

2/8/10

PROPOSED

REGS:

EXECUTIVE

BR.ETHICS/

OIL & GAS

TAX CREDIT

ALASKA STATE LEGISLATURE

Interim:

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
Fax: (907) 373-4729

**Session:**

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-4899
Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

COMMITTEE SCHEDULE

MONDAY FEBRUARY 8, 2010 3-5:00 P.M. ROOM 17

- + Joint Senate and House Committee Meeting**
- +* (9 AAC 52) Proposed Regulations Relating to Executive Branch Ethics
Public Testimony to be Taken.**
- +* (15 AAC 55.280 – 15 AAC 55. 811) Proposed Regulations Relating to Oil
and Gas Tax Credit and Heating Value of Gas Public Testimony to be
Taken.
Executive Session**

- + Teleconference**
- * First Public Hearing**
- = Previously Heard Bill**

E-Mail: John_Davies@legis.state.ak.us

ALASKA STATE LEGISLATURE

Interim:

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
Fax: (907) 373-4729



Session:

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-4899
Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

AGENDA

For

**ARRC meeting Monday, February 8, 2010
Capitol Rm.17, 3-5:00 P.M.**

- I. Call to Order by Chairman.
- II. Roll Call and Introduction of Members.
- III. Opening remarks by the Chairman.
- IV. (9 AC 52) Proposed Regulations Relating to Executive Branch Ethics, Presentation by Judy Bockmon, Assistant Attorney General, Department of Law, and thereafter; Public Testimony.
- V. (15 AAC 55.280 – 15 AAC 55.811) Proposed Regulations Relating to Oil and Gas Tax Credit and Heating Value of Gas. Presentation by Commissioner Patrick Galvin or Deputy Commissioner Marcia Davis and John Larson, Audit Master, and thereafter; Public Testimony.
- VI. Close Public Testimony.
- VII. Executive Session.

*This hearing will be teleconferenced.

E-Mail: John_Davies@legis.state.ak.us

John Davies

From: John Davies
Sent: Tuesday, February 09, 2010 1:03 PM
To: 'Andree McLeod'
Cc: Rep. Wes Keller
Subject: RE: Votes???

Dear Andree McLeod,

Thank you for your email.

By way of background, as you may know, the regulation review statute that the Committee operates under (Powers AS24.20.460) empowers the Committee to "as appropriate, to either introduce a bill annulling the regulation or exercise the committee's power to suspend the effectiveness of the regulation in accordance with AS24.20.445." (when not in Session)

The Committee, after exercising its due diligence review, did not find sufficient grounds to propose a bill annulling either of the regulations reviewed yesterday.

Thank you for your participation in yesterday's meeting, and for being an informed and engaged citizen.

Very Truly Yours,

John Davies
Committee Aide

From: Andree McLeod [mailto:andree@andree.us]
Sent: Tuesday, February 09, 2010 12:17 AM
To: John Davies
Subject: Votes???

Hi John
Did the committee vote on the Ethics regs?
What were the votes? I can't find it on BASIS.
Is that it? Is it final?
Andrée McLeod

John Davies

From: John Davies
Sent: Monday, February 01, 2010 3:53 PM
To: Bonnie Gruening; Christopher Birdsall; Kimberly Clark; Josh Applebee; Christina Apathy; Jim Pound
Subject: Notice of February 8, 2010 ARRC Meeting
Attachments: ARRC Schedule 2-8.docx

February 1, 2010

Dear Fellow Staff,

Attached to this email you will find the committee schedule notice for the first ARRC meeting to be held Monday, February 8, 2010, at 3 P.M. in room 17.

The House Speaker has brought to the committee's attention the two proposed regulations listed on the schedule (Executive Branch Ethics and Oil and Gas Credit). Public testimony will be taken on these two proposed regulations thereafter the committee will go into executive session in order to discuss with its attorney the 20 memos received during the interim concerning potential problem regulations. If you have any questions about specific memos feel free to give me a call.

Regards,

John Davies
Committee Aide

John Davies

From: Rep. Wes Keller
Sent: Wednesday, January 13, 2010 9:07 AM
To: Andree McLeod
Cc: John Davies
Subject: RE: Message to Wes from Andree re: proposed regulations changes to AEBEA

Good morning Andree, As you might guess, things are really stacking up just b4 I leave... I will look these over carefully and get John (my Chief of Staff and Reg Review Committee Aid) to review them--- then I will better understand your explanation of concerns. I had seen the notice of the proposed regulations and had heard mention of them on the news, but I have not looked at them in detail yet. We can communicate via telephone, but I will be distracted now getting moved to Juneau. If you give me a call early next week, I will keep this on my radar screen. (Juneau office is 465-2186)

Rep Keller

From: Andree McLeod [andree@andree.us]
Sent: Wednesday, January 13, 2010 8:38 AM
To: Rep. Wes Keller
Subject: Message to Wes from Andree re: proposed regulations changes to AEBEA

Hi Wes.

These changes to the Alaska Executive Branch Ethics Act are what I would like to speak to you about When will your committee have a hearing on these proposed changes?

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LAW

<http://www.law.state.ak.us/pdf/ethics/ProposedChanges.pdf>

Andrée
907.561.8595

John Davies

From: Rep. Wes Keller
Sent: Wednesday, January 13, 2010 9:14 AM
To: John Davies
Subject: assignment

Hi John, I just copied you on a response to Andree McLeod regarding the Administration Ethics regulation changes. If you remember, she is the one who filed countless complaints against the Governor and effectively demonstrated the need for some regulation changes. I want to listen carefully to what she is saying and respond definitively and will need your help to do that. It is difficult for me to believe that Admin would try to get away with anything when this is in the spotlight, but we need to understand exactly what they are doing. Give me a call if you have questions on this... I need to be able to respond to Andree next Tuesday.

Thanks, Wes

John Davies

From: John Davies
Sent: Wednesday, January 20, 2010 2:36 PM
To: 'andree@andree.us'
Cc: Rep. Wes Keller; Jim Pound
Subject: Proposed regulation changes to AEBEA

January 20, 2010

Dear Andree McLeod,

Representative Keller has asked me to respond to your email about your concerns reference the AEBEA.

The public vetting of the changes to the regulations is taking place at this time. You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Assistant Attorney General Judy Bockmon at the Department of Law, 1031 W. 4th Avenue, Anchorage, Alaska 99501 or by email to judy.bockmon@alaska.gov. Your comments must be received no later than 4:30 p.m. on January 22, 2010.

No hearing is presently anticipated by the Administrative Regulation Review Committee "ARRC" concerning the AEBEA.

The ARRC does not routinely hold hearings concerning proposed administrative regulations unless it is brought to the committee's attention by a standing committee or the ARRC's attorney that a regulation fails standards. Normally for a proposed regulation to garner review it would either be considered illegal; unconstitutional; outside statutory authority; inconsistent with statute; or inconsistent with legislative intent.

The ARRC's attorney reviews proposed regulations to determine if they comply with the standards for review, and jurisdictional standing committee(s) receive notice of the proposed changes. The standing committee may notice the ARRC if it has a concern about a proposed regulation.

At this time the ARRC has not received notice from either a standing committee or the ARRC attorney that the AEBEA fails any of the standards for review.

Therefore I encourage you to make your comments in the present ongoing public vetting process to the above named Assistant Attorney General.

Thank you for being an informed and concerned citizen. I hope that this email answered your question. If you have further need for information please feel free to contact our office at any time.

Very Truly Yours,

John Davies
Chief of Staff to
Rep Wes Keller

- (8) 9 AAC 52.135 is a proposed new section to provide guidance to designated ethics supervisors when review of an ethics disclosure reveals a violation of the Act.
- (9) 9 AAC 52.140 is proposed to be changed to clarify that the attorney general may separately address multiple alleged violations stated in one complaint.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Assistant Attorney General Judy Bockmon at the Department of Law, 1031 W. 4th Avenue, Ste. 200, Anchorage, Alaska 99501 or by email to judy.bockmon@alaska.gov. The comments must be received no later than 4:30 p.m. on January 22, 2010.

Oral or written comments also may be submitted at a hearing to be held on January 6, 2010, in the Fifth Floor Conference Room, Department of Law, 1031 W. 4th Avenue, Anchorage, Alaska. The hearing will be held from 10:00 a.m. to 12:00 p.m. and might be extended to accommodate those present before 10:00 a.m. who did not have an opportunity to comment.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Kamie Willis at (907) 269-5100 at least seven days before the special accommodation is needed to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact Kamie Willis at the Department of Law, 1031 W. 4th Avenue, Ste. 200, Anchorage, Alaska or (907) 269-5100 or go to www.law.state.ak.us/doclibrary/ethics.html.

After the public comment period ends, the Department of Law will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.**

Statutory Authority: AS 39.52.950

Statutes Being Implemented, Interpreted, or Made Specific: AS 39.52.110 - 39.52.140; AS 39.52.210; AS 39.52.220; AS 39.52.260; AS 39.52.310; AS 39.52.410; AS 39.52.420; AS 39.52.950; AS 39.52.960

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: December 5, 2009

/s/

Daniel S. Sullivan
Attorney General
Department of Law

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Department of Law
2. General subject of regulation: Changes to Alaska Executive Branch Ethics Act Regulations
3. Citation of regulation: 9 AAC 52.035 - 9 AAC 52.070; 9 AAC 52.130; 9 AAC 52.135; 9 AAC 52.140; 9 AAC 52.990
4. Reason for the proposed action:
 - ☐ compliance with federal law
 - ☐ compliance with new or changed state statute
 - ☐ compliance with court order
 - ☒ development of program standards
 - ☐ other: (please list) _____
5. RDU/component affected: Civil Division/Opinions, Appeals, and Ethics
6. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY 2010	Subsequent Years
Operating Cost	\$ 0	\$ 0
Capital Cost	\$ 0	\$ 0
Federal receipts	\$ 0	\$ 0
General fund match	\$ 0	\$ 0
General fund	\$ 0	\$ 0
General fund/ program receipts	\$ 0	\$ 0
General fund/ mental health	\$ 0	\$ 0
Other funds (specify)	\$ 0	\$ 0

7. The name of the contact person for the regulations:

Name Judy Bockmon
Title Assistant Attorney General
Address 1031 W. 4th Ave. Suite 200
Anchorage, AK 99501
Telephone 907-269-5100
E-mail address judy.bockmon@alaska.gov

8. The origin of the proposed action:

☒ staff of state agency
☐ federal government
☒ general public
☐ petition for regulation change
☒ other (please list): Request from Department of Administration

9. Date: December 7, 2009

Prepared by: _____/s/_____
[signature]

Name (typed) Judy Bockmon
Title (typed) Assistant Attorney General
Telephone: 907-269-5100

9 AAC 52 is amended by adding a new section to read:

9 AAC 52.035. Personal gain. For purposes of AS 39.52.120(a), gain is personal gain if it is

- (1) a benefit to the public officer's personal interest or financial interest; or
- (2) actual or anticipated gain, benefit, profit, or compensation to the public officer or the officer's immediate family member. (Eff. __/__/__, Register __)

Authority: AS 39.52.120 AS 39.52.950

9 AAC 52.040(c) is amended by adding a new paragraph to read:

(3) accepting money to reimburse the public officer for expenses incurred for professional legal services to defend against a complaint brought under AS 39.52.310 - 39.52.390, approving money to reimburse another public officer for those expenses, entering into an agreement to pay those expenses on behalf of another public officer, or authorizing payment to secure those professional legal services on behalf of another public officer, if

(A) the public officer to be reimbursed, or on whose behalf payment is to be made, is exonerated of a violation of the Ethics Act or other law for which reimbursement or payment is to be made, or agrees to repay the money or payment if the public officer is not exonerated of the violation;

(B) the complaint concerns conduct that occurred during the public officer's employment or service as a public officer;

(C) the expenses reimbursed or paid are reasonable; and

(D) the reimbursement or payment is made by a state agency that has money appropriated that may be lawfully used for the purpose of paying the expenses.

9 AAC 52.040 is amended by adding a new subsection to read:

(d) For purposes of (c)(3) of this section,

(1) exoneration of a violation of the Ethics Act

(A) occurs when an allegation in a complaint brought against a public officer under AS 39.52.310 - 39.52.390 is

(i) dismissed under AS 39.52.310(d), 39.52.320, or 39.52.370(d);

(ii) resolved with only preventive action recommended under

AS 39.52.330 to avoid a potential violation; or

(iii) dismissed after appeal under AS 39.52.370(f); and

(B) does not include the dismissal or resolution of an allegation in a complaint when corrective action is required under AS 39.52.330;

(2) expenses are reasonable if they were necessarily incurred to defend against an allegation in a complaint brought under AS 39.52.310 - 39.52.390; those expenses may

(A) include attorney's fees and fees incurred for professional legal services customarily performed by an attorney but delegated to and performed by an investigator, paralegal, or law clerk; and

(B) be apportioned by alleged violation if a complaint alleges more than one violation, but only if the public officer provides clear documentation that the expenses paid or to be reimbursed were limited to the alleged violation for which the public officer is exonerated; and

(3) payment or reimbursement under this section may be made to or on behalf of a current or former public officer. (Eff. 4/24/94, Register 130; am __/__/__, Register __)

Authority: AS 39.52.120 AS 39.52.950

9 AAC 52 is amended by adding a new section to read:

9 AAC 52.045. Transportation of family members of governor and lieutenant governor. (a) The use or authorization of use of state money or other state resources for transportation of a family member of the governor or lieutenant governor does not violate AS 39.52.120(a) or (b)(3) if transportation is provided to an event at which the family member's presence benefits the state. The presence of a family member of the governor or lieutenant governor benefits the state if the family member's presence

(1) is required for state business; or

(2) has a public purpose related to the governor's or lieutenant governor's official duties, including

(A) attending a state-sponsored event that the family of the governor or lieutenant governor customarily attends;

(B) attending an event at which the family member serves as an official representative of the state; and

(C) accompanying, as an invited guest, the governor or lieutenant governor to an event related to issues important to the state when the family member's attendance is appropriate for the event, such as youth or family related events.

(b) For purposes of AS 39.52.120(a) and (b)(3) and (a) of this section, transportation of a family member to attend a political or campaign event held for partisan political purposes does not benefit the state.

(c) For purposes of AS 39.52.120(a) and (b)(3), the use or authorization of use of state money or other state resources for transportation of a family member that does not benefit the state is presumed insignificant if the governor or lieutenant governor pays the state the cost of the family member's transportation. Except for transportation by state aircraft for partisan political purposes under AS 39.52.120(f), the agency that authorized or paid for the travel shall determine the cost of the transportation based on either

- (1) the actual fare paid; or
- (2) the fare for an equivalent commercial flight, if the travel was by state aircraft.

(d) In this section,

- (1) "child" has the meaning given in AS 39.52.960;
- (2) "family member" means a spouse or minor child of the governor or lieutenant

governor;

- (3) "for partisan political purposes" has the meaning given in

AS 39.52.120(b)(6). (Eff. __/__/__, Register __)

Authority: AS 39.52.120 AS 39.52.950

9 AAC 52.050 is repealed and readopted to read:

9 AAC 52.050. Use of state time, property, equipment, or other facilities. (a) Unless the attorney general has issued a general opinion against the use or advised the public officer against the use, a public officer who uses state time, property, equipment, or other facilities to benefit the officer, an immediate family member of the officer, the officer's personal or financial interest, or another person does not violate AS 39.52.120(a) or (b)(3) if the officer's designated supervisor determines that the use is insignificant.

(b) For purposes of determining whether a public officer has violated AS 39.52.120(a) or (b)(3), the use of a state cellular telephone to benefit the officer, an immediate family member of the officer, the officer's personal or financial interest, or another person is presumed insignificant if

(1) the cellular telephone service plan provides, for a set monthly fee, an allowance of usable minutes or an unlimited number of usable minutes;

(2) the use does not exceed

(A) the greater of 30 minutes or five percent of the allowed minutes under the applicable service plan per month, for a plan that provides an allowance of usable minutes;

(B) the greater of 30 minutes or five percent of the total minutes used in a month under the applicable service plan, for a plan that provides an unlimited number of usable minutes; and

(3) the public officer reimburses the state in full for use that results in a separate charge; charges for minutes exceeding an allowance of usable minutes are presumed to have been incurred to benefit the officer, an immediate family member of the officer, the officer's personal or financial interest, or another person.

(c) For purposes of determining whether a public officer has violated AS 39.52.120(a) or (b)(3), the use of a portable state computer to benefit the officer, an immediate family member of the officer, the officer's personal or financial interest, or another person is presumed insignificant if the use

(1) is for electronic mail communications, Internet access, or entertainment;

(2) does not occur during duty hours; and

(3) occurs at no cost to the state.

(d) For purposes of determining whether a public officer has violated AS 39.52.120(a) or (b)(3), the use of a state personal digital assistant to benefit the officer, an immediate family member of the officer, the officer's personal or financial interest, or another person is presumed insignificant if, when the device is used as a

(1) cellular telephone, the use complies with (b) of this section;

(2) computer, the use complies with (c) of this section.

(e) Nothing in this section exempts a public officer from compliance with other state requirements applicable to state computing and information technology resources. (Eff. 4/24/94, Register 130; __/__/__, Register __)

Authority: AS 39.52.110 AS 39.52.120 AS 39.52.950

9 AAC 52.060 is amended by adding a new subsection to read:

(c) An offer to a state agency by a person or governmental agency other than the state to pay or reimburse travel expenses for one or more public officers to carry out official responsibilities does not result in a gift to the individual traveling public officer within the meaning of AS 39.52.130 if an authorized supervising public officer approves acceptance of the offer in advance. An approving public officer may not participate in that travel without advance approval of acceptance of the offer by the head of the agency. In this subsection, "travel expenses" means the costs of transportation, lodging, or meals comparable to what the state would pay for travel expenses for the traveling public officer to carry out the associated official responsibilities. (Eff. 4/24/94, Register 130; am __/__/__, Register __)

Authority: AS 39.52.130 AS 39.52.950

9 AAC 52.070 is amended to read:

9 AAC 52.070. Information disseminated to the public. (a) For purposes of AS 39.52.140, information has been disseminated to the public if it has been **distributed to the public** [PUBLISHED] through

- (1) a newspaper or other printed** publication;
- (2)** broadcast media;
- (3)** a press release;
- (4)** a newsletter;
- (5)** a legal notice;
- (6)** a nonconfidential court filing;
- (7)** a published report;
- (8) an agency's website;**
- (9) posting on the Alaska Online Public Notice System established under AS 44.62.175;**
- (10)** a public speech; or
- (11)** public testimony before the legislature [, A BOARD,] or **an agency** [A COMMISSION].

(b) Information that is available to the public but that has not been **distributed** [PUBLISHED] as described in (a) of this section has not been disseminated to the public. (Eff. 4/24/94, Register 130; am __/__/__, Register ____)

Authority: AS 39.52.140 AS 39.52.950

9 AAC 52.130(a) is amended to read:

(a) A designated supervisor shall submit the quarterly report described in AS 39.52.260 during the 30 [45] days following the end of each calendar quarter.

(Eff. 4/24/94, Register 130; am __/__/__, Register __)

Authority: AS 39.52.260 AS 39.52.950

9 AAC 52 is amended by adding a new section to read:

9 AAC 52.135. Designated supervisor's determination of violation. If, upon review of an ethics disclosure, a designated supervisor determines that a violation of AS 39.52.110 - 39.52.190 may have or has occurred, the designated supervisor shall

(1) in the case of a public employee, refer the matter for investigation and appropriate disciplinary action in accordance with AS 39.52.420 and, following any disciplinary action, to the attorney general for review under AS 39.52.310, unless the significance of the identified violation warrants immediate review by the attorney general; and

(2) in the case of a board or commission member, refer the matter to the attorney general for review under AS 39.52.310. (Eff. __/__/__, Register __)

Authority: AS 39.52.210 AS 39.52.310 AS 39.52.950
AS 39.52.220 AS 39.52.420

9 AAC 52.140 is amended by adding a new subsection to read:

(e) If a complaint against a public officer alleges more than one violation of the Ethics Act, the attorney general may take action under AS 39.52.310, 39.52.320, 39.52.330, and

Register __, _____ 2010

LAW

39.52.350 regarding each alleged violation separately. (Eff. 4/24/94, Register 130;

am __/__/__, Register __)

Authority: AS 39.52.310

AS 39.52.330

AS 39.52.950

AS 39.52.320

AS 39.52.350

9 AAC 52.990(b)(6) is repealed:

(6) repealed __/__/__;

(Eff. 4/24/94, Register 130; am __/__/__, Register __)

Authority: AS 39.52.120

AS 39.52.410

AS 39.52.960

[AS 39.52.120(a)]

AS 39.52.950

John Davies

From: Rep. Wes Keller
Sent: Wednesday, January 20, 2010 12:55 PM
To: John Davies
Subject: FW: Message to Wes from Andree re: proposed regulations changes to AEBEA

Hi John, Feel free to respond in the context we talked about. There is no reason to have a hearing on the regulation change that I can see. You might point out that any standing committee can take this up if she wants to press the issue. (AS 24.05.182)

Thanks
Wes

-----Original Message-----

From: Andree McLeod [mailto:andree@andree.us]
Sent: Wednesday, January 20, 2010 11:58 AM
To: Rep. Wes Keller
Subject: FW: Message to Wes from Andree re: proposed regulations changes to AEBEA

Hello.

You mentioned to contact you this week about my concerns re: the proposed regulation changes to the AK Executive Branch Ethics Act (AEBEA) that will be in front of your Admin Reg Review committee.
I received a response from the Dept. of Law person charged with the AEBEA and she wasn't able to answer one very important consequence of the changes.

Will you schedule a committee hearing on these AEBEA changes in order to allow members of the public to apprise the Admin Reg Review committee members on the impending changes?

Thank you.
Andrée McLeod
561-8595

-----Original Message-----

From: Andree McLeod [mailto:andree@andree.us]
Sent: Wednesday, January 13, 2010 9:16 AM
To: 'Rep. Wes Keller'
Subject: RE: Message to Wes from Andree re: proposed regulations changes to AEBEA

Excellent Wes.

I am also awaiting for clarification on a couple of the changes. By the next time we speak, I hope to convince you that a proper public legislative vetting of the changes to the regulations should occur; as the impact of a couple of these changes to AK's ethics laws tend to water down and weaken the Legislature's initial intent re: the Alaska Executive Branch Ethics Act.
Thank you for your time and consideration.
Stay safe and Bon Voyage to Juneau!
Andrée

-----Original Message-----

From: Rep. Wes Keller [mailto:Representative_Wes_Keller@legis.state.ak.us]
Sent: Wednesday, January 13, 2010 9:07 AM
To: Andree McLeod

Cc: John Davies

Subject: RE: Message to Wes from Andree re: proposed regulations changes to AEBEA

Good morning Andree, As you might guess, things are really stacking up just b4 I leave... I will look these over carefully and get John (my Chief of Staff and Reg Review Committee Aid) to review them--- then I will better understand your explanation of concerns. I had seen the notice of the proposed regulations and had heard mention of them on the news, but I have not looked at them in detail yet. We can communicate via telephone, but I will be distracted now getting moved to Juneau. If you give me a call early next week, I will keep this on my radar screen. (Juneau office is 465-2186)

Rep Keller

From: Andree McLeod [andree@andree.us]

Sent: Wednesday, January 13, 2010 8:38 AM

To: Rep. Wes Keller

Subject: Message to Wes from Andree re: proposed regulations changes to AEBEA

Hi Wes.

These changes to the Alaska Executive Branch Ethics Act are what I would like to speak to you about

When will your committee have a hearing on these proposed changes?

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF LAW

<http://www.law.state.ak.us/pdf/ethics/ProposedChanges.pdf>

Andrée

907.561.8595

NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE DEPARTMENT OF LAW

The Department of Law proposes to adopt regulation changes in Title 9 of the Alaska Administrative Code, dealing with the Alaska Executive Branch Ethics Act, (AS 39.52), including the following:

- (1) 9 AAC 52.035 is a proposed new section to be added to establish the standards for the term "personal gain" as used in AS 39.52.120(a) to conform to statutes and to add clarifying language. The existing definition of "personal gain" at 9 AAC 52.990(b)(6) would be repealed.
- (2) 9 AAC 52.040 is proposed to be changed by adding new provisions establishing standards for the conditions when the acceptance or approval of state money to pay on behalf of, or reimburse a public officer for, expenses incurred for professional legal services to defend against a complaint brought under the Alaska Executive Branch Ethics Act (AS 39.52) may occur, including when the public officer is exonerated of any violation of the Act.
- (3) 9 AAC 52.045 is a proposed new section to be added to establish standards for determining when the use or authorization of state money or other state resources for transportation of family members of the governor or lieutenant governor does not result in personal gain or unwarranted benefits under the Act.
- (4) 9 AAC 52.050 is proposed to be changed to recognize that misuse of state resources may result in personal gain to a public officer or another person as well as benefit to an officer's personal interests or financial interests as those terms are defined in the Act. The regulation is also proposed to be changed to include standards for determining when a public officer's incidental use of state equipment, such as cell phones, personal digital assistants, and portable computers, is presumed insignificant.
- (5) 9 AAC 52.060 is proposed to be changed to clarify the application of AS 39.52.130, addressing gifts to a public officer. 9 AAC 52.060(b) currently permits agency heads to determine that a gift of travel received by an employee traveling on state business is a gift to the state, not a personal gift to the employee. The proposed amendment would clarify that the individual employee does not have to submit a disclosure for pre-approved state travel relating to offers by others made in advance to pay travel expenses of a state employee to facilitate state business.
- (6) 9 AAC 52.070 is proposed to be changed to update the description of information considered to be publicly disseminated for purposes of AS 39.52.140. That provision prohibits public officers from using information acquired during their jobs for personal benefit, unless it has been publicly disseminated. The proposed regulation change would, among other matters, establish that information posted for public consumption on a state website has been publicly disseminated.
- (7) 9 AAC 52.130(a) is proposed to be changed to change the deadline for ethics supervisors to submit quarterly reports to the attorney general from 45 to 30 days following the end of the quarter. The change would permit more timely review of the matters addressed by designated ethics supervisors during the quarter and earlier preparation of the public summary and report to the Personnel Board.

**Submitting a Comment to
The Joint Administrative Regulation Review Committee**

The Administrative Regulation Review Committee hears from Alaskans who have been affected by regulations. We also hear from those with concerns about proposed regulations. Your comments become part of the public process. Thank you.

Full Name: _____

Telephone: _____

Address: _____

Email: _____

What industry or public interest do you represent? _____

What department has promulgated the regulation(s) of concern? _____

What Alaska Administrative Codes (AAC) are in question, if known? _____

Comments: (use more pages if necessary)

Attachments (documents, if any, to support your statements)

☐ I would like to be contacted personally to follow up on my comments.

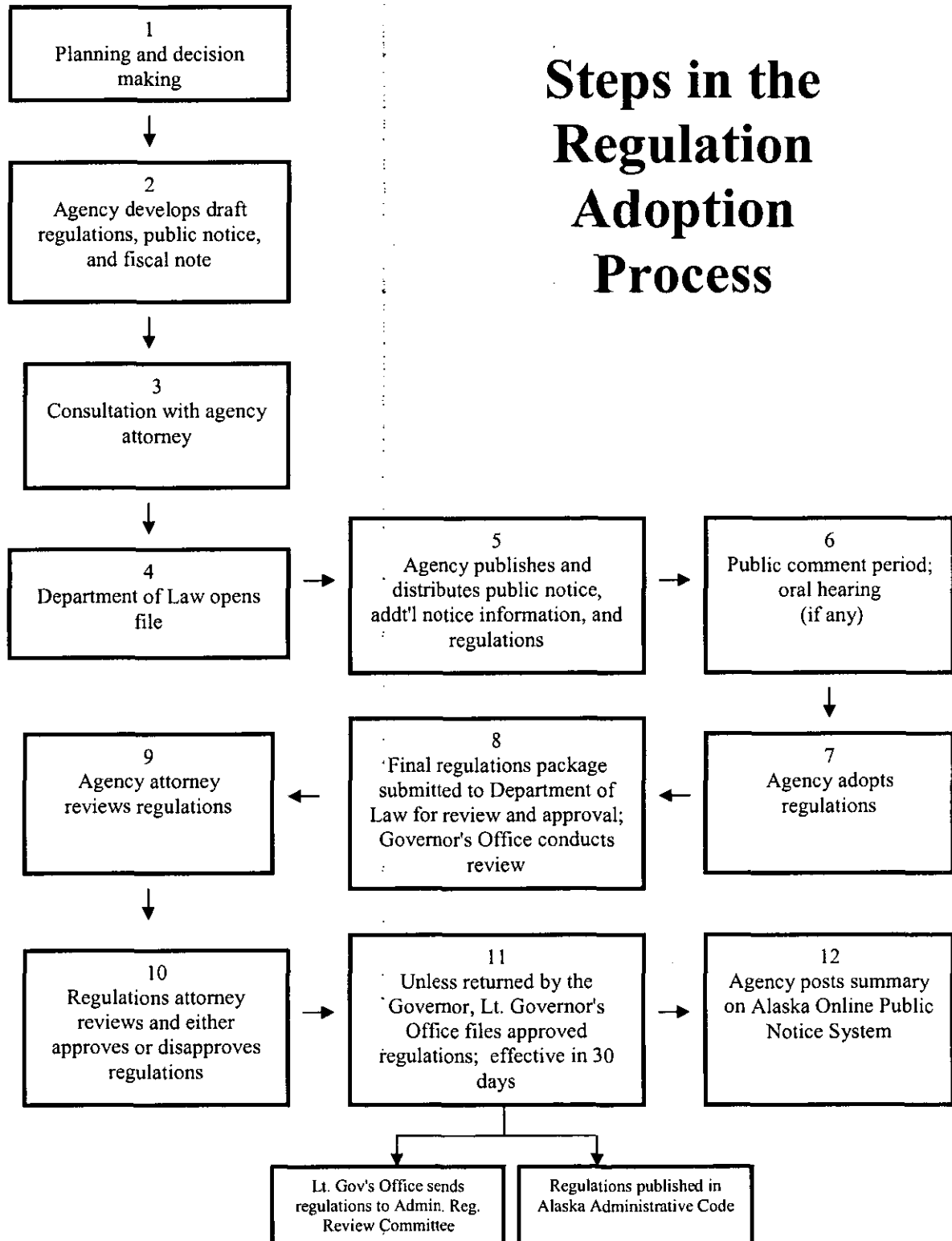
☐ I have already submitted similar comments to the department promulgating these regulations during their public comment period.

Please FAX: 1 (907) 269-0249

Telephone: (907) 269-0250

EMAIL: arrc@legis.state.ak.us

Steps in the Regulation Adoption Process



Alaska Legislature

Administrative Regulation Review Committee

[Administrative Procedures Act](#)

[Reports](#)

[Regulatory Process](#)

[Submitting Comments](#)

Joint Committee for Administrative Regulation Review

Authority - The Administrative Regulation Review Committee is established as a permanent interim committee of the legislature. The establishment of the committee recognizes the need for prompt legislative review of administrative regulations filed by the lieutenant governor.

Powers - The Administrative Regulation Review Committee has the power to hold public hearings; to examine all administrative regulations, including proposed regulations, amendments, and orders of repeal, to determine if they properly implement legislative intent and to provide comments on them to the governor and state agencies; to promote needed revision or repeal of regulations that have been adopted by state departments and agencies and, when the committee determines a regulation should be repealed or amended, to introduce a bill that would enact a statute that would supersede or nullify the regulation.

Review - The review of administrative regulations shall evaluate the legality and constitutionality of the regulation; whether the state agency has statutory authority to adopt the regulation that implements, interprets, makes specific, or otherwise carry out a statute; and whether the proposed regulation is consistent with applicable statutes.

Members - The Administrative Regulation Review Committee is composed of three members of the House appointed by the Speaker of the House, and three members of the Senate appointed by the President of the Senate. The membership from each house shall include at least one member from each of the two major political parties. Members serve for the duration of the legislature during which they are appointed.

ARRC Members for 26th Alaska Legislature

[Representative Wes Keller, Chair](#)

[Senator Donald Olson, Vice Chair](#)

[Senator Albert Kookesh](#)

[Senator Kevin Meyer](#)

[Representative Carl Gatto](#)

[Representative David Guttenberg](#)

Meetings - The Administrative Regulation Review Committee may meet during the sessions of the legislature and during the interim between sessions at such times and places in the state as the chairman may determine.

Staff - Jim Pound, Administrative Regulation Review Committee Aide, Staff
to Representative Wes Keller, Chair

Contact Information

Representative Wes Keller

[Representative Wes Keller@legis.state.ak.us](mailto:Representative_Wes_Keller@legis.state.ak.us)

Jim Pound, Committee Aide

Jim_Pound@legis.state.ak.us

ARRC@legis.state.ak.us

[Senator Donald Olson@legis.state.ak.us](mailto:Senator_Donald_Olson@legis.state.ak.us)

[Senator Albert Kookesh@legis.state.ak.us](mailto:Senator_Albert_Kookesh@legis.state.ak.us)

[Senator Kevin Meyer@legis.state.ak.us](mailto:Senator_Kevin_Meyer@legis.state.ak.us)

[Rep Carl Gatto@legis.state.ak.us](mailto:Rep_Carl_Gatto@legis.state.ak.us)

[Rep David Guttenberg@legis.state.ak.us](mailto:Rep_David_Guttenberg@legis.state.ak.us)

Alaska State Capitol, Room 125
Juneau , Alaska 99801
Phone: (907) 465-2995
Toll Free: (800) 365-2995
Fax: (907) 465-6592

Alaska Legislature

Administrative Regulation Review Committee

Reports

These reports are for the purpose of providing a quick read on newly proposed regulations and newly adopted regulations to spark interested parties to take a closer look. They are not comprehensive, nor do they offer commentary except as provided by the agency promulgating the regulation.

For complete information regarding proposed and newly adopted regulations, please go to the State of Alaska website: www.state.ak.us. Click on *Public Notices legal, bids*. Then click *By Dept*. Then look under each department heading for postings of *Notices of Proposed Regulations* or *Adopted Regulations - Text or Summary of Text*.

☐ For questions regarding these reports, or if you would like to be sent future copies of it, please contact Committee Aide Jim Pound at Jim_Pound@legis.state.ak.us. ☐

Newly Proposed Regulations

[Report # 1 January 25, 2005](#)

[Report # 2 February 11, 2005](#)

[Report #3 March 24, 2005](#)

[Report #4 May 4, 2005](#)

[Report #5 June 8, 2005](#)

[Report #6 July 27, 2005](#)

[Report #7 October 7, 2005](#)

[Report #8 December 5, 2005](#)

[Report #9 March 31, 2006](#)

Committee Minutes

[February 2, 2005](#)

[March 3, 2005](#)

April 20, 2005

News Releases

February 9, 2005 - Regulation Review Committee Hears Food Code Concerns at First Meeting

March 1, 2005 - Committee to Hear Concerns of Assisted Living Home Operators

April 12, 2005 - Committee to Hold Meeting on Food Codes

Newly Adopted Regulations

[As available]

Other Reports

[As available]

Contact Information

Representative Wes Keller

Representative Wes Keller@legis.state.ak.us

Jim Pound, Committee Aide

Jim_Pound@legis.state.ak.us

Alaska State Capitol, Room 125

Juneau , Alaska 99801
Phone: (907) 465-2995
Toll Free: (800) 365-2995
Fax: (907) 465-6592

Correct

John Davies

From: John Davies
Sent: Tuesday, February 02, 2010 12:13 PM
To: 'andree@andree.us'
Cc: Rep. Wes Keller
Subject: ARRC Meeting scheduled for 2/8/10
Attachments: ARRC Schedule 2-8.docx

Dear Andree McLeod,

Representative Keller has asked me to personally notify you that an ARRC meeting has been scheduled for Monday, February 8, 2010 at 3pm in room 17 of the State Capitol to among other business, receive public comment such as yours on the proposed executive ethics regulations. I am attaching a schedule for your review. Public comment may be given at your local LIO in the event that you are not able to attend in Juneau. If you have any questions please feel free to either email me or give me a call at 465-4899.

Very Truly Yours,

John Davies
Committee Aide

John Davies

From: Rep. Wes Keller
Sent: Saturday, January 30, 2010 10:02 AM
To: Andree McLeod; Sen. Donny Olson; Sen. Albert Kookesh; Sen. Kevin Meyer; Rep. David Guttenberg; Rep. Carl Gatto
Cc: John Davies
Subject: RE: Request for ARRC public review RE: Proposed regulation changes to AEBEA
Attachments: image001.gif

Andree, Thank you for your request and opinion. I am confident that the ARRC members are giving it consideration and will give me feedback as they see fit.

Sincerely,
Rep Wes Keller, ARRC Chair

From: Andrée McLeod [andree@andree.us]
Sent: Thursday, January 28, 2010 2:06 PM
To: Rep. Wes Keller; Sen. Donny Olson; Sen. Albert Kookesh; Sen. Kevin Meyer; Rep. David Guttenberg; Rep. Carl Gatto
Subject: Request for ARRC public review RE: Proposed regulation changes to AEBEA

To Representative Keller and members of the Administrative Regulation Review Committee:

This is another request for the Administrative Regulation Review Committee to have a public hearing re: the proposed changes to the Alaska Executive Branch Ethics Act (AEBEA). Your COS states that 'normally for a proposed regulation to garner review it would either be considered... or inconsistent with legislative intent.' **I submit that a couple of the changes weaken the AEBEA to the point where they do not support the legislative intent and objective of the AEBEA as they provide more safeguards towards public officials while they endanger and exact a high cost on the public's right to know, and their right to address and redress their public officials for wrongdoings and misconduct.**

How will the public know how ARRC members stand on the proposed changes if you don't meet publicly to review these changes? Will these proposed changes become official by default without the ARRC hearing from concerned members of the public? Are you relying on the Department of Law to provide a full and complete record re: the proposed changes?

For the ARRC to not have a public hearing on these proposed changes underline an unspoken truth that there is practically no distinction between the legislative and executive branches in Alaska re: the AEBEA and its continued dysfunctional operation.

Not having a public hearing undermines the people's right to appeal to their elected officials that there is something terribly wrong in the executive branch's ethics complaint process.

It would be quite a disappointment for the ARRC to consider and sign off on these proposed regulations without hearing from the public. What follows are my comments submitted to the Department of Law. (Note that proposed change (5) re: unclaimed gratuities to public officials is still not fully understood by the Department of Law.)

Please schedule an ARRC public hearing for the intent of publicly airing out these proposed changes to the AEBEA.

Sincerely,

Andrée McLeod

Here are the comments I submitted to the Department of Law:

- ✓ I object to the proposed regulations #2 and #5 of the because they violate the legislators' intent of the Alaska Executive Branch Ethics Act (AEBEA) and do not serve the public interests, but rather, only serve to protect and defend the interests of public officials.

(2) 9 AAC 52.040 is proposed to be changed by adding new provisions establishing standards for the conditions when the acceptance or approval of state money to pay on behalf of, or reimburse a public officer for, expenses incurred for professional legal services to defend against a complaint brought under the Alaska Executive Branch Ethics Act (AS 39.52) may occur, including when the public officer is exonerated of any violation of the Act.

The AEBEA states that: (7) compliance with a code of ethics is an individual responsibility; thus all who serve the state have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates. That individual responsibility includes the individual's choice to seek legal council, thereby; they alone should be responsible for expenses incurred by their choice. Secondly, these past 15 months or so have shown, beyond a shadow of any doubt, that there is an inherent and systemic breach in the way and manner ethics complaints are processed, and summarily dismissed. **The biased and subjective manner in which the Department of Law deals with ethics complaints is one that must be drastically changed before any state funds are appropriated to cover legal expenses of public officials who conduct themselves unethically. Instead, they are protected and defended by a flawed and corrupt complaint process where the person(s) investigating the misconduct of other public officials is situated within the chain of command of their bosses and their bosses' bosses. The reports that dismiss every complaint I have filed are the best examples that illustrate the dysfunctions that occur when "the Fox Watches the Hen House".**

(5) 9 AAC 52.060 is proposed to be changed to clarify the application of AS 39.52.130, addressing gifts to a public officer. 9 AAC 52.060(b) currently permits agency heads to determine that a gift of travel received by an employee traveling on state business is a gift to the state, not a personal gift to the employee. The proposed amendment would clarify that the individual employee does not have to submit a disclosure for pre-approved state travel relating to offers by others made in advance to pay travel expenses of a state employee to facilitate state business.

I asked Ms. Bockmon on Jan 19, 2010: "The important question I have is: Had this regulation (5) been in place already...would it have meant that Kris Perry would NOT have had to claim as gifts all those gifts of travel, lodging, and meals she claimed from the McCain and Chambliss campaigns?" Her answer was, "I can't answer the question."

I submit by example: Kris Perry claimed over \$15,000 in gifts for travel, lodging, etc. from the McCain and Chambliss campaigns while she "facilitated state business" and traveled from one end of the country to the other on the very partisan very political Republican vice-presidential campaign trail. Were this regulation in place...the public would NEVER have known the extent of those gratuities that were offered and excepted by this governor's staffer. **Keeping these kinds of gifts a secret and under the cloak of secrecy is unacceptable, does not serve the Alaskan public's better interests, and totally violates the intent and objectives of the Alaska Executive Branch Ethics Act, AND, the Alaska Public Official Financial Disclosure Act.**

These changes happen to come along at the same time a governor decided to pursue interests other than being governor. The premise of most of my complaints is found within the many conflicts of interests that resulted because of Sarah Palin's extra curricular activities that had absolutely nothing to do with her role as governor. These changes to the AEBEA regulations do nothing to better define, refine, avoid and resolve those conflicts of interests.

The AG and his staff's time would be better spent on finding ways to make the ethics complaint process free from the biases inherent in the system currently in place....and strengthen the statutes, policies, procedures, and protocols in place to address the chaos that ensues when a governor chooses to put their personal and political interests before the interests of the public when they make deals with other Outside interests and abandon the Office of the Governor and its constitutional duties. These regulation changes above merely weaken the AEBEA and its intent...and should be thrown out. Time would be better spent to find ways to better enforce the good ethics laws already in place.

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Wednesday, January 20, 2010 2:36 PM
To: andree@andree.us
Cc: Rep. Wes Keller; Jim Pound
Subject: Proposed regulation changes to AEBEA

January 20, 2010

Dear Andree McLeod,

Representative Keller has asked me to respond to your email about your concerns reference the AEBEA.

The public vetting of the changes to the regulations is taking place at this time. You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Assistant Attorney General Judy Bockmon at the Department of Law, 1031 W. 4th Avenue, Anchorage, Alaska 99501 or by email to judy.bockmon@alaska.gov. Your comments must be received no later than 4:30 p.m. on January 22, 2010.

No hearing is presently anticipated by the Administrative Regulation Review Committee "ARRC" concerning the AEBEA.

The ARRC does not routinely hold hearings concerning proposed administrative regulations unless it is brought to the committee's attention by a standing committee or the ARRC's attorney that a regulation fails standards. Normally for a proposed regulation to garner review it would either be considered illegal; unconstitutional; outside statutory authority; inconsistent with statute; or inconsistent with legislative intent.

The ARRC's attorney reviews proposed regulations to determine if they comply with the standards for review, and jurisdictional standing committee(s) receive notice of the proposed changes. The standing committee may notice the ARRC if it has a concern about a proposed regulation.

At this time the ARRC has not received notice from either a standing committee or the ARRC attorney that the AEBEA fails any of the standards for review.

Therefore I encourage you to make your comments in the present ongoing public vetting process to the above named Assistant Attorney General.

Thank you for being an informed and concerned citizen. I hope that this email answered your question. If you have further need for information please feel free to contact our office at any time.

Very Truly Yours,

John Davies
Chief of Staff to
Rep Wes Keller

John Davies

From: Will Vandergriff
Sent: Saturday, February 06, 2010 2:36 PM
To: Rep. Wes Keller; Jim Ellis; John Davies
Cc: Dani Carlson
Subject: new language - draft arrc advisory

Here's the change then, addressing Rep. Keller's concern. Please let me know if this will suffice. Regards, W

FOR IMMEDIATE RELEASE

MEDIA ADVISORY

ACES TAX REGULATION, EXEC. ETHICS HEARING SET FOR MONDAY
Chair Keller looks to admin. for details on proposed tax reg, ethics changes

Saturday, February 6, 2010, Juneau, Alaska – Joint Administrative Regulatory Review Committee Chair Wes Keller, R-Wasilla, today announced the committee will hold a hearing with the state Dept. of Revenue and administration to discuss the implementation of the proposed Alaska's Clear & Equitable Share, or ACES, oil tax regulation. The committee is focusing its review to proposed regulations concerning credits and the heating value of gas. The state Dept. of Law will also brief the committee on proposed regulatory changes to the Executive Branch Ethics Act.

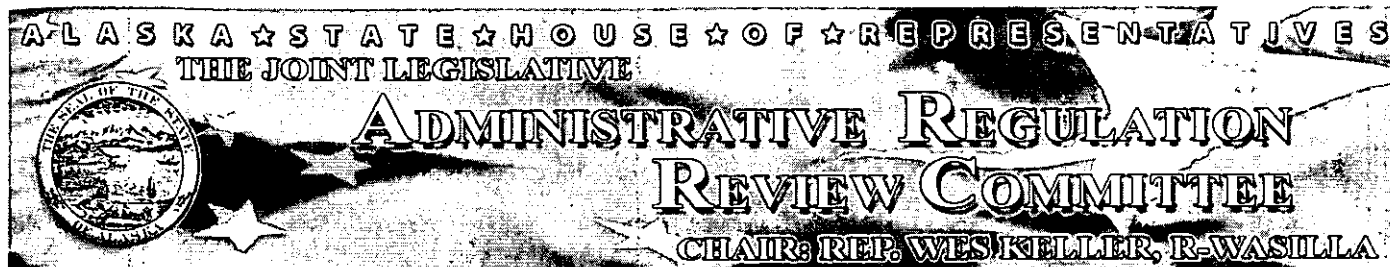
The hearing is scheduled for Monday, Feb. 8 at 3:00 p.m. in Capitol Room 17.

WHO: Joint Admin. Reg. Review Committee
WHAT: Proposed ACES and Exec. Ethics regulatory changes hearing
WHEN: Monday, Feb. 8 – 3:00 p.m.
WHERE: Beltz Committee Room
Capitol Room 17

#

To contact Rep. Keller, please call 907-465-2186.

Will Vandergriff
House Majority Press Secretary
Office of the Speaker - Alaska State Legislature
907.269.0167 direct
907.317.9755 cell
will_vandergriff@legis.state.ak.us
housemajority.org
mobile.housemajority.org
twitter.com/houmaj



PRESS RELEASE

FOR IMMEDIATE RELEASE

ADMINISTRATIVE REGULATION REVIEW HOLDS FIRST MEETING OF 2010 LEGISLATIVE SESSION

Executive Branch Ethics, Oil & Gas reviewed by joint committee

Tuesday, February 09, 2010, Juneau, Alaska – The Alaska State Legislature's Joint Administrative Regulation Review Committee held its first meeting of the 2010 Legislative Session on Monday. The committee reviewed portions of the Executive Branch Ethics Act, and statutes on lease expenditures pertaining to the tax structure set out by the Alaska's Clear and Equitable Share Act, or ACES.

Testimony was gathered from the Department of Law and the public regarding family travel, and on the payment of legal fees for state officers cleared of ethical wrongdoing after an investigation. The Department of Revenue testified on the topic of regulations dealing with adjustments to lease expenditures for companies conducting oil and gas exploration in the state.

"We did not find sufficient grounds to recommend to the Legislature that a law be passed to veto any of the regulations reviewed," Committee Chair Wes Keller, R-Wasilla. "The meeting was a good example of the committee exercising its due diligence regarding regulatory oversight."

The Administrative Regulation Review Committee plans on holding at least two more meetings during the 2010 Legislative Session for further review of other regulations.

#

For more information, please call Rep. Keller's office at 907-465-2186.

John Davies

From: John Davies
Sent: Tuesday, February 09, 2010 2:38 PM
To: 'janet_ogon@legis.state.ak.us'; Kimberly Clark; Josh Applebee; Christina Apathy; Christopher Birdsall; Bonnie Gruening
Cc: Rep. Wes Keller
Subject: ARRC Press Release
Attachments: ARRC February Press Release.doc

Dear Fellow Staffers,

Attached to this email is the press release sent to House Majority Press, Will and Dani, for distribution to the press. I am providing this release to you so your boss will know and be aware of what has been made public. So in the event that he gets a question from the press or the public he will be in the know as to the official position regarding yesterday's meeting. Please provide your boss with a copy. Thanks. If you have any questions feel free to give me a call.

Regards,

John Davies
Committee Aide

ALASKA STATE LEGISLATURE

Interim:

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
Fax: (907) 373-4729



Session:

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-4899
Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

PRESS RELEASE

THE JOINT ADMINISTRATIVE REVIEW COMMITTEE HOLDS ITS FIRST MEETING OF THE 2010 LEGISLATIVE SESSION.

On Monday, February 8th, the Joint Administrative Regulation Review Committee held its first meeting of the 2010 Legislative Session. The Committee reviewed portions of the Executive Ethics Regulations dealing with family travel and payment of legal fees for exonerated state officers, as well as the Oil and Gas Regulations dealing with adjustments to lease expenditures. Testimony from the Department of Law, Department of Revenue as well as from members of the public satisfied the Committee that there were no grounds at this time to overturn the reviewed regulations. The Chairman, Representative Wes Keller said, "Today's review meeting was a good example of the Committee exercising its due diligence regarding regulatory oversight. We did not find sufficient grounds to recommend to the Legislature that a law be passed to veto any of the regulations reviewed today." The Committee plans on holding at least two additional meetings during this Legislative Session for further review of other regulations.

Alaska State Legislature House of Representatives



Representative David Guttenberg PRESS RELEASE • February 22, 2009

<http://guttenberg.akdemocrats.org> • Contact: Amy Hundertmark, Aide • amy.hundertmark@legis.state.ak.us

Phone: 465-4457 • Fax: 465-3519 • Room #418 Capitol Bldg. Juneau, AK 99801 • House District 8

REP. GUTTENBERG ADDRESSES OFFICIAL TRAVEL State Should Pay For Executives, Not Their Families

JUNEAU – Alaska Representative David Guttenberg (D-Fairbanks) has introduced a bill to require the Alaska governor and lieutenant governor to reimburse the state for costs for family members who accompany them on official business.

"It's reasonable to want to travel with your family, but the state shouldn't be footing the bill for the family to tag along. Past events have shown how the language in the Alaska Executive Branch Ethics Act is ambiguous, and I believe that Alaskans want clearer rules," Guttenberg said. "This bill offers clear statutory language in defining acceptable, legitimate state expenses."

House Bill 353 amends the Alaska Executive Branch Ethics Act to require the governor or lieutenant governor to reimburse the state when their children, spouses, or other family members are transported with them on state-sponsored travel.

"Now is the time to address this problem so there will be no further controversies about executive branch travel," Guttenberg said.

The bill awaits hearings in the House State Affairs and Judiciary committees.

For further information, contact Representative Guttenberg or Amy Hundertmark at (907) 465-4457.

###

Alaska debates ethics rules raised during Palin's tenure

Lisa Demer
Anchorage Daily News

JUNEAU — A legislative committee on Monday took up ethics issues that erupted during the Palin administration, but it's not clear whether the panel intends to take any action.

Attorney General Dan Sullivan has proposed state rules establishing when it's appropriate for the state to pay for the travel of family members of the governor or lieutenant governor. Another proposal sets out when the state should pay legal bills for state officials defending against ethics complaints.

Former Gov. Sarah Palin was hit with numerous ethics complaints during her 2 1/2 years in office. She said she quit in part because of what she called frivolous ethics complaints and personal legal bills amounting to an estimated \$600,000.

Most of the ethics complaints against Palin were dismissed. But she settled one by reimbursing the state more than \$8,000 for her children's air travel.

Some parts of the package Sullivan is proposing go beyond the Palin-era controversies. For instance, another proposed rule change would do away with a requirement for state officials to disclose as gifts any travel for state business paid by others. But they still would have to file travel reports, which would be public.

Sullivan is trying to make the changes through new state regulations, which don't need legislative approval.

Oversight comes from the joint House-Senate Administrative Regulation Review Committee, which examines regulations to make sure they are allowed under state law.

The panel agreed to hold a public hearing on the ethics measures after being pushed by Palin critic Andree McLeod. House leaders also requested it, said state Rep. Wes Keller, R-Wasilla, who is the committee chairman.

Under the proposed rules, the state could cover the costs of defending a public official against ethics complaints if the official were exonerated, Assistant Attorney General Judy Bockmon told the committee.

Travel would be covered if the presence of a family member is required for state business or has a public purpose. The proposal says that would include a state-sponsored event that the family of the governor or lieutenant governor usually attends, or an event in which the family member is representing the state.

State Rep. David Guttenberg, D-Fairbanks, asked Bockmon whether state law gives any guidance on paying for family travel.

It doesn't, she said.

In that case, why try to decide when it's appropriate -- maybe it shouldn't be permitted at all, Guttenberg responded.

That's up to the Legislature, Bockmon said. There might be value to the state for the family to attend. It depends on the nature of the event.

State Rep. Carl Gatto, R-Palmer, said it might just save worry and time for a governor with young children to bring them along.

McLeod, who filed a number of ethics complaints against Palin and her staff, urged the committee to reject the changes.

"Are these changes valid? Do they improve the standards of public service? Do they promote the faith and confidence of the people in this state in their public officers? I submit that they do not," McLeod told the legislative committee.

McLeod said private citizens with questions about whether a public official has crossed a legal or ethical line can't get ethics opinions the way state employees can. So the public has no recourse except filing complaints to get answers, she said.

The Executive Branch Ethics Act is important, and the attorney general shouldn't be trying to change the law, another Palin critic, Zane Henning, told the committee. The Legislature should make any needed changes, he said.

"I object to the entire process that is being pushed through here," Henning said.

The ethics law needs reform, but not in the way the attorney general wants, Henning said. Elected officials, not the governor-appointed Personnel Board, should oversee ethics complaints against state officials, he said.

Both of his complaints against Palin were dismissed. One involved an interview about the vice presidential campaign that she gave to Fox News in her state office; the other concerned the fact she collected state expense payments while living in her own home in Wasilla.

Henning's concerns about the Personnel Board seemed to resonate with legislators.

"I'm just wondering is there maybe too close of a relationship there," state Sen. Kevin Meyer, R-Anchorage, asked during the hearing.

Bockmon told the committee an independent counsel investigates ethics complaints against the governor, lieutenant governor or attorney general in an effort to separate the Personnel Board from those high-level officials.

The committee can't halt the regulations from taking effect during the annual legislative session, but can express disapproval and propose new laws to override any objectionable regulations.

The Department of Law has solicited public comment and held a hearing on the ethics changes, Bockmon said. The period for comment has ended and the department must now decide what to do. It could adopt the provisions as is or with minor changes, or let the matter drop with no action.

The committee hasn't yet decided how to proceed, Keller said.



Texas for Sarah Palin

Tuesday, February 9, 2010

Call to Action: Serial Bogus Ethics Filers Give Testimony on Ethics?
- by Special Guest Contributor Adrienne Ross

*

During the tenure of Governor Palin, a whirlwind of ethics complaints blew into the state of Alaska. Both Andree McLeod and Zane Henning were responsible for filing bogus complaints against her. These were an affront to tax paying Alaskans and illustrated a complete disregard for the ethics system.

It would only stand to reason now that the state Legislature would take a good look at the system, hear from those who can give insight into how it can be improved, and follow through. Obviously, it would make sense to talk to the administration that has been so adversely affected by those seeking to abuse the ethic rules. Instead, in their hearings, they actually chose to receive testimony from Andree McLeod and Zane Henning, chief

abusers of the system.

Lisa Demer of the ADN reports:

A legislative committee on Monday took up ethics issues that erupted during the Palin administration, but it's not clear whether the panel intends to take any action.

Attorney General Dan Sullivan has proposed state rules establishing when it's appropriate for the state to pay for the travel of family members of the governor or lieutenant governor. Another proposal sets out when the state should pay legal bills for state officials defending against ethics complaints.

Former Gov. Sarah Palin was hit with numerous ethics complaints during her 2 1/2 years in office. She said she quit in part because of what she called frivolous ethics complaints and personal legal bills amounting to an estimated \$600,000.

Most of the ethics complaints against Palin were dismissed. But she settled one by reimbursing the state more than \$8,000 for her children's air travel.

[...]

Oversight comes from the joint House-Senate Administrative Regulation Review Committee, which examines regulations to make sure they are allowed under state law.

The panel agreed to hold a public hearing on the ethics measures after being pushed by Palin critic Andree McLeod. House leaders also requested it, said state Rep. Wes Keller, R-Wasilla, who is the committee chairman.

Under the proposed rules, the state could cover the costs of defending a public official against ethics complaints if the official were exonerated, Assistant Attorney General Judy Bockmon told the committee.

[...]

McLeod, who filed a number of ethics complaints against Palin and her staff, urged the committee to reject the changes.

[...]

The Executive Branch Ethics Act is important, and the attorney general shouldn't be trying to change the law, another Palin critic, Zane Henning, told the committee. The Legislature should make any needed changes, he said.

[...]

The Department of Law has solicited public comment and held a hearing on the ethics changes, Bockmon said. The period for comment has ended and the department must now decide what to do. It could adopt the provisions as is or with minor changes, or let the matter drop with no action.

The committee hasn't yet decided how to proceed, Keller said.
Read the full article **here**.

So Andree McLeod and Zane Henning, serial complainants who cost the state thousands of tax payer dollars while they played out their hellish vendetta against Governor Palin, somehow are credible sources of information? These two Palin anklebiters, whose complaints were thrown out one after another, are taken seriously, but the legislature doesn't want to hear from the administration itself regarding how these ethics abuses can be solved? What sense does that make?

Clearly, these two can't spot a real ethics violation if it smacked them in the face, so how does their one-sided testimony equate to anything remotely helpful in bringing about true ethics reform? And why can't the legislators see what is so apparent? Allowing these two characters to have a say in ethics rules is like allowing children to decide their own punishment. Don't tell me the legislators don't recognize this. They make it hard to take them or these hearings seriously. It seems, instead, to be more of the same Juneau dog and pony show.

Perhaps legislators' approach has something to do with the fact that their own ethics laws protect them from frivolous complaints. Perhaps it's due to the fact that if a complaint is leaked to the public in the legislative branch it is automatically dismissed. No wonder Jay Ramras, chair of House Judiciary, could so flippantly **scold** Governor Palin for wearing an Arctic Cat coat on a cold Alaska day though he ran multiple ads for his Pike's Lodge while serving in the legislature and running for lieutenant governor.

Could it not be argued that this was a political use of airtime? Could these ads not be deemed an improper in-kind contribution? Yet when the absurd Arctic Cat ethics complaint was filed, he chastised the governor for wearing a winter coat on a winter day! The hypocrisy is glaring.

We can look the other way, or we can implore legislators to do the right thing. They need to take up this issue, and we need to let them know how we feel about it. Governor Palin made the selfless decision to resign because she could no longer allow the politics of personal destruction being waged against her to continually cost the state thousands of dollars. And will legislators do nothing? Indeed, something needs to be done, and by "something" I don't mean simply hearing one-sided testimony from the anklebiters themselves.

Governor Palin fought against business as usual in the state of Alaska. Failure to act in the best interests of the state she served is unacceptable. The boneheaded decision to hear testimony on ethics from unethical boneheads makes no sense at all.

I urge you all to call and/or email these legislators and respectfully insist that they take action. Your voice does matter. I've included the contact information for you. (All phone numbers: 907 area code)

* Chair: Rep. Wes Keller - Representative_Wes_Keller@legis.state.ak.us, 465-2186

* Vice-Chair: Sen. Donald Olson - Senator_Donald_Olson@legis.state.ak.us, 465-3707

* Rep. Carl Gatto - Representative_Carl_Gatto@legis.state.ak.us, 465-3743

* Rep David Guttenberg - Representative_David_Guttenberg@legis.state.ak.us, 465-4457

* Sen. Albert Kookeesh - Senator_Albert_Kookeesh@legis.state.ak.us, 465-3473

* Sen. Kevin Meyer - Senator_Kevin_Meyer@legis.state.ak.us, 465-4945

* Senate Pres.: Sen. Gary Stevens - Senator_Gary_Stevens@legis.state.ak.us, 465-4925

* Speaker of the House: Rep. Mike Chenault
Representative_Mike_Chenault@legis.state.ak.us, 465-3779

Monday, February 08, 2010

Executive Session Decision Questioned



I went to the Joint Committee on Administrative Regulation Review because they were going to talk about (9 AAC 52) Proposed Regulations Relating to Executive Branch Ethics. They also covered Regulations Relating to Oil and Gas Tax. [AAC = Alaska Administrative Code.]

There's a lot that happened in both of these, but what I'd like to spotlight here happened at the end of the meeting. Or, to be more precise, when they went into Executive Session. As everyone was leaving, Lisa Demer, a reporter for the *Anchorage Daily News* came rushing in. I know Lisa from when I blogged the political corruption trials in Anchorage. She did spot-on reports that summarized the day's events managing to get in all the key points - at least as I saw them - in the strict space limits and deadline pressure she had. I ran into her yesterday; she'd just arrived to cover for the ADN for three weeks, replacing Sean Cockerham.

She rushed right up to the chair of the committee (I found out later, she'd been in the Press Room, across the hall, watching the hearing on the tv monitor) and introduced herself as the new ADN reporter and then politely, but firmly, asked why the meeting was going into executive session. The

chair, Rep. Wes Keller, who I thought had run the meeting with a nice balance of good humor and respect, clearly wasn't expecting this challenge to the decision to go into executive session and from what I heard, didn't really give a very substantive response. Lisa had her little tape recording going, so she has the exact exchange somewhere.

[Photo: Reporter Lisa Demer asking Chair Rep. Wes Keller why the meeting was going into executive session. Rep. David Guttenberg looks on.]



I was impressed. It hadn't occurred to me to question why they were going into executive session. In any case, I checked with someone afterward about the basis for going into executive session. The Uniform Rules*, specifically Rule 22 Open and Executive Sessions, says:

(a) All meetings of a legislative body are open to all legislators, whether or not they are members of the particular legislative body that is meeting, and to the general public except as provided in (b) of this rule.

(b) A legislative body may call an executive session at which members of the general public may be excluded for the following reasons:

- (1) discussion of matters, the immediate knowledge of which would adversely affect the finances of a government unit;
- (2) discussion of subjects that tend to prejudice the reputation and character of a person;

(3) discussion of a matter that may, by law, be required to be confidential;
(4) discussion of a matter the public knowledge of which would adversely affect the security of the state or nation, or adversely affect the security of a governmental unit or agency.

(c) When a legislative body desires to call an executive session in accordance with (b) of this rule, the body shall first convene as a public meeting and the question of holding an executive session shall be determined by a majority vote of the members present.

(d) The provisions of this rule may not be interpreted as permitting the exclusion of a legislator from an executive session, whether or not the legislator is a member of the body that is meeting. A legislator not a member of the body holding an executive session shall, however, be subject to the same rules of confidentiality and decorum as pertain to regular members of the body. [Emphasis added]



So, are any of these reasons for executive session applicable to today's meeting?

(1) discussion of matters, the immediate knowledge of which would adversely affect the finances of a government unit;

It's hard to imagine this was the case. They were, as I understand it, going to talk about regulations for implementing ACES. They had already gotten testimony from Marcia Davis (I didn't catch her title at the meeting, but there is a Marcia Davis listed as Deputy Commissioner for the Department of Revenue, which would be completely appropriate to what she was reporting on) with a lot of detail. This doesn't seem a likely reason.

(2) discussion of subjects that tend to prejudice the reputation and character of a person;

There was nothing to indicate they were going to talk about a person or that the discussion might prejudice someone's reputation. Also not likely.

(3) discussion of a matter that may, by law, be required to be confidential; Possibly, but there was nothing to indicate this, and no law that would require it was cited.

(4) discussion of a matter the public knowledge of which would adversely affect the security of the state or nation, or adversely affect the security of a governmental unit or agency.

I know that our national security is connected in some ways to oil, but this hardly seems a possible reason.

None of these seems a likely reason, but if one was, it would seem to me that the Chair should know which it is and should have been able to cite the reason directly in response to Lisa Demer's question.

One more issue is raised by reading these rules.

(c) When a legislative body desires to call an executive session in accordance with (b) of this rule, **the body shall first convene as a public meeting and the question of holding an executive session shall be determined by a majority vote of the members present.**

[Emphasis added]

The executive session was preceded by a public meeting, but there was no vote. There wasn't even a discussion of whether they should go into executive session.

Now, my contact also suggested another possible reason for an Executive Session, since they were discussing proposed regulations.

AS 24.20.100. Research and Drafting Services For Legislators.

Members of the legislature may utilize the research and bill drafting services of the Legislative Affairs Agency. Requests by members of the legislature are confidential. Staff services for members of the legislature shall be accomplished subject only to the priority of assignments determined by the council.

I know that legislators can request the Legislative Affairs Agency to do research and to draft bills and I

understand that their requests are confidential unless they sign off to allowing them to be public. But this was not about drafting legislation or about research. This was about setting up the regulations to implement the new laws affecting Oil and Gas Taxes.

There may well be a good reason for going into executive session, but if there was, it clearly wasn't on the tip of the Chair's tongue when he was asked why it was happening. Since the Uniform Rules specifically state that meetings should be open to the public unless certain exceptions occur, it seems reasonable that the Chair should be able to specifically identify the reason. There aren't that many. And the rules call for a vote before going into executive session.

I would note that the Legislative Council also went into Executive Session last week, and I don't recall any discussion or vote about that decision. And in both cases, the Executive Session was actually part of the printed agenda.



Here's Lisa in the ADN spot in the press room during the Executive Session.

TUESDAY, FEBRUARY 9, 2010

Call to Action; Serial Bogus Ethics Filers Give Testimony on Ethics?

During the tenure of Governor Palin, a whirlwind of ethics complaints blew into the state of Alaska. Both Andree McLeod and Zane Henning were responsible for filing bogus complaints against her. These were an affront to tax paying Alaskans and illustrated a complete disregard for the ethics system.

It would only stand to reason now that the state Legislature would take a good look at the system, hear from those who can give insight into how it can be improved, and follow through. Obviously, it would make sense to talk to the administration that has been so adversely affected by those seeking to abuse the ethic rules. Instead, in their hearings, they actually chose to receive testimony from Andree McLeod and Zane Henning, chief abusers of the system.

Lisa Demer of the ADN reports:

A legislative committee on Monday took up ethics issues that erupted during the Palin administration, but it's not clear whether the panel intends to take any action.

Attorney General Dan Sullivan has proposed state rules establishing when it's appropriate for the state to pay for the travel of family members of the governor or lieutenant governor. Another proposal sets out when the state should pay legal bills for state officials defending against ethics complaints.

Former Gov. Sarah Palin was hit with numerous ethics complaints during her 2 1/2 years in office. She said she quit in part because of what she called frivolous ethics complaints and personal legal bills amounting to an estimated \$600,000.

Most of the ethics complaints against Palin were dismissed. But she settled one by reimbursing the state more than \$8,000 for her children's air travel.

[...]

Oversight comes from the joint House-Senate Administrative Regulation Review Committee, which examines regulations to make sure they are allowed under state law.

The panel agreed to hold a public hearing on the ethics measures after being pushed by Palin critic Andree McLeod. House leaders also requested it, said state Rep. Wes Keller, R-Wasilla, who is the committee chairman.

Under the proposed rules, the state could cover the costs of defending a public official against ethics complaints if the official were exonerated, Assistant Attorney General Judy Bockmon told the committee.

[...]

McLeod, who filed a number of ethics complaints against Palin and her staff, urged the committee to reject the changes.

[...]

The Executive Branch Ethics Act is important, and the attorney general shouldn't be trying to change the law, another Palin critic, Zane Henning, told the committee. The Legislature should make any needed changes, he said.

[...]

The Department of Law has solicited public comment and held a hearing on the ethics changes, Bockmon said. The period for comment has ended and the department must now decide what to do. It could adopt the provisions as is or with minor changes, or let the matter drop with no action.

The committee hasn't yet decided how to proceed, Keller said.

Read the full article [here](#).

So Andree McLeod and Zane Henning; serial complainants who cost the state thousands of tax payer dollars while they played out their hellish vendetta against Governor Palin, somehow are credible sources of information? These two Palin anklebiters, whose complaints were thrown out one after another, are taken seriously, but the legislature doesn't want to hear from the administration itself regarding how these ethics abuses can be solved? What sense does that make?

Clearly, these two can't spot a real ethics violation if it smacked them in the face, so how does their one-sided testimony equate to anything remotely helpful in bringing about true ethics reform? And why can't the legislators see what is so apparent? Allowing these two characters to have a say in ethics rules is like allowing children to decide their own punishment. Don't tell me the legislators don't recognize this. They make it hard to take them or these hearings seriously. It seems, instead, to be more of the same Juneau dog and pony show.

Perhaps legislators' approach has something to do with the fact that their own ethics laws protect them from frivolous complaints. Perhaps it's due to the fact that if a complaint is leaked to the public in the legislative branch it is automatically dismissed. No wonder Jay Ramras, chair of House Judiciary, could so flippantly scold Governor Palin for wearing an Arctic Cat coat on a cold Alaska day though he ran multiple ads for his Pike's Lodge while serving in the legislature and running for

lieutenant governor. Could it not be argued that this was a political use of airtime? Could these ads not be deemed an improper in-kind contribution? Yet when the absurd Arctic Cat ethics complaint was filed, he chastised the governor for wearing a winter coat on a winter day! The hypocrisy is glaring.

We can look the other way, or we can implore legislators to do the right thing. They need to take up this issue, and we need to let them know how we feel about it. Governor Palin made the selfless decision to resign because she could no longer allow the politics of personal destruction being waged against her to continually cost the state thousands of dollars. And will legislators do nothing? Indeed, something needs to be done, and by "something" I don't mean simply hearing one-sided testimony from the anklebiters themselves.

Governor Palin fought against business as usual in the state of Alaska. Failure to act in the best interests of the state she served is unacceptable. The boneheaded decision to hear testimony on ethics from unethical boneheads makes no sense at all.

I urge you all to call and/or email these legislators and respectfully insist that they take action. Your voice *does* matter. I've included the contact information for you. (All phone numbers: 907 area code)

- * Chair: Rep. Wes Keller - Representative_Wes_Keller@legis.state.ak.us, 465-2186
- * Vice-Chair: Sen. Donald Olson - Senator_Donald_Olson@legis.state.ak.us, 465-3707
- * Rep. Carl Gatto - Representative_Carl_Gatto@legis.state.ak.us, 465-3743
- * Rep David Guttenberg - Representative_David_Guttenberg@legis.state.ak.us, 465-4457
- * Sen. Albert Kookeesh - Senator_Albert_Kookesh@legis.state.ak.us, 465-3473
- * Sen. Kevin Meyer - Senator_Kevin_Meyer@legis.state.ak.us, 465-4945
- * Senate Pres.: Sen. Gary Stevens - Senator_Gary_Stevens@legis.state.ak.us, 465-4925
- * Speaker of the House: Rep. Mike Chenault
Representative_Mike_Chenault@legis.state.ak.us, 465-3779

John Davies

From: Bockmon, Julia B (LAW) [judy.bockmon@alaska.gov]
Sent: Wednesday, February 03, 2010 10:49 AM
To: John Davies
Cc: Ford, Michael F (LAW); Behr, Deborah E (LAW)
Subject: Materials for Joint Committee on Administrative Regulations
Attachments: Petumenos 2 24 09 Ltr.pdf; AG OP Electronic Equipment 8 21 08.pdf; AG OP Aug 5 09.pdf

John:

Attached please find the following documents that provide background for three of the proposed regulations:

9 AAC 52.040(c) (attorney fees payments):

August 5, 2009 Attorney General Opinion Letter; pages 10-18

9 AAC 52.045(governor/ lt. governor family travel):

2/24/09 Letter from Independent Counsel T. Petumenos

9 AAC 52.050(b) – (e)(insignificant personal use of state electronic equipment):

August 21, 2008 Opinion Letter to Commissioner Kreitzer

Judy Bockmon
Assistant Attorney General
Opinions, Appeals & Ethics
Department of Law
907-269-5216

SEAN PARNELL, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907) 269-5100
FAX: (907) 276-3697

August 5, 2009

Mike Nizich
Chief of Staff, Office of the Governor
550 West 7th Avenue, Suite 1700
Anchorage, AK 99501

Re: Analysis and Recommendations Concerning the Alaska
Executive Branch Ethics Act

Dear Mr. Nizich,

We provide this legal analysis in response to questions about how to best implement the Alaska Executive Branch Ethics Act's goals to encourage high moral and ethical conduct and to improve public service, with a particular focus on (1) effective ways in which to minimize the disruptive effects of breaches of confidentiality, and (2) whether and how the state may defend public officers charged with ethics violations.

I. Summary

These are important issues for the state. They require consideration of laws that promote ethical conduct for public officials, the balance between First Amendment rights and a fair process for those accused of ethics violations, and holding public officials accountable while also encouraging qualified citizens to serve in state government. Because these issues have broader implications for public policy, I am issuing this analysis and advice as an attorney general's opinion.

Our analysis, conclusions, and recommendations fall into two categories. First, the confidentiality of the Ethics Act investigative process can be better protected in the future. As drafted, the Act provides an unnecessary opportunity

for a complainant to publicize a confidential report at a sensitive stage of the process. In addition, it imposes no consequences for citizens who abuse the Act by filing frequent, frivolous complaints, or filing complaints in bad faith. With statutory amendments, the ethics procedures can be changed in a manner that protects both the public interest in holding public officials accountable and the integrity of the process. We do not, however, recommend amendments that would impose sanctions for a citizen's disclosure of an ethics complaint that he or she has filed.

Second, the state has a well-established general policy of either defending or reimbursing executive and judicial branch officials for their legal defense when they are accused of inappropriate conduct or wrongdoing. Underlying this general policy is the legal presumption that state officers carry out their duties ethically and responsibly and therefore should be defended by the state against allegations to the contrary. Reimbursing the reasonable expenses that exonerated public officers incur in successfully defending against ethics complaints is consistent with this policy and balances the state's interests in discouraging misconduct by public officers and encouraging public service.

Drawing on previous legal advice we have provided, we conclude that executive branch agencies have authority to pay or reimburse the legal expenses public officers incur in defending against ethics complaints, if four conditions are met: (1) the public officers are exonerated of violations of the Ethics Act or other wrongdoing; (2) the officers acted within the course and scope of their offices or employment; (3) the expenses incurred are reasonable; and (4) appropriate sources of funds are available to the agencies to pay the expenses. Where those four conditions exist, reimbursing officers for those expenses clearly serves a public purpose and the public interest.

II. Background – the Ethics Act Process

Under the Ethics Act, anyone—including the attorney general or a member of the public—may file a complaint against a public officer.¹ For most ethics complaints, the attorney general is responsible for investigating the allegations and,

¹ AS 39.52.310. "Public officers" include executive branch employees and officers, members of state boards and commissions, and state trustees. AS 39.52.960(20) and (21).

if appropriate, prosecuting the accused.² However, for ethics complaints against the governor, lieutenant governor, or attorney general, the attorney general is recused from involvement in the proceedings and the personnel board appoints independent counsel to act in place of the attorney general.³ The attorney general is also charged with adopting regulations "necessary to interpret and implement" the Ethics Act.⁴

An Ethics Act investigation often results in the dismissal or settlement of the complaint. When it does not, the attorney general or independent counsel issues a public accusation against the subject officer, followed by an evidentiary hearing before the personnel board to determine whether a violation occurred and what remedies are appropriate.⁵ In that hearing, the attorney general or independent counsel prosecutes the ethics charges against the public officer.⁶

A public officer accused of ethics violations is not required to have a lawyer represent him in ethics proceedings. But even a public officer who is confident he acted properly may decide that he does not want to handle the ethics complaint procedures on his own – especially given that the potential penalties include substantial fines, removal from office, or discharge from state employment.⁷ A wrongly accused public officer might worry that, without a lawyer representing him in the process, the attorney general or independent counsel might misconstrue the officer's actions or misinterpret the Ethics Act. An accused public officer might also want a lawyer's advice on how to respond to media inquiries about an ethics complaint if the complaint prematurely becomes public knowledge.

² AS 39.52.310 – 39.52.390.

³ AS 39.52.310(c).

⁴ AS 39.52.950.

