46.35.070 lessens or reduces these powers, and AS 46.35.030 — 46.35.070 modify only the procedures to be followed in the carrying out of the powers.

(f) A state agency, in the performance of its responsibilities of decision making under AS 46.35.010 — 46.35.210, may request or receive additional information from an applicant and others before or after the public hearing. (§ 1 ch 60 SLA 1977; am § 49 ch 30 SLA 1996)

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reflect the 1994 enactment of Article 2.

Effect of amendments. — The 1996 amendment, effective May 16, 1996, substituted "by law" for "before October 1, 1977" in the first sentence of subsection (e).

Sec. 46.35.080. Withdrawal of agency from participation. (a) A state agency responding affirmatively under AS 46.35.030(c) may withdraw from participation in the processing provided in AS 46.35.030 — 46.35.070 at any time, by written notification to the department, if it subsequently appears to the state agency that it has no permit programs under its jurisdiction applicable to the project.

(b) A decision by a state agency to withdraw from the proceeding is irreversible, and the state agency may not subsequently require a permit of the applicant for the project described in the master application unless the master application contained false, misleading, or deceptive information, or other information or lack of information which would reasonably lead an agency to misjudge its interest in the master application. (§ 1 ch 60 SLA 1977)

Revisor's notes. — In 1995, in subsection (a), "AS 46.35.030(c)" was substituted for "AS 46.35.030(b)" to correct a manifest error in ch. 60, SLA 1977.

Sec. 46.35.090. Administrative and judicial review. (a) A person aggrieved by a final decision issued under AS 46.35.070(d) may file a notice of appeal with the commissioner requesting an adjudicatory hearing within 30 days of transmittal of the final decision to the person. A failure to file a timely notice of appeal constitutes a waiver of the person's right to review the final decision, unless the failure was due to circumstances beyond the applicant's control.

(b) The commissioner shall grant a request for an adjudicatory hearing within 20 days of filing of the notice of appeal if the commissioner determines that the notice raises a reasonable issue of fact or law material to the final decision.

(c) A hearing officer appointed under AS 44.62.350 shall preside at hearings under this section, rule on the admission and exclusion of evidence, advise the deciding officers on matters of law, and participate in posthearing deliberations.

(d) Appeals shall be heard jointly by the commissioner, or a designee, of each agency that rendered a final decision under AS 46.35.070 for which the person requesting the hearing is aggrieved. The commissioner, or the designee, of each agency shall decide only that portion of the appeal that involves that agency.

(e) The commissioner, after consultation with other state agencies and local government, shall adopt regulations governing the conduct of adjudicatory hearings under this section. The commissioner may enter into cooperative agreements with local governments and federal agencies for the joint holding of adjudicatory hearings. To the extent feasible, regulations adopted under this section must conform to adjudicatory hearing procedures for the review of permit decisions under AS 46.03 and AS 46.04. Notwithstanding AS 44.62.330(a)(44), adjudicatory hearing procedures to review permit decisions under AS 46.35.010 — 46.35.210, or under AS 46.03 or AS 46.04, need not conform to AS 44.62.330 — 44.62.630 (Administrative Procedure Act).

(f) A person aggrieved by a final decision of the commissioner under this section may appeal the decision to the superior court in the manner provided by AS 44.62.560 — 44.62.570. (§ 1 ch 60 SLA 1977; am § 119 ch 59 SLA 1982)

Revisor's notes. — In 1994, a reference to AS 46.35.010 — 46.35.210 was substituted for "this chapter" in the last sentence in subsection (e) to reflect the 1994 enactment of Article 2.

Sec. 46.35.100. Time; extensions. It is the sense of the legislature that time is of the essence in the processing of applications under AS 46.35.010 — 46.35.210. Whenever a

section in AS 46.35.010 — 46.35.210 states a time within which an act or a review is to be completed, the legislature has determined that the time allotted is adequate for a responsive state agency or municipality to complete the act or review. If unusual conditions prevent this from happening, it is the sense of the legislature that minimum extensions of the period established in AS 46.35.010 — 46.35.210 may be granted upon a determination that the delay occurred beyond the control of the reviewing agency or municipality. (§ 1 ch 60 SLA 1977)

Revisor's notes. — In 1994, references to AS 46.35.010 — 46.35.210 were substituted for "this chapter" in three places to reflect the 1994 enactment of Article 2.

Sec. 46.35.110. Application. Notwithstanding any other provisions of regulation or statute relating to the processing of application for permits, the procedures set out in AS 46.35.010 — 46.35.210 are exclusive for applications filed under AS 46.35.030. The procedures of AS 46.35.010 — 46.35.210 are in lieu of any procedures otherwise provided by law or regulation, and are to be followed by a state agency in ruling upon those applications. (§ 1 ch 60 SLA 1977)

Revisor's notes. — In 1994, a reference to AS 46.35.010 — 46.35.210 was substituted for "this chapter" in two places to reflect the 1994 enactment of Article 2.

Sec. 46.35.120. Fee schedules. Fee schedules previously established or authorized by law for an application for a permit continue to apply. The department shall collect the fees and forward them to the appropriate state agency. (§ 1 ch 60 SLA 1977)

Sec. 46.35.130. Compliance with local zoning ordinances and plans. (a) A permit for a project filed under AS 46.35.030 may not be issued unless the application has provided a certification from the appropriate local government that the project is in compliance with the zoning ordinances and associated comprehensive plans administered by the local government regarding the project. If the local government has no ordinances or plans, the local government shall certify that fact. A local government may accept applications for certification under this section and shall rule upon them within 30 days. A local government may impose stipulations of performance in its approval, but, upon certification, the local government may not change the zoning ordinances as to the proposed project until the procedures of AS 46.35.010 — 46.35.210, including an appeal, are completed.

(b) Approval of an application for certification as provided in this section does not eliminate any requirements of ordinances administered by a local government. A ruling by local government denying an application for certification is not appealable under AS 46.35.010 — 46.35.210, except that the denial of an application for certification under (a) of this section does not preclude the applicant from filing an application under a different statute or procedure. (§ 1 ch 60 SLA 1977)

Revisor's notes. — In 1994, a reference to AS 46.35.010 — 46.35.210 was substituted for "this chapter" in the last sentence in subsections (a) and (b) to reflect the 1994 enactment of Article 2.

Sec. 46.35.140. Applicability of other laws. AS 46.35.010 — 46.35.210 do not modify in any manner the applicability of a land use law or regulation or local zoning ordinances to land of a state agency. (§ 1 ch 60 SLA 1977)

Revisor's notes. — In 1994, a reference to AS 46.35.010 — 46.35.210 was substituted for "this chapter" at the beginning of this section to reflect the 1994 enactment of Article 2.

Sec. 46.35.150. Regulations. The department may adopt regulations to implement the provisions of AS 46.35.010 — 46.35.210. (§ 1 ch 60 SLA 1977)

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Revisor's notes. — In 1994, a reference to AS 46.35.010 — 46.35.210 was substituted for "this chapter" at the end of this section to reflect the 1994 enactment of Article 2.

Sec. 46.35.160. Permit requirement information centers. (a) The department shall establish permit requirement information centers at the commissioner's office and in all of its regional offices and may enter into an agreement with the governing body of any municipality having a population of more than 1,000 persons to establish and maintain local information centers to provide information to the public, in readily understandable form, regarding the requirements of federal, state, and local governments for permits which must be acquired before initiating projects in this state and to provide assistance in the completion of permit applications.

(b) Each regional office of the department and other offices as the department may establish shall provide a master application to any person requesting it. The department shall provide information, forms, instructions, and assistance in the completion of a master application under AS 46.35.010 — 46.35.210 to a person requesting assistance. (§ 1 ch 60 SLA 1977)

Revisor's notes. — In 1994, a reference to AS 46.35.010 — 46.35.210 was substituted for "this chapter" in the second sentence in subsection (b) to reflect the 1994 enactment of Article 2.

Sec. 46.35.170. Conflicts and compliance with federal requirements. (a) If any part of AS 46.35.010 — 46.35.210 is found in conflict with federal requirements regarding the allocation of federal funds to the state, that part of AS 46.35.010 — 46.35.210 is inoperative to the extent of the conflict regarding the agencies affected, and the determination does not affect the operation of the remainder of AS 46.35.010 — 46.35.210.

(b) The department, to the extent necessary to comply with procedural requirements of federal law relating to permit systems operated by the state, may modify the notice, timing, hearing, and related procedural matters provided in AS 46.35.010 — 46.35.210. (§ 1 ch 60 SLA 1977)

Revisor's notes. — In 1994, a reference to AS 46.35.010 — 46.35.210 was substituted for "this chapter" in three places in subsection (a) and one place in subsection (b) to reflect the 1994 enactment of Article 2.

