

**ALASKA DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**



18 AAC 50 AIR QUALITY CONTROL

Response to Comments on October 20, 2021, Proposed Regulations

April 18, 2022

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Introduction

This document provides the Alaska Department of Environmental Conservation's (DEC) response to public comments received regarding the October 20, 2021, draft regulations pertaining to electronic submission requirements and consistency of reporting methodologies for air permits.

The details describing the proposed regulation changes were presented in DEC's public notice dated October 20, 2021. DEC received comments via SmartComment from the following:

- Kevin Mathews
- InDyne Inc./Jim Ward
- Alyeska Pipeline Service Company (Alyeska)
- Alaska Power & Telephone Company (AP&T)
- Clinton DesJarlais
- Petro Star Inc. (PSI)

This document responds to the received comments.

Opportunities for Public Comment

The public notice dated October 20, 2021, provided information on the opportunities for the public to submit comments. The deadline to submit comments was December 13, 2021, at 11:59 p.m. This provided a 54 day period for the public to review the proposal and submit comments.

Opportunities to submit written comments included submitting electronic comments using DEC's electronic SmartComment system, submitting electronic comments via email, submitting written comments via facsimile, and submitting written comments via email.

The Department's public notice stated that DEC would hold a public hearing on November 30, 2021, if the Department received a request to hold the hearing by November 19, 2021. The Department received no requests and cancelled the hearing. The Department posted notice of the cancellation on the State, Department, and Division of Air Quality public notice web pages on November 22, 2021, as stated in the public notice.

Comments on 18 AAC 50 Regulations

Comments:

A commentator wanted to know if the new 18 AAC 59.270(a) language would allow for e-mail submission of documents. He stated his military clients do not want to have to create a myAlaska account for the sole purpose of having to sign Permittee Portal submissions. If the Permittee Portal will be mandatory, he requested that the air program manager upload signed documents.

Response:

As proposed, the language in 18 AAC 50.270(b) states:

(b) Upon department written approval, a person may submit required records or information using methods other than the method required in (a) of this section. If the person does not have reasonable access to equipment necessary to access the department's air quality Permittee Portal, the department may approve submission by alternative methods, including by letter, form, or electronic mail. Approval under this subsection is temporary and may not remain effective for more than one calendar year without the department's written extension of the approval.

Therefore, upon approval on a case-by-case basis, it would be possible to submit documents by e-mail. However, for efficiency purposes, the state is moving toward on-line practices for many state business transactions. A myAlaska account is already required for conducting many types of business with the state.

Comments:

Commentor feels that the new proposed language in 18 AAC 50.275(a) is not clear as the Department is already authorized to require "*all stationary sources operating in the state [to] report actual emissions as required under 18 AAC 50 to the department, either upon request or to meet individual permit requirements.*" Commentor wants to know how is the new rule not redundant, and how is it necessary?

Response: The proposed rule is not redundant, as it now makes the requirement to report actual emissions an applicable requirement for all stationary sources operating within the State. The previous (and still valid) Standard Permit Condition only applied to a select set of permitted sources, and thus stationary sources operating below permit requirements levels did not have that requirement.

Comments:

Commentor states that the proposed language in 18 AAC 50.275(b) is vague and

potentially problematic because emission factors and calculation methods can change over time. Because the Department already has the discretion to accept or reject emission factor and calculation methods, it is unclear what benefit the proposed regulation provides.

Response: The proposed rule does not change the Department's discretion to adopt or reject emission factors or calculation methods, what the proposed rule accomplishes is for a stationary source that reports emissions under one set of regulatory requirements (e.g. annual emission fees) and again under a second regulatory requirement (e.g. annual compliance certification) that the stationary source will use the same emission factor in both calculations, and not "cherry pick" which emission factor works best for a given situation. The Department is finding multiple reports that often do not align and yet purport to report the same input value (actual emissions), because different emission factors were used trying to achieve some leverage on reported values. Actual emissions reported under multiple reporting requirements should be the same – your stationary source's actual emissions do not change for the year just because the source calculated them differently using different emission factors. This will simplify reporting requirements and data validation by the Department.

Comment:

Commentor requested that the Department establish a working group of users to help develop new electronic forms.

Response:

The Department has to develop forms that comply with state and federal requirements. The proposed regulations allow for public participation in the form development process through reviewing, testing, and commenting on new forms.

