

Division of Air and Water Quality
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Director's Office: (907) 465-5100
Fax: (907) 465-5129
TTY: (907) 465-5010

October 29, 1997

Mr. William D. Steigers
Steigers Corporation
6551 South Revere Parkway, Suite 250
Englewood, CO 80111-6411

Dear Mr. Steigers:

I am responding to your October 17, 1997 request for an Alaska Attorney General's (AG) opinion regarding owner-requested limits under 18 AAC 50.225.

The AG's Office does not provide opinions to the public on matters dealing with interpretation of Alaska Administrative Code. The AG's Office does provide opinions to administrative agencies at the request of a Commissioner. I forwarded your letter to the Alaska Department of Environmental Conservation's (ADEC) Assistant Attorney General, Steven Daugherty, for advice on how to proceed. We agreed that the interpretation you have requested can be provided by my office.

You asked if a facility may request a limit under 18 AAC 50.225 to avoid a single requirement under AS 46.14, without having to avoid all applicable requirements. The short answer to your question is yes. However, I must qualify this answer.

The statutory authority for 18 AAC 50.225 is drawn from AS 46.14.140(a)(11). Under this statute, ADEC's authority is limited to allowing the owner of a facility to avoid the requirement to obtain a permit. The regulation cannot be used for purposes other than permit-avoidance. In regulation, ADEC further constrained the use of 18 AAC 50.225 to only those situations where the owner is limiting allowable or potential emissions for permit avoidance.

Although an owner can use 18 AAC 50.225 to avoid the requirement for a construction or operating permit, the owner must carefully check the applicability of other permit requirements to determine the usefulness of the regulation.

For example, suppose an owner wants to avoid a construction permit required for a new facility by virtue of its classification under 18 AAC 50.300, or for a modification by virtue of its classification under 18 AAC 50.300(h).

In order to avoid classification, ADEC requires the owner to obtain a construction permit under 18 AAC 50.305(a)(4). So in this case, 18 AAC 50.225 does not preempt the need for a construction permit.

Please call if you need additional explanation.

Sincerely,

John M. Stone, Chief
Air Quality Maintenance Section

JMS/pal (h:\air\jstone\steigers.wpd)

cc: Robert W. Hughes, ADEC/AQM, Juneau
James Baumgartner, ADEC/AQM, Juneau
Alfred K. Bohn, ADEC/AQM, Anchorage
Robert Cannone, ADEC/AQM, Fairbanks
Bill MacClarence, ADEC/AQM, Anchorage
John F. Kuterbach, ADEC/AQM, Juneau

Web Page