Sec. 46.35.200. Definitions. In AS 46.35.010 — 46.35.210

- (1) "commissioner" means the commissioner of environmental conservation;
- (2) "department" means the Department of Environmental Conservation;
- (3) "local government" means a city or borough including a unified municipality;
- (4) "permit" means each of the following licenses, permits or authorizations required to be obtained from a state agency before constructing or operating a project in the state, or any other license, permit or authorization which may be designated by the commissioner:
 - (A) emission control permit — AS 46.14, 18 AAC 50.120;
 - (B) open burning permit — AS 46.03.020, 18 AAC 50.120;
 - (C) burning permit during fire season — AS 41.15.050, 11 AAC 92.010;
 - (D) waste water disposal permit — AS 46.03.100, 18 AAC 72;
 - (E) solid waste disposal permit — AS 46.03.100, 18 AAC 60;
 - (F) brine or other salt water waste disposal permit — AS 31.05.030, 11 AAC 22.250;
 - (G) tidelands permit — AS 38.05.820, 11 AAC 62.710;
 - (H) tidelands right-of-way or easement permit — AS 38.05.820, 11 AAC 62.810;
 - (I) authorization for tidelands transportation — AS 38.05.110, 11 AAC 76.205;
 - (J) tide and submerged lands prospecting permit — AS 38.05.250;
 - (K) mineral and geothermal prospecting permits — AS 38.05.145;
 - (L) coal development permit — AS 27.20.010, 11 AAC 46.010;
 - (M) dam construction permit — AS 46.15.040, 11 AAC 72.060;

- (N) water well permit — AS 31.05.030, 11 AAC 22.140;
- (O) permit to appropriate water — AS 46.15.040, 11 AAC 72.050;
- (P) permit for use of timber or materials — AS 38.05.110, 11 AAC 76.185;
- (Q) special material use permit — AS 38.05.115, 11 AAC 76.540;
- (R) special land use permit — AS 38.05.035, 11 AAC 58.210;
- (S) limited personal use permit — AS 38.05.820, 11 AAC 62.820;
- (T) preferred use permit — AS 46.15.040, 11 AAC 72.160;
- (U) surface use permit — AS 38.05.255, 11 AAC 86.600;
- (V) miscellaneous state land use permit — AS 38.05.035, 11 AAC 96.010;
- (W) anadromous fish protection permit — AS 16.05.870, 5 AAC 95.100;
- (X) critical habitat area permit — AS 16.20.520 — 16.20.530;
- (Y) state game refuge land permit — AS 16.20.050 — 16.20.060;
- (Z) state park incompatible use permit — AS 41.21.020, 11 AAC 18.010;
- (AA) pesticides permit — AS 46.03.320, 18 AAC 90;
- (BB) surface oiling permit — AS 46.03.740, 18 AAC 75;
- (CC) encroachment permit — AS 19.25.200;
- (DD) utility permit — AS 19.25.010;
- (EE) driveway permit — AS 19.05.020, 17 AAC 10.020;
- (FF) access roads permit — AS 41.21.020, 11 AAC 18.020;
- (GG) right-of-way and easement permits — AS 38.05.850, 11 AAC 58.200;
- (HH) right-of-way permit — AS 38.05.850;

(5) "person" means an individual, municipal, public, or private corporation, or other entity, and includes a state agency and a local government;

(6) "processing" and "processing of applications" means the entire process followed in relation to the making of decisions on an application for a permit and review of it as provided in AS 46.35.030 — 46.35.080;

(7) "project" means any new activity or expansion of or addition to an existing activity, fixed in location, for which permits are required before construction or operation;

(8) "state agency" means a state department, commission, board or other agency of the state; for the purposes of AS 46.35.010 — 46.35.210 "state agency" also means a local or regional air pollution control authority established under AS 46.14.400. (§ 1 ch 60 SLA 1977; am § 84 ch 74 SLA 1985; am §§ 25, 26 ch 74 SLA 1993)

Revisor's notes. — Paragraph (4) was reorganized in 1987 to group permits by general subject area. Many of the references in the list in (4) are obsolete. Users should contact the commissioner of environmental conservation to determine whether particular permits are covered by this chapter.

In 1994, a reference to AS 46.35.010 — 46.35.210 was substituted for "this chapter" in the introductory

language and in paragraph (8) to reflect the 1994 enactment of Article 2.

Effect of amendments. — The 1993 amendment, effective June 26, 1993, in subparagraph (4)(A), substituted "emission control permit" for "air emissions permit" and made section reference substitutions in subparagraph (4)(A) and paragraph (8).

Sec. 46.35.210. Short title. AS 46.35.010 — 46.35.210 may be cited as the Environmental Procedures Coordination Act. (§ 1 ch 60 SLA 1977)

Article 2. Permit Extension.

Section

300. Extension of resource extraction or removal related permits

Sec. 46.35.300. Extension of resource extraction or removal related permits.

(a) The department that issued the permit shall extend a resource removal or extraction permit when the permittee

(1) is unwilling to engage in the resource removal or extraction activity allowed under the permit due to the actions of another person, other than the state, seeking adminis-

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DEPARTMENT OF ENVIRONMENTAL CONSERVATION



18 AAC 15

Administrative Procedures

As amended through July 11, 2002

Frank Murkowski
Governor

Ernesta Ballard
Commissioner

IMPORTANT NOTE TO READER

These regulations have been prepared by the Department of Environmental Conservation. They do not constitute an official version of these regulations, nor do they necessarily reflect current law. Any amendments made after the date of this document would appear in the published version of the Alaska Administrative Code. If any discrepancy is found between this document and the Alaska Administrative Code, the Code should be considered the final authority, unless the discrepancy is the result of a manifest error in the Code.

CHAPTER 15. ADMINISTRATIVE PROCEDURES.

Article

1. Coverage of Chapter (18 AAC 15.010)
2. Permit Procedures (18 AAC 15.020 - 18 AAC 15.100)
3. Adoption of NPDES Permits (18 AAC 15.120)
4. Certification (18 AAC 15.130 - 18 AAC 15.180)
5. Informal and Fee Review Procedures (18 AAC 15.185 – 18 AAC 15.190)
6. Administrative Appeal Procedures 18 AAC 15.195 – 18 AAC 15.310
7. General Provisions (18 AAC 15.900 - 18 AAC 15.920)

ARTICLE 1. COVERAGE OF CHAPTER.

Section

010. Coverage of chapter

18 AAC 15.010. COVERAGE OF CHAPTER. (a) The provisions of 18 AAC 15.020 - 18 AAC 15.100 apply to application procedures for the following permits or written approvals:

- (1) solid waste disposal permits under AS 46.03.100 and 18 AAC 60.215;
- (2) sewerage system and treatment works plan approvals and permits under AS 46.03.720, 18 AAC 72.200, 18 AAC 72.215, 18 AAC 72.220, 18 AAC 72.225, 18 AAC 72.240, 18 AAC 72.500, and 18 AAC 72.600;
- (3) public water system plan approvals under AS 46.03.720 and 18 AAC 80.200;
- (4) surface oiling permits under AS 46.03.740 and 18 AAC 75.730;
- (5) permits under AS 46.03.320, AS 46.03.330, AS 46.03.730, 18 AAC 90.500, and 18 AAC 90.505 for public pesticide programs or projects, and water or aerial application of pesticides;
- (6) permits and short-term variances under AS 46.03.100 and 18 AAC 70.200 for disposal of wastewater into or upon the waters or land of the state, except for point source discharges to the surface waters of the state subject to 18 AAC 15.120.

(b) The provisions of 18 AAC 15.130 - 18 AAC 15.180 apply to certification procedures under 33 U.S.C. 1341 (Clean Water Act, sec. 401).

(c) The provisions of 18 AAC 15.185 apply to an informal department review authorized by a provision of this title.

(d) The provisions of 18 AAC 15.190 apply to the review of a fee decision of the department under 18 AAC 31.050(n), 18 AAC 32.550, 18 AAC 34.910, 18 AAC 50.430, 18 AAC 60.700, 18 AAC 72.961, and 18 AAC 80.1910(i).

(e) The provisions of 18 AAC 15.195 – 18 AAC 15.340 apply to the conduct of adjudicatory hearing to review

(1) permit, approval, or certification decisions involving matters described in (a) or (b) of this section; and

(2) decisions authorized to be reviewed in an adjudicatory hearing by a provision of this title other than (a) or (b) of this section. (Eff. 11/25/77, Register 64; am 8/2/90, Register 115; am 2/15/98, Register 145; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.03.730
	AS 46.03.090	AS 46.03.330	AS 46.14.120

AS 46.03.100
AS 46.03.110

AS 46.03.720

AS 46.14.200

ARTICLE 2. PERMIT PROCEDURES.

Section

- 020. Permit applications
- 030. Signing of applications
- 040. Requests for additional information
- 050. Public notice
- 060. Public hearings
- 070. Preissuance conference
- 080. Decision on application
- 090. Permit terms and conditions
- 100. Permit limitations

18 AAC 15.020. PERMIT APPLICATIONS. (a) Except as provided in 18 AAC 15.130 - 18 AAC 15.140, an applicant for a permit or written approval subject to 18 AAC 15.020 - 18 AAC 15.100 must serve a complete application on the department.

