



LAWS OF ALASKA

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Chapter No.

60

AN ACT

Regulating the procedure on applications for permits for the use of the state's air, land, or water resources; and providing for an effective date.

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

* Section 1. AS 46 is amended by adding a new chapter to read:

CHAPTER 35. ENVIRONMENTAL PROCEDURES COORDINATION.

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

Sec. 46.35.020. PURPOSE. It is the purpose of this chapter to

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

(2) provide to the members of the public a better opportunity to present their views on proposed uses of the state's natural resources and related environmental

concerns before federal, state and local agencies decide on applications for permits;

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

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

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

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

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

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

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

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

(3) whether, in relation to the master application, a public hearing as provided in secs. 50 and 60 of this chapter would be in the public interest.

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

master application.

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

(f) When the applications, properly completed, have been returned to the department, each of the applications shall be transmitted to the appropriate state agency for the performance of its responsibilities of decision making in accordance with the procedures of this chapter.

Sec. 46.35.040. WITHHOLDING FINAL PERMIT. When it appears that the applicant does not own or control the land or water necessary for the siting of the project in the master application, the department shall continue the proceedings under this chapter but may withhold the final permit until the applicant has obtained ownership or control of the land or water necessary for the site of the project. If the applicant has applied for land or water necessary for the siting of the project from the state or a municipality of the state, the state agency or municipality shall promptly adjudicate the application for the land or water filed by applicant.

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

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

(c) If the responses received by the department from state agencies under sec. 30(f) of this chapter unanimously state the position that a public hearing concerning a master application is not necessary in the public interest, and the department, after a careful evaluation, taking into consideration all interests involved, including the

opportunity for members of the public to present views, agrees, the provisions of (a) of this section pertaining to the time and place of a public hearing shall not be included in the notice. In that case the notice shall state that members of the public may present their views and supporting materials in writing to the department regarding any of the permits applied for within 30 days after the last date of publication of the notice in a newspaper.

Sec. 46.35.060. PUBLIC HEARING. (a) Except as provided in sec. 50(b) of this chapter, before a final decision is made on a permit application relating to a project subject to the procedures of this chapter, a public hearing shall be held in or near the municipality in which all or a major part of the proposed project is to be constructed or operated, or, if the project is not to be constructed or operated in a municipality, the hearing shall be held at a location reasonably convenient to the site of the proposed project. The hearing shall be held in accordance with the notice given under sec. 50(a) of this chapter. At the hearing the applicant may submit any relevant information and material in support of his applications, and members of the public may present relevant views and supporting materials relating to any or all of the applications being considered.

(b) Each state agency having an application for a permit before it under sec. 50(a) of this chapter shall be represented at the public hearing by its commissioner or his designee. The commissioner of the department, his designee, or a hearing officer appointed by the governor, shall chair the hearing; however, the representative of any state agency other than the department within whose jurisdiction a specific application lies shall conduct the portion of the hearing pertaining to submission of information, views, and supporting materials which concern that application. The chairman may continue a hearing from time to time and place to place.

(c) No provisions of AS 44.62 apply to the hearing conducted under this section, and the hearing shall be conducted for the purpose of obtaining information for the assistance of state agencies and not as a trial or adversary proceeding.

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

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

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

(b) In a situation where a notice is provided under sec. 50(b) of this chapter, the department shall, 30 days after the last notice publication in the newspaper, submit a copy of all views and supporting material received by it to each agency as described in the notice as having an application before it. At the same time, the department shall notify each state agency, in writing, of the date by which final decisions on applications shall be forwarded to the department. That date shall be no later than 90 days after the date of last publication of the notice, but may be extended by the department for reasonable cause.

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

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

(e) Each state agency having jurisdiction to approve or deny an application for a permit shall have the power vested in it before the effective date of this Act to make such determinations. Nothing in secs. 30 - 70 of this chapter lessens or reduces these powers, and secs. 30 - 70 of this chapter modify only the procedures to be followed in the carrying out of the powers.

(f) A state agency, in the performance of its responsibilities of decision making under this chapter, may request or receive additional information from an applicant and others before or after the public hearing.

