

18 AAC 83 with Amendments

This document contains the following:

- Order Adopting Changes to Regulations of the Department of Environmental Conservation
- Memorandum from the Office of the Lieutenant Governor
- 18 AAC 83 Amendments
- 18 AAC 83

ORDER ADOPTING CHANGES TO
REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The attached 4 pages of regulations, dealing with 18 AAC 83, Alaska Pollutant Discharge Elimination System are hereby adopted and certified to be a correct copy of the regulation changes that the Department of Environmental Conservation (DEC) adopts under the authority of AS 46.03.020; AS 46.03.100; and AS 44.46.020; and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and AS 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, DEC paid special attention to the cost to private persons of the regulatory action being taken. The Department of Environmental Conservation also gave special attention to alternate practical methods in this regulatory action, as required by AS 46.03.024.

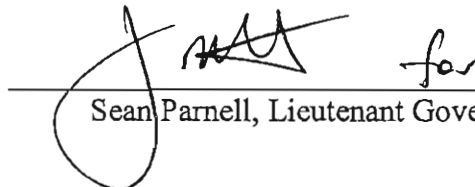
The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

DATE: September 19, 2008
Juneau, Alaska


Larry Hartig, Commissioner

FILING CERTIFICATION

Jason M. Hawley for
I, Sean Parnell, Lieutenant Governor for the State of Alaska, certify that on September 23, 2008, at 3:13 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.


Sean Parnell, Lieutenant Governor

Effective: October 23, 2008.

Register: 188, January 2009

SEAN PARNELL
LIEUTENANT GOVERNOR
www.lt.gov.state.ak.us

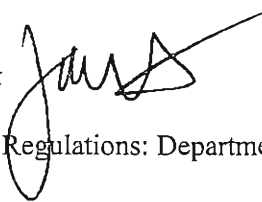


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STATE OF ALASKA
OFFICE OF THE LIEUTENANT GOVERNOR
JUNEAU

MEMORANDUM

To: Gary Mendivil, AAC Contact
Department of Environmental Conservation
Date: September 23, 2008

From: Jason Hooley
Special Assistant 
Telephone: (907) 465-4082

Re: Filed Permanent Regulations: Department of Environmental Conservation
Alaska Pollutant Discharge Elimination System: 18 AAC 83.010 - .425

Attorney General File: 993-09-0037
Regulation Filed: 9/23/2008
Effective Date: 10/23/2008
Print: 188, January 2009

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis
Eugene Harnett, Administrative Regulation Review Committee
Shalon Szymanski, Administrative Regulation Review Committee
Sharon Morgan, DEC

FOR DELEGATION OF LIEUTENANT GOVERNOR'S AUTHORITY

I, SEAN PARNELL, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, as authorized by AS 44.62.080, designate the following Special Assistant to the Lieutenant Governor to perform the Administrative Procedures Act filing functions of the Lieutenant Governor:

Jason Hooley, Special Assistant, Office of the Lieutenant Governor

IN TESTIMONY WHEREOF, I
have signed and affixed the Seal of
the State of Alaska, at Anchorage, on
July 31, 2007.



SEAN PARNELL
LIEUTENANT GOVERNOR



18 AAC 83.010(g)(2) is amended to read:

(2) 40 C.F.R. 403.1 – 40 C.F.R. 403.18 (General Pretreatment Regulations for Existing and New Sources of Pollution) **and Appendices D, E, and G,** as revised as of **July 1, 2007** [OCTOBER 14, 2006];

(Eff. 7/29/2006, Register 179; ^(am 11/10/2007, Register 184;) am __/__/__, Register __)

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.100
AS 46.03.010 AS 46.03.050 AS 46.03.110

18 AAC 83.015(c)(8)(A) is amended to read:

(A) when an owner or operator of a new source or new discharger proposes to discharge into a water segment

(i) that does not meet applicable water quality standards **or** [;
(ii)] that is not expected to meet those standards even after application of the effluent limitations required by 33 U.S.C.

1311(b)(1)(A); and

(ii) [(iii)] for which the state or interstate agency has performed a pollutants load allocation for the pollutant to be discharged;

(Eff 7/29/2006 Register 179; ^(am 11/10/2007, Register 184;) am __/__/__, Register __)

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.100
AS 46.03.010 AS 46.03.050 AS 46.03.110

18 AAC 83.120(g) is amended to read:

(g) In addition to the general public notice described in (d) of this section, the department shall **provide** [MAIL] a copy of the draft permit and fact sheet and the permit application, if any, to all persons identified in (c)(1)(A), (B), (C), and (D) of this section.

The department will provide a copy of the draft permit, ^{and} fact sheet and the permit application, if any, to EPA at the same time public notice on the draft permit is published.

18 AAC 83.120(m) is amended to read:

(m) Before issuing a final individual APDES permit, the department will provide a copy of the proposed final permit and draft response to comments to the permit applicant for review. **The department will concurrently provide a copy of the proposed final permit and draft response to comments to EPA, unless EPA has previously waived its right to review the proposed final permit.** The department will give the applicant at least five days, not including the weekend or state holidays, to review and discuss the proposed final permit with the department. The applicant may by written notice to the department waive the applicant's right to review and discuss the proposed final permit with the department or agree to a shortened period for that review and discussion. At the time the department provides a copy of the proposed final permit to the applicant under this subsection, the department will also make the proposed final permit available to the public.

The lead-in language to 18 AAC 83.120(o) is amended to read:

(o) The department will transmit to EPA a copy of any significant comments presented in writing ^{IN RESPONSE} pursuant to the public notice of a draft permit and a summary of any significant comments presented at any hearing on a draft permit in accordance with 40 C.F.R. 123.43(c). When the department issues a final permit, the department will issue a response to comments, which must be available to the public. The response must

...

18 AAC 83.120(p) is amended to read:

(p) When a fact sheet has been prepared under 18 AAC 83.115(b), the department ^{will} ~~shall~~ issue a revised fact sheet for the final permit, which must include all of the requirements of 18 AAC 83.115(c), and be available to the public. The department will notify EPA that the final permit, revised fact sheet reflecting the final permit, and response to comments are available on the department's web page. (Eff.

^(am 11/10/2007, Register 184;)
7/29/2006, Register 179, ^{am} ~~am~~ __/__/__, Register __)

| | | | |
|------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.425(c) is amended to read:

(c) All permit conditions must be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulation or requirement must be given in the permit. The monitoring and reporting requirements in APDES permits must be limited to those requirements authorized [MANDATED] by law,

including 33 U.S.C. 1318 (sec. 308, Clean Water Act), and any legal settlements, and those necessary to ascertain compliance with the effluent limitations contained in the permit and with state water quality standards.

18 AAC 83.425(d) is amended to read:

(d) In addition to the monitoring and reporting conditions that are contained in an APDES permit under (a) - (c) of this section, the department may require the owner or operator of any point source to perform any activity listed in 33 U.S.C. 1318 [33 U.S.C. 1318(a)(A)] whenever the department determines it is necessary to carry out the objectives set out in 33 U.S.C. 1318 [33 U.S.C. 1318(a)]. (Eff. 7/29/2006, Register 179; am __/__/__, Register __)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

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Chapter 83. Alaska Pollutant Discharge Elimination System Program.

Article

1. Purpose, Applicability, and Term (18 AAC 83.005 – 18 AAC 83.020)
2. Permit Process (18 AAC 83.105 – 18 AAC 83.175)
3. General Permits (18 AAC 83.205 – 18 AAC 83.215)
4. Permit Application Requirements (18 AAC 83.305 – 18 AAC 83.385)
5. Permit Conditions – General (18 AAC 83.405 – 18 AAC 83.560)
6. Requirements and Permit Conditions Specific to Type of Discharge
(18 AAC 83.605 – 18 AAC 83.640)
7. General Provisions (18 AAC 83.905 – 18 AAC 83.990)

Not Official Law of Alaska**Article 1. Purpose, Applicability, and Term.****Section**

- 005. Purpose, scope, and applicability of Alaska Pollutant Discharge Elimination System (APDES) program
- 010. Requirements, guidelines, and policy documents adopted by reference
- 015. Duty to obtain a permit; exclusions and prohibitions
- 020. Term of permit

18 AAC 83.005. Purpose, scope, and applicability of Alaska Pollutant Discharge Elimination System (APDES) program. (a) The purpose of this chapter, 18 AAC 83.005 – 18 AAC 83.990, is to implement the Alaska Pollutant Discharge Elimination System (APDES) point source wastewater discharge program in a manner that meets the purposes of AS 46.03 and in accordance with 33 U.S.C. 1342 (Clean Water Act, sec. 402) and the requirements adopted by reference at 18 AAC 83.010.

(b) The permit requirements and standards established and adopted in this chapter apply to the discharge of pollutants from any point source into waters of the United States.

(c) The state's administration of the APDES program and the requirements and standards adopted in this chapter will apply after the date the commissioner certifies to the lieutenant governor that the United States Environmental Protection Agency has approved, under 33 U.S.C. 1342(b), the state's administration of the APDES program.

(d) This chapter does not apply to the use or disposal of sewage sludge when that use or disposal is regulated under 40 C.F.R. Part 503, as revised as of July 1, 2006. (Eff. 7/29/2006, Register 179; am __/__/____, Register__)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.010. Requirements, guidelines, and policy documents adopted by reference. (a) The provisions of 40 C.F.R. 2.208 (Substantive Criteria for Use in Confidentiality Determinations), as revised as of July 1, 2005, are adopted by reference.