(b) An applicant must serve a complete application under (a) of this section for the department's review at least

(1) five days before the proposed commencement of the operation, for applications for surface oiling permits;

(2) 30 days before the proposed commencement of construction, installation, modification, or improvement, for applications for plan approvals or permits for a sewerage system, treatment works, or public water system;

(3) 60 days before the proposed commencement of construction, installation, modification, or improvement, for applications for plan approvals or permits for a municipal sewerage system, treatment works, or public water system project that involves state or federal monetary assistance;

(4) 60 days before the proposed commencement of the operation, for an application for a solid waste disposal permit, short-term variance from water quality standards, or wastewater disposal permit; and

(5) 100 days before the proposed commencement of a pesticide use that requires a permit under 18 AAC 90.500 or 18 AAC 90.505, if public notice is required under 18 AAC 90.520; if public notice is not required, the applicant shall submit the application at least 70 days before the proposed commencement of the pesticide use. (Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 8/2/90, Register 115; am 2/15/98, Register 145; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.110	AS 46.03.720
	AS 46.03.090	AS 46.03.320	AS 46.03.730
	AS 46.03.100	AS 46.03.330	

18 AAC 15.030. SIGNING OF APPLICATIONS. All permit or approval applications must be signed as follows:

(1) in the case of corporations, by a principal executive officer of at least the level of vice president or his duly authorized representative, if the representative is responsible for the overall management of the project or operation;

(2) in the case of a partnership, by a general partner;

(3) in the case of a sole proprietorship, by the proprietor; and

(4) in the case of a municipal, state, federal or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee. (Eff. 11/25/77, Register 64)

Authority:	AS 46.03.020(10)	AS 46.03.110	AS 46.03.330
	AS 46.03.090	AS 46.03.160	AS 46.03.720
	AS 46.03.720		

18 AAC 15.040. REQUESTS FOR ADDITIONAL INFORMATION. (a) If, within the time period for review of the application established in 18 AAC 15.020(b), the department determines that either further information or a site visit is necessary in order to evaluate the operation, the department will serve notice on the applicant of the specific information required and, in addition, establish a deadline for receipt of the requested information or the holding of the site visit. If the applicant fails to provide the requested information, or does not permit a site visit within the deadline period, the department will deny the application.

(b) The time period for review of the application established in 18 AAC 15.020(c) and (d) will be held in abeyance until service of the information, or holding of the site visit. (Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.110	AS 46.03.330
	AS 46.03.090	AS 46.03.160	AS 46.03.720
	AS 46.03.100	AS 46.03.320	

18 AAC 15.050. PUBLIC NOTICE. (a) Immediately after the service of a complete application for a solid waste disposal permit, a short-term variance from water quality standards, or a wastewater disposal permit, the department will publish two consecutive notices of the application in a newspaper of general circulation in the area that would be affected by the operation, and in other media the department considers appropriate to achieve sufficient public notice.

(b) In a public notice under this section, the department will include

(1) information on the nature and the location of the proposed activity;

(2) information on how the public can receive more information, including a statement that an interested person will be sent a copy of the application upon request; and

(3) a statement that a person may submit comments on the application by filing written comments with the department before the published comment deadline.

(c) A person required to have a permit for a public pesticide program or project, or for the water or aerial application of pesticides, shall publish a public notice in accordance with (a) and (b) of this section, if required by 18 AAC 90.520(a). An affidavit of publication in conformity with the requirements of (b) of this section must be included with the application. The public notice must include a statement that the department will hold a public hearing on the application if 50 or more residents in the affected area, or the governing body of an affected municipality, make a request to the department for a hearing within 30 days after publication of the second notice. (Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.100	AS 46.03.330
	AS 46.03.090	AS 46.03.110	AS 46.03.720

18 AAC 15.060. PUBLIC HEARINGS. (a) The department will hold a public hearing on a permit application for a public pesticide project if, within 30 days after the second publication of notice under 18 AAC 15.050(c), a hearing is requested by

- (1) 50 residents of the affected area; or
- (2) the governing body of an affected municipality.

(b) The department will hold a public hearing on an application for a short-term variance from water quality standards, or on a permit or approval application, if it determines that good cause exists.

(c) The hearing will be held no sooner than 15 nor more than 30 days following publication of the notice under (e) of this section.

(d) The public hearing will be held at the closest practicable location to the site of the operation.

(e) Notice of the time, place, and scope of the hearing will be published in a newspaper of general circulation for the area that would be affected by the operation.

(f) The appropriate division director shall appoint a designee to preside at the hearing. Testimony will be presented in the order, and subject to time limitations, established by the presiding officer.

(g) At the close of each witness' testimony, the witness may be questioned by the presiding officer and the department staff.

(h) A hearing under this section will be tape recorded. (Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.100	AS 46.03.330
	AS 46.03.090	AS 46.03.110	AS 46.03.720

18 AAC 15.070. PREISSUANCE CONFERENCE. (a) The provisions of this section apply solely to an application for a solid waste disposal permit, public pesticide program or project permit, permit for the water or aerial application of pesticides, short-term variance from water quality standards, or wastewater disposal permit.

(b) At any time before the department's decision under 18 AAC 15.080, the applicant may request a preissuance conference from the department. The request may be made orally.

(c) A preissuance conference is a discretionary, informal, and nonadjudicative procedure for the purpose of discussing the progress of the application and narrowing areas of disagreement between the parties. The conference may be tape recorded. The commissioner will appoint a designee to preside at the conference.

(d) The department will establish a time and place for holding the conference.

(e) Upon the granting of a request for a preissuance conference, the time period for review of the application established in 18 AAC 15.020(b) will be held in abeyance until completion of the conference.

(f) If practicable, communications between the applicant and an employee of the department regarding the application, other than at the preissuance conference, should be in writing. If oral communications are made, the department employee will prepare a memorandum for the record specifying the person with whom he or she communicated, the date and time of the communication, and a brief summary of the substance of the communication. (Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 8/2/90, Register 115; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.110	AS 46.03.720
	AS 46.03.090	AS 46.03.320	AS 46.03.730
	AS 46.03.100	AS 46.03.330	

18 AAC 15.080. DECISION ON APPLICATION. (a) For an application served under 18AAC 15.020(a), the appropriate division director or designee, within the applicable time period established in 18 AAC 15.020(b), shall serve the department's decision on the applicant. The decision will include

(1) the permit, variance, or written approval, if it is the department's determination that a permit or variance should be issued, or written approval granted;

(2) a brief summary of the basis for the department's decision, if the department's decision is to deny a permit, variance, or approval, or to subject a permit, variance, or approval to conditions specific to the activity; the department will provide a summary of the basis for its decision to grant a permit, variance, or approval in a case in which public comment adverse to the application has been received; and

(3) a statement that a person aggrieved by the department's decision may request an adjudicatory hearing under 18 AAC 15.200.

(b) The department's decision will also be served on each person who submitted timely comments on the application under 18 AAC 15.050(b)(3), or who testified at a public hearing held under 18 AAC 15.060. (Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 4/1/99, Register 149; am 10/1/99, Register 151; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.110	AS 46.03.720
	AS 46.03.090	AS 46.03.330	AS 46.03.730
	AS 46.03.100		

18 AAC 15.090. PERMIT TERMS AND CONDITIONS. As the department considers necessary to ensure that applicable criteria will be met, the department will attach terms and conditions to a permit, variance, or approval, including

(1) operating, monitoring, inspection, sampling, and reporting requirements;

(2) requirements to ensure department access to records; and

(3) the posting of a performance bond or other surety. (Eff. 11/25/77, Register 64; am 11/7/87, Register 100; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.100	AS 46.03.330
	AS 46.03.090	AS 46.03.110	AS 46.03.720

18 AAC 15.100. PERMIT LIMITATIONS. (a) The department will set a fixed term, not to exceed five years, for a permit or variance other than a plan approval for a

(1) sewerage system or treatment works; or

(2) public water system.

(b) Except as otherwise prohibited, a permit, variance, or approval may not be assigned without prior written approval of the appropriate division director. The appropriate division director will grant approval under this subsection if that director finds that the assignee has assumed the obligations of the permittee, and that the assignment will not result in an appreciable change in the operation.

(c) A permit or variance authorizes only that operation specified in the permit or variance. Any expansion, modification, or other change in a facility process or operation which might result in an increase in emissions or discharges, or might cause other detrimental environmental impacts from the permittee's facility, requires a new permit or variance. Any other change in the operation requires an amendment to the permit or variance.

(d) An application for a renewal of a permit, or amendment to a permit or variance, will be treated in the same manner as the initial application, except that public notice or hearing will

not be provided for applications for renewal or amendment. Application for renewal or amendment must be made no later than 30 days before the expiration of the permit or the planned effective date of the amendment. The department will, however, approve an amendment to a permit or variance on an emergency basis if necessary to protect public health, life, or property. (Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.100	AS 46.03.720
	AS 46.03.090	AS 46.03.110	

ARTICLE 3. ADOPTION OF NPDES PERMITS.