Comment:

Alyeska Pipeline Service Company (Alyeska) commented that because annual compliance certifications (ACC) have to be submitted to EPA as well as DEC, why couldn't Permittees upload existing ACC reports to the Permittee Portal like they do for Facility Operating Reports and NSPS semi-annual reports, rather than DEC developing a new electronic form?

Response:

The existing submission options for ACCs, FORs, and NSPS semi-annual reports are not electronic forms at this time. Rather, these reports and certifications can all be uploaded electronically to the Permittee Portal now. In these regulations, the Department is establishing the process by which electronic forms will be developed in the future, which will streamline submission procedures for all parties.

Comment:

Alyeska asked whether Permittees will have to input all information required for the ACC forms in the Permittee Portal or will the forms be pre-populated in the Portal?

Response:

Pre-loaded information is a possibility through the Portal; for those electronic forms already implemented, there is some information that is pre-populated. The Department can investigate what information is available for pre-population as ACC forms are developed. The Department will be allowing for industry/public participation in the form development process through reviewing, testing, and commenting on new forms, so there will be opportunities to consider what data exists that would be appropriate to use in pre-populating forms.

Comment:

Alyeska states that requiring the submittal of Excess Emissions Reports (EER) through the Permittee Portal may cause delays in reporting due to the time-sensitive submittal deadlines and potential unavailability of authorized personnel. Permittees might be required to add and train additional personnel who would be authorized to submit via the Portal and rely on the Portal being operational when the report is due. Therefore, they strongly recommend that an alternate method of submittal be allowed for EERs.

Response:

In the event of the Portal not being operational or the unavailability of authorized personnel to submit online, Permittees are able to submit via alternate means. The current Standard Permit Condition for Excess Emissions and Permit Deviation Reports already allows the following non-Portal submission options: email, postal mail, fax, or phone notifications (this option requires a written follow up report).

Comment:

Alaska Power & Telephone Company (AP&T) comments on 18 AAC 50.270:

18 AAC 50.270—Electronic Submission Requirements. Alaska Air Quality Control Statute. ADEC proposes to add a new section 18 AAC 50.270. AS 46.14.140(a) states (emphasis added):

The department shall adopt regulations to address substantive and procedural elements of the emission control permit program established under this chapter that are not addressed in statute, ***except elements that relate only to the internal management of the department and do not affect the public or govern the way the department deals with the public.*** The regulations must be reasonable and adequate, and provide flexibility in the operation of

a stationary source consistent with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and applicable federal regulations...

Although AP&T supports enhanced streamlined methods of recordkeeping and reporting developed in collaboration with the clients as envisioned in Mr. Plosay's December 14, 2017 Electronic Reporting letter, AP&T has found that air-online-service tools miss their intended mark as discussed in AP&T's December 2019 public comments on the Department's Standard Permit Condition proposal. Nor has the Department seriously considered recommendations to improve electronic forms. For the sake of brevity, AP&T will not reiterate those discussions.

The 2021 proposed regulation, as written, merely inserts a placeholder for yet to be developed electronic forms "available within the Permittee Portal" and sets up the department's approach to impose additional electronic submittal obligations upon the regulated community without the benefit of due process or appeal. Specifically (d), (e), (f), and (g) are deficient in that they do not comport with State rulemaking provisions.

By proposing a place holder, the department provides little substance for the public to provide meaningful review and comment on the proposed rulemaking. This approach is counter to State rulemaking manual which prohibits regulators from adopting a prospective rulemaking based on Alaska case law and counter to AS 46.14.140, cited above.

AP&T insists that ADEC develop their reporting tools collaboratively with the affected community and then, after concluding their development, go through formal rulemaking.

AP&T respectfully requests that the Department withdraw this proposal from the packet, engage in collaborative approach to electronic form development as envisioned in their 2017 notice to the regulated community, and after completion of the process, go through proper rulemaking to publish a proposal to incorporate the forms and procedures into the program's regulations, and, if necessary, imposing their use.

Response:

The Department notes that the manner in which Permittees report information is a substantive procedural element of the emission control program. These regulations are drafted to address this requirement. Electronic reporting is a common practice today, and it is reasonable to require Permittees to do so given the accuracy of information and cost associated with receiving and reviewing paper documents when fully functional electronic solutions have existed for years. The Department will continue to take corrective steps to improve usability of the AOS system as we have actively been making changes to the system in pursuit of advancing internal goals to

leverage technology and strive for improvements that create efficiencies. Importantly, the Department notes that we have been successfully receiving reports through AOS for years.