⁵ AS 39.52.350 – 39.52.370.

⁶ AS 39.52.360(c).

⁷ See AS 39.52.410 – 39.52.460.

The Ethics Act designates as confidential an ethics complaint and all other documents and information regarding an ethics investigation unless (1) the accused waives confidentiality in writing or (2) the attorney general or independent counsel initiates formal proceedings by issuing a public accusation.⁸ The Act also provides other ways in which confidential information from the proceedings can be made public.⁹

III. Preventing Breaches of Confidentiality

Despite the Ethics Act's confidentiality provisions, over the past several months complaints against public officers regularly have been provided to the news media. In addition, a confidential recommendation by the personnel board's independent counsel recently was disclosed to the press, undermining the process by which ethics complaints are resolved. The Ethics Act does not grant the state authority to punish citizens who violate the confidentiality requirement, however, nor would that be advisable in many circumstances.¹⁰ We conclude that the appropriate manner to prevent disclosure of information that may be harmful to the process of ethics investigations and the subject of the complaint is to improve protections to the process and to implement safeguards to prevent abuse of the Ethics Act.

A. The State Can Take Steps to Protect the Integrity of the Process of Resolving an Ethics Act Complaint

Confidentiality is important to the process of investigating and resolving an ethics complaint. The investigation may involve sensitive information about personnel matters that should be protected from the public eye. Further,

⁸ AS 39.52.340(a), (c).

⁹ See, e.g., AS 39.52.335(c), (f)-(h).

¹⁰ The confidentiality provision is enforceable against state officers who are part of the process of evaluating, investigating, and deciding Ethics Act complaints. See, e.g., *Dixon v. Kirkpatrick*, 553 F.3d 1294, 1306 (10th Cir. 2009) (holding that disclosure by a clerical employee of information about an ongoing investigation by state veterinary board was a constitutionally sufficient basis for dismissal).

publicizing information may interfere with the investigator's ability to find witnesses willing to cooperate, invite retaliation, threaten the independence of the investigation, and prejudice the right of the subject to a fair process. The public does not have a right to access information about the evidence or course of an investigation as it proceeds.¹¹

The state can protect its interest in the integrity of Ethics Act investigations by creating "careful internal procedures to protect the confidentiality of [the] proceedings."¹² Thus we recommend improving Ethics Act procedures to prevent a breach of confidentiality that could prejudice the subject of a complaint and interfere with the state's ability to judiciously resolve ethics matters.

For example, the Ethics Act provides that when the attorney general finds probable cause to believe that a past action has violated, or an anticipated action would violate the Ethics Act, but determines that a hearing is unwarranted, he recommends corrective or preventive action in a confidential report. The Ethics Act currently requires the attorney general to provide copies of this confidential report to both the complainant and the accused officer. The accused officer who receives a report of recommended action from the attorney general may want to negotiate an alternative corrective action or settlement with the state. In this situation, giving the recommendations to the complainant is unnecessary. The complainant has no role in negotiations and should not be permitted to interfere

¹¹ The right of access to information is far narrower than the free speech right to publish information once it is received. See *First Amendment Coal. v. Judicial Inquiry and Review Bd.*, 784 F.2d 467, 472 (3rd Cir. 1986) ("[T]he right of publication is the broader of the two, and in most instances, publication may not be constitutionally prohibited even though access to the particular information may properly be denied.") (citing *New York Times Co. v. United States*, 403 U.S. 713 (1971)).

¹² *Providence Journal Co. v. Newton*, 723 F. Supp. 846, 857 (D.R.I. 1989) (citing *Landmark Comm'ns, Inc. v. Virginia*, 435 U.S. 829 (1978); see also *R.M. v. Supreme Court of N.J.*, 883 A.2d 369, 380 (N.J. 2005) (holding that state's interest in enabling disciplinary authorities to make a full and fair investigation can be more narrowly met by the use of subpoenas and the imposition of criminal sanctions for witness tampering, destruction of evidence, and attempts to unduly pressure officials).

with or undermine discussions by publishing the report. This would compromise the proceedings at a critical stage. The complainant can be informed of the disposition of the case when the matter is resolved, corrective action is taken under AS 39.52.330, or an accusation is filed under AS 39.52.350. Thus, we recommend the Ethics Act be amended to eliminate the requirement that the attorney general serve the complainant with his predispositional recommendations, and to delay notification to the complainant until the matter is concluded.

B. The State Can Take Steps to Prevent Abuse of the Ethics Act

The Ethics Act process also could be changed to prevent another potential harm—abuse of the process. Some Alaskans have argued that the Ethics Act has been used inappropriately in some circumstances to politically damage the subject of the complaint.¹³ This opinion does not examine or decide whether or to what extent citizens may have abused the Ethics Act process in the past. We focus instead on statutory changes that could provide a disincentive to abuse the Act in the future.

Our first suggested addition to the Ethics Act is a provision that is simple and commonly used in other jurisdictions. We recommend giving the personnel board authority to order reimbursement of fees and costs from a person who has filed a complaint in bad faith. The reimbursement could extend both to the subject of the complaint, for attorney's fees and costs of defending against the accusation, and to the state, for its actual costs associated with processing and investigating the complaint. The precise standard for ordering reimbursement is a policy decision beyond the scope of this opinion, but as a general matter the standard should not discourage speech protected by the First Amendment. A brief analysis of different standards used by other states follows.

Some state codes make knowingly false complaints subject to both reimbursement orders and criminal prosecution.¹⁴ Others have similar provisions

¹³ See, e.g., "Our View: Abuse of Ethics Complaints Turns Good Law Into Bad Politics," Anchorage Daily News, May 3, 2009.

¹⁴ See, e.g., Ala. Code § 36-25-27(a)(4) ("Any person who knowingly makes or transmits a false report or complaint pursuant to this chapter shall, upon conviction, be guilty of a Class A misdemeanor and shall be liable for the actual legal expenses incurred by the respondent against whom the false report or

but without criminal penalties, whereby reimbursement is warranted when the complainant knew that he or she was falsely alleging misconduct or providing false information.¹⁵ In still other states, a less rigorous standard applies. Missouri law provides, for example, that "[a]ny person who submits a frivolous complaint shall be liable for actual and compensatory damages to the alleged violator for holding the alleged violator before the public in a false light."¹⁶ The same statute defines "frivolous" to mean "a complaint clearly lacking any basis in fact or law." An even looser standard would be to assess the subject's attorney's fees against the complainant whenever a subject is found not to have violated the Ethics Act, regardless of the complainant's knowledge or intent. We have found no state that applies such a standard, however, most likely because it would discourage most ethics complaints and undermine an important element of ethics laws.

We also recommend consideration of another safeguard to discourage habitual complaint filers who use the Ethics Act process to harass executive branch employees. Statutory amendments could provide authority to the personnel board to decline to process further complaints filed by a person who has abused the Act in this way. Again, the precise parameters of this authority would be a policy

complaint was filed."); *see also* 5 Ill. Comp. Stat. 430/50-5(d) ("Any person who intentionally makes a false report alleging a violation of any provision of this Act to an ethics commission, an inspector general, the State Police, a State's Attorney, the Attorney General, or any other law enforcement official is guilty of a Class A misdemeanor.").

¹⁵ In West Virginia, for example, a person who files an ethics complaint in good faith "is immune from any civil liability that otherwise might result," but a person who is found, by clear and convincing evidence, to have filed a complaint knowing that material statements are untrue can be ordered to reimburse both the subject and the ethics commission for costs and fees. W. Va. Code § 6B-2-4(u)(1)-(2); *see also* Fla. Stat. § 112.317(7) (giving ethics commission authority to require reimbursement of costs and fees "[i]n any case in which the commission determines that a person has filed a complaint against a public officer or employee with a malicious intent to injure the reputation of such officer or employee ... with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of this part.").

¹⁶ Mo. Ann. Stat. § 105.957 (4).

matter. One model is the provision for "Multiple complaints by a single complainant" in the Rules for Judicial Council and Judicial Disability, which govern the United States Court of Appeals for the Ninth Circuit. These rules provide that a complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints.¹⁷ The rule allows the complainant an opportunity to demonstrate why the judicial council should not limit the complainant's right to file further complaints, and gives the council authority to prohibit, restrict, or impose conditions on the complainant's future use of the procedure.¹⁸

We believe that these recommendations for changes to the Ethics Act maintain an appropriate balance between protecting the integrity of the process and encouraging responsible use of the Act to expose and correct unethical conduct. As discussed further below, we do not suggest any changes that might inhibit public discussion, debate, or criticism of the government.

C. The State Should Not Discourage Public Discourse on Government Actions

Creating safeguards to keep Ethics Act investigations confidential is categorically different than restricting citizens from speaking out about government conduct. Because public dialogue about government actions is speech at the core of the First Amendment, we do not recommend imposing sanctions on a citizen for disclosing information about an ethics complaint he or she has filed. Speech by a citizen charging government officials with breach of a code of official conduct is political speech accorded First Amendment protection. The United States Supreme Court has adhered to the bedrock principle that expression on public issues rests "on the highest rung of the hierarchy of First Amendment values,"¹⁹ and thus that "debate on public issues should be uninhibited, robust, and

¹⁷ U. S. Ct. of App. 9th Cir. Jud Miscon, Rule 10(a) (2008).

¹⁸ *Id.* West Virginia's ethics act contains a similar provision, *see* W. Va. Code § 6B-2-4(u)(2)(C) ("[T]he commission may decline to process any further complaints by the complainant, the initiator of the investigation, or the informant.").

¹⁹ *Carey v. Brown*, 447 U.S. 455, 467 (1979).

wide-open.”²⁰ The Supreme Court has also made clear that protected political speech goes far beyond intellectual argument about political theory; it includes vigorous debate about the qualifications and official conduct of public officials.²¹ Open discussion of official conduct is accorded the broadest protection available in our political system despite the fact “that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials.”²²

Alaska’s Ethics Act does not inhibit this type of debate, because it does not impose penalties on individuals who are not engaged in the investigative or decision-making process. As we have considered ways to protect the confidentiality of the ethics investigations, we have been mindful that penalizing public discourse about the actions of government officials might threaten First Amendment rights. Courts have consistently found that confidentiality provisions applicable to ethics complaints restrict the content of speech.²³ Because they

²⁰ *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964); see also *Mills v. Alabama*, 384 U.S. 214, 218 (1966) (“Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.”).

²¹ See, e.g., *New York Times Co. v. Sullivan*, 376 U.S. at 268 (citing with approval *Beauharnais v. Illinois*, 343 U.S. 250 (1952) (“public men, are, as it were, public property” and “discussion cannot be denied and the right, as well as the duty, of criticism must not be stifled”)).

²² *Id.* at 270.

²³ “As a general rule, laws that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content based.” *Turner Broad., Inc. v. FCC*, 512 U.S. 622, 643 (1994). Cases finding the confidentiality provisions of ethics laws to impose content-based restrictions include *Lind v. Grimmer*, 30 F.3d 1115, 1118 (9th Cir. 1994) (holding unconstitutional the confidentiality provision applicable to investigations conducted by Hawaii’s campaign spending commission); *Baugh v. Judicial Inquiry and Review Comm’n*, 907 F.2d 440, 444 (4th Cir. 1990) (finding that confidentiality requirement of Hawaii’s Judicial Inquiry and Review Commission was not content-neutral and remanding for further analysis under strict scrutiny); *Doe v. State of Florida Judicial Qualifications Comm’n*, 748 F. Supp. 1520, 1525 (S.D.

govern the content of speech, these restrictions will survive scrutiny only if narrowly drawn and necessary to serve a compelling state interest.²⁴ Courts generally have rejected states' interests in ethics code confidentiality provisions as insufficient to justify restrictions on citizens' speech.²⁵

IV. As a General Policy, the State Either Defends or Reimburses Public Officers for Their Legal Expenses When They are Accused of Inappropriate Conduct or Wrongdoing

The state routinely defends public officers against claims of inappropriate conduct or wrongdoing. For example, unless engaged in willful misconduct or gross negligence, the state defends public officers against claims that they violated others' constitutional rights while acting within the course and scope of their official duties.²⁶ Similarly, the Department of Law offers in-house legal

Fla. 1990) (invalidating confidentiality provision of Florida Constitution, applicable to complaints against judges); *Providence Journal Co. v. Newton*, 723 F. Supp. at 853 (invalidating confidentiality provision of Rhode Island Ethics Commission); *Doe v. Gonzalez*, 723 F. Supp. 690 (S.D. Fla. 1988) (finding confidentiality provision of Florida State Ethics Commission unconstitutional); *In re Warner*, ___ So.3d ___, 2009 WL 1025823 at *9 (La. 2009) (invalidating confidentiality requirement in attorney disciplinary proceedings).

²⁴ *Boos v. Barry*, 485 U.S. 312, 321 (1988).

²⁵ See *Lind v. Grimmer*, 30 F.3d at 1119-20; *Stilp v. Contino*, ___ F. Supp.2d ___, 2009 WL 1842087 at *6-11 (M.D. Pa. 2009); *Providence Journal Co. v. Newton*, 723 F. Supp. at 856-57; *S.D. v. Supreme Court of Florida*, 723 F. Supp. 690, 693-94 (S.D. Fla. 1988); *In re Warner*, 2009 WL 1025823 at *22-27; *R.M. v. Supreme Court of New Jersey*, 883 A.2d 369, 377-78 (N.J. 2005); *Doe v. Doe*, 127 S.W.3d 728, 736 (Tenn. 2004); *Petition of Brooks*, 678 A.2d 140, 144-45 (N.H. 1996).

²⁶ See, e.g., *Prentzel v. State, Dep't of Pub. Safety*, 169 P.3d 573, 577 (Alaska 2007). The Department of Law recently—and successfully—defended three Alaska State Troopers against claims under 42 U.S.C. § 1983, which provides, in part, that “[c]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall

representation to its attorneys when complaints of professional misconduct are filed against them with the Alaska Bar Association.²⁷ The Department of Law represents its attorneys so long as the allegations of misconduct arise in the course and scope of their official duties and the attorneys did not engage in willful misconduct or gross negligence.²⁸

In some cases, when the Department of Law does not defend public officers against claims of inappropriate conduct, the state will instead reimburse them for the legal expenses they incur in successfully defending themselves. For example, if a Department of Law attorney hires private counsel to defend against professional misconduct claims before the Alaska Bar Association, the department may reimburse the attorney for costs and fees incurred if the attorney successfully defends against the claims and the claims arise out of the course and scope of the attorney's work with the department.²⁹ The state also reimburses Alaska judges and judicial officers for legal expenses they incur in disciplinary proceedings before the Alaska Commission on Judicial Conduct.³⁰ This commission serves a function for the judicial branch that is analogous to the personnel board's function for the executive branch under the Ethics Act.

be liable to the party injured in an action at law." This statute therefore authorizes a person to bring a civil action for a public official's putative violation of the person's constitutional rights. The department also is defending former Governor Palin in a § 1983 action involving a clerical error in the Governor's Office that resulted in the failure to issue a proclamation.

²⁷ Memorandum from Attorney General Bruce Botelho at 2 (Nov. 8, 2002) (announcing the department's policy on reimbursement and defense of employees).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Letter of Agreement between the State of Alaska, Dep't of Admin., Div. of Risk Mgmt. and the Alaska Ct. Sys. at 2 (undated). The state also has agreed to reimburse state employees for legal defense of allegations of wrongdoing in occupational licensing investigations before the Board of Psychologists and the State Medical Board, if the employees are exonerated.

More generally, the Department of Law was recently asked whether a state agency may reimburse a public officer for legal expenses incurred in defending against a complaint that the officer violated the professional code of conduct covering his duties and responsibilities. We concluded that the agency could reimburse such legal expenses if: (1) a decision exonerates the officer of any violations of the law or any wrongdoing; (2) the officer acted within the course and scope of his office or employment; (3) the attorney's fees are reasonable; and (4) an appropriate source of funds is available for that purpose.³¹

As these examples show, the state adheres to a general policy of either defending or reimbursing public officers for their legal expenses when they are accused of inappropriate conduct or wrongdoing, particularly when such accusations are unfounded. Underlying this general policy is the legal presumption that state officers carry out their duties ethically and responsibly,³² and therefore should be defended by the state against allegations to the contrary.

V. May the State May Defend or Cover the Legal Expenses of Public Officers in Ethics Proceedings

Despite this widespread practice of defending or reimbursing public officials when accused of wrongdoing, the state apparently has never defended or covered the legal expenses of an accused officer in an Ethics Act proceeding. Alaska

³¹ Confidential Letter from Acting Attorney General Richard Svobodny (May 4, 2009).

³² See, e.g., *AT & T Alascom v. Orchitt*, 161 P.3d 1232, 1246 (Alaska 2007) (“[a]dministrative agency personnel are presumed to be honest”); *Earth Resources Co. v. State, Dep’t of Revenue*, 665 P.2d 960, 962 n.1 (Alaska 1983) (“agency personnel and procedures are presumed to be honest and impartial”).

statutes are silent on this issue with regard to ethics proceedings.³³ But existing law provides ample authority and guidance for covering these legal expenses without the need for statutory changes.

A. A Public Purpose is Critical

The state may not spend public money for public officers' defense in ethics matters unless doing so serves a public purpose and appropriations exist for the expenditures.³⁴ Defending officers accused of ethics violations or covering their legal expenses when they are exonerated clearly has a public purpose: citizens may be reluctant to serve in state government—or be inhibited in performing their

³³ We concluded in an informal 1994 opinion that defense or indemnification of public officers for expenses or penalties incurred in ethics proceedings was unavailable in part because a complaint under the Ethics Act is not a suit for money damages. 1994 Inf. Op. Att'y Gen. at 2 (June 3; 663-94-0289). To the extent that the informal 1994 opinion emphasizes that public officers are not legally entitled to defense and indemnification of fines levied against them in ethics proceedings, the reasoning of this informal opinion is sound, particularly for public officers found guilty of wrongdoing. To the extent that the opinion suggests that the state may not pay the legal expenses of exonerated public officers, it is inconsistent with the state's practice in other contexts and with the public interest. While ethics proceedings are not suits for money damages, ethics allegations usually arise out of public officers' performance of their official duties, and penalties for violating the Ethics Act may include monetary fines. See AS 39.52.440 – 39.52.450. Moreover, the potential damage to a public officer's reputation is a cost to the individual, and recent experience demonstrates that public officers may incur substantial legal expenses even with regard to meritless ethics complaints.

³⁴ See Alaska Const. art. IX, § 6 ("No . . . appropriation of public money [shall be] made, or public property transferred, . . . except for a public purpose."); Alaska Const. art. IX, § 13 ("No money shall be withdrawn from the treasury except in accordance with appropriations made by law. No obligation for the payment of money shall be incurred except as authorized by law."); see also AS 37.07.080(d) ("A state agency may not increase the salaries of its employees . . . or expend money or incur obligations except in accordance with law and [a] properly approved operations plan.").

official duties—if they must bear the cost of defending themselves against unfounded ethics charges related to their state duties.³⁵ Indeed, the Ethics Act itself underscores the importance of ensuring that the Act not only encourages “high moral and ethical standards among public officers in the executive branch,” but also “improve[s] standards of public service.”³⁶ Public service should not subject public officers, who are assumed by law to be acting ethically, to personal financial liabilities when ethics proceedings confirm that they acted appropriately. Therefore, in examining whether the state may defend or pay the legal expenses for public officers in ethics proceedings, the critical question is whether there is an approach that ensures that a public purpose is advanced while at the same time encouraging compliance with the Ethics Act by public officers. This question is examined in more detail below.

B. A Policy of Payment or Reimbursement After Exoneration Would Best Balance the Public Interest in Encouraging Public Service and Compliance with the Ethics Act

A policy allowing payment of legal expenses of exonerated public officers who hire private lawyers to defend them against ethics complaints would promote and “improve standards of public service”³⁷ while encouraging compliance with the Ethics Act. The public purpose for paying legal expenses is clearest for those

³⁵ See, e.g., *Snowden v. Anne Arundel County*, 456 A.2d 380, 385 (Md. 1983) (upholding an ordinance allowing reimbursement of fees and recognizing that reimbursement serves the public interest in encouraging the recruitment and retention of high-risk officers, maintaining morale, and providing necessary protection to those whose line of work exposes them to the financial burdens of defending baseless criminal charges); *Thornber v. City of Fort Walton Beach*, 568 So. 2d 914, 916-17 (Fla. 1990) (holding that Florida common law requires publicly paid legal representation for public officials defending against litigation arising from their performance of official duties while serving a public purpose; the requirement’s purpose “is to avoid the chilling effect that a denial of representation might have on public officials in performing their duties properly and diligently”) (citing *Nuzum v. Valdes*, 407 So. 2d 277 (Fla. Dist. Ct. App. 1981)).

³⁶ AS 39.52.010 (a)(1) and (a)(2)(B).

³⁷ AS 39.52.010(a)(2)(B).

who are exonerated.³⁸ As noted above, the reimbursement of legal fees for those who are exonerated in ethics matters also is consistent with the state's general practice in other contexts. Those situations, all of which concern professional ethics codes, involve issues very similar to Ethics Act matters. Such an approach also appears to be the common practice among the majority of state governments in the country.³⁹

The recent advice we provided to an executive branch agency on reimbursement of legal expenses in code-of-conduct proceedings offers an appropriate model for payment of legal expenses in Ethics Act matters. Based on that model, public officers may have expenses they incur in defending against ethics complaints covered if

(1) the officers are exonerated of any violation of the Ethics Act or other wrongdoing; (2) the officers acted within the course and scope of their offices or employment; (3) the expenses incurred were reasonable; and (4) there are appropriate sources of funds to pay the expenses.⁴⁰ As we stated in that opinion, "these conditions ensure that the spending will serve a public purpose."⁴¹

Although agencies could wait and reimburse public officers for their legal expenses once the ethics complaints against them are resolved, allowing state

³⁸ See *Snowden*, 456 A.2d at 385.

³⁹ See Letter from James McPherson, Executive Director of the National Association of Attorneys General 2 (July 31, 2009) ("In conclusion, the reimbursement for reasonable attorney's fees and costs incurred by state officials during the course of an investigation or adjudication of alleged ethics violations where those allegations were found unsubstantiated or unfounded appears to be a common practice among a majority of the states. Such common practice, while not specifically provided by any state statutory or regulatory scheme, is premised upon a broad interpretation of risk management programs, formal ethics programs, or sound public policy protecting state officials from frivolous lawsuits which could discourage citizens from engaging in public service or seeking elected office.").

⁴⁰ Confidential Letter from Acting Attorney General Richard Svobodny, *supra* n.31.

⁴¹ *Id.*

officers the option of having their legal expenses paid as they are incurred helps serve the public interest of not discouraging public service. Logistically, reimbursement may be simpler. But if public officers must shoulder the financial burden of legal expenses while they await resolution of unfounded complaints against them, qualified individuals may be reluctant to accept positions in state service and public officers may be inhibited in carrying out their duties. Public officers must agree, however, to repay any amounts they receive if they are not exonerated.⁴²

The Alaska Supreme Court has not addressed the issue of reimbursement, but other court decisions suggest that this approach strikes an appropriate balance between the public's interest in encouraging individuals to accept positions in state

⁴² Pursuant to AS 39.52.950, the Department of Law will soon promulgate regulations addressing procedures for payment of expenses incurred in Ethics Act proceedings.

service and its interest in holding public officials accountable and discouraging misconduct under the Ethics Act.⁴³

C. Conflict of Interest Issues Prevent the Department of Law from Directly Representing State Officials in Ethics Act Proceedings

Another possible approach would be to have the Department of Law defend public officers against ethics complaints. As noted above, the Department of Law regularly defends public officials when they are accused of wrongdoing under federal civil rights statutes. However, having the Department of Law directly defend public officers against ethics complaints could present conflict-of-interest

⁴³ See, e.g., *Guenzel-Handlos v. County of Lancaster*, 655 N.W.2d 384, 389-90 (Neb. 2003) (concluding that, absent specific legislative authorization, public bodies are not obligated to pay attorney's fees their officials incur in successfully defending against criminal charges arising out of performance of their official duties); *Triplett v. Town of Oxford*, 791 N.E.2d 310, 315-16 (Mass. 2003) (same); *Hart v. County of Sagadahoc*, 609 A.2d 282, 283-84 (Me. 1992) (concluding that the common law permits, but does not require, a public body to pay fees its officials incur in those circumstances); *Thornber v. City of Fort Walton Beach*, 568 So. 2d 914, 916-17 (Fla. 1990) (recognizing a common law duty of a governmental body to pay attorney's fees that its officials incur in defending against litigation arising out of performance of their official duties while serving a public purpose); *Chavez v. City of Tampa*, 560 So.2d 1214, 1214-19 (Fla. Dist. Ct. App. 1990) (holding that, where a city council member received advice from the city attorney that voting on a matter involving her personal interest would be a conflict of interest but nonetheless voted on that matter to break a tie vote, she was not entitled by statute or common law to reimbursement of the legal expenses she incurred in successfully defending against related charges before the state ethics commission); *Ellison v. Reid*, 397 So. 2d 352, 354 (Fla. Dist. Ct. App. 1981) (upholding the use of public funds to pay attorney's fees that a county appraiser incurred in successfully defending against charges of official misconduct before the state ethics commission); *Bd. of Chosen Freeholders of Burlington v. Conda*, 396 A.2d 613, 615, 620 (N.J. Super. Ct. Law Div. 1978) (holding that a county had neither the duty nor the authority to reimburse a county surrogate for legal fees incurred in defending against disciplinary proceedings before an advisory committee on judicial conduct, where the proceedings led to censure of the surrogate as a judicial officer).

challenges because of the attorney general's role in interpreting, enforcing, and prosecuting violations of the Ethics Act. If the Department of Law directly defended public officers in Ethics Act proceedings, the result would be that—for ethics complaints against most public officers—the defense counsel and the lawyer investigating and prosecuting the complaint would be in the same department and be supervised by the same attorney general and, perhaps the same deputy attorney general. In essence, the attorney general, through attorneys in the Department of Law, would be both prosecuting and defending against the ethics complaints. That could not only create an appearance of impropriety, but could also prejudice the interests of the accused officers and diminish the officers' confidence in the representation they receive. It could also create difficulties under the Alaska Rules of Professional Conduct because of the conflicting obligations of the state attorneys and their supervisors.⁴⁴

Those conflict difficulties would not exist if the Department of Law represented only the governor, lieutenant governor, and attorney general against ethics complaints, because the attorney general is recused from investigating and prosecuting complaints against those three officers.⁴⁵ But Department of Law representation of even those three officers would still raise significant concerns.⁴⁶

⁴⁴ See Alaska R. Prof'l Conduct 1.7, 1.10 (providing that a lawyer should generally not represent a client if the representation of that client will be directly adverse to another client of that lawyer or the lawyer's firm). *But see* Alaska R. Prof'l Conduct 1.7 cmt. ("government lawyers in some circumstances may represent government employees in proceedings in which a government agency is the opposing party.").

⁴⁵ AS 39.52.310(c).

⁴⁶ As a general rule, the Ethics Act makes clear that the attorney general has no role in the investigation and prosecution of an ethics complaint against the governor, lieutenant governor, or attorney general. In all other situations involving the Ethics Act, the role of the attorney general and Department of Law is to interpret, implement, and enforce the Act, with the goal of promoting the Act's purposes. But if the Department of Law were defending an individual officer against an ethics complaint, the goal would be different: to defend that officer zealously, regardless of the implications for the long-term implementation of the Ethics Act. For example, zealous representation of an accused officer might involve asserting that a provision of the Ethics Act is unconstitutional—an

Please contact me if we can be of further assistance with this matter.

Sincerely,



Daniel S. Sullivan
Attorney General

assertion that the Department of Law would likely resist in carrying out its general responsibility to implement and enforce the Ethics Act. Defending individual officers against ethics complaints would therefore create an unacceptable conflict between the Department of Law's duty to provide them zealous representation and its general duty to promote the purposes of the Ethics Act in interpreting, implementing, and enforcing the Act.

LAW OFFICES

BIRCH, HORTON, BITTNER AND CHEROT

A PROFESSIONAL CORPORATION

1127 WEST SEVENTH AVENUE • ANCHORAGE, ALASKA 99501-3301 • TELEPHONE (907) 276-1550 • (800) 478-1550 • FACSIMILE (907) 276-3680

HAL R. HORTON (1944 - 1998)

RONALD G. BIRCH
WILLIAM H. BITTNER
KATHRYN A. BLACK
SUZANNE CHEROT
ADAM W. COOK
JOHN M. DEVORE
CHARLES R. EBERLETT
GREGORY S. FISHER
JOSEPH H. FLACK

DOUGLAS S. FULLER
MAX D. GARNER
DAVID KARL GROSS
TINA M. GROVIER
WILLIAM P. HORN
STEPHEN H. HUTCHINGS
DANIEL C. KENT
THOMAS F. KUNKNER
DAVID E. LAMPERT

STANLEY T. LEWIS
JAMES H. LISTER
GREGORY A. MILLER
JENNIFER L. OWENS, Ph.D.
MICHAEL J. PARISE
TIMOTHY J. PETUNOS
ELISABETH H. ROSS
HOLLY C. SUOZZO

OF COUNSEL:
JENNIFER C. ALEXANDER
KENNETH E. VASSAR

RECEIVED

FEB 25 2009

Attorney Generals Office
Juneau

1155 CONNECTICUT AVE., N.W.
SUITE 1200
WASHINGTON, D.C. 20036
(202) 659-5800
FACSIMILE (202) 659-1227

D.C. BAR
D.C. AND ALASKA BAR
MARYLAND BAR
VIRGINIA BAR
ALL OTHERS ALASKA BAR

February 24, 2009

RECEIVED

FEB 25 2009

Executive AGO Juneau

Via Email and First Class Mail

Richard Svobodny, Acting Attorney General
P.O. Box 110300
Juneau, AK 99811
richard.svobodny@alaska.gov

Re: In re Ethics Complaint of October 24, 2008
Our File No. 506,751.3

Dear Mr. Svobodny:

I have been appointed Independent Counsel by the Alaska Personnel Board in connection with a complaint filed against Governor Palin under the Alaska Executive Ethics Act regarding travel by the Governor's children at State expense. After conducting legal research and an investigation into the facts of the matter, the Governor and the Personnel Board, through Independent Counsel, have entered into a Settlement Agreement which I have enclosed and which is to be released to the public. I write to you because the Department of Law has jurisdiction over the promulgation of regulations under the Alaska Executive Ethics Act.

I have come to the conclusion, and the Governor concurs, that the Ethics Act, and its clarifying regulations, gives insufficient guidance to an independent counsel, or a governor's office, as to what state reimbursed travel is appropriate for members of the first family. As a result, we have agreed in the settlement agreement to refer this matter to the Department of Law, in the public interest, so that more specific guidance and clarification be provided to this and future governors whose families may be called upon to travel on behalf of the State.

I have also come to the conclusion that the process of promulgating regulations is a far better way to address this issue than litigation following the filing of an adversarial accusation under these circumstances. The regulatory process provides for public comment and input as to what is an appropriate use of state funds for first family travel whereas litigation of the matter directly under the Act does not. The Governor's Office, in turn, is looking for more of a bright line set of rules to follow in scheduling travel that is simpler to apply than the current regulations.

Richard Svobodny, Acting Attorney General
February 24, 2009
Page 2

The operative statute is AS 39.52.120 which prohibits a state official from using state resources to obtain a personal benefit. A personal benefit conferred upon an official's immediate family, such as travel at State expense, is clearly covered by the Act's definition of personal benefit. An ambiguity arises, however, in AS 39.52.120(a) which provides that the benefit that is conferred must be an "unwarranted" benefit. The statute does not provide further definition. The Governor's Office has historically responded to numerous requests for what it terms "protocol" trips at which the Governor appears at events to lend the State's support and backing to such matters as a charitable organizations, business ventures benefiting the State or for the attendance at professional conferences where policy is discussed. Often the first family is invited to attend such events, but those making the invitation are almost always not offering to pay for the travel. The issue raised, therefore, is when is first family travel sufficiently in the State's interest ("warranted") to support the expenditure of public funds.

There are two regulations that address what is to be considered an unwarranted benefit. Section (a) of 9 AAC 52.040 provides that an unwarranted benefit is one that is conferred as a "deviation from normal procedures for the award of a benefit..." if the deviation is based upon an "improper motivation." In turn 9 AAC 52.990 provides that an "improper motivation" is one that is not related to the "best interests of the State." But 9 AAC 52.540(b) states, somewhat mystifyingly, that in considering whether the benefit is unwarranted, it does not matter whether the ultimate result is determined to be in the best interest of the State.

In addition to the fact that the regulations can be read to be internally inconsistent, there is the additional problem is that there is no real established procedure against which to measure first family travel. The complaint currently before the Personnel Board could be read to challenge travel by the Governor's children with respect to over 40 such trips. Our investigation reveals that there was no precedent against which to measure whether the procedures employed by the Governor's Office were or were not a deviation from "normal" procedures. Governor Murkowski had no minor children but announced a policy of travelling with his spouse on all gubernatorial trips because his spouse was his advisor. This was never challenged under the Act. Governor Knowles generally did not charge the State for travel for minor children, although staff at the Governor's office reports that family would travel on the state plane from time to time when the Governor travelled on it, a practice that was addressed after Governor Knowles left office in an opinion by the Attorney General in 2004 which suggests that this practice would not be in compliance with the Ethics Act, at least unless there was State business directly involving the passengers that caused the trip to be taken. Prior to the Knowles administration, the Ethics Act was not in existence.

The Settlement Agreement that was reached between the Personnel Board and the Governor refers the matter of first family travel to the Department of Law for regulatory clarification so that some further guidance, other than the "motivation" of the Governor, on a trip by trip basis, can be used to guide the decision makers. The Governor has agreed, retroactively, to reimburse the State for any ongoing or future travel should a clarification or standard set by a new regulation require it whether the travel preceded the new regulation or not. In the interim,

BIRCH, HORTON, BITTNER AND CHEROT
A PROFESSIONAL CORPORATION

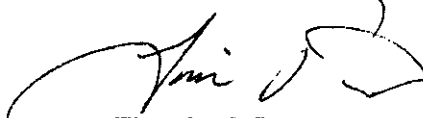
Richard Svobodny, Acting Attorney General
February 24, 2009
Page 3

the standard used in the Settlement Agreement will guide the travel decisions by the Governor's Office.

It has been my endeavor to not only resolve this complaint, but attempt to recommend that a process be put into place that would make it unnecessary for gubernatorial related travel to become the subject of future request for scrutiny under the Ethics Act by making the standards clearer and easier for the Governor's Office to apply. Thank you for your consideration of this matter.

Very truly yours,

BIRCH HORTON BITTNER AND CHEROT



Timothy J. Petumenos
Independent Counsel

Cc: Thomas Van Flein, Counsel to Governor Palin (via email)
Alaska Personnel Board (via email)

BEFORE THE ALASKA PERSONNEL BOARD

In Re October 24, 2008 Ethics Complaint

SETTLEMENT AGREEMENT

This settlement agreement is entered into between Governor Sarah Palin ("Governor") and the Alaska Personnel Board through its Independent Counsel ("Independent Counsel"). This settlement resolves the above described Complaint. The Complaint alleges that certain travel for Governor Palin's children was taken at State expense and in violation of the Alaska Executive Branch Ethics Act, AS 39.52.120(a) and (b)(3). The trips that are the subject of this Settlement Agreement are those described in Exhibit A. Exhibit A is specifically incorporated into the terms of this settlement agreement.

WHEREAS the parties agree that there is presently little statutory or regulatory guidance under the Alaska Executive Branch Ethics Act to determine the ethical standards for travel by the Governor's immediate family (referred to as Protocol Travel)¹ and, more specifically, to determine the circumstances under which (i) State reimbursement for travel by the Governor's children is ethically prohibited and (ii) when the Governor must reimburse the state for travel by her children on state transportation equipment;

WHEREAS the parties understand that AS 39.52.120(a)'s prohibition on unwarranted benefits or treatment is the most pertinent provision addressing

¹ As used herein, "Protocol Travel" is travel involving the First Family to events, ceremonies and other public appearances attended by the Governor.

travel by the Governor's immediate family as described in Exhibit A, that such provision is further defined by regulation, but that such regulation does not provide sufficiently clear standards for determining when travel as described in Exhibit A constitutes an unwarranted State reimbursed travel and therefore an ethical violation;

WHEREAS Independent Counsel has interpreted the Alaska Executive Branch Ethics Act, in the absence of specific regulation on the topic of first family travel, to require that state reimbursed travel for the first family should not occur at State expense unless the presence of the First Family serves an important state interest and that some of the travel raised by the Complaint does not meet this standard;

WHEREAS the Governor maintains that she adhered to Protocol Travel standards historically allowed to prior administrations, abided by the recommendations of state personnel, and has done nothing to violate the Act, but further agrees that written Protocol Travel guidelines would benefit her administration and all future administrations;

WHEREAS, as to the existing Complaint, the Governor wants to exceed minimum legal standards, and therefore wishes to respect and adhere to the determination made by Independent Counsel and does not wish to contest the standard being applied or the application of this standard to the Complaint in the interest of the State and the public;

WHEREAS the parties have agreed to mutually address and resolve the issues raised by the Complaint voluntarily, cooperatively and in the best interests of the State;

IT IS AGREED THAT:

1. The Governor shall reimburse the State within 120 days for payments for travel made as described in Exhibit A.

2. No other trips that could be the subject of the Complaint, through to the date of this agreement require reimbursement.

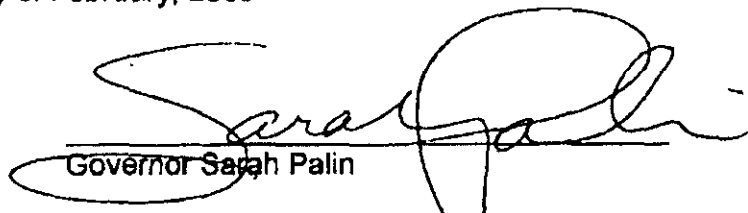
3. Independent Counsel shall refer this matter to the Department of Law for the purpose of promulgating additional regulations to clarify Protocol Travel by addressing more clearly what constitutes Protocol Travel that is warranted under the Alaska Executive Branch Ethics Act and therefore subject to State reimbursement. The Governor agrees to reimburse the State for any trip billed to the State for her children that are submitted in the future that does not comply with the regulation or regulations that are later promulgated.

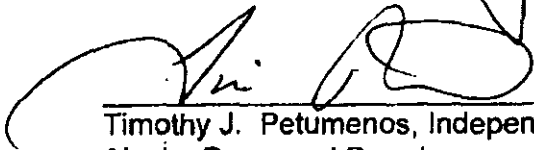
4. It is expressly agreed that the terms of this agreement shall be made public, that the Governor waives her right to confidentiality regarding this agreement, and that Independent Counsel and the Governor shall be authorized to communicate the terms of this agreement to the public and to the Attorney General for purposes of seeking clarifying regulations. Independent Counsel, the Governor and her staff, and members of the Department of Administration

charged with arranging Protocol Travel shall be free to participate in the regulatory process as they choose or as they may be called upon.

5. Nothing in this agreement constitutes an admission of wrongdoing, and none has been found, nor may any inference of wrongdoing be inferred by virtue of the execution of this agreement in any other proceeding.

DATED this 23rd day of February, 2009


Governor Sarah Palin


Timothy J. Petumenos, Independent Counsel
Alaska Personnel Board

Approved as to form and content:

2-23-09 
Thomas Van Flein, Attorney for Governor Palin

TA #	DATES	EVENT DESCRIPTION	COST DESCRIPTION	
01-1624	1/25 - 1/30/07	First Family attended Alaska Native Heritage Center First Family event in Anchorage (n/a); Bristol later attended opening night of Beauty and the Beast at Valley Performing Arts Center.	Additional cost to State for attending Beauty and the Beast to be reimbursed.	
01-1901	4/18 - 4/22/07	First Family attended Elders and Community dinner in Glennallen (n/a); attended Alaska Prudential Student Recognition ceremony (n/a); attended Alaska Moose Federation banquet with Governor.	Trip to be prorated between three events, with Moose Federation to be reimbursed for marginal cost.	
01-1857 01-1858 01-1859	5/6 - 5/8/07	First Family attended family dinner at the Outpost and attended the Skagway Community Reception for Palin family.	Family traveled via Ferry and DPS King Air.	
01-1876 01-1877	5/9 - 5/10/07	Governor, Willow and Piper attend Cordova Shorebird Festival and documentary. Governor spoke to Cordova Chamber of Commerce.	Family traveled via DPS King Air. Two round trip tickets for Willow and Piper.	
01-2134	10/7 - 10/11/07	Governor and Bristol attend Newsweek's Third Annual Women and Leadership Conference.	Airfare and one meal.	
01-2335 01-2336	1/12/2008	Willow and Piper returned to Juneau to State of the State Address.	Willow and Piper traveled with Governor on DPS King Air.	
01-2381	2/8 - 2/10/08	Start of the Iron Dog and Alaska Outdoor Council Banquet.	Piper traveled with Governor on DPS King Air.	
01-2519	4/10/08	Curves Ribbon Cutting Ceremony, and bill signing for recycled eyeglasses during the Lions Club of Alaska and Yukon Territory Annual Convention.	Juneau to Anchorage	
01-3151 01-3152	7/9 - 7/15/08	National Governor's Association Annual Summer Meeting.	Airfare and hotel	

STATE OF ALASKA

DEPARTMENT OF LAW OFFICE OF THE ATTORNEY GENERAL

SARAH PALIN, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-8554

August 21, 2008

Annette Kreitzer
Commissioner
Department of Administration
P.O. Box 110200
Juneau, AK 99811-0200

Re: Personal Use of Electronic Equipment
AGO File No. 661-08-0388

Dear Commissioner Kreitzer:

You requested an attorney general opinion addressing the applicability of the Executive Branch Ethics Act, AS 39.52, to the personal use of a state-owned cell phone, personal digital assistant, such as a BlackBerry (PDA), laptop computer, and other state-owned equipment. We conclude that the questions posed involve matters of general applicability and therefore, the standards should be addressed by promulgation of regulations by the Department of Law. Our advice regarding the considerations leading to adoption of particular standards is addressed in Part I of this opinion.¹

¹ Part I of this opinion principally addresses use of cell phones and PDAs, which are both issued subject to a usage plan. It also addresses other equipment used away from the regular workplace, such as satellite phones and portable computers, but is not applicable to office equipment, such as copiers. This opinion also does not apply to the use of state-owned vehicles, which is regulated by AS 44.68.010-44.68.040, the Department of Transportation and Public Facilities Policy and Procedure No. 11.04.010 and the Department of Administration policy addressing the personal use of state vehicles, dated January 29, 2007. An acceptable personal use under the state's vehicle policies is an insignificant use for purposes of the Ethics Act. Designated ethics supervisors must address other circumstances on a case-by-case basis.

You also asked that we address whether a public officer who elects to receive an allowance to purchase a personal cell phone or PDA to be used in part for state business, waives confidentiality for personal emails and call records. We conclude that personal emails and call records are not public records and public disclosure of such personal information would likely run afoul of the individual's right to privacy under the Alaska Constitution. However, because business related calls and business related email messages would also be generated through these personal devices, it is possible that a state official or a court could be required to review all call records and messages in order to locate the calls and email messages that concern state business and thus are public records. This issue is addressed in Part II of this opinion.

I. PERSONAL USE OF STATE-OWNED ELECTRONIC EQUIPMENT

You asked that we answer the following questions addressing the applicability of the Ethics Act to the personal use of state-owned equipment: What constitutes de minimis or insignificant use?² Can we establish a bright line for determining when usage is no longer insignificant? What are the criteria for determining whether insignificant use is permissible? What should a work supervisor do upon determining that the Ethics Act has been violated? What is a work supervisor's authority to address an Ethics Act violation? You also asked that we discuss the remedies and penalties available for an Ethics Act violation for misuse of state-owned equipment. Our advice and answers to your questions are set out below.

A. Applicable Ethics Act Provisions and Regulations

The Ethics Act contains several provisions applicable to the personal use of state equipment by public officers.³

² Your request used the phrase "de minimis or insignificant." The term "de minimis" has occasionally been used in ethics opinions to describe a minor use that does not violate the Ethics Act. The term "insignificant" as used in the Ethics Act and applicable regulations describes interests or circumstances that do not violate the Ethics Act or that result in no substantial impropriety, even if there was a violation. We have not used the term "de minimis" in this opinion to avoid confusion with the use of that term to describe a nontaxable fringe benefit under the Internal Revenue Service rules.

³ We use the term "public officer" as defined in the Ethics Act to include both state employees and the members of state boards and commissions. AS 39.52.960(21). The prohibitions and standards discussed in this opinion apply equally to both.

1. Prohibition on Use for Personal Benefit or to Benefit Another

Alaska Statute 39.52.120(a) states that a "public officer may not use, or attempt to use, an official position for personal gain and may not intentionally secure or grant unwarranted benefits or treatment for any person." "Gain" includes "actual or anticipated gain, benefit, profit, or compensation."⁴ Thus, as a general rule, a public officer may not use state equipment for personal benefit, regardless of whether there is financial gain.⁵ The officer also may not use state equipment to intentionally give an unwarranted benefit to any person.⁶

2. Prohibition on Use to Benefit Personal or Financial Interests

Alaska Statute 39.52.120(b)(3) states that a public officer may not "use state time, property, equipment, or other facilities to benefit personal or financial interests." The terms "personal interest" and "financial interest" are specially defined in the Ethics Act. "Personal interest" means "an interest held or involvement by a public officer, or the officer's immediate family member or parent, including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which,

⁴ AS 39.52.960(10). "Personal gain" has been further defined to mean "a benefit to a person's or immediate family member's personal interest or financial interest." 9 AAC 52.990(b)(6). We construe this regulation as explaining, not limiting, the definition of "gain" and the scope of the language in AS 39.52.120(a). There is a presumption that every word of a statute was intended for some useful purpose, that some effect is to be given to each word and that no superfluous words were used. *Alaska Transp. Comm'n v. Airpac, Inc.*, 685 P.2d 1248 (Alaska 1984). In addition, to be valid, a regulation must be consistent with and reasonably necessary to implement the statute authorizing its adoption and not conflict with other statutes. *O'Callaghan v. Rue*, 996 P.2d 88 (Alaska 2000). Thus, all words in the statutory definition of "gain" must be acknowledged and "gain" is not limited to situations involving "personal interests" or "financial interests," as defined in the Ethics Act.

⁵ "Benefit" means "anything that is to a person's advantage or self-interest, or from which a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value." AS 39.52.960(3).

⁶ "Person" includes a natural person, a business, an organization and a governmental entity. AS 39.52.960(17); 9 AAC 52.990(b)(5).

or as a result of which, a person or organization receives a benefit.”⁷ “Financial interest” means –

(A) an interest held by a public officer or an immediate family member, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit;

(B) holding a position in a business, such as an officer, director, trustee, partner, employee, or the like, or holding a position of management.⁸

A public officer violates the Ethics Act by using state equipment to benefit an organization with which the officer or an immediate family member has a relationship or to benefit an interest held by the officer or an immediate family member, including an interest in a business or other professional or private relationship, that is a source of income or financial benefit.

A related regulation, 9 AAC 52.050, provides a limited exception:

A public officer who uses state time, property, equipment, or other facilities to benefit the officer's personal or financial interest is not in violation of AS 39.52.120(b)(3) if the officer's designated supervisor determines that the use is insignificant, the attorney general has not issued a general opinion against the use, and the attorney general does not advise the officer against the use.

Therefore, if use to benefit a personal or financial interest occurs, the designated ethics supervisor may review the circumstances and determine that the public officer has not violated the Ethics Act, if the ethics supervisor concludes that the use was “insignificant” and the attorney general has not either generally or specifically advised against the use.

⁷ AS 39.52.960(19). The term “benefit” is broadly defined. *See supra* note 5.

⁸ AS 39.52.960(9).

3. Prohibition on Use of State Equipment for Partisan Political Purposes

Alaska Statute 39.52.120(b)(6) states that a public officer may not "use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes."⁹ As stated in the subsection, the phrase "for partisan political purposes" means "having the intent to differentially benefit or harm a (i) candidate or potential candidate for elective office; or (ii) political party or group." It does not include "having the intent to benefit the public interest at large through the normal performance of duties."

We interpret this provision stringently to prohibit any use of state equipment for political activity. Also, under the State of Alaska's *Personal Use of State Office Technologies Policy (SP-017)* it is unacceptable to use state equipment "for fundraising, political campaign activities, or public relations activities not specifically related to state government activities."

A state officer may reply to a communication relating to a partisan political activity only to advise the sender that use of state equipment for such purposes is prohibited and to provide an alternate place of contact, if courtesy would require it, without violating the Ethics Act. Any other activity related to partisan political activity is prohibited. The considerations discussed in the next section of this opinion do not create an exception when the use involved is related to partisan political purposes.

B. Standards for Determining Permissible Insignificant Personal Use¹⁰

The Ethics Act recognizes that public officers come to state service with private and independent outside interests. The Act acknowledges that public officers may pursue independent interests so long as the activity does not interfere with the full and faithful discharge of their public duties and responsibilities. It also directs that we distinguish between minor and inconsequential conflicts that are unavoidable and those that are

⁹ The subsection states exceptions for use of the governor's residence and so long as there is no charge to the state, use of communications equipment in the residence and some limited use of state aircraft.

¹⁰ The term "personal use" as used in this section includes a use addressed in AS 39.52.120(a) or (b)(3) as discussed above; that is, a use for personal gain or benefit, to provide an unwarranted benefit to any person or to benefit personal interests or financial interests.

substantial and material.¹¹ Those judgments are ordinarily based on the particular circumstances.

The Ethics Act provides guidance for determining when conduct that might otherwise be unethical under the Act's code of conduct, results in no violation because there is no substantial impropriety. Alaska Statute 39.52.110 excuses potential violations or permits action when a conflict exists if a public officer's "personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs," or when the "action or influence would have insignificant or conjectural effect on the matter."¹² These standards do not provide specific guidance for establishing a rule governing the personal use of cell phones or PDAs in the course of day-to-day activity. They do confirm that potential violations of the Ethics Act that may be characterized as "insignificant" are not the type of conduct that the Alaska Legislature considered "substantial and material" and to be avoided.

The Alaska Legislature amended the Ethics Act in 2007 to set standards for determining the significance of certain activities and these standards provide additional guidance for application of the Ethics Act to the use of state-owned electronic equipment. Alaska Statute 39.52.110, discussed above, was amended to provide that stock or other ownership interest in a business is presumed insignificant if its value is less than \$5000.¹³ Thus, the legislature set a bright line for defining an insignificant ownership interest in a business, but, by stating the rule as a presumption, it gave ethics supervisors the flexibility to address unusual circumstances.¹⁴ The legislature also limited the use of state aircraft for partisan political purposes to use that is collateral or incidental to the normal performance of official duties and that is no more than 10 per cent of the total use of the aircraft for official state purposes on a single trip. The person using the aircraft for this purpose must reimburse the state for the proportionate share of the actual cost of the

¹¹ AS 39.52.110(a).

¹² AS 39.52.110(b).

¹³ AS 39.52.110(d).

¹⁴ The legislature also amended the gift provisions to prohibit the receipt of gifts from registered lobbyists, but that bar was again stated as a presumption, providing flexibility to address circumstances where gifts are given to public officers by lobbyists for reasons unrelated to their state service. See AS 39.52.130(a).

use.¹⁵ Thus, the legislature reaffirmed its original intent that the responsibilities of an officer's state position should be reconciled with the officer's independent activity and interests where possible and that the state may accommodate outside matters that are insignificant and have limited impact on state business so long as there is no cost to the state.

We propose to promulgate regulations to set standards for determining when personal use of certain state equipment is presumed not to violate the Ethics Act. At this point, we contemplate proposing regulations that reflect the standards discussed below with respect to the equipment identified. We expect that the proposed regulations would permit designated ethics supervisors to review personal use that is inconsistent with the standards and therefore presumptively violates the Ethics Act and determine on a case-by-case basis whether the personal use was unavoidable and insignificant under the circumstances.

1. Cell Phones and Personal Digital Assistants

We assume that cell phones and PDAs are issued to state officers to ensure out-of-office accessibility, during the day but particularly after hours and on weekends. PDAs may also be needed when public officers travel and require access to email. Based on information provided by the Department of Administration, use of each individual state cell phone and PDA is governed by one of several plan options under a contract with a service provider. Plans typically provide a block or allowance of minutes, such as 500 or 800 minutes, for a set monthly fee, with additional fees for minutes that exceed that amount, out-of-state long distance, roaming, text messaging or data transfer.¹⁶

Generally, state equipment is not a substitute for an officer's personal equipment and personal use should be collateral or incidental to the performance of official duties. Personal calls or contacts during the work day should be of short duration as reasonably necessary to tend to family and individual matters, such as child care, medical appointments or social appointments, or to address matters relating to personal or financial interests, similar to the permitted use of a desk telephone. No use of state equipment may be made for partisan political purposes, except for limited replies to incoming contacts as stated earlier in this opinion.

¹⁵ AS 39.52.120(f).

¹⁶ The possible fees vary from plan to plan. This opinion is based on the current state of technology and contracts for cell phone and PDA use. Advances in technology or changes to plans may require modification of the standards discussed in this opinion.

Considering the legislature's intent, the standards defining conduct resulting in no substantial impropriety under the Ethics Act and input from the Department of Administration, we intend to propose regulations establishing that a public officer's personal use of cell phones and PDAs that is consistent with the following standards is presumed not to violate the Ethics Act.

- Personal use that does not exceed the greater of 30 minutes or five percent of the allowance of minutes under the applicable plan per month.
- Any personal use that results in a separate charge must be reimbursed to the state in full. Charges for minutes of use exceeding the monthly allowance of minutes under the officer's plan are presumed to have been incurred for the officer's personal benefit and must be reimbursed to the extent of the officer's personal use that month.¹⁷

In summary, personal use of state-issued cell phones and PDAs will be presumed insignificant if the amount of use does not exceed the greater of 30 minutes per month or five percent of the monthly minute allowance and all extra charges attributable to personal use are reimbursed.¹⁸ Personal use of this equipment is presumed to violate the Ethics Act if the personal use exceeds the allowed usage or the officer fails to reimburse charges incurred for personal use.

2. Field or Satellite Phones

A public officer may be issued a field or satellite phone to facilitate communication regarding state business when on assignment in the field. For such phones, not covered by an individual usage plan, a state officer may make personal calls, as described above, without limitation so long as the officer reimburses the state for all costs incurred for personal calls and the personal use does not interfere with use of the phones for state business. Work supervisors should advise officers being sent to the field

¹⁷ One contract has a "local call only" option, charging a set fee per minute for all calls. We presume that the business use of a cell phone under this option is intended to be limited, resulting in charges less than the least monthly fee. Any personal use is subject to the same charge and must be paid by the employee, as is the case for field or satellite telephone use.

¹⁸ These standards may be reconsidered as a result of comments on the proposed regulations. In addition these standards are not intended to address what is a de minimis fringe benefit under Internal Revenue Service regulations and may also be revised if necessary to address IRS requirements.

of this policy and any special limitations or modifications on use that may be warranted by the circumstances.

3. Portable Computers

Portable computers may be provided to employees to facilitate state business when the employees must work out of the office and when on travel. Portable computers may also be provided to members of boards and commissions in connection with official meetings and other state business. These public officers may make reasonable incidental personal use of portable computers, including use for private email or personal entertainment, so long as there is no cost to the state and any use is acceptable under the State of Alaska's *Personal Use of State Office Technologies Policy (SP-017)*.¹⁹

C. Procedures for Addressing Ethics Act Violations

The Ethics Act authorizes designated ethics supervisors, the attorney general and the Personnel Board to take certain actions relating to potential or actual ethics violations.²⁰ It also provides that agency disciplinary action may be taken to address ethics violations by a public employee. Alaska Statute 39.52.420 states that "an agency may reprimand, demote, suspend, discharge, or otherwise subject an employee to agency disciplinary action commensurate with the violations of [the Act]" and that the Act does not prohibit review of the discipline under applicable collective bargaining agreements or personnel statutes and rules. The regulations implementing the Ethics Act recognize that the attorney general may forward information obtained in the course of an ethics investigation to a designated ethics supervisor or other appropriate superior for potential disciplinary action.²¹

In situations where misconduct first comes to the attention of a work supervisor or designated ethics supervisor, the Department of Law recommends that executive branch agencies and public corporations conduct internal investigations into the misconduct and take appropriate disciplinary action with guidance or assistance from human resource

¹⁹ The minute limitation applicable to personal cell phone use is not applicable. We assume that batteries are rechargeable or the computer may be plugged in and internet access is free or the employee pays for the charges, such as a fee imposed by a hotel, related to personal use.

²⁰ See generally AS 39.52.210; AS 39.52.220; AS 39.52.310 – 39.52.460.

²¹ 9 AAC 52.160(b).

managers.²² A work supervisor should generally follow the same procedures and exercise similar judgment when addressing ethics issues as any disciplinary matter. The work supervisor should consult with the designated ethics supervisor about all matters believed to involve violations or potential violations of the Ethics Act. If, after a decision regarding discipline is made, the work supervisor and ethics supervisor believe the circumstances warrant review under the Ethics Act for consideration of additional penalties, the designated ethics supervisor may then refer the matter to the attorney general for review and additional action. The work supervisor or other officer imposing discipline should notify the subject employee that a referral is being made at the same time the employee is notified of the discipline being imposed.

D. Remedies and Penalties under the Ethics Act for Misuse of Equipment

If a public officer, whether public employee or board or commission member, has made inappropriate use of state equipment, a work supervisor or the designated ethics supervisor should initially direct that it not happen again.²³ In addition, state policy provides that incremental charges on invoices to the state resulting from personal use of cell phones and electronic equipment must be reimbursed to the state.²⁴

The particular circumstance of misuse by a public employee may require other discipline, up to and including termination. Care should be taken to ensure that appropriate personnel rules and the terms of collective bargaining agreements are followed to protect the integrity of the action taken. Work supervisors should consult with the appropriate human resource manager for guidance. Work supervisors should also coordinate with the agency's designated ethics supervisor.

Under the Ethics Act, the remedies available to a designated ethics supervisor of a public employee are limited to certain actions to address potential violations, i.e. reassignment of duties or ordering divestiture, and these remedies are not generally

²² If the circumstances suggest significant Ethics Act violations and the need for external investigation, matters may be referred to the attorney general initially for issuance of a complaint. The designated ethics supervisor should consult with the state ethics attorney if this course of action is believed necessary.

²³ Access to the equipment may also be removed, but we assume that there will be a continuing business need for the officer to use the equipment so that taking away the equipment will not usually be an option.

²⁴ AAM 320.340.

applicable to the inappropriate use of equipment addressed in this opinion.²⁵ The designated ethics supervisor for a board or commission may direct a member to refrain from action to avoid a further violation.²⁶

The Ethics Act gives the attorney general authority to recommend action to correct or prevent a violation and provides that the subject must comply. The Act does not limit the scope of possible corrective action.²⁷ It may include reimbursement to the state of costs incurred in violation of the Act or other action suitable to the circumstances, such as increased reporting or monitoring of use. The attorney general has authority to recover a benefit received by a person as a result of a violation of the Act.²⁸ Thus, the attorney general may seek to recover expense avoided by a public officer by making use of state electronic equipment. The attorney general also has broad authority to void actions taken in violation of the Ethics Act and to pursue other legal or equitable remedies.²⁹

The Personnel Board has varied authority to address Ethics Act violations depending on the circumstances. As appropriate to the misuse of equipment by a public employee, the board may order the employee to stop engaging in any official action related to the violation, direct the employee to make restitution or recommend disciplinary action, including termination.³⁰ The board may order a board or commission member to make restitution or recommend removal of the member from the board or commission to the appointing authority, which is required to immediately act to do so. Violation of the Ethics Act is grounds for removal for cause.³¹ If the board determines that a former public officer violated the Act, it may issue a public statement of its

²⁵ See AS 39.52.210.

²⁶ AS 39.52.220.

²⁷ AS 39.52.330. In so doing, the attorney general is guided by the remedies and penalties that may be imposed by the Personnel Board for violations.

²⁸ AS 39.52.430(d). Action must be brought within two years of discovery of the violation.

²⁹ AS 39.52.430(a)-(c).

³⁰ AS 39.52.410(a).

³¹ AS 39.52.410(b). If the officer is only removable by impeachment, the board must report its findings to the president of the Senate. AS 39.52.410(d).

findings and request the attorney general to take action seeking appropriate relief.³² In addition, the board may impose civil penalties of up to \$5000 per violation and require a public officer who has benefited a person in violation of the Act to pay the state up to twice the amount that the person realized.³³

In most instances, misuse of equipment would likely result in direction to stop the misuse and a demand for reimbursement of state expenses incurred or the value of the benefit received, absent serious violations of the Ethics Act or the Personal Use of State Office Technologies Policy, such as recurring misuse after direction to stop or misuse resulting in a substantial expense to the state or benefit to the officer.

II. CONFIDENTIALITY OF PERSONAL INFORMATION WHEN STATE ALLOWANCE IS USED FOR PERSONAL CELL PHONE OR PDA

You also asked whether an employee: (a) who is required to be accessible for business purposes by cell phone or PDA; (b) owns his or her own personal cell phone or PDA; and (c) elects to receive from the state an allowance to defray the additional cost of using these personally owned devices for business purposes, waives the confidentiality of his or her personal emails and call records. As explained below, the answer is that personal emails and call records are not public records under the definition in the Public Records Act and public disclosure of such personal information would likely run afoul of the individual's right to privacy under the Alaska Constitution. However, a state official or a court could be required to review all call records and messages in order to locate records generated through these personal devices that concern state business and that are public records. **In summary, state business records generated on a personal cell phone or PDA are public records subject to review and disclosure, unless the Public Records Act permits them to be withheld. Personal records are likely protected from public disclosure but are not protected from state official or court review to the extent necessary to identify state business records.**

Alaska Statute 40.25.110 provides, with certain exceptions, that public records of all public agencies are open to inspection by the public. The Public Records Act defines the term "public records" to mean "books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, regardless of format or physical characteristics, that are developed or received by a public agency, or by a private contractor for a public agency, and that are preserved for their informational value or as

³² AS 39.52.410(c).

³³ AS 39.52.440 and .450.

evidence of the organization or operation of the public agency; 'public records' does not include proprietary software programs."

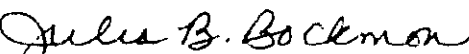
From the definition of public records, it appears that personal emails and call records from a personal cell phone or a PDA are not "accounts" or "writings" "developed or received by a public agency," and are not "preserved for their informational value or as evidence of the organization or operation of the public agency." Instead, they are writings developed or received by people in their personal, non-employee capacities and preserved for personal reasons. The personal emails and call records thus do not fit the definition of public records. Additionally, the Alaska Constitution provides, in article I, section 22, that the right of the people to privacy is recognized and shall not be infringed. This provision of the constitution provides additional protection from public disclosure by the government of personal emails and call records.

As stated above, however, a state official or a court could be required to review personal call records and emails while seeking to locate and identify the business related calls or business related emails sent or received through the personally owned devices. **Thus, again, although generally personal call records and emails would not be disclosed to the public, they could be reviewed by a state official or court in the limited circumstances described to comply with the Public Records Act.** We recommend that you advise all state officers who request the allowance of this information and have each acknowledge that he or she was so advised.

Please do not hesitate to contact us if you have further questions regarding the issues addressed in this opinion.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By: 
Julia B. Bockmon
Assistant Attorney General

JBB/WEM

DOR TAX DIVISION - ACES REGULATIONS PROCESS

Senate Administration Regulation Review 2/8/10

OVERVIEW



ACES passed 12/20/2007.

Regulatory Process governed by AS 44.62 – APA

DOR worked with the Department of Law in order to ensure the legality, constitutionality, and consistency with other regulations

All of our regulations are reviewed by the Department of Law as required. (AS 44.62.060)

Public Workshops

DOR shared outline of approach and then held “public workshops” to gain public input at early regulation design stage.

Significant changes were made as a result of comments received during workshops. If big changes on important issues, then second and third workshops held.

Workshops were also teleconferenced.

APA – 30-Day Formal Notice

After Workshops, near final draft regulation is put out for formal minimum 30 day comment under AS 44.62.190.

- 1) Published in a newspaper
- 2) furnished to every person who has filed for a request of proposed action (“Interested Parties)
- 3) Furnished to Dept. of Law
- 4) Provided to all incumbent State of Alaska legislators, and also to the Legislative Affairs Agency.

APA – Notice of Proposed Action

The agency shall give each interested person an opportunity to present statements, arguments, or contention in writing, with or without opportunity to present them orally (AS 44.62.210)

Agency then addresses in writing every comment received during public comment period.

APA- Final Step

Assuming public comments do not result in material changes to the draft regulation:

- Regulation is put in final form
- Final review by Department of Law
- Submitted to Lt. Governor for review and signature
- Regulation effective 30 days after release by Lt. Governor

Tax Division ACES Reg. Process

12/20/2007 ACES(HB2001)
1/2/2008 Production Tax Monthly Information Form
1/2/2008 1/14/2008 Workshop
1/3/2008 Department of Revenue, Tax Division Notice of Public Workshop On Potential Changes to Oil and Gas Production Tax Regulations and Interim Monthly Reporting Form
1/24/2008 Workshop for 2-4-2008
1/30/2008 Draft Interim Form for Monthly Production Tax Information
1/30/2008 Request for Public Comments on Draft Interim Production Tax Information
1/31/2008 Potential changes to oil and gas production tax regulations
2/5/2008 Comments on Discussion Draft Lease Expenditures extended to February 12
2/14/2008 Request for Public Comment Draft Annual Report Form
2/28/2008 DOR Interim Annual Information Report Forms - Now Online
2/28/2008 Potential changes to Oil & Gas Production Tax Regulations
2/28/2008 Notice of Proposed Oil & Gas Production Tax Regulations
2/29/2008 Text of Proposed Oil & Gas Production Tax Regulations
2/29/2008 Public Workshop March 12, 2008

Tax Division ACES Reg. Process

3/3/2008 Supplemental Public Notice Proposed Oil & Gas Tax Regulations 15 AAC 55.520

3/5/2008 Draft Interim Monthly Information Report

3/7/2008 Supplemental Notice for Workshop Scheduled March 12, 2008

3/12/2008 Agenda for 3-12-2008 Workshop

3/18/2008 Draft lease expenditure and overhead regulations

3/18/2008 2007 Interim Annual Information Reporting Form

3/19/2008 2007 Revised Interim Annual Reporting Form - Second Half VERSION 2

3/19/2008 2007 Revised Interim Annual Reporting Form - First Half VERSION 2

3/21/2008 Correction in general instructions for DOR Interim Annual Information Reports 2007

3/24/2008 Advisory Bulletin 2008-01

3/24/2008 Request for Public Comment Draft Transportation Regulations

3/24/2008 A Proposed Model to Compute the Cost of Capital Allowance for Pipeline Facilities under 15 AAC 55.195(f)

3/27/2008 DOR Public Workshop April 8, 2008 Draft Transportation Regulations and Cost of Capital Model

Tax Division ACES Reg. Process

3/28/2008 DOR Public Workshop April 8, 2008 Draft Transportation Regulations and Sample Capital Allowance for Pipelines
3/28/2008 Revised Draft Transportation Regulations
4/8/2008 Comment Period Extended to 4/15/08 for Draft Transportation Regulations
4/21/2008 Public Notice: Midyear Changes, North Slope PV, and Cook Inlet & Gas Allocations
4/21/2008 Proposed Regulations: Mid-year Changes, North Slope PV, and Cook Inlet & Gas Allocations
5/8/2008 Notice of Adopted Changes in the Regulations dealing with the Oil and Gas Production Tax and Required Monthly Filings
5/8/2008 Adopted Regulation 15 AAC 55.520
5/9/2008 DOR Public Workshop June 4, 2008 Draft Transportation Regulations V2 & Cost of Capital Model V2
5/9/2008 Draft Transportation Regulations Version 2
5/9/2008 Sample Cost of Capital Model for Pipelines Version 2
5/19/2008 DOR Monthly Information Report Notice
5/19/2008 DOR Monthly Information Reporting Form - Final

Tax Division ACES Reg. Process

6/30/2008 Advisory Bulletin 2008-03, Taxability of Waste Oil Streams
8/5/2008 Public Notice: Regulation Changes Related to AS 43.55.025
8/5/2008 Proposed Regulations Text: Changes to AS 43.55.025
9/9/2008 Lease Expenditure & Overhead Workshop 9/23/08 - draft proposed regulations - Text
9/9/2008 Lease Expenditure & Overhead Workshop, 9/23/08 - Notice
9/10/2008 Post-Filing Notice AS 43.55.173
9/19/2008 Lease Expenditure & Overhead Workshop RESCHEDULED from 9/23/08 to 10/7/08
9/19/2008 Proposed Mid-year and Conforming Changes Text, Public Hearing 10/09/2008
9/19/2008 Public Notice - Midyear & Conforming Changes Public Hearing 10/09/08
10/6/2008 Supplemental Topic October 7, 2008 Workshop, Adjustments to Lease Expenditures
10/14/2008 Prevailing Value for Gas Delivered North Slope Area 4th Qtr. 2008
11/28/2008 12/9/08 Workshop: Reimbursements Under AS 43.55.170 and Credits Under AS 43.55.023(a)&(b)

Tax Division ACES Reg. Process

11/28/2008 12/9/08 Workshop Discussion Draft: Proposal for Reimbursements Under AS 43.55.170

11/28/2008 12/9/08 Workshop Discussion Draft: Proposed Credit Safeguard Regulation

12/5/2008 Input Requested on Proposed Forms for Monthly and Annual Reporting

12/5/2008 DOR Proposed Monthly Reporting Information to Calculate Gross Value at the Point of Production

12/5/2008 DOR Proposed Annual Information and Tax Calculation Form

12/22/2008 Comment Period Extended for AS 43.55.170 Reimbursements and Credit Safeguard Regulation for AS 43.55.023(a)&(b)

12/22/2008 Monthly Electronic Reporting: New Process & Format Workshops January 20 & 27, 2009

12/24/2008 Text of Proposed Draft Regulations for Public Notice: Lease Expenditures & Overhead

12/24/2008 Public Notice: Proposed Lease Expenditure & Overhead Regulations

1/13/2009 WORKSHOP CANCELLATION: January 20 & 27 Revised Electronic Submission Process and Format of Monthly Information Reporting Form

1/13/2009 Sample Cost of Capital Model for Pipelines - Version 3 1/27/09 Workshop

1/13/2009 Transportation Costs Workshop: Tuesday, January 27, 2009

Tax Division ACES Reg. Process

1/14/2009 Transportation Workshop 1/27/09 Discussion Draft Proposed Regulations
1/14/2009 Prevailing Value for Gas Delivered North Slope Area 1st Qtr. 2009
1/16/2009 Supplemental Announcement Transportation Workshop
1/16/2009 Supplemental Topic Transportation Workshop Proposed Definition of
"affiliated" AS 43.55.150(b)
1/16/2009 SUPPLEMENTAL AND CORRECTED NOTICE: Lease Expenditures & Overhead
Public Hearing Comment Period Extended from February 4 to February 23, 2009 and
Corrected Call-in Number for Teleconference
1/26/2009 Agenda for January 27, 2009 Transportation Workshop
1/26/2009 Discussion Topic for 1/27/09 Transportation Workshop: Determining How to
Apply Lower of Actual or Reasonable Costs
1/28/2009 Proposed Transportation Regulations: Example Section 181(a).xls
1/28/2009 Proposed Transportation Regulations: Example Section 195(m).xls
1/29/2009 How to Access Audio Recording for Lease Expenditure & Overhead January
21, 2009 Public Hearing
2/10/2009 Advisory Bulletin 2009-01, gas "used in the state"
2/26/2009 Reimbursements under AS 43.55.170 Proposed 15 AAC 55.280 Revised
Draft

Tax Division ACES Reg. Process

2/27/2009 Workshop Announcement Reimbursements under AS 43.55.170 Proposed 15 AAC 55.280 Revised Draft 2/27/09
3/27/2009 Revised and Corrected Credit Forms Now Available on Forms Page
4/16/2009 North Slope Gas Prevailing Value Now on Tax Division Website
5/4/2009 Announcement Regarding Revised Economic Monthly Information Report
5/4/2009 Instructions for Economic Monthly Reporting Data Delivery Process
5/18/2009 Revision to Monthly Information Report Form.
5/20/2009 Notice Regarding Suspension of the Revised Economic Monthly Information Report posted May 4 and Second Revision posted May 14, 2009
6/9/2009 Supplemental Public Notice AS 43.55.025 Alternative Tax Credit Proposed Regulations
6/9/2009 Text of Proposed Regulations for AS 43.55.025 Alternative Tax Credits
7/17/2009 Workshop Announcement Proposed 15 AAC 55.280, Reimbursements Under AS 43.55.170, July 28, 2009
7/17/2009 Workshop Draft Proposed 15 AAC 55.280, Reimbursements Under AS 43.55.170
7/30/2009 Summary of Changes, Proposed 15 AAC 55.280 as Discussed March 17 to July 28, 2009 Public Workshops

Tax Division ACES Reg. Process

9/22/2009 Adopted Regulations Text for Mid-year and Conforming Changes
9/22/2009 Adoption Notice Mid-year and Conforming Regulation Changes
9/29/2009 Advisory Bulletin 2009-02, State Purchase of Transferable Tax Credit
Certificates
10/16/2009 Text of Proposed Regulation 15 AAC 55.810 and 55.811 Heating Value of
Gas
10/16/2009 Text of Proposed Regulation 15 AAC 55.320 Credit Safeguard
10/16/2009 Text of Proposed Regulation 15 AAC 55.280 Facility Sharing
10/16/2009 Public Notice Proposed Regulations 15 AAC 55.280 Adjustments to Lease
Expenditures, 55.320 Transferable Tax Credit Certificates, and 55.810 and 55.811
Heating Value of Gas
11/5/2009 Reporting Form Draft Sample Company Credit Forms (pdf)
11/5/2009 Reporting Form Draft Sample Company Test Data Set II Excel 2003 ver.xls
11/5/2009 Reporting Form Draft Tax Return Sample Company Nov 2 2009 Excel 2003
ver.xls
11/5/2009 Reporting Forms Workshop Wednesday November 25, 2009
11/9/2009 Reporting Form Draft Tax Return Sample Company November 2 2009.xlsx
11/9/2009 Reporting Form Draft Sample Company Test Data Set II.xlsx

Tax Division ACES Reg. Process

11/13/2009 Advisory Bulletin 2009-03 Third Party Purchasers of AS 43.55.023 Tax Credit Certificates

11/17/2009 Second Reporting Forms Workshop Wednesday, December 2, 2009

11/30/2009 Adoption Notice for Alternative Tax Credits

11/30/2009 Adopted Regulations for Alternative Tax Credits

12/17/2009 2009 Tax Summary Form in Excel

12/17/2009 Instructions for 2009 Tax Summary Form

12/17/2009 Delayed Implementation Proposed Reporting Form

1/27/2010 Public Notice: Proposed Regulation Changes Location Differential 15 AAC 55.171

1/27/2010 Proposed Language Location Differential Under 15 AAC 55.171

1/29/2010 Forms Announcement

1/29/2010 Tax Return Sample Company Jan 28 2010 version "xlsx"

1/29/2010 Tax Return Sample Company Jan 28 2010 Excel 2003 version "xls"

2/2/2010 Adoption Notice Lease Expenditures and Overhead

2/2/2010 Adopted Regulations for Lease Expenditures and Overhead

What remains?

46 of the 70 production tax regulations we anticipate writing or revising are DONE. Of those remaining, 17 relate to transportation and AGIA issues, 4 relate to facility sharing and BTU heating value.

Transportation and AGIA related Regulations out for public comment week of February 8th, 2010

Unplanned Production Interruption regulations – Second workshop to be scheduled this spring.

15 AAC 55.280 Facility Sharing Costs

Must interpret AS 43.55.170 - Requires producers' lease expenditures be reduced by payments received for use of production facility or by other payments that offset the producer's lease expenditures .

Legislative Intent is that Producer cannot at same time take a cost as a lease expenditure and get reimbursed for that cost through an arrangement with another party.
Is the state being kept whole?

What we learned at Workshops and through Research

Most facility sharing arrangements require new users to pay the operating expenses and future capital expenses associated with their use of the facility, and make whole the facility owners for their lost production.

Facility Owners felt compelled to gross up all facility sharing charges since they might be required to offset the payments against their bona fide, unreimbursed lease expenditures. Their taxes might increase because of their sharing arrangements.