Section

120. Adoption of NPDES permits

18 AAC 15.120. ADOPTION OF NPDES PERMITS. (a) A person who conducts an operation which results in the disposal of wastewater into the water of the state need not apply under secs. 20-100 of this chapter if the disposal is permitted under an NPDES permit, and the department has certified the NPDES permit in accordance with secs. 130-170 of this chapter.

(b) Any reissuance of or modification to a certified NPDES permit must be certified by the department under secs. 130-170 of this chapter. This requirement applies whether the reissuance or modification was brought about by reapplication, or by stipulation or other agreement between EPA and the permittee. Notwithstanding (c) of this section, if any NPDES permit is reissued or modified without certification under secs. 130-170 of this chapter, that permit will not be considered a permit under AS 46 03.100.

(c) For persons subject to (a) of this section, the NPDES permit constitutes the permit required under AS 46.03.100. The NPDES permit will be enforced by the department under AS 46.03, and may be modified or terminated for purposes of AS 46.03.100 under AS 46.03.120. Any rights or privileges inuring to the benefit of EPA in the NPDES permit, including any right to enter, inspect, sample, and have access to records, also inure to the benefit of the department. Any reports or other information filed with EPA in accordance with the NPDES permit must be contemporaneously filed with the department.

(d) If a certified NPDES permit, or any portion of the permit, is stayed pending a challenge to the permit, that permit will not be considered a state permit under AS 46.03.100 during the period of the stay. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority: AS 46.03.020 AS 46.03.110

ARTICLE 4. CERTIFICATION.**Section**

- 130. NPDES certification procedure
- 140. Public notice
- 150. Public hearings
- 160. Department decision
- 170. Period required to process certification
- 180. Certification for other federal licenses and permits

18 AAC 15.130. NPDES CERTIFICATION PROCEDURE. (a) Contemporaneous with the filing with EPA of an application for an NPDES permit, or for a modification or reissuance of an NPDES permit, a copy of the application and all supporting information, together with a cover letter requesting certification, must be served on the department. If the certification request involves a modification to an NPDES permit which does not involve application, for which EPA does not intend to issue public notice, the department will require a copy of the proposed modification at least 60 days before any deadline established by EPA for certification action on the modification, or 60 days before the proposed effective date of the modification, whichever is the sooner. All supplementary forms or other information pertaining to the application must be served on the department at the time of their filing with EPA.

(b) Within 30 days after receipt of an application for certification, the department will, if necessary, serve notice upon the applicant that additional information is necessary in order for the department to determine whether the discharge will comply with the applicable provisions of 33 U.S.C. 1311, 1312, 1313, 1316, and 1317 (Clean Water Act, secs. 301, 302, 303, 306, and 307), and that the additional information must be served upon the department within 30 days after receipt of the request. If the information is not served upon the department within the time period specified, certification will be denied unless a time extension is approved by the department upon the applicant's showing, to the department's satisfaction, that additional time is necessary to provide the needed information. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority: AS 46.03.020 AS 46.03.110

18 AAC 15.140. PUBLIC NOTICE. (a) Public notice of the certification application will be published jointly with notice of the proposed action by EPA under 40 C.F.R. 124.10. The notice will include the information required by 18 AAC 15.050(b).

(b) If the certification request involves a proposed modification to an NPDES permit for which EPA does not propose to issue public notice, the department will issue public notice in conformity with 18 AAC 15.050(b) within 10 days after receipt of the certification application. However, the department will not provide public notice for proposed modifications to an NPDES permit, if the department determines that the proposed modifications will not result in a significant change in the location, volume, type, or concentration of the discharge. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority: AS 46.03.020

AS 46.03.110

18 AAC 15.150. PUBLIC HEARINGS. (a) The department will determine whether to hold a public hearing on a certification application under 18 AAC 15.060(b).

(b) If EPA holds a public hearing under 40 C.F.R. 124.12, that hearing, and the hearing under this section, will, when practicable, be held jointly.

(c) If EPA does not hold a public hearing, the hearing under this section will be held no fewer than 30 days after notice of the hearing. The hearing will be noticed and conducted under 18 AAC 15.060(d) – (h). (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority: AS 46.03.020

AS 46.03.110

18 AAC 15.160. DEPARTMENT DECISION. The department will serve upon the applicant, EPA, and each person who submitted timely comments upon the application or testified at a hearing held under 18 AAC 15.150, the decision of the appropriate division director or designee regarding certification. In the decision, the department will include a summary of the basis of the department's decision. (Eff. 11/25/77, Register 64; 7/11/2002, Register 163)

Authority: AS 46.03.020

AS 46.03.160

18 AAC 15.170. PERIOD REQUIRED TO PROCESS CERTIFICATION. Subject to sec. 130(a) of this chapter, the department will require at least 30 days to act on a request for certification of the regional administrator's determination under 40 C.F.R. sec. 125.3 (39 FR 27080 (July 24, 1974)). (Eff. 11/25/77, Register 64)

Authority: AS 46.03.020

AS 46.03.160

18 AAC 15.180. CERTIFICATION FOR OTHER FEDERAL LICENSES AND PERMITS. (a) A person may not undertake a federally licensed or permitted activity requiring certification under 33 U.S.C. 1341 (Clean Water Act, sec. 401) without first applying for and obtaining certification from the department under this section unless, after application, the department waives its right to certify under 33 U.S.C. 1341(a) (Clean Water Act, sec. 401). An applicant must pay the appropriate fee in 18 AAC 72.956, 18 AAC 72.957, or 18 AAC 72.959 for certification of a federal license or permit

(b) Certification requests for any federal license or permit other than an NPDES permit will be processed in substantial conformity with secs. 130-170 of this chapter. The department will, in its discretion, enter into agreements with federal licensing and permitting agencies to provide for joint public notice and hearing. The department will make a decision on certification applications for other federal licenses or permits within 30 days of receipt of the federal agency's proposed action on the license or permit application.

(c) An applicant for a federal license or permit requiring certification under 33 U.S.C. 1341 (Clean Water Act, sec. 401) must serve upon the department a copy of the application for the federal license or permit, and all accompanying information, contemporaneous with the submission of the application to the federal licensing or permitting agency. The requirements of

18 AAC 15.120(b) regarding reissuances or modifications to an NPDES permit apply to reissuances, renewals, or amendments to any other federal license or permit requiring certification under 33 U.S.C. 1341. (Eff. 11/25/77, Register 64; am 11/10/94, Register 132; am 1/17/2002, Register 161; am 7/11/2002, Register 163)

Authority: AS 44.46.025 AS 46.03.020 AS 46.03.110

ARTICLE 5. INFORMAL AND FEE REVIEW PROCEDURES.**Section**

185. Informal review

190. Fee review

18 AAC 15.185. INFORMAL REVIEW. (a) A person authorized by a provision of this title to request an informal review under this section, or a person authorized to request an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340, may request an informal agency review by the director of the department division that issued the contested decision. As provided in 18 AAC 15.200(e), a request for informal review stays proceedings on a request for an adjudicatory hearing. A request for informal review must be made within 15 days after receiving the department's decision reviewable under this section. The request may be made by mail, electronic mail, or facsimile, and must include

- (1) the requestor's name, mailing address, and telephone number;
- (2) an identification of the department's decision to be reviewed; and
- (3) a clear and concise statement of the reason for the request, including

(A) a statement of the nature and scope of the requestor's interests, and an explanation of how and to what extent those interests would be directly and adversely affected by the decision;

(B) the contested terms and conditions of the department's decision, and proposed alternatives; and

(C) copies of any documents or data that would assist the director in concluding the informal review.

(b) The director of the department division that issued the contested decision may designate a person to conduct the informal review, other than the person who issued the contested decision. Within seven days after receipt of a request for informal review, the director or designee will decide if the request merits informal review. If the director or designee decides that the request does not merit informal review, the director or designee shall inform the requestor in writing of this decision and include the reasons for the decision. In the denial, the director or designee shall include the statement that the requestor may seek a formal adjudicatory hearing under 18 AAC 15.200 or AS 44.62, if either of those options is available to the requestor.

(c) If informal review is granted, the director or designee may request additional information from the requestor. The director or designee shall issue a final decision within 15 days after receipt of the request for informal review or receipt of additional information requested, whichever is later. The director or designee shall also advise the requestor and all other parties of the right to seek an adjudicatory hearing under 18 AAC 15.200 or AS 44.62, if either of those options is available to the requestor or other parties.

(d) A person authorized to seek an adjudicatory hearing under 18 AAC 15.195 – 18 AAC 15.340 or AS 44.62 may submit a hearing request within 30 days after a decision is made under (b) or (c) of this section and that decision is served on the requestor. (Eff. 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.04.030
	AS 46.03.090	AS 46.03.330	AS 46.14.120
	AS 46.03.100	AS 46.03.720	AS 46.14.150
	AS 46.03.110	AS 46.03.730	

18 AAC 15.190. FEE REVIEW. (a) An applicant for a permit or approval who is authorized by a provision of this title to seek a review of a fee decision of the department under this section may, within 30 days of receipt of the fee invoice, make a written request that the director of the department division issuing the invoice review the matter. The applicant need not pay the disputed fee until the director issues a final decision under (b) of this section, and the department will not charge interest while the director considers the request for fee review.

