

**Department of Environmental Conservation
Division of Environmental Health**

**Pesticide Regulation Revision
18 AAC 90**

**Public Noticed
June 30, 2017 – August 4, 2017**

**RESPONSIVENESS SUMMARY
October 5, 2017**

INTRODUCTION

Summary of Project

The Alaska Department of Environmental Conservation (DEC) proposed to adopt regulation changes in Title 18, Chapter 90 of the Alaska Administrative Code (18 AAC 90), dealing with pesticide product registration, certified applicator categories and process, automatic misting systems, school definition, tenant notification, and other clarifications of regulations. The DEC Commissioner adopted this regulations package on September 21, 2017.

The Lieutenant Governor signed the adopted changes to 18 AAC 90 on September 27, 2017, with an effective date of October 27, 2017.

Opportunities for Public Participation

The 35 day public comment period for the proposed regulation changes began on June 30, 2017, when DEC published notice in the Alaska Dispatch News. The public comment period ended on August 4, 2017. Publication included information about the proposed changes and the opportunity to submit comments. DEC also posted the public notice online at <http://dec.alaska.gov/eh/pest> and <http://dec.alaska.gov/Commish/public-notices.htm>.

DEC sent informational packets by e-mail or US Postal Service to interested parties, including current or recently certified pesticide applicators and pesticide product registrants. Packets included a “Dear Interested Party” letter, which directed interested people to the DEC website to access the proposed regulation revisions.

Decision Process and Purpose of Responsiveness Summary

The purpose of this document is to summarize and respond to comments received during the public comment period. DEC received two written comments on the regulation revision.

The following pages provide information about DEC’s decision process, a summary of the comments that were submitted by one or more individuals during the public comment period, and DEC’s response to those comments.

BACKGROUND INFORMATION

Recent federal changes to pesticide applicator certification and recordkeeping regulations in 40 CFR 171 were scheduled to take effect on March 21, 2017 (note: subsequent to adoption of this regulations package, EPA extended the effective date for changes to 40 CFR 171 to May 22, 2018). The state must revise its own regulations to bring regulations into compliance and maintain primacy of the program.

During this federally mandated revision, some additional changes were also recommended to eliminate loopholes, clarify intent, conform the regulation to current technology and practice, provide better regulatory support for existing program practice, and/or address developing pesticide issues. Changes to several areas were proposed.

Recordkeeping

Amend 18 AAC 90.410, 18 AAC 90.415, and 18 AAC 90.420 to clarify existing recordkeeping items for pesticide applicators and to add new items which are required to come into compliance with the newly-adopted federal regulations in 40 CFR 171.

Pesticide Product Registration

Amend 18 AAC 90.205 to clarify that pesticide product registration is valid for the calendar year only and that annual renewal is required.

Fee Update

Amend 18 AAC 90.850 to equalize cost of online versus paper registrations of pesticide products, needed to simplify current fee structure and to increase revenue.

School Definition

DEC proposed amending 18 AAC 90.990 to expand the definition of school to include licensed childcare facilities. Daycares and preschools, which house some of the most vulnerable populations, should be subject to the same protective measures as schools for older children. These include using only certified pesticide applicators and notifying parents when pesticides will be used.

The adopted version of the regulations does not include any change to the school definition, as the proposed change, as written, was rejected by the Alaska Department of Law. DEC may propose regulations with specific requirements applicable to child care facilities in a future package.

Tenant Notification

Add a new section, 18 AAC 90.635, to set standards for tenant notification of pesticide application in response to complaints and compliance concerns.

Automatic Misting System Protections

Amend 18 AAC 90.610 to add protective measures for automatic misting systems. Automatic misting systems must monitor conditions and cease operation when ambient conditions are unsafe or not conducive to pest control in order to address concerns over pesticide safety, in response to developing technology and industry practices as well as complaints and compliance concerns.

Certified Pesticide Applicator Categories

Amend 18 AAC 90.300 to eliminate the option of a non-certified applicator applying restricted use pesticides under a certified applicator's direction and to add and modify pesticide applicator certification categories. These changes are in response to industry need and are necessary to come into compliance with the newly-adopted federal regulations in 40 CFR 171.

Pesticide Applicator Certification Process

Amend 18 AAC 90.305 by removing oral examination as an option for certification procedures and amend 18 AAC 90.310 to clarify the process for renewing applicator certification. These changes are needed to eliminate loopholes, clarify intent, provide better support for existing program practice, and come into compliance with the newly-adopted federal regulations in 40 CFR 171.

Also amend 18 AAC 90.620 to clarify when insurance coverage is required for certified applicators.

Miscellaneous Changes

Amend 18 AAC 90.990 to add definitions, including “aircraft”, “fumigant”, and “regulated pest” needed to clarify existing terms in regulations.

Amend 18 AAC 90.615 to clarify who must follow the requirements for storage of restricted-use pesticides.

RESPONSE TO COMMENTS

1. Comment Summary:

There needs to be a certified applicator category that would allow for commercial agricultural pest control. None of the other categories would be relevant to this use.

Response:

None of the existing or proposed categories address commercial agricultural pest control activities. DEC had proposed expanding the existing “Private Agricultural Pest Control” category to include all private pest control, not just agricultural. This would include use of restricted use pesticides on an individual’s own property, but would not allow for commercial application.

DEC recognizes the need for a category for commercial agricultural pest control. As a result, DEC modified the existing “private agricultural pest control” category to create “agricultural pest control”. The revised category applies to all agricultural pest control, both private and commercial. DEC will modify procedural policies to allow for issuing certification for other types of private pesticide application.

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2. Comment Summary:

There needs to be a certified applicator category for pest control on industrial and tank farm sites.

Response:

DEC had proposed removing tank farms and industrial sites from the “Right of Way Pest Control” category, as these sites do not fit the definition of a right of way. As the commenter pointed out, this would have left tank farms and industrial sites with no applicable category of certification. Since the methods of pest control are similar for these sites, the adopted regulations leave tank farms and industrial sites in this category.

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3. Comment Summary:

It is unclear whether the term “turf” includes agricultural uses.

Response:

The term “turf” is used only in Category Four, Ornamental Plant and Turf Pest Control. There are no proposed changes to this category. This category is intended for pesticide application on ornamental plants, landscaping, and lawns. It is not intended for turf crops, which are an agricultural crop.

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4. Comment Summary:

There is no information about the implementation of new category certifications or how existing certifications would be modified to meet new categories.

Response:

Procedure and implementation are not typically written into regulation. DEC will work closely with applicators to transition to new categories. In most cases no modifications will be needed. For some applicators new cards will need to be issued to reflect modified categories. When an existing category has been split into more than one new category, existing applicators will receive cards reflecting both categories.

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5. Comment Summary:

Our equipment automatically mixes and applies a spray, so we then have to calculate application rate, total volume, and dilution to meet record keeping requirements. The information required for record keeping should be interchangeable because not all items apply.

Response:

Information items required by State of Alaska record keeping regulations reflect federally mandated requirements.

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6. Comment Summary:

One commenter submitted a number of comments related to certified applicator written examination policies and procedures.

Response:

Examination policies and procedures are not addressed through regulation. DEC will address these concerns separately.