Lack of certainty over how facility sharing fees would be handled in future was impairing facility sharing.

Structure of 15 AAC 55.280

Payments from New Party not required to be offset against facility owners' lease expenditures:

- 1) allocated share of operating costs
- 2) *transfer of barrels to make up the facility owner loss
- 3) *payment to offset higher tax liability of facility owner
- 4) allocated share of future capital costs
- 5) contribution to historical capital costs prior to PPT/ACES

Regulation ensures that no cost is deducted or credited in the tax calculation more than once. State held whole.

* Removed from definition of "lease expenditures"

Comments from Industry

“Without clear regulatory guidance from the Department, AS43.55.170 may be interpreted in a manner which artificially inflates the costs associated with facility sharing in the state; and acts as a disincentive to future third-party facility access agreements.

....

Thanks to this collaborative effort and the Department’s hard work, the proposed regulation largely addresses the concerns Pioneer has expressed over the past year, and in doing so, removes barriers to future facility sharing opportunities in the state.”

Patrick Foley, Manager, Pioneer Natural Resources Alaska November 19, 2009

Comments from Industry

“[W]e applaud the iterative process the Department has followed in developing these regulations and others in which it has offered its preliminary thoughts up for public comment (including industry’s and has then used that feedback to revise and improve its drafts, which it then offered for further public comment. This consultative or collaborative public process is both prudent and wise. But because this takes more time than rule-making by simple fiat, it is important to recognize the more difficult path the Department has chosen for developing the ACES regulations has resulted in improvements to the earliest drafts that justify the greater time and effort that have been required. There is an old quip about never having enough time to do something right, but always time to do it over. Here the Department has avoided falling into this quip, which is no small feat and deserves recognition. “

Marilyn Crockett, Executive Director, AOGA, November 19, 2009

Conclusion

Tax Division's Regulations Process has ensured maximum meaningful input from industry and public.

When final public comment period begins, involved parties have had numerous occasions to critique approach and Division has had opportunity to fully understand how the regulations will impact industry. Changes were made in light of comments received from Legislative Affairs.

Facility Sharing Regulation is perfect example of how this process has worked well. Intent of legislation was honored and the state is held whole. In addition, the industry's ability to share oil and gas facilities has been greatly facilitated through removal of ambiguity.

Sec. 43.55.170. Adjustments to lease expenditures.

(a) A producer's lease expenditures under AS 43.55.165 must be adjusted by subtracting payments or credits, other than tax credits, received by the producer or by an operator acting for the producer for

(1) the use by another person of a production facility in which the producer has an ownership interest or the management by the producer of a production facility under a management agreement providing for the producer to receive a management fee;

(2) a reimbursement or similar payment that offsets the producer's lease expenditures, including an insurance recovery from a third-party insurer and a payment from the state or federal government for reimbursement of the producer's upstream costs, including costs for gathering, separating, cleaning, dehydration, compressing, or other field handling associated with the production of oil or gas upstream of the point of production;

(3) the sale or other transfer of

(A) an asset, including geological, geophysical, or well data or interpretations, acquired by the producer as a result of a lease expenditure or an expenditure that would be a lease expenditure if it were incurred after March 31, 2006; for purposes of this subparagraph,

(i) if a producer removes from the state, for use outside the state, an asset described in this subparagraph, the value of the asset at the time it is removed is considered a payment received by the producer for sale or transfer of the asset;

(ii) for a transaction that is an internal transfer or is otherwise not an arm's length transaction, if the sale or transfer of the asset is made for less than fair market value, the amount subtracted must be the fair market value; and

(B) oil or gas

(i) that is not considered produced from a lease or property under AS 43.55.020(e); and

(ii) the cost of acquiring which is a lease expenditure incurred by the person that acquires the oil or gas.

(b) Except as otherwise provided under this subsection, if one or more payments or credits subject to this section are received by a producer or by an operator acting for the producer during a calendar year and if either the total amount of the payments or credits exceeds the amount of the producer's applicable lease expenditures for that calendar year or the producer has no lease expenditures for that calendar year, the producer shall nevertheless subtract those payments or credits from the lease expenditures or from zero, respectively, and the producer's applicable

adjusted lease expenditures for that calendar year are a negative number and shall be applied to the pertinent calculation under AS 43.55.160(a) as a negative number.

(c) For purposes of AS 43.55.023(a) and (b) and only as to expenditures incurred to explore for an oil or gas deposit located within land in which an explorer does not own a working interest, the term "producer" in this section includes "explorer."

((§ 25 ch 2 TSSLA 2006; am § 63 ch 1 SSSLA 2007))

Administrative Code. - For production tax value of oil and gas, see 15 AAC 55, art. 2.

Effect of amendments. The 2007 amendment, effective December 20, 2007, deleted "Unless the payment or credit has already been subtracted in calculating billable or billed costs under AS 43.55.165(c) or (d)" at the beginning of subsection (a).

Effective dates. Section 40, ch. 2, TSSLA 2006, makes this section effective August 20, 2006, in accordance with AS 01.10.070(c).

Editor's notes. Sections 35(a) and 39, ch. 2, TSSLA 2006, provide that this section is retroactive to April 1, 2006, and "appl[ies] to oil and gas produced after March 31, 2006."

Section 74(d), ch. 1, SSSLA 2007, provides that the 2007 amendment of (a) of this section is retroactive to July 1, 2007.

15 AAC 55.280. Adjustments to lease expenditures

In adjusting a producer's or explorer's lease expenditures for the receipt of a payment or credit for the sale or other transfer of an asset under AS 43.55.170(a)(3)(A), if the acquisition cost of the asset was incurred during a calendar year for which a portion of the producer's or explorer's expenditures was excluded under AS 43.55.165(e)(18) and 15 AAC 55.275, the amount required to be subtracted from the producer's or explorer's lease expenditures under AS 43.55.170(a) is reduced by a fraction of the payment or credit received for the sale or transfer of the asset as provided in this section. That fraction is equal to the quotient of (1) the total of the excluded portions of the producer's or explorer's expenditures described in this section for all segments in the state under 15 AAC 55.205, divided by (2) the sum of the (A) producer's or explorer's qualified capital expenditures incurred with respect to all segments in the state during the calendar year or portion of the calendar year for which that excluded portion was excluded, plus (B) the amount described in (1) of this section.

History: Eff. 5/3/2007, Register 182

Authority: AS 43.05.080

AS 43.55.023

AS 43.55.110

AS 43.55.165

AS 43.55.170

15 AAC 55.280 is proposed to be amended by adding new subsections to read:

(b) A fee or other consideration received by or on behalf of a producer in connection with another person's use of a production facility in which the producer has an ownership interest does not constitute a payment or credit for the use of the production facility under AS 43.55.170(a)(1) or a reimbursement or other payment that offsets the producer's lease expenditures under AS 43.55.170(a)(2), to the extent that the fee or other consideration

(1) defrays the fraction of the producer's costs to operate and maintain the production facility that is attributable to the other person's use of the facility, except to the extent the producer treats that fraction of the costs as its own lease expenditures;

(2) compensates the producer for the deferral or loss of the producer's oil or gas production resulting from the other person's use of the production facility, except to the extent the other person treats the fee or other consideration as its own lease expenditure;

(3) reimburses the producer for its additional tax liability resulting from the receipt of fees or other consideration in connection with the other person's use of the production facility, except to the extent the other person treats the amount of the reimbursement as its own lease expenditure;

(4) consists of a contribution of a share of the capital investment to acquire, construct, or improve the production facility and that is in lieu of an increase in the fee that would otherwise be charged to the other person in connection with the other

person's use of the facility, except to the extent the producer treats that share of the capital investment as its own lease expenditure; or

(5) represents a charge for use of capital invested in the production facility before April 1, 2006.

(c) For purposes of (b)(1) of this section,

(1) costs to operate and maintain the production facility do not include costs that are treated as capitalized expenditures under 26 U.S.C. (Internal Revenue Code), as amended;

(2) if the facility use agreement between the other person and the producer provides for an identifiable amount of a fee that represents the other person's share of the costs to operate and maintain the production facility, that amount will be considered the fraction of the producer's costs to operate and maintain the production facility that is attributable to the other person's use of the facility, unless the department determines that the amount is unreasonable; otherwise, the department will determine that fraction using a method of allocation that is based on relative quantities of produced fluids processed by the facility or other characteristics of the produced fluids that are reasonably related to the costs to operate and maintain the facility.

(d) For purposes of (b)(5) of this section, the extent of a fee or other consideration for a given time period that represents a charge for use of capital invested in the production facility before April 1, 2006, is equal to the following:

$$F \times (CB/(CB + CA)),$$

where

F = the total amount of the fee or fees or other consideration, excluding amounts described in (b)(1) – (4) of this section (regardless of whether treated as a lease expenditure), that would be charged for that given time period in connection with the other person's use of the facility if the total were calculated on the same per-unit basis that was used to calculate the total fee or fees or other consideration for the (1) last time period beginning before April 1, 2006, for which the other person was charged a fee or other consideration in connection with the other person's use of the facility; or (2) first time period for which the other person was charged a fee or other consideration for use of the facility, if that first time period began after March 31, 2006, but in either case not exceeding the amount of the actual total fee or fees or other consideration for the given time period for which the calculation is made;

CB = the producer's total capital investment, if any, incurred before April 1, 2006, to acquire, construct, or improve the production facility, without deduction of depreciation; the producer's capital investment excludes any contribution described in (b)(4) of this section (regardless of whether treated as a lease expenditure);

CA = the producer's total capital investment, if any, incurred after March 31, 2006, and before the beginning date of the first time period for which the other person was charged a fee in connection with the other person's use of the facility, to acquire, construct, or improve the production facility, without deduction of depreciation; the producer's capital investment excludes any contribution described in (b)(4) of this section (regardless of whether treated as a lease expenditure).

(e) For purposes of AS 43.55.170(a)(1), if a producer treats as its lease expenditure a fee or other consideration that the producer pays or imputes to or on behalf of itself, whether directly or through an operator's billing, in connection with its use of a

production facility that the producer owns in whole or in part, that fee or other consideration constitutes a payment or credit received by the producer for the use by another person of a production facility in which the producer has an ownership interest.

(f) For purposes of AS 43.55.170(a)(2), a payment or credit or portion thereof received by or on behalf of a producer to reimburse the producer for costs passed through to another person does not constitute a reimbursement or other payment that offsets the producer's lease expenditures if the reimbursed producer does not treat those costs as its own lease expenditures.

(g) For purposes of AS 43.55.170(a)(3), a fee or other consideration received by or on behalf of a producer in connection with another person's use of a production facility in which the producer has an ownership interest (1) that consists of a contribution of a share of the capital investment to acquire, construct, or improve the production facility and that is in lieu of an increase in the fee that would otherwise be charged to the other person in connection with its use of the facility, or (2) that represents a charge for use of capital invested in the production facility, does not constitute a payment or credit for the sale or transfer of an asset, unless legal title or a similar ownership interest in the facility is transferred from the producer to the other person. (Eff. 5/3/2007, Register 182; am ___/___/___, Register ___)

Authority:	AS 43.05.080	AS 43.55.110	AS 43.55.170
	AS 43.55.023	AS 43.55.165	

NOTICE OF
PROPOSED CHANGES IN THE REGULATIONS
of the
DEPARTMENT OF REVENUE

The Department of Revenue proposes to adopt regulation changes in Title 15, Chapter 55 of the Alaska Administrative Code, dealing with the oil and gas production tax, including the following:

- (1) 15 AAC 55.280, dealing with adjustments to lease expenditures under AS 43.55.170, is proposed to be amended by adding new provisions relating to the shared use of production facilities in which a producer has an ownership interest; fees a producer pays or imputes to itself in connection with its use of a production facility in which the producer has an ownership interest; and the reimbursement of a producer's costs passed through to another person.
- (2) 15 AAC 55.320, dealing with transferable tax credit certificates under AS 43.55.023, is proposed to be amended by adding new provisions relating to assurances and financial security in situations where a tax credit is claimed in connection with expenditures for an asset or other item that has not yet been placed in service.
- (3) 15 AAC 55.810, dealing with the heating value of gas, is proposed to be amended to limit its application to gas produced before the effective date of the regulation.
- (4) A new section, 15 AAC 55.811, is proposed to be adopted, for the determination of the heating value of gas produced on or after the effective date of the regulation.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to:

John Larsen
Alaska Department of Revenue, Tax Division
550 W. 7th Ave., Ste. 500
Anchorage, AK 99501

Or, via email to: john.larsen@alaska.gov, or by fax to: (907) 269-6644. Written comments must be received no later than 12:01 p.m. on Monday, November 23, 2009. Written comments received are public records and are subject to public inspection.

Oral or written comments also may be submitted at a hearing to be held on Tuesday, November 10, 2009 in the East Hearing Conference Room of the Regulatory Commission of Alaska, located at 701 West 8th Avenue, Suite 300, Anchorage, Alaska. The hearing will be held from 1:30 p.m. to 2:30 p.m. and might be extended to accommodate those present before 2:00 p.m. who did not have an opportunity to comment. If you are unable to attend the public hearing, you may participate by teleconference by dialing, 1-800-315-6338, and entering 1003# when prompted.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Dave Flavin at (907) 269-6620 no later than Thursday, November 5, 2009 for the public hearing, and, no later than Wednesday, November 18, 2009 for the written comment period, to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact the Tax Division at (907) 269-6620 or go to <http://www.tax.alaska.gov>.

After the public comment period ends, the Department of Revenue will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED.

Statutory Authority: AS 43.05.080; AS 43.55.023; AS 43.55.110; AS 43.55.165; AS 43.55.170.
Statutes Being Implemented, Interpreted, or Made Specific: AS 43.55.023; AS 43.55.170; AS 43.55.900.

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: October 15, 2009

/s/ John Larsen
Audit Master
Department of Revenue

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting Agency: Department of Revenue
2. General subject of regulation: Alaska Oil and Gas Production Tax
3. Citation of regulations: 15 AAC 55.280; 15 AAC 55.320; 15 AAC 55.810; and 15 AAC 55.811.
4. Reason for the proposed action:
☐ compliance with federal law
☒ compliance with new or changed state statutes
☐ compliance with court order
☒ development of program standards
5. RDU/component affected: Tax Division, Revenue Operations
6. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY 2010	Subsequent Years
Operating Cost	\$ 0	\$ 0
Capital Cost	\$ 0	\$ 0
Federal receipts	\$ 0	\$ 0
General fund match	\$ 0	\$ 0
General fund	\$ 0	\$ 0
General fund/ program receipts	\$ 0	\$ 0
General fund/ mental health	\$ 0	\$ 0
Other funds (specify)	\$ 0	\$ 0

7. The name of the contact person for the regulations:

Name: John Larsen
Title: Audit Master
Address: 550 W. 7th Ave., Ste. 500, Anchorage, AK 99501
Telephone: (907) 269-8436
FAX: (907) 269-6644
E-mail: john.larsen@alaska.gov

8. The origin of the proposed action:

☒ staff of state agency
☐ federal government
☐ general public
☐ petition for regulation change
☐ other (please list) _____

9. DATE: October 15, 2009

Prepared by: /s/John Larsen
Audit Master, Tax Division
(907) 269-6620

The Department of Revenue, Tax Division, keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of the Tax Division's Notices of Proposed Regulation Changes. To be added to or removed from the list, send a request to:

Dave Flavin
Department of Revenue, Tax Division
550 W. 7th Ave., Ste. 500
Anchorage, AK 99501-3566

giving your name, and either your e-mail address or mailing address, as you prefer for receiving such notices.

You may also add or unsubscribe yourself to the Department of Revenue (DOR) Tax Division Interested Parties List Server, by the following:

1. go to <http://list.state.ak.us/guest/RemoteAvailableLists>
2. click on "D" in the Mailing List Directory
3. Scroll down and click on DOR-Tax-Division-Regs@list.state.ak.us
4. A new window will open up – in the "Your E-mail address" box, type in the e-mail address you wish to receive the DOR Tax notices.
5. Click the button "Immediate Delivery" or "Unsubscribe". Immediate Delivery will add the e-mail address you entered into the list server immediately.
6. Click the "Submit" button.

The e-mail address you entered will immediately receive the DOR Tax Division "Welcome" notice explaining how the list serve works and also advises that you are now a member of the list serve. Please read this "Welcome" advisory – it contains important information regarding the list serve.

You may also unsubscribe, by following steps 1-6 above, except in step 5, please select the button "Unsubscribe". You will immediately receive an e-mail advisory stating that you will no longer receive e-mail notifications regarding the DOR Tax Division.

If you do not receive a welcome notice or unsubscribe notice, please contact Dave Flavin at (907) 269-6620.

**3/8/10 &
3/15/10
PROPOSED
REGS:
CHEESE
PRODUC-
TION**

ALASKA STATE LEGISLATURE

Interim:

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
Fax: (907) 373-4729

**Session:**

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-4899
Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

COMMITTEE SCHEDULE

MONDAY MARCH 8, 2010 3-5:00 P.M. ROOM 17

+ **Joint Senate and House Committee Meeting**

+* (18 AAC 32) Proposed Regulations Relating to Cheese Production.
Public Testimony to be Taken.

+* (11 AAC 65.010 – 11 AAC 65.900, particularly 11 AAC 65.010)
Regulations Relating to Personal Use Cabin Permits.
Public Testimony to be Taken.

Executive Session.

+ Teleconference
* First Public Hearing
= Previously Heard Bill

E-Mail: John_Davies@legis.state.ak.us

ALASKA STATE LEGISLATURE

draft

Interim:

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
Fax: (907) 373-4729



Session:

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-4899
Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

AGENDA

Monday, March 8, 2010, Capitol Room 17, 3-5:00 P.M.

- I. Call to Order by Chairman.
- II. Introduction of Members.
- III. Opening remarks by the Chairman.
- IV. (18 AAC 32) Proposed Regulations Relating to Cheese Production, Presentation by DEC Commissioner ~~Larry Hartig or Doctor Jay Fuller~~, State Veterinarian, and thereafter; Public Testimony. The review focuses on the DEC's need to protect the public from harm weighed against the individual's right to choose what he/she wishes to consume.
- V. (11 AAC 65.010 – 11 AAC 65.900, particularly 11 AAC 65.101) Regulations Relating to Personal Use Cabin Permits. Presentation by DNR Commissioner Tom Irwin or Director Dick Mylius, Division of Mining, Land and Water, and thereafter; Public Testimony. *put in script* The review focuses on the specific intent language in 11 AAC 65.010 "to phase out the use of unauthorized cabins on state land" and the destruction of such cabins, weighed against the private, public and survival use of the cabin resources.
- VI. Close Public Testimony.
- VII. Deliberation and discussion by Committee.
- VIII. Executive Session in order to discuss non-public review memos from the Committee's attorney.
- IX. Reconvene the meeting and adjournment.

*This hearing will be teleconferenced.

E-Mail: John_Davies@legis.state.ak.us

ALASKA STATE LEGISLATURE

Interim:

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
Fax: (907) 373-4729

**Session:**

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-4899
Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

AGENDA

Monday, March 8, 2010, Capitol Room 17, 3-5:00 P.M.

- I. Call to Order by Chairman.
- II. Introduction of Members.
- III. Opening remarks by the Chairman.
- IV. (18 AAC 32) Proposed Regulations Relating to Cheese Production. Presentation by DEC Commissioner Larry Hartig or Doctor Jay Fuller, State Veterinarian, and thereafter; Public Testimony.
- V. (11 AAC 65.010 – 11 AAC 65.900, particularly 11 AAC 65.101) Regulations Relating to Personal Use Cabin Permits. Presentation by DNR Commissioner Tom Irwin or Director Dick Mylius, Division of Mining, Land and Water, and thereafter; Public Testimony.
- VI. Close Public Testimony.
- VII. Deliberation and discussion by Committee.
- VIII. Executive Session in order to discuss non-public review memos from the Committee's attorney.
- IX. Reconvene the meeting and adjournment.

*This hearing will be teleconferenced.

E-Mail: John_Davies@legis.state.ak.us

ARRC Meeting Checklist for 3/8 Meeting

✓ 1. **Reserve Meeting Room.** Room 17 is Rep. Wilson's Transportation Meeting Room, Call Becky at 465-3759 to Reserve the Room. *Room reserved with Becky 2/22*

✓ 2. **ARRC Attorney.** The Committee has its Own Attorney, Her Name is Lisa Kirsch, She is at Legal Services 465-3867 in the Terry Miller Office Building, Coordinate with Her to Make Sure She can Attend the Meeting as She Only Works Half-Days. *notice 2/24*

✓ 3. **Staff Contacts.** Rep. Keller's Contacts are Jim Pound at 465-6265, or John Davies at 465-4899, room 13 or 17a; Rep. Gatto is Bonnie Gruning at 465-3743, room 108; Rep. Guttenberg -- contact is Christopher Birdsall at 465-4457 room 418; Senator Kookesh -- contact is Kimberly Klark at 465-3473, room 11; Senator Meyer -- contact is Josh Applebee at 465-4945, room 101; Senator Olson -- contact is Christina Apathy at 465-3707, room 514. Notice Legislative Staff Members of Upcoming Committee Meetings and Actions (keep them in the loop always). *Deb Behr Dept Jan 465 2122*

✓ 4. **Committee Schedule.** Deliver the Committee Schedule for the Next Upcoming Meeting to Both the Senate and House Clerks Because This is a Joint Committee.

✓ 5. **Distribute Committee Schedule** Email and Hand-Deliver the Committee Schedule for the Next Meeting to Each of the Senators and Representatives Personally and to Each Staff Contact. Notice to ARRC attorney -- Lisa Moritz Kirsch 465-3867, third floor, Terry Miller Building. Notice to Department of Law Regulations attorney -- Deborah Behr 465-3600. *copies Alan in printing*

✓ 6. **LIO Teleconference/Gavel to Gavel/Records.** Make Sure That the LIO Teleconference Details as well as TV and Records are Noticed. Juneau LIO 465-4648. New Toll-Free Number for Off Net Calls is 877-763-5073. Do LIO Teleconference Order Form, found on the State Website Intranet on the cover page. Clair Richardson 463-6471 is the Gavel to Gavel contact; House records, Crys, 465-2214, they bring sign up sheets. *Submit form on line*

✓ 7. **Agenda.** Make an Agenda for the Meeting, Make Sure Everyone On the Agenda Who Needs to be there is Notified and Coordinate with them. *do this - call to confirm*

✓ 8. **Interested Parties.** Give notice to interested parties and invite agency commissioners to attend regarding their new proposed regulations. If an agency has a legislative liaison then first talk with the liaison to have him/her set things up. Ask for back-up information to put in the committee member packets.

✓ 9. **Meeting Packets.** Make up information file folder packets for committee members with necessary materials to be discussed. Put the Packet information on Basis. *→*

✓ 10. **Press Release.** Contact Dani Carlson of House Majority Press and do a press release.

2/23 - called Rep Dugan's office - heads up - 465-4998

- ✓ **11. Script.** Prepare a script for the Chairman of how the meeting will proceed and language to act as a guide.
- 12. Committee Meeting.** Contact the Sgt. At Arms, Maceala 465-3869, to see that there is coffee and water in the committee room. See "Committee Aide Tips".
- a) Make 3 copies of LIO sign up list one to Chair and to Records.
 - b) If a power point is going to be used get Help Desk to set it up.
 - c) Have sign up sheets on the desk out in the hall.
 - ✓ **d) Do Motion to hold Executive Session for Vice Chair.** Come back into public session after Executive Session and then adjourn.
 - e) Before the meeting make sure that all members have paper, pen and supplies; Schedule is posted out on the bulletin board; agenda posted; hand outs copied and on the table for the public; coffee and water set out; and Chair has his script.

ALASKA STATE LEGISLATURE

Interim:

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
Fax: (907) 373-4729



Session:

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-4899
Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

March Meeting Script

- I. Call to Order by Chairman. (Rapping Gavel) Come to Order, Come to Order. I hereby call this meeting of the Joint ARRC to Order. For the record, today is Monday, March 8, 2010, and the time is 3:00 o'clock pm, and we are meeting in the Alaska State Capitol Room 17. I am the Committee Chairman, House Representative Wes Keller. I will now introduce my fellow committee members and perform the roll call.
- II. Introduction and Roll Call. To my right is Senator Donald Olson, the Vice Chairman; then Senator Albert Kookesh; and Senator Kevin Meyer. To my left are Representative David Guttenberg, and Representative Carl Gatto.
Guest: Rep. Tammie Walen
- III. Opening remarks by the Chairman. Before we get started with today's meeting, I would like to make a few brief comments for the benefit of our audience. The ARRC as we call the committee, was established by the Legislature with the passage of Alaska Statute, AS24.20.400. The Committee's job is to review administrative regulations. You may be interested to know that on average, there are over 1,500 pages of proposed regulations every year! That's a lot of regulation!

The Committee is composed of six members, three from the Senate and three from the House. As part of its review powers, the Committee may suspend a regulation during the interim, or during Session, recommend passage of a statute overturning a regulation. The Committee's aim is to see that regulations proposed or adopted by the various state agencies are Constitutional, implement legislative intent and/or have statutory authority.

Our purpose today is to review two limited areas of regulation. First, are the proposed regulations dealing with cheese production ; and secondly, regulations concerning personal use cabins.

We will hear presentations by the Dept. of Environmental Conservation and the Dept. of Natural Resources, as well as public comment.

We will then close the public portion of the meeting and go into Executive Session in order to discuss non-public review memos with our legal counsel. During the Executive Session we will not be deliberating about the regulations reviewed today, but discussing with our attorney her regulation review memos sent to us since this Session began. After the Executive Session, the Committee will reconvene, and after any necessary public discussion, we will adjourn. We plan on 45-60 minutes for the cheese production regulation portion of the meeting and 30-45 minutes for the personal use cabins portion. So let's get started.

First up are the proposed Cheese Production Regulations. The main issue for discussion concerns exemptions for small dairies or small producers. Our first presenter is Kristin Ryan, Director, Environmental Health Division, DEC, who is scheduled to testify from Anchorage by telephone conference call. Director Ryan are you present, and can you hear us? (Note: There may be others from DEC on the line such as Dr. Fuller.)

Director Kirstin Ryan... (Testimony limitations per email)
reqs - only proposed - not final no date

Do any of the Committee Members have any questions for Director Ryan?

Chairman's questions: Director Ryan, the small dairy and/or small cheese producers have commented to the Committee that the regulations as proposed are too complicated and cumbersome, and place a costly burden on them. They have asked for a small producer exemption to the regulations. Is there anything in the statutes that would prohibit granting them an exemption? In your opinion what would the Legislature have to do in order to grant such a small producer exemption? Would such an exemption be good or bad public policy? How does the Federal law, the PMO, "pasteurized milk ordinance", effect all of this?

Now let's hear from the public.....List of testifiers..

4:00PM. It is 4:00pm and time to move on to the next regulation... I would like to close this portion of the meeting.

Next: We have a presentation by the Dept. of Natural Resources, Director Dick Mylius, is with us here in person to talk about personal use cabins. Welcome Director Mylius. Please take a seat at the table here, and give us your presentation. The Committee is interested in hearing about DNR policy and procedures, particularly as they relate to the intent expressed in the regulations to phase out the unauthorized use of state land. (11AAC65.010)

Director Mylius testifies:.....

Do any of the members of the Committee have any questions for Director Mylius?

(I have two questions: 1) What is the statutory authority of DNR to express its intent to phase out the unauthorized use of

E-Mail: John_Davies@legis.state.ak.us

state land? 2) Would it be possible to grant some kind of preference right to lease or buy personal use cabins to the present permittees? Would, in your judgment, that be good or bad public policy? Is there some way to lessen the hardship of forfeiture of the cabin by the present owner? Has the concept of adopting a cabin, much like adopting a portion of highway, been thought about, so perhaps a non-profit group could care for the cabins after the permit runs out?

Public comment.....

4:45pm. It is 4:45pm, and I would like to close this portion of the meeting.

The Committee would like to now go into Executive Session. Motion/Vote. Do I have a motion...(Senator Olson makes the motion.) vote..... Thank You . We will now go into Executive Session and off the public record.

Clear the room for Executive Session.

After Executive Session the Committee reconvenes the public meeting.

Discussion if any.

Adjournment.

END OF SCRIPT....

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS
OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The Department of Environmental Conservation proposes to adopt regulation changes in Title 18 Chapter 32 of the Alaska Administrative Code, dealing with Milk, Milk Products, and Reindeer Slaughtering and Processing. The following new sections are proposed:

- 18 AAC 32.310 addressing the purpose and applicability of the cheese production regulations
- 18 AAC 32.315 addressing the adoption by reference of federal requirements
- 18 AAC 32.320 addressing the permit requirements for processing cheese or cheese products
- 18 AAC 32.323 addressing the water, wastewater, solid waste and plumbing requirements for cheese processing facilities
- 18 AAC 32.325 addressing the construction standards for cheese processing facilities
- 18 AAC 32.330 addressing the standards for personnel involved in cheese processing
- 18 AAC 32.335 addressing the standards for equipment and utensils utilized in cheese processing
- 18 AAC 32.340 addressing the sanitation standards for cheese processing
- 18 AAC 32.345 addressing the standards for ingredients used in cheese processing
- 18 AAC 32.350 addressing the testing standards for cheese processing
- 18 AAC 32.355 addressing the record retention requirements for cheese processing
- 18 AAC 32.360 addressing the labeling and identification standards for cheese processing
- 18 AAC 32.365 addressing the inspection standards for cheese processing
- 18 AAC 32.370 addressing the detention and destruction of cheese and cheese products
- 18 AAC 32.375 addressing the civil fines for violation of the cheese processing standards
- 18 AAC 32.380 addressing the right to appeal a decision
- 18 AAC 32.385 addressing fees

Amendments are also proposed that update the federal requirements adopted by reference in 18 AAC 32.020 and add new terms to the definitions in 18 AAC 32.990

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Jay Fuller, Assistant State Veterinarian, Division of Environmental Health, Department of Environmental Conservation, at 555 Cordova Street, Anchorage, AK 99501, by facsimile at 907-375-8213, or by e-mail to jay.fuller@alaska.gov. The comments must be received no later than 5:00 p.m. on December 3, 2009.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Deb Pock at the Division of the Department of Environmental Conservation, 907-269-0291, no later November 25, 2009, to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact Jay Fuller at the Division of Environmental Health, Department of Environmental Conservation, at 907-375-8213 or go to the DEC's regulations website at <http://www.dec.state.ak.us/regulations/index.htm>

After the public comment period ends, the Department of Environmental Conservation will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action

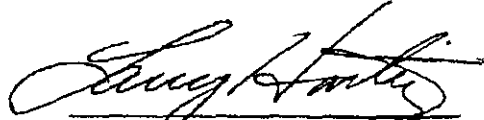
on them. The language of the final regulations may be different from that of the proposed regulations. YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED. Written comments received are public records and are subject to public inspection.

Statutory Authority: AS 03.05.011, AS 03.05.013, AS 03.05.030, AS 03.05.040, AS 03.05.050, AS 03.05.090, AS 17.20.005, AS 17.20.010, AS 17.20.020, AS 17.20.040, AS 17.20.050, AS 17.20.060, AS 17.20.070, AS 17.20.072, AS 17.20.180, AS 17.20.190, AS 17.20.200, AS 17.20.220, AS 17.20.230, AS 17.20.240, AS 17.20.250, AS 17.20.260, AS 17.20.270, AS 17.20.280, AS 17.20.305, AS 17.20.315, AS 17.20.365, AS 44.46.020

Statutes Being Implemented, Interpreted, or Made Specific: AS 03.05.030, AS 03.05.040, AS 03.05.050, AS 17.20.070, AS 17.20.072, AS 17.20.200, AS 17.20.230, AS 17.20.270, AS 17.20.305

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: October 30, 2009



Larry Hartig, Commissioner

18 AAC 32.020(1) is amended to read:

(1) *Grade "A" Pasteurized Milk Ordinance* (PMO), 2007 [2001] revision, published by the United States Department of Health and Human Services, [PUBLIC HEALTH SERVICE] Food and Drug Administration; this adoption by reference does not include sections 15 (Enforcement), 16 (Penalty), and 17 (Repeal and Date of Effect);

...

18 AAC 32.020(3) is amended to read:

(3) *Evaluation of Milk Laboratories*, 2005 [1995] Revision, published by FDA;

...

18 AAC 32.020(5) is amended to read:

(5) 21 C.F.R. 110, as revised as of April 1, 2007 [2003];

(Eff. 5/23/98, Register 146; am 1/14/2001, Register 157; am 9/6/2003, Register 167; am ___/___/___, Register ___)

Authority: AS 03.05.011 AS 03.05.020 AS 44.46.020

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.310. Purpose and Applicability. (a) The purpose of 18 AAC 32.310 – 18 AAC 32.390 is to safeguard public health and safety by requiring cheese and cheese products offered or sold to the public to be safe, unadulterated, wholesome and correctly labeled.

(b) The provisions of 18 AAC 32.310 - 18 AAC 32.390 apply to

(1) cheese producers whose cheese or cheese products are intended to be sold or offered to the public;

(2) milk producers who provide milk used for manufacturing cheese or cheese products. (Eff. __/__/__, Register __)

Authority: AS 03.05.011 AS 03.05.050 AS 17.20.290

AS 03.05.030 AS 17.20.005 AS 44.46.020

AS 03.05.040 AS 17.20.010

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.315. Requirements Adopted by Reference. Applicable provisions of the following publications are adopted by reference:

- (1) *Grade "A" Pasteurized Milk Ordinance*, 2007 Revision, the United States Department of Health and Human Services; Public Health Service, Food and Drug Administration; this adoption by reference does not include sections 15 (Enforcement), 16 (Penalty), and 17 (Repeal and Date of Effect);
- (2) *Evaluation of Milk Laboratories*, 2005 Revision, the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration;
- (3) 3-A Sanitary Standards and 3-A Accepted Practices published by the Food and Drug Administration and the International Association of Food Protection;
- (4) Food and Drug Administration/Center for Food Safety and Applied Nutrition Food Compliance Program, Domestic and Imported Cheese and Cheese Products (Inspection and Sampling Guidance Document), November 19, 1998;
- (5) 21 C.F.R. 101.1-101.30 (Food Labeling), revised as of April 1, 2007;

(6) 21 C.F.R. 101.54 – 101.83 (Food Labeling Nutrient and Health Claims), revised as of April 1, 2007;

(7) 21 C.F.R. 101.100-101.105 (Food Labeling Exemptions), revised as of April 1, 2007;

(8) 21 C.F.R. 110 (Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food), revised as of April 1, 2007;

(9) 21 C.F.R. 130.8 - 130.14 (Food Standards), revised as of April 1, 2007;

(10) 21 C.F.R. 133 (Cheeses and Related Cheese Products), revised as of April 1, 2007;

and

(11) 21 C.F.R. 170-189 (Food Additives), revised as of April 1, 2007. (Eff. __/__/__,

Register ___)

Authority: AS 03.05.011 AS 17.20.010 AS 44.46.020

AS 17.20.005

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.320. Permit Requirements. (a) A person may not produce cheese or cheese products subject to this chapter except as authorized by permit under this section.

(b) A permit issued under this section

(1) is valid for one year;

(2) is issued to a particular cheese producer and is not transferable;

(3) is subject to suspension, revocation, and reinstatement by the department; and

(4) must be prominently posted for public view in the facility.

(c) At least 30 days before commencing construction of a cheese production facility, initiating cheese or cheese product production, or changing ownership, a cheese producer must apply for a permit for each operation subject to the requirements of this section, using a form provided by the department. The application must:

(1) be accompanied by a permit fee as described in 18 AAC 32.385;

(2) include

(A) a plot plan of the premises showing the location of buildings and property boundaries;

(B) plumbing schematics that depict hot and cold potable water lines, nonpotable water lines, wastewater lines, and floor drains;

(C) building floor plans depicting locations of equipment, plumbing fixtures, toilets, and sinks;

(D) finish material specifications for floors, walls, and ceilings;

(E) types and locations of lighting and ventilation;

(F) a general description of planned volumes and types of cheese products and processing methods; and

(G) other information required by the department to demonstrate compliance with 18 AAC 32.323 – 18 AAC 32.360 or other provisions of this chapter.

(d) In the case of annual renewal of permits for continuing operations, the department may accept, in lieu of the information required by (c)(2), a written statement from a cheese producer that there have been no changes to the facility or its operations and that no changes are intended for the next year.

(e) A cheese producer must notify the department of any changes to aspects of the facility or operations authorized by permit. The department may approve, conditionally approve or deny changes. Applications for permits or annual permit renewals must reflect all prior changes to the facility or operations. (Eff. __/__/__, Register __)

Authority: AS 03.05.011 AS 17.20.005 AS 44.46.020
AS 03.05.040

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.323. Water, Wastewater, Solid Waste, and Plumbing. (a) In addition to applicable requirements of 21 C.F.R. 110.37, revised April 1, 2007, and adopted by reference at 18 AAC 32.315, the following requirements apply:

- (1) an adequate supply of potable water must be available from a public water system constructed and operated as required by 18 AAC 80;
- (2) wastewater or whey from the facility must be discharged into a public sewer or a wastewater system constructed and operated as required by 18 AAC 72;
- (3) grease traps must be accessible and cleanable;
- (4) solid waste disposal must comply with 18 AAC 60;
- (5) plumbing must be designed, installed, and maintained as required by applicable municipal and state plumbing codes and be consistent with good public health practices;

(b) Plumbing may not create an unsanitary condition and may not pose a threat of contamination.

(1) hot and cold running water under pressure must be provided to each plumbing fixture with faucets, including handsinks, warewashing sinks, sinks used for preparation or processing, and janitorial sinks; and

(2) drain lines from equipment may not discharge wastewater directly on a floor.

(c) Any non-potable water line must be labeled "DANGER – UNSAFE WATER" and can only be used for

(1) fire protection;

(2) air conditioning;

(3) heating;

(4) flushing toilets; or

(5) other non-potable purpose approved by the department.

(Eff. __/__/__, Register __)

Authority: AS 03.05.011 AS 17.20.005 AS 44.46.020

AS 03.05.040

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.325. Construction Standards. (a) In addition to the requirements of 21 C.F.R. 110.20, revised April 1, 2007 and adopted by reference at 18 AAC 32.315, cheese production facilities must have separate rooms for each of the following operations or equipment:

(1) receiving and weighing of milk, and washing and sterilizing of containers in which milk is received;

(2) pasteurization, processing, cooling, and manufacturing;

- (3) bacteriological and chemical analysis;
- (4) storage or aging of products;
- (5) boiler, compressor, and other machinery;
- (6) storing of cleaning supplies or other potentially hazardous materials;
- (7) toilets, lavatories, and lockers; and
- (8) business offices.

(b) Floors of rooms listed in 18 AAC 32.325 (1), (2), (4), and (7) must be constructed of concrete or other impervious material and must be constructed to be water tight and sloped so that all drainage will flow to one or more floor drains.

(c) Floor drains must include p-traps that comply with applicable plumbing codes and must be connected to a sewer line that conveys refuse milk, water, and sewage at least 100 feet from the facility into an approved wastewater system.

(d) Doors must be self-closing and windows, doors and other openings must effectively exclude flies and other pests.

(e) No activity, material or waste may be located on the premises in a manner that harbors pests or allows foul odors to reach the operation.

(f) Light sources, including natural light, artificial light, or a combination of both, must furnish at least twenty foot-candles (220 lux) of light in all working areas.

(g) Dry storage and cold storage rooms must have at least five foot-candles (55 lux) of light.

(h) Ventilation in all rooms must keep the processing areas reasonably free of odors not normally associated with cheese production and keep equipment, walls, and ceilings free from excessive condensation.

(i) Pressurized ventilation systems, if used, must have a filtered air intake.

(j) Walls and ceilings in rooms where cheese or cheese ingredients are handled, processed, packaged, or stored; or in which containers, utensils, or equipment are washed, must be made of a solid material, sealed to the floor and have a smooth, washable, impervious and light-colored surface.

(k) the storage and transportation of finished products must comply with 21 C.F.R. 110.93, revised April 1, 2007 and adopted by reference at 18 AAC 32.315. (Eff. __/__/__, Register __)

Authority: AS 17.20.005 AS 44.46.020

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.330. Personnel. (a) Personnel must comply with the disease control, cleanliness, education and training requirements of 21 C.F.R. 110.10, revised April 1, 2007 and adopted by reference at 18 AAC 32.315.

(b) Cheese or its ingredients may not be handled with bare hands.

(c) Cheese production may not occur unless there is an individual on the premises who is responsible for identifying sanitation problems and potential food contamination who has the education and experience necessary for the production of unadulterated cheese products.

(d) Food handlers and supervisors must complete the Alaska Food Worker training described in 18 AAC 31.330 or other comparable training acceptable to the department.

(e) In this section, "food handler" means an individual handling cheese ingredients, unpackaged cheese, or food-contact surfaces.

(f) Cheese producers must restrict access to cheese processing areas to authorized personnel. (Eff. __/__/__, Register __)

Authority: AS 17.20.005 AS 17.20.072 AS 44.46.020

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.335. Equipment and Utensils. (a) Equipment and utensils must be sanitary and meet applicable 3-A Sanitary Standards and 3-A Accepted Practices, and 21 C.F.R. 110.40, revised as of April 1, 2007 and adopted by reference in 18 AAC 32.315.

(b) Vats must be stainless steel or equally corrosion-resistant metal and constructed according to the applicable 3-A Sanitary Standards and 3-A Accepted Practices, adopted by reference in 18 AAC 32.315.

(1) Vats must be in good repair, equipped with tight-fitting lids and have adequate temperature controls.

(2) Vats must

(A) have an adequate jacket capacity for uniform heating;

(B) have an inner liner constructed of a minimum 16-gauge stainless steel or other equally corrosion-resistant metal properly pitched from side to center and from

rear to front for adequate drainage and must be smooth, free from excessive dents or creases and extend over the edge of the outer jacket;

(C) have the junction of the liner and outer jackets constructed to prevent milk or cheese from entering the inner jacket;

(D) be equipped with a sanitary outlet valve; and

(E) be provided with effective valves that are properly maintained to control the application of heat to the vat.

(c) Mechanical agitators must meet the following requirements:

(1) carriages and tracks must be constructed to prevent dirt or grease from entering the vat; and

(2) metal blades, forks, or stirrers must be constructed of stainless steel or of material approved in the 3-A Sanitary Standards and 3-A Accepted Practices, adopted by reference in 18 AAC 32.315, and be free from rough or sharp edges which might scratch the equipment or remove metal particles.

(d) Knives, hand rakes, shovels, paddles, strainers, and miscellaneous equipment must be stainless steel or of material approved in the 3-A Sanitary Standards and 3-A Accepted Practices, adopted by reference in 18 AAC 32.315.

(e) Product contact surfaces of curd mills must be constructed of stainless steel.

(f) Wires in curd knives must be constructed of stainless steel, kept tight and replaced when necessary.

(g) Hoops, forms, and followers must be constructed of stainless steel or heavy tinned steel.

(h) Cheese presses and press cloths must comply with the following requirements:

- (1) presses must be constructed of stainless steel;
- (2) cheese press joints must be welded;
- (3) cheese press surfaces, seams and openings must be readily cleanable;
- (4) cheese press pressure device must be the continuous type;
- (5) press cloths must be maintained in good repair and in a sanitary condition;

and

- (6) single-service press cloths can only be used once. (Eff. __/__/__, Register
__)

Authority: AS 17.20.005 AS 44.46.020

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.340. Sanitation. (a) Sanitation practices for a cheese production facility must comply with 21 C.F.R. 110.35, revised as of April 1, 2007 and adopted by reference in 18 AAC 32.315.

(b) Sanitizing of food contact surfaces must comply with 18 AAC 31.424. (Eff. __/__/__, Register __)

Authority: AS 17.20.005 AS 44.46.020

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.345. Ingredients. (a) Cheese and cheese product ingredients must comply with 21 C.F.R. 110.80 and 21 C.F.R. 110.110, revised April 1, 2007 and adopted by reference in

18 AAC 32.315. Food additives must meet the standards described in 21 C.F.R. 170-189, revised April 1, 2007 and adopted by reference in 18 AAC 32.315.

(b) Producers and transporters of milk used for cheese production must meet the standards in 18 AAC 32.010 – 18 AAC 32.060 and the standards of the Food and Drug Administration's Pasteurized Milk Ordinance, adopted by reference in 18 AAC 32.315. All animals producing milk for cheese production must meet the animal health requirements at 18 AAC 36.

(c) Cheese may be made from raw or pasteurized milk.

(1) cheese made from raw milk must be aged and conform to the standards set forth in 21 C.F.R. 133, as adopted by reference in 18 AAC 32.315.

(2) pasteurized milk used in cheese production must conform to the phosphatase standards for pasteurized milk and milk products set forth in the Pasteurized Milk Ordinance, as adopted by reference in 18 AAC 32.315.

(d) Raw milk used to make cheese must meet the following quality standards at the time of receipt or collection:

- (1) raw milk may not be adulterated, or have any abnormal odor, appearance or consistency;
- (2) standard plate count for bacteria in raw milk may not exceed 300,000/ml from any individual milk producer or comingled milk; and
- (3) raw milk may not contain unacceptable drug residue.

(A) raw milk used for cheese production must be tested for drug residues as required by the Pasteurized Milk Ordinance, as adopted by reference in 18 AAC 32.315.

(B) testing must be conducted by a laboratory that conforms to the Evaluation of Milk Laboratories, revised 2005 and adopted by reference in 18 AAC 32.315.

(C) the laboratory and laboratory analyst must be approved by the department to perform drug residue screening or confirmatory testing.

(4) somatic cell count in raw cow milk from a milk producer may not exceed 750,000 cells/ml on any 3 of 5 tests, as per the Pasteurized Milk Ordinance, adopted by reference in 18 AAC 32.315.

(5) somatic cell count in the raw goat milk from a milk producer may not exceed 1,000,000/ml on any 3 of 5 tests, as per the Pasteurized Milk Ordinance, adopted by reference in 18 AAC 32.315.

(6) raw milk must be cooled to 10°C (50°F) or less within four hours of commencement of first milking, and to within 7°C (45°F) or less within two hours after completion of milking. A blend temperature of an initial milking and subsequent milkings may not exceed 10°C (50°F). (Eff. __/__/__, Register __)

Authority: AS 03.05.011 AS 17.20.010 AS 17.20.030
AS 03.05.013 AS 17.20.020 AS 44.46.020
AS 17.20.005

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.350. Testing. (a) Cheese must be tested in accordance with this section.

(b) When beginning production of a new cheese product or a cheese product that has not been in production within the past year, or after a cheese fails a test prescribed by this section, the department will collect and analyze samples monthly for the next two months of production.

(c) After two months, the department will collect and analyze samples biannually unless the department determines that additional or more frequent testing is required to confirm product safety.

(d) Cheese samples must be analyzed in accordance with 21 CFR 133.5, adopted by reference in 18 AAC 32.315, for milkfat, moisture content, and phosphatase.

(e) Cheese samples must be analyzed using Food and Drug Administration-approved methodologies for the following six foodborne pathogens:

(1) Listeria monocytogenes;

(2) Salmonella;

(3) Escherichia coli;

(4) Enterotoxigenic Escherichia coli if Escherichia coli is present at 10^4 (10,000)

or above per gram;

(5) Enterohemorrhagic Escherichia coli (EHEC) ; and

(6) Staphylococcus aureus.

(f) A cheese producer must immediately report to the department results of any voluntary testing that exceed standards or tolerances in 18 AAC 32.345 or 18 AAC 32.370. (Eff.

___/___/___, Register ___)

Authority: AS 03.05.011 AS 17.20.005 AS 44.46.020.

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.355. Records. (a) A cheese producer must prepare or obtain the following records as applicable and retain them for the specified periods of time:

- (1) milk collection records received from milk haulers for at least two years;
- (2) records of all cheese product ingredients received at the cheese production facility, including the manufacturer and distributor of the ingredients, for at least one year;
- (3) daily records of all finished products produced at the cheese production facility, including name and type of product, volume produced, and date of production, for at least one year;
- (4) records of all milk quality tests conducted on milk shipments received by the cheese production facility for at least two years;
- (5) records of all tests for bacterial counts or adulteration in milk and cheese held or processed by the cheese production facility for at least two years;
- (6) pasteurization records for at least 180 days;
- (7) cleaning and sanitizing records for bulk milk tankers for at least 90 days;
- (8) temperature records for cheese processing and storage for at least 30 days;

(9) inventory control records for vitamin fortification of milk or cheese including vitamins used and quantity produced for at least two years;

(10) vitamin assay test results conducted on fortified cheese for at least two years; and

(11) daily records for cleaning and sanitizing equipment for at least 90 days.

(b) Records under subsection (a) shall be kept at the cheese production facility, and shall be made available to the department upon request. (Eff. __/__/__, Register __)

Authority: AS 03.05.011 AS 17.20.005 AS 44.46.020

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.360. Labeling and general identification. (a) Cheese and cheese products must comply with the standards of identity for cheese as described in 21 C.F.R. 133, revised as of April 1, 2007, and adopted by reference in 18 AAC 32.315.

(b) In addition to meeting labeling requirements in 21 C.F.R. 101.1-101.30, 21 C.F.R. 101.54 – 101.83, 21 C.F.R. 101.100-101.105, and 21 C.F.R. 130.8 - 130.14 revised as of April 1, 2007 and adopted by reference in 18 AAC 32.315, each package of cheese for retail sale must be labeled: "KEEP REFRIGERATED."

(c) Cheese products made from raw milk must be labeled "RAW MILK PRODUCT".

(d) Cheese may be labeled "MADE FROM GRADE A RAW MILK" only if manufactured under Grade A standards as outlined in the Pasteurized Milk Ordinance, adopted by reference in 18 AAC 32.315.

(e) Cheese products made from milk other than cow's milk must be labeled with the species of animal(s) the milk came from.

(f) Labels for cheese products must be approved by the department prior to commercial sale of the product. (Eff. __/__/__, Register __)

Authority: AS 03.05.011 AS 17.20.010 AS 44.46.020
AS 17.20.005 AS 17.20.300

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.365. Inspections. (a) The department may conduct inspections or audits with or without prior notice to determine compliance with this chapter.

(b) Inspections and audits to assess compliance with this chapter may include:

- (1) inspecting the cheese production facility;
- (2) examining labels, plans and records;
- (3) investigating employee illness or absenteeism;
- (4) examining food;
- (5) observing procedures;
- (6) obtaining samples;
- (7) conducting tests;
- (8) interviewing employees; and
- (9) taking photographs. (Eff. __/__/__, Register __)

Authority: AS 03.05.011 AS 17.20.005 AS 17.20.070
AS 03.05.040 AS 17.20.040 AS 44.46.020

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.370. Detention and Destruction. (a) A cheese producer must destroy or detain for further processing or testing cheese that has tested positive for Listeria monocytogenes, Salmonella, or Enterohemorrhagic Escherichia coli.

(b) A cheese producer must destroy or detain cheese for further processing or testing if any of the following tolerances are exceeded:

- (1) Escherichia coli – 1×10^4 or greater organisms per gram;
- (2) Enterotoxigenic Escherichia coli – 1×10^3 per gram, heat labile enterotoxin or heat stable enterotoxin positive; or
- (3) Staphylococcus aureus – positive for Staphylococcal enterotoxin or when viable count (MPN) is 1×10^4 or greater per gram and toxin test is negative.

(c) If sample analysis of pasteurized milk or cheese made from pasteurized milk reflects a positive phosphatase test, then the cheese producer must destroy or detain the milk or cheese derived from that milk for further processing or testing.

(d) The department may require that a cheese producer detain cheese if the department finds, or has cause to believe, that the cheese or an ingredient is adulterated, misbranded, or processed in violation of this chapter. A cheese producer may not take any action with respect to detained cheese without the department's written consent. Detention under this subsection is subject to the following procedures:

- (1) the department will
 - (A) issue a notice of detention and inform the cheese producer of the conditions under which the detention can be terminated;

(B) affix to the cheese or food ingredient a "detained" tag or other appropriate marking that gives notice that the cheese product or food ingredient has been detained;

(2) if, after issuing a notice of detention, the department finds that the cheese product or food ingredient is not adulterated, misbranded, or processed in violation of this chapter, the department will terminate detention and notify the cheese producer; and

(3) if the department finds that the cheese product or food ingredient is adulterated, misbranded, or processed in violation of this chapter, the department will notify the cheese producer of the corrective action necessary, which may include destruction of the cheese product or food ingredient.

(e) The department may require a cheese producer to destroy cheese if it violates standards or tolerances in 18 AAC 32.370 or if the cheese was made under the same conditions as other cheese found to violate those standards or tolerances.

(f) In this section, "destroy" means disposing of cheese or cheese products in a manner that precludes human consumption.

(g) In addition to the measures indicated in (a) – (f) of this section the department, in the event that it finds that failure to comply with this chapter poses an imminent health hazard, may take any other actions authorized by law, including modifying, suspending or revoking a cheese processing permit. (Eff. __/__/__, Register __)

Authority:	AS 03.05.011	AS 17.20.070	AS 17.20.250
	AS 03.05.030	AS 17.20.072	AS 17.20.260
	AS 03.05.050	AS 17.20.180	AS 17.20.270

AS 17.20.005	AS 17.20.190	AS 17.20.280
AS 17.20.020	AS 17.20.220	AS 17.20.305
AS 17.20.050	AS 17.20.230	AS 44.46.020
AS 17.20.060	AS 17.20.240	

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.375. Civil fines (a) The department may, without prior warning, notice, or hearing, assess a civil fine of not more than the following amounts for each violation of this chapter:

- (1) first offense: \$250;
- (2) second offense: \$500; and
- (3) third and subsequent offenses: \$1000.

(b) For the purpose of determining whether civil fines are warranted and their amounts, the department will consider aggravating or mitigating factors, including:

- (1) the history of previous violations by the cheese producer;
- (2) the seriousness of the violation, including actual or potential hazard to the health and safety of the public;
- (3) whether the violation occurred due to negligence or intentional conduct;
- (4) whether the cheese producer has demonstrated good faith efforts to achieve rapid compliance after notification of a violation;
- (5) the cheese producer's current compliance status and the number of continuing violations;

(6) the actual or potential economic gain to the cheese producer by violating a provision of this chapter;

(7) enforcement costs incurred by the department relating to the violation; and

(8) payment of civil fines previously assessed for the same or similar violation.

(Eff. __/__/__, Register __)

Authority:	AS 17.20.005	AS 17.20.190	AS 17.20.365
	AS 17.20.180	AS 17.20.315	AS 44.46.020

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.380. Right to Appeal a Decision (a) A person subject to this chapter may seek an informal review under 18 AAC 15.185 of a department decision.

(b) Nothing in this section affects a person's rights to request an adjudicatory hearing under 18 AAC 15.195. (Eff. __/__/__, Register __)

Authority:	AS 17.20.005	AS 17.20.072	AS 17.20.190
	AS 17.20.065	AS 17.20.180	AS 44.46.020

18 AAC 32 is amended by adding a new section to read:

18 AAC 32.385. Fees The annual permit fee for a cheese production facility is \$100.

(Eff. __/__/__, Register __)

Authority: AS 17.20.005

18 AAC 32.990 is repealed and readopted to read:

18 AAC 32.990. Definitions. Unless the context indicates otherwise, in this chapter

- (1) "adulterated" has the same meaning as "adulterated food" as defined in AS 17.20.020;
- (2) "approved" means approved in writing by the department;
- (3) "adequate" means necessary to accomplish the intended purpose in keeping with good public health practices;
- (4) "bed system" means a cradle used to support the reindeer carcass during the skinning process;
- (5) "brisket" means the anterior lower portion of the chest of the reindeer;
- (6) "bulk milk tanker" is a vehicle, including the truck, tank and those appurtenances necessary for its use, used by a bulk milk hauler/sampler to transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving station, or transfer station;
- (7) "bulk transfer container" means a vehicle or container that a milk producer uses to ship bulk milk from a dairy farm to a dairy plant;
- (8) "bung" means the rectum or terminal portion of the intestine of the reindeer;
- (9) "CIP SYSTEM" means equipment that is designed, constructed and installed to be cleaned in place by the internal circulation of cleaning and sanitizing solutions onto product contact surfaces;
- (10) "carcass" means all parts, including viscera, of slaughtered reindeer;
- (11) "cheese" means a dairy product prepared from the pressed curd of milk. A complete listing of styles of soft, semi-soft, soft-ripened, and hard cheeses may be found in the

FDA/CFSAN Food Compliance Program, Domestic and Imported Cheese and Cheese products, November 19, 1998, adopted by reference in 18 AAC 32.215;

(12) "cheese production facility" means a place, premise, or facility where cheese or cheese products are collected, handled, processed, stored, or prepared;

(13) "cheese producer" means a person who owns or operates a cheese production facility and provides, sells, or offers cheese for human consumption;

(14) "cheese product" means a product made from cheese that is intended for human consumption;

(15) "clean" or "cleaned" means, with regard to equipment or utensils, made free of soil, or to make free of soil, by

(A) washing in warm, soapy water and rinsing; or

(B) using another approved method if using water is inappropriate for the equipment or utensil being cleaned;

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

(17) "composite sample" means a sample of milk which is collected from 2 or more milk shipments from the same milk producer, and which is compiled and preserved;

(18) "critical control point" means a point, step, or procedure in a slaughtering or processing facility at which control can be applied, and a food safety hazard can, as a result, be prevented, eliminated, or reduced to acceptable levels;

(19) "critical violation" means

(A) food unfit for human consumption;

- (B) potentially hazardous food that is not kept at required temperatures during storage, preparation, processing, display, service, and transportation;
 - (C) insufficient facilities and equipment to maintain product temperatures;
 - (D) a person working as a food handler who has a disease communicable by food;
 - (E) employee conduct in violation of 18 AAC 32.650(a) - (b), the results of which might be a disease communicable by food;
 - (F) food-contact surfaces of equipment or utensils that are not washed, rinsed, and sanitized effectively and that might contaminate food;
 - (G) a water supply that
 - (i) is not in compliance with 18 AAC 32.625; or
 - (ii) has a cross-connection with a nonpotable supply or a back siphonage potential;
 - (H) sewage or liquid waste not disposed of in an approved manner;
 - (I) toilets and handsinks not installed or inaccessible;
 - (J) insects, rodents, or other pests that are on the premises;
 - (K) poisonous or toxic material that is improperly labeled, stored, or used;
 - (L) a violation of a critical control point in a HACCP plan described under 18 AAC 32.660;
 - (M) a foodborne illness associated with operation of the facility; or
 - (N) a condition or practice that affects the wholesomeness or safety of food;
- (20) "dairy plant" means any place where dairy product is manufactured or processed for sale or distribution as human food and includes a receiving station or transfer station;

(21) "dairy plant operator" means a person who operates a dairy plant and who is required to be licensed;

22) "dairy product" means all of the following:

(A) Raw or processed milk;

(B) A milk product or by-product, including all dairy and non-dairy ingredients incorporated into that milk product or by-product;

(C) A commodity in which milk or any milk product or by-product is the principle ingredient;

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

(24) "easily cleanable" means readily accessible and designed so that residue may be effectively removed by normal cleaning methods;

(25) "equipment" means machinery, apparatus, pipeline and appurtenances used in connection with the operation of a facility; "equipment" includes fixtures, containers, vessels, tools, devices, implements, storage areas, and sinks;

(26) "evisceration" means the process of removing viscera from a carcass;

(27) "extensively remodeled" means modified or improved at an expense equal to or exceeding 25 percent of the taxable value of the facility before initiation of the modification or improvement;

(28) "facility" means the premises used to conduct activities described in this chapter;

(29) "FDA" means the United States Food and Drug Administration;

(30) "fermentation" means any of a group of chemical reactions induced by living or non living yeast, bacterium, mold or enzyme that split complex organic compounds into relatively simple substances;

(31) "fluid milk product" means cream, sour cream, acidified sour cream, half-and half, sour half-and-half, whipped cream, concentrated milk, concentrated milk products, reduced fat milk, low fat milk, nonfat milk, flavored milk, buttermilk, cultured buttermilk, cultured milk, yogurt, low fat yogurt, nonfat yogurt, eggnog, nog-flavored milk, vitamin and mineral fortified milk or milk products, and any other fluid milk product made by adding any substance to milk or any such product;

(32) "food" or "food product" means a product made wholly or in part from an animal that is intended for human consumption;

(33) "food additive" or "food ingredient" means a substance, the intended use of which results or might result, directly or indirectly, in its becoming a part of or otherwise affecting the characteristics of a food product;

(34) "food-contact surface" means the surface of equipment and utensils with which food or food ingredients normally comes in contact, or from which drippage, drainage, or splashback onto a surface that contacts food might occur;

(35) "footcandles" means the illumination

(A) on a surface one square foot in area on which a flux of one lumen is uniformly distributed; or

(B) produced on a surface all points of which are at a distance of one foot from a directionally uniform point source of one candela;

(36) "frozen dessert" means ice cream, French ice cream, artificially sweetened ice cream, frozen custard, frozen yogurt, frozen concentrates, ice milk, sherbet, water ice, quiescently frozen confection, quiescently frozen dairy confection, manufactured frozen dessert mix and frozen whipped cream confections. "frozen dessert" includes "frozen dessert mix";

(37) "frozen dessert mix" means a mixture of frozen dessert ingredients that has not yet been processed and frozen to create a frozen dessert. "Frozen dessert mix" includes a mix of previously pasteurized dry dairy ingredients that is combined with potable water to create a liquid mix;

(38) "formula" means each ingredient used, the amount of each ingredient used, and the process used to make the milk or milk products;

(39) "gloves" means items that are

(A) made of natural rubber, vinyl, or synthetic material, including neoprene, polyvinyl chloride, and styrene butadiene; and

(B) worn on the hands to prevent contamination between food and an operator or employee;

(40) "HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis and Critical Control Point Principles and Application Guidelines, by the National Advisory Committee on Microbiological Criteria for Foods; the Hazard Analysis and Critical Control Point Principles and Application Guidelines are adopted by reference in 18 AAC 32.601;

(41) "handsink" means a lavatory

(A) equipped with hot and cold running water under pressure that can be tempered to a temperature between 100ø F - 120ø F by a mixing valve or combination faucet; and

(B) used solely for washing hands, arms, or other portions of the body;

(42) "hazard," with respect to food, food products, and food ingredients, has the meaning given in 18 AAC 31.990;

(43) "hermetically sealed" has the meaning given in 18 AAC 31.990;

(44) "imminent health hazard" means a condition with the potential to affect public health adversely; "imminent health hazard" includes

(A) the extended loss of a potable water supply;

(B) an extended power outage;

(C) a sewage backup into the facility or onto the grounds;

(D) a natural disaster;

(E) an employee sick with a disease communicable by food; and

(F) a major insect or rodent infestation;

(45) "inspected and passed" means determined by the department to be unadulterated, at the time a product was inspected under this chapter;

(46) "lot" means a collection of primary containers of the same size, type, and style produced under conditions as nearly uniform as possible and usually designated by a common code or marking, or a day's production;

(47) "low acid food" has the meaning given in 18 AAC 31.990;

(48) "meat" means the flesh and organs of a reindeer;

(49) "midline" means the median line of the carcass;

(50) "milk" means the normal lacteal secretion, practically free of colostrum, obtained by milking a cow, goat, sheep or other ruminant and includes skim milk and cream;

(51) "milk component testing device" means an automated testing device used to perform MILK component tests;

(52) "milk distributor" means a person who sells or offers to sell milk or milk products for wholesale;

(53) "milk hauler" means a person who transports raw milk or raw milk products to or from a milk processing plant, receiving station, or transfer station;

(54) "milk processing plant" means a place, premise, or facility where milk or milk products are collected, handled, processed, stored, pasteurized, processed, bottled, or prepared for wholesale distribution;

(55) "milk producer" means a person who owns or operates a dairy farm and provides, sells, or offers milk for sale to a milk processing plant, receiving station, or transfer station;

(56) "milk product" means a product made from fluid milk that is intended for human consumption, including cheese, yogurt, sour cream, and ice cream;

(57) "milk quality test" means a bacteria count, somatic cell count, drug residue test, milk component test, or other analytical test which is used to determine compliance with milk quality standards;

(58) "multi-use package" means a returnable bottle or other package that is designated for repeated use;

(59) "on-the-rail system" means an overhead rail from which carcasses are hung during the skinning process;

(60) "operation" means the premises, practices, and procedures associated with a specific type of activity within a facility subject to this chapter;

(61) "operator" means a person who controls, operates, manages, or conducts an activity described in this chapter;

(62) "package" means a container or wrapping, having one or more product contact surfaces, that is designed or used to enclose a dairy product sold or shipped from a dairy plant.

"Package" includes package covers and other package components. "Package" includes all of the following:

(A) a returnable bottle or other multi-use package;

(B) a single-service package;

(C) a bulk or shipping container, other than a bulk milk tanker that has one or more product contact surfaces and is used for the sale or shipment of a dairy product from a dairy plant;

(63) "packaging" means canning, cartoning, or tightly wrapping;

(64) "pasteurize" has the meaning given in the *Grade "A" Pasteurized Milk Ordinance*, adopted by reference in 18 AAC 32.315;

(65) "person" means an individual, corporation, partnership, cooperative, association, or any other business organization or entity. "Person" includes the State of Alaska, and any subunit or agency of the state, to the extent that the state or its subunit or agency is engaged in operating a dairy plant;

(66) "pesticide" has the meaning given in 18 AAC 90.990;

(67) "PMO" means the *Grade "A" Pasteurized Milk Ordinance*, adopted by reference in 18 AAC 32.020 and 18 AAC 32.315;

(68) "potable water" means water that is bacteriologically and chemically safe to drink, and that is free from harmful parasites from a supply properly located, protected and operated by the owner of the dairy plant;

(69) "potentially hazardous food" has the meaning given in 18 AAC 31.990;

(70) "ppm" means parts per million;

(71) "premises" means a place or location used in conjunction with the activities of a facility described in this chapter; "premises" includes all or portions of structures, land, vehicles, equipment, a water supply, a wastewater system, and plumbing;

(72) "processing" means an activity that changes the physical condition of a food or dairy product; "processing" includes butchering, cutting, slicing, grinding, cooking, dehydrating, freezing, packaging, smoking, pasteurizing, blending, manufacturing, or thermal processing;

(73) "processing plant" means a plant at which food products are processed;

(74) "product contact surface" means a surface of equipment or a surface of a utensil or package, with which a dairy or food product normally comes in direct contact, or from which materials may drain, drip or be drawn into a product;

(75) "public water system" has the meaning given in 18 AAC 80.1990;

(76) "putrefaction" means the partial decomposition of organic matter by microorganisms producing foul-smelling rotten matter;

(77) "raw milk" or "raw milk product" means milk or a milk product that has not been pasteurized or processed;

(78) "ready-to-eat," with respect to food, food products, and food ingredients, has the meaning given in 18 AAC 31.990;

(79) "reduced oxygen packaging" has the meaning given in 18 AAC 31.990;

(80) "receiving station" means a place, premise, or facility where raw milk is received, collected, handled, stored, or cooled, and then prepared for further transporting;

(81) "rodding" means positioning the looped end of a metal rod around the esophagus and pushing it through the thoracic cavity up to the diaphragm, to separate the esophagus from the trachea and lungs and permit its removal, through the diaphragm and thoracic cavity, without breaking during evisceration;

(81) "rumping" means the stage in dressing a reindeer carcass on half-hoist

(A) where the hide is removed from the hind legs, rump, and tail, and the bung is cut out and tied; and

(B) that takes place between the skinning and the gutting operation;

(82) "safe," with respect to food, food products, and food ingredients, has the meaning given in 18 AAC 31.990;

(83) "sanitize" means to reduce the number of microorganisms on cleaned surfaces, equipment, and utensils to a safe level by application of an appropriate sanitizing agent that is registered as required under 18 AAC 90;

(84) "shipping container" means a box, carton or similar container in which packaged dairy or food products are shipped in bulk from a plant;

(85) "single-service package" means a package that is designed to be used only once prior to disposal;

(86) "slaughtering or processing facility" means a facility where reindeer intended to be sold as part of commerce and intended for human consumption is slaughtered or processed;

"slaughtering or processing facility" does not include a

(A) food service described in 18 AAC 31.205 that accepts and processes a donation of reindeer in compliance with 18 AAC 31.205(1) - (6);

(B) site described in 18 AAC 31.820(a)(1) where reindeer are slaughtered and dressed for purposes of sales in compliance with 18 AAC 31.820(a)(1) - (a)(4); or

(C) retail meat market that is permitted under 18 AAC 31 and that processes reindeer in accordance with 18 AAC 31.820(b);

(87) "splitting" means to separate, cut, or divide into two or more parts;

(88) "stunned" means rendered unconscious;

(89) "thermally process" means to perform thermal processing as defined in 18 AAC 31.990 of food, food products, or food ingredients;

(90) "transfer station" means a place, premises, or facility where milk or milk products are transferred directly from one milk tank truck to another;

(91) "utensil" means a handheld or other similarly portable implement used to prepare, transport, or store food, food products, or food ingredients;

(92) "water activity" has the meaning given in 18 AAC 31.990;

(93) "wholesome" has the meaning given in 18 AAC 31.990. (Eff. 5/23/98, Register 146; am 1/14/2001, Register 157; am 9/6/2003, Register 167; am __/__/__, Register __)

Authority:	AS 03.05.011	AS 17.20.030	AS 17.20.200
	AS 03.05.020	AS 17.20.040	AS 17.20.230

Register ____, _____ 2010

ENVIRONMENTAL CONSERVATION

AS 03.05.040	AS 17.20.070	AS 17.20.250
AS 03.05.050	AS 17.20.072	AS 17.20.270
AS 17.20.010	AS 17.20.075	AS 17.20.290
AS 17.20.020	AS 17.20.190	AS 44.45.020

Subject: FW: Let's change a regulation

Dear Friends and Family;

I'm asking you for a favor, one that won't take much time but could make a difference. A little history is in order about how I came to be asking for help. I have several clients that have home dairies (both goat and cow). They make terrific cheeses but they can't sell those cheeses due to government regulations, which in Alaska are based on USDA guidelines. This sounds OK until you read the guidelines, which are actually the size of a mystery novel. Under current regulations, local cheese producers would have to have an eight room facility including a laboratory to check for antibiotics in the milk. As one of my clients says, "If I didn't give them antibiotics who would have?" The point is, these rules are made for large dairies and pushed by the American Dairy Association to further their interests not ours.

Let me be very clear; we are talking about cheese made from pasteurized milk. This is cheese that these small producers are feeding to their own families and friends. Under these current rules, Alaska does not and will never have a cheese industry. This concerns me. One reason is from an economic development standpoint. My friend is asked weekly to sell cheese or milk (many children can't drink cow's milk). This would not be a huge industry, but it is still dollars that leave Alaska that could be reinvested here. Have you noticed lately what artisanal cheeses are selling for at the supermarket? The ability to sell cheese would provide a good supplementary income for these farm families. Secondly, we Alaskans don't produce much. If our supply chain were ever interrupted due to war, disease, natural disaster or economic meltdown, things here could become dire. We should encourage people in our community to raise dairy animals so that in the event of an emergency, there would be a source of milk for those most in need of it. Thirdly, I'm quite frankly sick of government sticking their collective noses into places where they don't belong. I don't mind being protected from things that are dangerous, but they have taken the definition of dangerous to absurd lengths. As it is, we have very little idea of the regulations that exist for the manufacture of cheese which we import from other countries. Wouldn't you prefer to buy from a farmer you know?

Jennifer Ansley, a local goat owner, (She makes and sells those terrific goat's milk lotions and soaps you buy around town. Far Above Rubies is the name of her product.) and I have spent a lot of time on this. We've met with people from the University, the State Veterinarian, people from the DEC, senators and representatives, officials from the FNSB and others. Everyone is sympathetic but most have the 'can't get there from here attitude'. However, currently there is a proposed cheese regulation out for comment. We have been led to believe that if they get enough response from the public, they might be willing to change the regulations.

So here is what I'm asking you to do.

1. Write a short comment stating you would be in favor of an exemption for home dairies from the proposed regulation 18AAC32 and e-mail it to jay.fuller@alaska.gov. Or you could call him at 907-929-7335. Jay Fuller is with the State Veterinarian office. Note that this is only about cheese. Please don't muddy the waters with any other issues.
2. Forward this to as many Alaskans as you can.

907 375 8217

The deadline for comments is December 3rd at 5pm.

If this works, maybe we could change some other things too. Who knows, maybe we could make the democratic process work after all.

Thank you so much for your help. This is an issue that is important to me. If you find yourself in the same situation, let me know I would be glad to help. You can e-mail me or call me @ 474-4576 weekdays or 488-2666 evenings and weekends with questions or comments.

Paul Robinson

176 member - Jacobson Elm Dec. Com.?

PBR@RES<PA.com

John Davies

From: Jim Pound
Sent: Wednesday, February 03, 2010 4:23 PM
To: John Davies
Subject: FW: Cheese Regulation Packet

From: Havemeister, Franci A (DNR) [mailto:franci.havemeister@alaska.gov]
Sent: Thursday, December 03, 2009 9:38 AM
To: Ryan, Kristin J (DEC); Peter Fellman; Fuller, Jay D (DEC); Rep. Mark Neuman; Rep. Jay Ramras; Rep. Carl Gatto; Jane Pierson; Jim Pound; Paul Labolle; Rep. Bill Stoltze; Rep. Craig Johnson; Rep. Wes Keller; Rex Shattuck; Sheila Peterson
Cc: Gerlach, Robert F (DEC); Haralson, Lora L (DNR)
Subject: RE: Cheese Regulation Packet

Kristin,

The Division of Agriculture is requesting an extension on the Cheese Regs to give industry more time to review and comment.

Thank you for your consideration.

Franci

Franci Havemeister, Director
Division of Agriculture
State of Alaska
907-761-3867

From: Ryan, Kristin J (DEC)
Sent: Tuesday, December 01, 2009 8:07 AM
To: Fellman, Pete (LAA); Havemeister, Franci A (DNR); Fuller, Jay D (DEC); Neuman, Mark A (LAA); Ramras, Jay B (LAA); Gatto, Carl (LAA); Pierson, Jane (LAA); Pound, Jim (LAA); Labolle, Paul C (LAA); Stoltze, Bill (LAA); Johnson, Craig W (LAA); Keller, Wes (LAA); Shattuck, Rex (LAA); Peterson, Sheila (LAA)
Cc: Gerlach, Robert F (DEC)
Subject: RE: Cheese Regulation Packet

Pete are you requesting an extension of the comment period?

By the way, a legislative attorney has reviewed them already and provided comments to the regulatory review committee. Lisa Kirsch was the reviewer.