(b) The following provisions of 40 C.F.R. Part 122 (EPA Administered Permit Programs: The National Pollutant Discharge Elimination System), as revised as of July 1, 2006, are adopted by reference:

- (1) 40 C.F.R. 122.23 (Concentrated Animal Feeding Operations);
- (2) 40 C.F.R. 122.25 (Aquaculture Projects);

Not Official Law of Alaska

- (3) 40 C.F.R. 122.26 (Storm Water Discharges);
 - (4) 40 C.F.R. 122.29(d) (Effect of Compliance with New Source Performance Standards);
 - (5) 40 C.F.R. 122.30 – 40 C.F.R. 122.37 (Requirements and Guidance for Small Municipal Separate Storm Sewer Systems);
 - (6) 40 C.F.R. 122.42(e) (Additional Conditions Applicable to NPDES Permits for Concentrated Animal Feeding Operations);
 - (7) Appendix A to 40 C.F.R. Part 122 (NPDES Primary Industry Categories);
 - (8) Appendix C to 40 C.F.R. Part 122 (Criteria for Determining a Concentrated Aquatic Animal Production Facility);
 - (9) Appendix D to 40 C.F.R. Part 122 (NPDES Permit Application Testing Requirements);
 - (10) Appendix J to 40 C.F.R. Part 122 (NPDES Permit Testing Requirements for Publicly Owned Treatment Works).
- (c) The following provisions of 40 C.F.R. Part 125 (Criteria and Standards for the National Pollutant Discharge Elimination System), as revised as of July 1, 2006, are adopted by reference:
- (1) Subpart A (40 C.F.R. 125.1 – 40 C.F.R. 125.3; Criteria and Standards for Imposing Technology-Based Treatment Requirements);
 - (2) Subpart B (40 C.F.R. 125.10 – 40 C.F.R. 125.11; Criteria for Issuance of Permits to Aquaculture Projects);
 - (3) Subpart D (40 C.F.R. 125.30 – 40 C.F.R. 125.32; Criteria and Standards for Determining Fundamentally Different Factors);
 - (4) Subpart G (40 C.F.R. 125.56 – 40 C.F.R. 125.68; Criteria for Modifying Secondary Treatment Requirements);
 - (5) Subpart H (40 C.F.R. 125.70 – 40 C.F.R. 125.73; Criteria for Determining Alternative Effluent Limitations);
 - (6) Subpart I (40 C.F.R. 125.80 – 40 C.F.R. 125.89; Requirements Applicable to Cooling Water Intake Structures for New Facilities);

Not Official Law of Alaska

(7) Subpart J (40 C.F.R. 125.90 – 40 C.F.R. 125.99; Requirements Applicable to Cooling Water Intake Structures for Phase II Existing Facilities);

(8) Subpart M (40 C.F.R. 125.120 – 40 C.F.R. 125.124; Ocean Discharge Criteria).

(9) Subpart N (40 C.F.R. Part 125.130 – 40 C.F.R. 125.139; Requirements Applicable to Cooling Water Intake Structures for New Offshore Oil and Gas Extraction Facilities Under Section 316(b) of the Act).

(d) The provisions of 40 C.F.R. Part 129, Subpart A (40 C.F.R. 129.1 – 40 C.F.R. 129.105; Toxic Pollutant Effluent Standards and Prohibitions), as revised as of July 1, 2006, are adopted by reference.

(e) The provisions of 40 C.F.R. Part 133 (Secondary Treatment Regulation), as revised as of July 1, 2006, are adopted by reference.

(f) The provisions of 40 C.F.R. Part 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants), as revised as of July 1, 2006, are adopted by reference.

(g) The following provisions of Subchapter N (40 C.F.R. Part 400 – 40 C.F.R. Part 471; Effluent Guidelines and Standards) are adopted by reference:

(1) 40 C.F.R. Part 401 (General Provisions), as revised as of July 1, 2006;

(2) 40 C.F.R. 403.1 – 40 C.F.R. 403.18 (General Pretreatment Regulations for Existing and New Sources of Pollution), as revised as of October 14, 2006;

(3) 40 C.F.R. Part 405 – 40 C.F.R. Part 471, containing industry sector effluent limitations and guidelines, as revised as of July 1, 2006.

(h) The EPA's Combined Sewer Overflow Control Policy of April 19, 1994, published at 59 Fed. Reg. 18688, is adopted by reference.

(i) Unless the context in which a term is used clearly requires a different meaning, terms in the provisions adopted by reference in (a) – (h) of this section have the following meanings:

(1) “director” means “Department of Environmental Conservation”;

(2) “Environmental Protection Agency” or “EPA” means “Department of Environmental Conservation”;

Not Official Law of Alaska

(3) “regional administrator” or “administrator” means “Department of Environmental Conservation.” (Eff. 7/29/2006, Register 179; am __/__/____, Register __)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Editor’s note: A copy of the EPA’s Combined Sewer Overflow Control Policy, adopted by reference in 18 AAC 83.010, is available for examination at the Department of Environmental Conservation, Division of Water area offices in Juneau, Anchorage, and Fairbanks. The Combined Sewer Overflow Control Policy also may be viewed through the United States Government Printing Office website at <http://www.gpoaccess.gov/nara>.

18 AAC 83.015. Duty to obtain a permit; exclusions and prohibitions. (a) A person may not discharge pollutants from any point source into waters of the United States in the state without first obtaining an APDES permit from the department, unless the discharge is excluded from APDES permit requirements under (b) of this section or the discharge is authorized by an APDES or NPDES permit that continues in effect under 18 AAC 83.155.

(b) The following discharges do not require an APDES permit under this chapter but are subject to any applicable waste disposal permit requirements of AS 46.03.100, or any other state authorization:

(1) any discharge of sewage from a vessel, effluent from a properly functioning marine engine, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel as that term is defined in AS 46.03.826(14); however, this exclusion does not apply to

(A) rubbish, trash, garbage, or other materials discharged overboard, or

(B) other discharges when the vessel is operating in a capacity other than as a means of transportation, including when the vessel is

(i) used as an energy or mining facility, a storage facility, or a seafood processing facility;

(ii) secured to a storage facility or a seafood processing facility; or

(iii) secured to the bed of the ocean, contiguous zone, or waters of the United States for the purpose of mineral or oil exploration or development;

Not Official Law of Alaska

(2) any discharge of dredged or fill material into waters of the United States that is regulated under 33 U.S.C. 1344 (Clean Water Act, sec. 404);

(3) the introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works (POTWs) by an indirect discharger; however, this exclusion does not apply to an indirect discharger defined as a significant industrial user under 40 C.F.R. Part 403, adopted by reference in 18 AAC 83.010, if the indirect discharge is or will be to a POTW without an approved pretreatment program; the department will provide an opportunity for any POTW that may receive indirect discharges from a significant industrial user to comment on the significant industrial user's permit;

(4) any discharge in compliance with the instructions of an on-scene coordinator under 40 C.F.R. Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan), as revised as of July 1, 2006, or 33 C.F.R. Part 153 (Control of Pollution by Oil and Hazardous Substances, Discharge Removal), as revised as of July 1, 2006;

(5) any introduction of pollutants from non-point source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands; however, this exclusion does not apply to discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources;

(6) any return flow from irrigated agriculture;

(7) any discharge into a privately owned treatment works, unless the department otherwise requires under 18 AAC 83.485;

(8) any discharge of a pollutant from a POTW into marine waters where the discharger has been granted a waiver under 33 U.S.C. 1311(h).

(c) The department will not issue an APDES permit for a discharge,

(1) unless the conditions of the permit provide for compliance with the applicable requirements of 33 U.S.C. 1251 – 1387 (Clean Water Act) and this chapter;

(2) when the regional administrator has objected to issuance of the permit;

(3) when the department cannot impose conditions that ensure compliance with the applicable water quality requirements of all affected states;

(4) when, in the judgment of the United States Army Corps of Engineers, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

Not Official Law of Alaska

(5) of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) that is inconsistent with a plan or plan amendment approved under 33 U.S.C. 1288(b);

(7) to the territorial sea, the waters of the contiguous zone, or the oceans,

(A) before the EPA promulgates guidelines under 33 U.S.C. 1343 for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans, unless the department determines that it is in the public interest to issue a permit; or

(B) after the EPA promulgates guidelines under 33 U.S.C. 1343, if the department has insufficient information to make a reasonable judgment whether the discharge complies with the EPA guidelines;

(8) to a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards; however,

(A) when an owner or operator of a new source or new discharger proposes to discharge into a water segment

(i) that does not meet applicable water quality standards,

(ii) that is not expected to meet those standards even after application of the effluent limitations required by 33 U.S.C. 1311(b)(1)(A); and

(iii) for which the state or interstate agency has performed a pollutants load allocation for the pollutant to be discharged;

(B) the department will provide an opportunity before the close of the public comment period for that owner or operator to demonstrate that

(i) there are sufficient remaining pollutant load allocations to allow for the discharge; and

(ii) the existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards;

(C) the department may waive the submission of information required by (c)(8)(B) of this section if the department determines that the department already has adequate information to evaluate the request;

Not Official Law of Alaska

(D) the department must include an explanation of the development of limitations to meet the criteria of (c)(8)(B) of this section in the fact sheet to the permit under 18 AAC 83.115;

(9) of any pollutant to waters of the United States located in Denali National Park and Preserve. (Eff 7/29/2006 Register 179; am __/__/____, Register __)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.020. Term of permit. (a) An APDES permit is effective for a fixed term that must be listed in the permit and must not exceed five years. The department may issue a permit for a term of five years or any shorter period. Except as provided in 18 AAC 83.155(c) for the administrative continuance of expiring permits, the department will not extend the term of a permit by modification beyond the maximum duration specified in this section.