The existence of specific forms for reporting information does not change the underlying requirements of what information is being requested; the proposed changes in this standardized reporting method are specific to this notice. The proposed regulations allow for public participation in the form development process through reviewing, testing, and commenting on new forms. While the forms for all report types are not yet developed, the system and format of reporting has been developed and in use for years.

Comment:

AP&T comments on 18 AAC 50.275:

18 AAC 50.275—Consistency of Reporting Methodologies--The Department proposes to add a new Section to 18 AAC 50. Its supporting description simply states “ADEC is adding a new section to establish requirements for consistency in reporting methodologies for emissions.” It is challenging for the reviewer to acknowledge and appreciate the basis for the change.

18 AAC 50.275(a) is redundant and superfluous to one of the underlying statutes cited in the proposal. AS 46.14.020(b) states: “

(b) The department or a local air quality control program authorized under AS 46.14.400 may require an owner and operator of a stationary source or emissions unit classified under this section to report information to the department or the authorized local program concerning location, size, and height of stacks or area emissions units, processes employed, fuels used, the nature and time periods or duration of emissions, and other information relevant to air quality that is available or reasonably capable of being calculated and compiled.

There is no need or benefit to create additional regulation that simply paraphrases the statute. Therefore, Paragraph (a) should be removed from the proposal and the department should simply rely on its existing statutory authority to collect records from owners and operators to complete the State’s own reporting requirement under 40 C.F.R. Subpart 51, Subpart A.

Regarding the remaining paragraph 50.275(b) It is unclear why ADEC is requiring use of consistent pollution-specific factors and calculation methods for all reporting requirements and for assessable emissions. For example, AP&T’s major sources are required to submit a triennial inventory—the next of which will be due in 2024. The permittee, at their discretion may submit an assessable emission estimate each spring.

Estimating tools continue to evolve as U.S. EPA updates its published AP-42 emission factors, clients revise site-specific emission factors based upon subsequent emission source test records, and agencies improve emission estimating tools.

The term “Actual” is used in 18 AAC under several different context. In 18 AAC 040 the context is NSR/PSD under 40 CFR 51.165 and 40 CFR 52.21(aa); in 18 AAC 50.100--for non-road engines, in 18 AAC 50.225--for owner requested limits, in 18 AAC 50.311--for non-attainment area major stationary sources (40 CFR 51 and 52), In 18 AAC 50.326--for operating permits (40 CFR 71 &72), 18 AAC 50.410 for emission fees—underlying authority being AS 46.14.250—emission fees, 18 AAC 50.502 for Minor Permits for air quality protection (40 CFR 52.21 and AS 46.14.120 & .130), 18 AAC 50.540--for Minor Permit: application (40 CFR 52.21 and AS 46.14.120 & .130).

40 C.F.R Subpart 51 Subpart A is not incorporated by reference for any of these 18 AAC 50 citations listed above, nor have we located it directly referenced in 18 AAC 50. Instead, the reference is buried in an operating permit Standard Permit Condition incorporated by reference which requires Title V sources to submit periodic emission inventories dependent upon source size.

In other words, there are multiple underlying federal and State programs tied to the federal regulatory term of art “Actual Emissions.” PSD pre-construction review (PAL), Nonattainment new source review, Operating permits, Minor Permits, and State emission fees as well as the requirement for Alaska to prepare and submit an emission inventory to U.S. EPA. Each program has a different basis and reason for estimating actual emissions. Emission estimating tools and information change over time warranting flexibility to change emission factors and methodologies between estimates. Therefore, the client should not be compelled to use consistent factors and methods.

Specific permit terms also dictate reporting methodology(ies). If adopted, this proposed regulation may conflict with dozens of existing minor, construction and operating permits which require use of specific emission factor(s) and methodology(ies).

Because of this, AP&T requests that the Department withdraw its proposal to add subparagraph (b) and withdraw its mandate to use consistent methodologies and emission factors for all reports.

If AP&T's request to remove Subparagraph 50.275(b) is rejected, AP&T respectfully requests additional consideration to remove assessable emissions from the subparagraph.

18 AAC 50.410(c) allows a client to project the annual rate of emissions each year based on the most representative information available—at that time. AS 46.14.250(h)(1)(B) also allows the actual rate of emissions through monitoring, modeling, calculations, or other methods acceptable to the Department.