Kristin

From: Peter Fellman [mailto:Peter_Fellman@legis.state.ak.us]
Sent: Tuesday, December 01, 2009 6:53 AM
To: Havemeister, Franci A (DNR); Ryan, Kristin J (DEC); Fuller, Jay D (DEC); Neuman, Mark A (LAA); Ramras, Jay B (LAA); Gatto, Carl (LAA); Pierson, Jane (LAA); Pound, Jim (LAA); Labolle, Paul C (LAA); Stoltze, Bill (LAA); Johnson, Craig W (LAA); Keller, Wes (LAA); Shattuck, Rex (LAA); Peterson, Sheila (LAA)
Subject: RE: Cheese Regulation Packet

John Davies

From: Jim Pound
Sent: Wednesday, February 03, 2010 4:23 PM
To: John Davies
Subject: FW: Let's change a regulation

From: Peter Fellman
Sent: Tuesday, December 01, 2009 7:22 AM
To: Jane Pierson; Rep. Jay Ramras; Rep. Mark Neuman; Rep. Carl Gatto; Rex Shattuck; Rep. Mike Kelly; Jim Pound; Paul Labolle; Rep. Bill Stoltze; Rep. Wes Keller; Sen. John Coghill
Subject: FW: Let's change a regulation

From: P&P Fellman [mailto:udder_farm@hotmail.com]
Sent: Tuesday, December 01, 2009 7:12 AM
To: Peter Fellman
Subject: FW: Let's change a regulation

Subject: FW: Let's change a regulation
Date: Fri, 20 Nov 2009 10:59:09 -0900
From: pbr@rescpa.com
To: udder_farm@hotmail.com

From: Paul Robinson
Sent: Thursday, November 19, 2009 3:41 PM
To: 'clay spurling'; 'Jeff Wagner'; 'Janeen Macom'; 'Joanne Trefethen'; 'jenifer@ciint.com'; 'J Wigdahl'; 'John Luther Adams'; 'jspencer'; 'Julie Ament'; 'Juliette Boselli'; 'jstearns@gci.net'; 'JOHN JACKOVICH'; 'Jay Fulk'; 'John Kelly'; 'Janet Wakefield'; 'Joan Johnson'; 'Julie Scott'; 'jclark@alaska.net'; 'Jim Craig'; 'Jenifer Lefebvre'; 'Jimmy Wingerter'; 'Miller, Judy'; 'Amy Borneo'; 'amy johnson'; 'Audrey Ranstead'; 'Aileen D. Munoz'; 'Ann Hopper'; 'Amy Bristor'; 'Lopuhovsky, Angela'; 'Audra McGhee'; 'Hollister, Cole'; 'aknapp@grantstation.com'; 'Heather L Heineken'; 'Gary Baxley'; 'Bill St. Pierre'; 'brat@gci.net'; 'beth Kohnen'; 'bergdahl@ptialaska.net'; 'Bob Sattler'; 'conley jessica'; 'Cynthia Walker'; 'crystalg@rescpa.com'; 'callienne elterman'; 'Cynthia Adams'; 'Carrie McEnteer'; 'Cindy Salmon'; 'cynthia@acsalaska.net'; 'Charlie Dexter'; 'Charlie Dexter'; 'Connie Siegman @ Full Spectrum Painting, Inc.'; 'Cyndie Warbelow-Tack'; 'Don Ives'; 'Doris Miller'; 'diana'; 'Dr. Jonathan Victorino'; 'Dennis Witmer'; 'Karen Dieringer'; 'denalisubway@mac.com'; 'Debbie Shreve'; 'Dunham, Gay O.'; 'Donna Evans'; 'Darcy Harrod'; 'Debbi Miller'; 'Eric'; 'Ed & Pat McClure'; 'Esther Lara'; 'Kristi Higa'; 'Gary Laursen'; 'Amy Bristor'; 'Susan Doren'; 'Gary Brooking'; 'conley jessica'; 'Gary Baxley'; 'Robert Hook'; 'Paula Kunkel'; 'holladay.hardwoods@yahoo.com'; 'Larry Santoni'; 'Harold Woods'; 'Hannah preuss'; 'Image Optical'; 'kirstys@rescpa.com'; 'Kelly Ward'; 'Karma Seaman'; 'kmcafee@gci.net'; 'Kate Hall'; 'karrie@hairbodyandsol.com'; 'ken.jernstrom@alaska.edu'; 'Kate LaSota'; 'Kirsty'; 'Kaarin Tack'; 'Lillian O'Brien'; 'Winters, Linda'; 'Leisa Boswood'; 'Lantz, Teresa'; 'Lovell, Terri'; 'Meghan Geyer'; 'mariya rover'; 'Mike Young'; 'monica dallas'; 'Sharon McConnell'; 'Mark Ricahrds'; 'mbmgt@acsalaska.net'; 'mstevenson@alaska.net'; 'Nedra Buck'; 'Webber, Paula Sue (DOT)'; 'Patty Loud'; 'Patricia Peirsol'; 'Sexton, Roxann G (DOT)'; 'regina white'; 'Tori Clark'; 'Roblyn'; 'radcarlson@msn.com'; 'Sandy Crump'; 'Sarah Woods'; 'sharon@fundingexchange.org'; 'Sarah Lefebvre'; 'Sage Adams'; 'Susan Willis'; 'Ted Tisdale'; 'Tamara L. Spaulding'; 'Tonya L. Hess'; 'Teresa Quakenbush'; 'trudy@acousticadventures.com'; 'villa@santanet.org'; 'Veronica R.

John Harris is asking our legislative attorney that reviews regulations, to look at these proposed regulation changes. Our view is there wasn't enough time given for good public process, 30 days or less depending when people heard about this action. Also we will be asking the legislative committee that reviews regulation changes to take this up during the next session. If there needs to be changes in policy with regards to farm products we should look at every thing DEC is doing with regards to farm and home production. As you know there are volumes of information that is adopted by publication, it takes longer than 30 days review the material and get a complete picture of what DEC is doing to the good people of this state. Everyone who has interest should be asking for a time extension on this one.

From: Havemeister, Franci A (DNR) [mailto:franci.havemeister@alaska.gov]

Sent: Monday, November 30, 2009 1:13 PM

To: Peter Fellman

Subject: FW: Cheese Regulation Packet

Pete,

Have you had a chance to take a look at these regs? The last day to comment is Dec 3rd.

Thanks

Franci

Franci Havemeister, Director
Division of Agriculture
State of Alaska
907-761-3867

From: Havemeister, Franci A (DNR)

Sent: Monday, November 23, 2009 3:53 PM

To: Bert Gore (crosswind@matnet.com)

Subject: FW: Cheese Regulation Packet

Bert,

Thought these might interest you!

Have a happy Thanksgiving!

Franci

Franci Havemeister, Director
Division of Agriculture
State of Alaska
907-761-3867

From: Fuller, Jay D (DEC)

Sent: Wednesday, November 04, 2009 11:07 AM

To: Havemeister, Franci A (DNR); dhepler@gci.net; pete.fellman@legis.gov; ffmps@uaf.edu; Kusko Lady; Editor@alaskafarmandranchnews.com; kbeus@yahoo.com; fairskies@allisawfarm.com; janehamilton99737@yahoo.com

Cc: Ryan, Kristin J (DEC); Gerlach, Robert F (DEC)

Subject: FW: Cheese Regulation Packet

Dear Interested Parties,

Attached is the public notice for draft cheese production regulations. The draft regulation is now posted on the internet for public comment. A raw milk fact sheet is also attached for your information. Please feel free to disseminate this

information to any other people that may be interested. We plan to hold a workshop this month to discuss the regulation. Please let me know if you are interested in participating so we can arrange a schedule.

Thank You,

Jay Fuller, DVM
Assistant State Veterinarian
Alaska Dept of Environmental Conservation

Paul Robinson

From: Jeff Wagner [vagner1971@hotmail.com]
Sent: Monday, November 23, 2009 6:22 AM
To: Paul Robinson
Subject: RE: Dairy products

I read your letter urging people to write their representatives. It looked good and I promptly sent off a message to the e-mail account in the letter. Anything else I can do, let me know.

Jeff

Subject: RE: Dairy products
Date: Fri, 20 Nov 2009 14:38:26 -0900
From: pbr@rescpa.com
To: vagner1971@hotmail.com

What do you think?

From: Jeff Wagner [mailto:vagner1971@hotmail.com]
Sent: Wednesday, November 18, 2009 12:57 PM
To: Paul Robinson
Subject: Dairy products

Hello,

My name is Jeff Wagner, a friend of Clay Spurling. He dropped by today and gave me your e-mail, telling me to get in touch about dairy issues (for lack of a better way to refer to them right now). He told me you were on the front lines trying to get the laws changed? I have no idea how I can help, but I am interested in what you are doing. Contact me if you please.

Jeff

Hotmail: Trusted email with powerful SPAM protection. [Sign up now.](#)

Bing brings you maps, menus, and reviews organized in one place. [Try it now.](#)

Paul Robinson

From: Fuller, Jay D (DEC) [jay.fuller@alaska.gov]
Sent: Tuesday, November 24, 2009 2:02 PM
To: Paul Robinson
Subject: RE: Home Dairy Cheese

Thank you for your comment. All comments will be addressed by DEC after the comment period ends Dec 3rd.

Jay Fuller, DVM
Assistant State Veterinarian

From: Paul Robinson [mailto:pbr@rescpa.com]
Sent: Monday, November 23, 2009 4:39 PM
To: Fuller, Jay D (DEC)
Subject: Home Dairy Cheese

Dr Fuller,

It was a pleasure talking to you the other day. I'm writing as a follow up to that. Several people have told me that we are very fortunate to have you to deal with as your predecessor was less than open to change.

I really want the State to make an exemption from the rules to allow small dairies to flourish in our State (18aac32). We need to diversify our economy. This is something that most politicians use as part of their election platform but at this point it just seems it is a buzz-word. Also, I feel that is healthier buying locally produced cheese products than those that come from thousands of miles away or Kraft Plastic Cheese whose ingredients reads like a chemistry experiment. In addition, I think our State is vulnerable if our supply chain was ever broken (war, economic meltdown, natural disaster....). But mainly I like the cheese that I currently cannot buy.

In our conversation you indicated that public comment would make a difference and we intend on finding out if that is true. I'm sure you have noticed some interest in this already and you can expect some additional responses on this matter before the deadline. Like many Americans and Alaskans I don't trust our governments and I'm hoping this process will show me (and others) that our voice can be heard. If you could get me on your mailing list or e-mailing list for future regulation in this area I would appreciate it.

Respectfully Yours

Paul Robinson, CPA
1300 Washington Dr., Ste 201
Fairbanks, AK 99709

Paul Robinson

From: Ann Hopper [ffadh@uaf.edu]
Sent: Tuesday, November 24, 2009 2:20 PM
To: Paul Robinson
Subject: FW: Favor of an exemption for home dairies

Annie Hopper, LCSW
UAF CRCD Tech Prep Coordinator
510 2nd Avenue/Room 309A Chena Building
P.O. Box 756510
Fairbanks, Alaska 99775-6510
(907) 455-2034
Fax: (907) 455-2051 Cell: (907) 388-8802
ffadh@uaf.edu

From: Fuller, Jay D (DEC) [mailto:jay.fuller@alaska.gov]
Sent: Tuesday, November 24, 2009 1:58 PM
To: Ann Hopper
Subject: RE: Favor of an exemption for home dairies

Thank you for your comment. All comments will be addressed by DEC after the comment period ends Dec 3rd.

Jay Fuller, DVM
Assistant State Veterinarian

From: Ann Hopper [mailto:ffadh@uaf.edu]
Sent: Tuesday, November 24, 2009 1:34 PM
To: Fuller, Jay D (DEC)
Subject: Favor of an exemption for home dairies

Hello Jay: just wanted to send a comment about the proposed regulation 18AAC32 to say I am in favor of an exemption for home dairies! Please do what you can to support this exemption! Annie Hopper

Annie Hopper, LCSW
Cell: (907) 388-8802

Paul Robinson

From: Dyan Cooper [dyan@completeservicecompany.com]
Sent: Monday, November 30, 2009 12:08 PM
To: jay.fuller@alaska.gov
Subject: Reg. 18AAC32 exemption for Home Dairy Sale of Cheese
Attachments: "AVG certification"

Dear Sir,

This writing is to register that I, Dyan Cooper, 2100 Hanson Rd., Fbks, AK, 99709, Phone # 907-452-0540, am in favor of an exemption for Home Dairies in the proposed regulation 18AAC32.

Respectfully,

Dyan Cooper

Kelly Ward

From: Fuller, Jay D (DEC) [jay.fuller@alaska.gov]
Sent: Tuesday, November 24, 2009 2:00 PM
To: Kelly Ward
Subject: RE: Home Dairy exemption

Thank you for your comment. All comments will be addressed by DEC after the comment period ends Dec 3rd.

Jay Fuller, DVM
Assistant State Veterinarian

From: Kelly Ward [mailto:kelly@rescpa.com]
Sent: Tuesday, November 24, 2009 9:22 AM
To: Fuller, Jay D (DEC)
Subject: Home Dairy exemption

Mr. Fuller,

I am writing regarding the fact that I am in favor of an exemption for home dairies. This issue is covered under proposed regulation 18AAC32. I believe this issue is of significant important in Alaska where so many of our suppliers are separated by such a large distance. By having home dairies, this is one way in which we can support our local economy and the local community through legislation that favors local Alaskans.

Kelly Ward, EA

Paul Robinson

From: Mike Young [myoung007@alaska.net]
Sent: Sunday, November 22, 2009 7:03 PM
To: jay.fuller@alaska.gov
Cc: Paul Robinson; micah@cbsnews13.com; Sam Oxman; Bill St Pierre
Subject: RE: 18AAC32 EXEMPTION

Jay Fuller,

As a former elected Borough Assemblyman we are trying to support small businesses here in the interior.

I am certain you are aware of the difficulties that home dairies have regarding the proposed regulation 18AAC32.

I do hope you would be in favor of an exemption for home dairies regarding this onerous regulation so that they can expand their markets into creating cheese and other products to be consumed by our local market.

Please let me know if you are willing to consider an exemption before Dec. 3rd so that we in the interior can take more drastic action to assist small farms.

Regards,

Michael S. Young
Fairbanks North Star Borough Assemblyman
(Retired)

Kirsty Steele

From: Fuller, Jay D (DEC) [jay.fuller@alaska.gov]
Sent: Tuesday, November 24, 2009 2:00 PM
To: Kirsty Steele
Subject: RE: Regulation 18AAC32

Thank you for your comment. All comments will be addressed by DEC after the comment period ends Dec 3rd.

Jay Fuller, DVM
Assistant State Veterinarian

From: Kirsty Steele [mailto:KirstyS@rescpa.com]
Sent: Tuesday, November 24, 2009 9:31 AM
To: Fuller, Jay D (DEC)
Subject: Regulation 18AAC32

Mr Fuller

I am writing to state that I am in favor of an exemption for home dairies from the proposed regulation 18AAC32. I have recently become aware of the difficulties facing small dairy farms in our state and how difficult, if not impossible, it is to sell dairy products. I would love to be able to purchase local cheeses and milk. To have this ability would not only benefit my family but would be of great benefit to our State and our local economy.

Kirsty Steele
240 Thoreau Drive
Fairbanks, AK 99712

12/1/2009

Paul Robinson

From: Eric [Eric.DeltaP@alaska.net]
Sent: Saturday, November 21, 2009 6:25 AM
To: Paul Robinson
Subject: FW: Cheese

Delta P Pump & Equipment, LLC.

P.O. Box 771452
Eagle River, AK 99577-1452
Phone: (907) 694-7583 Fax: (907) 694-7584
www.deltapump.com

Eric Grabber
Technical Consultant, Sales
Delta P Pump & Equipment, LLC
6881 Altair Lane
Fairbanks, AK 99712
Office Phone: 907-490-7325
FAX: 907-490-7325
Mobile Phone: 907-699-9904
e-mail: Eric.DeltaP@alaska.net

From: Fuller, Jay D (DEC) [mailto:jay.fuller@alaska.gov]
Sent: Friday, November 20, 2009 2:46 PM
To: Eric
Subject: RE: Cheese

Thank you for your comment. All comments will be addressed by DEC after the comment period ends Dec 3rd.

Jay Fuller, DVM
Assistant State Veterinarian

From: Eric [mailto:Eric.DeltaP@alaska.net]
Sent: Friday, November 20, 2009 1:46 AM
To: Fuller, Jay D (DEC)
Subject: Cheese

Delta P Pump & Equipment, LLC.

P.O. Box 771452
Eagle River, AK 99577-1452
Phone: (907) 694-7583 Fax: (907) 694-7584
www.deltapump.com

Mr. Fuller,

I want to state that I am in favor of an exemption for home daries from the proposed regulation: 18AAC32. Please assist the local farmers in their effort to develop a local production base for cheese. I would gladly support this effort economically through the purchase of product. We need to support our local industry and facilitate their reasonable efforts.

Thank you for your support,

Eric Grabber
Technical Consultant, Sales
Delta P Pump & Equipment, LLC
6881 Altair Lane
Fairbanks, AK 99712
Office Phone: 907-490-7325
FAX: 907-490-7325
Mobile Phone: 907-699-9904
e-mail: Eric.DeltaP@alaska.net

Paul Robinson

From: Brenda Holladay [baholladay@alaska.edu]
Sent: Friday, November 20, 2009 2:13 PM
To: Paul Robinson
Cc: Scott Holladay
Subject: [Fwd: re: regulation 18AAC32]

Hi Paul,

I sent your letter to several of my friends & family, and I particularly liked Brad's brief response so I'm sharing with you. Your letter is making the rounds, and I've felt A LOT of support for the exemption.

:)

Brenda

----- Original Message -----

Subject: re: regulation 18AAC32
Date: Fri, 20 Nov 2009 11:58:52 -0900
From: Brad Marden <bmmarden@alaska.edu>
To: jay.fuller@alaska.gov

Dear Jay,

I would like to encourage you to consider exempting small, home dairies from regulations which would make the viability of their businesses more difficult. Improving safety and public health is an important goal, but it is also important to recognize when rules and regulations will have the effects- intended or unintended- on people's livelihoods, and on the availability of locally-produced, healthy dairy products. I feel strongly that small cheese farms do a good job at policing their own quality, because niche markets such as this thrive or die from their reputation and quality standards. Please consider the possible negative impact of proposed regulation 18AAC32 on small cheeseries.

Sincerely,
Brad Marden

--

><(((e>

Brenda Holladay
Research Scientist
Fisheries Oceanography Laboratory
Institute of Marine Science
University of Alaska Fairbanks
P.O. Box 757220
Fairbanks, AK 99775-7220

Room 134 O'Neill Bldg.
voice 907-474-7938
fax 907-474-1943
><(((e>

Paul Robinson

From: Gareth O'Neil [gareth@reconfilms.com]
Sent: Monday, November 23, 2009 2:11 PM
To: jay.fuller@alaska.gov
Subject: Artisnal Cheese

Mr. Fuller,

Much like others in alaska, I am disturbed by the lack of locally produced food. We are limited in many areas by geographic complication, but one product we could, buy and share locally is cheese. Good old cow or goat milk- with all little value added culture, from small home dairies, and a minimal oversight on the part of your office, or any other government agency for that matter.

Simple; reduce regulation on producers below a certain size.

Done. Done and Done.

That will allow Alaskan businesses to grow, and perhaps develop into major cheese biz- prepared for all the regulation and obfuscation therewith.

Many thanks, I know my voice is one of many, and trust that we can get this issue off the shelf, and local cheese on the table.

Gareth O'Neil



Agency 49, LLC
4523 Old Airport Way
Fairbanks, Alaska 99709
907.451.1500 stage

Paul Robinson

From: Kirsty Steele
Sent: Friday, November 20, 2009 3:54 PM
To: Paul Robinson
Subject: FW: Exemption in 18AAC32

Kirsty Steele

Robinson & Associates, PC
1300 Washington Dr, Ste 201
Fairbanks, AK 99709
Phone 907-474-4576
Fax 907-474-1045
www.robinsonandassociatespc.com

IRS CIRCULAR 230 NOTICE: Any US tax advice included in this written or electronic communication was not intended or written to be used, nor can it be used by the tax payer, for the purpose of avoiding any penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law.

This email and any attachments are for the sole use of the intended recipient(s) and contains information that may be confidential and or legally privileged. If you have received this email in error, please notify the sender by reply email and delete the message immediately. Any disclosure, copying, distribution or use of this communication by someone other than the intended recipient is prohibited.

From: chip S [mailto:thesteeles01@yahoo.com]
Sent: Friday, November 20, 2009 3:52 PM
To: jay.fuller@alaska.gov
Cc: Kirsty Steele
Subject: Exemption in 18AAC32

Mr. Fuller,

I recently found out about the regulations concerning small dairy farms and how difficult, if not impossible, it is to sell dairy products unless you are a huge conglomerate facility. These regulations put a huge strain on the "ma and pa" dairy businesses and gives only a few businesses the ability to distribute their goods. I propose the state of Alaska make the necessary changes in favor of an exemption for home dairies from the proposed regulation 18AAC32. These changes will lead to a better trade system and of course, lower prices on dairy products for the state of Alaska. I will also be contacting my Federal Senators Begich and Murkowski on this subject. Please keep me informed of any future developments on this issue.

Very Respectfully,
Chief Warrant Officer William Steele
240 Thoreau Drive

Fairbanks, Alaska
99712

Paul Robinson

From: Roblyn [roblyn@ak.net]
Sent: Sunday, November 22, 2009 1:46 PM
To: Paul Robinson
Subject: Home dairies...

Thank you for all that wonderful information.

Yes I agree, it is important to support local small industries, ie. the families involved, their talent and interest that they add to the community.

I sent off an email to Jay Fuller. It is important to remember that we are the ones that should be able to affect and add to the democratic process....

Roblyn

Roblyn L. Wiebe, EA, ATA
P.O. Box 83809
Fairbanks, AK 99708
(907) 479-7311 Fax (907) 479-6041
Email: roblyn@ak.net

The foregoing email may contain U.S. federal tax advice. If so, please read the following carefully:

Pursuant to Title 31 of the Code of Federal Regulations, Part 10 requires us to notify you that any tax advice included in this electronic communication is not intended or written to be used, and that it cannot be used by the taxpayer, for the purpose of avoiding any penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions.

CONFIDENTIALITY NOTICE: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by e-mail and destroy all copies of the original message.

Paul Robinson

From: Far Above Rubies [gkahoe@gci.net]
Sent: Monday, November 23, 2009 9:27 AM
To: Paul Robinson
Subject: Re: Cheese

Dear Paul,

It seems as though you have gotten a lot of responses from people. That is very encouraging. At the goat meeting on Saturday, one of our members volunteered to put the letter on an Alaska goat owners list serve which apparently has many members in the Mat-Su valley and the Kenai area. Hopefully that will get people down there involved as well. The letter has also gone out on the 4H list serve, and I discussed it at North Pole 4H meeting yesterday.

Funny that your friend from Delta Pump got an answer from Jay Fuller. Dr. Fuller didn't send me any acknowledgement at all!

Jennifer

State orders Elkhorn farm to stop raw milk sales through cow-share program

By ASSOCIATED PRESS Saturday, Sept. 19, 2009

ELKHORN — State agriculture officials have ordered an Elkhorn farm to stop selling raw milk through a cow-share program after more than two dozen people fell ill.

The order against Zinniker Farm Inc., says 35 people from Walworth, Waukesha and Racine counties have been diagnosed with campylobacter jejuni since Aug. 13. That's a bacterial infection that causes diarrhea, cramping and vomiting.

All the victims said they had consumed raw milk. Thirty of them said they got it from the Zinniker farm. Tests matched campylobacter jejuni found in 29 victims' feces to campylobacter jejuni found in cow feces on the farm.

"Laws requiring pasteurization of milk have been on the books for more than half a century, and there are good public health reasons for that," said Steve Ingham, head of the Food Safety Division in the Department of Agriculture, Trade and Consumer Protection.

"We have very compelling evidence linking these illnesses to drinking raw milk. This is the third major outbreak in Wisconsin since 2001 that has been tied to raw milk consumption. That's not to mention a number of smaller ones in which the link was strongly suspected, but patients were unwilling to identify farms that provided the milk. So far we've been fortunate that the infections have not been life-threatening, but raw milk is an inherently risky food and it can lead to other, more dangerous illnesses, including E. coli 0157:H7 infection."

An epidemiologic investigation conducted by DATCP and the Wisconsin Department of Health Services has found 35 confirmed cases of Campylobacter jejuni infection, including 21 patients under age 18. One person was hospitalized. All the patients had consumed unpasteurized milk. Thirty of the patients identified Zinniker Family Farm, Elkhorn, as the source of the raw milk. The farm sells raw milk through a "cow-share" program. Twenty-seven of the confirmed cases were in Walworth and Waukesha counties; the rest were in Racine and Kenosha counties.

Additional testing showed that the Campylobacter jejuni isolated from 25 of the patients -- all linked to Zinniker Family Farm -- had the same DNA fingerprint. Manure samples obtained directly from milking cows on that farm also tested positive for Campylobacter jejuni with the same DNA fingerprint. Manure on the cows' udders or in the milking barn environment can contaminate milk. Pasteurization kills Campylobacter jejuni and other disease-causing bacteria in milk.

Campylobacter jejuni are bacteria that cause symptoms including diarrhea, abdominal cramping, fever, nausea and vomiting. Rarely, an infection may lead to paralysis, which may require hospitalization and artificial respiration. This generally occurs after the initial symptoms have

disappeared. *Campylobacter* can be transmitted by consuming food contaminated by animal feces or handled by someone with the infection who has not adequately washed his/her hands after using the bathroom.

Milk samples from the farm taken after the initial outbreak did not test positive, which is not unusual, Ingham said. Cattle shed the bacteria intermittently, so the bacteria may not have been present when the samples were taken. Changes in sanitation procedures could also explain the absence of bacteria in later milk samples, he said.

Because Zinniker Family Farm sells milk to a defined customer list, there is little risk to the general public in this case. However, the outbreak should discourage consumers from joining "cow-share," membership, or other similar arrangements to buy raw milk, and should discourage dairy producers from adopting such an arrangement for their farms, Ingham said.

"Selling raw milk to consumers is illegal in Wisconsin. Some farmers believe that such arrangements exempt them from the law. They are mistaken. The law says that owners may consume raw milk from their farms, but those owners have to be true owners with a real financial stake in the farm. And the law clearly says that unpasteurized milk can be sold only to a licensed dairy plant or to other licensed businesses that sell to dairy plants," he said.

Other outbreaks in Wisconsin that have been tied to raw milk include:

In December 2001, at least 30 laboratory-confirmed cases of *Campylobacter jejuni* were identified in northwestern Wisconsin, all tied to a cow-share program.

In June 2006, 19 laboratory-confirmed and 39 probable cases of *Campylobacter jejuni* infection were traced to cheese curds made from unpasteurized milk in an unlicensed facility by an unlicensed cheese maker in Ashland. The cases occurred in many Wisconsin counties and six other states.

Nationwide, the Centers for Disease Control and Prevention report that 45 outbreaks tied to unpasteurized milk or cheese consumption occurred from 1998 to 2005. These outbreaks occurred in 22 states, two were multi-state outbreaks, and they resulted in 1,000 illnesses, 104 hospitalizations and two deaths.

In an article published in the Wisconsin Medical Journal in August 2000, the Wisconsin Division of Public Health reported that from 1992 to 1999, consumption of raw milk and raw milk products was one of the top three risks for *E. coli* 0157:H7 infection in Wisconsin. *E. coli* 0157:H7 infections can be fatal.

Charles Knight
4913 Princeton Drive
Fairbanks, AK 99709

Phone 907-479-5808

December 3, 2009

Jay Fuller
Assistant State Veterinarian
Dept. of Environmental Conservation
555 Cordova Street,
Anchorage, AK 99501

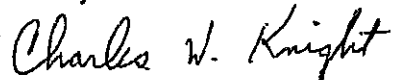
RE: Proposal to Adopt Changes in the Regulations dealing with Milk, Milk Products, and Reindeer Slaughtering and Processing.

Dear Mr. Fuller:

I have concerns about the proposed changes to regulations concerning cheese manufacturing in Alaska. These regulations appear to be written specifically to exclude cheese making as a cottage industry in Alaska. I know several people who make cheese from either goat or cow milk and sell their products to neighbors. Most of these people have hopes of expanding their operations so they can sell at Farmers Markets and possibly to tourists. Is there any possibility of an exception in these regulations to exclude individuals who sell directly to consumers so they would not be required to have a million dollar facility as described in the regulations?

It is my opinion that Alaska should be encouraging small businesses in Alaska, not regulating them out of existence. Since we are a long distance from the source of most of our food, I believe that anything that we can do to be self sufficient should be encouraged.

Thank you for this consideration,



Charles Knight

Larry "Papa" Meunier
P.O. Box 56604
North Pole, AK 99705

Phone 488-7326

December 3, 2009

Jay Fuller
Assistant State Veterinarian
Dept. of Environmental Conservation
555 Cordova Street,
Anchorage, AK 99501

RE: Proposal to Adopt Changes in the Regulations dealing with Milk, Milk Products, and Reindeer Slaughtering and Processing.

Dear Mr. Fuller:

I just recently learned of the proposed changes to regulations concerning cheese manufacturing in Alaska. I have not had adequate time to study the proposed regulations and when I called your office last week, I got a recording that you would be out of the office until today (the last day to comment on the proposed changes). I have many concerns about the proposed changes and do not have access to several of the standards that are adopted by reference. I request additional time to review these proposed standards and at this time have specific questions about the following items:

The permit is valid for one year. Is this permit required for the manufacturing of cheese or to sell cheese, or both? Various cheeses would take longer than one year to cure. If the permit were not renewed, would the cheese have to be destroyed?

A cheese producer must apply for a permit for each operation What is an operation? Is it a cheese manufacturing facility, or are seven different permits required (with fees) for plans A-G as indicated under Permit Requirements?

Potable water must come from a public water supply. What is a public water supply? Does this mean that cheese production must take place within the city limits where zoning doesn't allow it? How can I get public water on my farm?

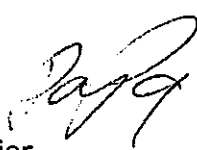
The wastewater must be discharged into a public sewer or into a system as required by 18AAC72. Could you please send me information on these wastewater requirements? Would a holding tank that could be emptied and the contents spread on agricultural land meet these requirements?

I see that eight different rooms are required and that four of these rooms must have concrete floors with water tight floors and p-traps that are accessible and cleanable. Could you please provide me additional information about how I can I access and clean a p-trap under a water tight concrete floor?

Sewage must be dispensed into an approved wastewater system at least 100 feet from the facility. If I use a holding tank, does it have to be 100 feet away from the facility?

I have several other questions that require a lot more study of these proposed regulations. I request that you do not accept these proposed regulations at this time, that you extend the comment period for at least 60 days, and that public information meetings be held in Palmer, Delta Junction and Fairbanks. These are the three largest agricultural regions in the State.

Thank you,


Papa Meunier

2/22/10

call Dr. Zuller - Alaska has very liberal
regs, no state has exemption for
small dairy -

- working on regs to minimize size -

Palmer operator 7 goats - qualified

60-70 goats needed

form a coop - bring milk to one processor

our regs are patterned after Oregon

need facility to insure safe purity

- regs at -

4 places authorized to make cheese

DEC - Jeff Green
State Vet

safety of public v economy of state

②

465 6578 - Pete - Reg Harris - Green reg

Pete Jefferson - Harris's office

- reg too complicated -
- small operator can't get into it - too much regulation

right to choose - what to put in your

body is up to you
personal choice - buy direct from farmer
choice - you look at farmer + decide

4573890 - Commentator

John Davies

From: Far Above Rubies [gkahoe@gci.net]
Sent: Friday, February 26, 2010 8:54 AM
To: John Davies
Cc: Meridith_Cameron@legis.state.ak.us; Paul Robinson
Subject: Re: ARRC meeting Schedule and Agenda
Attachments: State orders Elkhorn farm to stop raw milk sales through cow.docx

Dear Mr. Davies,

Paul Robinson forwarded your email to me, and I appreciate the opportunity to ensure that Alaskans can sell and purchase locally produced milk and milk products. I sell goat milk soap and goat milk skin cream at the Tanana Valley Farmers' Market, at stores around Fairbanks, and online. Every single Farmers' Market day, I have customers asking me if they can buy milk or cheese. Unfortunately, I have to tell them that such sales are illegal in Alaska. It is clear that there is a great demand for locally produced milk and cheese.

When Paul Robinson and I spoke to Jay Fuller in November about the proposed cheese making regulations, he told us that "cow-shares" were a legal way to sell milk products in Alaska and that the DEC would not take steps to regulate any "cow-share" programs. He also stated that any other type of sales were dangerous to the Public health and would not be allowed.

I pointed out to Dr. Fuller that "cow-shares" in which people "own" parts of an animal and are therefore entitled to a portion of the products from that animal, are well known to cause outbreaks of disease. I have appended to this email an Associated Press article from September 19, 2009 in which the entire "cow-share" program in Wisconsin was shut down due to bacterial infections caused by the consumption of raw milk distributed by "cow-shares."

I propose the following for the State's consideration:

- **Home farms, defined as a farm producing less than 10 gallons of milk per day, shall be exempt from the current cheese regulations proposed by the DEC. These farms would be allowed to sell their milk or milk products directly to the consumer. Such farms would be required to register with the DEC.**

I understand that the DEC is justly concerned with the public health and safety. An alternative to the above blanket exemption would be as follows:

- **All home farms, defined as farms producing less than 10 gallons of milk per day, shall be allowed to sell milk and milk products directly to the consumer after registering their farm with the DEC. Additionally, all milk shall be heat-treated (pasteurized) by raising the temperature of the milk to 165°F for 15 seconds.**

The benefits of the above alternatives are as follows:

- They cost the State no money.
- The DEC would have records of the farms providing milk and milk products to consumers. Right now, the DEC is willing to allow "cow-share" programs over which they have no control whatsoever. Should consumers become ill, it would be much more difficult to trace the problem to a specific farm since the DEC has no records of "cow-share" providers. In Wisconsin, many people who became ill refused to disclose the farm which had provided the milk to them in order to protect the farmers.

As a third alternative, the State should consider the following proposal:

- **Home farms, defined as farms producing less than 10 gallons of milk per day, shall be allowed to sell milk and milk products directly to the consumer as long as the farm is registered with the DEC. The milk shall be heat-treated (pasteurized) by raising the temperature of the milk to 165°F for 15 seconds. A**

representative from each farm shall attend an annual milk hygiene class sponsored by the Cooperative Extension.

This third alternative would, of course, cost the State money to provide these classes to the farmers.

With the growing public demand for locally produced food, as well as the need to protect Alaska's food supply system, it is important that we have reasonable laws in place that will allow for the safe sale of milk and milk products by local farmers. I think the proposals which I have made address public safety issues without imposing an untenable burden of expense and labor on home farms. Please note that I am talking about small home farms selling directly to consumers. The cheese regulations as proposed by the DEC are fine for large dairies the purpose of which is the commercial sale of products to restaurants and grocery stores. It should be obvious, however, that there is a big difference between such commercial farms and home farms. The regulations should reflect this difference.

Thank you again for the opportunity to assist you with this issue. I look forward to attending the meeting from Fairbanks on March 8.

Sincerely,

Jennifer Ansley
Far Above Rubies
907-457-3890
www.alaskagoatmilk.com

----- Original Message -----

From: Paul Robinson
To: Far Above Rubies ; Kathryn Dodge
Sent: Wednesday, February 24, 2010 1:41 PM
Subject: FW: ARRC meeting Schedule and Agenda

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Wednesday, February 24, 2010 1:30 PM
To: Paul Robinson
Cc: Rep. Wes Keller; Jim Pound
Subject: ARRC meeting Schedule and Agenda

February 24, 2010

Dear Paul Robinson:

This email is a follow up to our recent telephone conversation about the ARRC review of the proposed cheese regulations. Attached to this email you will find the meeting Schedule and Agenda. You and the individuals that you noticed in your earlier email are invited to attend the meeting and testify. If you are not able to attend in person here in Juneau, then telephone participation will be fine. You may participate through your local LIO. There is limited call in capacity for someone not able to get to the LIO.

If you have any printed information that you would like the committee members to see, please send it to me for posting on BASIS and for distribution to the committee. The information will be public, and I will have copies for the public here in the meeting room for review as well.

If you have any questions, feel free to call me at 907 465-4899.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

John Davies

From: John Davies
Sent: Wednesday, February 24, 2010 1:16 PM
To: 'Larry.Hartig@alaska.gov'; 'Jay.Fuller@alaska.gov'
Cc: Rep. Wes Keller; Jim Pound
Subject: Invitation to ARRC meeting

February 24, 2010

Dear Commissioner Hartig and Doctor Jay Fuller:

Representative Keller asked me to invite you to the upcoming Administrative Regulation Review Committee "ARRC" meeting scheduled for March 8th at 3:00 pm in room 17 of the State Capitol Building, Juneau, Alaska.

If you are not able to attend in person, telephone participation would be fine as well.

The ARRC has received public comments inquiring about ways to structure a form of exemption to the proposed cheese production regulations for either small producers or for direct sales without third party involvement.

The focus of the committee review will be to discuss the DEC's need to protect the public from harm weighed against the individual's right to choose what he/she wishes to consume, as related to the proposed regulations fulfilling statutory authorization and/or legislative intent.

If you have any questions please feel free to call me at 907 465-4899. Please note that any printed information you wish to present, I will need copies so I may post them on BASIS and distribute them to the committee members.

We look forward to hearing from you and having your participation at the meeting.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

John Davies

From: Ryan, Kristin J (DEC) [kristin.ryan@alaska.gov]
Sent: Tuesday, March 02, 2010 11:39 AM
To: John Davies
Cc: DEC Legislative Contacts; Fuller, Jay D (DEC)
Subject: RE: ARRC meeting Schedule and Agenda

Thanks John. I will be the lead for the department during this ARRC meeting. Dr. Fuller or Dr. Gerlach will be attending as well. We will most likely only be participating via teleconference rather than traveling to Juneau just for this hearing. Commissioner Hartig may be joining us if his schedule allows.

I also want to be clear about what we can say during the hearing since the administrative procedures act defines the rule making process. We won't be submitting anything in writing since we are still discussing what changes we will be making to the draft regulations and they are not final. This hearing will provide an opportunity for legislators to hear constituent concerns. The proposed regulations for cheese processing had two comment periods which is when the department received feedback from the public. Those comment periods have closed so testimony made during this hearing will not be part of our regulatory drafting record although it will be part of the legislative record. That said, I expect that everything brought up during the committee hearing was submitted to the department during the comment period so this most likely won't be a problem. We can answer questions asked by the committee on the draft regulations but we will be unable to make any commitments on the final regulatory package since we are still deliberating. We will be as accommodating as possible but we are still restricted by administration rules even if this is a legislative process.

If you have additional questions, please let me know.

Kristin Ryan

Director
Environmental Health Division
Alaska Department of Environmental Conservation
907.269.7644 ph / 907.269.7654
Kristin.ryan@alaska.gov

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Friday, February 26, 2010 12:41 PM
To: Ryan, Kristin J (DEC)
Subject: FW: ARRC meeting Schedule and Agenda

Here is the schedule and agenda. JD

From: John Davies
Sent: Wednesday, February 24, 2010 1:20 PM
To: 'Larry.Hartig@alaska.gov'; 'jay.fuller@alaska.gov'
Cc: Rep. Wes Keller; Jim Pound
Subject: ARRC meeting Schedule and Agenda

February 24, 2010

Dear Gentlemen:

FYI, please find attached a copy of the March 8th meeting Schedule and Agenda.

If you have any questions, feel free to call me at 907 465-4899.

Thank You,

John Davies
ARRC Acting Committee Aide

Alaska Farm & Ranch News

March 04, 2010

Phone: 907-895-5551 OR Email:
Editor@alaskafarmandranchnews.com**Subscribe Today!**[Home](#)[News](#)[Classifieds](#)[Photo Gallery](#)[Report on News](#)[Calendar](#)[Search](#)[Archives](#)[Search tips](#) | [Advanced](#)[Search Google](#)

Proposed cheese regulations to be heard in legislature

03/02/10

STAFF REPORT

[Email this story to a friend](#)

The Joint Administrative Regulation Review Committee of the Alaska Legislature is scheduled to hold a hearing on the cheese regulations proposed by the Department of Environmental Conservation (DEC). The regulations, which are to become part of the Alaska Administrative Code, (18 AAC 32) place controls on the production of cheese products.

DEC proposed the regulations last year to regulate the growing number of cheese producers in the state. The growing locavore movement has resulted in an increase in the number of individuals desiring to sell raw milk and produce cheese and other products in small facilities.

One individual, who requested they not be identified, stated they have goats and sell goat milk and cheese to friends and neighbors.

"It's only a few gallons of milk and a little cheese," they said. "The regulations will mean I can't sell my next door neighbor cheese I make at home."

The committee has scheduled a period for public testimony on Monday, March 8 at 3 p.m. The committee hearings are scheduled for teleconference.

To provide public testimony, contact your local Legislative Information Office and request to participate in the Joint Administrative Regulation Review Committee public testimony on 18 AAC 32 - Proposed Regulations Relating to Cheese Production.

Copyright 1998-2007 [MyWebPal.com](#). All rights reserved.Contact us at webmaster@mywebpal.com

All other trademarks and Registered trademarks are property of their respective owners.

John Davies

From: Rep. Wes Keller
Sent: Tuesday, March 02, 2010 9:04 PM
To: John Davies
Subject: RE: ARRC meeting Schedule and Agenda

Great, Please make sure this email is in the packet so I can explain a bit about limitations of testimony.

Wes

From: John Davies
Sent: Tuesday, March 02, 2010 12:05 PM
To: Ryan, Kristin J (DEC)
Cc: Rep. Wes Keller
Subject: RE: ARRC meeting Schedule and Agenda

Dear Director Ryan,

Thank you for your email, and for giving me the scope of your input. I will copy your email to the Chairman, Representative Keller, so he will understand the nature of the restriction on your comments.

If you need assistance in facilitating your call in to the meeting, just let me know.

Would you like copies of the input I have received from the public?

Regards,
John Davies
ARRC Acting Committee Aide

From: Ryan, Kristin J (DEC) [mailto:kristin.ryan@alaska.gov]
Sent: Tuesday, March 02, 2010 11:39 AM
To: John Davies
Cc: DEC Legislative Contacts; Fuller, Jay D (DEC)
Subject: RE: ARRC meeting Schedule and Agenda

Thanks John. I will be the lead for the department during this ARRC meeting. Dr. Fuller or Dr. Gerlach will be attending as well. We will most likely only be participating via teleconference rather than traveling to Juneau just for this hearing. Commissioner Hartig may be joining us if his schedule allows.

I also want to be clear about what we can say during the hearing since the administrative procedures act defines the rule making process. We won't be submitting anything in writing since we are still discussing what changes we will be making to the draft regulations and they are not final. This hearing will provide an opportunity for legislators to hear constituent concerns. The proposed regulations for cheese processing had two comment periods which is when the department received feedback from the public. Those comment periods have closed so testimony made during this hearing will not be part of our regulatory drafting record although it will be part of the legislative record. That said, I expect that everything brought up during the committee hearing was submitted to the department during the comment period so this most likely won't be a problem. We can answer questions asked by the committee on the draft regulations but we will be unable to make any commitments on the final regulatory package since we are still deliberating. We will be as accommodating as possible but we are still restricted by administration rules even if this is a legislative process.

If you have additional questions, please let me know.

Kristin Ryan

Director

Environmental Health Division

Alaska Department of Environmental Conservation

907.269.7644 ph / 907.269.7654

Kristin.ryan@alaska.gov

From: John Davies [mailto:John_Davies@legis.state.ak.us]

Sent: Friday, February 26, 2010 12:41 PM

To: Ryan, Kristin J (DEC)

Subject: FW: ARRC meeting Schedule and Agenda

Here is the schedule and agenda. JD

From: John Davies

Sent: Wednesday, February 24, 2010 1:20 PM

To: 'Larry.Hartig@alaska.gov'; 'jay.fuller@alaska.gov'

Cc: Rep. Wes Keller; Jim Pound

Subject: ARRC meeting Schedule and Agenda

February 24, 2010

Dear Gentlemen:

FYI, please find attached a copy of the March 8th meeting Schedule and Agenda.

If you have any questions, feel free to call me at 907 465-4899.

Thank You,

John Davies

ARRC Acting Committee Aide

John Davies

From: John Davies
Sent: Wednesday, March 03, 2010 9:55 AM
To: 'Far Above Rubies'
Subject: RE: ARRC meeting Schedule and Agenda

OK, sounds good. If you have any problems or concerns feel free to call me. 465-4899 or 465-2186. JD

From: Far Above Rubies [mailto:gkahoe@gci.net]
Sent: Wednesday, March 03, 2010 8:52 AM
To: John Davies
Subject: Re: ARRC meeting Schedule and Agenda

Dear Mr. Davies,

Paul Robinson and I will participate in the meeting through teleconference at the Fairbanks LIO. Thank you very much for your help.

Sincerely,

Jennifer Ansley

----- Original Message -----

From: John Davies
To: Far Above Rubies
Cc: Rep. Wes Keller
Sent: Tuesday, March 02, 2010 1:02 PM
Subject: RE: ARRC meeting Schedule and Agenda

Dear Ms Ansley,

I am in receipt of your email, and will include a copy of your recommendations in the Legislator packets. Mr. Robinson has emailed me to let me know that he and you will participate in the meeting. I am assuming that he means by way of teleconference from your Fairbanks LIO. Please let me know if you need assistance in coordinating your testimony. It should be pretty simple if you go to the LIO and sign up to testify. If you run into problems feel free to call me at 465-4899 or at Representative Keller's main line, 465-2186.

Regards,
John Davies
ARRC Acting Committee Aide

From: Far Above Rubies [mailto:gkahoe@gci.net]
Sent: Saturday, February 27, 2010 8:07 AM
To: John Davies
Subject: Re: ARRC meeting Schedule and Agenda

Dear Mr. Davies,

Thank you for your email. You have my permission to print my email and make my input public. I think it would be very helpful for Committee members to be able to look at alternatives beforehand. It would probably be a good idea to give everyone a copy of the Associated Press article about the Wisconsin cow shares so that the Committee members understand the problems associated with cow shares. I would be very happy to testify to the Committee and plan to attend the meeting on March 8 at the Fairbanks LIO.

Sent: Wednesday, February 24, 2010 1:41 PM
Subject: FW: ARRC meeting Schedule and Agenda

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Wednesday, February 24, 2010 1:30 PM
To: Paul Robinson
Cc: Rep. Wes Keller; Jim Pound
Subject: ARRC meeting Schedule and Agenda

February 24, 2010

Dear Paul Robinson:

This email is a follow up to our recent telephone conversation about the ARRC review of the proposed cheese regulations. Attached to this email you will find the meeting Schedule and Agenda. You and the individuals that you noticed in your earlier email are invited to attend the meeting and testify. If you are not able to attend in person here in Juneau, then telephone participation will be fine. You may participate through your local LIO. There is limited call in capacity for someone not able to get to the LIO.

If you have any printed information that you would like the committee members to see, please send it to me for posting on BASIS and for distribution to the committee. The information will be public, and I will have copies for the public here in the meeting room for review as well.

If you have any questions, feel free to call me at 907 465-4899.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

John Davies

From: Far Above Rubies [gkahoe@gci.net]
Sent: Friday, February 26, 2010 8:54 AM
To: John Davies
Cc: Meridith_Cameron@legis.state.ak.us; Paul Robinson
Subject: Re: ARRC meeting Schedule and Agenda
Attachments: State orders Elkhorn farm to stop raw milk sales through cow.docx

Dear Mr. Davies,

Paul Robinson forwarded your email to me, and I appreciate the opportunity to ensure that Alaskans can sell and purchase locally produced milk and milk products. I sell goat milk soap and goat milk skin cream at the Tanana Valley Farmers' Market, at stores around Fairbanks, and online. Every single Farmers' Market day, I have customers asking me if they can buy milk or cheese. Unfortunately, I have to tell them that such sales are illegal in Alaska. It is clear that there is a great demand for locally produced milk and cheese.

When Paul Robinson and I spoke to Jay Fuller in November about the proposed cheese making regulations, he told us that "cow-shares" were a legal way to sell milk products in Alaska and that the DEC would not take steps to regulate any "cow-share" programs. He also stated that any other type of sales were dangerous to the Public health and would not be allowed.

I pointed out to Dr. Fuller that "cow-shares" in which people "own" parts of an animal and are therefore entitled to a portion of the products from that animal, are well known to cause outbreaks of disease. I have appended to this email an Associated Press article from September 19, 2009 in which the entire "cow-share" program in Wisconsin was shut down due to bacterial infections caused by the consumption of raw milk distributed by "cow-shares."

I propose the following for the State's consideration:

- **Home farms, defined as a farm producing less than 10 gallons of milk per day, shall be exempt from the current cheese regulations proposed by the DEC. These farms would be allowed to sell their milk or milk products directly to the consumer. Such farms would be required to register with the DEC.**

I understand that the DEC is justly concerned with the public health and safety. An alternative to the above blanket exemption would be as follows:

- **All home farms, defined as farms producing less than 10 gallons of milk per day, shall be allowed to sell milk and milk products directly to the consumer after registering their farm with the DEC. Additionally, all milk shall be heat-treated (pasteurized) by raising the temperature of the milk to 165°F for 15 seconds.**

The benefits of the above alternatives are as follows:

- They cost the State no money.
- The DEC would have records of the farms providing milk and milk products to consumers. Right now, the DEC is willing to allow "cow-share" programs over which they have no control whatsoever. Should consumers become ill, it would be much more difficult to trace the problem to a specific farm since the DEC has no records of "cow-share" providers. In Wisconsin, many people who became ill refused to disclose the farm which had provided the milk to them in order to protect the farmers.

As a third alternative, the State should consider the following proposal:

- **Home farms, defined as farms producing less than 10 gallons of milk per day, shall be allowed to sell milk and milk products directly to the consumer as long as the farm is registered with the DEC. The milk shall be heat-treated (pasteurized) by raising the temperature of the milk to 165°F for 15 seconds. A**

representative from each farm shall attend an annual milk hygiene class sponsored by the Cooperative Extension.

This third alternative would, of course, cost the State money to provide these classes to the farmers.

With the growing public demand for locally produced food, as well as the need to protect Alaska's food supply system, it is important that we have reasonable laws in place that will allow for the safe sale of milk and milk products by local farmers. I think the proposals which I have made address public safety issues without imposing an untenable burden of expense and labor on home farms. Please note that I am talking about small home farms selling directly to consumers. The cheese regulations as proposed by the DEC are fine for large dairies the purpose of which is the commercial sale of products to restaurants and grocery stores. It should be obvious, however, that there is a big difference between such commercial farms and home farms. The regulations should reflect this difference.

Thank you again for the opportunity to assist you with this issue. I look forward to attending the meeting from Fairbanks on March 8.

Sincerely,

Jennifer Ansley
Far Above Rubies
907-457-3890
www.alaskagoatmilk.com

----- Original Message -----

From: Paul Robinson
To: Far Above Rubies ; Kathryn Dodge
Sent: Wednesday, February 24, 2010 1:41 PM
Subject: FW: ARRC meeting Schedule and Agenda

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Wednesday, February 24, 2010 1:30 PM
To: Paul Robinson
Cc: Rep. Wes Keller; Jim Pound
Subject: ARRC meeting Schedule and Agenda

February 24, 2010

Dear Paul Robinson:

This email is a follow up to our recent telephone conversation about the ARRC review of the proposed cheese regulations. Attached to this email you will find the meeting Schedule and Agenda. You and the individuals that you noticed in your earlier email are invited to attend the meeting and testify. If you are not able to attend in person here in Juneau, then telephone participation will be fine. You may participate through your local LIO. There is limited call in capacity for someone not able to get to the LIO.

If you have any printed information that you would like the committee members to see, please send it to me for posting on BASIS and for distribution to the committee. The information will be public, and I will have copies for the public here in the meeting room for review as well.

If you have any questions, feel free to call me at 907 465-4899.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

John Davies

From: John Davies
Sent: Tuesday, March 02, 2010 1:02 PM
To: 'Far Above Rubies'
Cc: Rep. Wes Keller
Subject: RE: ARRC meeting Schedule and Agenda

Dear Ms Ansley,

I am in receipt of your email, and will include a copy of your recommendations in the Legislator packets. Mr. Robinson has emailed me to let me know that he and you will participate in the meeting. I am assuming that he means by way of teleconference from your Fairbanks LIO. Please let me know if you need assistance in coordinating your testimony. It should be pretty simple if you go to the LIO and sign up to testify. If you run into problems feel free to call me at 465-4899 or at Representative Keller's main line, 465-2186.

Regards,
John Davies
ARRC Acting Committee Aide

From: Far Above Rubies [mailto:gkahoe@gci.net]
Sent: Saturday, February 27, 2010 8:07 AM
To: John Davies
Subject: Re: ARRC meeting Schedule and Agenda

Dear Mr. Davies,

Thank you for your email. You have my permission to print my email and make my input public. I think it would be very helpful for Committee members to be able to look at alternatives beforehand. It would probably be a good idea to give everyone a copy of the Associated Press article about the Wisconsin cow shares so that the Committee members understand the problems associated with cow shares. I would be very happy to testify to the Committee and plan to attend the meeting on March 8 at the Fairbanks LIO.

Thank you very much for this opportunity.

Sincerely,

Jennifer Ansley
Far Above Rubies

----- Original Message -----

From: John Davies
To: Far Above Rubies
Cc: Rep. Wes Keller ; Jim Pound
Sent: Friday, February 26, 2010 12:56 PM
Subject: RE: ARRC meeting Schedule and Agenda

Dear Jennifer Ansley,

Thank You for your well reasoned input on the cheese regulation meeting. Do I have your permission to print your email and make your input public for the Committee and the public as well as DEC? If so, I will put a copy in each member's packet and post it on BASIS as well as provide copies to the public at the meeting. Also, you would be an excellent person to tell the Committee about your work and your policies expressed herein. Would you be available to

testify? You can do so by telephone or at your Local LIO or come here to Juneau and be in the committee room with the Legislators. I will be happy to facilitate your testimony.

I look forward to hearing from you.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

From: Far Above Rubies [mailto:gkahoe@gci.net]
Sent: Friday, February 26, 2010 8:54 AM
To: John Davies
Cc: Meridith_Cameron@legis.state.ak.us; Paul Robinson
Subject: Re: ARRC meeting Schedule and Agenda

Dear Mr. Davies,

Paul Robinson forwarded your email to me, and I appreciate the opportunity to ensure that Alaskans can sell and purchase locally produced milk and milk products. I sell goat milk soap and goat milk skin cream at the Tanana Valley Farmers' Market, at stores around Fairbanks, and online. Every single Farmers' Market day, I have customers asking me if they can buy milk or cheese. Unfortunately, I have to tell them that such sales are illegal in Alaska. It is clear that there is a great demand for locally produced milk and cheese.

When Paul Robinson and I spoke to Jay Fuller in November about the proposed cheese making regulations, he told us that "cow-shares" were a legal way to sell milk products in Alaska and that the DEC would not take steps to regulate any "cow-share" programs. He also stated that any other type of sales were dangerous to the Public health and would not be allowed.

I pointed out to Dr. Fuller that "cow-shares" in which people "own" parts of an animal and are therefore entitled to a portion of the products from that animal, are well known to cause outbreaks of disease. I have appended to this email an Associated Press article from September 19, 2009 in which the entire "cow-share" program in Wisconsin was shut down due to bacterial infections caused by the consumption of raw milk distributed by "cow-shares."

I propose the following for the State's consideration:

- **Home farms, defined as a farm producing less than 10 gallons of milk per day, shall be exempt from the current cheese regulations proposed by the DEC. These farms would be allowed to sell their milk or milk products directly to the consumer. Such farms would be required to register with the DEC.**

I understand that the DEC is justly concerned with the public health and safety. An alternative to the above blanket exemption would be as follows:

- **All home farms, defined as farms producing less than 10 gallons of milk per day, shall be allowed to sell milk and milk products directly to the consumer after registering their farm with the DEC. Additionally, all milk shall be heat-treated (pasteurized) by raising the temperature of the milk to 165°F for 15 seconds.**

The benefits of the above alternatives are as follows:

- They cost the State no money.
- The DEC would have records of the farms providing milk and milk products to consumers. Right now, the DEC is willing to allow "cow-share" programs over which they have no control whatsoever. Should consumers become ill, it would be much more difficult to trace the problem to a specific farm since the DEC has no records of "cow-

share" providers. In Wisconsin, many people who became ill refused to disclose the farm which had provided the milk to them in order to protect the farmers.

As a third alternative, the State should consider the following proposal:

- **Home farms, defined as farms producing less than 10 gallons of milk per day, shall be allowed to sell milk and milk products directly to the consumer as long as the farm is registered with the DEC. The milk shall be heat-treated (pasteurized) by raising the temperature of the milk to 165°F for 15 seconds. A representative from each farm shall attend an annual milk hygiene class sponsored by the Cooperative Extension.**

This third alternative would, of course, cost the State money to provide these classes to the farmers.

With the growing public demand for locally produced food, as well as the need to protect Alaska's food supply system, it is important that we have reasonable laws in place that will allow for the safe sale of milk and milk products by local farmers. I think the proposals which I have made address public safety issues without imposing an untenable burden of expense and labor on home farms. Please note that I am talking about small home farms selling directly to consumers. The cheese regulations as proposed by the DEC are fine for large dairies the purpose of which is the commercial sale of products to restaurants and grocery stores. It should be obvious, however, that there is a big difference between such commercial farms and home farms. The regulations should reflect this difference.

Thank you again for the opportunity to assist you with this issue. I look forward to attending the meeting from Fairbanks on March 8:

Sincerely,

Jennifer Ansley
Far Above Rubies
907-457-3890
www.alaskagoatmilk.com

----- Original Message -----

From: Paul Robinson
To: Far Above Rubies ; Kathryn Dodge
Sent: Wednesday, February 24, 2010 1:41 PM
Subject: FW: ARRC meeting Schedule and Agenda

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Wednesday, February 24, 2010 1:30 PM
To: Paul Robinson
Cc: Rep. Wes Keller; Jim Pound
Subject: ARRC meeting Schedule and Agenda

February 24, 2010

Dear Paul Robinson:

This email is a follow up to our recent telephone conversation about the ARRC review of the proposed cheese regulations. Attached to this email you will find the meeting Schedule and Agenda. You and the individuals that you noticed in your earlier email are invited to attend the meeting and testify. If you are not able to attend in person here

in Juneau, then telephone participation will be fine. You may participate through your local LIO. There is limited call in capacity for someone not able to get to the LIO.

If you have any printed information that you would like the committee members to see, please send it to me for posting on BASIS and for distribution to the committee. The information will be public, and I will have copies for the public here in the meeting room for review as well.

If you have any questions, feel free to call me at 907 465-4899.

Very Truly Yours,

John Davies

ARRC Acting Committee Aide

Thank you very much for this opportunity.

Sincerely,

Jennifer Ansley
Far Above Rubies

----- Original Message -----

From: John Davies
To: Far Above Rubies
Cc: Rep. Wes Keller ; Jim Pound
Sent: Friday, February 26, 2010 12:56 PM
Subject: RE: ARRC meeting Schedule and Agenda

Dear Jennifer Ansley,

Thank You for your well reasoned input on the cheese regulation meeting. Do I have your permission to print your email and make your input public for the Committee and the public as well as DEC? If so, I will put a copy in each member's packet and post it on BASIS as well as provide copies to the public at the meeting. Also, you would be an excellent person to tell the Committee about your work and your policies expressed herein. Would you be available to testify? You can do so by telephone or at your Local LIO or come here to Juneau and be in the committee room with the Legislators. I will be happy to facilitate your testimony.

I look forward to hearing from you.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

From: Far Above Rubies [mailto:gkahoe@gci.net]
Sent: Friday, February 26, 2010 8:54 AM
To: John Davies
Cc: Meridith_Cameron@legis.state.ak.us; Paul Robinson
Subject: Re: ARRC meeting Schedule and Agenda

Dear Mr. Davies,

Paul Robinson forwarded your email to me, and I appreciate the opportunity to ensure that Alaskans can sell and purchase locally produced milk and milk products. I sell goat milk soap and goat milk skin cream at the Tanana Valley Farmers' Market, at stores around Fairbanks, and online. Every single Farmers' Market day, I have customers asking me if they can buy milk or cheese. Unfortunately, I have to tell them that such sales are illegal in Alaska. It is clear that there is a great demand for locally produced milk and cheese.

When Paul Robinson and I spoke to Jay Fuller in November about the proposed cheese making regulations, he told us that "cow-shares" were a legal way to sell milk products in Alaska and that the DEC would not take steps to regulate any "cow-share" programs. He also stated that any other type of sales were dangerous to the Public health and would not be allowed.

I pointed out to Dr. Fuller that "cow-shares" in which people "own" parts of an animal and are therefore entitled to a portion of the products from that animal, are well known to cause outbreaks of disease. I have appended to this email an Associated Press article from September 19, 2009 in which the entire "cow-share" program in Wisconsin was shut down due to bacterial infections caused by the consumption of raw milk distributed by "cow-shares."

I propose the following for the State's consideration:

- Home farms, defined as a farm producing less than 10 gallons of milk per day, shall be exempt from the current cheese regulations proposed by the DEC. These farms would be allowed to sell their milk or milk products directly to the consumer. Such farms would be required to register with the DEC.

I understand that the DEC is justly concerned with the public health and safety. An alternative to the above blanket exemption would be as follows:

- All home farms, defined as farms producing less than 10 gallons of milk per day, shall be allowed to sell milk and milk products directly to the consumer after registering their farm with the DEC. Additionally, all milk shall be heat-treated (pasteurized) by raising the temperature of the milk to 165°F for 15 seconds.

The benefits of the above alternatives are as follows:

- They cost the State no money.
- The DEC would have records of the farms providing milk and milk products to consumers. Right now, the DEC is willing to allow "cow-share" programs over which they have no control whatsoever. Should consumers become ill, it would be much more difficult to trace the problem to a specific farm since the DEC has no records of "cow-share" providers. In Wisconsin, many people who became ill refused to disclose the farm which had provided the milk to them in order to protect the farmers.

As a third alternative, the State should consider the following proposal:

- Home farms, defined as farms producing less than 10 gallons of milk per day, shall be allowed to sell milk and milk products directly to the consumer as long as the farm is registered with the DEC. The milk shall be heat-treated (pasteurized) by raising the temperature of the milk to 165°F for 15 seconds. A representative from each farm shall attend an annual milk hygiene class sponsored by the Cooperative Extension.

This third alternative would, of course, cost the State money to provide these classes to the farmers.

With the growing public demand for locally produced food, as well as the need to protect Alaska's food supply system, it is important that we have reasonable laws in place that will allow for the safe sale of milk and milk products by local farmers. I think the proposals which I have made address public safety issues without imposing an untenable burden of expense and labor on home farms. Please note that I am talking about small home farms selling directly to consumers. The cheese regulations as proposed by the DEC are fine for large dairies the purpose of which is the commercial sale of products to restaurants and grocery stores. It should be obvious, however, that there is a big difference between such commercial farms and home farms. The regulations should reflect this difference.

Thank you again for the opportunity to assist you with this issue. I look forward to attending the meeting from Fairbanks on March 8.

Sincerely,

Jennifer Ansley
Far Above Rubies
907-457-3890
www.alaskagoatmilk.com

----- Original Message -----

From: Paul Robinson
To: Far Above Rubies ; Kathryn Dodge

John Davies

From: Paul Robinson [pbr@rescpa.com]
Sent: Monday, March 01, 2010 11:45 AM
To: John Davies
Subject: RE: March 8th Meeting of ARRC

John

I've been in Valdez and had the staff forward your e-mail to Jenifer Ansley. I talked to her this morning and she and I will be there on the 8th along with other support. Sorry it took me so long to get back to you. It is a crazy time of year for me.

Paul

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Friday, February 26, 2010 12:44 PM
To: Paul Robinson
Subject: March 8th Meeting of ARRC

Dear Mr. Robinson,

A few days ago I sent you a schedule and agenda for the March 8th ARRC meeting in which the committee will be reviewing the cheese production regulations. Did you receive them? Are you able to arrange testimony? Please let me know so I may properly coordinate the meeting. Thank You.

John Davies
ARRC Acting Committee Aide

John Davies

From: Peter Fellman
Sent: Monday, March 01, 2010 2:36 PM
To: John Davies
Subject: FW: Let's change a regulation

From: Paul Robinson

Sent: Thursday, November 19, 2009 3:41 PM

To: 'clay spurling'; 'Jeff Wagner'; 'Janeen Macom'; 'Joanne Trefethen'; 'jenifer@ciint.com'; 'J Wigdahl'; 'John Luther Adams'; 'jspencer'; 'Julie Ament'; 'Juliette Boselli'; 'jstearns@gci.net'; 'JOHN JACKOVICH'; 'Jay Fulk'; 'John Kelly'; 'Janet Wakefield'; 'Joan Johnson'; 'Julie Scott'; 'jclark@alaska.net'; 'Jim Craig'; 'Jenifer Lefebvre'; 'Jimmy Wingerter'; 'Miller, Judy'; 'Amy Borneo'; 'amy johnson'; 'Audrey Ranstead'; 'Aileen D. Munoz'; 'Ann Hopper'; 'Amy Bristol'; 'Lopuhovsky, Angela'; 'Audra McGhee'; 'Hollister, Cole'; 'aknapp@grantstation.com'; 'Heather L Heineken'; 'Gary Baxley'; 'Bill St. Pierre'; 'brat@gci.net'; 'beth Kohnen'; 'bergdahl@ptialaska.net'; 'Bob Sattler'; 'conley jessica'; 'Cynthia Walker'; 'crystalg@rescpa.com'; 'callienne elterman'; 'Cynthia Adams'; 'Carrie McEnteer'; 'Cindy Salmon'; 'cynthia@acsalaska.net'; 'Charlie Dexter'; 'Charlie Dexter'; 'Connie Siegman @ Full Spectrum Painting, Inc.'; 'Cyndie Warbelow-Tack'; 'Don Ives'; 'Doris Miller'; 'diana'; 'Dr. Jonathan Victorino'; 'Dennis Witmer'; 'Karen Dieringer'; 'denalisubway@mac.com'; 'Debbie Shreve'; 'Dunham, Gay O.'; 'Donna Evans'; 'Darcy Harrod'; 'Debbi Miller'; 'Eric'; 'Ed & Pat McClure'; 'Esther Lara'; 'Kristi Higa'; 'Gary Laursen'; 'Amy Bristol'; 'Susan Doren'; 'Gary Brooking'; 'conley jessica'; 'Gary Baxley'; 'Robert Hook'; 'Paula Kunkel'; 'holladay.hardwoods@yahoo.com'; 'Larry Santoni'; 'Harold Woods'; 'Hannah preuss'; 'Image Optical'; 'kirstys@rescpa.com'; 'Kelly Ward'; 'Karma Seaman'; 'kmcafee@gci.net'; 'Kate Hall'; 'karrie@hairbodyandsol.com'; 'ken.jernstrom@alaska.edu'; 'Kate LaSota'; 'Kirsty'; 'Kaarin Tack'; 'Lillian O'Brien'; 'Winters, Linda'; 'Leisa Boswood'; 'Lantz, Teresa'; 'Lovell, Terri'; 'Meghan Geyer'; 'mariya rover'; 'Mike Young'; 'monica dallas'; 'Sharon McConnell'; 'Mark Ricahrds'; 'mbmgt@acsalaska.net'; 'mstevenson@alaska.net'; 'Nedra Buck'; 'Webber, Paula Sue (DOT)'; 'Patty Loud'; 'Patricia Peirsol'; 'Sexton, Roxann G (DOT)'; 'regina white'; 'Tori Clark'; 'Roblyn'; 'radcarlson@msn.com'; 'Sandy Crump'; 'Sarah Woods'; 'sharon@fundingexchange.org'; 'Sarah Lefebvre'; 'Sage Adams'; 'Susan Willis'; 'Ted Tisdale'; 'Tamara L. Spaulding'; 'Tonya L. Hess'; 'Teresa Quakenbush'; 'trudy@acousticadventures.com'; 'villa@santanet.org'; 'Veronica R. Hall-Critchfield'; 'wfcoulter@firstcommand.com'; 'yvette@alaska.net'

Subject: FW: Let's change a regulation

Dear Friends and Family;

I'm asking you for a favor, one that won't take much time but could make a difference. A little history is in order about how I came to be asking for help. I have several clients that have home dairies (both goat and cow). They make terrific cheeses but they can't sell those cheeses due to government regulations, which in Alaska are based on USDA guidelines. This sounds OK until you read the guidelines, which are actually the size of a mystery novel. Under current regulations, local cheese producers would have to have an eight room facility including a laboratory to check for antibiotics in the milk. As one of my clients says, "If I didn't give them antibiotics who would have?" The point is, these rules are made for large dairies and pushed by the American Dairy Association to further their interests not ours.

Let me be very clear; we are talking about cheese made from pasteurized milk. This is cheese that these small producers are feeding to their own families and friends. Under these current rules, Alaska does not and will never have a cheese industry. This concerns me. One reason is from an economic development standpoint. My friend is asked weekly to sell cheese or milk (many children can't drink cow's milk). This would not be a huge industry, but it is still dollars that leave Alaska that could be reinvested here. Have you noticed lately what artisanal cheeses are selling for at the supermarket? The ability to sell cheese would provide a good supplementary income for these farm families. Secondly, we Alaskans don't produce much. If our supply chain were ever interrupted due to war, disease, natural disaster or

economic meltdown, things here could become dire. We should encourage people in our community to raise dairy animals so that in the event of an emergency, there would be a source of milk for those most in need of it. Thirdly, I'm quite frankly sick of government sticking their collective noses into places where they don't belong. I don't mind being protected from things that are dangerous, but they have taken the definition of dangerous to absurd lengths. As it is, we have very little idea of the regulations that exist for the manufacture of cheese which we import from other countries. Wouldn't you prefer to buy from a farmer you know?

Jennifer Ansley, a local goat owner, (She makes and sells those terrific goat's milk lotions and soaps you buy around town. Far Above Rubies is the name of her product.) and I have spent a lot of time on this. We've met with people from the University, the State Veterinarian, people from the DEC, senators and representatives, officials from the FNSB and others. Everyone is sympathetic but most have the 'can't get there from here attitude'. However, currently there is a proposed cheese regulation out for comment. We have been led to believe that if they get enough response from the public, they might be willing to change the regulations.

So here is what I'm asking you to do.

1. Write a short comment stating you would be in favor of an exemption for home dairies from the proposed regulation 18AAC32 and e-mail it to jay.fuller@alaska.gov. Or you could call him at 907-929-7335. Jay Fuller is with the State Veterinarian office. Note that this is only about cheese. Please don't muddy the waters with any other issues.
2. Forward this to as many Alaskans as you can.

The deadline for comments is December 3rd at 5pm.

If this works, maybe we could change some other things too. Who knows, maybe we could make the democratic process work after all.

Thank you so much for your help. This is an issue that is important to me. If you find yourself in the same situation, let me know I would be glad to help. You can e-mail me or call me @ 474-4576 weekdays or 488-2666 evenings and weekends with questions or comments.

Paul

Bing brings you maps, menus, and reviews organized in one place. [Try it now.](#)

FAIRBANKS DAILY NEWS MINER

New state dairy regulations irk small producers

by Staff and Wire Report

1 day 9 hrs ago | 1279 views | 12  | 4  |  | 

JUNEAU — The state's plan to change regulations on milk and homemade cheese production has sparked howls from the Interior. The regulation change, proposed last year by the state Department of Environmental Conservation, drew residents and business owners Monday to call for exemptions for smaller operations.

The regulations focus on health implications of the production and sale of milk and milk products.

But families, small-business owners and others sounded a common theme Monday, urging that small operators be exempt from the rules. Some in particular said registered "home farms" — households producing 10 gallons of milk or less per day — should be able to sell pasteurized milk and milk products outside the new regulations.

Rep. Mark Neuman, R-Big Lake, told colleagues that many state residents obviously place great weight on the ability to sell their milk for cheese production, given the level of comments on various plans.

Kristin Ryan, head of the state Department of Environmental Conservation's division covering sanitary food, defended the new regulations as accessible. She said three operations — of which two are "mom-and-pop" farmers — have already been permitted under the proposed regulations, albeit with compromises.

Committee chairman Rep. Wes Keller, R-Wasilla, said the regulations ought to be more direct and specifically address such compromises.

Ryan said the regulations are a work in progress that will be revised to address many of the comments without compromising food safety.

Paul Robinson, a member of Fairbanks' Economic Development Commission, said an exemption for small operations would help diversify the community and its economy.

Jennifer Ansley of Ester, who owns Far Above Rubies and sells goat milk soap and skin cream at the Tanana Valley Farmers Market, said customers regularly ask if they can buy locally produced milk and cheese and are disappointed at learning the products are generally not available.

Rep. David Guttenberg, D-Fairbanks, questioned why exemptions for small dairy farmers are undesirable given an existing exemption program. Alaska bans raw milk for human consumption, except by the owners of milk-producing livestock for personal use. As an extension of that exception, multiple people can buy shares of an animal, typically cows or goats, exempting each shareholder.

The state's public hearing window on the proposed regulations ended in December but lawmakers held Monday's informational hearing to collect input from constituents.

comments (12)

« blue5011 wrote on Tuesday, Mar 09 at 11:45 AM »

Guess I am lucky to be alive, since I grew-up on a dairy farm and drank raw milk for eighteen years. To this day I still cannot drink 2 percent milk or that 1 percent milky water that is claimed to be "milk".

« average-joe wrote on Tuesday, Mar 09 at 11:41 AM »

Yes. I would like two bottles of sudafed----And throw in a gallon of raw milk>wink wink>

« wayuphere wrote on Tuesday, Mar 09 at 11:20 AM »

This is another pretty typical beaurocratic move to be sure only Anchorage sees any money from any home-grown industry.

I for one will continue to "buy local" before I buy anything coming from South Central or the Anchorage area.

« 88888 wrote on Tuesday, Mar 09 at 11:04 AM »

Don't blame the elected officials for this. This involves regulations made at the departmental level. These are the most onerous, since they are often created "out of sight" of the general public and lack legislative oversight.

Why does the Department of Environmental Conservation have a division covering sanitary food??? Don't the FDA and the State Dept. of Health cover those things? What does sanitary food have to do with environmental conservation?

I'm surprised they haven't tried to pass regulations banning sushi. Raw fish can be dangerous. Maybe that's next on their list.

« Audrey25 wrote on Tuesday, Mar 09 at 10:50 AM »

we do not need more regulations on locally produced food...! The US is so crazy when it comes to food regulations. We aren't allowed raw milk, but corn that is genetically modified to produce it's own pesticides, hey that's totally normal and healthy, right?

« say_what64 wrote on Tuesday, Mar 09 at 09:59 AM »

I grew up on raw milk. We made our own cheese, cottage cheese, butter and of course, butter milk. I still like home made products because they have far more flavor. Pasteurized milk can be used with the addition of a good rennet but is never makes product as good as with raw milk. Raw milk has been illegal to sell in most areas of the US, for a long time now.

I was not aware that we could buy shares in a milk cow and then get the milk legally. It would be worth it to buy a cow for a dairy and just pick up a couple of gallons when I need to make a batch of something, since it's legal to use raw milk if you own the cow. Corporations, ya gotta love 'em!!!!

« Isanova wrote on Tuesday, Mar 09 at 08:50 AM »

Fresh milk has been illegal in most all of the country for some time. Pressures of the dairy industry. I've a friend with cows, the taste is a huge difference. This is why cheeses in Europe are so superior, they don't have to use pasteurized milk

This legislation seems aimed at the Northern Lights Dairy. Now they want to take away my good-tasting milk!

« Mundus_Vult_Decipi wrote on Tuesday, Mar 09 at 08:26 AM »

Just another control of the people being put in place. Only the government can come up with regulations for things that there are no problems with, and then, amazingly, it becomes a problem laced event that can no longer exist without some govt control. Typical of all elected officials. People lived on farms for centuries without poisoning themselves or others without Big Brother telling them how to do it.

« AggressiveProgressive wrote on Tuesday, Mar 09 at 08:19 AM »

swanny1970 - That was my first question. Has anyone become sick from bad milk products in Alaska? If it ain't broke, why fix it?

I think the limit should be raised to fifty or a hundred gallons of milk a day to be exempted from the law. Turning local farmers into criminals with unwarranted legislation is just what the corporate police state ordered.

Raw milk is illegal? Can you just see the other prisoners asking you, "Whatta are ya in for?" "Drinking my generous neighbor's raw milk." We are legislating ourselves further away from earth-logic every single day..

« polarmark wrote on Tuesday, Mar 09 at 07:09 AM »

the state needs to keep their nose out of it.

« swanny1790 wrote on Tuesday, Mar 09 at 07:02 AM »

Has anyone actually become ill from home-produced milk or dairy products in Alaska, or is this just another excuse for bureaucrats to exert their power over the people?

Who stands to benefit? I'm guessing the big-money dairy producers would have no problem with regulations that make it difficult or impossible for small time operators to compete.

If it isn't a problem then we don't need the government to "fix" it.

« spaceman wrote on Tuesday, Mar 09 at 06:59 AM »

Why do our legislators continue to pass laws, then promptly grant exemptions. Stop wasting time.

Dairy program



Activities that require a dairy license

Activities that are exempt

Prohibited activities

Dairy license information

Small dairy Exemption

Activities that require a dairy license

A license is required for the following activities:

1. To produce milk on a Grade A dairy farm
2. To market milk as a milk marketing agent or handler for producers
3. To transport milk in a milk tanker or transfer milk to a transfer or receiving station
4. To process milk to manufacture any fluid milk or dairy products, including the wholesale manufacture of frozen dairy desserts (as defined in 21CFR Part 135)

Dairy operator licenses are required for:

1. Individuals who collect raw milk samples which will be used for regulatory purposes
2. Individuals responsible for the pasteurization of milk or dairy products

The Pasteurized Milk Ordinance (PMO) is developed by the National Conference of Interstate Milk Shippers (NCIMS) and covers construction and operation standards for all dairy operations including farms, transportation, processing and pasteurizing. Compliance with the PMO is required for plants or farms to ship Grade A milk interstate. The Interstate Milk Shippers List (IMS List) is a list of dairy operations that are approved for interstate milk shipment.