(b) A request for fee review must be accompanied by a written discussion that sets out the reasons why the fee or computation is disputed and how it should be adjusted. The director of the department division issuing the invoice shall issue a written decision on the disputed invoice within 30 days after receiving the request for fee review. A decision made under this subsection is the final agency decision. A person aggrieved by that decision may appeal it to the superior court in accordance with the Alaska Rules of Appellate Procedure. (Eff. 7/11/2002, Register 163)

Authority:	AS 44.46.020	AS 46.03.020	AS 46.14.140
		AS 44.46.025	AS 46.03.070

ARTICLE 6. ADMINISTRATIVE APPEAL PROCEDURES.

Section

321-1955

- 195. Applicability
- 200. Request for an adjudicatory hearing
- 205. Alternative dispute resolution
- 210. Stay of decision
- 220. Action on hearing requests
- 225. Additional parties and issues
- 230. Consolidation and severance
- 235. Hearing officer
- 237. Agency decision record
- 240. Prehearing document exchange; witness lists
- 245. Obligation to submit evidence and raise issues
- 247. Subpoenas
- 250. Prehearing conference
- 255. Summary determination
- 260. (Repealed)
- 270. Hearings
- 280. Certification of adjudication record
- 290. Proposed findings
- 300. Final decision
- 310. Adjustment of deadlines
- 320. Contempt
- 340. Service under 18 AAC 15.185 – 18 AAC 15.340

18 AAC 15.195. APPLICABILITY. As provided in AS 44.62.330(a)(44) and AS 46.35.90(e), the adjudicatory hearing procedures in this chapter are in lieu of and supersede the adjudicatory hearing procedures contained in AS 44.62.330 – 44.62.630 (Administrative Procedure Act). (Eff. 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.04.030
	AS 46.03.090	AS 46.03.330	AS 46.14.120
	AS 46.03.100	AS 46.03.720	AS 46.14.150
	AS 46.03.110	AS 46.03.730	AS 46.35.090(e)

18 AAC 15.200. REQUEST FOR AN ADJUDICATORY HEARING. (a) Within 30 days after the department issues a permit decision reviewable under 18 AAC 15.195 – 18 AAC 15.340 or within 30 days after the department issues a final decision under 18 AAC 15.185, whichever is later, a person authorized to request an adjudicatory hearing under this chapter may serve a request upon the commissioner. The request must be in writing and must contain

(1) the requestor’s name, mailing address, and telephone number;

(2) the names and addresses of all persons adversely affected by the decision whom the requestor represents;

(3) a memorandum that supports the request; the memorandum must include

(A) a clear and concise factual statement of the nature and scope of the interests of the requestor, and an explanation of how and to what extent those interests would be directly and adversely affected by the decision; that explanation must include a discussion of the factors in 18 AAC 15.220(b)(1)(A);

(B) a clear and concise statement of

(i) each disputed issue of material fact and question of law proposed for consideration at the hearing;

(ii) the relevance to the permit decision of each matter identified under (i) of this subparagraph; and

(iii) the hearing time estimated to be necessary for the adjudication;

(C) a discussion of why the request for hearing should be granted; and

(D) if applicable, specific reference to the contested terms or conditions of the department's decision, as well as suggested alternative terms and conditions that in the requestor's judgment are required to implement applicable requirements of law.

(b) Unless a permit is being renewed, if the application was made solely for a permit amendment, a request for an adjudicatory hearing may not raise issues relating to

(1) the validity of the permit for which an amendment is sought; or

(2) unrelated permit conditions for which an amendment was not sought.

(c) A copy of the request for an adjudicatory hearing must be served on the department office that issued the decision being challenged, and on the permit applicant. A copy of the request also must be provided to the department office in an electronic format, unless the department waives this requirement because the requestor lacks a readily accessible means or the capability to provide item in an electronic format.

(d) The department will issue by mail a notice of the request for hearing to the requestor, to the permit applicant, and to each person who commented on the application or proposed permit decision, and will post that notice on the Alaska Online Public Notice System established under AS 44.62.175. In the notice of request for hearing, the department will inform persons that the hearing request is available for review by contacting the department or by reviewing the department's web site. In the notice, the department will also include the statement that a person who wishes to file a response to the request for hearing must do so by serving a response on the commissioner within 20 days after issuance of the notice.

(e) A request under 18 AAC 15.185 for informal agency review stays the deadlines set out in 18 AAC 15.200 – 18 AAC 15.340 while the request is pending and during any informal

review. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.04.030
	AS 46.03.090	AS 46.03.330	AS 46.14.120
	AS 46.03.100	AS 46.03.720	AS 46.14.150
	AS 46.03.110	AS 46.03.730	AS 46.35.090(e)

18 AAC 15.205 . ALTERNATIVE DISPUTE RESOLUTION. (a) Notwithstanding 18 AAC 15.195 – 18 AAC 15.340, the department and the parties may engage in alternative dispute resolution, using procedures to which the department and the parties agree, in order to prevent or to minimize the escalation of a dispute or to resolve a dispute that has occurred. However, a request for adjudicatory hearing must be filed in accordance with 18 AAC 15.200 at the same time as or before a request for alternative dispute resolution.

(b) For purposes of this section, alternative dispute resolution

(1) includes non-binding arbitration, modified adjudication proceedings, non-record abbreviated hearings, or any collaborative method designed to encourage the parties to work together to develop a mutually agreeable solution, including negotiation, mediation, use of a neutral fact-finder, and settlement conferences; and

(2) does not include binding arbitration.

(c) Nothing in this section impairs the ability of a party to an adjudicatory hearing under 18 AAC 15.195 – 18 AAC 15.340 or the hearing officer from pursuing settlement discussions. (Eff. 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.110	AS 46.03.720
	AS 46.03.090	AS 46.03.320	AS 46.03.730
	AS 46.03.100	AS 46.03.330	

18 AAC 15.210. STAY OF DECISION. (a) The department's decision is effective when issued. The department's decision is not automatically stayed during the pendency of proceedings under this chapter. A requestor may, contemporaneous with the service of the request for a hearing under 18 AAC 15.200, serve upon the commissioner a request for stay of the department's decision, or a portion of it, pending completion of proceedings under this chapter. The request must be supported by a written memorandum setting out each reason why the decision should be stayed. A person requesting a stay must serve a copy of the request and supporting memorandum on the department office that issued the decision being challenged and on the permit applicant. A copy of the request for stay also must be provided to the department office in an electronic format, unless the department waives this requirement because the requestor lacks a readily accessible means or the capability to provide items in an electronic format. The department will issue by mail a notice of the request for stay to the requestor, to the permit applicant, and to each person who commented on the application or proposed permit decision, and will post that notice on the Alaska Online Public Notice System established under AS 44.62.175. In the notice of request for stay, the department will inform persons that the request for stay is available for review by contacting the department or by reviewing the department's web site. In the notice, the department also will include the statement that a person

who wishes to file a response to the request for stay must do so by serving a response on the commissioner within 20 days after issuance of the notice. In reviewing a request for stay, the commissioner or a designee assigned under 18 AAC 15.235(a)(1)(A) will consider

(1) the relative harm to the person requesting the stay, the permit applicant, and public health, safety, and the environment, if a stay were granted or denied;

(2) the resources that would be committed during the pendency of the proceedings under this chapter, if a stay were granted or denied; and

(3) the likelihood that the person requesting the stay will prevail in the proceedings on the merits.

(b) No stay will be granted on a denial of a permit application or request for certification for either a new operation, or an operation that began after the effective date of the statute or regulation requiring a permit.

(c) Within 20 days after the department issues the notice of request for stay under (a) of this section, the department staff, a requestor, the permit applicant, and a potential intervenor may serve a responsive memorandum upon the commissioner and all others appearing in the proceeding.

(d) The commissioner or a designee assigned under 18 AAC 15.235(a)(1)(A) will issue a decision on the request for stay within 15 days after the expiration of the deadline for a responsive memorandum under (c) of this section. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.03.730
	AS 46.03.090	AS 46.03.330	AS 46.14.120
	AS 46.03.100	AS 46.04.030	AS 46.14.150
	AS 46.03.110	AS 46.03.720	AS 46.35.090(e)

18 AAC 15.220. ACTION ON HEARING REQUESTS. (a) The department staff, the permit applicant, and potential intervenors may serve a response to a request for an adjudicatory hearing within 20 days after issuance, under 18 AAC 15.200(d), of a notice of the request for hearing. A response may include or address any matter that may assist the commissioner or a designee assigned under 18 AAC 15.235(a)(1)(A) in deciding whether the hearing request should be granted or denied. The requestor may reply within seven days after service of any response to the request for an adjudicatory hearing.