Sec. 46.35.080. WITHDRAWAL OF AGENCY FROM PARTICIPATION. (a) A state agency responding affirmatively under sec. 30(b) of this chapter may withdraw from participation in the processing provided in secs. 30 - 70 of this chapter at any time, by written notification to the department, if it subsequently appears to the state agency that it has no permit programs under its jurisdiction applicable to the project.

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

Sec. 46.35.090. ADMINISTRATIVE AND JUDICIAL REVIEW.
(a) A person aggrieved by a final decision issued under

sec. 70(d) of this chapter may file a notice of appeal with the commissioner requesting an adjudicatory hearing within 30 days of transmittal of the final decision to the person. A failure to file a timely notice of appeal constitutes a waiver of the person's right to review the final decision, unless the failure was due to circumstances beyond the applicant's control.

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

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

(d) Appeals shall be heard jointly by the commissioner, or his designee, of each agency which rendered a final decision under sec. 70 of this chapter for which the person requesting the hearing is aggrieved. The commissioner, or his designee, of each agency shall decide only that portion of the appeal which involves his agency.

(e) The commissioner, after consultation with other state agencies and local governments, shall adopt regulations governing the conduct of adjudicatory hearings under this section. The commissioner may enter into cooperative agreements with local governments and federal agencies for the joint holding of adjudicatory hearings. To the extent feasible, regulations adopted under this section shall conform to adjudicatory hearing procedures for the review of permit decisions under AS 30.25 and AS 46.03. Notwithstanding AS 44.62.330(a)(44), adjudicatory hearing procedures to review permit decisions under this chapter, or under AS 30.25 or AS 46.03, need not conform to the Administrative Procedure Act (AS 44.62.330 et seq).

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

Sec. 46.35.100. TIME. It is the sense of the legislature that time is of the essence in the processing of applications under this chapter. Whenever a section in this chapter states a time within which an act or a review is to be completed, the legislature has determined that the time allotted is adequate for a responsive state agency or municipality to complete the act or review. If unusual conditions prevent this from happening, it is the sense of the legislature that minimum extensions of the period established in this chapter may be granted upon a determination that the delay occurred beyond the control of the reviewing agency or municipality.

Sec. 46.35.110. APPLICATION. Notwithstanding any other provisions of regulation or statute relating to the processing of application for permits, the procedures set

out in this chapter are exclusive for applications filed under sec. 30 of this chapter. The procedures of this chapter are in lieu of any procedures otherwise provided by law or regulation, and are to be followed by a state agency in ruling upon those applications.

Sec. 46.35.120. FEE SCHEDULES. Fee schedules previously established or authorized by law for an application for a permit continue to apply. The department shall collect the fees and forward them to the appropriate state agency.

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

(b) Approval of an application for certification as provided in this section shall not eliminate any requirements of ordinances administered by a local government. A ruling by local government denying an application for certification is not appealable under this chapter, except that the denial of an application for certification under (a) of this section does not preclude the applicant from filing an application under a different statute or procedure.

Sec. 46.35.140. APPLICABILITY OF OTHER LAWS. Nothing in this chapter modifies in any manner the applicability of a land use law or regulation or local zoning ordinances to land of a state agency.

Sec. 46.35.150. REGULATIONS AND AUTHORITIES. The department may adopt regulations to implement the provisions of this chapter.

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

(b) Each regional office of the department and other

offices as the department may establish shall provide a master application to any person requesting it. The department shall provide information, forms, instructions, and assistance in the completion of a master application under this chapter to a person requesting assistance.

Sec. 46.35.170. CONFLICTS AND COMPLIANCE WITH FEDERAL REQUIREMENTS. (a) If any part of this chapter is found in conflict with federal requirements regarding the allocation of federal funds to the state, that part of this chapter is inoperative to the extent of the conflict regarding the agencies affected, and the determination shall not affect the operation of the remainder of this chapter.

(b) The department, to the extent necessary to comply with procedural requirements of federal law relating to permit systems operated by the state, may modify the notice, timing, hearing and related procedural matters provided in this chapter.