Link to milk safety references

Link to Pasteurized Milk Ordinance

Link to Interstate Milk Shippers List

Link to Oregon State University Extension Service's Dairy Program

Activities that are exempt

The dairy law exempts from licensing a person owning not more than three dairy cows that have calved at least once, nine sheep that have lactated at least once or nine goats that have lactated at least once. The fluid milk from these animals may be sold for human or other consumption only if:

1. The person does not advertise the milk for sale
2. The milk is sold directly to the consumer at the premises where produced; and
3. No more than two producing dairy cows, nine producing sheep or nine producing goats are located on the premises where the milk is produced.

Prohibited activities

Prohibition against retail sale of unpasteurized milk from cows (unless meeting the limits of the above exemption).

A person may not sell or distribute for sale unpasteurized milk or fluid milk from cows, or dairy products from unpasteurized milk or fluid milk from cows, other than to a distributor, producer-distributor, dairy products plant licensee or nonprocessing cooperative. This does not apply to the sale or distribution of cheese otherwise exempt from pasteurization requirements or to sales or distributions by a person described under ORS 621.012.

Distributor or producer-distributor may sell only milk that is pasteurized or from disease-free goats or sheep.

A distributor, producer-distributor or dairy products plant licensee shall not sell or offer or expose for sale any dairy product or fluid milk for human consumption unless the milk used in the dairy product or fluid milk has been pasteurized or is goat or sheep's milk that was produced by a disease-free herd, except that if not more than one reactor animal appears when the goat or sheep herd is tested for brucellosis, the milk, dairy products or fluid milk may still be sold if the animal is slaughtered and no additional reactor animals appear when the herd is retested. If one or more reactor animals appear when the herd is retested, no milk, dairy products or fluid milk from the herd may be sold until the herd regains a brucellosis-free status.

Dairy license information

State licenses web site describes license type, references statute and rule, lists responsible agency and links to licensing prerequisites.

Link to state licenses web site:

Dairy license type 02 - [dairy-fluid milk producer](#)
Dairy license type 03 - [dairy producer-distributor grade A](#)
Dairy license type 04 - [dairy producer-distributor grade B](#)
Dairy license type 05 - [dairy-fluid milk distributor](#)
Dairy license type 06 - [dairy non-processing distributor grade A](#)
Dairy license type 07 - [dairy non-processing distributor grade B](#)
Dairy license type 17 - [dairy wholesale frozen dessert manufacturer](#)
Dairy license type 18 - [dairy operator-HTST pasteurizer](#)
Dairy license type 18 - [dairy operator-milk sampler/grader](#)
Dairy license type 18 - [dairy operator-vat pasteurizer](#)
Dairy license type 19 - [dairy products - plant](#)
Dairy license type 19 - [dairy-milk marketing association](#)
Dairy license type 20 - [dairy-contract milk hauler](#)

Licensing information on issuing a food license, preliminary inspections, multiple activities covered by one statute, transferring licenses and interagency agreements in Oregon. Inspection information on regular or routine inspections, initial inspections and other types of inspections.

[Licensing and inspections](#)

John Davies

From: Jim Pound
Sent: Monday, March 08, 2010 10:04 AM
To: John Davies

John,

This is in today's Fairbanks Daily News Miner.

Jim

Alaska cheese makers seek exemptions to regulations

by Jeremy Hsieh / The Associated Press

03.08.10 - 11:50 am

JUNEAU, Alaska - Proposed regulations geared for the industrial-scale dairies are burdensome to small producers, and they will seek exemptions when state lawmakers hold a hearing Monday.

The regulations are in place to minimize food safety risks, but small dairies say they are too cumbersome for micro-farmers to meet. For example, one rule for cheese making requires eight separate rooms with specifications for drainage, lighting, ventilation and construction materials.

One goat farmer from Ester wrote the administration suggesting an exemption allowing farms producing less than 10 gallons of milk a day to sell milk and milk products directly to consumers. The milk would have to be pasteurized and the farms registered.

ARRC

3/8/10 DEC

17.20.005 - regulate prod statutory authority
17.20.020 - to regulate cheese

have permitted small operations

Beet Gore - former state Vet - comments on
regs

907-982762

public testimony - all of it heard already
cow shares are allowed - for milk

Ryan says shares for cheese could be done

~~20~~ send Ansley's Email to Ryan

dash regs can fit small operations

Letter to Director Ryan -
exemption or suspension

+ negotiated rule making

3/8/10 Call from

Rob Wells - Matanuska Creamery

Dr. Burt Gore - former State Vet

↓

will fax info - some info

submitted to DEC - concern

with testing protocol & complexity

of reg. - problems with reg.

Valley Dairy, Inc.
dba Matanuska Creamery
7805 East Palmer-Wasilla Highway/Palmer, Alaska 99645
907/745-6455 Fax 907/745-6995

Fax Cover Sheet

To: John w/ Rep. Keller

@ Fax Number: ~~457~~ 907 465-3818

Date: March 8 2010

From: Rob / Matanuska Creamery

Number pages including cover: 9

Regarding:

Cheese Regs

Additional Notes:

Valley Dairy, Inc.
dba Matanuska Creamery
7805 East Palmer-Wasilla Highway/Palmer, Alaska 99645
907/745-6455 Fax 907/745-6995

December 3, 2009

Jay Fuller
Assistant Veterinarian
Division of Environmental Health
Department of Environmental Conservation
555 Cordova St.
Anchorage, Alaska 99501

Re: Regulations Regarding Cheese Production

Dear Dr. Fuller:

It is our position that the comment period for the major new regulations being proposed for cheese should be extended at least another 90 days. Further, hearings or fact-gathering meetings should be held so that both the industry and the public may have a realistic chance to contribute.

The extensive cross-referencing cited in other letters is a major reason for delay.

The regulations seem to be venturing into the purview of other divisions of DEC, as well. For example, we have been working for over a year on handling of milk processing industrial waste with others in the Department, and have been at considerable pains and expense to comply. Further layers of regulation concerning by-product disposal would not seem to be needed.

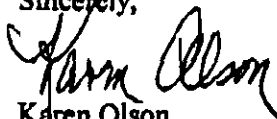
Re: { While we are the largest cheese processor in Alaska, we are really a tiny plant compared to those in other states. Some of the references to equipment types in the proposal are not appropriate to any kind of small, artisanal cheesemaker. If it is not appropriate for us, it is surely not appropriate for someone with a few goats.

* We have had a very bad experience trying to follow the only rules available to us in 2008 for cheese, as you are aware. The lack of coherent DEC regulations, or even rules, cost us and the Southcentral dairy farmers several hundred thousand dollars, and could have cost us the industry itself.

We do, therefore, applaud your attempt to develop regulations after the fact of our start-up. However, we must all be sure that the regulations are reasonable, address Alaska's small-scale enterprises, are easily understood and interpreted, and mean the same things to both industry and the Division.

At this point, there is no need to hurry.

Sincerely,



Karen Olson,
Chief Executive Officer/Chief Financial Officer
Matanuska Creamery

cc:

Senator Linda Menard
Representative Bill Stoltze

Valley Dairy, Inc.
dba Matanuska Creamery
7805 East Palmer-Wasilla Highway/Palmer, Alaska 99645
907/745-6455 Fax 907/745-6995

December 2, 2009

Jay Fuller
Assistant Veterinarian
Division of Environmental Health
Department of Environmental Conservation
555 Cordova St.
Anchorage, Alaska 99501

Re: Regulations Regarding Cheese Production

Dear Dr. Fuller:

I have attempted to thoroughly review the regulation package released by your Division regarding cheese production. I am requesting you extend the comment period another ninety days, and would hope during that period DEC could hold a work-session with interested parties to address serious concerns I have with the draft.

It has been difficult to understand the meaning and impacts of the draft because of the extensive cross referencing used in the document. You cite the Federal PMO, Alaska Statute, Alaska Administrative Code, and the Federal Register. It will require many hours of work to reveal the real effect of these regulations to our business, and potential expenses associated with them.

Specifically, your requirements in 18 AAC 32.323 is of concern. We are currently working with another division in your department to address wastewater issues. Number 1 and 2 in that section needs further explanation. Number 2 says that whey (must be discharged into sewer or wastewater. Whey has nutritional value and is an ingredient in other cheese products like ricotta. It is used for animal feed and crop fertilizer and is dried in large operations. It would be wrong to preclude its use and treat it as waste. Consultation on this item is requested, as it potentially has significant financial impacts. Additionally, b 2 in that section seems to be not practical in terms of cleaning equipment.

In 18 AAC 32.325 your requirement that the vats have tight fitting lids is totally contrary to our production methods, and may require us to go out of business. We are not a large, automated cheese production facility handling hundreds of thousands of pounds of milk a day using the latest and most expensive technology. Rather we produce artisan cheese in small quantities

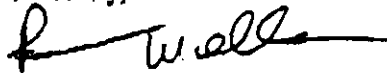
using time tested production methods. A quick Internet search will show these techniques (open vat) used successfully across the country in other states (Washington, Oregon, California, Wisconsin, Missouri). This requirement causes concern about other intended or unintended consequences not yet revealed through a thorough review of all the cross-references.

18 AAC 32.350 concerning testing is unclear as to frequency and who is considered capable of testing. We have cheese stored in detention because of conflicting laboratory tests with your lab. This has been at our expense. We need to have clear understanding of how product can be detained when certified private lab results are discounted.

To preserve future appeals to this regulation package, please consider this letter as a blanket objection to adoption of these regulations until a work session can be scheduled in the next 90 days to address our concerns.

As you know we are a new private sector business employing directly 15- 20 employees with many indirect positive economic and social benefits. Unnecessary regulation threatens our continued existence. We are committed to producing quality safe Alaskan food products, and look forward to working with you toward that end.

Sincerely,



Robert Wells

Cheese maker/ Part-Owner Matanuska Creamery

cc:

Senator Linda Menard

Representative Bill Stoltze

Proposed Cheese Regulations Comments by Matanuska Creamery

18AAC 32.020 OK
32.310 OK
32.315 OK

32.320 (a) This needs to be rewritten to say:

A person may not produce cheese or cheese products ADD(for sale in commerce).

re: Persons should be allowed to make cheese at ^{home} for their own personal use.

32.320 (c)(2)(F) delete the word "planned"

re: Milk demand is variable so cheese production will vary inversely with fluid sales. One cannot plan these market swings.

18AAC 32.323 (a)(1) change wording: delete "from a public water" system; substitute "A water system in compliance with 18AAC 72.

re: Both Matanuska Creamery and Northern Lights Dairy are on private wells operated in accordance with 18AAC 80. There is no option for either milk processor to hook up to a public water system.

18AAC 32.323 (a)(2) delete "whey"

re: Whey can be used for cheese manufacture, livestock feed and in the food industry as gelling/whipping agents, emulsifiers, stabilizers and sports nutrition bars. Whey can be a valuable byproduct of cheese manufacturing, so should definitely not be consigned in Alaska to the waste barrel. After milk is turned into cheese, 85-90 per cent of the remaining is whey, which still contains 50 per cent of the original milk's nutritional value.

(a)(2) delete "public sewer"; change to "a wastewater system constructed and operated as required by 18AAC 72.

re: Matanuska Creamery and Northern Lights Dairy cannot hook up to a public wastewater system as there isn't one available.

(b)(2) change the wording here:
Remove "equipment" and replace it with "hand sinks".

re: Rinse water from vats goes on the floor and into the drains. To require vats and all equipment to drain into sewer and wastewater lines is not feasible.

18AAC 32.325 (a) This should be rewritten to insert the word "allowing". It should read:
In addition to the requirements of 21 CFR, 110.22 revised April 1, 2007 & adopted by reference at 18AAC 32.315, cheese production facilities must have separate rooms "allowing" for each of the following operations or equipment.

(c) Delete "at least 100 feet" from the proposed regulation.

re: No additional rules are needed if the wastewater system is already approved by DEC and designed and operated in accordance with 18AAC72.

18AAC 32.330(b) "Cheese or its ingredients may not be handles with bare hands." We need clarification on when the regulators consider milk has become cheese.

re: Prior to becoming cheese, the milk is heated, a curd is set, the curd is cut and then cooked. Most of the whey is drained and the cooked curds form a mat. The mat is put into molds and finally the cheese block is packaged and aged. So when are gloves required?

18AAC32.330(c) In the last line substitute the word "or" for "and".

re: CFR 110.10 says personnel shall have a background of education or experience or a combination thereof, to provide a level of competency necessary for production of clean and safe foods.

18AAC 32.340. OK

18AAC 32.345. OK

18AAC 32.350 Testing. (This section contains many problems and potential for inequal treatment and unfair dealing.)

32.350 (b) Testing cheese: Remove the dependent clause at the beginning of the sentence, "When beginning the production of a new cheese product or a cheese product that has not been in production within the past year,"

re: Before a new cheese product is made and offered for sale, DEH reviews the label. They then recommend changes or approve the label. The cheese product is manufactured in accordance with 21 CFR Volume 2 part 133. Therefore, no detention or testing is required.

DEH stated at a meeting December 30, 2009 that the cheese product would be detained until microbiological testing was complete. This attitude assumes Matanuska Creamery has made an unwholesome or adulterated product This is wrong.

Further, are the seafood and food industries subjected to this same level of testing? Are jam, jelly, chocolate, honey, ice cream or pastry manufacturers on a 'test and hold' program as is being proposed for cheese? Does DEC maintain a 'test and hold' program for seafood plants when they begin production of canned, smoked, kippered, cured salmon after being closed for the winter? If this done for public health reasons, everyone should be subject to this regulation.

32.350(c) The biennial testing of cheese is not by itself objectionable.

re: The biennial testing of cheese for adulteration and pathogens is acceptable if and only if all cheese manufacturers are included. If the goal is to protect public health, then all cheese products offered for sale in Alaska need to be tested. Matanuska Creamery sells less than one per cent of the cheese consumed in Alaska at this time. Surely the other 99 per cent offers a greater public health risk by sheer volume of sales and probability of supply-chain contamination

It is only fair and equitable to test all cheeses offered for sale to the public if required in this regulation. To do otherwise is a discriminatory practice imposed solely on Alaska industry.

The Pasteurized Milk Ordinance sets minimum standards for Grade A fluid milk products and procedures. All states must meet these federal regulations before Grade A milk products can be sold to military installations, schools, or move in interstate commerce. The federal system has no mandatory testing

requirements for cheese that moves in interstate commerce. It is for this reason that cheese manufactured in other states must meet all Alaska cheese regulations which may be imposed.

18AAC 32.350 Add a new section "g", to read: (g) "Cheese samples determined positive for pathogenic bacteria at the Alaska Laboratory will be referred to a second laboratory, approved by FDA, for a second opinion or confirmation, prior to any final disposition of the product in question."

18AAC 32.350 (f) We at Matanuska Creamery question this requirement. Forcing industry to report voluntary testing results that exceed 345 or 32.370 promotes a "why bother to do quality control" mindset. You would need to report every violation, be it low butterfat, added water or adulteration. The state needs to define what is reportable.

During the cheese testing and detention at Matanuska Creamery in 2008, the State Vet in conjunction with DEC/DEH refused to accept negative test results for Listerian monocytogenes from private laboratories. These negative results were confirmed by three different certified laboratories. DEC/DEH refused to accept the results. Why does the state suddenly want violative results from laboratories from which they will not accept negative results?

18AAC 32.355. Records. OK

18AAC 32.360 Labeling and General identification. (c) Revise the wording to say "Raw or Unpasteurized Milk Product.

re; Raw milk is a scare phrase. Cheddar cheese manufactured from raw or unpasteurized milk in accordance with 21 CFR Volume 2 Part 133 allows a 60-dat or greater aging process to provide a substitute or equivalent procedure for pasteurization.

Secondly, go to a cheese case in grocery stores and read the labels. The label may say in the front panel "made from pasteurized milk", "made from unpasteurized milk", or it might just say "milk". No labels say "Raw milk".

Each state establishes labeling and testing regulations providing they comply with standards of identification described in 21CFR. We wish to reiterate there are no biennial or routine cheddar cheese microbiological testing requirements in the PMO or 21 CFR. Each state establishes its frequency of regulatory bacterial testing. Therefore, ALL cheese offered for sale in Alaska must meet the requirements of 18AAC 32.350 either in the state of manufacture or when offered for sale in Alaska. Everyone must meet or exceed Alaska's cheese regulations.

18AAC 32.350 (d) "Made from Grade A Raw Milk" should be amended to read "made from Grade A (Raw or Unpasteurized) Milk. Either terminology is acceptable.

18AAC 32.365 Inspection. (b)(8) Delete or amend to say employees may only be interviewed with management's approval and/or management's presence.

re; On any given day, one may have disgruntled employees. Additionally, individuals may not have the whole picture. Either deliberately or through ignorance, an unaccompanied employee could give an entirely erroneous picture to an interviewer.

Inspection. (b)(9) Amend to read, "The taking of photographs in the creamery may be allowed or disapproved by management. Prior permission from management is needed before photographs may be taken by the regulatory agency, DEC/DEH.

18AAC 32.370 (a) We support this wording. A cheese producer must destroy or detain for further processing or testing cheese that tested positive for *Listeria monocytogenes*, *Salmonella* or *E. coli*.

re: We agree that the cheese plant should be given options for alleged violative cheeses.

18AAC 32.370 (d)(3) This section should delete the words "cheese product" and retain "food ingredient".

re: Cheese is covered in section 18AAC32.370 (a). Contamination of food ingredients should only be in this paragraph.

18AAC 32.370 (e). Delete (e).

re: In 18AAC 32.370(a) the cheese producer is given a choice to destroy, detain for further processing or testing. This section (e) is contradictory and should be deleted.

18AAC 32.370(f) Question: Define or elaborate on what is meant by "destroy" in a manner that precludes human consumption.

re: What alternatives exist for a product that is precluded for human consumption? Can it be used as livestock feed, fish feed or crab bait?

18AAC 32.370 (g) Delete this section.

re: The cheese plant is given the choice in section (a) to destroy or detain for further processing or testing. This section is unnecessary.

18AAC 32.375. Civil Fines. (a) Civil fines will only be acceptable if all businesses regulated by DEC/DEH are included.

18AAC 32.380. Right to Appeal a Decision.

This section is meaningless. To be valid it must spell out what decisions are appealable, what evidence may be included in an administrative hearing, to whom decisions may be appealed, and so on.

There must also be an authority or an impartial third party which DEC/DEH acknowledges as an expert, especially in the case of pathogens and the public health.

For example, when Matanuska Creamery had difficulty with cheese testing in 2008, the detained notice outlined a right to appeal. When this right was exercised, DEC/DEH refused to hold a hearing on the grounds that the DEC lab was the only laboratory whose results would be acknowledged. Thus, DEH said, truthfully, that a hearing would be a waste of time, as they would not consider any other evidence than its own results.

This kind of circular logic is why both this section and the section on testing need to be carefully written and, when written, applied.

If there is no meaningful right to appeal, the regulations should so state. If that is the case, this section should be deleted, and processors should be warned that no administrative remedies exist or can exist.

Stating this is probably not proper form for the administrative code. If not, procedures for a real remedy within administrative confines should be found and promulgated.

General comment: DEH needs to create a new inspection form, which includes the regulatory citation for every deficiency noted.

John Davies

From: John Davies
Sent: Friday, March 12, 2010 3:45 PM
To: 'Ryan, Kristin J (DEC)'
Cc: Rep. Wes Keller
Subject: RE: ARRC Continued meeting Schedule and Agenda
Attachments: ARRC 3-15 Agenda.doc; ARRC Schedule 3-15.docx

Dear Director Ryan:

FYI, here is a copy of next Monday's continued meeting Schedule and Agenda. Since the Agency and public testimony is closed, you don't need to be in attendance, but I just wanted you to be kept in the loop as long as the issues are active. You may of course attend in person or by phone if you wish, as your input is always welcome.

Regards,
John Davies
ARRC Acting Committee Aide

From: Ryan, Kristin J (DEC) [mailto:kristin.ryan@alaska.gov]
Sent: Friday, March 05, 2010 1:24 PM
To: John Davies; Fuller, Jay D (DEC)
Cc: Rep. Wes Keller
Subject: RE: ARRC meeting Schedule and Agenda

Okay. Thanks John.

The one we are aware of is Margie Buckwalter. She will be using the 1-877 number. If we learn about others we'll let you know.

Thanks, Kristin

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Friday, March 05, 2010 11:58 AM
To: Ryan, Kristin J (DEC)
Cc: Keller, Wes (LAA)
Subject: RE: ARRC meeting Schedule and Agenda

Dear Director Ryan:

The call in number is 877-763-5073. If you have any problems with that number please call me directly at 465-4899 or Rep. Keller's main line 465-2186. We value your input and want to make sure that there are no technical problems with the call in presentation.

As for the small cheese processors that want to testify, that would be excellent to have such input. They may either go to their local LIO and sign up to testify or call in the number I gave you above. The problem is that there are a limited number of call in lines so the LIO has asked me to try and have the individuals go to the LIO if at all possible. I know that some of the callers live in remote areas where an LIO is not accessible so in that case it would be ok.

I don't need the names, but the testifiers will have to sign up at the LIO to testify. If they are going to call in, then give me a heads up so I can alert the LIO here in Juneau.

Thank You.

Regards,
John Davies
ARRC Acting Committee Aide

From: Ryan, Kristin J (DEC) [mailto:kristin.ryan@alaska.gov]
Sent: Friday, March 05, 2010 9:05 AM
To: John Davies
Cc: Fuller, Jay D (DEC)
Subject: RE: ARRC meeting Schedule and Agenda

John – what teleconference number would you like us to use Monday?

Also, there is a currently permitted small cheese processors that want to testify as well. If you need their information in advance, we can have them contact you.

Thanks, Kristin

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Friday, February 26, 2010 12:41 PM
To: Ryan, Kristin J (DEC)
Subject: FW: ARRC meeting Schedule and Agenda

Here is the schedule and agenda. JD

From: John Davies
Sent: Wednesday, February 24, 2010 1:20 PM
To: 'Larry.Hartig@alaska.gov'; 'jay.fuller@alaska.gov'
Cc: Rep. Wes Keller; Jim Pound
Subject: ARRC meeting Schedule and Agenda

February 24, 2010

Dear Gentlemen:

FYI, please find attached a copy of the March 8th meeting Schedule and Agenda.

If you have any questions, feel free to call me at 907 465-4899.

Thank You,

John Davies
ARRC Acting Committee Aide

John Davies

From: John Davies
Sent: Friday, March 12, 2010 2:01 PM
To: Dani Carlson
Cc: Rep. Wes Keller; Jim Pound
Subject: Press Release for Monday's ARRC meeting
Attachments: ARRC 3-15 Agenda.doc

Dear Dani

Attached to this email is the agenda for the ARRC's Monday continued meeting regarding Cheese Production and Personal Use Cabin regulations. This may help you draft your press release.

Press Release suggestions:

ARRC to consider an Exemption for small dairies.

The Chairman of the Joint Administrative Regulation Review Committee, Representative Wes Keller, continued last Monday's hearing until Monday, March 15, 2010, in order to allow for additional time to consider the subject of an exemption for small dairies from the new Cheese Production Regulations being proposed by DEC. The Committee will deliberate on this issue as well as take up issues pertaining to Personal Use Cabins. The Agency and public testimony has closed on the Cheese Production issues, but DNR will continue with its presentation on the personal use cabin issues and the public is welcome to weigh in with testimony on the cabin issues.

Thanks,

John Davies
ARRC Acting Committee Aide

ALASKA STATE LEGISLATURE

Interim:

600 E. Railroad Avenue

Wasilla, Alaska 99654

Phone: 373-1842

Fax: (907) 373-4729

**Session:**

State Capitol Building

Juneau, Alaska 99801-1182

Phone: (907) 465-4899

Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

March 15, 2010

Kristin Ryan, Director
Environmental Health Division
Alaska Department of Environmental Conservation
555 Cordova Street
Anchorage, Alaska 99601

Dear Ms Ryan:

We would like to thank you for your testimony at the March 8 ARRC meeting regarding 18 AAC 32. Based on the testimony and that, other states such as Oregon have enacted an exemption for small dairies, we believe a similar exemption can be adopted for Alaskans. Therefore, the Committee recommends that your agency enter into negotiated rule making with the appropriate parties pursuant to AS44.62.710 et.seq to work out an acceptable exemption.

The Committee is hopeful that a workable solution can be achieved that balances the protection of the public with the individual's freedom to choose what he/she eats, thereby reducing regulatory involvement at the smaller direct sales level. If an appropriate exemption is not worked out, please be advised that the Committee has the authority during interim to suspend a regulation and during the Session to introduce legislation to overrule a regulation. If you have any questions, please feel free to give the ARRC office a call.

Very Truly Yours,

Rep Wes Keller
Donald C Olson
Ken Meyer

Albert Kookesh
Zach [unclear]
Jammie Wilson
[unclear]

ALASKA STATE LEGISLATURE

Interim:

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
Fax: (907) 373-4729

**Session:**

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-4899
Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

REPRESENTATIVE WES KELLER, R-WASILLA- CHAIR

FOR IMMEDIATE RELEASE

PRESS RELEASE

Cheese Regulations need more work and some exemptions

The Administrative Regulation Review Committee (ARRC) met again on Monday, March 15th to continue work on previously discussed issues including Department of Environmental Conservation proposed regulations on cheese. Of concern to the committee and the stakeholders is the effects the regulations will have on small dairies.

Committee Chair, Wes Keller proposed that prior to any more action, the Department enter into negotiated rulemaking discussions with the stakeholders. Negotiated Rule making is a process in which both sides sit down at the table and discuss their concerns and attempt to reach a compromise. The statutory process has been used several times since being created by the Legislature and has been successful in reaching agreements on regulations.

A number of small producers attended the March 8th meeting of ARRC and asked for an exemption from the regulations similar to the one adopted by the State of Oregon. At the meeting on the 15th the Committee decided to request a small producer exemption be placed in the new regulations. Representative Keller said, "The Committee believes that small dairies should not be burdened with expensive or complicated regulations, and that individuals should be free to buy fresh milk and cheese from these small farms if they wish. It is good public policy for both the small dairyman and the consumer, and where they deal directly with one another the State doesn't need to be involved." By using negotiated rule making the details of that exemption can be worked out prior to the regulations taking effect.

In its letter to DEC, the Committee made it clear that if an acceptable exemption is not adopted, that it had the power to suspend a regulation or introduce legislation to overrule the regulations. Certainly, the committee prefers that the Department and the Stakeholders reach an agreed solution without the need for legislative involvement.

###

John Davies

From: John Davies
Sent: Wednesday, March 17, 2010 1:28 PM
To: Rep. Wes Keller
Subject: Cheese Exemption

Dear RWK:

One problem that could come up in the Cheese Exemption regards the PMO federal law. Oregon views the PMO as only effecting milk shipped interstate. But Alaska has adopted the PMO in AS17.20.005 as part of our state standards of sanitation for dairies offering to the public or selling milk or milk products.

Perhaps that means that, as Jennifer Ansley proposed, the milk and/or cheese would have to be pasteurized before sales could take place? Our ARRC attorney thinks that the way Alaska law presently reads in the referenced statute that an exemption can't be granted.

Maybe we will have to put an exemption in statute? Such as in AS17.20.005 (4) add a (4a) to read "Small Dairy Exemption.....then add language like Oregon or whatever the negotiated rule making comes up with".

Just a thought for now, as we don't know yet whether the Director will enter into negotiated rulemaking with the stakeholders. Perhaps next session, working with Rep. Neuman we put in a bill for exemption so as to override the PMO.

JD

John Davies

From: Rep. Wes Keller
Sent: Sunday, March 21, 2010 8:00 PM
To: Frederick Pennington
Cc: John Davies
Subject: RE: Cheese Production

Frederick, I have copied John Davies, chief of staff so he can respond if he has an answer to your question. I think it would be good to get in touch with some of the testifiers for small producers to ask them.

Rep Keller

From: Frederick Pennington [fr3der1ckiv@yahoo.com]
Sent: Friday, March 19, 2010 12:12 PM
To: Rep. Wes Keller
Subject: Re: Cheese Production

Thanks Rep. Keller, for the fast response and your support. Is there anyone else I can write or call to protect Alaskan Cheese producers?
Frederick Pennington

From: Rep. Wes Keller <Representative_Wes_Keller@legis.state.ak.us>
To: Frederick Pennington <fr3der1ckiv@yahoo.com>
Sent: Fri, March 19, 2010 9:51:22 AM
Subject: RE: Cheese Production

Thanks for the encouragement Frederick. The onerous regulations were a product of the Division of Environmental Health in DEC. The Legislature is doing everything we can to allow small cheese producers to operate without undue restriction.

Sincerely,
Rep Keller

From: Frederick Pennington [mailto:fr3der1ckiv@yahoo.com]
Sent: Thursday, March 18, 2010 2:13 PM
To: Wes_Keller@legis.state.ak.us
Subject: Cheese Production

Dear Rep. Keller,
I frequently monitor local news and happened upon an article today about regulations on cheese production and was shocked at the ridiculousness of requiring city water and sewer. As horrid as that idea is, I am really upset to have not heard this was even being considered and have missed the public comment period. For the record I am not against government regulation, but these regulations would further restrict Alaskans the chance to buy local and support our fellow Alaskans. I strongly request that you vote against such regulations that would require cheese manufacturers to move to a city to make cheese.

Frederick C Pennington IV
745 E Susitna Dr.
Wasilla, AK 99654

 **John Davies**

From: John Davies
Sent: Thursday, March 25, 2010 11:03 AM
To: 'fr3der1ckiv@yahoo.com'
Cc: Rep. Wes Keller
Subject: ARRC Cheese Production Regulations

Dear Mr. Pennington:

Representative Keller has forwarded a copy of your email to me for response.

After reading your email, it is my opinion that you would most likely find it educational to correspond with two of the individuals that advocated for a small producer exemption. You may find that working with them promotes your best interests as well.

Their contact information is: Jennifer Ansley at Far Above Rubies 907 457-3890 www.alaskagoatmilk.com email gkahoe@gci.net and Paul Robinson at pbr@rescpa.com

Thank you for taking the time to be involved in the process.

Regards,
John Davies
ARRC Acting Committee Aide

STATE OF ALASKA

Sean Parnell, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION DIVISION OF ENVIRONMENTAL HEALTH

555 Cordova Street
Anchorage, Alaska 99501
PHONE: (907) 269-7644
FAX: (907) 269-7654
<http://www.dec.state.ak.us/>

April 8th, 2010

The Honorable Wes Keller
Administrative Regulation Review Committee Chairman
State Capitol, Room 13
Juneau, Alaska 99801

Dear Representative Keller,

This is in response to the letter from the Administrative Regulation Review Committee dated March 15, 2010. The Department of Environmental Conservation (DEC), Division of Environmental Health attended two committee hearings related to the regulation of cheese for commercial sale.

Since 2008, the Division of Environmental Health has been drafting changes to 18 AAC 32 to address commercial cheese production. Several years ago, one company made cheese in Alaska. Since we were lacking regulations for safe cheese production at that time, we utilized the federal rules but found them too restrictive for Alaskan producers. We are excited to see more entrepreneurs venturing into cheese making and our only goal is to ensure they make a product that is safe to eat.

I want to reiterate the most important aspects of making cheese that is safe to eat and protective of human health. First, it requires healthy animals. Sometimes it is impossible to know when an animal is shedding dangerous pathogens into the milk such as tuberculosis, brucellosis, listeria, campylobacter, E. coli, salmonella, and Coxiella burnetti (Q-Fever). The proper care and humane treatment of animals will require a conscientious owner to occasionally use antibiotics to save the life of an animal. The second tenet to safe cheese making is a clean and sanitary processing facility. Given the environment in which dairy animals live, it is impossible to eliminate all fecal matter from a dairy operation but the risks can be reduced with effective sanitation. Third, adequate processing is necessary to kill bacteria and pathogens that may contaminate the milk. And fourth, testing of the final product is required to make sure the protective measures were successful and the commercial product is wholesome and safe to eat. The regulations proposed by the Division of Environmental Health were intended to establish the minimum standards necessary to make safe cheese.

We have thoroughly reviewed many other states' regulations related to cheese production and primarily used the State of Oregon as our model. No other state exempts any cheese producer, no matter what their size, from food safety requirements. The exemption example provided to the committee from Oregon does not relate to cheese production and only exempts raw milk sales. It is similar to the current raw milk allowance in Alaska.

One testifier felt the proposed testing regime was much stricter than what imported cheese goes through. Commercial cheese is regulated by the state or country that it is produced in. Any international imports must have a regulatory program acceptable to the U.S. Food and Drug Administration. Every state except Alaska has rules in place very similar to the ones proposed by the Division of Environmental Health. Not every state is identical on all regulatory aspects but they are relatively equivalent. For example, Alaska's proposed regulations are actually more lenient than many states because we allow the use of Grade "B" milk for cheese production.

There are many misunderstandings about the proposed drinking water and wastewater requirements. The three cheese producers that have received permits are on private wells. In situations like these, DEC requires the well to be tested quarterly for total coliforms and nitrates. That puts the well in compliance with 18 AAC 80, the regulations for public water systems and technically makes the well a public water system. In the case of Healing Acres Goat Farm, their septic system was a few feet closer to their well than drinking water regulations allow which is why the drinking water program granted them a waiver. The commercial cheese production regulations do not include waivers. It is a similar circumstance for wastewater treatment. The three cheese producers that have received permits are on private septic systems. The proposed regulations just require that wastewater systems comply with 18 AAC 70 the regulations for wastewater systems. Private septic systems can comply with those regulations.

The proposed regulations stated separate rooms were necessary for eight different types of activities. We are developing new provisions that will allow for some latitude in room usage without compromising food safety. The existing permitted facilities have combined several compatible activities in rooms or utilized closets for certain things like bacteriological and chemical analysis without jeopardizing the safety or wholesomeness of the cheese product.

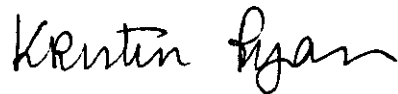
Because many small Alaskan commercial producers feel the proposed regulations are unattainable, yet small cheese makers in other states are able to comply with similar regulations, we have researched the differences carefully. The most common method used by small artisan cheese makers in other states is the formation of cooperatives where multiple cheese producers band together and build one facility for commercial cheese production. We are working with the U.S. Department of Agriculture (USDA) to bring cheese guild

representatives in from other states so they can explain how this model has worked in their communities. Grants and loans appear to be available to support this approach. The Division of Environmental Health will create a group of stakeholders to encourage discussion about this option over the next year. Co-op kitchens are used for the preparation and processing for many commercial food products. Therefore, it may be a successful model for several small, Alaskan food processors.

Since there are considerable misunderstandings with the proposed regulations, the Division of Environmental Health will release another version for public comment and continue the dialogue. This will allow us to make amendments and hold workshops to further delve into concerns and possible solutions. Hopefully a revised version of the regulations will clarify and address many of the concerns raised. In addition, we need more discussion about the areas of concern. The Division of Environmental Health wants to assist small commercial cheese producers make a safe product.

Thank you for your input. We will be releasing a new version of the regulations and will announce the workshops soon.

Sincerely,



Kristin Ryan
Director
Division of Environmental Health

Cc:

Honorable Senator Olson
Honorable Representative Gatto
Honorable Representative Guttenberg
Honorable Senator Kookesh
Honorable Senator Meyer
Honorable Tammie Wilson

John Davies

cheese regs

From: Far Above Rubies [gkahoe@gci.net]
Sent: Friday, April 09, 2010 6:09 PM
To: Rep. Wes Keller; Rep. Tammie Wilson; Rep. David Guttenberg
Cc: John Davies; Paul Robinson
Subject: cheese regulations

Dear Rep. Keller, Rep. Wilson, and Rep. Guttenberg,

The article below is on the Fairbanks Daily News-Miner website for Friday, April 9th. I am concerned with the attitude of the DEC. It seems unlikely that they intend to engage in any meaningful negotiated rulemaking with the stakeholders. To date, I have not been contacted by the DEC nor am I aware of any other stakeholders who have been contacted to begin discussions. I am also very offended by Kristin Ryan's flip comment that home dairy owners make "cheese in their bathtubs."

I appreciate the interest that you have shown and the time that you have taken to encourage the DEC to make an exemption for home dairies. I wanted to be sure that you were aware of this article and of the DEC's uncooperative attitude.

Thank you very much for your time.

Sincerely,

Jennifer Ansley
Far Above Rubies

Goat farms spur growth in Alaskan cheese making
by Jeremy Hsieh / The Associated Press
7 hrs ago | 708 views | 5 | 8 | |

JUNEAU, Alaska - When Jennifer Ansley saw goats for the first time at a state fair, her heart nearly skipped a beat.

"Oh, that's what I want," she told her husband. "I'm going to learn to make cheese. And I did."

A decade later, Ansley is among a growing number of Alaska farmers who have found a niche with goats, hardy animals they say adjust well to the state's climate. Ansley has 10 goats on her 15-acre farm in Ester and makes cheese for her family - something that concerns state officials who have drafted the state's first rules for commercial cheese making.

"We don't want people making cheese in their bathtubs," said Kristin Ryan, director of the state Division of Environmental Health. "We want it done in a sanitary environment."

Ansley doesn't sell her cheese, instead making a living selling soaps and skin creams made with goat milk. But state officials are hearing from more farmers who want to sell cheese - and suspect some may already be doing it out their back doors - as the number of dairy goat farms grows.

It more than doubled from 12 in 1997 to 27 in 2007, the latest year for which numbers are available. But Ryan said Alaska remained the only state without commercial cheese making regulations until this winter.

The rules issued then have alarmed the state's budding cheese-makers, who say they will raise costs and squelch entrepreneurs. One particularly vilified rule requires eight separate rooms for production with specifications for plumbing, lighting and ventilation. Ryan said that wasn't the intent, and it will be relaxed.

One goat dairy has already closed up shop. Matt Shaul and his wife ran the 10-acre Cranberry Ridge Farm in Wasilla for a year and a half. They received a permit for sales to the public from Ryan's office while the new rules were still being drafted and opened in 2007.

Area retailers bought every block of cheese the farm could make and sold it for about \$30 a pound, Shaul said, adding: "We could not keep up."

But in late 2008, they sold their farm and moved to New York. Dairy farming is already difficult with Alaska's short grazing season, small consumer base and high shipping costs, Shaul said. His permit came with rules that added to the burden, such as a requirement that he test for antibiotics part way through the cheese making process, adding to his equipment and other costs. New York tests for antibiotics too, but the cheese-maker doesn't have to have a lab to do it, he said.

"Any one of those things wouldn't have shut me down," Shaul said, "but piling it all together. ... Agriculture is so fragile in Alaska."

The state has issued permits for public sales to only one other mom-and-pop operation. Margie Buchwalter said she found the process reasonable and the state accommodating, but she closed her business shortly after receiving its permit because her husband developed unrelated health problems.

The only other permit holder thus far has been the state's biggest dairy processor, Matanuska Creamery in Palmer. Unlike the other two, it buys cow milk from farmers and has 17 workers, including two part-time cheese-makers. But general manager Karen Olson said her company also has concerns about the rules, particularly when it must compete with cheaper cheese imported from states where regulations might be more lenient.

Alaska lawmakers met last month on the cheese regulations and asked Ryan to work with the dairies to rewrite the rules with exemptions for small farms. As a model, dairy farmers and lawmakers pointed to Oregon, which allows direct-to-consumer milk sales at the farm.

But Ryan said milk has lower health risks than cheese, which involves more production steps, handling and ingredients, thus more ways to become tainted.

The U.S. sees about 2,500 cases each year of listeriosis, the most common food-borne illness caused by dairy products, with about 500 fatalities, according to the Centers for Disease Control and Prevention. It can be dangerous to the elderly, newborns, pregnant women and people with chronic medical conditions.

Dr. Jay Fuller, an assistant state veterinarian who helped draft Alaska's rules, said they are already the most liberal among the states and food safety shouldn't take a back seat to business.

"This is not stricter regulation, it's the first regulation we ever had," said Fuller, who suggested farmers pool their resources and establish cooperatively owned processing facilities that meet state safety codes instead of seeking a small dairy exemption.

John Davies

From: John Davies
Sent: Monday, April 12, 2010 10:25 AM
To: 'Far Above Rubies'
Cc: Rep. Wes Keller; Jim Pound
Subject: RE: cheese regulations

Dear Jennifer Ansley,

Thank you for your email. I am disappointed that DEC is not working with you and the other stakeholders as the Committee suggested. I will meet with Chairman Keller to explore options.

In closing, I read the article that you forwarded. It was well done and accurate from what I know about the situation. Good reporting is rare these days, so the article was refreshing.

Please feel free to contact me in a few weeks if you haven't heard from me by then. We are right at the end of the Legislative Session and things will be in transition at the end of this week as the Sessions ends and we move the office back to District 14 (Wasilla). I'll be back in the Wasilla office after April 26th.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

From: Far Above Rubies [mailto:gkahoe@gci.net]
Sent: Friday, April 09, 2010 6:09 PM
To: Rep. Wes Keller; Rep. Tammie Wilson; Rep. David Guttenberg
Cc: John Davies; Paul Robinson
Subject: cheese regulations

Dear Rep. Keller, Rep. Wilson, and Rep. Guttenberg,

The article below is on the Fairbanks Daily News-Miner website for Friday, April 9th. I am concerned with the attitude of the DEC. It seems unlikely that they intend to engage in any meaningful negotiated rulemaking with the stakeholders. To date, I have not been contacted by the DEC nor am I aware of any other stakeholders who have been contacted to begin discussions. I am also very offended by Kristin Ryan's flip comment that home dairy owners make "cheese in their bathtubs."

I appreciate the interest that you have shown and the time that you have taken to encourage the DEC to make an exemption for home dairies. I wanted to be sure that you were aware of this article and of the DEC's uncooperative attitude.

Thank you very much for your time.

Sincerely,

Jennifer Ansley
Far Above Rubies

Goat farms spur growth in Alaskan cheese making

JUNEAU, Alaska - When Jennifer Ansley saw goats for the first time at a state fair, her heart nearly skipped a beat.

"Oh, that's what I want," she told her husband. "I'm going to learn to make cheese. And I did."

A decade later, Ansley is among a growing number of Alaska farmers who have found a niche with goats, hardy animals they say adjust well to the state's climate. Ansley has 10 goats on her 15-acre farm in Ester and makes cheese for her family - something that concerns state officials who have drafted the state's first rules for commercial cheese making.

"We don't want people making cheese in their bathtubs," said Kristin Ryan, director of the state Division of Environmental Health. "We want it done in a sanitary environment."

Ansley doesn't sell her cheese, instead making a living selling soaps and skin creams made with goat milk. But state officials are hearing from more farmers who want to sell cheese - and suspect some may already be doing it out their back doors - as the number of dairy goat farms grows.

It more than doubled from 12 in 1997 to 27 in 2007, the latest year for which numbers are available. But Ryan said Alaska remained the only state without commercial cheese making regulations until this winter.

The rules issued then have alarmed the state's budding cheese-makers, who say they will raise costs and squelch entrepreneurs. One particularly vilified rule requires eight separate rooms for production with specifications for plumbing, lighting and ventilation. Ryan said that wasn't the intent, and it will be relaxed.

One goat dairy has already closed up shop. Matt Shaul and his wife ran the 10-acre Cranberry Ridge Farm in Wasilla for a year and a half. They received a permit for sales to the public from Ryan's office while the new rules were still being drafted and opened in 2007.

Area retailers bought every block of cheese the farm could make and sold it for about \$30 a pound, Shaul said, adding: "We could not keep up."

But in late 2008, they sold their farm and moved to New York. Dairy farming is already difficult with Alaska's short grazing season, small consumer base and high shipping costs, Shaul said. His permit came with rules that added to the burden, such as a requirement that he test for antibiotics part way through the cheese making process, adding to his equipment and other costs. New York tests for antibiotics too, but the cheese-maker doesn't have to have a lab to do it, he said.

"Any one of those things wouldn't have shut me down," Shaul said, "but piling it all together. ... Agriculture is so fragile in Alaska."

The state has issued permits for public sales to only one other mom-and-pop operation. Margie Buchwalter said she found the process reasonable and the state accommodating, but she closed her business shortly after receiving its permit because her husband developed unrelated health problems.

The only other permit holder thus far has been the state's biggest dairy processor, Matanuska Creamery in Palmer. Unlike the other two, it buys cow milk from farmers and has 17 workers, including two part-time cheese-makers. But general manager Karen Olson said her company also has concerns about the rules, particularly when it must compete with cheaper cheese imported from states where regulations might be more lenient.

Alaska lawmakers met last month on the cheese regulations and asked Ryan to work with the dairies to rewrite the rules with exemptions for small farms. As a model, dairy farmers and lawmakers pointed to Oregon, which allows direct-to-consumer milk sales at the farm.

But Ryan said milk has lower health risks than cheese, which involves more production steps, handling and ingredients, thus more ways to become tainted.

The U.S. sees about 2,500 cases each year of listeriosis, the most common food-borne illness caused by dairy products, with about 500 fatalities, according to the Centers for Disease Control and Prevention. It can be

• dangerous to the elderly, newborns, pregnant women and people with chronic medical conditions.

Dr. Jay Fuller, an assistant state veterinarian who helped draft Alaska's rules, said they are already the most liberal among the states and food safety shouldn't take a back seat to business.

"This is not stricter regulation, it's the first regulation we ever had," said Fuller, who suggested farmers pool their resources and establish cooperatively owned processing facilities that meet state safety codes instead of seeking a small dairy exemption.

John Davies

From: John Davies
Sent: Tuesday, April 13, 2010 11:03 AM
To: 'janet_ogan@legis.state.ak.us'; Bonnie Gruening; Kimberly Clark; Christina Apathy; Josh Applebee; Christopher Birdsall
Cc: Rep. Wes Keller; Jim Pound
Subject: FW: Cheese Regulations

Dear Fellow Staffers,

Here is a forwarded email that thanks Director Ryan for her letter of April 8th, (all members were cc'd) which notifies the ARRC that DEC will be proposing new regulations with changes to deal with the objections to the formerly proposed regulations. It appears that the ARRC has helped the small producers be heard, and hopefully after the workshops, a suitable resolution will be hashed out. Thank your bosses for their positive input.

Have a good closing to this Session. It has been a pleasure working with all of you.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

From: John Davies
Sent: Tuesday, April 13, 2010 10:56 AM
To: 'Ryan, Kristin J (DEC)'
Cc: Rep. Wes Keller; Jim Pound
Subject: Cheese Regulations

Dear Director Ryan:

Representative Keller on behalf of the Administrative Regulation Review Committee thanks you for your letter dated April 8, 2010, and your reasoned approach to working out a Cheese Regulation solution that will work for all parties.

The Committee wishes you success in these proceedings. If you need the assistance of the Committee please do not hesitate to call upon us.

Very Truly Yours,

For Representative Wes Keller
By
John Davies
ARRC Acting Committee Aide

John Davies

From: John Davies
Sent: Tuesday, April 13, 2010 10:51 AM
To: 'Far Above Rubies'
Cc: 'Ryan, Kristin J (DEC)'; Rep. Wes Keller; Jim Pound
Subject: Cheese Regulations

Dear Jennifer Ansley,

Today our office received a letter from Director Ryan, Division of Environmental Health, DEC, which I believe is responsive to your questions.

In her letter Director Ryan says, "Since there are considerable misunderstandings with the proposed regulations, the Division of Environmental Health will release another version for public comment and continue the dialogue. This will allow us to make amendments and hold workshops to further delve into concerns and possible solutions. Hopefully a revised version of the regulations will clarify and address many of the concerns raised. In addition, we need more discussion about the areas of concern. The Division of Environmental Health wants to assist small commercial cheese producers make a safe product.

Thank you for your input. We will be releasing a new version of the regulations and will announce the workshops soon."

I suggest that you keep in touch with Director Ryan so that you are in a position to receive notice of the new regulations and be able to comment so as to be a part of the dialogue. Please feel free to contact our office if you have any questions or concerns.

I am happy to know that matters are moving in a positive direction for all concerned.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

John Davies

From: John Davies
Sent: Tuesday, April 13, 2010 10:56 AM
To: 'Ryan, Kristin J (DEC)'
Cc: Rep. Wes Keller; Jim Pound
Subject: Cheese Regulations

Dear Director Ryan:

Representative Keller on behalf of the Administrative Regulation Review Committee thanks you for your letter dated April 8, 2010, and your reasoned approach to working out a Cheese Regulation solution that will work for all parties.

The Committee wishes you success in these proceedings. If you need the assistance of the Committee please do not hesitate to call upon us.

Very Truly Yours,

For Representative Wes Keller
By
John Davies
ARRC Acting Committee Aide

John Davies

From: Far Above Rubies [gkahoe@gci.net]
Sent: Tuesday, April 13, 2010 2:08 PM
To: John Davies
Subject: Re: Cheese Regulations

Dear Mr. Davies,

Unfortunately, Ms. Ryan still seems confused as to what we are asking for. We are not small commercial cheese producers. We are people with less than 10 milking goats or 3 milking cows who would like to be able to legally sell our excess milk (less than 10 gallons/day) or cheese that we have made with our excess milk, directly to our friends and neighbors. We are not interested in making a business of cheesemaking. If Ms. Ryan could be made to understand that this is not a "small commercial cheese" production issue, I think that it would be easy to reach a satisfactory agreement.

I also am very unhappy with Ms. Ryan's public comments suggesting that we are "making cheese in (our) bathtubs." This, to me, does not indicate a sincere desire to understand or meet our needs.

Thank you for your assistance.

Sincerely,

Jennifer Ansley
Far Above Rubies

----- Original Message -----

From: John Davies
To: Far Above Rubies
Cc: Ryan, Kristin J (DEC) ; Rep. Wes Keller ; Jim Pound
Sent: Tuesday, April 13, 2010 10:50 AM
Subject: Cheese Regulations

Dear Jennifer Ansley,

Today our office received a letter from Director Ryan, Division of Environmental Health, DEC, which I believe is responsive to your questions.

In her letter Director Ryan says, "Since there are considerable misunderstandings with the proposed regulations, the Division of Environmental Health will release another version for public comment and continue the dialogue. This will allow us to make amendments and hold workshops to further delve into concerns and possible solutions. Hopefully a revised version of the regulations will clarify and address many of the concerns raised. In addition, we need more discussion about the areas of concern. The Division of Environmental Health wants to assist small commercial cheese producers make a safe product.

Thank you for your input. We will be releasing a new version of the regulations and will announce the workshops soon."

I suggest that you keep in touch with Director Ryan so that you are in a position to receive notice of the new regulations and be able to comment so as to be a part of the dialogue. Please feel free to contact our office if you have any questions or concerns.

I am happy to know that matters are moving in a positive direction for all concerned.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

John Davies

Cheese Regs

From: John Davies
Sent: Wednesday, April 14, 2010 9:51 AM
To: 'Ryan, Kristin J (DEC)'
Cc: Rep. Wes Keller; Jim Pound; 'Far Above Rubies'
Subject: Small Dairy Exemption

Dear Director Ryan,

As we pack up the Juneau office and finish out the 26th Legislative Session, I wanted to convey to you the recently received sentiments of the small dairy group. They wanted to make the distinction that they are not small commercial cheese producers, but instead people with less than 10 milking goats or 3 milking cows who would like to be able to legally sell their excess milk (less than 10 gallons/day) or cheese that they have made with their excess milk, directly to their friends and neighbors. They are not interested in making a business of cheese making. They don't see this as an issue of small commercial cheese production, but simply a way to use their excess milk to offset the costs of their small family dairy. Finding a way to exempt these small operations from the burden and expense of cumbersome regulation is what is hoped for. Thank you for this consideration. We trust that the new proposed regulations and the workshops will prove fruitful in this regard.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

**3/8/10 &
3/15/10
REGS:
PERSONAL
USE
CABIN
PERMITS**

ALASKA STATE LEGISLATURE

Interim:

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
Fax: (907) 373-4729

**Session:**

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-4899
Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

AMENDED COMMITTEE SCHEDULE

MONDAY MARCH 15, 2010 3-5:00 P.M. ROOM 17

+ **Joint Senate and House Committee Meeting**

+* Continued hearing from March 8, 2010 concerning:

(18 AAC 32) Proposed Regulations Relating to Cheese Production.
Testimony has closed, Committee Deliberations.

(11 AAC 65.010 – 11 AAC 65.900, particularly 11 AAC 65.010),
Regulations Relating to Personal Use Cabin Permits.
Public Testimony to be Taken:

Executive Session.

+ Teleconference
* First Public Hearing
= Previously Heard Bill

E-Mail: John_Davies@legis.state.ak.us

ALASKA STATE LEGISLATURE

Interim:

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
Fax: (907) 373-4729

**Session:**

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-4899
Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

AGENDA

Monday, March 15, 2010, Capitol Room 17, 3-5:00 P.M.; Continued from the March 8, 2010 meeting.

- I. Call to Order by Chairman.
- II. Introduction of Members.
- III. Opening remarks by the Chairman.
- IV. (11 AAC 65.010 – 11 AAC 65.900, particularly 11 AAC 65.101) Regulations Relating to Personal Use Cabin Permits. Continued presentation by DNR Director Dick Mylius, Division of Mining, Land and Water, and thereafter; Public Testimony.
- V. Close Public Testimony.
- VI. (18 AAC 32) Proposed Regulations Relating to Cheese Production. Deliberation and discussion by Committee. Agency and public testimony previously closed.
- VII. Deliberation and discussion regarding the Personal Use Cabin issues.
- VIII. Executive Session, time permitting, in order to discuss non-public review memos from the Committee's attorney.
- IX. Reconvene the meeting, in the event of a special session, and adjournment.

*This hearing will be teleconferenced.

E-Mail: John_Davies@legis.state.ak.us

ARRC Meeting Checklist for 3/15/10 Meeting

1. **Reserve Meeting Room.** Room 17 is Rep. Wilson's Transportation Meeting Room, Call Becky at 465-3759 to Reserve the Room. *✓ ok for 3/15*
2. **ARRC Attorney.** The Committee has its Own Attorney, Her Name is Lisa Kirsch, She is at Legal Services 465-3867 in the Terry Miller Office Building, Coordinate with Her to Make Sure She can Attend the Meeting as She Only Works Half-Days. *Deborah Behr*
3. **Staff Contacts.** Rep. Keller's Contacts are Jim Pound at 465-6265, or John Davies at 465-4899, room 13 or 17a; Rep. Gatto is Bonnie Gruning at 465-3743, room 108; Rep. Guttenberg -- contact is Christopher Birdsall at 465-4457 room 418; Senator Kookesh -- contact is Kimberly Klark at 465-3473, room 11; Senator Meyer -- contact is Josh Applebee at 465-4945, room 101; Senator Olson -- contact is Christina Apathy at 465-3707, room 514. Notice Legislative Staff Members of Upcoming Committee Meetings and Actions (keep them in the loop always). *Deborah Behr 465 2422*
4. **Committee Schedule.** Deliver the Committee Schedule for the Next Upcoming Meeting to Both the Senate and House Clerks Because This is a Joint Committee. *Deborah Behr*
5. **Distribute Committee Schedule.** Email and Hand-Deliver the Committee Schedule for the Next Meeting to Each of the Senators and Representatives Personally and to Each Staff Contact. Notice to ARRC attorney -- Lisa Moritz Kirsch 465-3867, third floor, Terry Miller Building. Notice to Department of Law Regulations attorney -- Deborah Behr 465-3600. *to Alaska - for*
6. **LIO Teleconference/Gavel to Gavel/Records.** Make Sure That the LIO Teleconference Details as well as TV and Records are Noticed. Juneau LIO 465-4648. New Toll-Free Number for Off Net Calls is 877-763-5073 Do LIO Teleconference Order Form, found on the State Website Intranet on the cover page Clair Richardson 463-6471 is the Gavel to Gavel contact; House records, Crys, 465-2214, they bring sign up sheets.
7. **Agenda.** Make an Agenda for the Meeting, Make Sure Everyone On the Agenda Who Needs to be there is Notified and Coordinate with them.
8. **Interested Parties.** Give notice to interested parties and invite agency commissioners to attend regarding their new proposed regulations. If an agency has a legislative liaison then first talk with the liaison to have him/her set things up. Ask for back-up information to put in the committee member packets.
9. **Meeting Packets.** Make up information file folder packets for committee members with necessary materials to be discussed. Put the Packet information on Basis.
10. **Press Release.** Contact Dani Carlson of House Majority Press and do a press release.

11 **Script.** Prepare a script for the Chairman of how the meeting will proceed and language to act as a guide.

12. **Committee Meeting.** Contact the Sgt. At Arms, Macela 465-3869, to see that there is coffee and water in the committee room. See "Committee Aide Tips".

a) Make 3 copies of LIO sign up list one to Chair and to Records.

~~b) If a power point is going to be used get Help Desk to set it up.~~

c) Have sign up sheets on the desk out in the hall.

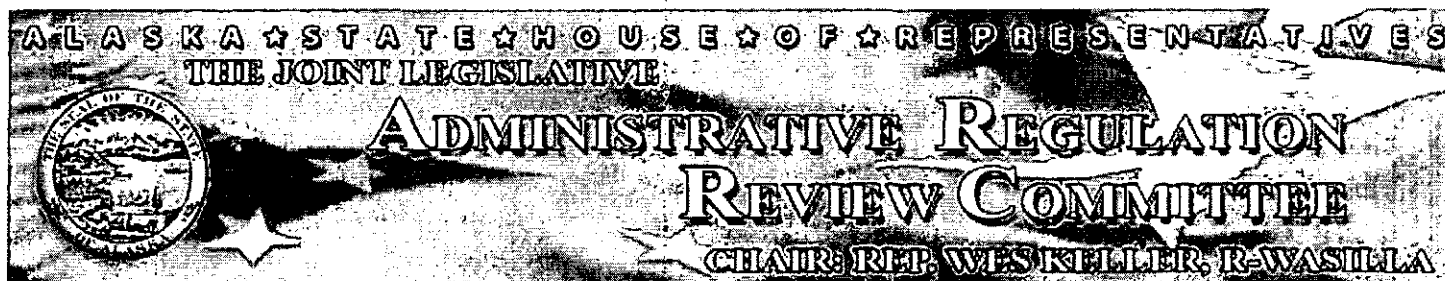
☒ d) Do Motion to hold Executive Session for Vice Chair. Come back into public session after Executive Session and then adjourn.

e) Before the meeting make sure that all members have paper, pen and supplies; Schedule is posted out on the bulletin board; agenda posted; hand outs copied and on the table for the public; coffee and water set out; and Chair has his script.

name plates set out

John Davies

From: Will Vandergriff
Sent: Saturday, March 06, 2010 4:06 PM
Subject: Media advisory - Admin. Reg. Review Comm. to meet Monday
Attachments: image001.jpg; ARR_Advisory_20100306.pdf



FOR IMMEDIATE RELEASE

MEDIA ADVISORY

ADMIN. REG. REVIEW COMMITTEE TO MEET MONDAY
Topics centering on cabins, dairy production

Saturday, March 6, 2010, Juneau, Alaska – The Joint Administrative Regulation Review Committee will hold its first March meeting on Monday, focusing on Alaska Dept. of Environmental Conservation and Dept. of Natural Resources regulations.

Committee Chair Representative Wes Keller, R-Wasilla, says he's agreed to hold the dual topic hearing after groups approached the committee about having separate hearings regarding dairy production and public use cabins. One part of the meeting will focus on examining regulations regarding cheese production by small dairies in the state, and possible exemptions in order to make manufacture and business easier. Another part of the meeting will focus on examining personal use cabin owners' requests to save their interests in their cabins that are on state land.

"The committee simply wants to perform its due diligence to look into these matters," Keller said.

Both departments, DEC and DNR, along with members of the public are expected to provide the committee with testimony.

WHO: Joint Administrative Regulation Review Committee
WHAT: Committee hearing – dairy production & public use cabins
WHEN: Monday, March 8, 2010, 5:00 p.m.
WHERE: Capitol Room 17

###

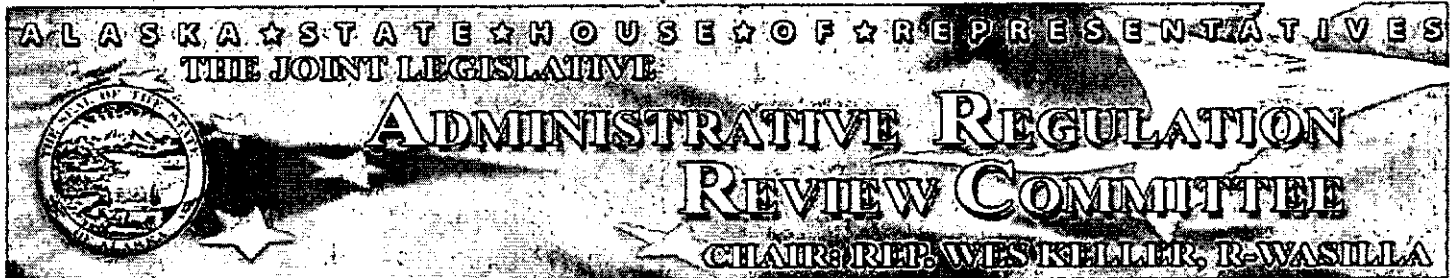
To contact Rep. Keller's office, please call 907-465-2186.

Will Vandergriff
House Majority Press Secretary

Office of the Speaker - Alaska State Legislature
907.269.0167 direct
907.317.9755 cell
will_vandergriff@legis.state.ak.us
housemajority.org
mobile.housemajority.org
twitter.com/houmaj

John Davies

From: Dani Carlson
Sent: Friday, March 12, 2010 5:12 PM
To: John Davies
Subject: draft for release
Attachments: image001.jpg



FOR IMMEDIATE RELEASE

MEDIA ADVISORY

ADMIN. REG. REVIEW COMMITTEE TO MEET MONDAY
Topics centering on cabins, dairy production

Saturday, March 13, 2010, Juneau, Alaska – The Joint Administrative Regulation Review Committee will hold a hearing on Monday, in order to allow for additional time to consider the Alaska Dept. of Environmental Conservation's proposal on cheese production regulations and an Alaska Dept. of Natural Resources presentation regarding personal use log cabins.

Committee Chair Representative Wes Keller, R-Wasilla, says that public testimony has been closed on the DEC request for an exemption for small dairies, while public testimony and Dept. of Natural Resources will still have an opportunity to weigh in on personal use cabins issues.

WHO: Joint Administrative Regulation Review Committee
WHAT: Continued committee hearing – dairy production & public use cabins
WHEN: Monday, March 15, 2010, 3:00 p.m. – 5:00 p.m.
WHERE: Capitol Room 17

###

To contact Rep. Keller's office, please call 907-465-2186.

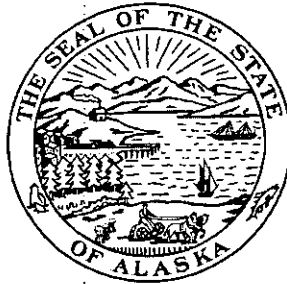
yours,
Dani Carlson

House Majority Press Office
Office of the Speaker - Alaska State Legislature
Room 116, Alaska State Capitol
907.465.6791 - Session
dani.carlson@legis.state.ak.us
<http://www.housemajority.org>
<http://mobile.housemajority.org>
<http://www.twitter.com/houmaj>

ALASKA STATE LEGISLATURE

Interim:

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
Fax: (907) 373-4729



Session:

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-4899
Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

March 15th Meeting Script

- I. Call to Order by Chairman. (Rapping Gavel) Come to Order, Come to Order. I hereby call this meeting of the Joint ARRC to Order. For the record, today is Monday, March 15, 2010, and the time is 3:00 o'clock pm, and we are meeting in the Alaska State Capitol Room 17. I am the Committee Chairman, House Representative Wes Keller. I will now introduce my fellow committee members and perform the roll call.
- II. Introduction and Roll Call. To my right is Senator Donald Olson, the Vice Chairman; then Senator Albert Kookesh; and Senator Kevin Meyer. To my left are Representative David Guttenberg, and Representative Carl Gatto.
- III. Opening remarks by the Chairman. Before we get started with today's meeting, I would like to make a few brief comments for the benefit of our audience.

Today's meeting is a continuation of our meeting of last Monday, March 8, 2010. At that meeting we took up most of our time hearing testimony from the DEC and the public about the newly proposed Cheese Production Regulations. It was a lively discussion about whether small dairies ought to be

E-Mail: John_Davies@legis.state.ak.us

State
hardly
land
Vern
Commerce
land
needed
in bush
for guide
no statute
authorize
other
exempt from the Cheese Production Regulations, and there was a lot of public comment. Consequently, we ran out of time and were not able to give the Personal Use Cabin participants enough time to get their testimony on the public record. So now we have this continued hearing to give those issues our attention. On behalf of the entire Committee, I would like to thank all those Cabin participants that sat through the last meeting and didn't get the chance to testify; and say also thank you for your interest and time in getting involved in this public discussion.

Our purpose today is to continue the review of regulations concerning personal use cabins, and to also deliberate on the exemption request put to us by the small dairies and cheese producers.

So let's get back to the presentation by Director Dick Mylius from DNR concerning the personal use cabin issues. Director Mylius, welcome; and thank you for coming back to testify again before the Committee.

As you know, the Committee is interested in hearing about DNR policy and procedures, particularly as they relate to the intent expressed in the regulations to phase out the unauthorized use of state land. (11AAC65.010) Please, you may proceed.

Director Mylius testifies:.....

Do any of the members of the Committee have any questions for Director Mylius?

(I have questions: 1) What is the statutory authority of DNR to express its intent to phase out the unauthorized use of state land? 2) Would it be possible to grant some kind of preference right to lease or buy personal use cabins to the present permittees? Would, in your judgment, that be good or bad public policy? Is there some way to lessen the hardship of forfeiture of the cabin by the present owner? Has the concept of

adopting a cabin, much like adopting a portion of highway, been thought about, so perhaps a non-profit group could care for the cabins after the permit runs out?

More Questions: Go to questions on separate sheet if necessary.

Public comment.....

4:00pm. It is 4:00pm, and I would like to close this portion of the meeting.

We have now completed the Agency and public testimony in the Personal Use Cabin issue as well as the Cheese Production regulations.

As regards the Cheese Production Regulations, we have a number of members of the public who would like to see an exemption in the regulations for small dairies. Let's discuss this exemption issue.

Exemption discussion.....if there is a consensus then propose the letter to Director Ryan and get it signed by a majority of the committee or at least get authority as the chairman to sign and send it.

Moving on then to the Personal Use Cabin Permits. Do any members of the Committee see a need to amend or change the existing regulation? Discussion.....

Consensus?....Action? Close topic.....

Executive Session:

Time Permitting: (Would need at least 30 minutes)

The Committee would like to now go into Executive Session. Motion/Vote. Do I have a motion...(Senator Olson makes the motion.) vote..... Thank You . We will now go into Executive Session and off the public record.

E-Mail:John_Davies@legis.state.ak.us

Clear the room for Executive Session.

After Executive Session the Committee reconvenes the public meeting.

Discussion if any.

Adjournment.

END OF SCRIPT....

Questions for DNR

- We've heard that DNR no longer offers long term (55 year) leases beyond 25 years.
 - **Q – Who decided this new policy? Commissioner or Governor?**
(Trying to find out if these policies are being created by mid-level breauocrats.)
- There are currently bills in both the House and the Senate (HB379 & SB293) granting a "preference right" to purchase or lease for persons who have developed the land and been conducting "business" on the land for the past 10 years.
 - **Q – The DNR could grant this preference right but has never done it. Could you explain why?**
- The State Constitution states that "It is the policy of the State to encourage the settlement of its land and the development of it's natural resources...ect...ect."
 - **Q – Wouldn't it make sense to allow the people who are doing the "settlement" and "development" to have some sort of preferential treatment when the state decides to dispose of the land?**
- In 2009 DNR changed it's long held policy of allowing a cabin permittee to renew their lease, even if they missed the filing deadline, by simply paying a \$25 administrative fee.
 - **Q – It's my understanding that DNR's current policy is to not allow anyone to apply for lease renewal AFTER the filing deadline. Is this correct?**
- Once these people are refused renewal they have 60 days to come with a plan to tear down their cabin and submit the plan to DNR. ANALOGY – It's like never allowing someone to drive their car again because they failed to renew their license on time.
 - **Q – To tear down a cabin because of a clerical error (missing filing deadline) seems like such a draconian step. Why such a harsh policy for a clerical error.**

John Davies

From: John Davies
Sent: Friday, March 12, 2010 1:29 PM
To: 'janet_logan@legis.state.ak.us'; Bonnie Gruening; Christopher Birdsall; Christina Apathy; Josh Applebee; Kimberly Clark
Cc: Rep. Wes Keller; Jim Pound
Subject: ARRC re: Cheese - Negotiated Rule Making

Dear Fellow Staffers:

You and your boss may want to know a little about negotiated rule making before Monday's meeting. I am attaching to this email a copy of a portion of the Statutes dealing with the matter. Hope this is helpful for you. JD

Sec. 44.62.710. Purpose and applicability of AS 44.62.710 - 44.62.800.

(a) The purpose of AS 44.62.710 - 44.62.800 is to establish a framework for the conduct of negotiated regulation making consistent with AS 44.62.010 - 44.62.320. Negotiated regulation making is not a substitute for the requirements of AS 44.62.010 - 44.62.320 but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new regulations or the amendment or repeal of existing regulations. A consensus agreement reached by a negotiated regulation making committee may be modified by an agency head as a result of the subsequent regulation making process. AS 44.62.710 - 44.62.800 may not be construed as an attempt to limit innovation and experimentation with the negotiated regulation making process or to limit other means to obtain public participation in the regulation making process.

(b) The provisions of AS 44.62.710 - 44.62.800 may be used by an agency even if other provisions of this chapter do not apply to that agency.

((1 ch 117 SLA 1998))

Negotiated Rule Making

Sec. 44.62.710. Purpose and applicability of AS 44.62.710 - 44.62.800.

(a) The purpose of AS 44.62.710 - 44.62.800 is to establish a framework for the conduct of negotiated regulation making consistent with AS 44.62.010 - 44.62.320. Negotiated regulation making is not a substitute for the requirements of AS 44.62.010 - 44.62.320 but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new regulations or the amendment or repeal of existing regulations. A consensus agreement reached by a negotiated regulation making committee may be modified by an agency head as a result of the subsequent regulation making process. AS 44.62.710 - 44.62.800 may not be construed as an attempt to limit innovation and experimentation with the negotiated regulation making process or to limit other means to obtain public participation in the regulation making process.

(b) The provisions of AS 44.62.710 - 44.62.800 may be used by an agency even if other provisions of this chapter do not apply to that agency.
((1 ch 117 SLA 1998))

Sec. 44.62.720. Determination of need for negotiated regulation making committee.

(a) In addition to the regulation adoption requirements under AS 44.62.010 - 44.62.320, an agency head may determine that the use of a negotiated regulation making committee to negotiate and develop a proposed regulation is in the public interest. In making that determination, the agency head is advised to consider whether

(1) there is a need for a regulation, including whether any legal action is pending that might resolve the need;

(2) there are a limited number of identifiable interests that are held by more than one person and that will be significantly affected by the regulation;

(3) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who

(A) can adequately represent the interests identified under (2) of this section; and

(B) are willing to negotiate in good faith to reach a consensus on the proposed regulation;

(4) there is a reasonable likelihood that a committee will reach a consensus on the proposed regulation within a fixed period of time;

(5) the negotiated regulation making procedure will not unreasonably delay the adoption of the final regulation;

(6) the agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and

(7) the agency head, to the maximum extent possible consistent with the legal or other obligations of the agency, will use the consensus of the committee as the basis for the regulation proposed by the agency under AS 44.62.010 - 44.62.320.

(b) Upon determining that a negotiated regulation making committee will be formed, an agency head shall notify the public so that interested persons can apply to be appointed to the committee.

((1 ch 117 SLA 1998))

Sec. 44.62.730. Use of convener.

(a) An agency head may use the services of an impartial person as a convener to assist in making the determination of need under AS 44.62.720 and to assist the agency to

(1) identify the persons who will be significantly affected by a proposed regulation; and
(2) conduct discussions with affected persons on the issues of concern and determine whether the establishment of a negotiated regulation making committee is feasible and appropriate for the particular proposed regulation.

(b) A person acting as a convener may also be named as a facilitator under AS 44.62.760. The convener shall report findings and make recommendations to the agency. The report and recommendations of the convener shall be made available to the public upon request.
((1 ch 117 SLA 1998))

Sec. 44.62.740. Establishment, time line, support, and termination of committee.

(a) The agency head may establish a negotiated regulation making committee to assist in the formulation of a proposed regulation. The agency head should strive to achieve and maintain throughout the negotiated regulation making process the balanced committee representation described under AS 44.62.720(a)(3). Members of the committee serve at the pleasure of the agency head. If a committee member is unable to attend a meeting, the agency head may select a designee to serve in that member's place for a meeting.

(b) Before notifying the public under AS 44.62.720(b), the agency head shall establish a time line for the work of the committee. The time line must include a completion date for the transmission to the agency of the report described in AS 44.62.750(d) or (e). The agency shall provide the time line to persons who apply for appointment to the committee. At its first meeting, the committee shall review the time line and recommend to the agency head any revisions to the time line. The agency head shall consider any recommendations and revise the time line if necessary to further the purposes of the negotiated regulation making process.

(c) The agency head may expand the membership of the negotiated regulation making committee if necessary to facilitate the workings of the committee.

(d) The agency shall make available administrative support to the negotiated regulation making committee, including technical support, that the agency head determines necessary.

(e) A negotiated regulation making committee terminates upon adoption under AS 44.62.010 - 44.62.320 of the final regulation under consideration unless the agency head specifies an earlier termination date.
((1 ch 117 SLA 1998))

Sec. 44.62.750. Committee duties, procedures, and report.

(a) A negotiated regulation making committee shall consider the matter proposed by the agency head for consideration and shall attempt to reach consensus concerning a proposed regulation and any other matter on which the agency head requests assistance and that is relevant to the proposed regulation.

(b) The person representing the agency on a negotiated regulation making committee shall participate in the deliberations of the committee with the same rights and responsibilities of other members of the committee and is authorized to fully represent the agency in the discussions and negotiations of the committee.

(c) An agency head may adopt procedures for the operation of the negotiated regulation making committee. The agency head shall appoint the chair of the committee.

(d) If a negotiated regulation making committee achieves consensus on a proposed regulation on or before the completion date established under AS 44.62.740(b), the committee shall transmit to the agency head that established the committee a report containing the proposed regulation.

(e) If a negotiated regulation making committee does not reach a consensus on the proposed regulation on or before the completion date established under AS 44.62.740(b), the committee shall transmit to the agency head a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report other information, recommendations, or materials that the committee considers appropriate. A member of the committee may include as an addendum to the report additional information, recommendations, or materials.

(f) AS 44.62.310 - 44.62.312 apply to meetings of a negotiated regulation making committee.

((1 ch 117 SLA 1998))

Sec. 44.62.760. Facilitator selection, duties, and authority.

(a) An agency head may appoint a person who is impartial to serve as a facilitator for the negotiations of a negotiated regulation making committee. A person designated to represent the agency on substantive issues may not serve as facilitator.

(b) A facilitator appointed or selected under (a) of this section shall

(1) preside at the meetings of the committee in an impartial manner, unless the agency head has designated another person as chair;

(2) impartially assist the members of the committee to conduct discussions and negotiations and to achieve consensus;

(3) coordinate with the agency head regarding the management of records of the committee; and

(4) perform other duties related to the negotiated regulation making committee that are assigned by the agency head.

(c) A facilitator does not have decision-making authority for the committee.

((1 ch 117 SLA 1998))

Sec. 44.62.770. Employees, contractors, and funding.

(a) An agency head may appoint an agency employee or obtain the services of another state employee or a private contractor to serve as a convener or facilitator for a negotiated regulation making committee.

(b) Before appointing or selecting a convener under AS 44.62.730 or a facilitator under AS 44.62.760, an agency head shall determine whether a person being considered has a financial or other interest that would prevent the person from serving in an impartial and independent manner. A person disqualified under this criterion may not be considered further.

(c) A member of a negotiated regulation making committee shall disclose to the agency and other members of the committee a grant, gift, or other financial benefit that exceeds \$150 and

that has been accepted by the disclosing member to finance the disclosing member's participation on the negotiated regulation making committee.