(b) The department may issue a permit to expire on or after the statutory deadline set in 33 U.S.C. 1311(b)(2)(A), (C), and (E) if the permit includes effluent limitations to meet the requirements of 33 U.S.C. 1311(b)(2)(A), (C), (D), (E), and (F), whether or not the EPA has promulgated or approved applicable effluent limitations guidelines.

(c) If the department determines that a discharger falls within an industrial category for the purpose of setting a permit expiration date under (b) of this section, that determination does not establish the discharger's industrial category for any other purpose, and does not foreclose either the discharger or the department from a different industrial category determination when a permit is formulated. (Eff. 7/29/2006, Register 179)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Not Official Law of Alaska**Article 2. Permit Process.****Section**

- 105. Duty to apply and reapply for a permit
- 110. Permit application process and timing; completeness
- 115. Draft permit, fact sheet, and applicant review
- 120. Public notice and comment; hearing on permit; issuance of final permit
- 125. Permit preparation by third-party contractor or an applicant
- 130. Procedure to modify, revoke and reissue, or terminate permit
- 135. Cause to modify or revoke and reissue permit
- 140. Cause to terminate permit
- 145. Minor modification of permit
- 150. Transfer of permit
- 155. Effect of permit; continuation of expiring permit; acceptance of federally-issued NPDES permit as state-administered APDES permit
- 160. Permit variances
- 165. Proprietary or confidential business information
- 170. Board member conflict prohibited
- 175. Appeals

18 AAC 83.105. Duty to apply and reapply for a permit. (a) Any person who discharges or proposes to discharge a pollutant and who does not have a permit in effect, shall submit a complete APDES permit application to the department in compliance with this chapter, unless the discharge or proposed discharge is covered by one or more general permits, or excluded under 18 AAC 83.015 from APDES permit requirements, or unless the person is a user of a privately owned treatment works and the department, under 18 AAC 83.485, does not otherwise require the person to apply for a permit. A concentrated animal feeding operation shall seek coverage under an APDES permit, as described in 40 C.F.R. 122.23, adopted by reference in 18 AAC 83.010.

(b) A publicly owned treatment works (POTW) or any other permittee with a currently effective permit shall reapply by submitting a new application at least 180 days before the existing permit expires, unless the department has granted the permittee permission to submit an application on a later date; however, the department will not grant permission for an application to be submitted after the expiration date of the existing permit;

(c) When a facility or activity is owned by one person but operated by another person, it is the operator's duty to obtain a permit. (Eff. 7/29/2006, Register 179)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Not Official Law of Alaska**18 AAC 83.110. Permit application process and timing; completeness. (a)**

Any person required to obtain a permit under the APDES program shall submit to the department a complete application for a permit in compliance with the requirements of this chapter. For an APDES general permit, an application is not required but a notice of intent must be submitted as set out in 18 AAC 83.210(b). A permit application must be signed and certified as required by 18 AAC 83.385.

(b) An applicant must submit an application on one or more department-approved forms appropriate to the number and types of discharges or outfalls at the applicant's facility, as provided in 18 AAC 83.305(a).

(c) A person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless the department has granted permission to submit the application on a later date. A facility proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity that may result in a discharge of storm water associated with that industrial activity, unless the department has granted permission to submit the application on a later date. A storm water discharge facility described under 40 C.F.R. 122.26(b)(14)(x) or (b)(15)(i), adopted by reference in 18 AAC 83.010, shall submit an application at least 90 days before the date on which construction is to commence unless otherwise required by the terms of an applicable general permit.

(d) Except for a general permit, the department will not issue an APDES permit before receiving a complete application for the permit. An application for a permit is complete when the permit fee required under 18 AAC 83.905 is paid and the department, in its sole discretion, determines that the application form and any supplemental information are satisfactory. The department shall judge the completeness of any application for a permit independently of any other permit application or permit for the same facility or activity. Within 30 days after receiving an application, the department will notify an applicant if the application is complete for purposes of this section or 18 AAC 83.155(c)(1). Notification that an application is complete does not preclude the department from requiring the applicant to submit additional information for the department's use in processing the application. The department will not consider a permit application to be complete if the department waived application requirements under 18 AAC 83.330(b) and the EPA has disapproved the waiver. If a person required to reapply for a permit submits a waiver request to the EPA more than 210 days before an existing permit expires, and the EPA does not disapprove the waiver request 181 days before the permit expires, the department will consider the permit application to be complete without the information that is the subject of the waiver request. (Eff. 7/29/2006, Register 179)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

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18 AAC 83.115. Draft permit, fact sheet, and applicant review. (a) After receiving a complete application, the department will tentatively decide to issue an APDES permit or to deny the application. If the department tentatively decides to issue an APDES permit, the department will prepare a draft permit. A draft permit must contain the following information:

- (1) all conditions established under 18 AAC 83.405;
- (2) all conditions established under 18 AAC 83.425;
- (3) all monitoring requirements established under 18 AAC 83.455;
- (4) schedules of compliance established under 18 AAC 83.560;

(5) effluent limitations, standards and prohibitions, and conditions under 18 AAC 83.430, 18 AAC 83.510, 18 AAC 83.610, and any variances that are approved.

(b) A fact sheet containing the information required in (c) of this section must accompany the draft permit prepared for

- (1) a major APDES facility or activity;
- (2) an APDES general permit;
- (3) a permit that incorporates a variance or requires an explanation under (c)(9) of this section;
- (4) a permit that includes a sewage sludge land application plan under 40 C.F.R. 501.15(a)(2)(ix), as revised as of July 1, 2005; and
- (5) a permit that the department finds is the subject of wide-spread public interest or raises major issues.

(c) A fact sheet must briefly set out the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit and must include, if applicable, the following information:

- (1) a brief description of the type of facility or activity that is the subject of the draft permit;
- (2) the type and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;
- (3) a brief summary of the basis for the draft permit conditions, including references to applicable statutes or regulations and appropriate supporting references to the administrative record;

Not Official Law of Alaska

(4) reasons for the department's tentative decision on any requested variances or alternatives to required standards;

(5) a description of the procedures for reaching a final decision on the draft permit, including

(A) the beginning and ending dates of the comment period under 18 AAC 83.120(b) and the address where comments should be submitted;

(B) the procedure for requesting a hearing and the nature of that hearing; and

(C) any other procedures by which the public may participate in the final decision;

(6) the name and telephone number of a person to contact for additional information;

(7) the justification for waiver of any application requirements under 18 AAC 83.330;

(8) any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard as required by 18 AAC 83.430, and reasons why the effluent limitations and conditions are applicable, or an explanation of how any alternate effluent limitation was developed;

(9) if applicable, an explanation of why the draft permit contains the following conditions or waivers:

(A) limitations to control toxic pollutants under 18 AAC 83.440;

(B) limitations on internal waste streams under 18 AAC 83.550;

(C) limitations on indicator pollutants under 40 C.F.R. 125.3(g), adopted by reference in 18 AAC 83.010;

(D) limitations established on a case-by-case basis under 40 C.F.R. 125.3 (c)(2) or (c)(3), adopted by reference in 18 AAC 83.010, or under 33 U.S.C. 1345(d)(4);

(E) limitations to meet the criteria for permit issuance under 18 AAC 83.015(c)(8); or

(F) waivers from monitoring requirements granted under 18 AAC 83.430(b);

Not Official Law of Alaska

(10) for a draft permit for a treatment works owned by a person other than a state or municipality, an explanation of the department's decision on regulation of users under 18 AAC 83.485;

(11) if appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

(d) The department will send the fact sheet to the applicant and, on request, to any other person.

(e) Before giving public notice of a draft individual APDES permit under AS 46.03.110 and 18 AAC 83.120, the department will provide a copy of the preliminary draft permit and draft fact sheet to the applicant for review. The department will give the applicant at least 10 days, not including the weekend or state holidays, to provide written and oral comments, to propose amendments, or to discuss the preliminary draft permit with the department before the draft permit undergoes public notice and comment under AS 46.03.110 and 18 AAC 83.120. The applicant may by written notice to the department waive the applicant's right to review and comment on the preliminary draft permit and draft fact sheet or agree to a shortened period for that review and comment.

(f) Before giving public notice of a draft general APDES permit under AS 46.03.110 and 18 AAC 83.120, the department will post the preliminary draft general permit on the Alaska Online Public Notice System (AS 44.62.176) for at least 10 days, not including the weekend or state holidays, for potential permittees to provide written and oral comments, to propose amendments, and to discuss the preliminary draft permit with the department before the draft permit undergoes public notice and comment under AS 46.03.110 and 18 AAC 83.120. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.120. Public notice and comment; hearing on permit; issuance of final permit. (a) The department will give notice to the public that a draft permit has been prepared under 18 AAC 83.115, and whether a hearing is scheduled. A public notice may describe more than one permit or permit action.

(b) In a public notice, the department will allow at least 30 days for public comment on the draft permit, and will give at least 30 days notice before the hearing. Notice of the draft permit and the hearing may be combined and given at the same time.