(b) Within 30 days after the time has expired for a requestor to reply to responses to the request, the commissioner or a designee assigned under 18 AAC 15.235(a)(1)(A) will issue a decision on a request for an adjudicatory hearing. The commissioner or designee will

(1) grant a request for a hearing if the commissioner or designee finds that

(A) the request discloses that the requestor would be directly and adversely affected by the department's decision so as to justify an adjudicatory hearing; in

determining whether a requestor is directly and adversely affected by the department's decision, the commissioner or designee will consider the nature of the interest asserted by the requestor, whether that interest is one that the applicable statutes and regulations were intended to protect, and the extent to which the department's decision directly and substantively impairs that interest;

(B) the requestor has raised a genuine issue of disputed fact material to the decision; and

(C) the request for hearing satisfies the requirements of 18 AAC 15.200;

(2) remand the permit decision to department staff, with instructions as appropriate, if the commissioner or designee finds that the staff or the applicant has failed to comply with a statutory or regulatory requirement or that the permit could be amended to accommodate concerns raised in the request without raising a substantive issue that might give rise to a separate hearing request from another person;

(3) deny a request for an adjudicatory hearing and grant a hearing on the existing agency record and on written briefs, if the commissioner finds that the request does not raise a genuine issue of disputed fact material to the decision but does raise a disputed and significant issue of law or policy; or

(4) deny the request for an adjudicatory hearing and issue a final agency decision if, after reviewing the request, response, and reply, the commissioner or designee finds that

(A) that a hearing should not be granted under (1) of this subsection;

(B) a remand should not be granted under (2) of this subsection; and

(C) a hearing on the existing record and on written briefs should not be granted under (3) of this subsection.

(c) If the commissioner or designee grants an adjudicatory hearing request or a hearing on the existing record and on written briefs, the department will publish notice of the action in a newspaper of general circulation for the affected area, and will send a copy of the public notice to each person who submitted timely written comments on the contested application, who testified at a public hearing before the department's decision on the application, or who submitted a request for hearing.

(d) If the commissioner or designee grants a hearing on the existing record and on written briefs, the commissioner or designee will establish, after the time for intervention has expired under 18 AAC 15.225, a briefing schedule for submission of an opening brief by each requestor, a responsive brief by each respondent, and a reply brief by each requestor. The commissioner or designee may allow the parties to supplement the agency record with additional information submitted with the briefs. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority	AS 46.03.020	AS 46.03.320	AS 46.14.120
	AS 46.03.090	AS 46.03.330	AS 46.14.150

AS 46.03.100	AS 46.03.720	AS 46.35.090(e)
AS 46.03.110	AS 46.03.730	

18 AAC 15.225. ADDITIONAL PARTIES AND ISSUES. (a) A person who wants to intervene in proceedings granted by the commissioner or designee under 18 AAC 15.220(b)(1) or (b)(3) may serve upon the commissioner a request to intervene that contains the information and meets the requirements specified in 18 AAC 15.200, within 15 days after publication of notice or mailing of notice under 18 AAC 15.220(c), whichever occurs last. A person requesting to intervene must serve a copy of the request to intervene on each party. An existing party may submit an objection to a request to intervene within 15 days after service after the request.

(b) Each requestor, the permit applicant, and the department office that issued the challenged decision are automatically parties to the proceeding and need not file requests for intervention.

(c) The commissioner or designee will grant or deny the request to intervene within 10 days after the expiration of the deadline to object. The commissioner or designee will grant the intervention request if the commissioner or designee finds that the potential intervenor meets the standing requirements of 18 AAC 15.220(b)(1)(A) and the potential intervenor's interests are not adequately represented in the adjudication.

(d) If more than one hearing request concerning a department decision, including requests to intervene, is granted, all granted requests will be automatically joined in a single proceeding. (Eff. 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.330	AS 46.14.120
	AS 46.03.090	AS 46.03.720	AS 46.14.150
	AS 46.03.100	AS 46.04.030	AS 46.35.090(e)
	AS 46.03.110		

18 AAC 15.230. CONSOLIDATION AND SEVERANCE. (a) The commissioner may consolidate, in whole or in part, two or more proceedings to be held under this chapter, if the commissioner determines that a joint hearing on any or all of the matters at issue would expedite or simplify consideration of the issues and that consolidation would not prejudice a party. Consolidation does not affect the right of a party to raise issues that might have been raised had consolidation not occurred.

(b) If the commissioner determines that consolidation is not conducive to an expeditious, full, and fair hearing, a party or issue may be severed and heard in a separate proceeding. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.04.030
	AS 46.03.090	AS 46.03.330	AS 46.14.120
	AS 46.03.100	AS 46.03.720	AS 46.14.150
	AS 46.03.110	AS 46.03.730	AS 46.35.090(e)

18 AAC 15.235. HEARING OFFICER. (a) The commissioner may

(1) designate a department employee to

(A) make a final decision under 18 AAC 15.200 – 18 AAC 15.225 or to prepare a recommended decision for the commissioner’s consideration; or

(B) act as a hearing officer for a hearing under this chapter, and to

(i) make a final decision in the hearing; or

(ii) prepare a recommended decision for the commissioner’s consideration; or

(2) appoint an individual from outside the department to act as a hearing officer for a hearing under this chapter, and to prepare a recommended decision for the commissioner’s consideration.

(b) An individual designated or appointed under (a) of this section

(1) may not have been substantively involved in the decision at issue in the hearing;

(2) must be impartial with respect to the subject of the hearing;

(3) if a public officer within the meaning of AS 39.52 (Executive Branch Ethics Act), may not serve in violation of that chapter; and

(4) if an attorney, must comply with applicable rules of professional conduct.

(c) If the commissioner designates another individual to act as hearing officer under (a)(1)(B) or (a)(2) of this section, the commissioner will give notice at the time of the designation to the parties. (Eff. 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.330	AS 46.04.120
	AS 46.03.090	AS 46.03.720	AS 46.14.150
	AS 46.03.100	AS 46.04.030	AS 46.35.090(e)
	AS 46.03.110		

18 AAC 15.237. AGENCY DECISION RECORD. (a) If an adjudicatory hearing request is granted, or a hearing on the existing record and written briefs is granted, the department staff shall prepare the agency decision record. In the agency decision record, the department staff shall include the permit application and supporting documentation, written and electronic correspondence concerning the proposed action, additional information submitted by the applicant to the department, public comments and information submitted to the department on the proposed decision, tapes or transcripts of any public hearing, the department’s decisional documents, and other materials that the department considered or relied upon in making the department’s decision. Documents exempt from AS 40.25.110 – 40.25.123 will not be included in the agency decision record. The department staff shall number the pages of the agency decision record consecutively throughout the volumes. The department staff are not required to prepare an index of the agency decision record.

(b) Within 30 days after the expiration, under 18 AAC 15.225, of the time for intervention, if a request for intervention is not filed, or within 30 days after service of the commissioner's decision on requests for intervention, whichever is later, the manager for the department program involved in the contested decision shall certify the agency decision record as complete. The program manager shall at the same time also serve notice on all parties that the agency decision record is available for inspection and copying at the requesting party's expense. For good cause shown, the hearing officer may extend the time for preparation and certification of the agency decision record.

(c) The requestor shall pay the cost of gathering and certifying the agency decision record, including the reasonable cost of transcription of the tapes of any public hearing or other permit conference. If more than one requestor are parties, each requestor shall bear, on a pro-rata basis, the cost of gathering and certifying the agency permit record, unless the hearing officer grants another percentage allocation among the requestors. The department may require advance payment of the costs of gathering and certifying the record as reasonably estimated by the department. If the department requires advance payment, the cost of gathering and certifying the agency decision record must be paid before any further proceedings under this chapter. The department will waive all or part of the cost of gathering and certifying the record if the requestor demonstrates, to the department's satisfaction, an inability to pay those costs.

(d) The department will impose copying charges on a party requesting copies of a portion of or the entire agency decision record, unless the number of copies requested is de minimis. (Eff. 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.04.030
	AS 46.03.090	AS 46.03.330	AS 46.14.120
	AS 46.03.100	AS 46.03.720	AS 46.14.150
	AS 46.03.110	AS 46.03.730	

18 AAC 15.240. PREHEARING DOCUMENT EXCHANGE; WITNESS LISTS.

(a) Within 20 days after the certification of the agency decision record, each requestor shall serve on the hearing officer and all parties

(1) a complete and concise summary of the factual and legal assertions of error that the requestor will present at the hearing;

(2) the name, address, telephone number, and occupation of each witness whom the requestor intends to call at the hearing, the purpose of each witness's testimony, and, if a witness is to testify as an expert, the information and documents required by courts in this state for the disclosure of expert testimony; and

(3) copies of any real or documentary evidence that the requestor intends to introduce at the hearing, and the purpose of the introduction of that evidence.

(b) Within 20 days after the service of the matters specified in (a) of this section, each respondent shall serve upon each party

(1) the name, address, telephone number, and occupation of each witness whom the respondent intends to call at the hearing, the purpose of each witness' testimony, and, if a witness is to testify as an expert, the information and documents required by courts in this state for the disclosure of expert testimony; and

(2) copies of any real or documentary evidence that the requestor intends to introduce at the hearing, and the purpose of the introduction of that evidence.