Sec. 46.35.200. DEFINITIONS. In this chapter

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

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

(3) "local government" means a city or borough including a municipality unified under AS 29.68.240 - 29.68.440;

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

(A) waste water disposal permit -- AS 46.03.100, 18 AAC 72;

(B) solid waste disposal permit -- AS 46.03.100, 18 AAC 60;

(C) air emissions permit -- AS 46.03.150, 18 AAC 50.120;

(D) pesticides permit -- AS 46.03.320, 18 AAC 90;

(E) surface oiling permit -- AS 46.03.740, 18 AAC 75;

(F) open burning permit -- AS 46.03.020, 18 AAC 50.120;

(G) anadromous fish protection permit -- AS 16.05.870, 5 AAC 95.100;

(H) critical habitat area permit -- AS 16.20.250 - 16.20.260;

- 16.20.050 (I) state game refuge land permit -- AS
- 16.20.060;
- (J) encroachment permit -- AS 19.25.200;
- (K) utility permit -- AS 19.25.010;
- (L) driveway permit -- AS 19.05.020, 17
AAC 10.020;
- (M) state park incompatible use permit --
AS 41.20.020, 11 AAC 18.010;
- (N) access roads permit -- AS 41.20.020,
11 AAC 18.020;
- (O) water well permit -- AS 31.05.030, 11
AAC 22.140;
- (P) brine or other salt water waste disposal
permit -- AS 31.05.070, 11 AAC 22.250;
- (Q) coal development permit -- AS 27.20.-
010, 11 AAC 46.010;
- (R) right-of-way and easement permits --
AS 38.05.330, 11 AAC 58.200;
- (S) special land use permit -- AS 38.05-
.035, 11 AAC 58.210;
- (T) tidelands permit -- AS 38.05.320, 11
AAC 62.710;
- (U) tidelands right-of-way or easement
permit -- AS 38.05.320, 11 AAC 62.810;
- (V) limited personal use permit -- AS
38.05.320, 11 AAC 62.820;
- (W) permit to appropriate water -- AS
46.15.040, 11 AAC 72.050;
- (X) dam construction permit -- AS 46.15.-
040, 11 AAC 72.060;
- (Y) preferred use permit -- AS 46.15.040,
11 AAC 72.160;
- (Z) permit for use of timber or materials
-- AS 38.05.110, 11 AAC 76.185;
- (AA) authorization for tidelands transpor-
tation -- AS 38.05.110, 11 AAC 76.205;
- (BB) special material use permit -- AS
38.05.115, 11 AAC 76.540;
- (CC) mineral and geothermal prospecting
permits -- AS 38.05.145;
- (DD) tide and submerged lands prospecting

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permit -- AS 38.05.250;

(EE) surface use permit -- AS 38.05.255, 11 AAC 86.600;

(FF) burning permit during fire season -- AS 41.15.050, 11 AAC 92.010;

(GG) miscellaneous state land use permit -- AS 38.05.035, 11 AAC 96.010;

(HH) right-of-way permit -- AS 38.05.330;

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

(6) "processing" and "processing of applications" means the entire process followed in relation to the making of decisions on an application for a permit and review of it as provided in secs. 30 - 80 of this chapter;

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

(8) "state agency" means a state department, commission, board or other agency of the state; for the purposes of this chapter "state agency" also means a local or regional air pollution control authority established under AS 46.03.210.

Sec. 46.35.210. SHORT TITLE. This Act may be cited as the Environmental Procedures Coordination Act.

* Sec. 2. AS 46.03.020 is amended by adding a new paragraph to read:

(11) after consultation with other state agencies and local government officials, identify and propose for addition or deletion, by regulation, other licenses, permits or authorizations for which the provisions of ch. 30 of this title are applicable, and report annually to the legislature the permits which have been included or deleted.

* Sec. 3. The department, after consultation with other state agencies and local governments, shall submit to the legislature by January 1, 1979, a report setting out the results of the experience under this chapter together with any recommendations and views pertaining to ways and means of improving the procedures and otherwise satisfying the purposes of this chapter.

* Sec. 4. This Act takes effect October 1, 1977.