(c) Public notice of the preparation of a draft permit and any hearing on the draft permit must be given by the following methods:

Not Official Law of Alaska

(1) by mailing a copy of the notice to the following persons, unless any person entitled to receive notice under this paragraph waives that person's right to receive notice for any classes and categories of permits:

(A) the applicant, unless there is no applicant for an APDES general permit;

(B) any other agency that the department knows has issued or is required to issue a permit for the same facility or activity under the following laws and programs:

(i) Resource Conservation and Recovery Act,
42 U.S.C. 6921 – 6939e;

(ii) Underground Injection Control Program,
42 U.S.C. 300f-300j-26;

(iii) Clean Air Act, 42 U.S.C. 7401-7671q;

(iv) National Pollutant Discharge Elimination System
Program, 33 U.S.C. 1342;

(v) Sludge Management Program, 33 U.S.C. 1345;

(vi) Dredge and Fill Permit Program, 33 U.S.C. 1344; or

(vii) Ocean Dumping Permit Program under the Marine
Research Protection and Sanctuaries Act, 33 U.S.C. 1412 – 1414(b);

(C) federal and state agencies with jurisdiction over coastal zone management plans and fish, shellfish, and wildlife resources, the federal Advisory Council on Historic Preservation, state historic preservation officers, and any affected Indian tribe;

(D) any state agency responsible for plan development under 33 U.S.C. 1288(b)(2), 33 U.S.C. 1288(b)(4), or 33 U.S.C. 1313(e), and the United States Army Corps of Engineers, the United States Fish and Wildlife Service, and the National Marine Fisheries Service;

(E) any user identified in the permit application of a privately owned treatment works;

(F) persons on a mailing list developed by

(i) recording those who request in writing to be on the list;

Not Official Law of Alaska

(ii) soliciting persons for area lists from participants in past permit proceedings in that area; and

(iii) publishing notice on the department's website and through periodic publication in the local press and in regional and state-funded newsletters, environmental bulletins, state law journals or similar publications, of the opportunity to be on the mailing list; the department may update the mailing list from time to time by requesting written indication of continued interest from those listed, and may delete from the list the name of any person who fails to respond to the department's request;

(G) any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(H) each state agency having any authority under state law with respect to the construction or operation of the facility;

(2) for a major facility permit and a general permit, by publishing a notice in a daily or weekly newspaper within the area affected by the facility or activity;

(3) in a manner constituting legal notice to the public under state law; and

(4) by any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or use of any other forum or media to elicit public participation.

(d) A public notice issued under this section must contain at least the following information:

(1) name and address of the office processing the permit action for which notice is being given and where comments may be submitted;

(2) name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit, except in the case of APDES draft general permits;

(3) a brief description of the business conducted at the facility or activity described in the permit application, or for general permits when there is no application, in the draft permit;

(4) name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, fact sheet, and the application;

(5) a brief description of the comment and hearing procedures required by (h) and (l) of this section and the time and place of any hearing that will be held; if no

Not Official Law of Alaska

hearing has already been scheduled, a statement of procedures to request a hearing and other procedures by which the public may participate in the final permit decision;

(6) a general description of the location of each existing or proposed discharge point and the name of the receiving water;

(7) a description of requirements applicable to cooling water intake structures under 33 U.S.C. 1326(b) in accordance with 40 C.F.R. Part 125, Subparts I, J, and N, adopted by reference in 18 AAC 83.010;

(8) any additional information considered necessary or proper.

(e) In addition to the information required by (d) of this section, the public notice for a draft permit for a discharge for which a request has been filed under 33 U.S.C. 1326(a) must include:

(1) a statement that the thermal component of the discharge is subject to effluent limitations under 33 U.S.C. 1311 and 1316, and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under 33 U.S.C. 1311 and 33 U.S.C. 1316;

(2) a statement that a request has been filed under 33 U.S.C. 1326(a), that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under 33 U.S.C. 1326(a), and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

(3) if the applicant has filed an early screening request under 40 C.F.R. 125.72, adopted by reference in 18 AAC 83.010, for a variance under 33 U.S.C. 1326(a), a statement that the applicant has submitted that early screening request.

(f) In addition to the general public notice described in (d) of this section, the public notice of a hearing under this section must contain the following information:

(1) reference to the date of previous public notices relating to the permit;

(2) date, time, and place of the hearing;

(3) a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(g) In addition to the general public notice described in (d) of this section, the department shall mail a copy of the draft permit and fact sheet and the permit application, if any, to all persons identified in (c)(1)(A), (B), (C), and (D) of this section.

Not Official Law of Alaska

(h) During the public comment period, any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised in the hearing. The department will consider all comments in making the final decision and will answer the comments as provided in (o) of this section.

(i) If, during the comment period for an APDES draft permit, the district engineer of the United States Army Corps of Engineers advises the department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the department will deny the permit and notify the applicant of the denial. If the district engineer advises the department that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, the department will include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer must be sought through the applicable procedures of the United States Army Corps of Engineers and not through the state procedures set out in 18 AAC 83.175. If a court of competent jurisdiction stays the conditions or if applicable procedures of the United States Army Corps of Engineers result in a stay of the conditions, those conditions must be considered stayed in the APDES permit for the duration of the stay.

(j) If, during the comment period for an APDES draft permit, the United States Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the department may include the specified conditions in the permit to the extent the department determines they are necessary to comply with the provisions of applicable federal laws.

(k) In appropriate cases, the department may consult with one or more of the agencies referred to in (i) and (j) of this section before issuing a draft permit and may set out an agency's view in the fact sheet or the draft permit.

(l) The department will hold a public hearing whenever the department finds, on the basis of requests, a significant degree of public interest in a draft permit. The department may also hold a public hearing if a hearing might clarify one or more issues involved in the permit decision or for other good reason in the department's discretion.

(m) Before issuing a final individual APDES permit, the department will provide a copy of the proposed final permit and draft response to comments to the permit applicant for review. The department will give the applicant at least five days, not including the weekend or state holidays, to review and discuss the proposed final permit with the department. The applicant may by written notice to the department waive the applicant's right to review and discuss the proposed final permit with the department or agree to a shortened period for that review and discussion. At the time the department

Not Official Law of Alaska

provides a copy of the proposed final permit to the applicant under this subsection, the department will also make the proposed final permit available to the public.

(n) Before issuing a final general APDES permit, the department will post a copy of the general permit on the Alaska Online Public Notice System for at least five days, not including the weekend or state holidays, for potential permittees to review and discuss the proposed final permit with the department.

(o) When the department issues a final permit, the department will issue a response to comments, which must be available to the public. The response must

(1) specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(p) When a fact sheet has been prepared under 18 AAC 83.115(b), the department shall issue a revised fact sheet for the final permit, which must include all of the requirements of 18 AAC 83.115(c), and be available to the public. (Eff. 7/29/2006, Register 179; am __/__/__, Register __)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.125. Permit preparation by third-party contractors or an applicant. (a) The department may enter into an agreement with the permit applicant for the department to select and engage the services of a third-party contractor to prepare the draft permit, fact sheet, proposed final permit, or response to comments. In proceeding with a third-party contractor, the department will

(1) in consultation with the permit applicant, select the contractor based on qualifications and experience and enter a contract with the selected contractor to provide permit development services;

(2) require the contractor to execute a disclosure statement certifying that the contractor has no financial or other conflicting interest in the outcome of the project;

(3) eliminate a contractor from the selection process or terminate a contract if the department determines, after review, that the contractor may have a conflict of interest in preparing the permits and supporting documents;

(4) in consultation with the permit applicant, develop an agreement that includes the contractor's scope of work, schedule, and costs; and

Not Official Law of Alaska

(5) direct the contractor's performance of the contract.

(b) If the permit applicant develops a preliminary draft, draft or proposed final permit, fact sheet, or draft permit provisions for approval by the department, the department shall independently evaluate the information submitted and verify its completeness and accuracy. The department is not bound to accept a preliminary draft or proposed permit or fact sheet submitted by the permit applicant. After initial review, the department may request additional information from the applicant to evaluate and verify the completeness and accuracy of the preliminary draft, draft or proposed final permit or fact sheet.

(c) At the applicant's request, the department will attempt to reach a negotiated service agreement with the permit applicant to provide the department's regulatory services during the permit development process in accordance with 18 AAC 83.905(c). The terms of the negotiated services agreement may be included in the agreement between the department and the permit applicant described in (a) of this section.

(d) The department has sole authority in verifying the completeness of a permit application and sole authority and responsibility to approve and modify the statements, analyses, and conclusions included in a draft or final permit presented to the department by the contractor or permit applicant, including the fact sheet and response to comments received during the public comment period for a draft permit. (Eff. 7/29/2006, Register 179; am __/__/____, Register __)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 37.10.052 | AS 46.03.020 | AS 46.03.100 |
| | AS 44.46.020 | AS 46.03.050 | AS 46.03.110 |
| | AS 44.46.025 | | |

18 AAC 83.130. Procedure to modify, revoke and reissue, or terminate permit. (a) The department may modify, revoke and reissue, or terminate an APDES permit, either at the request of an interested person, including the permittee, or on the department's own initiative, for any reason specified in 18 AAC 83.135 and 18 AAC 83.140. A request to modify, revoke and reissue, or terminate an APDES permit must be in writing and must contain facts or reasons supporting the request.

(b) If the department tentatively decides to modify or revoke and reissue a permit, the department will prepare a draft permit incorporating the proposed changes, and may request additional information. If the tentative decision is to modify a permit, the department may require the permittee to submit an updated application.