(c) If a party is both a requestor and a respondent, that party shall serve the items required under (a) of this section as to those issues for which the party is a requestor, and shall serve the items required under (b) of this section as to those issues for which the party is a respondent.

(d) The hearing officer may not permit depositions, interrogatories, requests for admission, and requests for production unless stipulated to by the parties or unless the hearing officer finds good cause for the discovery. For purposes of this subsection, the hearing officer may find good cause upon a compelling showing by the proponent of the discovery that the proposed discovery is essential for a fair hearing in the context of the specific adjudication, will not cause undue delay, and will not unduly increase the cost of the adjudication. The hearing officer shall place appropriate limitations on any discovery allowed under this subsection. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.04.030
	AS 46.03.090	AS 46.03.330	AS 46.14.120
	AS 46.03.100	AS 46.03.720	AS 46.14.150
	AS 46.03.110	AS 46.03.730	AS 46.35.090(e)

18 AAC 15.245. OBLIGATION TO SUBMIT EVIDENCE AND RAISE ISSUES.

A party may not submit a factual contention or expert opinion that was not submitted timely to the department before the department's issuance of the contested decision unless the party shows good cause for the failure to submit the item. A party may not raise an issue of fact or question of law that was not raised timely to the department before the department's issuance of the contested decision unless the party shows good cause for the failure to raise each matter. For purposes of this section, grounds upon a party may show good cause include the following:

(1) the party could not reasonably have ascertained the issues or made the information available within the time required by this chapter; or

(2) the party could not have reasonably anticipated the relevance or materiality of the matter sought to be raised or the information sought to be introduced. (Eff. 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.04.030
	AS 46.03.090	AS 46.03.330	AS 46.14.120
	AS 46.03.100	AS 46.03.720	AS 46.14.150
	AS 46.03.110	AS 46.03.730	AS 46.35.090(e)

18 AAC 15.247. SUBPOENAS. (a) In addition to other powers described in this

chapter, and subject to 18 AAC 15.240(d), the hearing officer may issue subpoenas requiring the appearance of witnesses and production of evidence if requested by a party. A subpoena issued under this section is enforceable as set out in AS 09.50.010, AS 44.62.590, and Rule 45, Alaska Rules of Civil Procedure.

(b) The party who requested the subpoena shall pay, in accordance with AS 44.62.430, for witness fees, mileage, and expenses. (Eff. 7/11/2002, Register 163)

Authority: AS 46.03.020

18 AAC 15.250. PREHEARING CONFERENCE. (a) The hearing officer may direct the holding of a prehearing conference if a conference might substantially aid resolution of the case. At least 10 days before a prehearing conference, unless the parties agree to a shorter time period, the hearing officer shall

(1) give notice of the conference to each party; and

(2) set the time and place of the conference with due regard for the convenience of the parties.

(b) At the prehearing conference, the hearing officer may address, and may issue an order regarding

(1) the simplification, clarification, consolidation, or limitation of the issues;

(2) the striking of immaterial issues, and the summary disposition of issues over which a genuine dispute does not exist;

(3) the admission of facts and the genuineness of documents, and stipulations with respect to facts and documents;

(4) objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits, or other submissions proposed by a party; however, the failure to raise an evidentiary objection at the conference does not preclude a party from raising the objection at the hearing;

(5) matters of which official notice will be taken in accordance with AS 44.62.480;

(6) establishment of a schedule, including definite or tentative times relating to the progress of the hearing;

(7) subject to 18 AAC 15.240, the taking and introduction of depositions;

(8) the use of affidavits in place of oral testimony under the procedures set out in AS 44.62.470;

(9) the acceptance, on good cause shown, of supplements to the witness and

evidence lists provided under 18 AAC 15.240, specifically including rebuttal evidence to matters submitted under 18 AAC 15.240(b);

(10) the exclusion of unduly repetitive or irrelevant evidence;

(11) subject to AS 44.62.410(b), the telephonic participation of witnesses; and

(12) any other matter that will expedite the hearing or aid disposition of the matter.

(c) The hearing officer shall ensure that the prehearing conference is electronically or stenographically tape recorded.

(d) The hearing officer shall prepare, and shall serve upon all parties, within 10 days after holding the prehearing conference, a written prehearing order reciting the actions taken at the prehearing conference and setting out the schedule for the hearing. In the order, the hearing officer shall include a written statement of the areas of factual agreement and disagreement, of the methods and procedures to be used to develop the evidence, and of the respective duties of the parties in connection therewith. The order controls the subsequent course of the hearing unless modified by the hearing officer for good cause shown. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.330	AS 46.14.120
	AS 46.03.090	AS 46.03.720	AS 46.14.150
	AS 46.03.100	AS 46.04.030	AS 46.35.090(e)
	AS 46.03.110		

18 AAC 15.255. SUMMARY DETERMINATION. (a) If determined by the hearing officer to be appropriate for focussing or narrowing the issues for an adjudicatory hearing, a party may move for a summary determination in that party's favor upon any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. This motion shall be filed at least 45 days before the date set for the hearing, except that upon good cause shown the motion may be filed at any time before the close of the hearing.

(b) Any other party may, within 30 days after service of the motion, file and serve a response to it or a counter motion for summary determination. If a motion for summary determination is made and supported, a party opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the hearing officer, that there is a genuine issue of material fact for determination at the hearing.

(c) Affidavits must

(1) be made on personal knowledge;

(2) set out facts that would be admissible in evidence; and

(3) show affirmatively that the affiant is competent to testify to the matters stated

in the affidavit.

(d) The hearing officer may set the matter for oral argument and call for the submission of proposed findings, conclusions, briefs, or memoranda of law. The hearing officer shall rule on the motion not more than 30 days after the date responses to the motion are filed under (b) of this section, or all argument and filings completed under this subsection, whichever is later.

(e) If all factual issues are decided by summary determination, a hearing may not be held and the hearing officer shall prepare a decision under 18 AAC 15.300. If summary determination is denied or if partial summary determination is granted, the hearing officer shall issue a memorandum opinion and order, and shall proceed with the hearing on the remaining issues.

(f) If it appears from the affidavits of a party opposing a motion for summary determination that the party cannot for reasons stated present, by affidavit or otherwise, facts essential to justify the opposition, the hearing officer may deny the motion or order a continuance to allow time for additional affidavits or other information to be obtained. (Eff. 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.04.030
	AS 46.03.090	AS 46.03.330	AS 46.14.120
	AS 46.03.100	AS 46.03.720	AS 46.14.150
	AS 46.03.110	AS 46.03.730	AS 46.35.090(e)

18 AAC 15.260. DECIDING OFFICER. Repealed. (Eff. 11/25/77, Register 64; repealed 7/11/2002, Register 163)

18 AAC 15.270. HEARINGS. (a) Unless the hearing officer orders otherwise, the sequence of argument, examination, and summation must conform to the prehearing order. The hearing officer may administer oaths and affirmations and certify official acts. Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on matters relevant to the issues, even if that matter was not covered in the direct examination, impeach a witness regardless of which party first called the witness to testify, and rebut adverse evidence. The hearing officer may question a witness.

(b) In a multiparty proceeding, the hearing officer may limit cross-examination to one party on each side of an issue, if the hearing officer is satisfied that the cross-examination by one party will adequately protect the other parties. A party whose cross-examination is limited may engage in cross-examination as to matters not covered by previous cross-examination.

(c) Subject to 18 AAC 15.245 and (e) and (f) of this section, the hearing officer may admit any material evidence of the type on which a reasonable person might rely in the conduct of serious business affairs. The hearing officer may refuse to admit evidence that is unduly repetitious.

(d) The burden of proof and of going forward with the evidence is on the requestor.

(e) A party may not introduce or advance any issue, testimony, or real or documentary evidence at the hearing that was not disclosed under 18 AAC 15.240 or 18 AAC 15.250(b)(9).

The hearing officer may waive this prohibition if the failure to previously disclose was due to

- (1) surprise;
- (2) newly discovered evidence that, by due diligence, could not have previously been discovered and disclosed; or
- (3) fraud, misrepresentation, or other misconduct of a party.

(f) The prohibition in (e) of this section does not apply to evidence offered solely to rebut or impeach matters first disclosed under 18 AAC 15.250(b)(9).

(g) The hearing officer shall ensure that the proceedings at the hearing are electronically or stenographically reported.

(h) The hearing officer may require the submission of briefs and proposed findings of fact and conclusions of law after the close of the hearing if the hearing officer finds that they might aid in resolving the case. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.330	AS 46.14.120
	AS 46.03.090	AS 46.03.720	AS 46.14.150
	AS 46.03.100	AS 46.04.030	AS 46.35.090(e)
	AS 46.03.110		

18 AAC 15.280. CERTIFICATION OF ADJUDICATION RECORD. (a) After the hearing, or after the hearing transcript is prepared if the hearing officer orders a transcript, the hearing officer shall certify the record of the hearing and provide notice of the certification to all parties.