((1 ch 117 SLA 1998))

Sec. 44.62.780. Judicial review.

An agency action relating to establishing, assisting, or terminating a negotiated regulation making committee under AS 44.62.710 - 44.62.800 is not subject to judicial review. Nothing in this section bars judicial review if the judicial review is otherwise provided by law. A regulation that is the product of negotiated regulation making and is later subject to judicial review may not be given greater deference by a court for that reason than a regulation that is not the product of negotiated regulation making.

((1 ch 117 SLA 1998))

Sec. 44.62.790. Relationship to other requirements.

The negotiated regulation making authorized by AS 44.62.710 - 44.62.800 is in addition to the procedures required under AS 44.62.010 - 44.62.320 for adopting, amending, or repealing regulations, and, if an agency head decides to use negotiated regulation making, the negotiated regulation making shall, where possible, occur before the procedures under AS 44.62.010 - 44.62.320 begin.

((1 ch 117 SLA 1998))

Sec. 44.62.795. Confidentiality of certain records and documents.

Notwithstanding AS 40.25.100 - 40.25.220, records from private persons that are requested or used by a negotiated regulation making committee and working documents prepared by the committee that analyze or incorporate information from the records shall be kept confidential if the records or working documents contain proprietary information and the owner of the records or working documents requests that the records or working documents be kept confidential.

((1 ch 117 SLA 1998))

Revisor's notes. In 2000, "AS 40.25.100 - 40.25.220" was substituted for "AS 09.25.100 - 09.25.220" to reflect the 2000 renumbering of AS 09.25.100 - 09.25.220.

Sec. 44.62.800. Definitions.

In AS 44.62.710 - 44.62.800,

(1) "agency" means a department, an institution, or a division or other administrative unit of the executive branch of state government authorized or required by law to make regulations, except that "agency" does not include

(A) a board, a commission, a council, an authority, or a public corporation of the executive branch of state government authorized or required by law to make regulations; or

(B) the Department of Corrections;

(2) "agency head" means

(A) the commissioner or other head of an agency who has the authority to adopt regulations for the agency; or

(B) *[Repealed, 44 ch 24 SLA 2003.]*

(3) "consensus" means unanimous concurrence among the interests represented on a negotiated regulation making committee;

(4) "convener" means a person who is impartial and performs the services identified under AS 44.62.730 for an agency;

(5) "facilitator" means a person who is impartial and performs the services identified under AS 44.62.760(b) for a negotiated regulation making committee;

(6) "negotiated regulation making" means regulation making through the use of a negotiated regulation making committee;

(7) "negotiated regulation making committee" means an advisory committee to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed regulation;

(8) "person" has the meaning given in AS 01.10.060, and expressly includes a public organization of any character;

(9) "regulation" has the meaning given in AS 44.62.640 and includes the amendment or repeal of a regulation.

((1 ch 117 SLA 1998; am 4, 44 ch 24 SLA 2003; am E.O. No. 106, 7, 8 (2003)))

Effect of amendments. The first 2003 amendment, effective May 22, 2003, in subparagraph (1)(A) deleted reference to the Alaska Coastal Policy Council and made stylistic changes; and repealed subparagraph (2)(B).

The second 2003 amendment, effective April 15, 2003, updated section references in subparagraphs (1)(A) and (2)(B).

Chapter 65

Personal Use Cabin Permits

Section

- 10. Applicability.
- 20. Applications.
- 30. Application fee.
- 40. Renewals.
- 50. Permit decision.
- 60. Density within state game refuges and critical habitat areas.
- 70. Conflicting applications.
- 80. Ownership and removal.
- 90. Conditions of permit.
- 100. Appeals.
- 110. Public use cabins.
- 900. Definitions.

11 AAC 65.010. Applicability

This chapter applies to the issuance of personal use cabin permits for unauthorized cabins placed on state land before August 1, 1984. Cabins built on state land after August 1, 1984 will not be authorized. A permit under this chapter does not convey an interest in state land or establish a preference right for the lease or purchase of state land. It is the express intent of this chapter to phase out the use of unauthorized cabins on state land, and where appropriate, convert them to public use.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.020. Applications

© 2010 by The State of Alaska and Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

John Davies

From: John Davies
Sent: Wednesday, February 24, 2010 2:28 PM
To: 'Tom.Irwin@alaska.gov'; 'Dick.Mylius@alaska.gov'
Cc: Rep. Wes Keller; Jim Pound
Subject: Invitation to ARRC meeting
Attachments: ARRC 3-8 Agenda.doc; ARRC 3-8 Agenda.doc

February 24, 2010

Dear Commissioner Irwin and Director Mylius:

Representative Keller has asked me to invite you to attend and participate in the Administrative Regulation Review Committee "ARRC" meeting scheduled for March 8th at 3:00pm in room 17 of the State Capitol Building, Juneau, Alaska.

If you are not able to attend in person, telephone participation would be fine as well.

The ARRC has received public comment concerning the regulations relating to personal use cabin permits, particularly 11 AAC 65.010. The review focus will generally be on the specific intent language "to phase out the use of unauthorized cabins on state land" and the destruction of such cabins, weighed against the private, public and survival uses of the cabin resources. The committee will be looking at the regulation's statutory authorization and whether it carries out legislative intent. Your input will be most helpful. A copy of the Schedule and Agenda are attached for your information.

If you have any questions please feel free to call me at 907 465-4899. Please note that any printed information you wish to present, I will need copies so I may post it on BASIS and distribute it to the committee members.

We look forward to hearing from you and having your participation at the meeting.

Very Truly Yours,

John Davies
ARRC acting Committee Aide

Cc: Keller, Wes (LAA); Pound, Jim (LAA)
Subject: RE: Invitation to ARRC meeting

Dear Director Mylius:

I have discussed your email request with Representative Keller, Chairman ARRC, and he has asked me to provide you with information that will foster a fruitful and productive meeting.

The following is a synopsis of contacts that may be useful for your meeting preparation and presentation:

- 1) In person complaint at the Capitol ARRC office by an individual whose cabin burned down. He is trying to rebuild the cabin, but reports that he is getting hassled by DNR and not getting cooperation.
- 2) In person complaint at the Capitol ARRC office by an agent on behalf of a client. He complains that as a long term leaseholder, his client is facing the complete loss of his lodge in a few years when the lease runs out. The land around the lodge was selected by a borough, and the leasee has no preference right to buy the land. Once the lease runs out, he loses everything, his lodge, retirement, equity, everything. His entire life's work gone.
- 3) In person complaint at the Capitol ARRC office about a personal use cabin permittee who is facing the forfeiture of his cabin because he filed his renewal late. The permittee did not know about the new rule that renewals must be filed 90 days before the end of the permit term, but was aware of the old rule that a \$25 late fee would be assessed. He filed before the end of the permit term but not before the new 90 day time frame. He faces the complete loss of his cabin and permit.
- 4) A member of the Legislative Body reports that he has a constituent whose husband has a cabin permit and when he dies the permit ceases leaving her and the family with nothing. The family has used this cabin and land since before statehood, and cannot get a preference right to buy the land or in any other way protect its long term use of the land. They face complete loss as well.
- 5) By way of prior Resource Committee hearings it has become public knowledge that DNR is burning and/or destroying cabins for what is described as "liability reasons".
- 6) The complainants report an attitude of hostility by DNR towards private use of public lands.

The question may be: Is the intent language in the regulations, 11 AAC 65.010, "to phase out the use of unauthorized cabins on state land", fostering a hostile attitude by DNR towards these private persons, or is the Committee simply being made aware of anecdotal situations that don't reflect the true nature of what is going on? The Chairman is hopeful that your presentation to the Committee and the public will help with this question.

In addition to the above question, the Chairman would like for you, or another DNR representative, to be prepared to tell the Committee about: where does DNR derive its statutory authority for its intent to phase out the use of unauthorized cabins on state land; as well as explain its policy and procedures for granting and extending personal use cabin permits; what happens to a cabin that goes back to the State; why are cabins destroyed or burned down; what is the cost of such destruction; and lastly as an overview of the numbers and significance of the personal use cabin program?

The Chairman wanted me to be sure to let you know that the Committee does not, and in this meeting is not, advocating for any particular individual or constituent in its inquiry. The Committee is reviewing these regulations to see if they stand the three part test of Constitutionality, statutory authority, and/or legislative intent. If the Committee finds grounds it may present the Legislature with a bill to annul or veto a regulation.

We look forward to your participation in the upcoming meeting. If you have any questions please feel free to give me a call at 465-4899.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

John Davies

From: Mylius, Richard H (DNR) [dick.mylius@alaska.gov]
Sent: Friday, February 26, 2010 1:32 PM
To: John Davies
Cc: Rep. Wes Keller; Jim Pound; Menefee, Wyn (DNR); Parsons, Martin W (DNR); Irwin, Tom E (DNR); Mylius, Richard H (DNR); Baker, John T (LAW)
Subject: RE: Invitation to ARRC meeting

John – these six complaints deal with four very different issues. I'd be happy to address all those issues at the meeting, but only three (items 1, 3, and 4) deal with the regulations that are the topic for the meeting (11AAC 65.010 – 11 AAC 65.900). Unless I hear otherwise, I'll plan to address all four issues at the March 8 meeting.

Here is a bit of information about the three issues not related to the regulation:

Item #2, the gentleman with the lease for a lodge that was conveyed to the Aleutians East Borough is Mel Gillis, and that issue is currently in litigation involving the state, the Borough and Mr. Gillis. Mr. Gillis appealed an unfavorable Superior Court decision to the Supreme Court. The issue is a statutory interpretation (AS 38.05.035(f)) and its application to Borough owned lands, we have no regulations for the statutes at issue in this situation. Someone from the Department of Law will be available by phone for the March 8 meeting and can help address that issue.

Item #5 is an issue regarding federal lands being transferred into state ownership under the statehood act land grants. The state has had a policy for many years that when land is transferred into state ownership, the federal government needs to transfer land that is free of unauthorized uses and any environmental contamination. To implement this policy, the federal Bureau of Land Management either authorizes existing uses or cleans up the unauthorized use - whether that is trash or waste left behind at mining claims, trespass cabins, or whatever. DNR has not burned or torn down any cabins.

Item #6, I believe, reflects that legislators primarily hear from the few individuals who have issue with the a specific decision by the department or division. We have literally thousands of Alaskans who purchase state land, hold mining claims, have permits for access, have permits for private cabins, etc., that do not have complaints, so these complaints need to considered in that context. If the committee desires, I can provide information about the numbers of users on state land. In addition, we strive to apply statutes and regulations so they are fair to all Alaskans. Where individuals disagree with our decisions, we provide an administrative appeal process to address their concerns.

Dick Mylius

*Dick Mylius, Director
Alaska Department of Natural Resources
Division of Mining, Land & Water
907-269-8600 Fax 907-269-8904*

3/8/10 APR 3/8 Meeting

Cabins

Dick Mylner - presentations -

get land into private use by land sales & leasing
1984 - trespass cabin rules -

241 permits still active

- continue - hearing til next Monday

- Sen. Olson - very passionate about keeping
cabins

* no program to continue cabin use
need legislation to maintain cabins

/ continued til next Monday

Personal Use Cabin Permits Overview for the Administrative Regulation Review Joint Committee
Division of Mining, Land and Water
March 8, 2010

- The Personal Use Cabin Permit (PUCP) program was established in 1984.
- The program provided a narrow window of opportunity for individuals that had trespass cabins built before August 1st 1984 to apply for permits to allow authorized use of the structures.
- The regulations created a very narrow scope of allowable use and tight rules of how these cabins could remain authorized.
- The regulations express the intention is to phase out the use of unauthorized cabins on state land, and where appropriate, convert them to public use.
- The regulations do not allow for additions or enlargements.
- The regulations require pre authorization for rebuilding a destroyed or damaged structure.
- Permit duration is 6 years.
- The regulations require a renewal application in writing to be submitted between 90-180 days before the expiration of the permit.
- Permits are only valid during the lifetime of the original holder of the permit.

355 permits were initially granted

241 permits are still active

22 permits were closed over time (last one 9/2/08)

84 permits were suspended/inactive (Just have not closed the file but essentially the same as closed)

1 permit was transferred

7 permits are under appeal

In 2009 DMLW changed its policy of allowing late applicants to pay a late fee in order to correctly follow the existing regulations. When the 12 late applicants were denied permits through an April 22, 2009 decision, they all appealed the decision. The Commissioner overturned the decision based on inadequate notice provided to the applicants of the change of practice of denying late applications. Those 12 permits were reinstated and notice of the change of policy was then provided for all of the other permit holders when we provided their application package. All permit holders now have adequate public notice of the change.

After that time, some other permits with later expiration dates were denied because of either late application or for overbuilding. 6 appeals were received from those that overbuilt and one appeal received from someone who submitted a late application.

Further information was provided that there was a contradictory deadline provided in the packet. The application form said that the application could be postmarked by the due date. Therefore the division is now reviewing three applications that were postmarked by the due date to determine if we can reinstate those permits that were originally deemed as a late application.

AS 38.04.035* Criteria For Program Selection.

** AS3804.035(4) had language inserted "or where disposal of land would cause potential conflicts with other resources and uses, or where long-range interest in public ownership and use exist" in paragraph (4) in 1984. The entire paragraph (4) was eliminated in 1997.*

In determining which land availability program is appropriate for state land in different locations, the director shall be guided by the following criteria:

(4) For enabling isolated cabin development in remote locations where survey and conveyance is impractical, or where disposal of land would cause potential conflicts with other resources and uses, or where long-range interest in public ownership and use exist, a system for cabin permits on public land may be used.

11 AAC 65.010. Applicability

This chapter applies to the issuance of personal use cabin permits for unauthorized cabins placed on state land before August 1, 1984. Cabins built on state land after August 1, 1984 will not be authorized. A permit under this chapter does not convey an interest in state land or establish a preference right for the lease or purchase of state land. It is the express intent of this chapter to phase out the use of unauthorized cabins on state land, and where appropriate, convert them to public use.

11 AAC 65.040. Renewals

(a) Application for renewal of a permit must be made in writing at least 90 days, but not more than 180 days, before the expiration of the permit. The application must be accompanied by the fee prescribed by 11 AAC 05.010.

(b) A permit will be renewed if the continued use complies with 11 AAC 65.050 - 11 AAC 65.900.

(c) A permit issued and renewed under this chapter is valid only during the lifetime of the original holder of that permit.

11 AAC 65.050. Permit decision

(a) The department will issue and renew an applicant's cabin permit if the director finds in writing that the application is for a cabin that complies with AS 38.04.035 (4) and does not conflict with the public interest criteria as described in (b) of this section.

(b) No permit will be issued for a cabin on state land

(1) where a subdivision or agricultural sale has occurred or is anticipated or scheduled during the term of the permit;

(2) where homesteads are proposed for future disposal, unless the disposal is not anticipated within the term of the permit;

(3) if the land has been selected under the authority of the Municipal Entitlement Act, AS 29.18;

- (4) in state park units, land managed under an interagency land management agreement, land classified as reserved use, or where the issuance of a permit would interfere with significant public recreational use;
- (5) that is shoreland, submerged land, or tideland;
- (6) that serves an important ecological function, or is especially sensitive to human disturbance, as determined by the department;
- (7) located close to a center of population;
- (8) where material extraction, timber sales, mining, or intensive recreational facility development is scheduled or anticipated during the term of the permit;
- (9) overlying a mining location or mineral lease if the department determines that a cabin may interfere with development of the mining location or mineral lease during the term of the permit;
- (10) under application or proposed for a public facility or highway right-of-way unless it is clear that the intended use will not occur during the term of the permit;
- (11) for which a Native allotment application is on record with the Bureau of Land Management, or on land validly selected under the Alaska Native Claims Settlement Act;
- (12) accessible by road within legislatively designated state game refuge or critical habitat area;
- (13) in a legislatively designated state game sanctuary;
- (14) where the cabin is used as a permanent residence; or
- (15) if the department determines that the proposed use may more appropriately be allowed under another chapter of this title.

11 AAC 65.080. Ownership and removal

- (a) Except as otherwise provided in (b) or (c) of this section, a cabin subject to this chapter is the personal property of the permittee, and remains so for the term of the permit.
- (b) A cabin not applied for under this chapter becomes the property of the state if not removed within 60 days after notice by the department.
- (c) Upon revocation or expiration of a permit, including renewals of it, or if an application was made but no permit issued, the cabin becomes the property of the state if not removed within 60 days after notice by the department.

11 AAC 65.090. Conditions of permit

A permit issued under this chapter

- (1) is valid for a period of up to six years;
- (2) may include site-specific conditions of use, such as seasonal use restrictions determined appropriate by the department and, on game refuges and critical habitat areas, by the Department of Fish and Game;
- (3) is not valid unless signed by an authorized individual within the Department of Fish and Game if the permit is for a cabin located within a state game refuge or critical habitat area;
- (4) is not valid unless the annual rental fee prescribed by 11 AAC 05.010 is timely received by the department;
- (5) is not valid unless the permit is signed by the applicant or applicant's authorized agent; and
- (6) will contain the following general stipulations and conditions:
 - (A) the permit does not convey an interest in state land or grant any preference right for the lease or purchase of state land;

- (B) the permit is revocable immediately upon violation of any of its terms, conditions, or stipulations, upon nonpayment of fees, or upon failure to comply with any other applicable statutes and regulations;
- (C) the permit is not transferable or assignable;
- (D) the permit must be displayed in general view on the cabin at all times;
- (E) no additions to or enlargements of the cabin are allowed, except for routine maintenance and upkeep;
- (F) all garbage and foreign debris brought into, or placed on, the cabin site must be removed by the permittee unless otherwise authorized by the director;
- (G) the state must be held harmless from all claims, demands, suits, loss, liability, and expense for injury to, or death of, a person arising out of or connected with the uses covered by the permit;
- (H) if the cabin is destroyed or damaged beyond repair, rebuilding the structure is not authorized without prior written approval of the director; this approval may not be unreasonably withheld;
- (I) the cabin may not be used for a commercial activity or as a permanent residence;
- (J) no new road or trail across state land is authorized under the permit, and access must be consistent with the provisions of 11 AAC 96;
- (K) no restriction or interference with public access to or across state land is allowed;
- (L) the permit does not relieve the permittee of the responsibility of securing other necessary state, federal, or local permits or authorizations; and
- (M) the department reserves the right to require measures to mitigate disruptions to public use of the area, and to fish and wildlife populations and their habitats, which may be created by the permittee, or occur as a direct result of the permittee's failure to comply with the terms of the permit or any applicable law.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING, LAND & WATER SOUTHCENTRAL REGION LAND OFFICE

SEAN PARNELL, GOVERNOR

550 WEST 7TH AVENUE, SUITE 900C
ANCHORAGE, ALASKA 99501-3577

PHONE: (907) 269-8503

FAX: (907) 269-8913

August 7, 2009

RE: Permit Expiring December 31, 2009

Dear Personal Use Cabin Permit Holder:

The Commissioner of the Department of Natural Resources (DNR) recently issued a decision that affects the renewal process for personal use cabin permits. This decision was the result of several appeals that were submitted to the Commissioner due to a decision made by the Division of Mining, Land and Water's (DMLW) Southcentral Regional Office (SCRO) for cabin permits expiring June 30, 2009.

The Commissioner's decision will implement a change in how SCRO handles permit renewal applications from now on. The renewal process for personal use cabin permits is governed by the regulation 11 AAC 65.040(a) which states that an "application for renewal of a permit must be made in writing at least 90 days, but not more than 180 days, before expiration of a permit." It has been SCRO's policy to accept and process renewal applications that were received after this 90 day period. **This policy is now changed due to the Commissioner's decision. From this point forward SCRO will no longer accept permit renewal applications that are received after the 90 day deadline, and these applications will be denied and the permit will terminate as of the expiration date of the permit.**

Attached is a copy of the Commissioner's decision. The Discussion section explains the reasons for the Commissioner's decision and the new policy to be implemented is addressed in the Decision section.

Please note that this Decision directly affects all permits expiring December 31, 2009. According to regulation the 90-day deadline to submit applications for permits expiring December 31, 2009 is **October 2, 2009. It is therefore imperative that your application be submitted and received by the Southcentral Regional Office no later than October 2, 2009. NO LATE APPLICATIONS WILL BE ACCEPTED.**

Application packets were sent to the Agent of Record for your cabin. If you are not the Agent of Record it is recommended that you make immediate contact with your Agent of Record to assure a timely submittal of the renewal application **no later than October 2, 2009.** If you do not know your Agent of Record or your Agent of Record is deceased please contact this office immediately at the numbers listed below.

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."

If you have any questions about this Decision or the renewal of your personal use cabin permit, you may contact Paul Vail at (907) 269-8562 or Adele Lee at 269-8479 or by e-mail at paul.vail@alaska.gov or adele.lee@alaska.gov .

Sincerely;

Robin Swinford
Natural Resource Manager I

Attachment: Commissioner's Decision on MLW/SCRO's
April 22, 2009 Decision re: Personal Use Cabin Permits



Memorandum

Department of Natural Resources
Division of Mining, Land and Water

State of Alaska

Southcentral Region Office

DATE: April 22, 2009

TO: Rick Thompson – SCRO Regional Manager

FROM: Robin Swinford – SCRO Manger Leasing Unit

RE: Personal Use Cabin Permit (PUCP) Applications

The SCRO is currently administering 216 PUCP's of which 116 will expire June 30, 2009 and the remaining 100 will expire on December 31, 2009. According to regulation 11 AAC 65.040 all applications for renewal must be submitted 90 days prior to expiration.

Applications for permit renewal were mailed certified, with green return receipts requested cards attached, to the agent of record on February 12, 2009 for those permits expiring June 30, 2009; a full six weeks prior to the 90 day deadline of March 30, 2009. By March 20th all but 10 green cards were received confirming notification of 106 Permittee's. Phone contact was made with the agent or at least one member of the 10 Permits (approximately 20-25 phone contacts beyond just the agent of record) whose green card was not received and verbally informed of the impending deadline. Between February 12th and March 31st more than 65 contacts were made over the phone or in person in regards to the renewal process in general by both agents and permittee's of record. It was emphasized that all applications must either be received or post marked no later than March 30, 2009. To date more than 165 contacts have been recorded.

Soon after it was discovered that March 30th was a State holiday; to address the possibility that some Permittee's would attempt to hand deliver their applications on March 30th, the official deadline of record, it was decided that a staff member would be present in the office that day. Arrangements were made with building management and the security guards to allow Permittee's access to the 9th floor to deliver their applications. A total of 6 applications were hand delivered that day along with several phones calls who were advised that the application had to be post marked that day.

The morning of March 31st we discussed the holiday issue and determined that as the 30th was a State holiday any application received or post marked March 31, 2009 would be accepted. Any application received or postmarked after that date would be rejected and denied a renewal.

As of today we have a total of 22 applicants who missed the March 31st deadline for the 116 permits expiring June 30, 2009. The breakdown is as follows:

- 3 Permits - none of the original applicants are living

- 9 applications were received after March 31st
(excuses range from; the mail, being out of town the entire application period, mail wasn't forwarded, asked someone else to mail and it didn't get done, to a lost packet)
- 10 applications remain outstanding with no contact with SCRO.

To continue with the adjudication of the 116 permits expiring June 30th and setting the management standard by which the remaining 100 cabins expiring December 31st will be addressed, the following management options were considered.

Please indicate the management direction we should be following:

- ☐ Accept all applications submitted after the deadline of March 31, 2009 but prior to the expiration of the Permit on June 30, 2009 with an additional \$25 late fee. This was the procedure utilized during the prior renewal period in 2003.

Advantage: This decision would allow SCRO to continue to manage the land use through a contractual agreement with the Permittee's for use of the cabins. The administration of the program would continue with all cabins permitted except those where all original Permittee's have passed away. This option has the least administrative responsibilities as staff would not be dealing with trespass issues or all the follow up as a result of the appeal process.

Disadvantage: This decision simply does not comply with the procedure and deadline established by regulation, and there is no provision within the regulation to allow for those who do not comply. In addition, the renewal requirements and application timeframe was specifically stated in the 2003 Permit cover letter which was presumably read by each permittee.

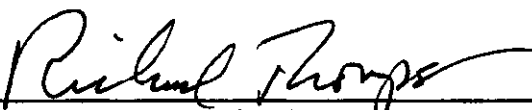
- ☒ Reject and deny all applications submitted after the March 31st deadline as required by 11 AAC 65.040(a).

Advantage: This decision complies with applicable regulations governing administration of this program. SCRO staff went the extra mile to contact permit holders (a courtesy notification) well in advance of this deadline to remind them of this obligation. Contact was made in writing, and in some cases by telephone. The missed deadline was determined by regulation, and there is no option for considering excuses for non-compliance. This decision corrects past discrepancies in applying this regulation and sets a no nonsense course for future actions.

Disadvantage: This decision will result in additional administrative responsibilities with respect to disposition of cabins and reclamation of cabin sites. This result is unavoidable, but work will be prioritized along with other tasks. Staff will

coordinate activities with the Department of Fish & Game's Susitna Flats, Trading Bay and Palmer Hay Flats State Game Refuge staff for those cabins located within refuge boundaries. Permit holders of record are expected to stand by their obligations to remove the improvements and return the site to its original condition and will be required to submit a reclamation plan sufficient enough to detail the work to be done, and a date by which the site reclamation will be completed. Applicants who fail to comply with site reclamation requirements within the specified timeframe will be liable for all costs incurred by the state in removing the improvements and reclaiming the site.

Direction is given to proceed with the selected Management Decision alternative above.



Richard B. Thompson, Regional Manager
Southcentral Region Land Office

5/4/09

Date



STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR

☐ P.O. BOX 111000
JUNEAU, ALASKA 99811-1000
PHONE: (907) 465-2400
FAX: (907) 465-3886
■ 550 WEST 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431
FAX: (907) 269-8918

August 6, 2009

See Distribution List

**SUBJECT: COMMISSIONER'S DECISION on MLW/SCRO's June 22, 2009 Decision
re: Personal Use Cabin Permits**

Dear Appellants and Other PUCP Permit Holders:

In a letter dated June 22, 2009, the Division of Mining, Land and Water's (MLW) Southcentral Regional Office (SCRO) notified twelve permit holders that their application to renew their personal use cabin permit was denied because it was not filed within the 90-day deadline set forth in regulation 11 AAC 65.040(a). The recipients of this "denied letter" were notified of their right to appeal in accordance with DNR's appeal regulations in 11 AAC 02. In a separate letter, also dated June 22, 2009, SCRO notified seven other permit holders that since no application for renewal had been received, they were required to begin the process of removing all structures from their permit site. Since the deadline for permit renewal had passed and the permits would automatically expire on June 30, 2009 by operation of the terms of the permit, there was no appeal provision in the "removal letter."

The commissioner's office received twelve appeals of SCRO's June 22, 2009 letters: ten from those who received the "denied letter" and two from those who received the "removal letter." Four of these appeals were received after the 20 day appeal deadline to submit an appeal. Since DNR's appeal regulations do not allow me to waive this 20 day deadline, these untimely appeals must be rejected. Because my decision on the timely submitted appeals also affects permit holders whose appeals were untimely and those who did not submit an appeal, this decision is being sent to all 19 permit holders who received SCRO's June 22, 2009 letters. The reasons for doing so will become clear in my decision, as explained below.

This letter is my decision on the appeals of SCRO's June 22, 2009 decision to deny the late-filed applications for renewal. The case files, applicable statutes and regulations, and policies of DNR and MLW make up the administrative record upon which I based my decision.

After careful consideration, I have decided to GRANT the appeals and reverse SCRO's June 22, 2009 decision. Because my decision is to grant the appeals and reverse SCRO's decision, all the permit holders who received SCRO's June 22, 2009 letters are being similarly treated, regardless of whether their appeal was timely or whether they submitted an appeal. This decision applies to all recipients of SCRO's June 22, 2009 letters, that is, to all who received the "denied letter" and to all who received the "removal letter."

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans"

BACKGROUND: Numerous small cabins were built on state land without authorization from the State for the placement of these cabins on state-owned land. The Personal Use Cabin Program (PUCP) was established in 1984 when the Legislature amended AS 38.04.035(4) by adding language that would allow the permitting of cabins on public land "where a long-range interest in public ownership and use exist."¹ In 1984, DNR adopted regulations to implement a process by which permits could be issued for those cabins that were placed on state land before August 1, 1984 in order to authorize and control the use and existence of these cabins on state land. Since that time the PUCP has been managed and maintained according to 11 AAC 65.010 - .900. This program was limited to existing unauthorized cabins that were placed on state land before August 1, 1984. In 1985, the State of Alaska provided public notice of the PUCP and provided for a one time only application period that commenced at different dates throughout the State. Permits were issued for a term of six years. Permits could be renewed under a process established by 11 AAC 65.040. The first renewal period occurred in 1991 and there have been several renewal periods since then.

The personal use cabin permits that were issued in 1985 were subject to their first renewal in 1991. On June 20, 1991, MLW's SCRO made an Administrative Decision to administratively renew all permits whose renewal applications were timely filed and to administratively reject all applications for renewal that were not timely filed. Several appeals of this administrative decision were received.

On August 14, 1991, MLW's (then the Division of Land and Water Management) Acting Director issued his decision on the appeals of SCRO's June 20, 1991 decision and concluded that the language in 11 AAC 65.040 "allows for administrative discretion as to the penalty for missing the filing period [and] to exercise that discretion in favor of the appellants." The decision also stated that while the director "empathized with personal hardships [that may have caused the late filing], the regulation makes no allowance for missing the filing deadline." The Acting Director's decision was to accept the late-filed renewal applications, provided they met certain conditions stated in the decision. On April 17, 1992, the division Director issued this same decision; that is, to accept the late-filed renewal applications that had been rejected by SCRO on December 10, 1991. In a decision signed on April 23, 2003 by SCRO's Regional Manager, it was recommended that late-filed renewal applications be processed and cited the division Director's 1991 decision as the reason for doing so.

According to the record, SCRO is currently administering 216 PUCP permits, 116 with an expiration date of June 30, 2009 and 100 will expire on December 31, 2009. On February 12, 2009, SCRO sent letters by certified mail, return receipt requested to the 116 permit holders in the Southcentral Region whose personal use cabin permits were set to expire on June 30, 2009. This letter was not required by either statute or regulation but sent by SCRO as a courtesy to inform permit holders of the upcoming deadline to renew their permits. The letter explained that under 11 AAC 65.040, their completed renewal application "**must be submitted to this Division 90 days prior to the permit's expiration**" and if they failed to submit their renewal application by the 90-day deadline, their "**permit will be subject to termination**." This language was in bold and underlined in SCRO's February 12, 2009 letter.

¹ This statute was amended in 1997 and this paragraph (4) was deleted.

Of the 116 permits that were set to expire on June 30, 2009, 19 failed to submit renewal applications by the 90-day deadline. On June 22, 2009, SCRO sent letters to twelve persons whose renewal applications were received after the 90-day deadline and notified them that their application for renewal was denied for failure to timely file by the deadline established by 11 AAC 65.040(a) and of their right to appeal this decision to the DNR Commissioner. Several appeals were subsequently received. Also on June 22, 2009, SCRO sent letters to seven persons who did not submit a renewal application and informed them that they must remove all structures from their permit site and requested them to submit a written plan within 60 days of expiration for removal and restoration of the site. Two persons who received the June 22, 2009 "removal letter" submitted an appeal.

DISCUSSION: Because I have decided to grant these appeals on other grounds, it is not necessary to address the issues raised in the appeals.

It appears from the record that the division Director's 1991 appeal decision has been MLW's policy; that is, to accept renewal applications that are received after the 90-day filing deadline set in 11 AAC 65.040. SCRO departed from this long-standing division policy in its June 22, 2009 letters when it denied the late-filed permit renewal applications and initiated the removal process for those who did not submit a permit renewal application. While I agree that SCRO correctly interpreted 11 AAC 65.040 and made the correct decisions in its two June 22, 2009 letters, I disagree that SCRO should have departed from the established division policy without first adopting a new policy and providing prior notice of that policy change to all PUCP permit holders. Although SCRO's February 12, 2009 letter explained that late-filed renewal applications could subject the permit to termination, the permit holders had no reasonable expectation that this would actually occur since MLW's policy since 1991 has been to accept all late-filed renewal applications.

Let me further explain. I agree with SCRO's June 22, 2009 decisions and I disagree with the former division Director's decision in 1991 that established a division policy of accepting PUCP renewal applications received after the 90-day regulatory deadline. I disagree with the former division Director's decision that 11 AAC 65.040 allows for any discretionary application of the 90-day deadline set forth in 11 AAC 65.04(a), which states:

Application for renewal of a permit must be made in writing at least 90 days, but not more than 180 days, before the expiration of the permit. The application must be accompanied by the fee prescribed by 11 AAC 65.010. (The second sentence was added to the regulation in 1993.)

That receipt of the renewal application within this regulatory deadline is mandatory and not discretionary is supported by the clear language of the regulation. According to *Black's Law Dictionary* (1979, 5th edition), "must" is "like the word 'shall' and is primarily of mandatory effect." That application of the 90-day deadline is mandatory is also supported by the purpose of the Personal Use Cabin Permit Program, as stated in 11 AAC 65.010, Applicability: "It is the express intent of this chapter to phase out the use of unauthorized cabins on state land, and where appropriate, convert them to public use."

The division's Acting Director was aware of this purpose and mentioned it in his 1991 decision. The Director found this purpose was being accomplished by other aspects of the PUCP which he

explained in his decision: those who didn't apply during the one-time only application period in 1985 were never eligible for a permit; cabins built after August 1, 1984 could never be authorized under the PUCP; and all cabins would eventually be phased out because the permit is renewable only during the lifetime of the original holder of the permit. However, this does not support the division Director's decision to waive the renewal deadline in 11 AAC 65.040. First, those who didn't apply didn't get a permit and so would never be part of the renewal process. Second, the PUCP doesn't apply to cabins built after August 1, 1984. The PUCP defines "applicant" as "an individual or group of individuals at least 18 years old who have resided in Alaska not less than one year immediately preceding the date of application and does not include an organization, association, or corporation." (11 AAC 65.900(1)) During the one-time application period in 1985, there could be only one application but that application could list one or more applicants. While there was only one original applicant or original group of applicants in 1985, the permit may be renewed as long as there is at least one original applicant still living. For those permits that are held by a group of individuals, the permit could be renewed throughout several lifetimes.

The deadline in the renewal regulation implements the purpose of the PUCP which is to phase-out these cabins on state land. This purpose can only be achieved if the regulatory deadline is enforced. Of course, revocation of the permit can also achieve this purpose but revocation is not the subject of this appeal. The regulations do not provide the director of MLW, or even the commissioner of DNR, the authority to waive the provisions of the renewal regulation.

DECISION: Because of the above-described division precedent, I have decided that the renewal process for the PUCP permits set to expire on June 30, 2009 should be the same as it has been since 1991. I believe that SCRO's June 22, 2009 decision and its application of 11 AAC 65.040 is supported by the clear language of 11 AAC 65.040. However, I believe it would be unfair to reject the late-filed renewal applications since there was no notice of a change in the division's long-standing policy of accepting late-filed renewal applications. **Accordingly, I am granting the appeals and reversing SCRO's June 22, 2009 decision that denied the twelve late-filed renewal applications for permits set to expire on June 30, 2009. I am also vacating SCRO's June 22, 2009 letter to the seven persons who did not submit a renewal application and were told to begin removing the structures from their permit site and whose permits were set to expire on June 30, 2009. I believe it is only fair and equitable that these seven persons be treated the same as those whose late-filed renewal applications were denied, as was done in 1991.**

This decision constitutes a repeal of the MLW's Director's 1991 appeal decision and resulting division policy and establishes a new policy for all future PUCP renewals to strictly enforce the language and intent of 11 AAC 65.040, the department's regulation regarding renewal of personal use cabin permits on state land. The effect of this decision is that all future renewal applications must be received within the regulatory 90-day deadline and if not, the late-filed applications shall be denied and the permits will automatically expire by operation of the permit's terms.

In accordance with my decision, the late-filed renewal applications for the permits set to expire on June 30, 2009 will be accepted and adjudicated by SCRO to ensure their compliance with all applicable requirements, and these late-filed renewal applicants shall be given an opportunity to cure any defects in their application by a date certain to be determined by SCRO. The seven persons

Personal Use Cabin Permits

August 6, 2009

Page 5 of 5

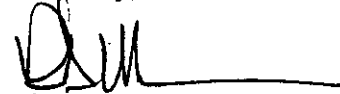
who did not file a renewal application for the permits set to expire on June 30, 2009 shall be given an opportunity to submit a renewal application and if they choose to submit a permit renewal application, then it must be received on a date certain to be determined by SCRO. This decision shall be sent to all persons who received SCRO's June 22, 2009 letters (which includes the appellants), as well as to all other personal use cabin permit holders. When SCRO sends out courtesy letters to those whose permits will expire on December 31, 2009, a copy of this decision will be included with that courtesy letter.

I am also sending this decision to the managers of MLW's Northern and Southeast Regional Offices and directing these managers to mail a copy of this decision to all PUCP permit holders within their areas. This will provide notice of the department's interpretation and new policy regarding the application of 11 AAC 65.040. Since there may be permit holders in the Northern and Southeast regions whose 90-day renewal period has already elapsed, the regional managers shall notify those permit holders that their renewal application must be received in their respective offices within 90 days of the date of this decision.

I am also recommending that MLW assess whether the regulations in 11 AAC 65 may require any changes or revisions in light of my decision and this new policy. I would especially direct MLW's attention to 11 AAC 65.040, the renewal regulation, and consider adding language that failure to comply with the deadline in 11 AAC 65.040(a) shall result in termination of the personal use cabin permit as of its expiration date. By amending 11 AAC 65.040 to include termination language, all permit holders will have notice that failure to comply with the regulatory deadline shall result in the automatic termination of their personal use cabin permit by operation of law.

APPEAL: This decision is a final administrative order and decision of the department for the purpose of an appeal to Superior Court. An appellant affected by this final order and decision may appeal to Superior Court within 30 days in accordance with the Alaska Rules of Court and to the extent permitted by applicable law.

Sincerely,



✓ Thomas E. Irwin
Commissioner

cc: Dick Mylius, Director, Division of Mining, Land and Water, DNR
Richard B. Thompson, Regional Manager, Southcentral Region, MLW, DNR
Chris C. Milles, Regional Manager, Northern Region, MLW, DNR
David L. Kelley, Regional Manager, Southeast Region, MLW, DNR

STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER

☐ Northern Region
3700 Airport Way
Fairbanks, AK 99709
(907) 451-2740

☐ Southcentral Region
550 W 7th Ave., Suite 900C
Anchorage, AK 99501-3577
(907) 269-8552

☐ Southeast Region
400 Willoughby
P.O. Box 111020
Juneau, AK 99811-1020
(907) 465-3400

PERSONAL USE CABIN PERMIT RENEWAL APPLICATION
11 AAC 65.040

Non-refundable filing fee: \$100

ADL# _____

Permittee's or Authorized Agent's Name: _____
Mailing Address: _____
City/State/ZIP: _____
Phone: _____ Message Phone: _____
E-mail address: _____

The Authorized Agent acts as a representative for all cabin members and accepts full responsibility to act on their behalf. It is the responsibility of the Authorized Agent to ensure compliance with all the terms and conditions of the permit. The Authorized Agent also accepts full responsibility for being the main point of contact for DNR. It is the responsibility of the Authorized Agent to keep DNR informed of any change of addresses and phone numbers of all remaining original members and their status.

Request for renewal of a Personal Use Cabin Permit **MUST** be submitted in writing no earlier than 180 days, but no less than 90 days prior to Permit expiration. It is the responsibility of the Authorized Agent to request and submit a renewal application within this time frame. Should the Authorized Agent fail to inform or respond to DNR within the allotted timeframes required for renewal the DNR will make no attempt to contact members beyond the Authorized Agent of record.

This Application MUST be received or post marked NO LESS than 90 calendar days prior to permit expiration.
NO LATE APPLICATIONS WILL BE ACCEPTED.

1. Is this a change of the Authorized Agent of record? ☐ Yes ☐ No
2. List the current names, addresses, phone #'s and e-mail addresses of the remaining original permittee's:
NOTE: No new members may be added.

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

Name: _____
Address: _____
City/State/Zip _____
Phone: _____
E-mail address: _____

3. Please list any of the original permittee's who are now deceased:

Name: _____	Date _____
Name: _____	Date _____
Name: _____	Date _____

4. Please list any of the original permittee's who no longer desire an interest in the cabin: Please provide, in writing, a notarized statement from each member relinquishing their interest.

Name: _____	Relinquishment letter attached: ☐ Yes ☐ No
Name: _____	Relinquishment letter attached: ☐ Yes ☐ No
Name: _____	Relinquishment letter attached: ☐ Yes ☐ No

5. Where is the cabin located? _____

- a) List GPS coordinates: _____
- b) Provide the legal description:
Seward Meridian: Township _____, Range _____, Section _____
- c) USGS Quad map: _____
- d) Topographic Map (1:63) attached with "X" marking the spot: ☐ Yes ☐ No

6. Describe the characteristics of the cabin which might help to identify it during a field inspection:

- a) Dimensions: _____
- b) Total Square footage: _____
- c) Color: _____
- d) Other identifying characteristics: _____

7. Attach a recent date stamped Photograph of the cabin taken within the last 6 years.

Photo attached: ☐ Yes ☐ No If no please explain: _____

8. Have any improvements been made to the cabin since the permit was originally issued? If so, please explain:

9. Primary purpose of the cabin? _____

10. Seasons of use? _____

11. Are you applying for an ADFG Special Area Permit or renewal at this time? ☐ Yes ☐ No

Authorized Agent's Signature

Date

STATE OF ALASKA)

)

) ss.

Judicial District

)

THIS IS TO CERTIFY THAT ON THIS _____ day of _____, _____, before me personally appeared _____, known to me to be the person named and who signed the foregoing lease and acknowledged voluntarily signing the same.

Notary Public in and for the State of Alaska
My commission expires: _____

ATTACH PHOTO(s) HERE:

Phone (907) 269-8503
Fax (907) 269-8913

March 5, 2010

RETURN RECEIPT REQUESTED

Re: ADL No. _____, Personal use Cabin Permit **Expiring December 31, 2009**
Renewal Application **Deadline October 2, 2009**

Dear Permit Holder,

Your Personal Use Cabin Permit (PUCP) issued by the Department of Natural Resources (DNR), Division of Mining, Land & Water (DMLW), Southcentral Regional Office (SCRO), will expire on December 31, 2009. According to 11 AAC 65.040, **in order to renew your permit a completed renewal application packet must be submitted and received by this office no less than 90 days prior to the permit expiration. Therefore the deadline to submit the permit renewal application to this office is October 02, 2009.**

To renew your permit please complete and submit the following documentation no later that **October 2, 2009.**

- A completed Renewal Application, signed and notarized (*form enclosed*);
- A completed Environmental Risk Questionnaire (*form enclosed*);
- A recent, dated photograph of the cabin; (*photos should not be more than 6 years old.*)
- A \$100.00 filing fee

Return the completed forms and requested documentation **no later than October 02, 2009** to:

Division of Mining Land and Water,
Southcentral Regional Office
550 W. 7th Avenue, Suite 900C
Anchorage, AK 99501-3577

If you fail to submit an application for renewal by October 2, 2009 your permit will naturally expire and will not be renewed. Once your permit has expired you will be given 60

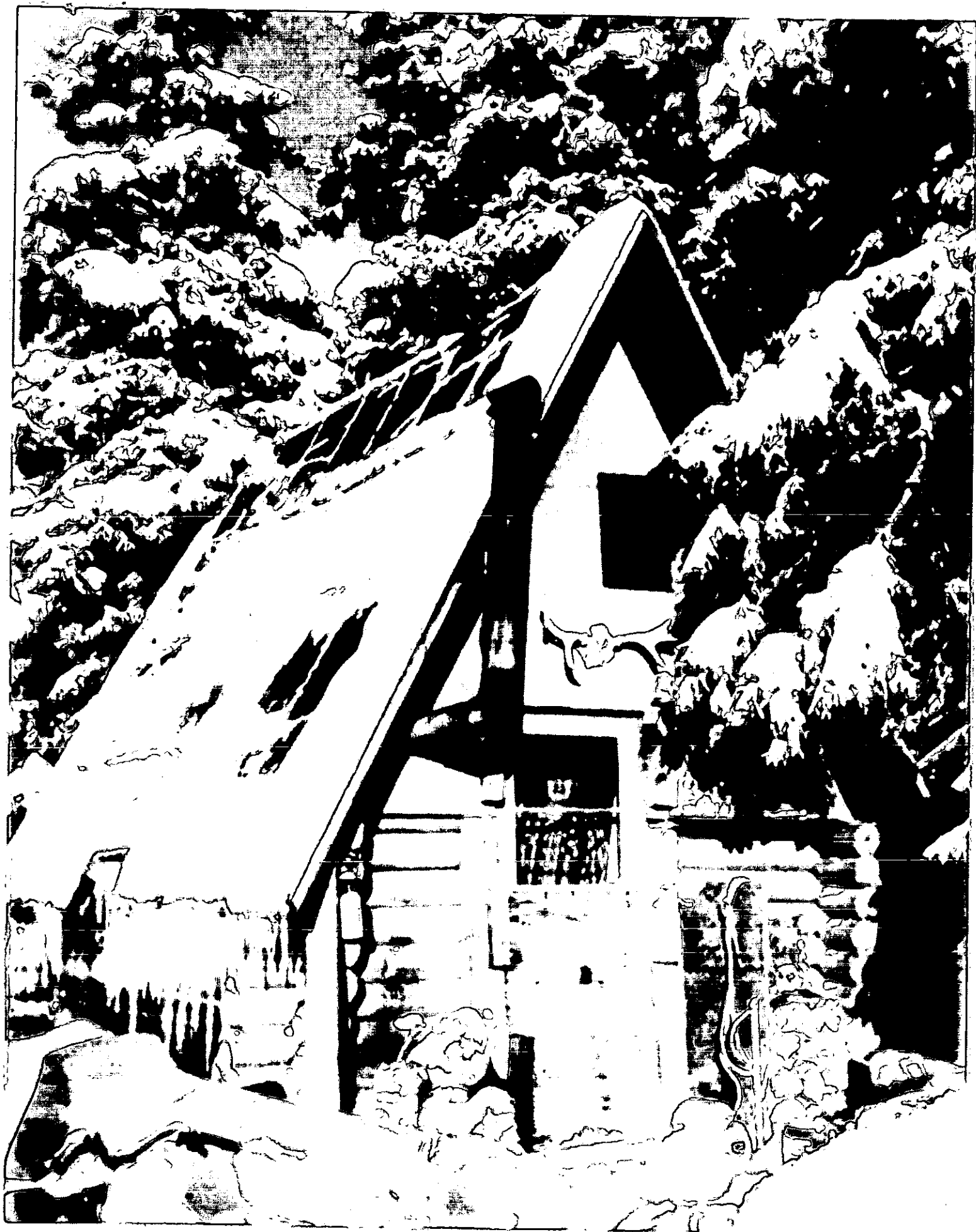
days after permit expiration to remove all improvements and personal property according to 11 AAC 65.080.

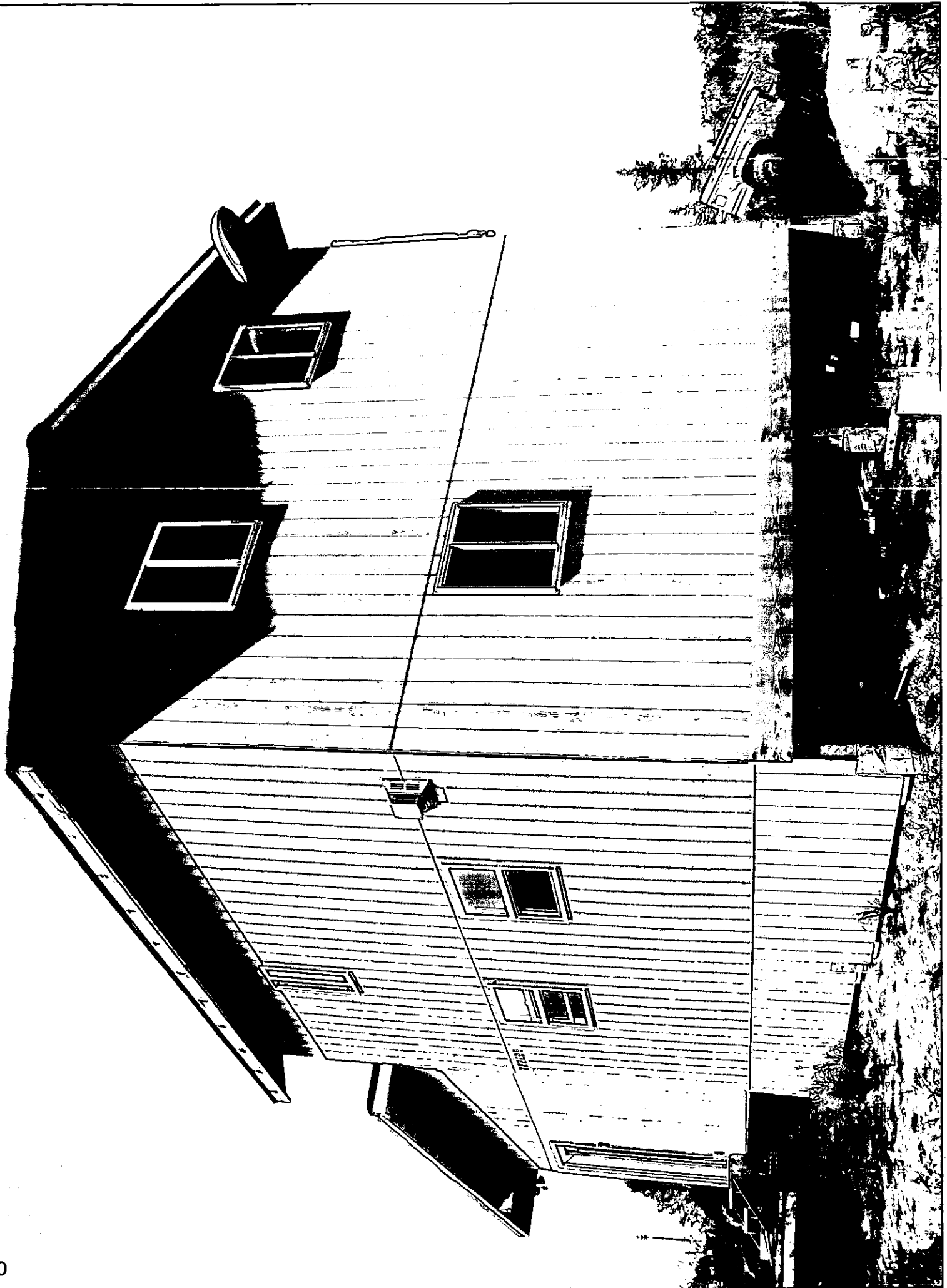
If you have any questions or concerns regarding your permit renewal, feel free to contact me at 269-8562 or Adele Lee at 269-8479.

Sincerely,

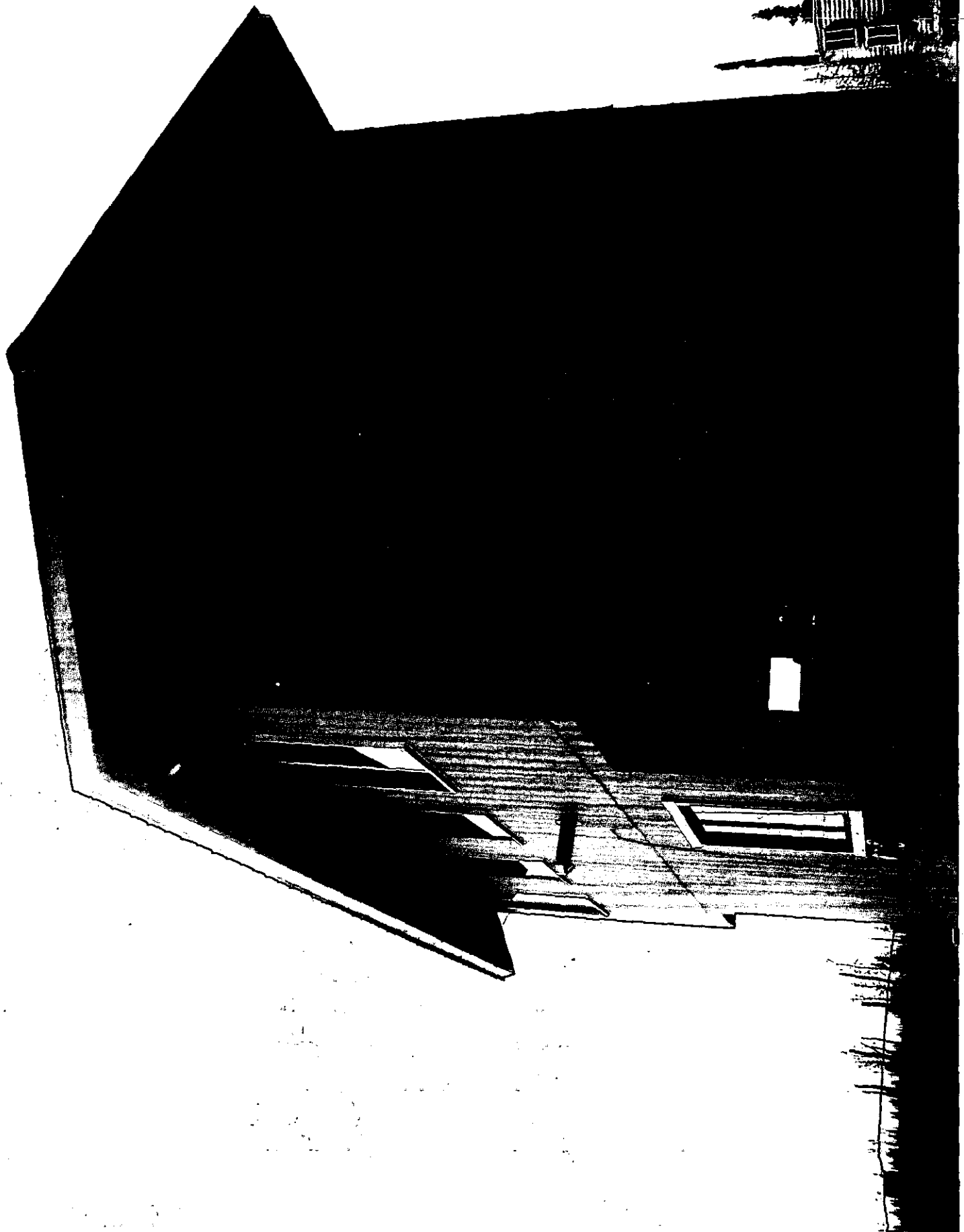
Paul Vail
Natural Resource Specialist

*Enclosures: Personal Use Cabin Renewal Application
 Environmental Risk Questionnaire*









SOUTHCENTRAL 2009 DENIED PERSONAL USE CABINS

	ADL #	NAME	ADDRESS	CABIN LOCATION	CURRENT STATUS OF PERMIT	REASON FOR DENIAL	PERMIT HOLDER DATE
Permits that were to expire June 30, 2009. Reinstated because 8/6/09 Commissioner Decision	220994	Patrick E. Carty	P.O. Box 2913 Kenai, AK 99611	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220732	Joel K Blatchford	370 W. Redoubt Avenue #4, Soldotna, AK 99669	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220756	Corey D Doil	3131 Bettles Bay Loop, Anchorage, AK 99515	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220789	Keith K Appel	4705 Malibu Drive, Anchorage, AK 99517	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220824	Allan L Sawyer	PO Box 2646, Kenai, AK 99611	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220911	Kent Kohlase	2142 Forest Park Drive, Anchorage, AK 99517	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220923	Charles M Sage	5108 Strawberry Road, Anchorage, AK 99502	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220925	Jodi Grendahl	7720 Lodge Pole Court, Anchorage, AK 99516	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220926	Marvin J Grendahl	7720 Lodge Pole Court, Anchorage, AK 99516	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220941	Donald J Hicke	6916 Whitehall, Anchorage, AK 99502	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220958	Ward Hulbert	5226 Strawberry Road, Anchorage, AK 99502	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220995	Ronald T Stanek	3623 Lynn Drive, Anchorage, AK 99508	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
Permits that were to expire December 31, 2009. Denials that were not changed by 8/6/2009 Commissioner Decision	221834	C Grant Henderson	3302 W. 81st Avenue, Anchorage, AK 99502-4425	Cook Inlet	Denied/Expired - letter pending	Late Application	Since 1985
	221926	Michael B Brooks	511 W. 54th Ave, Anchorage, AK 99518-1136	Kenai Peninsula	Denied/Expired	Late Application	Since 1986
	221993	Ed Clark	PO Box 834, Kenai, AK 99611	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
	222214	Fred F Braun	502 Lake Street #2, Kenai, AK 99611	Cook Inlet	Denied/Expired - Appealed	Late Application	Since 1986
	222000	Louis L Clark	2840 Porcupine Trail, Anchorage, AK 99516	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
	222003	Rick A Bailey	PO Box 581, Soldotna, AK 99669-0581	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
	222086	Nancy K Myers	3840 Wildrose Avenue, Kenai, AK 99611	Kenai Peninsula	Denied/Expired	The cabin is not on	Since 1986
	222096	Scott Davis	PO Box 3852, Soldotna, AK 99669	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
	222098	Leslie Near	Drawer 448, Soldotna, AK 99669	Cook Inlet	Denied/Expired - letter pending	Late Application	Since 1985
	222112	Rollin Braden	36625 Ansel Drive, Soldotna, AK 99669	Kenai Peninsula	Denied/Expired - postmark	Late Application	Since 1986
	222116	Rollin Braden	36625 Ansel Drive, Soldotna, AK 99669	Kenai Peninsula	Denied/Expired - postmark	Late Application	Since 1986
	222191	Scott Jackson	PO Box 2091, Soldotna, AK 99669	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
	222222	James A Scritchfield	PO Box 866, Soldotna, AK 99669	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
	222223	David Blossom	PO Box 313, Kasilof, AK 99610	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
	222313	T J Hinkle	46745 Kenai Spur Highway, Kenai, AK 99677	Cook Inlet	Denied/Expired - postmark	Late Application	Since 1986

Explanation of the information in the 2009 DENIED PERSONAL USE CABINS spreadsheet.

There are 211 Personal Use Cabin Program (PUCP) permits in the South Central Region land office (SCRO) of the Division of Mining, Land & Water. Most of these are not shown in this spreadsheet. Only those that were denied at some point during 2009 are shown. These are permits that had expiration dates of June 30, 2009 or December 31, 2009. Of the 211 permits, 173 cabin permits have been renewed this year (2009-10). This includes the top group of permits shown in the table that were previously denied but reinstated after the August 6, 2009 Commissioner Decision that overturned the denials.

Of the remaining 38 cabins, 7 were denied for a late application (terms of renewal in regulation, but 3 are potentially going to be reinstated for meeting the postmark date), 7 were denied for having overbuilt the authorized structure footprint and size (violating conditions of the permit and the regulations), and one was denied because it is not on state land. This is the bottom group of permits shown in the spreadsheet. The remaining 24 permits not shown in the table were closed because the permittee has failed to turn in an application or all of the permittees associated with the permit have passed away.

The Personal Use Cabin Program is based on the foundation that the division is not to perpetuate the existence of these previous trespass cabins. It was a one time offer from the legislature to authorize these cabins under a set of strict regulations that prevent expansion and set conditions for denying permits.

SCRO has divided its 211 PUCP permits into two separate groups. One group is composed of permits that expire on June 30 and the other is composed of permits that expire on December 31. SCRO made a decision on April 22, 2009 to deny all applications that were received past the application deadline for the June 30 expiration group. Several affected permit holders of that group appealed to the DNR Commissioner and the Commissioner reversed SCRO's decision on August 6, 2009, and provided a one time 90 day grace period for those that already had missed the renewal application deadline or had pending application deadlines. This group was notified to allow them 90 days to reapply to renew their permit. The permit holders in the top group in the spreadsheet were reinstated because SCRO had their late application in hand. The Commissioner's decision also was very clear that all future late renewal applications would be denied. In addition, permit holders that held permits that would expire on December 31, 2009 were notified SCRO would deny permits for late applications or for violation of other permit terms.

Of the lower group of denials in the spreadsheet (the only ones that are currently denied in southcentral), only one permittee that filed late has appealed the SCRO decision to deny. In addition, all of the overbuilt permittees have appealed the SCRO decision to deny.

No other denials have been issued in 2009 for the other regions of the state.

SOUTHCENTRAL 2009 DENIED PERSONAL USE CABINS							
	ADL #	NAME	ADDRESS	CABIN LOCATION	CURRENT STATUS OF PERMIT	REASON FOR DENIAL	PERMIT HOLDER DATE
Permits that were to expire June 30, 2009. Reinstated because 8/6/09 Commissioner Decision	220994	Patrick E. Carty	P.O. Box 2913 Kenai, AK 99611	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220732	Joel K Blatchford	370 W. Redoubt Avenue #4, Soldotna, AK 99669	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220756	Corey D Doil	3131 Bettles Bay Loop, Anchorage, AK 99515	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220789	Keith K Appel	4705 Malibu Drive, Anchorage, AK 99517	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220824	Allan L Sawyer	PO Box 2646, Kenai, AK 99611	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220911	Kent Kohlase	2142 Forest Park Drive, Anchorage, AK 99517	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220923	Charles M Sage	5108 Strawberry Road, Anchorage, AK 99502	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220925	Jodi Grendahl	7720 Lodge Pole Court, Anchorage, AK 99516	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220926	Marvin J Grendahl	7720 Lodge Pole Court, Anchorage, AK 99516	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220941	Donald J Hickel	6916 Whitehall, Anchorage, AK 99502	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220958	Ward Hulbert	5226 Strawberry Road, Anchorage, AK 99502	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
	220995	Ronald T Stanek	3623 Lynn Drive, Anchorage, AK 99508	Cook Inlet	Reinstated(Previously denied)	Late Application	Since 1985
Permits that were to expire December 31, 2009. Denials that were not changed by 8/6/2009 Commissioner Decision	221834	C Grant Henderson	3302 W. 81st Avenue, Anchorage, AK 99502-4425	Cook Inlet	Denied/Expired - letter pending	Late Application	Since 1985
	221926	Michael B Brooks	511 W. 54th Ave, Anchorage, AK 99518-1136	Kenai Peninsula	Denied/Expired	Late Application	Since 1986
	221993	Ed Clark	PO Box 834, Kenai, AK 99611	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
	222214	Fred F Braun	502 Lake Street #2, Kenai, AK 99611	Cook Inlet	Denied/Expired - Appealed	Late Application	Since 1986
	222000	Louis L Clark	2840 Porcupine Trail, Anchorage, AK 99516	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
	222003	Rick A Bailey	PO Box 581, Soldotna, AK 99669-0581	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
	222086	Nancy K Myers	3840 Wildrose Avenue, Kenai, AK 99611	Kenai Peninsula	Denied/Expired	The cabin is not on S	Since 1986
	222096	Scott Davis	PO Box 3852, Soldotna, AK 99669	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
	222098	Leslie Near	Drawer 448, Soldotna, AK 99669	Cook Inlet	Denied/Expired - letter pending	Late Application	Since 1985
	222112	Rollin Braden	36625 Ansel Drive, Soldotna, AK 99669	Kenai Peninsula	Denied/Expired - postmark	Late Application	Since 1986
	222116	Rollin Braden	36625 Ansel Drive, Soldotna, AK 99669	Kenai Peninsula	Denied/Expired - postmark	Late Application	Since 1986
	222191	Scott Jackson	PO Box 2091, Soldotna, AK 99669	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
	222222	James A Scritchfield	PO Box 866, Soldotna, AK 99669	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
	222223	David Blossom	PO Box 313, Kasilof, AK 99610	Kenai Peninsula	Denied/Expired - Appealed	Overbuilt	Since 1986
	222313	T J Hinkle	46745 Kenai Spur Highway, Kenai, AK 99677	Cook Inlet	Denied/Expired - postmark	Late Application	Since 1986

Explanation of the information in the 2009 DENIED PERSONAL USE CABINS spreadsheet.

There are 211 Personal Use Cabin Program (PUCP) permits in the South Central Region land office (SCRO) of the Division of Mining, Land & Water. Most of these are not shown in this spreadsheet. Only those that were denied at some point during 2009 are shown. These are permits that had expiration dates of June 30, 2009 or December 31, 2009. Of the 211 permits, 173 cabin permits have been renewed this year (2009-10). This includes the top group of permits shown in the table that were previously denied but reinstated after the August 6, 2009 Commissioner Decision that overturned the denials.

Of the remaining 38 cabins, 7 were denied for a late application (terms of renewal in regulation, but 3 are potentially going to be reinstated for meeting the postmark date), 7 were denied for having overbuilt the authorized structure footprint and size (violating conditions of the permit and the regulations), and one was denied because it is not on state land. This is the bottom group of permits shown in the spreadsheet. The remaining 24 permits not shown in the table were closed because the permittee has failed to turn in an application or all of the permittees associated with the permit have passed away.

The Personal Use Cabin Program is based on the foundation that the division is not to perpetuate the existence of these previous trespass cabins. It was a one time offer from the legislature to authorize these cabins under a set of strict regulations that prevent expansion and set conditions for denying permits.

SCRO has divided its 211 PUCP permits into two separate groups. One group is composed of permits that expire on June 30 and the other is composed of permits that expire on December 31. SCRO made a decision on April 22, 2009 to deny all applications that were received past the application deadline for the June 30 expiration group. Several affected permit holders of that group appealed to the DNR Commissioner and the Commissioner reversed SCRO's decision on August 6, 2009, and provided a one time 90 day grace period for those that already had missed the renewal application deadline or had pending application deadlines. This group was notified to allow them 90 days to reapply to renew their permit. The permit holders in the top group in the spreadsheet were reinstated because SCRO had their late application in hand. The Commissioner's decision also was very clear that all future late renewal applications would be denied. In addition, permit holders that held permits that would expire on December 31, 2009 were notified SCRO would deny permits for late applications or for violation of other permit terms.

Of the lower group of denials in the spreadsheet (the only ones that are currently denied in southcentral), only one permittee that filed late has appealed the SCRO decision to deny. In addition, all of the overbuilt permittees have appealed the SCRO decision to deny.

No other denials have been issued in 2009 for the other regions of the state.

To Whom It May Concern

January 21, 2010

I am appealing your decision to deny my application for renewal of my Personal Use Cabin Permit ADL 221934.

On August 9th the Post Man rang the door bell moments after one of my kids yelled Grandpa's gone! (Grandpa is 90 with mid stage Alzheimer's) I quickly signed for an envelope and pulled the paper work out of the far enough to see that it was the renewal for Moose Camp and that it expired on December 31st I tossed it in with the rest to the mail and went looking for Grandpa. He was found next door, after a frantic search. The mail however was packed in a box as we were preparing to move that day and not found for 3 months.

On December 2nd my wife found the renewal application and I was able to look at the contents of the renewal packet for the first time.

I had no idea and no reason to suspect that there was a surprise in the back of that packet changing the established policy and did not expect that being late would constitute denial of a renewal application.

The notice of the change of policy could have been sent in a separate envelope ahead of the renewal application would have made all the difference in my case. Even a red stamp noting "Notice...New policy inside, open immediately" would have helped.

I believe that SCRO should not have departed from the established division policy without first communicating a change to that policy in an adequate way in the form of a separate mailing to all PUCP permit holders. (See Commissioner's Decision on MLW/SCRO's June 22, 2009 Decision re: Personal Use Cabin Permits.) Page 3 paragraph 3 and Page 4 paragraph 3.)

I believe that I am in the exact same position that the late filing applicants were in in June. Accordingly I ask for you to renew my Personal Use Cabin Permit on the same basis that you allowed the late filing applicants in June.

I hope that you don't see me as just ADL permit number 221834, but that you see me as a Dad that faces letting down everyone that shared the privilege of using the cabin with me as well as losing the opportunity to share with my own children the experiences that my Uncle Sam shared with me at Moose Camp.

Sincerely

C. Grant Henderson



There seems to be quite a lot of confusion from the public as to what DNR's policies are regarding the use of state lands. Whether for lease or for purchase. This confusion seems to be a result of the lack of clear and consistent policies by the department. For instance....

On this DNR form for "Purchase or Lease of State Land,"

There's a line asking if you're applying for a "lease" or for a "sale"? Can you actually use this form to purchase state land?

There is also a line asking "If a lease, how many years are you applying for? (55 years max).

Is it possible to lease land for a 55 year term?

Is this an actual policy that was adopted by the Commissioner of DNR? Or is this an general understanding of mid-level beaurocrats?

I've been told that in the Fairbanks DNR office a person was told that they could only lease land for a 5 year term?

It would appear that once again DNR lacks a clear and consistent statewide policy on this issue.

Rick Thompson

STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES DIVISION OF MINING, LAND AND WATER

☐ Resource Assessment and
Development Section 2144
850 W 7th Ave., Suite 1050
Anchorage, AK 99501-3579
(907) 269-8534

☐ Northern Region
3700 Airport Way
Fairbanks, AK 99709
(907) 451-2740

☐ Southcentral Region
850 W 7th Ave., Suite 900C
Anchorage, AK 99501-3577
(907) 269-8552

☐ Southeast Region
2200 W 4th Ave., Suite 100
Juneau, AK 99801-1000
(907) 586-2100

APPLICATION FOR PURCHASE OR LEASE OF STATE LAND

Date _____

Applicant's Name _____ Doing business as _____

Mailing Address _____

City/State/Zip _____ E-Mail _____

Message Phone () _____ Work Phone () _____ Soc. Sec. # and/or Tax ID# _____

Is applicant a corporation qualified to do business in Alaska? ☐ yes ☐ no Is the corporation in good standing with the
State of Alaska, Dept. of Commerce and Economic Development? ☐ yes ☐ no.

Is applicant 18 years or older? ☐ yes ☐ no Are you applying for a ☐ lease or ☐ sale? What kind of land are you
applying for? ☐ Tideland; ☐ Public/Charitable Use; ☐ Grazing; ☐ Millsite; ☐ Negotiated; ☐ Competitive

If a lease, how many years are you applying for? _____ years (55 years Max.) *who set the policy*

Legal Description: Lot(s) _____ Block/Tract # _____ Survey/Subdivision _____

Other _____

Meridian _____ Township _____ Range _____ Section(s) _____

Municipality _____ LORAM Reading (optional) _____

Geographic Location _____

What is the proposed use of and activity on the state land?

Are there any improvements on the land now? ☐ yes ☐ no. If yes, who owns the improvements and what is their
estimated value?

If yes, describe any existing improvements on the land.

Are there any improvements or construction planned? ☐ yes ☐ no. If yes, describe them and their estimated value.

State the proposed construction date _____ estimated completion date* _____

Name and address of adjacent land owners and, if you are applying for tidelands, the name and address of the adjacent
upland owners

Are you currently in default on, or in violation of, any purchase contract, lease, permit or other authorization issued by the
Department under 11 AAC? ☐ yes ☐ no Within the past three years, has the Department foreclosed or taken action on
a purchase contract, lease, permit or other authorization issued to you? ☐ yes ☐ no

Non-refundable filing fee: \$100
(Fee may be waived under 11 AAC 06.010(c))

182-103 (Rev. 02/95)

Page 1

John Davies

From: MaryBea Byrne
Sent: Thursday, March 11, 2010 2:57 PM
To: John Davies
Subject: written testimony for cabin regulations
Attachments: Testimony of Rick Baldwin.pdf; Testimony of Mike Schilling.pdf

Mr. Davies,

We have received the attached written testimony for submittal to the JARR Committee from two of the individuals who attended the last hearing on March 8 regarding personal use cabin regulations. They are unable to attend the meeting on March 15, but requested that the attached be given to the committee members in lieu of oral testimony.

Thank you for your assistance in this matter,

Mary Bea

Kenai LIO

283-20303

Testimony of Mike Schilling

420 N. Willow Street, Kenai, AK

I am a life-long Alaskan. I own and manage GLM Machine Shop, an industrial turbine repair and overhaul facility in Kenai. I would like to address the State's policy regarding personal use permitted cabins as stated in 11 AAC 65.010. I will discuss how application of the policy has affected me and my family personally, in the recent refusal of DNR to process the renewal application for the personal use cabin permit submitted by Fred Braun for a duck cabin located across Cook Inlet from Kenai.

Fred Braun will present testimony to the Committee on the circumstances under which the DNR has refused to process the cabin permit. I ask the Committee to not view the situation as merely Fred Braun losing a permit, but to consider the implications on the people involved. The DNR's present course of action, if upheld, will result in my family and me losing an important part of our history.

My father Louis Schilling, Fred Braun and Larry Rappe built the cabin almost 40 years ago. I remember as a child participating in my first duck hunt from the cabin at the age of five. From that time, and almost every year since, the annual duck hunt with my father, brother and friends was the highlight of my year. My father allowed my brother and me to miss school for the opening week of duck season, and many times later in the fall also.

Initially, transportation to the flats was either by chartered aircraft or by boat from Kenai. When I became an adult, having the ability to fly to the duck cabin was the main impetus for me to get a pilot's license. After receiving a license, my use of the cabin increased even more.

Duck hunting was my father's passion. After Dad retired in 2000, he finally had the time to spend at the cabin, as he had always wanted. He spent several weeks at the cabin each fall. In 2003 he went over to the cabin with his young grandson Sam and renovated the cabin. He put on a new roof, replaced the rotted deck, beefed up the foundation supports, and painted the structure. In 2006 Dad was diagnosed with mesothelioma, a form of lung cancer resulting from asbestos exposure. Although he went outside for treatment, he returned to the state for

duck season. That year he spent almost six weeks at the duck cabin in the company of his sons, grandson and old friends.

In the fall of 2007 Dad went to the cabin with my brother for what would be his last hunt. He passed away October 6, 2007.

I don't understand how it would be in the interest of the state to require us to move the cabin. It is not noticeable from the air and takes up very little space. No one is excluded from hunting by its presence. In fact, I would guess that over 200 individuals have sheltered in the cabin at various times since its construction and to my knowledge no one asking to use the cabin has ever been turned away. Due to the transportation difficulties involved I am aware of very few hunters who attempt to hunt the flats without being able to shelter in a cabin.

In conclusion, it is impossible to adequately describe the sense of loss I felt when I heard that the DNR had refused to process the cabin permit. So much family history is tied up in the cabin, so many good memories. I have always planned that I would hunt there with my son. What possible public policy is advanced by depriving people of the kinds of experiences so many of us have enjoyed as a result of being able to use the cabin? I would hope that the legislature would seriously consider whether the public would be better off by having the cabin removed, and conclude that there still is a place in the Alaska wilderness for cabins built in a time when the rules for such things were less rigid, by self-sufficient people whose legacy continues to today.

Testimony of Charles R. (Rick) Baldwin
125 N. Willow, Kenai

My testimony consists of two parts. The first part addresses the overall public policy implications of the current policy with respect to wilderness cabins on state land. The second part of my testimony is personal, describing the value to me as an Alaskan of a state policy encouraging the maintenance of existing cabins. I do not have a cabin permit, nor do I have an ownership interest in any cabin on state land.

A. The policy of the state should be to encourage the maintenance of existing wilderness cabins on state land, rather than orchestrating their destruction or removal.

1. The current written policy for state lands is to "phase out the use of unauthorized cabins on state land." According to the interpretation of DNR an "unauthorized cabin" is one that is on land owned by the state, even though it may be permitted under 11 AAC 65.010. See August 6, 2009 *Commissioner's Decision on MSW/SCRO's June 22, Decision re: Personal Use Cabin Permits* (the "2009 Commissioner's Decision").
2. 11 AAC 65.010 is not consistent with what should be the policy of the legislature - to preserve wilderness cabins, both as historical objects and as places of sanctuary.
 - a. Historical value. Each cabin has a story. A cabin in the wilderness doesn't last long without being occupied and cared for. As each wilderness cabin falls into disrepair and disappears into the tundra, marsh or trees, a little bit of Alaska history is lost.
 - b. Sanctuary value. There can be no doubt that wilderness cabins have been literal lifesavers to people lost or stranded in the wilderness. While a dilapidated cabin may offer better shelter than no cabin at all, a tight, dry, provisioned cabin may be the difference between life and death. State policy should encourage, not discourage the continued maintenance of existing wilderness cabins.
 - c. Financial value. Unless and until the DNR has a budget to maintain and renovate cabins for which personal use permits have been granted, the policy of

the state should be to leave them in the care of those who have a stake in maintaining them. It would be foolish to expect that the state would be better off if it had in its inventory a bunch of cabins in remote wilderness locations. There would be little incentive to use public funds to maintain cabins in out-of-the-way locations when the State's budget for just maintaining the current public use facilities is inadequate. If the state owned the cabins they would rapidly fall into disrepair.