(c) If the tentative decision is to revoke and reissue a permit, the department will require the permittee to submit a new application.

(d) The department will follow the procedures in 18 AAC 83.115 and 18 AAC 83.120 in preparing a draft permit under this section.

Not Official Law of Alaska

(e) A permit will not be modified unless the department finds cause to modify under 18 AAC 83.135(b) or cause for a minor modification under 18 AAC 83.145. A permit will not be revoked and reissued unless the department finds cause to revoke and reissue a permit under 18 AAC 83.135(c).

(f) In a permit modification procedure under this section and 18 AAC 83.135(b), only those conditions considered for modification may be reopened when a new draft permit is prepared. All other provisions of the existing permit shall remain in effect for the term of that permit.

(g) In a procedure to revoke and reissue a permit under this section, all provisions in the permit are reopened and subject to revision and the permit is reissued for a new term. During any proceeding to revoke and reissue a permit, the permittee shall comply with all conditions of the existing permit until a new final permit is issued.

(h) A minor modification under 18 AAC 83.145 is not subject to the requirements of this section.

(i) If the department tentatively decides to terminate a permit and the permittee objects, the department shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit subject to 18 AAC 83.115 and 18 AAC 83.120, as provided in (d) of this section. Except as provided in (j) of this section, the department shall follow the applicable procedures in 18 AAC 83.115, and 18 AAC 83.120, and will not terminate any APDES permit unless the department finds cause under 18 AAC 83.140.

(j) The department may terminate a permit by notice to the permittee if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW, but not by land application or disposal into a well. Termination by notice is effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the department shall proceed as required by (i) of this section.

(k) A permittee subject to pending state or federal enforcement actions, including citizen suits brought under state or federal law, may not proceed under expedited termination procedures. A permittee requesting expedited permit termination procedures must certify that it is not subject to any pending state or federal enforcement actions, including citizen suits brought under state or federal law. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.050 | AS 46.03.110 |
| | AS 46.03.010 | AS 46.03.100 | AS 46.03.120 |
| | AS 46.03.020 | | |

Not Official Law of Alaska

18 AAC 83.135. Cause to modify or revoke and reissue permit. (a) When the department receives any new information, including information received or discovered through a facility inspection, a submittal by the permittee required by the permit, a request to modify or revoke and reissue a permit, or a file review, the department may, in accordance with this section, determine if there is cause to modify or revoke and reissue the permit. If the department finds cause, the department may modify or revoke and reissue the permit in compliance with this section.

(b) Cause to modify a permit, but not to revoke and reissue the permit unless the permittee requests or agrees, includes the following:

(1) a material and substantial alteration or addition to the permitted facility or activity occurred after permit issuance, and the alteration or addition justifies the imposition of permit conditions different from the existing permit;

(2) the department has received new information, other than revised regulations, guidance, or test methods, that was not available at the time of permit issuance, and the new information would have justified the imposition of different permit conditions at the time of issuance; for APDES general permits, cause under this paragraph includes any information indicating that cumulative effects on the environment are unacceptable; for new source or new discharger APDES permits, cause under this paragraph includes any significant information derived from effluent testing required under 18 AAC 83.315(e)(1) or 18 AAC 83.360(c) after issuance of the permit;

(3) the standards or regulations on which the permit was based have been changed by the adoption of amended standards or regulations after the permit was issued; the department will modify a permit under this paragraph only when:

(A) the permit condition to be modified was based on a promulgated effluent limitation guideline, EPA-approved or promulgated water quality standards, or the secondary treatment regulations under 40 C.F.R. Part 133, adopted by reference in 18 AAC 83.010;

(B) the EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a state action with regard to a water quality standard on which the permit condition was based; and

(C) a permittee requests the department to modify the permit condition under 18 AAC 83.130 within 90 days after publication of a *Federal Register* notice of the action on which the request is based;

(4) the standards or regulations on which the permit was based have been changed by judicial decision after the permit was issued; the department will modify a permit under this paragraph only when a court of competent jurisdiction has remanded and stayed EPA-promulgated regulations or effluent limitations guidelines on which the

Not Official Law of Alaska

permit condition was based, and a permittee requests the department to modify the permit in accordance with 18 AAC 83.130 within 90 days of the judicial remand;

(5) the department determines good cause exists to modify a compliance schedule; good cause includes an act of God, strike, flood, materials shortage or other event over which the permittee has little or no control and for which there is no reasonably available remedy; however, in no case may an APDES compliance schedule be modified to extend beyond an applicable statutory deadline under 33 U.S.C. 1251 – 1387;

(6) a permittee files a request for a variance under 33 U.S.C. 1311(c), (g), (h), (i), (k), or 33 U.S.C. 1326(a) or based on fundamentally different factors within the time specified in 18 AAC 83.365(b);

(7) the department is required to incorporate an applicable toxic effluent standard or prohibition under 33 U.S.C. 1317(a) in an existing permit;

(8) the reopener conditions in a permit require the department to consider a modification;

(9) a permittee requests modification when that permittee qualifies for effluent limitations on a net basis or when a discharger is no longer eligible for net limitations under 18 AAC 83.545;

(10) a permit modification is necessary under 40 C.F.R. 403.8(e), adopted by reference in 18 AAC 83.010, for development of the pretreatment program using compliance schedules;

(11) a state with an EPA approved program has failed to notify, as required by 33 U.S.C. 1342(b)(3), another state whose waters may be affected by a discharge from the approved state;

(12) when the level of discharge of any pollutant not limited in the permit exceeds the level that can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 C.F.R. 125.3(c), adopted by reference in 18 AAC 83.010;

(13) to establish a notification level as provided in 18 AAC 83.445;

(14) to modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW that has received a grant under 33 U.S.C. 1282(a)(3) for 100 percent of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under 33 U.S.C. 1282(a)(2), but in no case shall the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance under 33 U.S.C. 1251 – 1387;

Not Official Law of Alaska

(15) for a small municipal separate storm sewer system, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in 40 C.F.R. 122.34(b), adopted by reference in 18 AAC 83.010, when

(A) the permit does not include a minimum control measure based upon the determination that another entity was responsible for implementation of the requirement; and

(B) the other entity fails to implement measures that satisfy the requirement;

(16) to correct technical mistakes, such as errors in calculation, or mistaken interpretations of law, made in determining permit conditions;

(17) when the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under 33 U.S.C. 1342(a)(1) and has properly operated and maintained the facilities, but has been unable to achieve those effluent limitations; in that case, the limitations in the modified permit may reflect the level of pollutant control actually achieved, but shall not be less stringent than required by a subsequently promulgated effluent limitation guideline.

(c) Cause to modify or, alternatively, revoke and reissue a permit includes the following:

(1) circumstances identified as cause for termination under 18 AAC 83.140 exist, and the department determines that it is appropriate to modify or revoke and reissue a permit;

(2) the department has received notification, as required in the permit, of a proposed transfer of the permit.

(d) Under (c)(2) of this section, a permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee. (Eff. 7/29/2006, Register 179; am __/__/__, Register __)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.050 | AS 46.03.110 |
| | AS 46.03.010 | AS 46.03.100 | AS 46.03.120 |
| | AS 46.03.020 | | |

18 AAC 83.140. Cause to terminate permit. Cause for terminating a permit before the end of its term, or for denying a permit renewal application, includes the following:

(1) the permittee's noncompliance with any condition of the permit;

Not Official Law of Alaska

(2) the permittee's failure to fully disclose all relevant facts in the application or during the permit issuance process, or the permittee's misrepresentation of any relevant fact at any time;

(3) the department's determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination;

(4) a change in any condition, such as closure of a plant or termination of a discharge by connection to a POTW, if the change requires either a temporary or permanent reduction or elimination of any discharge. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.050 | AS 46.03.110 |
| | AS 46.03.010 | AS 46.03.100 | AS 46.03.120 |
| | AS 46.03.020 | | |

18 AAC 83.145. Minor modification of permit. (a) With the consent of the permittee, the department may make minor modifications to a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures described in 18 AAC 83.115, 18 AAC 83.120, and 18 AAC 83.130. The following constitute minor modifications that the department may make under this section:

(1) correcting any typographical error;

(2) requiring more frequent monitoring or reporting by the permittee;

(3) changing an interim compliance date in a schedule of compliance, if the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(4) allowing for a change in ownership or operational control of a facility if

(A) a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the department; and

(B) the department determines that no other change in the permit is necessary;

(5) changing the construction schedule for a discharger that is a new source; however, the change must not affect the discharger's obligation to have all pollution control equipment installed and in operation before commencing a discharge from the new source;

Not Official Law of Alaska

(6) making a change in a permit provision that will neither result in allowing an actual or potential increase in the discharge of a pollutant or pollutants into the environment nor result in a reduction in monitoring of a permittee's compliance with applicable statutes and regulations;

(7) deleting a point source outfall when the discharge from that outfall is terminated without resulting in a discharge of pollutants from other outfalls except in accordance with permit limits;

(8) incorporating, as enforceable conditions of a POTW's permit, the conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 C.F.R. 403.11, adopted by reference in 18 AAC 83.010, or a modification of a POTW pretreatment program that has been approved in accordance with the procedures in 40 C.F.R. 403.18, adopted by reference in 18 AAC 83.010.