(b) If the hearing officer orders a transcript, the requestor shall bear the cost of transcribing the hearing, except for good cause shown. If more than one requestor are parties, the hearing officer may apportion the costs among the requestors. If a requestor fails to pay for that requestor's portion of the transcript costs as ordered by the hearing officer, the hearing officer may, upon motion by one of the parties or by motion of the hearing officer withhold final decision in the adjudication and seek enforcement of the transcript assessment using the procedures set out in 18 AAC 15.320. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.330	AS 46.14.120
	AS 46.03.090	AS 46.03.720	AS 46.14.150
	AS 46.03.100	AS 46.04.030	AS 46.35.090(e)
	AS 46.03.110		

18 AAC 15.290. PROPOSED FINDINGS. Within 10 days after notice of the certification of the adjudication record under 18 AAC 15.280 and if ordered by the hearing officer, a party shall serve upon the hearing officer, and all parties, proposed findings of fact and conclusions of law. The hearing officer may use the proposed findings of fact and conclusions of law as an aid to the hearing officer, and need not issue a ruling to accept or reject the proposed findings and conclusions. (Eff. 11/25/77, Register 54; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.14.120
	AS 46.03.090	AS 46.03.330	AS 46.14.150
	AS 46.03.100	AS 46.03.720	AS 46.35.090(e)
	AS 46.03.110	AS 46.04.030	

18 AAC 15.300. FINAL DECISION. (a) The hearing officer will send a copy of the decision with the findings of fact and conclusions of law to the parties as soon as practicable after notice of certification of the record under 18 AAC 15.280 or after submittal of briefs ordered under 18 AAC 15.270(h), whichever occurs later.

(b) A decision under this section will be issued

(1) as a final decision if the commissioner is the hearing officer or if the commissioner instructs a hearing officer designated under 18 AAC 15.235(a)(1)(B)(i) to prepare and issue a final decision; or

(2) as a recommended decision; within 15 days after issuance of a recommended decision a party may submit briefing to the commissioner as to whether the commissioner should adopt the recommended decision; the commissioner will issue a final agency decision as soon as practicable after expiration of the time to submit briefing concerning a recommended decision under this paragraph.

(c) Unless the final decision involves a remand to department staff, a final decision issued under (b) of this section is a final agency decision for purposes of appeal as provided in AS 44.62.560 – 44.62.570 and shall be issued with a statement that it is a final agency decision and that an aggrieved party, including the department, has 30 days to appeal to the superior court. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.330	AS 46.14.120
	AS 46.03.090	AS 46.03.720	AS 46.14.150
	AS 46.03.100	AS 46.04.030	AS 46.35.090(e)
	AS 46.03.110		

18 AAC 15.305. RECONSIDERATION. A party may request reconsideration of a final decision issued under 18 AAC 15.300. A request for reconsideration must be submitted within 10 days after the final decision is issued. The power to order reconsideration expires 30 days after issuance of the final decision. If no action is taken on a request for reconsideration within the time allowed for reconsideration, the request is considered denied. (Eff. 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.330	AS 46.14.120
	AS 46.03.090	AS 46.03.720	AS 46.14.150
	AS 46.03.100	AS 46.04.030	AS 46.35.090(e)
	AS 46.03.110		

18 AAC 15.310. ADJUSTMENT OF DEADLINES. For good cause shown, the commissioner or hearing officer may shorten or extend a deadline established in 18 AAC 15.240

- 18 AAC 15.300. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.330	AS 46.14.120
	AS 46.03.090	AS 46.03.720	AS 46.14.150
	AS 46.03.100	AS 46.04.030	AS 46.35.090(e)
	AS 46.03.110		

18 AAC 15.320. CONTEMPT. The commissioner or hearing officer may use the procedures set forth in AS 44.62.590 to obtain the assistance of the superior court if a person in the proceeding disobeys or resists a lawful order, refuses to respond to a subpoena, refuses to take oath or affirmation as a witness, refuses to be examined, or is guilty of misconduct at the hearing or so near the hearing as to obstruct the proceeding. (Eff. 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.04.030
	AS 46.03.090	AS 46.03.330	AS 46.14.120
	AS 46.03.100	AS 46.03.720	AS 46.14.150
	AS 46.03.110	AS 46.03.730	AS 46.35.090(e)

18 AAC 15.340. SERVICE UNDER 18 AAC 15.185 – 18 AAC 15.340. (a) Any matter required to be served under 18 AAC 15.185 - 18 AAC 15.340 shall be submitted by personal delivery, or by first-class, priority, or express United States mail to each party and the commissioner or designee along with proof of service. The hearing officer may waive the requirement for submission by personal delivery or mail as described in this subsection, to allow facsimile service or service in an electronic format upon motion of a party. Proof of service must be made by an affidavit of service stating the persons who have been served, and the day and manner of service.

(b) If a pleading or paper filed discloses that a requestor or respondent is represented by counsel, service upon the requestor or respondent must be made upon the requestor's or respondent's attorney.

(c) If mail is used for service, service occurs upon mailing for the purpose of the serving person's obligation. If a party has the right or is required to do some act or take some proceedings within a period prescribed in 18 AAC 15.195 – 18 AAC 15.340 after the service of a notice or other paper upon the party, and if the party is served by mail, three days are added to the prescribed period. (Eff. 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.04.030
	AS 46.03.090	AS 46.03.330	AS 46.14.120
	AS 46.03.100	AS 46.03.720	AS 46.14.150
	AS 46.03.110	AS 46.03.730	AS 46.35.090(e)

ARTICLE 6. GENERAL PROVISIONS.**Section**

- 900. Time computations
- 910. Service
- 920. Definitions

18 AAC 15.900. TIME COMPUTATIONS. Time computations under this chapter will be made in accordance with AS 01.10.080. (Eff. 11/25/77, Register 64)

Authority:	AS 46.03.020(10)	AS 46.03.110	AS 46.03.330
	AS 46.03.090	AS 46.03.160	AS 46.03.720
	AS 46.03.100		

18 AAC 15.910. SERVICE. (a) Any matter required to be served under 18 AAC 15.020 – 18 AAC 15.080, or before a request for an adjudicatory hearing under 18 AAC 15.200 may be served by first-class mail, facsimile, an electronic format, or personal delivery.

(b) Repealed 7/11/2002.

(c) When a pleading or paper filed in a case discloses that a requestor or respondent is represented by counsel, service upon the requestor or respondent must be made upon his attorney.

(d) When mail is used for service, service occurs upon the date of mailing as indicated by the postmark for the purpose of the serving party's obligation, and upon receipt for the purpose of commencing time limits upon the receiving party. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.110	AS 46.03.720
	AS 46.03.090	AS 46.03.330	AS 46.04.030
	AS 46.03.100		

18 AAC 15.920. DEFINITIONS. As used in this chapter, unless the context otherwise requires

(1) "appropriate division director" means the director of the department division responsible for the permit, approval, or certification at issue;

(2) "commissioner" means the commissioner of environmental conservation;

(3) "decision" means a department decision to issue, deny, condition, suspend, revoke, or amend a permit, or to take another action reviewable under 18 AAC 15.195 - 18 AAC 15.340;

(4) "department" means the Department of Environmental Conservation;

(5) "EPA" means the United States Environmental Protection Agency;

(6) "hearing officer" means

(A) the commissioner, if the commissioner does not designate or appoint a hearing officer under 18 AAC 15.235(a)(1)(B) or (a)(2); or

(B) an individual designated or appointed under 18 AAC 15.235(a)(1)(B) or (a)(2);

(7) "modification of an NPDES permit" includes an action that, as a practical matter, alters the permittee's obligation under the NPDES permit, whether through a consent decree, stipulated agreement, enforcement compliance schedule letter, or any other means:

(8) "NPDES" means the National Pollutant Discharge Elimination System under 33 U.S.C. 1328, 1342, and 1345;

(9) "party" means the permit applicant, each person whose request for an adjudicatory hearing or intervention has been granted, and the department staff;

(10) "permit" means an approval, permit, certification, variance, exemption, delegation, or other authorization of the department subject to review under 18 AAC 15.195 - 18 AAC 15.340;

(11) "permit applicant" means a person who

(A) submitted an application for a permit subject to review under 18 AAC 15.195 - 18 AAC 15.340;

(B) has been issued a permit subject to review under 18 AAC 15.195 - 18 AAC 15.340; or

(C) is the subject of a departmental action that is subject to review under 18 AAC 15.195 - 18 AAC 15.340;

(12) "regional administrator" means the administrator of Region X of EPA;

(13) "requestor" means a person requesting an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340, a person requesting a stay under 18 AAC 15.210, or a person who intervenes in order to challenge all or part of the department's decision; "requestor" does not include a person whose request for an adjudicatory hearing or intervention is denied;

(14) "respondent" means a person defending the department's decision. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.110	AS 46.04.030
	AS 46.03.090	AS 46.03.330	AS 46.14.120
	AS 46.03.100	AS 46.03.720	AS 46.14.150