3. 11 AAC 65.010 is being applied in a manner which is inconsistent with the policy of fairness generally favored by the legislature. According to the August 6, 2009 *Commissioner's Decision on MSW/SCRO's June 22, Decision re: Personal Use Cabin Permits* (the "2009 Commissioner's Decision"), the prior Commissioner's decision to accept late-filed permit renewal applications was inconsistent with the policy of removing wilderness cabins on state land. For that reason the current Commissioner has instituted the practice of rejecting late-filed permit renewal applications with no provision for reinstatement, no matter the reason for the late filing. (2009 *Commissioner's Decision*, p. 4). This practice has resulted in several permittees faced with losing their permits. One such permittee is Fred Braun. Mr. Braun will provide testimony that he received no prior notice of the change in policy, so when he received his permit application, following his usual practice, he put it with other documents requiring action before year end. Only when he opened and read the enclosed notice did he become aware that DNR would refuse to process the permit if not submitted by the October deadline.

A policy which results in an Alaska citizen being deprived of his cabin merely because of a clerical error is an unduly harsh policy and should not be countenanced by the legislature. In other avenues people making clerical mistakes are generally not penalized by a loss of the subject matter of the error. For example, people late on their mortgage payments enjoy the protection of a statute allowing them to cure the default, rather than losing their house; attorneys filing pleadings late usually are sanctioned, but their clients don't lose the lawsuit because of the error; and people leasing state property have the opportunity to cure late rental payments.

A principle almost universally enforced in state government is that when the state adopts ground rules applicable to a particular class of individuals, the rules should be disseminated in such a way that they are understood, before they are enforced. In the case of the class of permittees to which Mr. Braun belongs, the notice of the change of the ground rules was sent out with the application itself, so that if the envelope was opened late, there would be no ability to comply with the rule.

If the overriding state policy is that wilderness cabins on state land are to be removed or destroyed by any legal means, then perhaps resort to the harsh measures detailed above can be justified. It is a question for this legislature as to whether such a policy should instead stand as an expression of legislative intent.

4. The state has an active, workable policy for dealing with problem cabins found in 11 AAC 65.090. Every six years the permit is subject to renewal and as a part of the renewal process a public interest determination is made. The regulation provides for DNR to decline to renew cabin permit for public policy reasons.

B. Losing a permit is one thing. However, when a permit is not renewed it is not the permit that is lost. What is lost is the work that has gone into building and maintaining the cabin, the plans for its use, the family history spawned by the shared experiences made possible by the cabin and the opportunity for other Alaskans to enjoy the benefits of the cabin.

C. Personal reflections.

I am one of the many people who have hunted ducks out of some of the various duck cabins/shacks on the flats across Cook Inlet from Kenai. Without having a cabin to shelter in, I would not have had the experience. I tried only once to hunt out of a tent with my young son. The ground is too wet, the flats too exposed and the lack of a place to store gear made it impractical. Constructing a tent plat-form is just as illegal as constructing a cabin under current DNR regulations.

Many of the cabins have fallen into such disrepair that they are uninhabitable. The dampness of the flats and the exposure to the elements ensure that any cabin not

regularly maintained will soon become uninhabitable. Given that most of the permittees are now into at least their sixties, there is little reason to incur significant renovation costs for most of the cabins.

I have hunted the flats for almost 20 years. I've taken my son, son-in-law and many friends. I had hoped to be able to take my grandson. I have never been turned down in my request for permission to use a duck cabin.

For most of us who hunt the flats, it's just a refreshing experience to go over there and spend a night or two away from civilization, and to spend the day in the quiet of the flats – quiet, because few people hunt there, and as existing cabins fall into disrepair, fewer people each year.

Most of us aren't very prosy, so it's difficult for us to explain why we enjoy a hard bed, no running water, and breakfast consisting of a granola bar eaten while walking to the duck blind in the early morning darkness. A young Alaskan now finishing up medical school recently took a shot at describing the experience and I've attached what he wrote on his "blog" about his visit to the Braun/Schilling cabin this past fall. Certainly he speaks for me, as well as the countless others who have sheltered in the few remaining duck cabins on the flats.

Conclusion

In determining state policy regarding the public use cabins it is suggested that the following questions be addressed:

- What legitimate public interest is served by the removal of well-maintained, convenient structures that are not harming anyone, and in fact, benefitting many?
- What possible legitimate state policy is served by depriving Alaskans of the kind of experience described in the attached excerpt?

- Regarding the treatment of renewal applications by cabin permittees, what legitimate public interest is served by a departure from the principle of fairness and equity generally followed by the state?

Thank you for creating the forum in which these important issues can be addressed and resolved.

Friday, September 11, 2009

Duck hunting

Just to catch up a bit, since May, I've finished 3rd year of med school, done two surgery rotations at the VA Hospital in Seattle, took a few weeks off and am now back in Seattle for my ER rotation.

My break started by going back home. My dad, 2 dogs and I flew across Cook Inlet in his plane for opening day of duck season. We started duck hunting over there together when I was in 5th or 6th grade so it was a pretty nostalgic trip. We stayed in a luxury duck shack complete with a stove, table, porch and separate room for bunk beds. Opening day found us swatting swarms of mosquitoes in the twilight hunkered down behind a pile of driftwood fashioned into a duck blind. There had been some ducks on the pond in front of us prior to shooting time that acted as live decoys to give those we'd put out a hint of authenticity.

It's hard to describe the following hours in a way to paint the taking of birds in a majestic light but there were picturesque moments, freeze frames where every contributing factor summed to etch an indelible snapshot in my mind. After a morning of birds flaring into our decoys, birds from the far side of the pond responding in curiosity to our calls and dogs finally realizing their inborn drive fulfilled, my dad and I decided to take a walk and jump shoot before heading back to the shack for breakfast.

We had already put down 14 out of a 16 bird limit and were both wanting to prolong the day, but still felt compelled to seek out those final 2. We walked through the grass and marsh without seeing much for a while, the dogs trotting along tired from a long morning. I spotted two heads peeking up among the tall grass and signaled to my dad their location. We crouched, crept forward quietly until in a burst of sound and motion, they rose into the air. A pause. Eyes tracking, guns rising, a moment of calculation. Simultaneous shots forming one loud BOOM and both birds fell synchronized from the sky. The dogs, Chipper and Darby, alerted to the action bolted to find the fallen ducks in the grass.

It was the perfect ending to a morning unparalleled in all the duck hunts I have been on. It wasn't so much the hunting as it was the plane parked in the blowing grass with the mountains stretched skyward in the background. It was the plate of chips and onions and cheese and chili the night before. It was walking through the tall grass in silence with my dad and the dogs and the occasional hawk riding the air currents. It was the moment of anticipation, of hearing the wings overhead and briefly tensing before reacting quickly.

It's hard to describe without having been there, but it was one of the ways I felt a reawakening during my time off. It was a chance to sit quietly and experience the fullness of the life that God has given me and be thankful.

Posted by Ross at 9:21 PM

Sansone, Jerri E (DNR)

From: Brenda_Becker@blm.gov
Sent: Thursday, February 18, 2010 11:59 AM
To: Sansone, Jerri E (DNR)
Subject: Re: trespass cabin
Attachments: PICT0018 1.jpg; front of cabin.JPG; R0010320_tag.jpg

Jerri,

For the most part what was removed from selected lands were not able to be used for any type of shelter, but there were some that were "nice" or even better than that. The photos attached here are some that were not usable.

I will send you a couple of pictures on a second email of some that definitely are usable.

Let me know if these photos help you.

Brenda Becker
Realty Specialist
Bureau of Land Management
Glennallen Field Office
P.O. Box 147
Glennallen, Alaska 99588
Phone: 907-822-7321
Fax: 907-822-7335

(See attached file: PICT0018 1.jpg) (See attached file: front of cabin.JPG) (See attached file: R0010320_tag.jpg)

"Sansone, Jerri E
(DNR)"

<jerri.sansone@alaska.gov>

02/18/2010 08:15 AM

Brenda_Becker@ak.blm.gov

To

cc

Subject

trespass cabin

Brenda - do you have some photos (one each) of a selection of trespass 'cabins' that BLM has been able to dismantle / remove that you could send to me? Correct me if I'm wrong, but aren't the majority of these 'cabin's' basically decrepit structures and are not useable or safe i.e., for a shelter against inclement weather etc.?

Jerri Sansone

Chief, Realty Services Section

State of Alaska, DNR

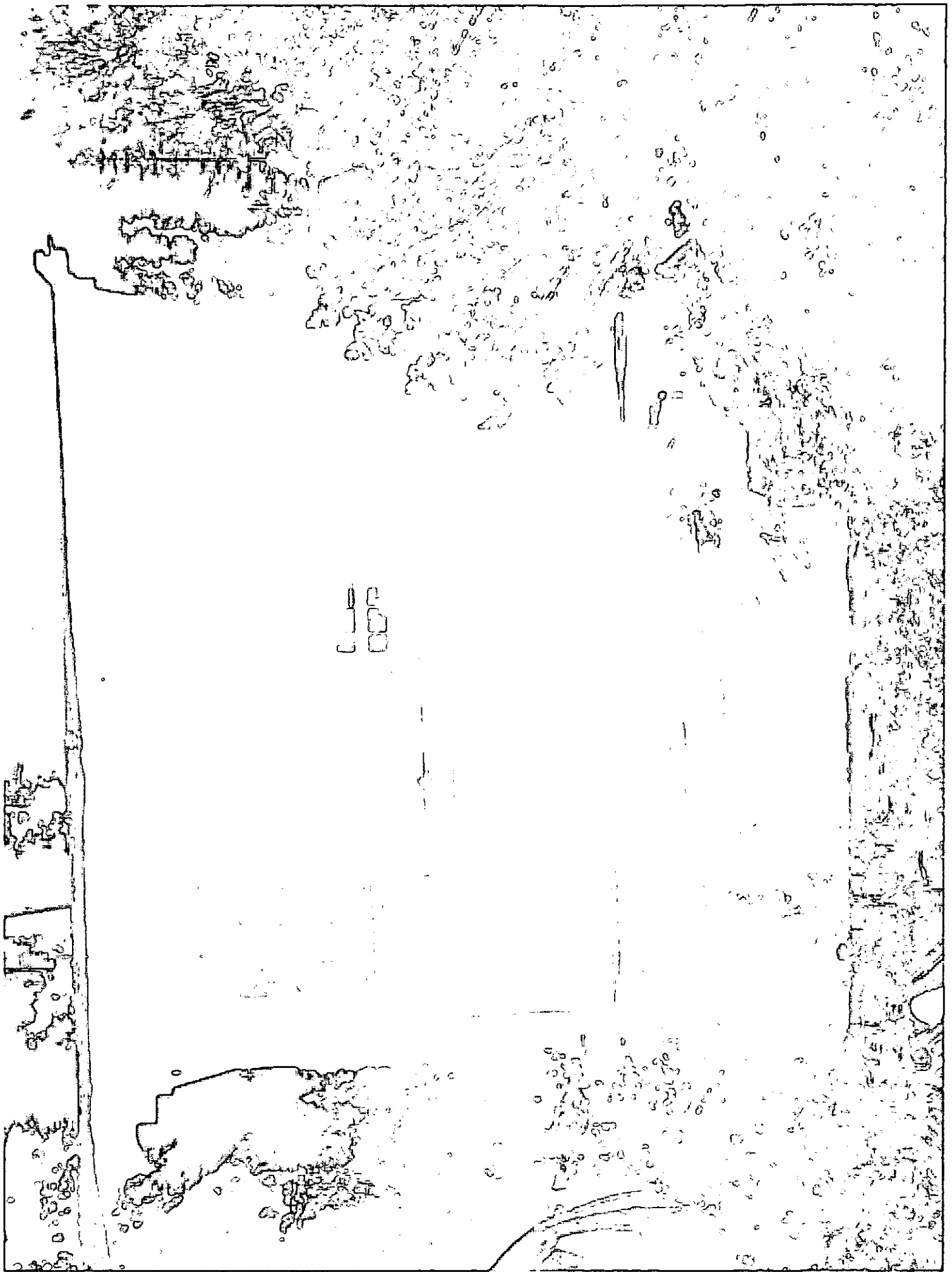
550 W. 7th Ave., Suite 1050A

Anchorage, AK 99501

(907) 334-2552

(907) 269-8935 fax





B

A





Sansone, Jerri E (DNR)

From: Brenda_Becker@blm.gov
Sent: Thursday, February 18, 2010 1:21 PM
To: Sansone, Jerri E (DNR)
Subject: Cabin on Deep Lake
Attachments: DSC00465.JPG

Jerri,

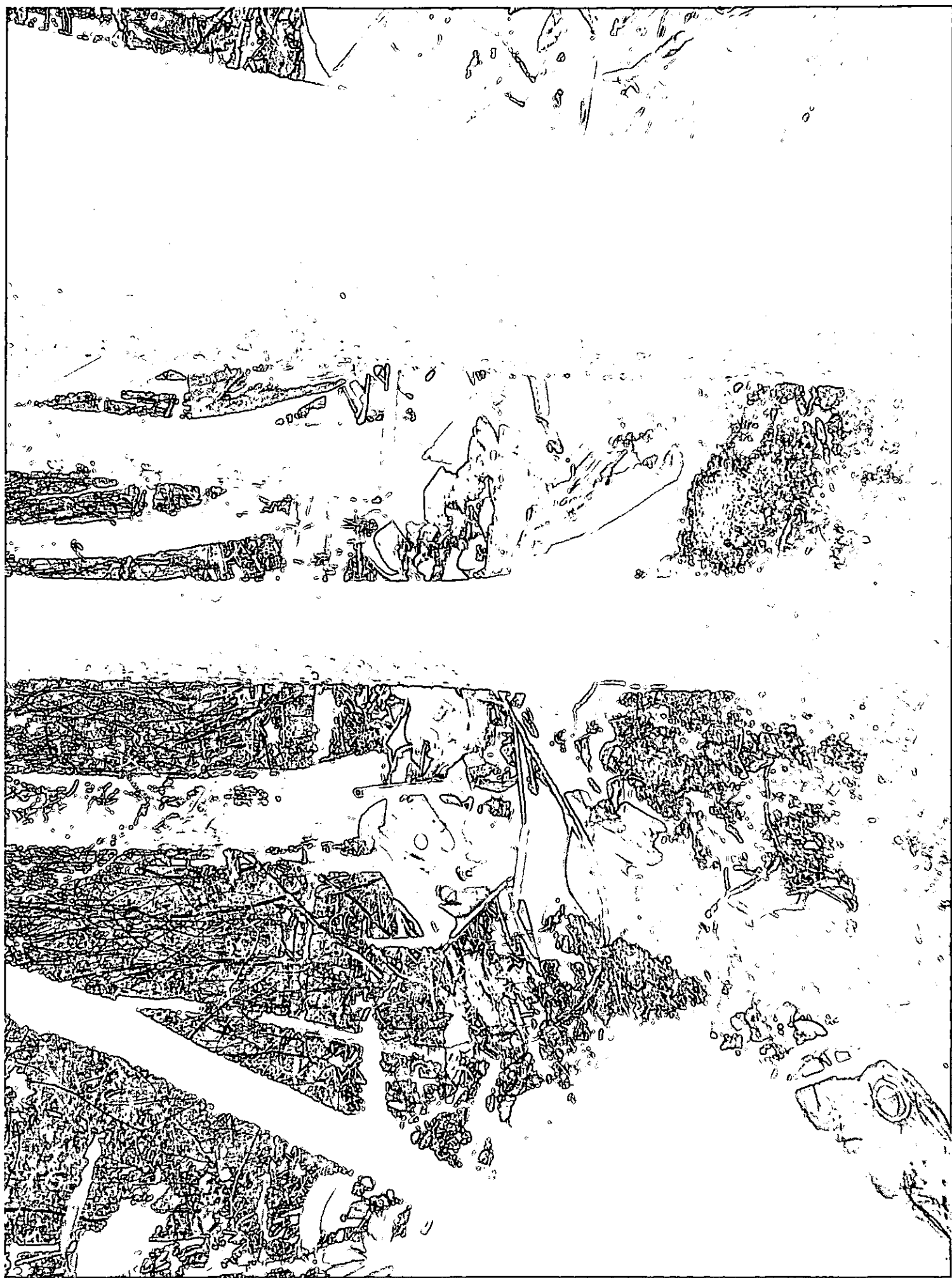
This cabin is located on Deep Lake, in sec. 7, T. 8 N., R. 4 W., Copper River Meridian. This has a trapping cabin application pending with DNR.

This is really only 1 story, but looks like it is bigger than that.

(See attached file: DSC00465.JPG)

Brenda Becker
Realty Specialist
Bureau of Land Management
Glennallen Field Office
P.O. Box 147
Glennallen, Alaska 99588
Phone: 907-822-7321
Fax: 907-822-7335





Sansone, Jerri E (DNR)

From: Brenda_Becker@blm.gov
Sent: Thursday, February 18, 2010 12:39 PM
To: Sansone, Jerri E (DNR)
Subject: Re: trespass cabin
Attachments: P1010034.JPG; P8210987.JPG

Jerri,

Here are some photos of cabins that were taken out this past summer that were definitely usable. These are some that I had requested that the State accept so that they could be used for shelter cabins.

If you have any questions on these, please give me a call.

Brenda Becker
Realty Specialist
Bureau of Land Management
Glennallen Field Office
P.O. Box 147
Glennallen, Alaska 99588
Phone: 907-822-7321
Fax: 907-822-7335

(See attached file: P1010034.JPG) (See attached file: P8210987.JPG)



22
40



Sansone, Jerri E (DNR)

From: Brenda_Becker@blm.gov
Sent: Thursday, February 18, 2010 1:26 PM
To: Sansone, Jerri E (DNR)
Subject: cabin on Swimming Bear Lake
Attachments: DSC00393.JPG

Jerri,

This cabin is on Swimming Bear Lake, Sec 4, T. 32 N., R. 3 E., Seward Meridian. This guy has been in touch with DNR on this one. I am not sure where it stands tho.

(See attached file: DSC00393.JPG)

Brenda Becker
Realty Specialist
Bureau of Land Management
Glennallen Field Office
P.O. Box 147
Glennallen, Alaska 99588
Phone: 907-822-7321
Fax: 907-822-7335



Sansone, Jerri E (DNR)

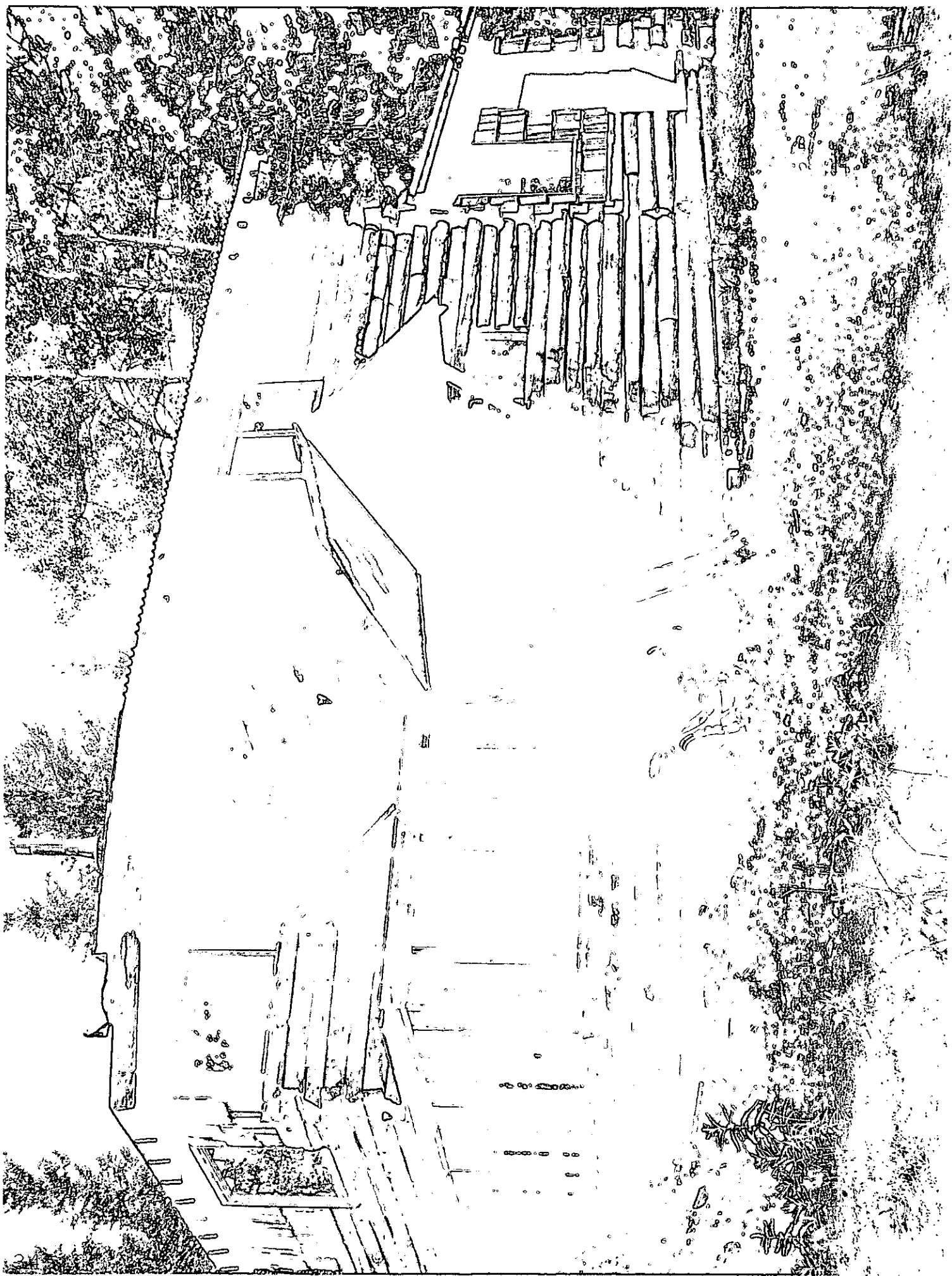
From: Brenda_Becker@blm.gov
Sent: Thursday, February 18, 2010 1:16 PM
To: Sansone, Jerri E (DNR)
Subject: Tonsina Cabin (House)
Attachments: P7020300.JPG; P7020299.JPG

Jerri,

This cabin/house is located in Sec. 9, T. 2 S., R. 2 E., Copper River Meridian. This is also viewable on Google Earth.

(See attached file: P7020300.JPG)(See attached file: P7020299.JPG) Brenda Becker Realty
Specialist Bureau of Land Management Glennallen Field Office P.O. Box 147 Glennallen, Alaska
99588
Phone: 907-822-7321
Fax: 907-822-7335







Patrick D. Carter

Phone: 907-252-9191
E-mail: CarterCoAK@gmail.com

P.O. Box 90973
Anchorage, AK 99509

Chapter 65

Personal Use Cabin Permits

Section

- 10. Applicability.
- 20. Applications.
- 30. Application fee.
- 40. Renewals.
- 50. Permit decision.
- 60. Density within state game refuges and critical habitat areas.
- 70. Conflicting applications.
- 80. Ownership and removal.
- 90. Conditions of permit.
- 100. Appeals.
- 110. Public use cabins.
- 900. Definitions.

11 AAC 65.010. Applicability

This chapter applies to the issuance of personal use cabin permits for unauthorized cabins placed on state land before August 1, 1984. Cabins built on state land after August 1, 1984 will not be authorized. A permit under this chapter does not convey an interest in state land or establish a preference right for the lease or purchase of state land. It is the express intent of this chapter to phase out the use of unauthorized cabins on state land, and where appropriate, convert them to public use.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.020. Applications

© 2010 by The State of Alaska and Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

(a) An application for a permit to use an existing cabin on state land must

(1) be received by the department during a 60-day application period established by the department and announced by public notice; the application period will be open for one time only by geographic location;

(2) be made on a form provided by the department;

(3) be complete and correct to the best of the applicant's knowledge;

(4) contain a description of the cabin and site;

(5) contain a description of the proposed use of the cabin and site;

(6) be signed and dated by the applicant or, in the case of a group of applicants, by the applicant's authorized agent.

(b) An application made under this section must include the following:

(1) a \$25 application fee;

(2) identification of the cabin site on a United States Geological Survey map at 1:63,360 scale (1" to 1 mile) or its equivalent;

- (3) a photograph (print) of the cabin taken within the past year;
- (4) documentation demonstrating historic use and occupancy;
- (5) documentation of any prior investments in the cabin; and
- (6) any other information required by the director.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.030. Application fee

The application fee required by 11 AAC 65.020 is not refundable. However, if the department determines that an application made under this chapter should have been made under a different chapter, the application fee may be applied to an application made under another chapter.

History: Eff. 12/16/84, Register 62

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.040. Renewals

(a) Application for renewal of a permit must be made in writing at least 90 days, but not more than 180 days, before the expiration of the permit. The application must be accompanied by the fee prescribed by 11 AAC 05.010.

(b) A permit will be renewed if the continued use complies with 11 AAC 65.050 - 11 AAC 65.900.

(c) A permit issued and renewed under this chapter is valid only during the lifetime of the original holder of that permit.

History: Eff. 12/16/84, Register 92; am 5/5/93, Register 126

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.050. Permit decision

(a) The department will issue and renew an applicant's cabin permit if the director finds in writing that the application is for a cabin that complies with AS 38.04.035(4) and does not conflict with the public interest criteria as described in (b) of this section.

(b) No permit will be issued for a cabin on state land

(1) where a subdivision or agricultural sale has occurred or is anticipated or scheduled during the term of the permit;

(2) where homesteads are proposed for future disposal, unless the disposal is not anticipated within the term of the permit;

(3) if the land has been selected under the authority of the Municipal Entitlement Act, AS 29.18;

(4) in state park units, land managed under an interagency land management agreement, land classified as reserved use, or where the issuance of a permit would interfere with significant public recreational use;

(5) that is shoreland, submerged land, or tideland;

(6) that serves an important ecological function, or is especially sensitive to human disturbance, as determined by the department;

(7) located close to a center of population;

(8) where material extraction, timber sales, mining, or intensive recreational facility development is scheduled or anticipated during the term of the permit;

(9) overlying a mining location or mineral lease if the department determines that a cabin may interfere with development of the mining location or mineral lease during the term of the permit;

(10) under application or proposed for a public facility or highway right-of-way unless it is clear that the intended use will not occur during the term of the permit;

(11) for which a Native allotment application is on record with the Bureau of Land Management, or on land validly selected under the Alaska Native Claims Settlement Act;

(12) accessible by road within legislatively designated state game refuge or critical habitat area;

(13) in a legislatively designated state game sanctuary;

(14) where the cabin is used as a permanent residence; or

(15) if the department determines that the proposed use may more appropriately be allowed under another chapter of this title.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.060. Density within state game refuges and critical habitat areas

Densities and configurations of public cabins within state game refuges and critical habitat areas will be determined based upon habitat type, wildlife seasonal use patterns, wildlife sensitivity to disturbance, and the applicant's proposed type and season of use. Permits will be issued if the density and configuration of cabins and associated uses are not found in conflict with (1) the public interest during the term of the permit, (2) the maintenance or enhancement of fish and wildlife populations and their habitats, or (3) general public use.

History: Eff. 12/16/84, Register 92

Authority: AS 16.20.050

AS 16.20.250

AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.070. Conflicting applications

If the director determines that two or more applications for the same cabin are equally valid, the department will choose the permittee by lottery from the valid applications received.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.080. Ownership and removal

(a) Except as otherwise provided in (b) or (c) of this section, a cabin subject to this chapter is the personal property of the permittee, and remains so for the term of the permit.

(b) A cabin not applied for under this chapter becomes the property of the state if not removed within 60 days after notice by the department.

(c) Upon revocation or expiration of a permit, including renewals of it, or if an application was made but no permit issued, the cabin becomes the property of the state if not removed within 60 days after notice by the department.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.090. Conditions of permit

A permit issued under this chapter

(1) is valid for a period of up to six years;

(2) may include site-specific conditions of use, such as seasonal use restrictions determined appropriate by the department and, on game refuges and critical habitat areas, by the Department

of Fish and Game;

(3) is not valid unless signed by an authorized individual within the Department of Fish and Game if the permit is for a cabin located within a state game refuge or critical habitat area;

(4) is not valid unless the annual rental fee prescribed by 11 AAC 05.010 is timely received by the department;

(5) is not valid unless the permit is signed by the applicant or applicant's authorized agent; and

(6) will contain the following general stipulations and conditions:

(A) the permit does not convey an interest in state land or grant any preference right for the lease or purchase of state land;

(B) the permit is revocable immediately upon violation of any of its terms, conditions, or stipulations, upon nonpayment of fees, or upon failure to comply with any other applicable statutes and regulations;

(C) the permit is not transferable or assignable;

(D) the permit must be displayed in general view on the cabin at all times;

(E) no additions to or enlargements of the cabin are allowed, except for routine maintenance and upkeep;

© 2010 by The State of Alaska and Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

(F) all garbage and foreign debris brought into, or placed on, the cabin site must be removed by the permittee unless otherwise authorized by the director;

(G) the state must be held harmless from all claims, demands, suits, loss, liability, and expense for injury to, or death of, a person arising out of or connected with the uses covered by the permit;

(H) if the cabin is destroyed or damaged beyond repair, rebuilding the structure is not authorized without prior written approval of the director; this approval may not be unreasonably withheld;

(I) the cabin may not be used for a commercial activity or as a permanent residence;

(J) no new road or trail across state land is authorized under the permit, and access must be consistent with the provisions of 11 AAC 96;

(K) no restriction or interference with public access to or across state land is allowed;

(L) the permit does not relieve the permittee of the responsibility of securing other necessary state, federal, or local permits or authorizations; and

(M) the department reserves the right to require measures to mitigate disruptions to public use of the area, and to fish and wildlife populations and their habitats, which may be created by the permittee, or occur as a direct result of the permittee's failure to comply with the terms of the permit or any applicable law.

History: Eff. 12/16/84, Register 92; am 5/5/93, Register 126

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

11 AAC 65.100. Appeals

(a) The department will publish notice of its intent to issue a permit under this chapter in a newspaper of general circulation in the vicinity of the area covered by the permit.

(b) An eligible person who is affected by a permit decision by the director may appeal that decision to the commissioner in accordance with 11 AAC 02. A person who is affected by a permit decision by the Department of Fish and Game in the case of a cabin on a state game refuge or critical habitat area may appeal to the commissioner of the Department of Fish and Game in accordance with 5 AAC 95.

History: Eff. 12/16/84, Register 92; am 11/7/90, Register 116; am 9/19/2001, Register 159

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

AS 44.37.011

11 AAC 65.110. Public use cabins

As of December 17, 1984, the department will consider making available for public use, any

© 2010 by The State of Alaska and Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

cabin for which a permit is not issued under this chapter.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.05.020

11 AAC 65.900. Definitions

As used in this chapter,

(1) "applicant" means an individual or group of individuals at least 18 years old who have resided in Alaska not less than one year immediately preceding the date of application and does not include an organization, association, or corporation;

(2) "authorized agent" means an individual who is the designated agent for a group of individuals who are applicants, and is one of the applicants;

(3) "cabin" means a permanent structure in existence as of August 1, 1984, consisting of at least four walls and a roof, and used for eating and sleeping; the word includes a separate sanitary device or outhouse, and storage area or cache;

(4) "commercial" means an action or operation that generates income from the buying, selling, renting, bartering, or trading of goods or services relating to use of a cabin;

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

(6) "director" means the director of the division of land and water management of the Department of Natural Resources;

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

(8) "state" means the State of Alaska;

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

(10) "tideland" means land which is periodically covered by tidal water between the elevations of mean high and mean low tides.

History: Eff. 12/16/84, Register 92

Authority: AS 38.04.035

AS 38.04.900

AS 38.05.020

AS 41.21.020

Sec. 38.04.035. Criteria for program selection.

In determining which land availability program is appropriate for state land in different locations, the director shall be guided by the following criteria:

(1) to cover public costs associated with private land use and to provide the public with a fair return for publicly owned property, conveyance of state land to private parties shall be at fair market value except where otherwise authorized by statute, or by an administrative regulation the adoption of which is specifically permitted by statute;

(2) sale or lease programs should be used where land is readily accessible to a major community center or where, because of a prime location on waterfront or a transportation route or some other location characteristic, land has relatively high real estate value;

(3) sale programs are preferred but lease programs may be used

(A) where special land use controls are required and there is a high public interest in having certain types of land used for particular purposes;

(B) when the intended use is a temporary one;

(C) in commercial or industrial situations when a leasehold can provide cash flow advantages to the lessee;

(D) when a unique location with special public values is involved, as in a deep water port, hydroelectric site, or aquaculture facility;

(E) where current demand for private use is high, but projections suggest that, in the future, the land may be more valuable for public use, as in accessible waterfront recreation areas;

(4) limited or conditional title may be granted when the state's best interest so dictates; among other things, title limitations may include grants of agricultural interest only, retention of development rights, and retention of scenic or other easements; a conditional title may be tied to a development schedule or other standards of performance.

((§ 5 ch 181 SLA 1978; am § 10 ch 152 SLA 1984; am § 6 ch 91 SLA 1997))

Administrative Code. - For personal use cabin permits, see 11 AAC 65.

For homesteads, see 11 AAC 67, art. 6A.

Effect of amendments. The 1997 amendment, effective July 1, 1997, substituted "shall" for "should" in paragraph (1) and "may" for "should" in the introductory language of paragraph (3), deleted former paragraph (4), which read: "for enabling isolated cabin development in remote locations where

survey and conveyance is impractical, or where disposal of land would cause potential conflicts with other resources and uses, or where a long-range interest in public ownership and use exist, a system for cabin permits on public land may be used," and redesignated former paragraph (5) as paragraph (4).

NOTES TO DECISIONS

Quoted in State v. Weidner, 684 P.2d 103 (Alaska 1984).

Sec. 38.04.900. Regulations.

(a) The commissioner shall adopt under the Administrative Procedure Act (AS 44.62) regulations believed necessary to carry out the purposes of this chapter.

(b) A municipality has standing to petition the commissioner for the adoption of a regulation, or for the amendment or repeal of an existing regulation, or to appeal a decision of the commissioner with respect to classification, management, or disposal of land made under authority of a regulation adopted under (a) of this section with respect to state land outside the corporate boundaries of the municipality to protect any interest which the municipality is authorized to regulate outside its boundaries under AS 29.35.020.

(c) If the regulations adopted by the commissioner under (a) of this section fail to provide for a process by which decisions of the commission may be appealed, an interested person may petition for reconsideration of a decision. The petition shall contain the information required to be submitted by AS 44.62.220 and shall be acted upon by the commissioner in the manner provided in AS 44.62.230. For purposes of this subsection, a municipality is an interested person with respect to its interests in land defined in (b) of this section.

((§ 5 ch 181 SLA 1978; am § 94 ch 6 SLA 1984; am § 56 ch 74 SLA 1985; am § 10 ch 22 SLA 2001))

Administrative Code. - For appeals, see 11 AAC 2.

For fees for department services, see 11 AAC 5.

For applicability of chapter, see 11 AAC 51, art. 1.

For identification, reservation, and modification of public easements, see 11 AAC 51, art. 2.

For land records system, see 11 AAC 53, art. 1.

For survey and platting standards, see 11 AAC 53, art. 2.

For subdivision development standards, see 11 AAC 53, art. 4.

For platting authority in the unorganized borough, see 11 AAC 53, art. 5.

For land planning and classification, see 11 AAC 55.

For personal use cabin permits, see 11 AAC 65.

For administrative provisions, see 11 AAC 67, art. 1.

For sale or lease at auction, see 11 AAC 67, art. 2.

For preference right sales, see 11 AAC 67, art. 3.

For sale or grant by lottery, see 11 AAC 67, art. 4.

For homesites, see 11 AAC 67, art. 5.

For disposal of agricultural interest, see 11 AAC 67, art. 7.

For land discounts, see 11 AAC 67, art. 11.

For definitions, see 11 AAC 67, art. 12.

Effect of amendments. The 2001 amendment, effective May 10, 2001, substituted "this subsection" for "this section" in the last sentence in subsection (c).

Sec. 38.05.020. Authority and duties of the commissioner.

(a) The commissioner shall supervise the administration of the division of lands.

(b) The commissioner may

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

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

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

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

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

(6) classify tracts for agricultural uses;

(7) after consulting with the Board of Agriculture and Conservation (AS 03.09.010), waive, postpone, or otherwise modify the development requirements of a contract for the sale of agricultural land if

(A) the land is inaccessible by road; or

(B) transportation, marketing, and development costs render the required development uneconomic;

(8) reconvey or relinquish land or an interest in land to the federal government if

(A) the land is described in an amended application for an allotment under 43 U.S.C. 1617; and

(B) the reconveyance or relinquishment is

(i) for the purposes provided in 43 U.S.C. 1617; and

(ii) in the best interests of the state;

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

(10) exercise the powers and do the acts necessary to carry out the provisions and objectives of AS 43.90 that relate to this chapter.

((§ 4 art II ch 169 SLA 1959; am § 1 ch 31 SLA 1964; am § 1 ch 76 SLA 1964; am § 3 ch 72 SLA 1972; am §§ 25 - 27 ch 3 FSSLA 1973; am § 1 ch 129 SLA 1982; am § 15 ch 152 SLA 1984; am § 1 ch 35 SLA 1994; am § 1 ch 68 SLA 1994; am § 4 ch 1 FSSLA 1996; am § 4 ch 20 SLA 1997; am § 20 ch 81 SLA 2000; am § 1 ch 23 SLA 2003; am § 3 ch 22 SLA 2007))

Revisor's notes. In 1984, former (c) of this section was renumbered as AS 38.35.015.

Cross references. For a list of regulations annulled by ch. 20, SLA 1997, see § 15, ch. 20, SLA 1997 in the 1997 Temporary and Special Acts.

Administrative Code. - For appeals, see 11 AAC 2.

For disposition of royalty oil, gas, or gas liquids, see 11 AAC 3.

For payment of oil and gas royalties, rents, and bonuses, see 11 AAC 4.

For fees for department services, see 11 AAC 5.

For document recording and filing, see 11 AAC 6.

For special provisions, see 11 AAC 20, art. 18.

For applicability of chapter, see 11 AAC 51, art. 1.

For identification, reservation, and modification of public easements, see 11 AAC 51, art. 2.

For land records system, see 11 AAC 53, art. 1.

For survey and platting standards, see 11 AAC 53, art. 2.

For subdivision development standards, see 11 AAC 53, art. 4.

For platting authority in the unorganized borough, see 11 AAC 53, art. 5.

For purchase by contract, see 11 AAC 54, art. 2.

For land planning and classification, see 11 AAC 55.

For use limitation by classification, see 11 AAC 58, art. 1.

For permits, see 11 AAC 58, art. 2.

For short title and definitions, see 11 AAC 58, art. 4.

For grazing leases, see 11 AAC 60.

For tide and submerged lands, see 11 AAC 62.

For aquatic farmsite permits and leases, see 11 AAC 63.

For shore fisheries leasing, see 11 AAC 64.

For personal use cabin permits, see 11 AAC 65.

For administrative provisions, see 11 AAC 66, art. 1.

For administrative provisions, see 11 AAC 67, art. 1.

For sale or lease at auction, see 11 AAC 67, art. 2.

For preference right sales, see 11 AAC 67, art. 3.

For sale or grant by lottery, see 11 AAC 67, art. 4.

For homesites, see 11 AAC 67, art. 5.

For homesteads, see 11 AAC 67, art. 6A.

For disposal of agricultural interest, see 11 AAC 67, art. 7.

For remote recreational cabin sites, see 11 AAC 67, art. 8B.

For installment contracts, see 11 AAC 67, art. 9.

For veterans' land discounts, see 11 AAC 67, art. 10A.

For land discounts, see 11 AAC 67, art. 11.

For disposal by quitclaim to federal government, see 11 AAC 67, art. 11A.

For definitions, see 11 AAC 67, art. 12.

For escheated real property, see 11 AAC 69.

For timber and material sale procedures, see 11 AAC 71, art. 1.

For timber and material sale contracts and operations, see 11 AAC 71, art. 2.

For timber and logging requirements, see 11 AAC 71, art. 3.

For unbranded or abandoned timber property sales, see 11 AAC 71, art. 4.

For log brands, see 11 AAC 71, art. 5.

For pipeline right-of-way leasing, see 11 AAC 80.

For availability of land, see 11 AAC 82, art. 1.

For qualifications, see 11 AAC 82, art. 2.

For acreage limitations, see 11 AAC 82, art. 3.

For competitive bidding, see 11 AAC 82, art. 4.

For noncompetitive procedures, see 11 AAC 82, art. 5.

For royalty products, see 11 AAC 82, art. 7.

For records and reports, see 11 AAC 82, art. 8.

For exploration licensing, see 11 AAC 82, art. 9.

For net profit share leasing, see 11 AAC 83, art. 2.

For unitization, see 11 AAC 83, art. 3.

For communitization and drilling and development contracts, see 11 AAC 83, art. 4.

For underground storage, see 11 AAC 83, art. 5.

For federal leases and preference rights on Alaska lands, see 11 AAC 83, art. 6.

For work commitment, see 11 AAC 83, art. 7.

For exploration incentive credit, see 11 AAC 83, art. 8.

For exempt lease sales, see 11 AAC 83, art. 9.

For Cook Inlet discovery royalty, see 11 AAC 83, art. 10.

For phosphates, see 11 AAC 84, art. 2.

For oil shale, see 11 AAC 84, art. 3.

For sodium, see 11 AAC 84, art. 4.

For sulphur, see 11 AAC 84, art. 5.

For potassium, see 11 AAC 84, art. 6.

For geothermal leasing, see 11 AAC 84, art. 7.

For geothermal unitization, see 11 AAC 84, art. 8.

For competitive leasing, see 11 AAC 85, art. 1.

For noncompetitive leasing, see 11 AAC 85, art. 2.

For staking, recording and maintaining claims and leasehold locations, see 11 AAC 86, art. 2.

For converted MTRSC locations, see 11 AAC 86, art. 3.

For upland mining leases, see 11 AAC 86, art. 4.

For prospecting sites, see 11 AAC 86, art. 5.

For offshore permits and leases, see 11 AAC 86, art. 6.

For millsites, see 11 AAC 86, art. 7.

For applicability, see 11 AAC 87, art. 1.

For exploratory operations, see 11 AAC 87, art. 2.

For drilling of geothermal wells, see 11 AAC 87, art. 3.

For practice and procedure, see 11 AAC 88.

For zoning district regulations, see 11 AAC 91, art. 2.

For designation of districts, see 11 AAC 91, art. 3.

For definitions, see 11 AAC 91, art. 4.

For appropriation and use of water, see 11 AAC 93, art. 2.

For additional provisions for seismic exploration and stratigraphic tests, see 11 AAC 96, art. 2.

For cooperative management agreements, see 11 AAC 97, art. 7.

For management of Alaska mental health trust land, see 11 AAC 99.

Effect of amendments. The 1996 amendment, effective September 4, 1996, in subsection (b), deleted "and require the prequalification, including the submission of conservation plans, development plans, or other plans, schedules, or programs, of persons who apply to participate in an agricultural development project under AS 44.33.475" from the end of paragraph (6) and substituted "or" for "and" at the end of subparagraph (7)(A).

The 1997 amendment, effective August 5, 1997, in paragraph (b)(6), deleted "and require the prequalification, including the submission of conservation plans, development plans, or other plans, schedules, or programs, of persons who apply to participate in an agricultural development project under AS 44.33.475" from the end and made a minor stylistic change.

The 2000 amendment, effective July 1, 2000, added "after consulting with the Board of Agriculture and Conservation (AS 03.09.010)," at the beginning of paragraph (b)(7).

The 2003 amendment, effective May 22, 2003, added paragraph (b)(9) and made a related stylistic change.

The 2007 amendment, effective June 8, 2007, added paragraph (b)(10) and made related changes.

Editor's notes. Section 17, ch. 75, SLA 1987 provides that "[a] land management and disposal decision, including a disposal under AS 38.05.057, AS 38.08, or AS 38.09, or a commercial agricultural project under AS 38.05.020(b)(6), made before June 16, 1987, under a classification order under AS 38.05.300 is valid, notwithstanding the adoption of the classification order before the adoption of the regional land use plan, if other requirements of law were met."

On June 7, 1996, the enactment of CSSB 162(FIN) (Nineteenth Legislature, Second Session),

designated as ch. 1, FSSLA 1996, became the subject of a lawsuit relating to the legislative override of the governor's veto of that bill. On April 16, 1997, the superior court issued a Final Declaratory Judgment stating that the governor's veto of CSSB 162(FIN) "was not timely overridden by the Alaska Legislature" and that "CSSB 162(FIN) was not enacted into law." *Honorable Tony Knowles v. Legislative Council*, No. 1JU 96-1276 CI (Sup. Ct. Apr. 16, 1997). On appeal, the Alaska Supreme Court vacated the judgment and directed the superior court to dismiss the action, concluding that the matter was an action brought in the name of the state against the legislature in violation of article III, sec. 16 of the Alaska Constitution. *Legislative Council v. Knowles*, 988 P.2d 604 (Alaska 1999).

The provisions of Section 4, ch. 20, SLA 1997, are given effect. These 1997 provisions are identical to the 1996 provisions of Section 4 of CSSB 162(FIN).

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

For governor's transmittal letter for ch. 23, SLA 2003 (SB 142), see 2003 Senate Journal 472 - 473.

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

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

NOTES TO DECISIONS

ANALYSIS

- I. General Consideration
- II. Administrative Regulations

I. GENERAL CONSIDERATION.

The leasing of state lands is governed by regulations promulgated by the commissioner of the Department of Natural Resources, pursuant to subsection (b)(1), and executed by the director of the Division of Lands, pursuant to AS 38.05.035(a)(3). *Swindel v. Kelly*, 499 P.2d 291 (Alaska 1972).

Negotiating proposed changes in lease. - The commissioner had the authority, subject to legislative approval, to negotiate proposed changes in a lease relating to the terms covering net profit shares. *Baxley v. State*, 958 P.2d 422 (Alaska 1998).

Applied in *Chevron U.S.A. Inc. v. LeResche*, 663 P.2d 923 (Alaska 1983).

Quoted in Alyeska Ski Corp. v. Holdsworth, 426 P.2d 1006 (Alaska 1967); Pan Am. Petroleum Corp. v. Shell Oil Co. 455 P.2d 12 (Alaska 1969).

Cited in City of Juneau v. Cropley, 429 P.2d 21 (Alaska 1967).

II. ADMINISTRATIVE REGULATIONS.

Regulations are subject to rule-making provisions of Administrative Procedure Act. - Regulations adopted by the commissioner of natural resources are subject to the rule-making provisions of Alaska's Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971).

The rule-making function of an administrative agency frequently resembles the legislative process of passing a statute. Each entity determines the need for a particular enactment in light of chosen policies; each has procedures for the expression of views upon the merits of the proposal; and each, after consideration of the relevant policies and arguments, decides whether to adopt the proposed amendment. When administrative rule-making is based upon clear authority from the legislature to formulate policy in the adoption of regulations, the rule-making activity takes on a quasi-legislative aspect. Under proper standards, such delegations of legislative power to administrative agencies are constitutional. Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971).

Judicial review of administrative regulation. - Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act (AS 44.62), and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the supreme court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971).

Scope of review. - When a regulation has been adopted under a delegation of authority from the legislature to the administrative agency to formulate policies and to act in the place of the legislature, the supreme court should not examine the content of the regulation to judge its wisdom, but should exercise a scope of review not unlike that exercised with respect to a statute. Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971).

Standard of review generally. - AS 44.62.020 and 44.62.030 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971).

"Reasonable basis" standard of review. - See Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971).

The reasonable basis approach should be used for the most part in cases concerning administrative expertise as to either complex subject matter or fundamental policy formulations. Kelly v. Zamarello, 486

P.2d 906 (Alaska 1971).

Application of the reasonable basis test is extremely useful where the administrative action under review resembles executive as opposed to legislative or judicial activity. *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971).

Review of decision of director of division of lands not precluded by AS 44.62.540(a). - AS 44.62.540(a) does not preclude the kind of intra-departmental review presented where the commissioner of the Department of Natural Resources reviews the decision of the director, division of lands, denying an application for discovery well certification, particularly where such review is authorized by statute. *Union Oil Co. v. State, Dep't of Natural Resources*, 526 P.2d 1357 (Alaska 1974).

AS 44.62.540(a) applies only to reconsideration by the specific "agency" that actually made the decision, not the more comprehensive agency. *Union Oil Co. v. State, Dep't of Natural Resources*, 526 P.2d 1357 (Alaska 1974).

Even though administrative code refers to such action as "reconsideration". - Even though the administrative code provisions refer to the commissioner's action on petition for reconsideration, where the director, division of lands, has denied an application for discovery well certification, as "reconsideration," the actual process is that of the "review" authorized by paragraph (b)(3). *Union Oil Co. v. State, Dep't of Natural Resources*, 526 P.2d 1357 (Alaska 1974).

"Review" and "reconsideration" compared. - Both "review" and "reconsideration" in a broad sense refer to a reexamination of acts or a course of proceedings. But as normally used in the context of administrative adjudication, "review" implies a consideration of a case by one other than the entity which initially decides it, while "reconsideration" implies a reexamination, and possibly a different decision, of a case by the entity which initially decides it. *Union Oil Co. v. State, Dep't of Natural Resources*, 526 P.2d 1357 (Alaska 1974).

Alternatives available as to review. - *Pan Am. Petroleum Corp. v. Shell Oil Co.*, 455 P.2d 12 (Alaska 1969), establishes the propriety of seeking judicial review of a division of lands decision without exhausting further remedies within the Department of Natural Resources. But it does not prohibit the pursuit of further remedies within the department, where those remedies exist pursuant to statutory authority and promulgated regulations, such as this section and former 11 AAC 516.32. *Union Oil Co. v. State, Dep't of Natural Resources*, 526 P.2d 1357 (Alaska 1974).

These are situations in which one may possess the alternatives of either seeking judicial review directly from a decision of the division of lands or seeking review by the commissioner and then invoking judicial review. *Union Oil Co. v. State, Dep't of Natural Resources*, 526 P.2d 1357 (Alaska 1974).

Regulations adjusting royalty rates. - When considered together, this section and AS 38.05.145, and AS 38.05.150 impliedly authorize the Department of Natural Resources to promulgate coal royalty rates and adjustments to those rates; thus, regulations setting a standard royalty rate on noncompetitive coal leases was valid. *Usibelli Coal Mine, Inc. v. State, Dep't of Natural Resources*, 921 P.2d 1134 (Alaska 1996).

Sufficient standards and procedural safeguards existed to ensure the valid exercise the authority of the Department of Natural Resources in adopting regulations. *Usibelli Coal Mine, Inc. v. State, Dep't of Natural Resources*, 921 P.2d 1134 (Alaska 1996).

Decision not a "regulation." - A decision of the Department of Natural Resources that a mining company owed back royalties because it erroneously calculated its "adjusted gross value" was not a

"regulation" within the meaning of the Administrative Procedures Act. *Usibelli Coal Mine, Inc. v. State, Dept of Natural Resources*, 921 P.2d 1134 (Alaska 1996).

Sec. 41.21.020. Duties and powers of Department of Natural Resources; limitations.

(a) The department shall

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

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

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

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

(5) provide for the acquisition, care, management, supervision, improvement, development, extension, and maintenance of public recreational land, and make necessary arrangements, contracts, or commitments for the improvement and development of land acquired under AS 41.21.010 - 41.21.040; contracting for improvement and development under this paragraph is governed by AS 36.30 (State Procurement Code);

(6) adopt, in accordance with this section and AS 44.62 (Administrative Procedure Act), regulations governing the use and designating incompatible uses within the boundaries of state park and recreational areas to protect the property and to preserve the peace;

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

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

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

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

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

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

(13) adopt, in accordance with AS 44.62 (Administrative Procedure Act), regulations governing the use of the Chena River State Recreation Area and designating incompatible uses within the boundaries of the Chena River State Recreation Area in accordance with AS 41.21.490; and

(14) annually, by the first day of each regular session of the legislature, submit a report to the legislature on each designation of an incompatible use under this chapter, or other action, that prohibits or restricts a traditional means of access in or to a park, area, or preserve established under this chapter for a traditional recreational activity on or within the park, area, or preserve; for each prohibition or restriction, the report must state reasons for the designation of incompatibility or prohibition or restriction of a traditional means of access, the specific area of the prohibition or restriction, and the time period during which the incompatibility or prohibition or restriction is expected to exist; in this paragraph,

(A) "traditional means of access" means those types of transportation on, to, or in the state land, water, or land and water, for which a popular pattern of use has developed; the term includes general or commercial aviation, ballooning, motorized and nonmotorized boating, snowmachining, operation of all-terrain vehicles, mushing, use of pack animals, skiing, snowshoeing, and walking;

(B) "traditional recreational activity" means those personal or commercial types of activities that people may use for sport, exercise, subsistence, or personal enjoyment, including hunting, fishing, trapping, or gathering, and that have historically been conducted as part of an individual, family, or community life pattern on or in the state land, water, or land and water.

(b) In adopting regulations under (a)(6) of this section, the department shall consider whether the use of dogs, horses, and other animals for packing gear, pulling sleds, or for other recreational use is a compatible use within a state park or recreational area.

(c) The department may accept cash and other donations from public or private sources to assist and support the department in carrying out the purposes of this chapter.

(d) Notwithstanding (a)(3) of this section, the department may not manage as part of a park, area, or preserve established under AS 41.21.110 - 41.21.630, land, water, or land and water that is not within the boundaries, as designated by the legislature, of the park, area, or preserve.

(e) Except for reasons which create an immediate threat to public safety or as otherwise provided in AS 41.21.110 - 41.21.630, the department may not close or restrict traditional access to land, water, or land and water, managed under this chapter unless the closure or restriction (1) is limited to a period of not more than 90 days in a calendar year, or (2) is submitted to the

legislature for approval at the next regular session of the legislature. A closure or restriction under (1) of this subsection may not be repeated in the subsequent calendar year unless the closure or restriction is approved by the legislature under (2) of this subsection. If the legislature fails to approve a closure or restriction under (2) of this subsection by the last day of that regular session, the closure or restriction ends and cannot be enforced after the last day of that regular session.

((§ 2 ch 158 SLA 1959; am § 1 ch 233 SLA 1970; am § 3 ch 30 SLA 1981; am §§ 1, 2 ch 78 SLA 1981; am § 1 ch 16 SLA 1984; am § 40 ch 106 SLA 1986; am § 19 ch 2 FSSLA 1992; am § 74 ch 63 SLA 1993; am §§ 1, 2 ch 27 SLA 1997))

Revisor's notes. Formerly AS 41.20.020. Renumbered in 1983. Paragraph (a)(13) was enacted as (a)(12) and renumbered in 1981. The present second sentence of AS 41.21.490 was enacted as a part of (a)(13) and transferred in 1981, with minor word changes in (a)(13) of this section. In 1984, "a compatible use" was substituted for "compatible" in subsection (b) to correct a manifest error in ch. 16, SLA 1984.

Cross references. For power of the department of military affairs to construct memorials to veterans, see AS 44.35.030.

Administrative Code. - For appeals, see 11 AAC 2.

For fees for department services, see 11 AAC 5.

For uniform state waterway marking system, see 11 AAC 7, art. 1.

For state park land and water restrictions, see 11 AAC 12, art. 1.

For jurisdiction and procedure, see 11 AAC 15, art. 1.

For park uses, see 11 AAC 18, art. 1.

For Chugach state park, see 11 AAC 20, art. 1.

For Kachemak Bay state park, see 11 AAC 20, art. 2.

For Kachemak Bay state wilderness park, see 11 AAC 20, art. 3.

For Willow Creek state recreation area, see 11 AAC 20, art. 4.

For Wood-Tikchik state park, see 11 AAC 20, art. 5.

For Denali state park, see 11 AAC 20, art. 6.

For Caines Head state recreation area, see 11 AAC 20, art. 7.

For Chena River state recreation area, see 11 AAC 20, art. 8.

For Quartz Lake state recreation area, see 11 AAC 20, art. 9.

For Nancy Lake state recreation area, see 11 AAC 20, art. 10.

For Captain Cook state recreation area, see 11 AAC 20, art. 11.

For Chilkat state park and Point Bridget state park, see 11 AAC 20, art. 12.

For Afognak Island state park, see 11 AAC 20, art. 13.

For Alaska marine parks, see 11 AAC 20, art. 14.

For Shuyak Island state park, see 11 AAC 20, art. 16.

For Kenai River special management Area, see 11 AAC 20, art. 17.

For special provisions, see 11 AAC 20, art. 18.

For Eagle preserve land and water restrictions, see 11 AAC 21, art. 1.

For preserve activities; management, see 11 AAC 21, art. 2.

For personal use cabin permits, see 11 AAC 65.

Editor's notes. Section 87, ch. 63, SLA 1993 provides "[i]f any section of this bill is found to violate the single subject rule it is severed from the rest of the bill."

NOTES TO DECISIONS

Kenai River Area. - The legislature intended the Kenai River Area to be a state park and intended normal state park regulations to govern the area unless those regulations were inconsistent with a regulation promulgated specifically for the area under AS 41.21.506(b). *State v. Lowrence*, 858 P.2d 635 (Alaska Ct. App. 1993).

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF APPEAL

ADL 222214

TO THE COMMISSIONER:

Fred F. Braun hereby gives notice of appeal from the decision dated January 5, 2010, by the Department of Natural Resources ("DNR"), Division of Mining, Land and Water ("DMLW"), Southcentral Region Land Office denying his application for renewal of his Personal Use Cabin Permit, ADL 222214 ("Permit"), received by DMLW on or about December 11, 2009. The Permit expiration date was December 31, 2009. Departing from its prior established procedures, the DMLW refused to process the Permit renewal application on the grounds that it was not received within 90 days prior to the expiration of the Permit. The DMLW has advised Mr. Braun that the Permit has now expired and directed him to remove his improvements within 60 days.

This appeal is based upon the following grounds.

1. Adequate prior notice of the revised policy was not given. From the inception of the permit program, the Permittee and others similarly situated have understood that an obligation of the Permit is to remit the required \$100 annual fee on or before December 31 of each year. Bills for the annual fee generally arrive in November and are paid in December. Every six years the department has sent out a permit renewal packet, requiring an application for renewal, and more extensive information. Pursuant to 11 AAC 65.040, the Permit renewal

BALDWIN & BUTLER, LLC.
125 N. Willow Street
Kenai, AK 99611
Phone (907) 283-7167
Fax (907) 283-8438

application is due "at least 90 days, but not more than 180 days, before the expiration of the permit." Prior to the *Commissioner's Decision on MLW/SCRO's June 22, 2009 Decision re: Personal Use Cabins*, (the "Commissioner's 2009 Decision"), the official position of DMLW was that when a Permittee failed to file a permit application within the window prescribed by Section 40, DMLW would process the application, but impose an administrative fee of \$25. The DMLW communicated the Director's decision implementing this policy to Mr. Braun, a copy of which is attached as "Exhibit A." The DMLW further communicated this policy to Mr. Braun by letter dated September 5, 2003 (attached as "Exhibit B"), in connection with his 2003 permit renewal. The letter states

Under 11 AAC 65.040, your completed renewal application packet must be submitted to this Division 90 days prior to the permit expiration, October 1st, 2003. *Once the deadline is past, a late fee of \$25.00 is applicable if a permittee chooses to request an extension.* (emphasis added).

Thus, at the time Mr. Braun received the renewal application packet in August of 2009, he had (1) a reasonable basis for believing that the matter could be dealt with at any time prior to the December 31, permit expiration deadline, and (2) absolutely *no* basis for expecting that a failure to deal with the matter prior to the permit expiration deadline would result in DMLW's refusal to process the application, effectively resulting in a forfeiture of the Permit for the cabin.

When he received the envelope from DLMW in 2009, Mr. Braun expected the envelope to contain permit renewal application documents, which it did. He set the sealed envelope aside, together with other important papers requiring attention before year-end. He did not open and examine the contents of the envelope to discover the policy change until December, when he began to complete the form. The envelope itself bore no markings that would indicate that it

Notice of Appeal
Page 2 of 8

contained a critical notice. No advance or subsequent communication from the Division provided notice of the significant policy change. Based on his past experience with the Division and the earlier clear, unequivocal communications from the Division concerning the division's policy as to permit renewal filing requirements, Mr. Braun was justified in assuming the envelope contained a routine permit renewal application and could be dealt with prior to year-end.

The Commissioner's 2009 Decision, applying fundamental notions of due process, recognized that, at a minimum, a fundamental change in division policy would require prior notice to all permit holders of the revised policy. The Commissioner held that

I disagree that SCRO should have departed from the established division policy without first adopting a new policy and providing prior notice of that policy change to all PUCP permit holders.

As a state permittee, Mr. Braun is entitled to the protection of due process of law under Article I Section 7 of the Alaska Constitution.¹ The right to adequate notice and opportunity for hearing is an elementary and fundamental requirement of due process.² The action of DMLW deprived Mr. Braun of these basic rights.

The DLMW did not provide Mr. Braun with prior notice of the policy change. It would have been a simple matter to have sent, in a separate mailing to all permit holders, a notice of the revised policy. Instead, whether for reasons of expediency or economy, the DLMW sent out the "notice" with the renewal forms, committing the identical transgression for which they were

¹ *Herscher v. State Department of Commerce*, 568 P.2d 996 (Alaska 1977)

² *Aguchak v. Montgomery Ward Co.*, 520 P.2d 1352 (Alaska 1974)

criticized in the Commissioner's 2009 Decision – failing to provide adequate *prior* notice of the departure from established policy to all PUCP permit holders. Under the Commissioner's 2009 Decision this notice is *per se* inadequate. Had adequate prior notice been given, this appeal would not have been necessary.

2. The decision lacks a reasonable basis. In order for the decision of an administrative agency to be upheld, it must demonstrate a reasonable basis for the decision.³ The Commissioner's 2009 Decision recognized, regarding the permittees whose permits were set to expire in June 30, 2009 (the "June Permittees"), that even though they received notice of the change in established division policy, they had "no reasonable expectation that this would actually occur" given the long-standing MLW policy to the contrary. Only one practical distinction differentiates between the treatment given the June Permittees⁴, and those whose permits were set to expire December 31, 2009 (the "December Permittees"): the Commissioner's decision was included in the renewal packet of the latter group. Each group was sent a notice from the Division, advising that the penalty for failing to submit a timely renewal was forfeiture of the permit and the notices were sent approximately four and one-half months prior to the expiration date of the permit.

Given the perceived harshness of the proposal to forfeit the permits of the June Permittees, the Commissioner exercised his inherent authority to apply the 1991 decision to the 2009 permit renewal process of the June Permittees. Similar equitable considerations should be

³ *Kelly v. Zamarello*, 486 P.2d 906 (Alaska 1971)

⁴ This assumes the notice to the June Permittees was sent in the same mailing as the renewal application, as was the notice to the December Permittees.

given to the December Permittees. Although not articulated at length in the decision, the Commissioner's 2009 Decision was based on a basic policy of "fairness" as regards the way the state ought to deal with its citizens. If the state creates an expectation as to how it deals, it shouldn't change the way it deals without ensuring that the citizens are given fair, advance notice. As to the present appeal, like the June Permittees, Mr. Braun was sent a letter stating the Division intended to reject his application for renewal if it was not received by the stated deadline. As with the June Permittees the letter was included with the permit application form, which, under established division policy would have been accepted for processing by the division at any time without challenge.

There were no markings on the envelope calculated to inform Mr. Braun that the envelope contained anything other than the routine permit application, so he didn't open it until he was ready to file the forms. Mr. Braun had been provided no other communication to inform him that the rules for the 2009 submittal were any different than for prior submittals. Therefore, Mr. Braun was identically situated with the June Permittees, in that he had a reasonable expectation that his Permit would be renewed if he submitted the renewal application prior to the expiration of the Permit. No reasonable basis exists for the Division to now decide to refuse to process the renewal application and allow the Permit to lapse due to administrative inaction.

3. The filing requirement as applied by DMLW violates the Permittee's due process rights. Basic principles of due process of law require that criteria established for granting or denying a privilege not be vague and ambiguous, and that as established, they be applied objectively.⁵ 11 AAC 65.040(a) sets forth the requirement that an application for renewal of a

⁵ *Kiester v. Humana Hospital Alaska, Inc.* 843 P.2d 121 (Alaska 1992)

permit must be made in writing at least 90 days prior to expiration. The section is silent as to remedies. As noted above, the DMLW historically has assessed an administrative fee for late applications. There was no prior indication the DMLW would refuse to process a late application, effectively terminating the permit without affording the permittee the opportunity to object. If the DMLW intends that the penalty for applying late is to be forfeiture of the permit, the regulation should clearly express that as a remedy, which it does not. As such it is ambiguous.

Forfeiture is a remedy that is disfavored by the Alaska courts.⁶ Where the harm or transgression is slight, the Courts of Alaska are reluctant to invoke a draconian remedy if alternatives exist. This principle would be especially applicable in a case such as this, where the failure to file within the prescribed period was unintentional and in reliance on an established procedure of the State agency; where the procedure was changed with no advance notice to the holder of the permit; and where the regulation is ambiguous as to the penalties for filing late.

Contrary to the reasoning set forth in the Commissioner's 2009 Decision, the 1991 decision did not operate to "waive" the filing requirement of Section 40. The 1991 decision recognized the filing requirement and imposed a penalty for failure to comply. The penalty imposed was a monetary penalty, intended to recover the administrative costs incurred by the division in dealing with late-filed applications for renewal. Such a penalty is a far more appropriate sanction for inadvertently missing a filing deadline than is forfeiture of the permit.

The regulation is not being applied objectively by the department. As noted above, the June Permittees have been beneficiaries of the Commissioner's decision excusing them from

⁶ *Dillingham Commercial Company, Inc. v. Spears*, 641 P.2d 1 (Alaska 1982); see also, Opinion (informal) of Alaska Attorney General A66-333-82 (1982).

filing their applications late, while the December Permittees, who received essentially the same inadequate notice, are finding their permits forfeited.

Given its historical interpretation of the regulation, the DMLW violates the due process rights of the Permittee when it arbitrarily reverses itself and re-interprets the provision to give itself the authority to refuse to process late applications. Such a draconian penalty cannot be imposed for inadvertently filing a renewal application late, without first being implemented in the regulations through the regulatory review process of the Alaska Administrative Procedure Act (AS 44.62), providing some basic level of due process.

4. The regulations mandate renewal of the Permit. Not only do the regulations fail to provide for forfeiture of the permit as a remedy, they mandate the renewal of a permit, with no consideration given as to the timeliness of the filing. 11 AAC 65.050 provides that

"The department will issue and renew an applicant's cabin permit if the director finds in writing that the application is for a cabin that complies with AS 38.04.035(4)⁷ and does not conflict with the public interest criteria described in (b) of this section."

Since the regulation cited is mandatory, the department must process and grant a permit for renewal and must apply only the criteria listed in the regulation. The regulations do not give the department the discretion to refuse to process an application for renewal that was filed after the 90 day date.

The use is consistent with the public interest criteria as described in 11 AAC 65.050(b). In order to eligible for renewal, a cabin must comply with the public interest criteria of the regulation. Given that the permit has been issued and renewed three times previously, there can

⁷ The referenced code provision was evidently repealed in 1997.

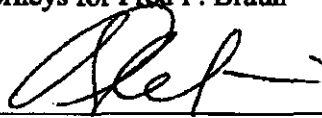
be no doubt that the cabin is consistent with the criteria of Section 50 (b). Upon making a finding to that effect, the department is obligated to renew the permit.

Requested Remedy

The Commissioner is respectfully requested to reverse the decision of DMLW which denied the Permittee's renewal application for ADL 222214, determined the Permit to have expired, and ordered the removal of his improvements, and instead to order the DMLW to accept the Permit for processing, to process the Permit and renew the same pursuant to 11 AAC 65, and to rescind the order directing removal of his improvements.

Dated at Kenai, Alaska, this 28th day of January, 2010.

BALDWIN & BUTLER, LLC
Attorneys for Fred F. Braum

By: 

C. R. BALDWIN
Alaska Bar # 7406032

BALDWIN & BUTLER, LLC

125 N. Willow Street
Kenai, AK 99511
Phone (907) 283-7137
Fax (907) 283-4435

Notice of Appeal
Page 8 of 8

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

ADL 222214

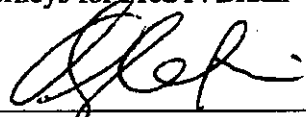
REQUEST FOR HEARING

Permittee, Fred F. Braun hereby requests a hearing in the matter of his appeal from the decision dated January 5, 2010, by the Department of Natural Resources ("DNR"), Division of Mining, Land and Water ("DMLW"), Southcentral Region Land Office denying his request for renewal of his Personal Use Cabin Permit ("Permit"), received by DMLW on or about December 11, 2009.

This request is made pursuant to 11 AAC 02.050.

Dated at Kenai, Alaska, this 28th day of January, 2010.

BALDWIN & BUTLER, LLC
Attorneys for Fred F. Braun

By: 

C. R. BALDWIN
Alaska Bar # 7406032

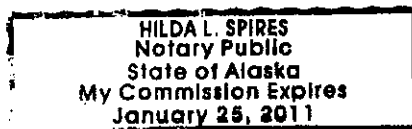
BALDWIN & BUTLER, LLC
125 N. Willow Stn at
Kenai, AK 99611
Phone (907) 283-7167
Fax (907) 283-8435

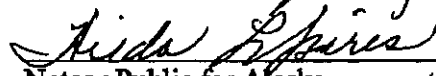
I have always operated with the understanding that both the annual fee and the permit renewal forms were due on or before December 31 of each year. Until this year I have never been advised by the department or any other person that making either filing was required at an earlier time. I have never been advised that by filing the renewal form later than 90 days from the permit expiration date, I would be jeopardizing the permit. Had I been so advised I would have filed the form as instructed.

Regarding the 2009 renewal form, I acknowledge that it was mailed to my business address and received in August, 2009. The envelope was a plain brown envelope bearing the return address of the Division of Mining Land and Water. There were no marks on the envelope indicating it to be of an urgent nature or suggesting that it be opened immediately. Having filed the cabin permit renewal applications on three separate previous occasions, I knew that the envelope contained a permit renewal application. I set it on a shelf near my desk in a stack of other documents having year-end deadlines. Only when I opened the envelope and read the cover letter did I know of the change in policy. Prior to that time I had no knowledge or warning of the new policy. It was not my intent to disregard a regulation. Based on my prior dealings with the department I had every reason to believe, and did believe, that my actions were fully consistent with the requirements of the department for handling a permit renewal application.


Fred F. Braun

SUBSCRIBED AND SWORN TO before me this 27th day of January, 2010.




Notary Public for Alaska
My commission expires: 1/25/2011

AFFIDAVIT OF FRED F. BRAUN
Page 2 of 2

AFFIDAVIT OF FRED F. BRAUN

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

FRED F. BRAUN, being first duly sworn, deposes and says:

I have personal knowledge of the facts herein.

I am the permit holder of ADL 222214 (the "permit").

I applied for and received the permit to maintain a personal use cabin in 1985. I have submitted renewal applications in the years 1991, 1997, 2003 and 2009. I have paid, on a timely basis, the annual fee payable under the permit for each year since 1985.

I have used the cabin in each of the above years and have allowed others to use and enjoy the cabin, primarily during the fall, in every year since 1985. The cabin has been well-kept and the surrounding area has been cared for. Over the last five years, significant labor and expense have gone into maintenance of the cabin. The exterior deck has been replaced with cedar planks, the pilings replaced and reinforced, the walls reinsulated, the structure painted, a new roof installed, and a new propane oven installed, all with the intention and expectation that the cabin would be enjoyed by my children, friends, acquaintances and families. Over the years I have made the cabin available to the Alaska Department of Fish and Game as a base of operations for projects in the area. I have been a good steward of the cabin and have cherished the opportunity to use and share it.

A change of agent form is enclosed if you wish to change the primary agent. This form must be signed by all other active permittees then returned to this office with your renewal packet. A copy of your original permit is enclosed to reduce confusion concerning who are original permittees. Only those permittees on the original application have an interest in the permit.

If you have any questions concerning your permit renewal, do not hesitate to contact me at (907) 269-5047.

Sincerely,



Kara Moore
Natural Resource Technician

Enclosures: Personal Use Cabin Permit Renewal Request
 Environmental Risk Questionnaire
 Change of Agent form
 Copy of Original Permit Application
 Copy of Decision to Renew Cabin Permits 2003

STATE OF ALASKA

FRANK H. MURKOWSKI
GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING, LAND AND WATER
SOUTHCENTRAL REGION LAND OFFICE

550 W. 7TH AVE., SUITE 900C
ANCHORAGE, ALASKA 99501-3577

September 5, 2003

CERTIFIED MAIL RECEIPT REQUESTED
7002 2410 0006 2047 4803

Fred F. Braun
502 Lake St. #2
Kenai, AK 99611

Subject: Personal Use Cabin Permit Renewal ADL 222214

Dear Mr. Braun:

Your personal use cabin permit issued by the Division of Mining, Land & Water will expire on December 31, 2003. Under 11 AAC 65.040, your completed renewal application packet must be submitted to this Division 90 days prior to the permit expiration, October 1st, 2003. Once the deadline is past, a late fee of \$25.00 is applicable if a permittee chooses to request an extension.

The following renewal information must be received for the Division to consider a renewal of your Personal Use Cabin Permit:

- 1) A completed, signed and notarized Renewal Application (*including updated contact information and birth dates for all active original permittees. For those permittees no longer active submit either a signed relinquishment or a copy of a death certificate or obituary for permittees now deceased*).
- 2) A completed Environmental Risk Questionnaire (*including information on small amounts of fuel, kerosene, or propane*).
- 3) A recent, dated photograph of the cabin; (*photos should not be more than 2 years old*).
- 4) A \$100.00 filing and application fee. This fee is separate from the \$100 annual rental due at the time of permit renewal.

Please complete the enclosed forms and return the packet to: Division of Mining Land and Water at 550 W. 7th Avenue, Suite 900C, Anchorage, AK 99501-3577. If you fail to submit your written request for renewal by October 1st, 2003 your permit will be subject to termination. In the case of termination, a permittee is allowed 60 days after permit expiration or revocation to remove any improvements (11 AAC 65.080). If the cabin is not removed, it will be relinquished to the state that may determine to dispose of the cabin at the permittees expense.

"Develop, Conserve and Enhance Natural Resources for Present and Future Alaskans"

C

EXHIBIT B
Page 1 of 2

Director's Decision
August 9, 1991
Page 3

Filing the application within a specified time period is one of the regulatory requirements for renewal. Under 11 AAC 65.050(b), a permit is revocable immediately upon failure to comply with any applicable statute or regulation. The regulations also state that the intent of the program is to phase out the use of unauthorized cabins. Thus, it is reasonable to conclude that an untimely application can properly result in the closure of the file.

It is also reasonable to conclude that some other form of penalty would be proper.

First, when the permits were issued six years ago, the cabins did not conflict with the public interest criteria described in 11 AAC 65.050(b), and there is no reason to believe they would do so now.

Second, while it is true that this program was implemented to phase out the use of unauthorized cabins, other aspects of the program have already accomplished that intent to some degree. Cabin owners who missed the initial, one-time filing period will never be eligible for a permit. Also, cabins constructed after August 1, 1984 can never be authorized under this program. All cabins will eventually be phased out because the permit is renewable only during the lifetime of the original holder of the permit.

Third, I believe the language of 11 AAC 65.040 allows for administrative discretion as to the penalty for missing the filing period. I am inclined to exercise that discretion in favor of the appellants. That is because I see little difference between these late applications and the timely ones, other than the extra administrative burden. (It is more efficient to process all the applications for an area at the same time.)

DECISION:

Some of the appeal letters claim good cause for late filing, and other appellants state no reason. While I sympathize with personal hardships, the regulation makes no allowance for missing the filing deadline.