(b) Any permit modification not qualifying as a minor modification under this section must be made through the draft permit and public notice process as required in 18 AAC 83.115, 18 AAC 83.120, 18 AAC 83.130, and for cause as provided in 18 AAC 83.135. (Eff. 7/29/2006, Register 179; am __/__/__, Register __)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.050 | AS 46.03.110 |
| | AS 46.03.010 | AS 46.03.100 | AS 46.03.120 |
| | AS 46.03.020 | | |

18 AAC 83.150. Transfer of permit. (a) Except as provided in (b) of this section and 18 AAC 83.145(a)(4), a permittee may transfer a permit to a new owner or operator only if the department has modified or revoked and reissued the permit under 18 AAC 83.130.

(b) Notwithstanding (a) of this section, an APDES permit may be automatically transferred if the department does not notify an existing permittee and the proposed new owner or operator of its intent to modify or revoke and reissue the permit, after the current permittee

(1) notifies the department at least 30 days in advance of the proposed transfer date; and

(2) provides a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee.

(c) A transfer under (b) of this section may also be a minor modification under 18 AAC 83.145. If the department does not notify an existing permittee and the proposed new owner or operator of its intent to modify or revoke, the transfer is effective

Not Official Law of Alaska

on the date specified in the agreement referred to in (b)(2) of this section. (Eff. 7/29/2006, Register 179)

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| Authority: | AS 44.46.020 | AS 46.03.050 | AS 46.03.110 |
| | AS 46.03.010 | AS 46.03.100 | AS 46.03.120 |
| | AS 46.03.020 | | |

18 AAC 83.155. Effect of permit; continuation of expiring permit; acceptance of federally-issued NPDES permit as state-administered APDES permit.

(a) Except for any toxic effluent standards and prohibitions imposed under 33 U.S.C. 1317, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with 33 U.S.C. 1311, 1312, 1316, 1317, 1328, and 1343. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set out in 18 AAC 83.135 and 18 AAC 83.140.

(b) The issuance of a permit does not convey any property rights or any exclusive privilege.

(c) The conditions of an expired permit, whether a federal NPDES permit or a state-issued APDES permit, continue in force until the effective date of a new permit if

(1) the permittee has submitted a timely application for a new permit under 18 AAC 83.110, and the department determines the application is complete under 18 AAC 83.110(d); and

(2) the department, because of time, resource, or other constraints, but through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit.

(d) A permit continued under this section remains fully effective and enforceable.

(e) When the permittee is not in compliance with any condition of the expiring or expired permit, the department may choose to do one or more of the following:

(1) initiate enforcement action based on the permit that has been continued;

(2) issue a notice of intent to deny the new permit; if the permit is denied, the owner or operator must cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) issue a new permit with appropriate conditions;

(4) take other actions authorized by state law.

Not Official Law of Alaska

(f) A federally-issued NPDES permit in effect at the time the EPA gives its approval under 33 U.S.C. 1342(b) of the state's administration of the APDES program serves as the APDES permit required under 18 AAC 83.015, and continues in effect, subject to (c) and (d) of this section until its expiration date. (Eff. 7/29/2006, Register 179; am __/__/____, Register __)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.050 | AS 46.03.110 |
| | AS 46.03.010 | AS 46.03.100 | AS 46.03.120 |
| | AS 46.03.020 | | |

18 AAC 83.160. Permit variances. (a) Subject to EPA objection under 40 C.F.R. 123.44, as revised as of July 1, 2005, the department may grant or deny requests for the following variances:

(1) extensions under 33 U.S.C. 1311(i), based on delay in completion of a POTW;

(2) extensions under 33 U.S.C. 1311(k), based on the use of innovative technology; however, the department will first consult with the regional administrator; and

(3) variances under 33 U.S.C. 1326(a), for thermal pollution.

(b) The department may deny, or forward to the regional administrator with a written concurrence or without a recommendation, a completed request for a variance based on

(1) the economic capability of the applicant under 33 U.S.C. 1311(c); or

(2) water quality related effluent limitations under 33 U.S.C. 1312(b)(2).

(c) When the department forwards a request for a variance listed in (b) of this section to the EPA, the regional administrator, under 40 C.F.R. 124.62(c), as revised as of July 1, 2005, has authority to deny, forward without recommendation or with a recommendation for approval to the director of the EPA Office of Wastewater Management.

(d) Under 40 C.F.R. 124.62(d), the director of the EPA Office of Wastewater Management has authority to approve or deny any variance request submitted under (c) of this section. If the EPA Office of Wastewater Management director approves the variance, the department may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which the EPA has approved or denied a variance or modification must identify the applicable procedures for appealing that decision under 40 C.F.R. 124.64, as revised as of July 1, 2005.

Not Official Law of Alaska

(e) The department may deny or forward to the administrator or the administrator's delegate with a written concurrence a completed request for a variance based on

(1) the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based; or

(2) certain water quality factors under 33 U.S.C. 1311(g).

(f) Under 40 C.F.R. 124.62(f), the administrator or the administrator's delegate has authority to grant or deny a request for a variance listed in (e) of this section that the department forwards. If the administrator or the administrator's delegate approves the variance, the department may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which the EPA has approved or denied a variance or modification must identify the applicable procedures for appealing that decision under 40 C.F.R. 124.64, as revised as of July 1, 2005. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Editor's note: Information regarding the EPA Office of Wastewater Management referenced in (c) and (d) of 18 AAC 83.160 can be obtained by contacting the Office of Wastewater Management, U.S.E.P.A., Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 at (202) 260-9545 or by visiting the office's website at <http://www.epa.gov/owm/>.

18 AAC 83.165. Proprietary or confidential business information. (a) A permit applicant or permittee may assert a claim of confidentiality for proprietary or confidential business information by stamping the words "confidential business information" on each page of a submission containing proprietary or confidential business information. The department will treat the stamped submission as confidential if the information satisfies the test in 40 C.F.R. 2.208, adopted by reference in 18 AAC 83.010, and is not otherwise required to be made public by state law.

(b) A claim of confidentiality under (a) of this section may not be asserted for the name and address of any permit applicant or permittee, a permit application, a permit, effluent data, sewage sludge data, and information required by APDES or NPDES application forms provided by the department, whether submitted on the forms themselves or in any attachments used to supply information required by the forms.

(c) A permittee's claim of confidentiality authorized in (a) of this section is not waived if the department provides the proprietary or confidential business information to the EPA or to other agencies participating in the permitting process. The department will supply any information obtained or used in the administration of the state APDES

Not Official Law of Alaska

program to the EPA upon request under 40 C.F.R. 123.41, as revised as of July 1, 2005. When providing information submitted to the department with a claim of confidentiality to the EPA, the department will notify the EPA of the confidentiality claim. If the department provides the EPA information that is not claimed to be confidential, the EPA may make that information available to the public without further notice. (Eff. 7/29/2006, Register 179)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.170. Board member conflict prohibited. (a) The department will ensure that any board or body that approves all or portions of a permit does not include as a member a person who receives, or has during the previous two years received a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(b) For the purposes of (a) of this section,

(1) “board or body” includes any individual, including the director, who has or shares authority to approve all or any portion of a permit either in the first instance, as modified or reissued, or on appeal;

(2) “significant portion of income” means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement;

(3) “permit holders or applicants for a permit” do not include any department or agency of the state government;

(4) “income” includes retirement benefits, consultant fees, and stock dividends.

(c) For the purposes of (b) of this section, income is not received “directly or indirectly from permit holders or applicants for a permit” when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income. (Eff. 7/29/2006, Register 179; am __/__/__, Register __)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Not Official Law of Alaska

18 AAC 83.175. Appeals. (a) The review provisions of 18 AAC 15.185 and 18 AAC 15.195 – 18 AAC 15.340 apply to review of any condition imposed in an APDES permit or any denial of an APDES permit application.

(b) The commissioner or the commissioner's designee will, under 18 AAC 15.220, determine the action to be taken on a request for an adjudicatory hearing. If an adjudicatory hearing or a hearing on the record is granted, the commissioner or the commissioner's designee may specify the issues to be addressed through the hearing process to the Office of Administrative Hearings, created under AS 44.64.010.

(c) An APDES permit is not automatically stayed by the filing of a request for an adjudicatory hearing on the permit. The commissioner or the commissioner's designee will decide a request to stay an APDES permit. (Eff. 7/29/2006, Register 179; am __/__/__, Register __)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Not Official Law of Alaska**Article 3. General Permits.****Section**

- 205. General permits
- 210. Administration of general permits
- 215. Exceptions to general permit requirement; individual permits

18 AAC 83.205. General permits. (a) The department may issue a general APDES permit written to cover one or more categories or subcategories of discharges or facilities, except those covered by individual permits, within a geographic area. The area covered by a general permit should correspond to existing geographic or political boundaries, including the following:

- (1) a designated planning area under 33 U.S.C. 1288 and 33 U.S.C. 1313;
- (2) a sewer district or sewer authority;
- (3) a city, borough, or state political boundary;
- (4) a state highway system;
- (5) a standard metropolitan statistical area as defined by the federal Office of Management and Budget of the Executive Office of the President;
- (6) an urbanized area as designated by the United States Census Bureau, according to criteria in 67 Fed. Reg. 11663 (March 15, 2002); 67 Fed. Reg. 54630 (August 23, 2002); and 67 Fed. Reg. 70045 (November 20, 2002);
- (7) any other appropriate division or combination of boundaries.