In other words, the emission fee section and its underlying Alaska Statute provides latitude for the client to use alternative methods to calculate their accessible emissions. Please remove the clause "...and assessable..." from the proposal.

18 AAC 50.275...

(b) For the purposes of reporting actual ~~and assessable~~ emissions under any requirement of 18 AAC 50, stationary sources shall use consistent pollutant-specific emissions factors and calculation methods for all reporting requirements.

Response:

The Department declines to remove Subparagraph 50.275(b) as well as the "...and assessable" emissions clause from the rulemaking proposal final text, as the requirement and underlying objective of the rulemaking are not changed. As stated by the commentor, a permittee may use varying methods to calculate assessable emissions. A permittee under the new rule shall, however, use this same method for all other emissions calculations for *consistency*. A permittee may continue to use "the most representative information available" but then that information should also be the information used for all other calculations, since it is, as the commentor identified, the most representative. If the stationary source emitted certain amounts of regulated pollutants, then the amount of pollutants emitted does not change because an ancillary permit or regulatory requirement asks for those numbers as part of a different reporting requirement. The base objective of the new regulation serves not only the Department, but also the permittee. If emission calculations have been performed once, then no secondary calculations need be performed for a different reporting requirement, which removes the burden from the permittee to make multiple calculations for different reporting requirements.

Comment:

Petro Star Inc. (PSI) proposed additional language for 18 AAC 50.270, shown below in red, to allow permittees to submit data by an alternative reporting method without prior approval from the Department if they cannot submit via the electronic submission method due to conditions outside their control, such as earthquakes or health pandemics.

Please add 18 AAC 50.270(i) to read:

(i) In cases that the Permittee cannot submit the data via Electronic Submission caused by conditions outside their control, all reports required by the permit may be submitted by an alternative reporting method without prior approval from the Department.

Response:

Events outside of the Permittee's control are already covered through our Department Notification Form and existing discretion. In situations where the Department agrees that conditions are outside the Permittee's control, the Department reserves discretion over determining compliance; therefore, the Department is requesting Permittees make this request in advance whenever possible. In the example of any emergent situations where the Permittee cannot reasonably obtain prior approval – they should use the ADEC Notification Form as found in their permit. In the event of the Portal not being operational or the unavailability of authorized personnel to submit required data online, permittees are able to contact ADEC for approval on a case by case basis to submit the information via alternate means including email, postal mail, fax, or phone notifications (this option requires a written follow up report).

Comment:

PSI proposed adding language to 18 AAC 50.275(b), as shown below in red, that would spell out where emissions factors and calculations methods may have already been established, to align the language more closely with language found in Standard Permit Condition I and provide consistency throughout the regulations.

Please amend the following Condition [18 AAC 50.275(b)] as indicated below for better clarity.

(b) For the purposes of reporting actual and assessable emissions under any requirement of 18 AAC 50, stationary sources shall use consistent pollutant-specific emissions factors and calculation methods, as established in the recent permit application PTEs, approved source testing report emission factors, or other emission factors previously accepted by the Department, for all reporting requirements.

Response:

The Department declines to add the additional text as proposed by the commenter because it may limit or conflict with other requirements. An emission factor used during PTE calculations may not be representative of any true emissions because of the wide range of uncertainty on regulatorily-allowed emissions calculations prior to source construction, AP-42 for one example. The proposed regulation does nothing to limit those already approved changes in emission calculation emission factors, but it only requires that the same method be used *consistently* for emissions calculations until other approved methods are adopted.

Comments that are Out of Scope for these Proposed Regulation Revisions

Comment:

AP&T requested that DEC adopt by reference the November 13, 2019, federal RICE rule revisions into 18 AAC 50.040.

Response:

The RICE rule revisions were adopted by reference in the revisions to 18 AAC 50 that were public noticed on April 24, 2020, and that went into effect on November 7, 2020.

Comment:

Commentor requested that we not add any references to federal regulations or requirements from Washington D.C. to the regulations and that we allow people in local communities to form groups to address local concerns.

Response:

These comments do not relate to the contents of the proposed regulations. The Department is required to refer to Federal regulations adopted by reference as part of the establishment and maintenance of the approved program in order to provide a regulatory citation and basis for the <any> underlying requirement.