It is my decision to accept late applications for the above case files, provided each appellant meets the following conditions within 10 days of receipt of this decision. Those conditions are:

1. File a renewal application, if one has not already been filed.
2. All rents and fees must be current.

GENERAL CONCURRENCE GC-21

PERSONAL USE CABINS

The following activity is consistent with the Alaska Coastal Management Program per 6 AAC 28.030 (c) and (e) when conducted according to the standard conditions listed below. This approval does not relieve the applicant from obtaining required permits and approvals from local, State, and Federal individual agencies.

DESCRIPTION OF THE ACTIVITY

Personal use cabins. Limited use of existing cabins on State land.

Authority: 11 AAC 65.050

Permit: Personal Use Cabin Permit (DNR)

Region: Statewide

PROCEDURE

Permittees shall consult the Alaska Heritage Resources Survey (907) 762-2622 so that known historic, archaeological and paleontological sites may be avoided.

STANDARD CONDITIONS

1. No additions to or enlargements of the cabin are allowed, except for routine maintenance.
2. All garbage and foreign debris brought in or placed on the cabin site must be removed by the permittee unless otherwise authorized by DNR.
3. The cabin may not be used for a commercial activity or as a permanent residence.
4. No new road or trail across State land is authorized under this general concurrence.
5. No restriction or interference with public access to or across State land is allowed.
6. The Alaska Historic Preservation Act (AS 41.35.200) prohibits the appropriation, excavation, removal, injury, or destruction of any state-owned historic, prehistoric (paleontological) or archaeological site without a permit from the Commissioner. Should any site be discovered during the course of field operations, activities that may damage the site will cease and the Office of History and Archaeology in the Division of Parks and Outdoor Recreation ((907) 263-8822) and the appropriate coastal district shall be notified immediately. 264-5121

Rev. 5/93

1 of 1

GC-21

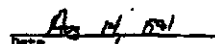
Director's Decision
August 12, 1991
Page 4

1. Pay a \$25 late payment service charge.

The legal authority for establishing this penalty is AS 18.05.010(a)(4), AS 18.05.010(a)(5), and 11 AAC 05.010(a)(16)(A). Should the applicant fail to meet the above conditions, the decision to close the case file will remain in effect.

A person adversely affected by this decision may appeal this decision, in accordance with 11 AAC 02 to: Harold Meinen, Commissioner, Department of Natural Resources, 400 Willoughby Avenue, Juneau, Alaska 99801. Any appeal must be received at the above address within 30 calendar days after the date of "delivery" of the decision, as defined in 11 AAC 02.040. A copy of 11 AAC 02 may be obtained from any Department of Natural Resources office. If no appeal is filed within the time specified, this decision becomes final.


Ron Swenson
Acting Director


Date

DECISION

Personal Use Cabin Permit Renewal
Expiring in 2003

REQUESTED ACTION:

The Southeastern Region has received personal use cabin permit renewal requests for three permits expiring June 30, September 30, and December 31, of 2003. Regulation 11 AAC 65.050(a) allows the renewal of a cabin permit if the Director finds in writing that the application is for a cabin that complies with AS 38.04.035(4) and does not conflict with the public interest criteria as described in 11 AAC 65.050(b).

BACKGROUND:

The Personal Use Cabin Program was established to permit use of unimproved cabins that had been constructed on state land from the time of statehood through August 1, 1984. The program was available for only a short period to allow unknown cabin owners a one-time opportunity to obtain a permit for their unimproved use. The intent was to allow the original applicants to continue to use the cabins during their lifetime, but cabins would eventually be placed on or become public use cabins. Permits were issued in 1983 for a 6-year term. This is the third renewal period for the permits. Over the years some permittees have passed away or relinquished interest in the permits but a large percentage remain active. A majority of cabins are located on state game refuges or critical habitat areas and also receive subordination from the Department of Fish and Game in the form of a Special Access Permit.

DISCUSSION:

Renewal applications and individual cabin permit records have been reviewed. Applicants continue to use the cabin sites also authorized in 1983. For those sites within State Game Refuges and Critical Habitat Areas, a Special Access Permit will also be approved by the Department of Fish and Game consistent with the DNR permit term.

Regulation 11 AAC 65.040(b) allows for permit renewal if the continued use complies with 11 AAC 65.050 - .500 and meets the criteria of AS 38.04.035(4). The personal use cabin program was intended to be a temporary authorization for use of state land for the lifetime of the applicant. Generally, cabin permits were approved in remote locations where the disposal of land was undesirable or might cause potential conflict with other resources and uses. Renewal of these permits will not conflict with the public interest criteria in 11 AAC 65.050(b). The permit program meets the criteria in AS 38.04.035(4) which allows for limited or conditional use when in the state's best interest.

For these cabin sites located within a coastal zone management boundary, the activity is consistent with the Alaska Coastal Management Program when conducted according to standard conditions listed in Coastal Consistency GC-21 (rev 5/99). GC-21 includes a stipulation for the protection of state-owned historic, prehistoric, and archaeological sites. Stipulations from the

general consensus will be included in the permit renewal. Standard stipulations for personal use cabins are noted in Regulation 11 AAC 65.050. Additional pertinent stipulations for the cabin permit authorizations will include: Wastewater disposal from kitchen gray water, toilets, or showers, must meet Department of Environmental Conservation (DEC) requirements; Petroleum products must be used and stored in a manner that prevents spillage or leakage, to ensure that discharges of petroleum products into adjacent waters does not occur; Permittees shall take all reasonable precautions to prevent, and all reasonable actions to suppress, forest, brush, and grass fires.

Some permit renewal applications have listed additional individuals under this renewal and/or past renewals who were not original applicants. These applicants along with other individuals must be included that 11 AAC 65.040(e) states a renewal is valid only during the lifetime of the original holder of that permit. A permit condition states the permit is not transferable or assignable. Thus new individuals may not be added to a personal use cabin permit.

A small number of renewal applications were submitted after the 90-day filing deadline for those permits expiring June 30, 2003. For 11 AAC 65.040 a renewal application must be made in writing at least 90 days before a permit expires. This issue was previously addressed in a 1991 Director's Decision on an appeal of several permit decisions for failing to meet the 90-day deadline, granted the appeal and removed the late filings from that year. A copy of that decision is attached. It is recommended the late applications be processed along with the other renewals but that a \$25 late fee be charged consistent with the 1991 appeal decision.

Applications are reviewed for completeness and may not conflict with the public interest criteria described in 11 AAC 65.050(b). The permit program meets the requirements of AS 38.04.035(4) under Criteria for Program Selection. Fees must be paid current and permit stipulations must be met.

RECOMMENDATION:

Issuance of permits to those applicants requesting a renewal does not establish a preference right for the lease or purchase of state land and the cabin use will eventually be phased out. The Department of Fish and Game has continued to issue Special Access Permits for those cabins located in state game refuges or critical habitat areas. The cabins do not conflict with the public interest criteria under 11 AAC 65.050(b) and permittees must meet permit stipulations. Issuance of renewals for these cabin permits is in the state's best interest.

Carol A. Campbell
Carol A. Campbell
Natural Resource Specialist

May 5, 2003
Date

Richard B. Thompson
Richard B. Thompson
Southeastern Regional Manager

May 5, 2003
Date

Attached: 1991 Director's Decision on untimely filings

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LAND AND WATER MANAGEMENT

DIRECTOR'S DECISION

REQUESTED ACTION:

The Southeastern Region has rejected renewal applications for personal use cabin permits because the applications were untimely filed. That decision has been appealed. The names of the appellants and the case file numbers are listed below:

Appellant	App. No.
Emberg, R. C., et. al.	220740
Bessner, Richard	220733
Wesley, Carroll R.	220976
Bass, Cheryl	220939
Richal, Donald J.	220942
Larkley, Robert L.	220943
Marria, Rodger	220921

"The application was also rejected because a preliminary court injunction prohibits transfer of any interest in mental health trust lands.

LEGAL AUTHORITY:

The applicable statutes and regulations used to adjudicate these appeals are:

AS 38.04.035(4) Criteria for Program Selection
AS 38.05.035(a)(4) and AS 38.05.035(a)(5) Powers and Duties of the Director
11 AAC 65.010 Applicability
11 AAC 65.040 Renewals
11 AAC 65.050 Permit Decision
11 AAC 65.050 Conditions of Permit
11 AAC 65.010(a)(16)(A) Fees

Delegation of Authority to Richard B. Thompson dated May 2, 1991

ADMINISTRATIVE RECORD:

The decision under appeal was signed on June 20, 1991 by Richard B. Thompson, Chief of the Retained Lands Section for the Southeastern Region. The decision was sent to each permit holder by individual letters dated June 24 or June 26, 1991. This decision is based on the appeal letters, a copy of the decision signed on June 20, 1991, and copies of the individual transmittal letters.



Director's Decision
August 9, 1991
Page 2

BACKGROUND:

In June, 1985, approximately 130 personal use cabin permits were issued in the Sustina Flats State Game Refuge, Trading Bay Game Refuge, and Palmer Bay Flats State Game Refuge. The permits were scheduled to expire on or about June 30, 1991. A personal use cabin permit is not transferable or assignable but is renewable during the lifetime of the original holder of the permit.

One of the requirements for renewal is set forth in 11 AAC 65.040(e) which states:

"Application for renewal of a permit must be made in writing at least 90 days, but not more than 180 days before expiration of the permit."

There were four parts to the decision under appeal:

1. If a renewal application was timely filed, the permit would be renewed.
2. If a renewal application was not timely filed, the renewal would be denied.
3. If appropriate, invoke trespass proceedings when former permittees refused to dismantle their cabins and rehabilitate the site.
4. Reject all renewal applications located on mental health trust lands.

The transmittal letters stated that the cabins would become the property of the state if former permittees did not remove them within 60 days from receipt of the letter.

Staff shortages made it impractical to adjudicate the applications, the structures, or the sites for compliance with all applicable permit terms and regulations. Therefore, the decision emphasized that renewals would be conditional and subject to further adjudication at any time.

The issue of renewal applications on mental health trust lands has no bearing on this decision. The mental health trust lands issue will be dealt with under a separate decision.

DISCUSSION, PERTINENT ISSUES, AND FINDINGS:

Is it proper to reject a renewal application and close the file because the renewal application was untimely filed?

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.530

Article 7 **Permit Procedures**

Section

700. Application procedures.

710. Permit decision.

720. Permit conditions and assignment.

730. Permit term.

740. Amendments to the permit.

750. Retention of permit; inspection of permit sites.

760. Renewal of permit.

770. General permits.

5 AAC 95.700. Application procedures

(a) An applicant for a permit shall submit a completed application on a form or in a manner approved by the commissioner. The application must be correct and complete to the best of the applicant's knowledge and be signed and dated by the applicant or the applicant's designee. The submission of a completed application satisfies any related notification required by AS 16 and this chapter. An application form is available from the department's habitat division offices.

(b) The completed application must include the anticipated commencement date, duration, and area of proposed activity including a scaled map, identification of waterbodies at the site, description of type of activity, description of any proposed facility, the description of proposed access route and means and time of travel, and other

information necessary for the commissioner to determine whether the activity will comply with the applicable provisions of this chapter.

(c) A completed application must be submitted to the department's habitat division office representing the region or area in which the proposed activity will occur.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.050

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.520

AS 16.20.530

Editor's note: Habitat division office addresses are:

Regional offices:

Juneau: P.O. Box 20, Douglas, AK 99824-0020; telephone 465-4290

Anchorage: 333 Raspberry Road, Anchorage, AK 99518-1599; telephone: 267-2346

Fairbanks: 565 University Avenue, Fairbanks, AK 99701; telephone 479-3104

Area offices:

Ketchikan: 415 Main Street, Ketchikan, AK 99901; telephone 225-2027

Petersburg: P.O. Box 667, Petersburg, AK 99833; telephone: 772-3801

Sitka: P.O. Box 510, Sitka, AK 99835; telephone: 747-5828

(a) The commissioner will issue a permit if the commissioner determines that the requirements of this chapter are met.

(b) The commissioner will notify an applicant in writing of any denial. The notice will include

5 AAC 95.720. Permit conditions and assignment

(a) To provide for the proper protection and management of fish and wildlife, and their habitats, the commissioner may include as conditions of the permit

(1) the duration of the proposed activity, including any provision for changing the time period during which the permit is valid and any provision for changing the effective time period of the permit;

(2) any other seasonal use restrictions on a specific activity;

(3) limitation of the a real extent of the activity;

(4) any provision for the mitigation of damage to fish or wildlife, or their habitats;

(5) any provision to facilitate periodic monitoring of the proposed land or water use or activity by an authorized representative of the state, including inspection and sampling;

(6) reporting requirements;

(7) any provision for the posting of a performance bond or other surety as authorized in 5 AAC 95.950, necessary to ensure compliance with the provisions of this chapter or conditions of the permit; and

(8) any other necessary condition.

(b) A permit may not be transferred but may be assigned upon written consent by the commissioner.

(c) The commissioner may require a permit applicant to sign and date the permit before its validation as acknowledgement of the permittee's agreement to, and full understanding of, all conditions of the permit.

(d) A person who obtains a permit issued under this chapter must comply with all conditions set out in the permit.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

(1) the reason for the denial; and

(2) a statement that the applicant may appeal under 5 AAC 95.920 or submit new or additional information and ask for reconsideration under (c) of this section.

(c) The commissioner may reconsider a denial of an application if the applicant submits factual information which is new or additional to that supplied with the original application. An applicant may submit the new or additional information as an amendment to the original application, or the applicant may submit a new application. The procedures of 5 AAC 95.700 - 5 AAC 95.760 apply to reconsideration.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.050

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.520

AS 16.20.530

5 AAC 95.720. Permit conditions and assignment

(a) To provide for the proper protection and management of fish and wildlife, and their habitats, the commissioner may include as conditions of the permit

(1) the duration of the proposed activity, including any provision for changing the time period during which the permit is valid and any provision for changing the effective time period of the permit;

(2) any other seasonal use restrictions on a specific activity;

- 
- (3) limitation of the a real extent of the activity;
 - (4) any provision for the mitigation of damage to fish or wildlife, or their habitats;
 - (5) any provision to facilitate periodic monitoring of the proposed land or water use or activity by an authorized representative of the state, including inspection and sampling;
 - (6) reporting requirements;
 - (7) any provision for the posting of a performance bond or other surety as authorized in 5 AAC 95.950, necessary to ensure compliance with the provisions of this chapter or conditions of the permit; and
 - (8) any other necessary condition.
- (b) A permit may not be transferred but may be assigned upon written consent by the commissioner.
- (c) The commissioner may require a permit applicant to sign and date the permit before its validation as acknowledgement of the permittee's agreement to, and full understanding of, all conditions of the permit.
- (d) A person who obtains a permit issued under this chapter must comply with all conditions set out in the permit.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.530

5 AAC 95.730. Permit term

(a) Except as provided in (b) and (c) of this section, the commissioner may issue a permit for a fixed term not to exceed two years, subject to the provisions of this chapter.

(b) The commissioner may issue a permit for a personal use cabin, concurrent with a permit issued by the Department of Natural Resources under ~~11 AAC 65~~, for up to six years.

(c) The commissioner may issue a permit for a fixed term exceeding two years if the commissioner determines that the activity meets the purposes and requirements of this chapter and the activity is permanent in nature.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.530

5 AAC 95.740. Amendments to the permit

(a) The commissioner may initiate action to amend a permit to correct any condition or change any method authorized by the permit which was reasonably unforeseeable at the time of permit approval and which threatens to cause a substantially adverse effect upon

(1) fish or wildlife, or their habitat; or

(2) if the permit is a special area permit, the purpose for which the special area was established.

(b) Any action a permittee desires to take which increases the overall scope of the project or which negates, alters, or minimizes the intent or effectiveness of any condition

contained in a permit, is a deviation from the approved plan and requires an amendment before initiation of the action.

(c) A permittee may request amendment of a permit by submitting, to the department's habitat division office where the permit was issued, a written statement explaining why the amendment is necessary, including the amended plan, the location, commencement time, duration, and type of activity requiring amendment.

(d) The commissioner will issue an amendment to the permit if he or she determines that the requirements of this chapter will be met. Review of a request for amendment after receipt of the written statement in the appropriate habitat division office will not exceed 30 days. The procedures of 5 AAC 95.700 - 5 AAC 95.760 apply to a request for amendment.

(e) An amendment approved by the commissioner becomes effective upon receipt by the permittee, or at a later date specified by the amendment. An amendment is valid for the duration of the permit or for a shorter specified period.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.530

5 AAC 95.750. Retention of permit; inspection of permit sites

(a) A permittee shall keep a copy of the permit, including any amendments, at the site of the permitted activity until completion of the activity, and shall make it available for inspection upon request by an authorized representative of the state.

(b) For the purpose of inspecting or monitoring compliance with any condition of the permit or the requirements of this chapter, a permittee shall give an authorized

representative of the state free and unobstructed access, at safe and reasonable times, to the permit site. A permittee shall furnish whatever assistance and information as the authorized representative reasonably requires for monitoring and inspection purposes.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.530

5 AAC 95.760. Renewal of permit

(a) A permittee may request renewal of an existing permit before the expiration of the current term of the permit. Procedures in this chapter apply to renewal, except that the filing of a new application under 5 AAC 95.700 is not required.

(b) If an existing permit expires or is revoked, a permittee may obtain a new permit only by filing a new completed application in accordance with 5 AAC 95.700.

History: Eff. 6/5/86, Register 98

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.530

5 AAC 95.770. General permits

Notwithstanding the provisions of 5 AAC 95.700 and 5 AAC 95.750 - 5 AAC 95.760, the commissioner may issue a permit to the public at large for a specific activity in a specific area.

History: Eff. 6/5/86, Register 98; am 8/15/2008, Register 187

Authority: AS 16.05.020

AS 16.05.050

AS 16.05.251

AS 16.05.255

AS 16.20.050

AS 16.20.060

AS 16.20.094

AS 16.20.096

AS 16.20.162

AS 16.20.520

AS 16.20.530

John Davies

From: John Davies
Sent: Friday, February 26, 2010 12:37 PM
To: 'Lesh, Melanie (DNR sponsored)'
Cc: Rep. Wes Keller; Jim Pound
Subject: RE: ARRC Meeting

Dear Melanie Lesh,

Thank you for your email. I think in person presentations are always best, but realizing the difficulty in getting to Juneau and the cost, the telephone testimony option is a good one. I will leave who presents and how and where to your judgment and that of your DNR representatives. I will do my best to accommodate you and make sure your presentation is as good as it can be.

I do not have any excused absences for that day, March 8th, so I am expecting all the members to be here. But as we all know here at the Capitol, Juneau weather may have its way and trump our best efforts. I am going forward with preparations believing that the meeting will happen as planned.

I just hit the send button before responding to this email and sent a background email to Director Mylius. Do I work with you or Director Mylius in meeting preparations?

Thanks for your help and input on this meeting.

I look forward to working with you.

I met you last evening at the reception. I believe that you were the positive lady with the award winning restaurant in Gustavus? Greetings.

Regards,
John Davies
ARRC Acting Committee Aide

From: Lesh, Melanie (DNR sponsored) [mailto:melanie.lesh@alaska.gov]
Sent: Thursday, February 25, 2010 3:40 PM
To: John Davies
Subject: ARRC Meeting

Hi John,

I'll help coordinate the ARRC meeting on March 8th on behalf of DNR. Would you like Mr. Mylius to be here in Juneau in lieu of Commissioner Irwin (who at this time may be available, but I can't commit him quite yet).

Will you have a quorum on March 8th? I understand many legislators are still traveling back from Energy Council on that date.

Melanie Lesh
Special Assistant/Legislative Liaison
Department of Natural Resources
400 W. Willoughby Ave.
Juneau, Alaska 99801
907.465.4730
907.723.7364

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Friday, February 26, 2010 12:17 PM
To: Mylius, Richard H (DNR)
Cc: Keller, Wes (LAA); Pound, Jim (LAA)
Subject: RE: Invitation to ARRC meeting

Dear Director Mylius:

I have discussed your email request with Representative Keller, Chairman ARRC, and he has asked me to provide you with information that will foster a fruitful and productive meeting.

The following is a synopsis of contacts that may be useful for your meeting preparation and presentation:

- 1) In person complaint at the Capitol ARRC office by an individual whose cabin burned down. He is trying to rebuild the cabin, but reports that he is getting hassled by DNR and not getting cooperation.
- 2) In person complaint at the Capitol ARRC office by an agent on behalf of a client. He complains that as a long term leaseholder, his client is facing the complete loss of his lodge in a few years when the lease runs out. The land around the lodge was selected by a borough, and the leasee has no preference right to buy the land. Once the lease runs out, he loses everything, his lodge, retirement, equity, everything. His entire life's work gone.
- 3) In person complaint at the Capitol ARRC office about a personal use cabin permittee who is facing the forfeiture of his cabin because he filed his renewal late. The permittee did not know about the new rule that renewals must be filed 90 days before the end of the permit term, but was aware of the old rule that a \$25 late fee would be assessed. He filed before the end of the permit term but not before the new 90 day time frame. He faces the complete loss of his cabin and permit.
- 4) A member of the Legislative Body reports that he has a constituent whose husband has a cabin permit and when he dies the permit ceases leaving her and the family with nothing. The family has used this cabin and land since before statehood, and cannot get a preference right to buy the land or in any other way protect its long term use of the land. They face complete loss as well.
- 5) By way of prior Resource Committee hearings it has become public knowledge that DNR is burning and/or destroying cabins for what is described as "liability reasons".
- 6) The complainants report an attitude of hostility by DNR towards private use of public lands.

The question may be: Is the intent language in the regulations, 11 AAC 65.010, "to phase out the use of unauthorized cabins on state land", fostering a hostile attitude by DNR towards these private persons, or is the Committee simply being made aware of anecdotal situations that don't reflect the true nature of what is going on? The Chairman is hopeful that your presentation to the Committee and the public will help with this question.

In addition to the above question, the Chairman would like for you, or another DNR representative, to be prepared to tell the Committee about: where does DNR derive its statutory authority for its intent to phase out the use of unauthorized cabins on state land; as well as explain its policy and procedures for granting and extending personal use cabin permits; what happens to a cabin that goes back to the State; why are cabins destroyed or burned down; what is the cost of such destruction; and lastly as an overview of the numbers and significance of the personal use cabin program?

The Chairman wanted me to be sure to let you know that the Committee does not, and in this meeting is not, advocating for any particular individual or constituent in its inquiry. The Committee is reviewing these regulations to see if they stand the three part test of Constitutionality, statutory authority, and/or legislative intent. If the Committee finds grounds it may present the Legislature with a bill to annul or veto a regulation.

We look forward to your participation in the upcoming meeting. If you have any questions please feel free to give me a call at 465-4899.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

From: Mylius, Richard H (DNR) [mailto:dick.mylius@alaska.gov]
Sent: Wednesday, February 24, 2010 4:51 PM
To: John Davies
Cc: Rep. Wes Keller; Jim Pound; Irwin, Tom E (DNR)
Subject: RE: Invitation to ARRC meeting

John – we'll participate – not sure if I'll be on the phone or in person. Commissioner Irwin will be in Toronto for mining related meetings but hopes to call in. We'll prepare some information to get to the Committee ahead of time.

Did you receive written comments concerning the regulations – if so can I get a copy? We are aware of several issues/complaints regarding this topic, but it would be helpful to see what the Committee has received as well. Dick

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Wednesday, February 24, 2010 2:28 PM
To: Irwin, Tom E (DNR); Mylius, Richard H (DNR)
Cc: Keller, Wes (LAA); Pound, Jim (LAA)
Subject: Invitation to ARRC meeting

February 24, 2010

Dear Commissioner Irwin and Director Mylius:

Representative Keller has asked me to invite you to attend and participate in the Administrative Regulation Review Committee "ARRC" meeting scheduled for March 8th at 3:00pm in room 17 of the State Capitol Building, Juneau, Alaska.

If you are not able to attend in person, telephone participation would be fine as well.

The ARRC has received public comment concerning the regulations relating to personal use cabin permits, particularly 11 AAC 65.010. The review focus will generally be on the specific intent language "to phase out the use of unauthorized cabins on state land" and the destruction of such cabins, weighed against the private, public and survival uses of the cabin resources. The committee will be looking at the regulation's statutory authorization and whether it carries out legislative intent. Your input will be most helpful. A copy of the Schedule and Agenda are attached for your information.

If you have any questions please feel free to call me at 907 465-4899. Please note that any printed information you wish to present, I will need copies so I may post it on BASIS and distribute it to the committee members.

We look forward to hearing from you and having your participation at the meeting.

Very Truly Yours,

John Davies
ARRC acting Committee Aide

From: Mylius, Richard H (DNR) [dick.mylius@alaska.gov]

Sent: Friday, February 26, 2010 1:32 PM

To: John Davies

Cc: Rep. Wes Keller; Jim Pound; Menefee, Wyn (DNR); Parsons, Martin W (DNR); Irwin, Tom E (DNR); Mylius, Richard H (DNR); Baker, John T (LAW)

Subject: RE: Invitation to ARRC meeting

John – these six complaints deal with four very different issues. I'd be happy to address all those issues at the meeting, but only three (items 1, 3, and 4) deal with the regulations that are the topic for the meeting (11AAC 65.010 – 11 AAC 65.900). Unless I hear otherwise, I'll plan to address all four issues at the March 8 meeting.

Here is a bit of information about the three issues not related to the regulation:

Item #2, the gentleman with the lease for a lodge that was conveyed to the Aleutians East Borough is Mel Gillis, and that issue is currently in litigation involving the state, the Borough and Mr. Gillis. Mr. Gillis appealed an unfavorable Superior Court decision to the Supreme Court. The issue is a statutory interpretation (AS 38.05.035(f)) and its application to Borough owned lands, we have no regulations for the statutes at issue in this situation. Someone from the Department of Law will be available by phone for the March 8 meeting and can help address that issue.

Item #5 is an issue regarding federal lands being transferred into state ownership under the statehood act land grants. The state has had a policy for many years that when land is transferred into state ownership, the federal government needs to transfer land that is free of unauthorized uses and any environmental contamination. To implement this policy, the federal Bureau of Land Management either authorizes existing uses or cleans up the unauthorized use - whether that is trash or waste left behind at mining claims, trespass cabins, or whatever. DNR has not burned or torn down any cabins.

Item #6, I believe, reflects that legislators primarily hear from the few individuals who have issue with the a specific decision by the department or division. We have literally thousands of Alaskans who purchase state land, hold mining claims, have permits for access, have permits for private cabins, etc., that do not have complaints, so these complaints need to be considered in that context. If the committee desires, I can provide information about the numbers of users on state land. In addition, we strive to apply statutes and regulations so they are fair to all Alaskans. Where individuals disagree with our decisions, we provide an administrative appeal process to address their concerns.

Dick Mylius

*Dick Mylius, Director
Alaska Department of Natural Resources
Division of Mining, Land & Water
907-269-8600 Fax 907-269-8904*

From: John Davies [mailto:John_Davies@legis.state.ak.us]

Sent: Friday, February 26, 2010 12:17 PM

To: Mylius, Richard H (DNR)

John Davies

From: Rep. Wes Keller
Sent: Saturday, February 27, 2010 10:30 AM
To: Mylius, Richard H (DNR)
Cc: tom.irwin@alaska.gov; John Davies
Subject: RE: Invitation to ARRC meeting

Director Mylius, Thanks for your helpful response.

As is demonstrated by the information you provided, complaints and advocacies (in general) that come to the legislature often look much different when all the information is on the table. Passions (sometimes very bitter ones) are often the result --- at least partially --- of misunderstandings and miscommunications that are fixable. [FWIW--- 'cabin passion' will never hold a candle to 'family/children's issue passion'. I was in the Office of Children's Services building yesterday and it was a reality check to see the receptionists sitting behind 1" thick safety glass --- and other very obvious security measures.]

The intent of the proposed ARRC meeting is to get comprehensive information on the record (including any legislative recommendations that you might have) that will serve both to mitigate passions and to allow legislators to determine if policy changes should be considered. In keeping with this intent we will make you aware of any substantive complaints that we become aware of before-hand. I will begin the meeting by giving you the 'first bite of the apple' to make a presentation that describes the various types of access issues and to give you a chance to present the history and challenges DNR faces. I am thinking of no more than ~30 minutes for this presentation, but that is negotiable if you need/want more. After your presentation I will give opportunity for the committee to ask clarification questions--- and then go to public testimony with you (or a DNR rep) there to respond to questions/errors. It is always an option to have future hearings or to provide clarifications/answers back to the committee after the hearing if something comes up that cannot be addressed on the spot.

In my mind, the best results of the meeting would be a record of policy that can be used as a reference both to resolve cabin access issues in terms of the misunderstandings that are out there, but also to reveal the underlying statutory authority so the legislature can respond if need be. I will do my best to limit 'grandstanding' on political hot-buttons--- but, as you know, this is not completely possible in a public hearing (by definition).

I hope this helps--- I respectfully request transparency and candid interaction. Personally, I am looking forward to the learning about this perennial issue, and I believe it will be a productive time. I know you are very busy with pipeline-related land-use issues, so if you need a few weeks to fit this in, I am open to postponing the proposed meeting to a time specific. I appreciate your participation and respect your understanding of the complex land-use issues.

I also want to assure you that John Davies, my ARRC staff, is very reliable and qualified. Please do not hesitate to interact with him with confidence that he and I are in communication and working together to these ends.

Thanks,

Rep. Wes Keller

John Davies

From: John Davies
Sent: Tuesday, March 02, 2010 1:09 PM
To: 'Lesh, Melanie (DNR sponsored)'
Cc: Rep. Wes Keller; 'Mylius, Richard H (DNR)'
Subject: RE: ARRC Meeting

Dear Melanie Lesh,

It looks like Director Mylius and the Chairman, Representative Keller, have emailed each other directly and worked out the Director's presentation in general form. I am of the belief that we are now ready to have the hearing. If there is anything that you would like me to distribute to the members of the committee please submit it to me this week for delivery. Thanks. I look forward to seeing you at the meeting. In the event that the Chairman gives me additional direction that may involve a change in what we now expect, I will let you know as once.

Regards,
John Davies
ARRC Acting Committee Aide

From: Lesh, Melanie (DNR sponsored) [mailto:melanie.lesh@alaska.gov]
Sent: Friday, February 26, 2010 1:09 PM
To: John Davies
Subject: RE: ARRC Meeting

Thanks John,
It was nice meeting you last night.
If you work with me directly I will coordinate with Mr. Mylius – in preparing for the meeting. I believe Mr. Mylius will be able to be here in Juneau for the hearing.

Melanie Lesh
Special Assistant/Legislative Liaison
Department of Natural Resources
400 W. Willoughby Ave.
Juneau, Alaska 99801
907.465.4730
907.723.7364

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Friday, February 26, 2010 12:37 PM
To: Lesh, Melanie (DNR sponsored)
Cc: Keller, Wes (LAA); Pound, Jim (LAA)
Subject: RE: ARRC Meeting

Dear Melanie Lesh,

Thank you for your email. I think in person presentations are always best, but realizing the difficulty in getting to Juneau and the cost, the telephone testimony option is a good one. I will leave who presents and how and where to your judgment and that of your DNR representatives. I will do my best to accommodate you and make sure your presentation is as good as it can be.

I do not have any excused absences for that day, March 8th, so I am expecting all the members to be here. But as we all know here at the Capitol, Juneau weather may have its way and trump our best efforts. I am going forward with preparations believing that the meeting will happen as planned.

I just hit the send button before responding to this email and sent a background email to Director Mylius. Do I work with you or Director Mylius in meeting preparations?

Thanks for your help and input on this meeting.

I look forward to working with you.

I met you last evening at the reception. I believe that you were the positive lady with the award winning restaurant in Gustavus? Greetings.

Regards,
John Davies
ARRC Acting Committee Aide

From: Lesh, Melanie (DNR sponsored) [mailto:melanie.lesh@alaska.gov]
Sent: Thursday, February 25, 2010 3:40 PM
To: John Davies
Subject: ARRC Meeting

Hi John,
I'll help coordinate the ARRC meeting on March 8th on behalf of DNR. Would you like Mr. Mylius to be here in Juneau in lieu of Commissioner Irwin (who at this time may be available, but I can't commit him quite yet).
Will you have a quorum on March 8th? I understand many legislators are still traveling back from Energy Council on that date.

Melanie Lesh
Special Assistant/Legislative Liaison
Department of Natural Resources
400 W. Willoughby Ave.
Juneau, Alaska 99801
907.465.4730
907.723.7364

Re: February 24, 2010

Dear Commissioner Irwin and Director Mylius:

Representative Keller has asked me to invite you to attend and participate in the Administrative Regulation Review Committee "ARRC" meeting scheduled for March 8th at 3:00pm in room 17 of the State Capitol Building, Juneau, Alaska.

If you are not able to attend in person, telephone participation would be fine as well.

The ARRC has received public comment concerning the regulations relating to personal use cabin permits, particularly 11 AAC 65.010. The review focus will generally be on the specific intent language "to phase out the use of unauthorized cabins on state land" and the destruction of such cabins, weighed against the private, public and survival uses of the cabin resources. The committee will be looking at the regulation's statutory authorization and whether it carries out legislative intent. Your input will be most helpful. A copy of the Schedule and Agenda are attached for your information.

If you have any questions please feel free to call me at 907 465-4899. Please note that any printed information you wish to present, I will need copies so I may post it on BASIS and distribute it to the committee members.

We look forward to hearing from you and having your participation at the meeting.

Very Truly Yours,

John Davies
ARRC acting Committee Aide

John Davies

From: Rep. Wes Keller
Sent: Sunday, February 28, 2010 10:58 AM
To: John Davies
Subject: RE: Synopsis of DNR Personal Use Cabin complaints

Thanks for the valuable recap John,

I am sure you got a copy of the reply I sent to Dick Mylius and am wondering if we should make this information available to DNR??? The problem DNR has, of course, is that it cannot endorse trespass cabins for the land they manage any more than we would endorse trespass cabins on any private land... The best sites would be snapped up and then we would fight for years about access - etc. If someone builds a cabin and makes improvement on land that he has not ensured clear title to--- that HAS to be his problem. I think in AK there is/was a law that if you can maintain contested presense on a piece of land for 10 years it is yours! That is why DNR actively removes squattors cabins unless special permits are acquired --- and when the terms of the permits are expired, that is it! Seems reasonable to me (even if it is painful for the foolish person who built with no title or fails to meets legitimate terms of permits.

All that being said, it is healthy to get this clearly on the record so legislators who think the policy/ terms of leases/ etc are inappropriate can know what the situation is so they can pursue legislation if they are able.

--- so:

Q 1--- should we send a version of this memo to Mylius?

Q 2--- should we ask DNR to expand their presentation to include a briefing on ACCESS to any legitimate cabin (publically owned, premitted trespass, isolated, lease...)? I think this would be another ~~~30 minute presentation by Scott Ogan--- he recently gave a similar presentation about "navivable water" to CACFA-- It was very enlightening.

Because ARRC is unlikely to take any action on these regs, I think we should do what we can to make sure the hearings are as informative as possible.

Wes

From: John Davies
Sent: Friday, February 26, 2010 12:23 PM
To: Rep. Wes Keller
Cc: Jim Pound
Subject: Synopsis of DNR Personal Use Cabin complaints

Attached is a memo of the situations that are the basis of ARRC inquiry at the March meeting. JD

John Davies

From: Rep. Wes Keller
Sent: Sunday, February 28, 2010 10:59 AM
To: John Davies
Subject: FW: Invitation to ARRC meeting

:-) :-)

You are way ahead of me... Great job. I didn't realise until now that this was the memo that Dick Mylius responded to.

Q 2 on recent email still stands.

WEs

From: John Davies
Sent: Friday, February 26, 2010 12:16 PM
To: Mylius, Richard H (DNR)
Cc: Rep. Wes Keller; Jim Pound
Subject: RE: Invitation to ARRC meeting

Dear Director Mylius:

I have discussed your email request with Representative Keller, Chairman ARRC, and he has asked me to provide you with information that will foster a fruitful and productive meeting.

The following is a synopsis of contacts that may be useful for your meeting preparation and presentation:

- 1) In person complaint at the Capitol ARRC office by an individual whose cabin burned down. He is trying to rebuild the cabin, but reports that he is getting hassled by DNR and not getting cooperation.
- 2) In person complaint at the Capitol ARRC office by an agent on behalf of a client. He complains that as a long term leaseholder, his client is facing the complete loss of his lodge in a few years when the lease runs out. The land around the lodge was selected by a borough, and the leasee has no preference right to buy the land. Once the lease runs out, he loses everything, his lodge, retirement, equity, everything. His entire life's work gone.
- 3) In person complaint at the Capitol ARRC office about a personal use cabin permittee who is facing the forfeiture of his cabin because he filed his renewal late. The permittee did not know about the new rule that renewals must be filed 90 days before the end of the permit term, but was aware of the old rule that a \$25 late fee would be assessed. He filed before the end of the permit term but not before the new 90 day time frame. He faces the complete loss of his cabin and permit.
- 4) A member of the Legislative Body reports that he has a constituent whose husband has a cabin permit and when he dies the permit ceases leaving her and the family with nothing. The family has used this cabin and land since before statehood, and cannot get a preference right to buy the land or in any other way protect its long term use of the land. They face complete loss as well.
- 5) By way of prior Resource Committee hearings it has become public knowledge that DNR is burning and/or destroying cabins for what is described as "liability reasons".
- 6) The complainants report an attitude of hostility by DNR towards private use of public lands.

The question may be: Is the intent language in the regulations, 11 AAC 65.010, "to phase out the use of unauthorized cabins on state land", fostering a hostile attitude by DNR towards these private persons, or is the Committee simply being made aware of anecdotal situations that don't reflect the true nature of what is going on? The Chairman is hopeful that your presentation to the Committee and the public will help with this question.

In addition to the above question, the Chairman would like for you, or another DNR representative, to be prepared to tell the Committee about: where does DNR derive its statutory authority for its intent to phase out the use of unauthorized cabins on state land; as well as explain its policy and procedures for granting and extending personal use cabin permits; what happens to a cabin that goes back to the State; why are cabins destroyed or burned down; what is the cost of such destruction; and lastly as an overview of the numbers and significance of the personal use cabin program?

The Chairman wanted me to be sure to let you know that the Committee does not, and in this meeting is not, advocating for any particular individual or constituent in its inquiry. The Committee is reviewing these regulations to see if they stand the three part test of Constitutionality, statutory authority, and/or legislative intent. If the Committee finds grounds it may present the Legislature with a bill to annul or veto a regulation.

We look forward to your participation in the upcoming meeting. If you have any questions please feel free to give me a call at 465-4899.

Very Truly Yours,

John Davies
ARRC Acting Committee Aide

From: Mylius, Richard H (DNR) [mailto:dick.mylius@alaska.gov]
Sent: Wednesday, February 24, 2010 4:51 PM
To: John Davies
Cc: Rep. Wes Keller; Jim Pound; Irwin, Tom E (DNR)
Subject: RE: Invitation to ARRC meeting

John – we'll participate – not sure if I'll be on the phone or in person. Commissioner Irwin will be in Toronto for mining related meetings but hopes to call in. We'll prepare some information to get to the Committee ahead of time.

Did you receive written comments concerning the regulations – if so can I get a copy? We are aware of several issues/complaints regarding this topic, but it would be helpful to see what the Committee has received as well. Dick

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Wednesday, February 24, 2010 2:28 PM
To: Irwin, Tom E (DNR); Mylius, Richard H (DNR)
Cc: Keller, Wes (LAA); Pound, Jim (LAA)
Subject: Invitation to ARRC meeting

February 24, 2010

Dear Commissioner Irwin and Director Mylius:

Representative Keller has asked me to invite you to attend and participate in the Administrative Regulation Review Committee "ARRC" meeting scheduled for March 8th at 3:00pm in room 17 of the State Capitol Building, Juneau, Alaska.

If you are not able to attend in person, telephone participation would be fine as well.

The ARRC has received public comment concerning the regulations relating to personal use cabin permits, particularly 11 AAC 65.010. The review focus will generally be on the specific intent language "to phase out the use of unauthorized cabins on state land" and the destruction of such cabins, weighed against the private, public and survival uses of the cabin resources. The committee will be looking at the regulation's statutory authorization and whether it carries out

legislative intent. Your input will be most helpful. A copy of the Schedule and Agenda are attached for your information.

If you have any questions please feel free to call me at 907 465-4899. Please note that any printed information you wish to present, I will need copies so I may post it on BASIS and distribute it to the committee members.

We look forward to hearing from you and having your participation at the meeting.

Very Truly Yours,

John Davies
ARRC acting Committee Aide

John Davies

From: Mylius, Richard H (DNR) [dick.mylus@alaska.gov]
Sent: Sunday, February 28, 2010 7:29 PM
To: Rep. Wes Keller
Cc: Irwin, Tom E (DNR); John Davies
Subject: RE: Invitation to ARRC meeting

Rep. Keller – Thank you for the response. A half hour should be more than enough time for me to address these topics. I'll address the Mel Gillis one first, as that is a pretty specific issue, then talk about the Personal Use Cabins and the issue with the cabins on BLM land being transferred to the state. Dick Mylius

From: Rep. Wes Keller [mailto:Representative_Wes_Keller@legis.state.ak.us]
Sent: Saturday, February 27, 2010 10:30 AM
To: Mylius, Richard H (DNR)
Cc: Irwin, Tom E (DNR); Davies, John G (LAA)
Subject: RE: Invitation to ARRC meeting

Director Mylius, Thanks for your helpful response.

As is demonstrated by the information you provided, complaints and advocacies (in general) that come to the legislature often look much different when all the information is on the table. Passions (sometimes very bitter ones) are often the result --- at least partially --- of misunderstandings and miscommunications that are fixable. [FWIW--- 'cabin passion' will never hold a candle to 'family/children's issue passion'. I was in the Office of Children's Services building yesterday and it was a reality check to see the receptionists sitting behind 1" thick safety glass --- and other very obvious security measures.]

The intent of the proposed ARRC meeting is to get comprehensive information on the record (including any legislative recommendations that you might have) that will serve both to mitigate passions and to allow legislators to determine if policy changes should be considered. In keeping with this intent we will make you aware of any substantive complaints that we become aware of before-hand. I will begin the meeting by giving you the 'first bite of the apple' to make a presentation that describes the various types of access issues and to give you a chance to present the history and challenges DNR faces. I am thinking of no more than ~30 minutes for this presentation, but that is negotiable if you need/want more. After your presentation I will give opportunity for the committee to ask clarification questions--- and then go to public testimony with you (or a DNR rep) there to respond to questions/errors. It is always an option to have future hearings or to provide clarifications/answers back to the committee after the hearing if something comes up that cannot be addressed on the spot.

In my mind, the best results of the meeting would be a record of policy that can be used as a reference both to resolve cabin access issues in terms of the misunderstandings that are out there, but also to reveal the underlying statutory authority so the legislature can respond if need be. I will do my best to limit 'grandstanding' on political hot-buttons--- but, as you know, this is not completely possible in a public hearing (by definition).

I hope this helps--- I respectfully request transparency and candid interaction. Personally, I am looking forward to the learning about this perennial issue, and I believe it will be a productive time. I know you are very busy with pipeline-related land-use issues, so if you need a few weeks to fit this in, I am open to postponing the proposed meeting to a time specific. I appreciate your participation and respect your understanding of the complex land-use issues.

I also want to assure you that John Davies, my ARRC staff, is very reliable and qualified. Please do not hesitate to interact with him with confidence that he and I are in communication and working together to these ends.

Thanks,

Rep. Wes Keller

John Davies

From: Ryckman, Mary Kay (DNR) [marykay.ryckman@alaska.gov]
Sent: Thursday, February 25, 2010 11:48 AM
To: John Davies
Subject: RE: Call in number for March 8 ARRC meeting

MANY thanks John! I will try to let you know if for some reason flying causes him to miss the meeting.

Mary Kay Ryckman
Executive Secretary III
Office of the Commissioner
Department of Natural Resources
550 W. 7th #1400
Anchorage, AK 99501
269-8426 office
269-8918 fax

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Thursday, February 25, 2010 11:48 AM
To: Ryckman, Mary Kay (DNR)
Cc: Keller, Wes (LAA)
Subject: RE: Call in number for March 8 ARRC meeting

Dear Mary Kay Ryckman,

Thank you for your email. The call in number is 877-763-5073. If the commissioner has any problems with this number please have him call Rep. Keller's office directly at 907 465-2186. The office is right across the hall from the meeting room, and if there are technical problems with the 877 number we will know and have a chance to fix them. If you have any questions feel free to call me at 465-4899. Have a great day.

Regards,
John Davies
ARRC Acting Committee Aide

From: Ryckman, Mary Kay (DNR) [mailto:marykay.ryckman@alaska.gov]
Sent: Thursday, February 25, 2010 8:53 AM
To: John Davies
Subject: Call in number for March 8 ARRC meeting

Good morning John,

May I please request a call in number for the ARRC Meeting on March 8th? Commissioner Irwin will be out of state, but he'd like to try to call in for the meeting.

Thanks so much!

Mary Kay Ryckman
Executive Secretary III
Office of the Commissioner
Department of Natural Resources
550 W. 7th #1400
Anchorage, AK 99501
269-8426 office

From: Irwin, Tom E (DNR)
Sent: Thursday, February 25, 2010 8:47 AM
To: Ryckman, Mary Kay (DNR)
Subject: Fwd: Invitation to ARRC meeting

FYI

Sent from my iPhone

Begin forwarded message:

From: "Mylius, Richard H (DNR)" <dick.mylius@alaska.gov>
Date: February 24, 2010 4:50:42 PM AKST
To: "Davies, John G (LAA)" <john_davies@legis.state.ak.us>
Cc: "Keller, Wes (LAA)" <representative_wes_keller@legis.state.ak.us>, "Pound, Jim (LAA)" <jim_pound@legis.state.ak.us>, "Irwin, Tom E (DNR)" <tom.irwin@alaska.gov>
Subject: RE: Invitation to ARRC meeting

John – we'll participate – not sure if I'll be on the phone or in person. Commissioner Irwin will be in Toronto for mining related meetings but hopes to call in. We'll prepare some information to get to the Committee ahead of time.

Did you receive written comments concerning the regulations – if so can I get a copy? We are aware of several issues/complaints regarding this topic, but it would be helpful to see what the Committee has received as well. Dick

From: John Davies [mailto:John_Davies@legis.state.ak.us]
Sent: Wednesday, February 24, 2010 2:28 PM
To: Irwin, Tom E (DNR); Mylius, Richard H (DNR)
Cc: Keller, Wes (LAA); Pound, Jim (LAA)
Subject: Invitation to ARRC meeting

February 24, 2010

Dear Commissioner Irwin and Director Mylius:

Representative Keller has asked me to invite you to attend and participate in the Administrative Regulation Review Committee "ARRC" meeting scheduled for March 8th at 3:00pm in room 17 of the State Capitol Building, Juneau, Alaska.

If you are not able to attend in person, telephone participation would be fine as well.

The ARRC has received public comment concerning the regulations relating to personal use cabin permits, particularly 11 AAC 65.010. The review focus will generally be on the specific intent language "to phase out the use of unauthorized cabins on state land" and the destruction of such cabins, weighed against the private, public and survival uses of the cabin resources. The committee will be looking at the regulation's statutory authorization and whether it carries out legislative intent. Your input will be most helpful. A copy of the Schedule and Agenda are attached for your information.

If you have any questions please feel free to call me at 907 465-4899. Please note that any printed information you wish to present, I will need copies so I may post it on BASIS and distribute it to the committee members.

We look forward to hearing from you and having your participation at the meeting.

Very Truly Yours,

John Davies

ARRC acting Committee Aide

2/25/10

Center - Complaint for Court - Mel

Long term lease holder -

preference right to lease holder to purchase

may not shall -

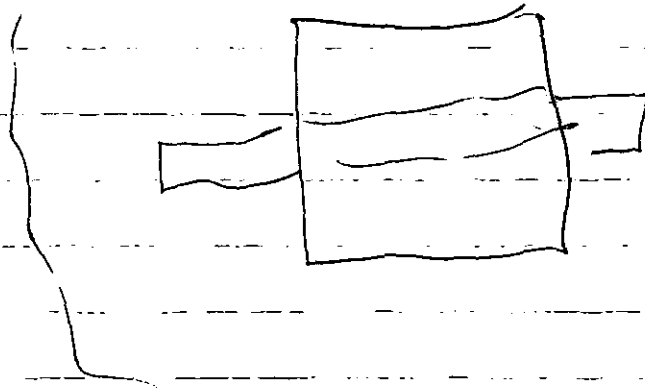
Hostile attitude toward public

what is present of land disposal

Mel - lease 2014

Alutian Broomf / Lake & River

clay to 58



lease
expired
Mel
looser
everything

DNR Regs on Land Leasing & Disposal.pdf

Google docs

Download (2430K) Print (29 pages) Plain HTML

1 / 29

Search the document.

NATURAL RESOURCES

Part 6. Lands.

Chapter

- 51. Public Easements (11 AAC 51.010 — 11 AAC 51.990)
- 52. (Repealed)
- 53. Records, Surveys, and Platting (11 AAC 53.010 — 11 AAC 53.900)
- 54. Disposal of Lands (11 AAC 54.010 — 11 AAC 54.510)
- 55. Land Planning and Classification (11 AAC 55.010 — 11 AAC 55.290)
- 56. (Repealed)
- 57. (Repealed)
- 58. Leasing of Lands (11 AAC 58.010 — 11 AAC 58.910)
- 59. Grazing Leases (11 AAC 59.010 — 11 AAC 59.180)
- 60. Tide and Submerged Lands (11 AAC 60.010 — 11 AAC 62.840)
- 61. Aquatic Permitte Permits and Leases (11 AAC 63.010 — 11 AAC 63.900)
- 62. Shore Fisheries Leasing (11 AAC 64.010 — 11 AAC 64.570)
- 63. Personal Use Cabin Permits (11 AAC 65.010 — 11 AAC 65.900)
- 64. Municipal Grant Land Entitlement Program (11 AAC 66.010 — 11 AAC 66.990)
- 65. Disposal of Land (11 AAC 67.002 — 11 AAC 67.990)
- 66. (Repealed)
- 67. Exhausted Real Property (11 AAC 68.010 — 11 AAC 68.900)
- 68. (Repealed)
- 69. Timber and Material Sales (11 AAC 71.005 — 11 AAC 71.910)
- 70. (Repealed)
- 71. (Repealed)
- 72. (Repealed)
- 73. Pipeline Right-of-Way Leasing (11 AAC 80.005 — 11 AAC 80.065)
- 74. Mineral Leasing Procedure (11 AAC 82.100 — 11 AAC 82.990)



Forest Service
Federal Cabin

3/1/10

Jim King

Advocate for Sustainable Cabin

Recreational cabins -

Oregon - 22 Forest Service
cabin units
college program

would like to see cabins sustained

Chuyah Tongow -

Forest Service Cabin have position & impact

'Sustainable Recreation Workshop' {excellent
conference
Tongow Chuyah}

building cabin not the problem

sustaining them is the problem

Cabin

143

Tongow

Forest Service has 5 yr plan
to sustain cabins

42

Chuyah

looking for a solution to maintaining cabins

evil to Forest Service - fed - under staffed - and
inventory down

moisture on cabin closure -

Joint resolution? Forests going recreational?

John Davies

From: Rep. Wes Keller
Sent: Tuesday, March 02, 2010 8:59 PM
To: John Davies
Subject: RE: Synopsis of DNR Personal Use Cabin complaints

We really did get a 1 foot wave from Chile???? Amazing!

I am more than satisfied --- I am delighted with your good work and prep for meeting. I was impressed with Dick Mylius' presentation today on ANILCA--- Did you know that there is only one gov't entity that manages more real estate than Alaska DNR?--- the Federal Gov't :-).

thanks
wes

From: John Davies
Sent: Tuesday, March 02, 2010 12:57 PM
To: Rep. Wes Keller
Subject: RE: Synopsis of DNR Personal Use Cabin complaints

Dear RWK,

After doing the synopsis of the complaints, I paraphrased the complaints and listed them out for Director Mylius. I sent you a copy of that email to him. So he knows about the complaints. I told him that the Committee is not advocating for any of the complainants but merely using the complaints as a basis of general inquiry.

Are you satisfied with the general outline of his presentation that he proposes in his email to you? If so I can simply put a few questions in your "script" to ask him in the event that he doesn't cover them in the presentation. The big question in my mind, is "Director Mylius, can you tell us the statutory basis for DNR's intent to phase out the unauthorized use of state land, ie, the cabins, as expressed in 11AAC65.010?" Do we want that to be Legislative policy and intent?

Hope your physical went well. See you soon. The marine shop is installing the depth finder today. Didn't use the boat last weekend because of the tsunami warning! Can you believe that, as tsunami. Turned out to be about a foot high. But, hey, why test the first tsunami warning in my marine history? JD

From: Rep. Wes Keller
Sent: Sunday, February 28, 2010 10:58 AM
To: John Davies
Subject: RE: Synopsis of DNR Personal Use Cabin complaints

Thanks for the valuable recap John,

I am sure you got a copy of the reply I sent to Dick Mylius and am wondering if we should make this information available to DNR??? The problem DNR has, of course, is that it cannot endorse trespass cabins for the land they manage any more than we would endorse trespass cabins on any private land... The best sites would be snapped up and then we would fight for years about access - etc. If someone builds a cabin and makes improvement on land that he has not ensured clear title to--- that HAS to be his problem. I think in AK there is/was a law that if you can maintain contested presense on a piece of land for 10 years it is yours! That is why DNR actively removes squattors cabins unless special permits are acquired --- and when the terms of the permits are expired, that is it! Seems reasonable to me (even if it is painful for the foolish person who built with no title or fails to meets legitimate terms of permits.

All that being said, it is healthy to get this clearly on the record so legislators who think the policy/ terms of leases/ etc are inappropriate can know what the situation is so they can pursue legislation if they are able.

--- so:

Q 1--- should we send a version of this memo to Mylius?

Q 2--- should we ask DNR to expand their presentation to include a briefing on ACCESS to any legitimate cabin (publically owned, premitted trespass, isolated, lease...)? I think this would be another ~~~30 minute presentation by Scott Ogan--- he recently gave a similar presentation about "navigable water" to CACFA-- It was very enlightening.

Because ARRC is unlikely to take any action on these regs, I think we should do what we can to make sure the hearings are as informative as possible.

Wes

From: John Davies

Sent: Friday, February 26, 2010 12:23 PM

To: Rep. Wes Keller

Cc: Jim Pound

Subject: Synopsis of DNR Personal Use Cabin complaints

Attached is a memo of the situations that are the basis of ARRC inquiry at the March meeting. JD

ALASKA STATE LEGISLATURE

Interim:

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
Fax: (907) 373-4729

**Session:**

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-4899
Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

MEMO

To: Rep. Wes Keller, Chairman

Fm: John Davies, Acting Committee Aide

Cc: File

Date: February 26, 2010, 11:10 AM

Re: Synopsis of situations re: DNR Personal Use Cabin regs and long term lease regs.

Recently the committee has become aware of the following situations concerning DNR regs:

- 1) Paul Shadura of Kenai 283-5098, stopped by the office to complain that his trespass cabin burned down and he was trying to rebuild it, but being hassled by DNR and not getting cooperation.
- 2) Patrick Carter, stopped by the office to complain on behalf of his client, Mel ?, that as a long term leaseholder his client was facing the complete loss of his lodge in a few years when the lease runs out. The land around the lodge was selected by a borough, the Aleutian Borough I believe, and Mel has no priority right to buy the property. Once the lease runs out, he loses everything; his lodge, retirement, equity, everything. His entire life's work gone.
- 3) Patrick Carter, stopped by the office a second time to complain on behalf of Fred Braun. Mr. Braun is a permit holder of a personal use cabin permit. He filed his renewal application before the expiration of the present permit, but not 90 days before the expiration date. In the past late filings had been assessed a \$25 late filing fee and then processed. But this year the DNR changed the way it treated late filings and declared a forfeiture of Mr. Braun's cabin. His renewal was refused and he was told to remove his cabin. Mr. Braun has had to hire a lawyer and is in the process of appealing the decision. The notice that DNR was changing its procedures was in the same envelope as the

E-Mail: John_Davies@legis.state.ak.us

renewal application and Mr. Braun didn't see it until too late and didn't otherwise know about the change in procedures.

- 4) Rep. Guttenberg has a constituent, Myra Neff, who's husband has a long term lease with DNR on state land. The family has lived on the property since before statehood, but when the husband dies the lease terminates and the property goes back to the state. The family loses everything.
 - 5) Rep. Doogan's staff reports that DNR is destroying cabins that come into state possession for what the state calls "liability reasons". This issue has been brought up in prior resource committee meetings.
 - 6) The parties uniformly report a hostile attitude by DNR towards private parties use of public lands.
 - 7) The question may be: Is the intent language in the regulations, 11AAC 65.010, to phase out the use of unauthorized cabins on state land, fostering this hostile attitude by DNR or are we simply being made aware of anecdotal situations that don't reflect the true nature of what is going on?
-

The information contained in this memo is CONFIDENTIAL and/or privileged. This memo is intended to be reviewed initially by only the individual named above. If the reader of this page is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of this memo or the information contained herein is prohibited. If you have received this memo in error, please immediately notify the sender by telephone and return this memo to the sender at the above address.

Thank you

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND

TONY KNOWLES, GOVERNOR

NORTHERN REGION
3700 AIRPORT WAY
FAIRBANKS, ALASKA 99709-4699
PHONE: (907) 451-2700

March 24, 1998

Richard W. Neff
PO Box 60470
Fairbanks, AK 99706

Re: ADL 412042
Personal Use Cabin Renewal (Goodpaster River)

Dear Mr. Neff,

I am responding to your letter of March 1st, 1998 regarding preference rights and adding to the original list of permittees.

Your request is being forwarded to the Anchorage office which handles preference rights. The contact person is Dick Mylius at (907) 269-8532.

I realize that you would like to add your wife and children to your original list of permittees, however, the law states that the permittees are the ones that are on the original application and permits may not be transferred. Pursuant to state regulation 11 AAC 65.090 (6) (C), the permit is not transferable or assignable. Your original application lists yourself and your father, Wendell R. Neff as the applicants having an interest in the cabin, therefore, these are the only two names which can be listed on the application.

Please review the enclosed documents. If you have any questions I can be reached at the Division of Land at (907) 451-2733.

Thank you,

Sincerely,
Darla Hasselquist
Darla Hasselquist
Natural Resource Technician

Governor Sean Parnell
Alaska State Capital Building
PO Box 110001
Juneau, AK 99811

Lt. Governor Craig Campbell
550 W. 7th Ave., Suite 1700
Anchorage, AK 99501

Commissioner Tom Irwin
Department of Natural Resources
400 Willoughby Avenue, 5th Floor
Juneau, AK 99801

Senator Gene Therriault
1292 Sadler Way, Suite 308
Fairbanks, AK 99701

Representative David Guttenberg
1292 Sadler Way, Suite 308
Fairbanks, AK 99701

Representative Scott Kawasaki
1291 Sadler Way, Suite 308
Fairbanks, AK 99701

Representative John B. Coghill, Jr.
3340 Badger Rd., Suite 290
North Pole, AK 99705

September 30, 2009

RE: ADL414042

As a life-long Alaskan resident, born in Palmer before statehood, I respectfully request your assistance in obtaining a parcel of state land, located at: 2 Section, 008S Township, 012E Range, Fairbanks Meridian. This land was "squatted on" by my father-in-law, the late Wendell R. Neff, during the early 1950's. For the ensuing 20 years, he used this piece of land as a hunting /recreational site, and constructed a small shelter shed for his family. During the 1970's this land was offered under a homestead or homesite program by the State of Alaska. Unfortunately, by this time my father-in-law had established another family in another location, and did not pursue this option. Wendell's son, Richard (my husband) was a young man at the time; he was regrettably ill-equipped both in maturity and resources to pursue the terms and conditions required for this opportunity, and consequently did not take advantage of the survey and appraisal options to obtain this land. However, by leasing the land from DNR, Richard continued utilizing the location for family recreation and hunting opportunities.

In 1983, the State of Alaska denied Wendell Neff (and his son, Richard) their Preference Right Application for the right to purchase this site, in spite of the documented proof and affidavits of its historical use by the family since territorial days. The cabin site is located within the Tanana Basin Area Plan's Goodpaster River management unit, where state land disposals are banned and thus there has been no interest in the review of this situation by the state government.

As the law presently stands, upon my husband's death this cabin and land will be reverted back to the state and opened for public use. Frankly, it is a painful insult that our state, immensely rich in land, will snatch away the hard work and cherished recollections of a second-generation Alaskan family. My husband's recent health issues has made it more imperative for me to pursue avenues that will permit us to obtain legal title to this land; I wish to own this land for the personal significance this site has for me, for the great amount of time and effort our family has invested to develop and enjoy it, and for the heritage of my children and grandchildren. We and our children's lives are enmeshed with memories of this cabin site. It is an important, historic link to the generation before, and with the state's consideration, for the generations to follow.

Currently, less than 1% of the total land mass in Alaska is in private ownership, exuding land set aside by the Alaska Native Claims Settlement Act. Our state government is appointed to 'unlock our potential' by offering remote, recreational state lands for sale. Article VIII of the Alaska Constitution states, "It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest." The Constitution, State laws, and the Alaska Legislature all direct DNR to sell state land for settlement and private ownership. What better risk than those who have a vested interest? As a bona fide Alaskan family, we have invested in this particular parcel of land for 50+ years, we've worked arduously to improve this land, and we have faithfully made annual payments on this land to the State under the lease agreement. Beyond a doubt, we have proven our commitment and dedication by carving out a section of Alaskan wilderness for use and enjoyment by our family. I respectfully ask the State to consider a stipulation that will allow us to purchase this land.

Upon review of this situation by former Lt. Governor Loren Leman, his office suggested pursuing the introduction of a bill which would allow the opportunity to buy the state leased land, with certain stipulations. For instance, offering land for sale at appraised value to those individuals who have continuously paid for state leased land for over 25 years, and 'grandfathering' exceptions for those within state land where disposal is prohibited. This would apply to only private, individual citizens, not to conglomerates or agencies such as the University of Alaska or Alyeska Pipeline, etc. I don't know how much land would qualify, but it would be in the state's honor to allow Alaskan residents to purchase the land into which they have faithfully devoted, invested, and improved.

Governor Parnel and Lt. Governor Campbell, I trust you to be unswerving in discovering innovative ways for public lands to pass into the hands of private citizens. Commissioner Irwin, I depend on your support to investigate ways that residents who have consistently paid for cabin lease sites will have the chance to purchase that land at fair and equitable rates. Senator Therriault, I believe you will seek avenues that allow more private ownership of land. Representative Guttenberg, Representative Kawasaki, and Representative Coghill, I count on you to encourage legislative endeavors and/or seek legal ways permitting Alaskans to purchase the land they lease from the State.

In the interest of more state lands being transferred to Alaskans, I implore your help in introducing a law that would allow us to purchase this site. I look forward to hearing from all entities herewith addressed. Thank you.

Sincerely,

Myra S. Neff
2101 Broadmoor Ave.
Fairbanks, AK 99709

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR

□ 550 WEST 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431
FAX: (907) 269-8918

November 25, 2009

Ms Myra S. Neff
2101 Broadmoor Avenue
Fairbanks, AK 99709

Re: ADL 414042

Dear Ms Neff:

I am responding to your letter of September 30, 2009 concerning acquisition of title to state land previously the subject of a preference right application, currently under a Personal Use Cabin permit (ADL 414042). Originally this Personal Use Cabin Permit was issued by the state to your husband, Richard Neff. This parcel was also the subject of a Preference Right application (ADL 403149). Our files indicate your husband's cabin permit is for a parcel of state land located in Section 2, Township 8 South, Range 13 East, Fairbanks Meridian. I assume you meant Range 13 East in your letter and will proceed on that basis.

You are correct in stating in your letter that the preference right application (ADL 403149) submitted by your father-in-law, Wendell R. Neff, was denied by the state. This denial was based on the determination that the sale was not in the state's best interests. The parcel of state land for which your father-in-law applied is located in an area determined to be valuable for public recreation under the Tanana Basin Area plan. In accordance with this plan, state land in this area was to be retained in state ownership and not made available for disposal. The state's determination was appealed to the State Superior Court, which upheld the state's decision to deny the preference right application.

By statute, state land is sold competitively by public auction, lottery or over-the-counter; sale by preference right is the exception and is constrained by very specific statutory requirements. In this instance, sale of the parcel of state land you refer to was determined to not qualify for a preference right sale. If the land where the cabin is located were to be sold, it would be through a competitive sale open to all Alaskans. However, the Tanana Basin Area plan identifies this area for retention in public ownership.

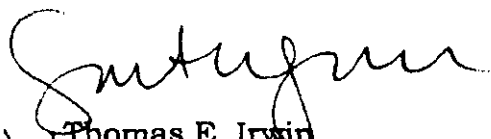
"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans"

November 25, 2009
Page 2 of 2

The Department does take seriously the Constitutional mandate to encourage the settlement of Alaska's land. To that extent, we have a land sale program to get land into private ownership. I suggest you contact the Fairbanks DNR Public Information Center at (907) 451-2705 or the Division of Mining Land & Water's website for information regarding state land that is available for sale in the Fairbanks area.

Thank you for your inquiry.

Sincerely,



for Thomas E. Irwin
Commissioner

Cc: Governor Sean Parnell
Lt. Governor Craig Campbell
Senator John B. Coghill, Jr.
Representative Davie Guttenberg
Representative Scott Kawasaki

John Davies

From: John Davies
Sent: Monday, March 29, 2010 2:31 PM
To: Jim Colver
Cc: Rep. Wes Keller; Jim Pound
Subject: RE: Agenda

Dear Jim,

As you may know, because the two major issues for review have been informally handled, Chairman Keller has cancelled the 4/5/10 ARRC meeting. In discussing the Mel Gillis cabin burning issues, he felt that the ARRC would be better served by initially handling this item off the record by way of letter to DNR. Would you please furnish me with the name(s) of the DNR staff member(s) who authorized or directed Mr. Gillis to burn the cabins? The Chairman will then send a letter to the DNR Commissioner asking for a response and open a dialog about the matter. Once the ARRC has a response, a decision can then be made how best to proceed.

If you have any questions, feel free to give me a call. Meanwhile, once I have the name(s), I will prepare the letter for the Chairman's signature.

Regards,

John Davies
ARRC Acting Committee Aide

From: Jim Colver
Sent: Friday, March 26, 2010 11:45 AM
To: 'John_Davies@legis.state.ak.us'
Subject: Agenda

John,

Senator Olson asked me to request that Mel Gillis be invited to testify on the cabin permit regulations. Mel's phone number is 344-8589.

Jim Colver
Staff To Sen. Olson
465-3877

John Davies

Burning Cabins

From: John Davies
Sent: Wednesday, April 14, 2010 10:39 AM
To: 'Dick.Mylius@alaska.gov'
Cc: Rep. Wes Keller; Christina Apathy; Jim Pound
Subject: Distruction of Cabins Allegations

Dear Director Mylius:

This email is an inquiry for follow up information. As you will recall, during the ARRC meeting last March, Mr. Mel Gillis testified that he had burned down two cabins in the bush at the direction of DNR. Senator Olson asked Mr. Gillis to furnish his office with the name(s) of the DNR representative that instructed him to burn the cabins.

Mr. Gillis furnished the following information to Senator Olson's staff: Mr. Gillis reported that he was told by Dave Kelly of DNR that DNR would pay him to burn down Warren Johnson's cabin at Port Moller at the Sandy River Air Strip. Mr. Gillis did in fact burn the cabin down at the direction of DNR and gave pictures to Adam Smith.

He said that he also burned down the Illnik cabin at Port Moller at the direction of DNR.

The Committee would appreciate your looking into these allegations and reporting back on your findings. As you know, based upon Member comments during the meetings, the Committee would prefer not to burn or destroy cabins in the bush that could otherwise serve the public interest as shelter and survival assets.

We look forward to hearing from you.

Very Truly Yours,

Representative Wes Keller
By
John Davies
ARRC Acting Committee Aide

"we'll Pay You to burn 3/19
cabins" Dave Kelly

(DNR) Now SE Regional
MNR

6 yrs ago

Air Field /

0 Air strip
Sandy River
Fed #1 - ~~pollen~~

Owner Carby
Warren Johnson

MEL Burned ~~it~~ at
for DNR - he had
bodge there

He gave pictures of
ADAm Smith

that it had

Burned Down -

State Land

West
North
4th

VIA-
NR-

344-8589-
Mel 5/1/15

Also Burned
Dowry

~~70~~

Illnik -
Cabin

Port Moller /
pt H

\$2,000 Bond
\$1,000 yr 1

John Davies

From: Josh Applebee
Sent: Monday, April 05, 2010 1:04 PM
To: John Davies
Subject: RE: ARRC recommendation letter to Commissioner Irwin re: Personal Use Cabins

Just make sure you get everyone's "yea" vote before sending it out. Or just delete the word "entire".
I am sure you should get most of them, but I would visit the offices and get an answer because it's every effective as currently worded.
Don't wait for them to get back with you.

Josh

From: John Davies
Sent: Monday, April 05, 2010 1:03 PM
To: Josh Applebee
Subject: RE: ARRC recommendation letter to Commissioner Irwin re: Personal Use Cabins

Good point Josh. What do you recommend? John

From: Josh Applebee
Sent: Monday, April 05, 2010 1:01 PM
To: John Davies
Subject: RE: ARRC recommendation letter to Commissioner Irwin re: Personal Use Cabins

John,
Do you think it wise to use the term "on behalf of the entire Committee" before you have unanimous consent?

From: John Davies
Sent: Monday, April 05, 2010 12:53 PM
To: Janet Ogan; Bonnie Gruening; Christina Apathy; Kimberly Clark; Christopher Birdsall; Josh Applebee
Cc: Rep. Wes Keller; Jim Pound
Subject: ARRC recommendation letter to Commissioner Irwin re: Personal Use Cabins

Dear Fellow Staffers:

Since ARRC canceled its meeting for today, I am sending around this copy of the letter that Chairman Keller would like to send to Commissioner Irwin concerning the Committee's recommendations for Personal Use Cabin Permit renewals.

Please print out a copy for your boss and let me or Rep. Keller know if there are any objections to the letter. If your boss would like to co-sign the letter let me know, as the letter is scheduled to go out tomorrow unless there are significant objections.

Thanks for your assistance.

Regards,

John Davies
ARRC Acting Committee Aide

John Davies

From: John Davies
Sent: Monday, April 05, 2010 12:53 PM
To: 'janet_ogan@legis.state.ak.us'; Bonnie Gruening; Christina Apathy; Kimberly Clark; Christopher Birdsall; Josh Applebee
Cc: Rep. Wes Keller; Jim Pound
Subject: ARRC recommendation letter to Commissioner Irwin re: Personal Use Cabins
Attachments: ARRC - Commissioner Irwin Personal Use Cabin Permits .docx

Dear Fellow Staffers:

Since ARRC canceled its meeting for today, I am sending around this copy of the letter that Chairman Keller would like to send to Commissioner Irwin concerning the Committee's recommendations for Personal Use Cabin Permit renewals.

Please print out a copy for your boss and let me or Rep. Keller know if there are any objections to the letter. If your boss would like to co-sign the letter let me know, as the letter is scheduled to go out tomorrow unless there are significant objections.

Thanks for your assistance.

Regards,

John Davies
ARRC Acting Committee Aide

John Davies

From: John Davies
Sent: Tuesday, April 06, 2010 9:39 AM
To: Josh Applebee
Subject: RE: ARRC amended letter to Commissioner Irwin

Dear Josh,

Thanks for your email. Chairman Keller appreciates Senator Meyer's support, but he thinks that his signature and the Vice Chair will be sufficient. Have a great day.

John D

From: Josh Applebee
Sent: Tuesday, April 06, 2010 7:48 AM
To: John Davies
Subject: RE: ARRC amended letter to Commissioner Irwin

John,
Sen. Meyer supports the chairman on this issue and would be happy to sign on if that is the Chair's intent.

josh

From: John Davies
Sent: Monday, April 05, 2010 1:15 PM
To: Janet Ogan; Bonnie Gruening; Christina Apathy; Kimberly Clark; Christopher Birdsall; Josh Applebee
Cc: Rep. Wes Keller; Jim Pound
Subject: ARRC amended letter to Commissioner Irwin

Dear Fellow Staffers:

Please disregard the prior letter to Commissioner Irwin and use this amended letter in its place. The word entire has been deleted from the first paragraph in the event that unanimous consent is not achieved. This is the only change that is made which causes a minor rewording in the first and second sentences. Replace the first letter.
Thanks.

John Davies

Meyer Y
Ogan Y
Krook X
Keller Y

Guttenberg
Bath

ALASKA STATE LEGISLATURE

Interim:

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone: 373-1842
Fax: (907) 373-4729

**Session:**

State Capitol Building
Juneau, Alaska 99801-1182
Phone: (907) 465-4899
Fax: (907) 465-3818

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

April 5, 2010

Tom Irwin, Commissioner DNR
550 West 7th Ave. Ste 1400
Anchorage, AK 99501-3554

Re: ARRC Recommendations concerning Personal Use Cabin Permits (11 AAC 65.010 et seq.)

Dear Commissioner Irwin:

Greetings from the Alaska Legislature's Joint Administrative Regulation Review Committee "ARRC". As the Committee Chairman, I write to you today on behalf of the ~~entire~~ Committee and convey to you our recommendations for carrying out Legislative intent concerning Personal Use Cabin Permits.

As you may know, the ARRC was established by Alaska Statute, AS 24.20.040, and charged with the responsibility of overseeing agency regulations. One of the jobs of the ARRC is to review existing regulations to determine if they carry out legislative intent. If the Committee finds that a regulation does not implement the intent of the Legislature, it may introduce a bill to over ride or veto the regulation. Such legislative action is a strong and sometimes arduous measure and reserved for situations where other more diplomatic solutions have failed. The Committee would hope that in this case, a socially just resolution could be developed which balances the public interest and personal use permittees' interests wisely.

In particular, sufficient public complaint about DNR's handling of Personal Use Cabin situations had come to the Committee's attention that ARRC hearings were held on March 8 and 15, 2010, in which considerable agency and public testimony was heard. After the close of testimony it was evident that there is a conflict between the Legislature's intent that Personal Use Cabin Permits expire upon the death of the permittee, and the agency's intent to "phase out the unauthorized use of state land" as expressed in 11 AAC 65.010. The frustrated, and at times angry, testimony of the public, as well as the Director's report, conveyed a clear message that permits were being terminated and cabins forfeited before the death of the permit holder for mere late filing of permit paperwork. Members of the public testified to being told contradictory information by agency staff, and that no appeal process was available for recourse. There

appeared to be a change of agency handling of permit renewals from historic precedent and two differing methods used in one calendar year resulting in confusion among the permit holders.

The Committee finds that the intent of the underlying statute that gave rise to the Personal Use Cabin Permit regulations was that persons be granted a permit to use the cabins until the death of the permit holder. At that point the permit would expire and the cabin, if not removed, would become the property of the state. It was not the intent of the Legislature that a permit would expire because some necessary paperwork was filed late. We therefore recommend that the Agency redo its renewal application phase for the last half of 2009 and allow all prior permit holders to re-file their renewal paperwork. If the agency needs to put new regulations into effect to clarify matters in the future, we recommend that it do so. After the renewals solution, if the agency feels that it needs additional statutory authorization, you are invited to make a proposal through the ARRC for possible introduction to the Legislature. Please know that the Committee understands the large task it is for the agency to manage millions of acres of Alaska land, and we stand ready to work with you for the best interests of all Alaskans.

As you contemplate the need, if any, for new regulations to carry out your duties, the Committee also recommends that some thought be given to the future, and what will be done with the personal use cabins once a permit expires. From the testimony, it does not appear that the agency has a program to deal with the transition of a cabin from private use into the public domain. As a suggestion, perhaps an "Adopt a Cabin" plan much like the road system has for a group to adopt a portion of highway to keep it clean would be a workable idea. Or, competitive sales/lease with the permit holder given some sort of preference as is done with the veterans' preference presently in the lands program. Whatever you decide, it was clear from the testimony that some thought needs to be given to how to handle the cabins in the future, as destroying them seems to be a very unpopular and unwise option.

The Committee trusts that this letter will provide your agency with some valuable guidance in working out balanced and just solutions to the above cited situations. Please feel free to call me if you have any questions.

Very Truly Yours,

Representative Wes Keller
Chairman
ARRC

CC: Governor Parnell
Director Dick Mylius