(b) The department may use a general permit to regulate one or more categories or subcategories of discharges within an area described in (a) when the sources within a covered category or subcategory of discharges are either

- (1) storm water point sources; or
- (2) point sources other than storm water point sources if the sources within each category or subcategory all
 - (A) involve the same or substantially similar types of operations;
 - (B) discharge the same types of wastes;
 - (C) require the same effluent limitations or operating conditions;

Not Official Law of Alaska

(D) require the same or similar monitoring; and

(E) in the opinion of the department, are more appropriately controlled under a general permit than under individual permits.

(c) A general permit that covers a source within a specific category or subcategory of dischargers must make that source subject to any applicable water quality-based limitations under 18 AAC 83.430.

(d) A general permit must clearly identify the conditions applicable to each category or subcategory of discharges covered by the permit. The general permit may exclude specified sources or areas from coverage. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Editor's note: Information regarding standard metropolitan statistical areas as referenced in 18 AAC 83.205(a)(5) can be obtained by contacting The Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503 at (202) 395-3080 or by visiting the office's website at <http://www.whitehouse.gov/omb/>.

18 AAC 83.210. Administration of general permits. (a) The department may issue a general permit in compliance with this section and the applicable requirements of 18 AAC 83.115 and 18 AAC 83.120, and may modify, revoke and reissue, or terminate a general permit in compliance with 18 AAC 83.130.

(b) Except as provided in (g) and (h) of this section, a discharger that seeks coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A complete and timely notice of intent in compliance with requirements of the general permit fulfills a discharger's duty to apply for a permit. A discharger that fails to submit a notice of intent in compliance with the requirements of the permit is not authorized to discharge under the general permit unless the department:

(1) determines, as provided in (g) of this section, that a notice of intent is not required for coverage under the general permit; or

(2) notifies a discharger, as provided in (h) of this section, that it is covered by a general permit.

(c) A general permit must specify the contents of the notice of intent to be submitted by a discharger that seeks coverage under that general permit. The general permit must require the discharger to submit information necessary for adequate program implementation, including the legal name and address of the owner or operator, the

Not Official Law of Alaska

facility's name and address, type of facility or discharges, and the receiving waters. A general permit for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements. A notice of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in 18 AAC 83.320, including a topographic map.

(d) A notice of intent must be signed in compliance with 18 AAC 83.385.

(e) A general permit must specify the deadline for submitting a notice of intent to be covered and each date when a discharger is authorized to discharge under the permit.

(f) A general permit must specify when a discharger that is eligible for coverage under the permit and has submitted a complete and timely notice of intent in compliance with the general permit, is authorized to discharge under the permit. The permit may allow discharge to begin upon the department's receipt of the notice of intent, after a waiting period specified in the general permit, on a date specified in the general permit, or when the department notifies the discharger that it is covered under the general permit.

(g) If the department finds that a notice of intent requirement is inappropriate, the department may authorize a discharger other than a POTW, a combined sewer overflow, a municipal separate storm sewer system, a primary industrial facility, or a storm water discharge associated with industrial activity, to discharge under a general permit without submitting a notice of intent. If the department does not require a notice of intent under this section, the department will state the reasons for not requiring a notice of intent in the public notice of the general permit. In making a finding that a notice of intent is not required, the department shall consider

- (1) the type of discharge;
- (2) the expected nature of the discharge;
- (3) the potential for toxic and conventional pollutants in the discharge;
- (4) the expected volume of the discharge;
- (5) other means of identifying a discharge covered by the permit; and
- (6) the estimated number of discharges to be covered by the permit.

(h) The department may notify a discharger that it is covered by a general permit, even if the discharger has not submitted a notice of intent to be covered. A discharger that receives notice under this section may request an individual permit under 18 AAC 83.215(b). (Eff. 7/29/2006, Register 179)

Not Official Law of Alaska

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.100
AS 46.03.010 AS 46.03.050 AS 46.03.110

18 AAC 83.215. Exceptions to general permit requirement; individual permits. (a) The department may terminate or revoke any discharger's coverage under a general permit, and may require the discharger to apply for and obtain an individual APDES permit. An interested person may petition the department to take action under this paragraph. An individual APDES permit may be required when, for example,

(1) the discharger is not in compliance with the conditions of the general APDES or NPDES permit;

(2) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(3) effluent limitations guidelines are promulgated for point sources covered by the general APDES permit;

(4) a water quality management plan containing requirements applicable to a point source is approved;

(5) circumstances have changed so that the discharger is no longer appropriately controlled under the general permit, or the authorized discharge must be either temporarily or permanently reduced or eliminated;

(6) the department determines the discharge is a significant contributor of pollutants; in making this determination, the department may consider

(A) the location of the discharge with respect to waters of the United States;

(B) the size of the discharge;

(C) the quantity and nature of the pollutants discharged to waters of the United States; and

(D) other relevant factors.

(b) An owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application, with reasons supporting the request, to the department no later than 90 days after the publication of the general permit in accordance with state law. The provisions of 18 AAC 83.115 and 18 AAC 83.120 apply to an application under this subsection. The department will grant the request by issuing an individual permit if the reasons cited by the owner or operator are adequate to support the request.

Not Official Law of Alaska

(c) When an individual APDES permit is issued to an owner or operator under (b) of this section, the owner or operator's authorization under the general permit automatically terminates on the effective date of the individual permit.

(d) An owner or operator of a facility or activity excluded from a general permit solely because the owner or operator already has an individual permit may request that the discharge from the owner or operator's facility or activity be covered by the general permit. If the department approves coverage under the general permit, the individual permit is revoked. (Eff. 7/29/2006, Register 179)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Not Official Law of Alaska**Article 4. Permit Application Requirements****Section.**

- 305. Permit application forms and general information requirements
- 310. Permit application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers
- 315. Permit application requirements for manufacturing, commercial, mining, and silvicultural facilities that discharge only non-process wastewater
- 320. Permit application requirements for new and existing concentrated animal feeding operations
- 325. Permit application requirements for new and existing concentrated aquatic animal production facilities
- 330. Permit application requirements for new and existing POTWs and other dischargers designated by the department
- 335. Whole effluent toxicity monitoring for POTWs and other designated dischargers
- 340. Information requirements for industrial discharges to POTWs
- 345. Information requirements for a POTW receiving hazardous or corrective action wastes
- 350. Information requirements for a POTW with combined sewer systems and overflows
- 360. Permit application requirements for new sources and new discharges.
- 365. Variance requests by non-POTWs
- 370. Variance requests by POTWs
- 375. Expedited variance procedures
- 380. Permit application requirements for facilities with cooling water intake structures
- 385. Signature requirements for permit applications and reports

18 AAC 83.305. Permit application forms and general information requirements. (a) A person required by 18 AAC 83.015 to obtain an APDES permit shall submit an application to the department providing the information required by (b) of this section, if applicable, and by the applicable parts of 18 AAC 83.310 – 18 AAC 83.360 and 18 AAC 83.380. The application must be submitted on one or more of the EPA forms listed in this section, or on the department equivalent of the listed EPA form:

(1) for an applicant other than a POTW and other treatment works treating domestic sewage, EPA Form 1, revised as of August 1, 1990, adopted by reference, and the following additional forms, if applicable:

(A) for an applicant that is a concentrated animal feeding operation or aquatic animal production facility, EPA Form 2B, revised as of February 12, 2003, adopted by reference;

Not Official Law of Alaska

(B) for an applicant that is an existing industrial facility, including manufacturing facilities, commercial facilities, mining activities, and silvicultural activities, EPA Form 2C, revised as of August 1, 1990, adopted by reference;

(C) for an applicant that is a new industrial facility that discharges process wastewater, EPA Form 2D, revised as of August 1, 1990, adopted by reference;

(D) for an applicant that is a new or existing industrial facility that discharges only non-process wastewater, EPA Form 2E, revised as of August 1, 1990, adopted by reference;

(E) for an applicant that is a new or existing facility whose discharge is composed entirely of storm water associated with industrial activity, EPA Form 2F, unless the applicant is exempted by 40 C.F.R. 122.26(c)(1)(ii), adopted by reference in 18 AAC 83.010; if the applicant's discharge is composed of storm water and non-storm water, EPA Forms 2C, 2D, or 2E, as appropriate;

(2) for an applicant that is a new or existing POTW, EPA Form 2A, revised as of January 14, 1999, adopted by reference.

(b) An applicant for an APDES permit other than a POTW and other treatment works treating domestic sewage, shall provide the following information to the department, using the appropriate forms specified in (a) of this section:

(1) the applicant's activity that requires an APDES permit;

(2) the name, mailing address, electronic mail address, and location of the facility for which the application is submitted;

(3) up to four North American Industry Code System codes that best identify the principal products or services provided by the facility;

(4) the operator's name, mailing address, electronic mail address, telephone number, ownership status, and status as federal, state, private, public, or other entity;

(5) a statement that the facility is located in Indian country, if applicable;

(6) a listing of all permits or construction approvals received or applied for under any of the following programs:

(A) hazardous waste management program under 42 U.S.C. 6921-6939(e) (Resource Conservation and Recovery Act);

Not Official Law of Alaska

- (B) underground injection control (UIC) program under 42 U.S.C. 300(f) – 300j-26 (Safe Drinking Water Act);
 - (C) APDES or NPDES program under 33 U.S.C. 1342 (Clean Water Act, sec. 402);
 - (D) prevention of significant deterioration (PSD) program under 42 U.S.C. 7470 – 7492 (Clean Air Act);
 - (E) nonattainment program under 42 U.S.C. 7501 – 7515 (Clean Air Act);
 - (F) national emission standards for hazardous pollutants (NESHAPS) preconstruction approval under 42 U.S.C. 7412 (Clean Air Act);
 - (G) ocean dumping permits under 33 U.S.C. 1412 – 1414(b) (Marine Protection Research and Sanctuaries Act);
 - (H) dredge or fill permits under 33 U.S.C. 1344 (Clean Water Act, sec. 404);
 - (I) other relevant environmental permits, including state permits;
- (7) a topographic map, or other map if a topographic map is unavailable, extending one mile beyond the property boundaries of the source, depicting
- (A) the facility and each of its intake and discharge structures;
 - (B) the location of the facility's hazardous waste treatment, storage, or disposal areas;
 - (C) the location of each well where fluids from the facility are injected underground; and
 - (D) the location of wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known by the applicant to exist in the map area;
- (8) a brief description of the nature of the business.
- (c) The applicant may submit information required by this section electronically if the department approves an electronic method of submittal.
- (d) An applicant shall keep records of all data used to complete a permit application and any supplemental information submitted under this article for a period of at least three years from the date the application is signed. (Eff. 7/29/2006, Register 179)

Not Official Law of Alaska

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.100
AS 46.03.010 AS 46.03.050 AS 46.03.110

Editor's Note: Copies of EPA's application forms specified and adopted by reference in 18 AAC 83.305(a) are available for examination at the Department of Environmental Conservation, Division of Water area offices in Juneau, Anchorage, and Fairbanks. The forms may also be viewed through EPA's website at <http://cfpub.epa.gov/npdes/pareas.cfm>. The North American Industry Classification System (NAICS) codes can be obtained from the following internet address of the United States Census Bureau: <http://www.census.gov/epcd/www/naics.html>.

18 AAC 83.310. Permit application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. (a) Information requirements. Except for a facility subject to the requirements of 18 AAC 83.315, an applicant for an APDES permit for an existing discharge from a manufacturing, commercial, mining, or silvicultural facility or activity shall provide the following information to the department, using the applicable forms specified in 18 AAC 83.305(a):

(1) the latitude and longitude of each outfall location to the nearest 15 seconds and the name of each receiving water;

(2) for each outfall

(A) a narrative identifying each type of process, operation, or production area that contributes wastewater to the effluent from that outfall, including process wastewater, cooling water, and storm water runoff; processes, operations, or production areas may be described in general terms, such as "dye-making reactor" or "distillation tower";

(B) the average flow that each process contributes and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(C) for a privately owned treatment works, the identity of each user of the treatment works;

(D) the average flow of point sources composed of storm water; for this sub-paragraph, the average flow may be estimated;

(E) the basis for the rainfall event with the method of estimation;

(3) a description of the frequency, duration, and flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks, for any of the discharges described in (a)(2) of this section that are intermittent or seasonal;

Not Official Law of Alaska

(4) a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline, if an effluent guideline promulgated under 33 U.S.C. 1314 applies to the applicant and is expressed in terms of production or other measure of operation; the reported measure must reflect the actual production of the facility as required by 18 AAC 83.520;

(5) if the applicant is subject to any present requirements or compliance schedules for construction, upgrading, or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates;

(6) a listing of any toxic pollutant that the applicant currently uses or manufactures as an intermediate or final product or byproduct, except that the department may waive or modify this requirement

(i) if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant; and

(ii) the department has adequate information to issue the permit;

(7) an identification of any biological toxicity tests that the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water in relation to a discharge;

(8) the identity of each laboratory or firm and the analyses performed, if a contract laboratory or consulting firm performed any of the analyses required by (c) of this section.

(b) **Line drawing.** The owner or operator of a facility subject to this section shall submit with an application a line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. In the line drawing, similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under (a)(2) of this section. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined for certain activities such as mining, the applicant may instead provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(c) **Effluent characteristics.** In addition to the items of information listed in (a) and (b) of this section, and except for information on storm water discharges required by 40 C.F.R. 122.26, adopted by reference in 18 AAC 83.010, an applicant for an APDES permit for an existing facility described in (a) of this section shall

(1) collect, prepare, and submit information regarding the discharge of pollutants specified in this section and effluent characteristics; and

Not Official Law of Alaska

(2) when quantitative data for a pollutant are required, collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 C.F.R. Part 136, adopted by reference in 18 AAC 83.010, except that when no analytical method is approved, the applicant may use any suitable method but must describe the method.

(d) **Grab sampling.** An applicant for an APDES permit under this section shall use grab samples in providing information regarding pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, the applicant shall use 24-hour composite samples, except that a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. For discharges other than storm water discharges, the department may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is not feasible and that a minimum of four grab samples will be a representative sample of the effluent being discharged.

(e) **Exceptions to testing and data provision requirements for effluent characteristics.** For purposes of (c) of this section,

(1) when an applicant has two or more outfalls with substantially identical effluents, the department may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfall;

(2) an applicant's duty under (j), (k), and (l) of this section to provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report that those pollutants are present.

(f) **Storm water discharges.** For storm water discharges associated with an existing facility described in (a) of this section,

(1) all samples must be collected from the discharge resulting from a storm event and shall be collected at least 72 hours from the previously measurable storm event, and, where feasible, from a storm event that does not exceed the duration and total rainfall of the average or median storm event in that area by more than 50 percent;

(2) a flow-weighted composite sample must be taken for either the entire discharge or for the first three hours of the discharge, except for the following:

(A) the sampling may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes; if the department approves, an applicant for a storm water discharge permit under

Not Official Law of Alaska

40 C.F.R. 122.26(d), adopted by reference in 18 AAC 83.010, may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots;

(B) a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours;

(C) for a flow-weighted composite sample, only one analysis of the composite of aliquots is required;

(3) for samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes, or as soon thereafter as practicable, of the discharge for all pollutants specified in 40 C.F.R. 122.26(c)(1), adopted by reference in 18 AAC 83.010, except that for all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 40 C.F.R. 122.26, adopted by reference in 18 AAC 83.010, but not for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus;

(4) the department may, on a case-by-case basis, allow or establish appropriate site-specific sampling procedures or requirements, including

(A) sampling locations;

(B) the season in which the sampling takes place;

(C) the minimum duration between the previous measurable storm event and the sampled storm event;

(D) the minimum or maximum level of precipitation required for an appropriate storm event;

(E) the form of precipitation sampled, whether snow melt or rain fall;

(F) protocols for collecting samples under 40 C.F.R. Part 136, adopted by reference in 18 AAC 83.010; and

(G) additional time for submitting data;

(5) an applicant is deemed to know or have reason to believe that a pollutant is present in an effluent if an evaluation of the expected use, production, or storage of the pollutant, or any previous analyses for the pollutant, show that pollutant's presence.

Not Official Law of Alaska

(g) **Reporting requirements.** Unless a reporting requirement is waived under (h) of this section, every applicant subject to this section shall report quantitative data for the following pollutants for every outfall:

- (1) biochemical oxygen demand;
- (2) chemical oxygen demand;
- (3) total organic carbon;
- (4) total suspended solids;
- (5) ammonia, as N;
- (6) temperature in both winter and summer, respectively;
- (7) pH.

(h) **Waiver.** The department may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in (g) of this section if the applicant demonstrates that information adequate to support issuance of a permit can be obtained with less stringent requirements.

(i) **Processes in one or more primary industry categories.** Except as provided in (n) of this section, an applicant with an existing facility described in (a) of this section that has processes that qualify in one or more of the primary industry categories shown in Appendix A to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010, contributing to a discharge, must report quantitative data for pollutants in each outfall containing process wastewater as follows:

(1) data for the organic toxic pollutants listed in Table II of Appendix D to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010, in the fractions designated in Table I of Appendix D to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010; for purposes of this paragraph:

(A) Table II of Appendix D to 40 C.F.R. Part 122, lists the organic toxic pollutants in each fraction; the fractions result from the sample preparation required by the analytical procedure that uses gas chromatography/mass spectrometry;

(B) if the department determines that an applicant falls within an industrial category for the purposes of selecting fractions for testing, that determination does not establish the applicant's category for any other purpose; see Notes 2, 3, and 4 to 40 C.F.R. 122.21, as revised as of July 1, 2005;

Not Official Law of Alaska

(2) data for the toxic metals, cyanide, and total phenols listed in Table III of Appendix D to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010.

(j) **Disclosure regarding conventional and nonconventional pollutants.** An applicant for an APDES permit under this section must disclose in an application whether the applicant knows or has reason to believe that any of the conventional and nonconventional pollutants in Table IV of Appendix D to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010, are discharged from each outfall. If an applicable effluent limitations guideline limits the pollutant either directly or indirectly by express limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged that is not limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(k) **Disclosure regarding organic toxic pollutants, toxic metals, cyanide, or total phenols.** An applicant for an APDES permit under this section must disclose in an application whether the applicant knows or has reason to believe that any of the organic toxic pollutants listed in Table II or the toxic metals, cyanide, or total phenols listed in Table III of Appendix D to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010, for which quantitative data are not otherwise required under (i) of this section, are discharged from each outfall. Unless an applicant qualifies as a small business under (n) of this section, the applicant must

(1) report quantitative data for every pollutant expected to be discharged in concentrations of 10 parts per billion or greater;

(2) report quantitative data for acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, if any of these four pollutants are expected to be discharged in concentrations of 100 parts per billion or greater;

(3) for every pollutant expected to be discharged in concentrations less than 10 parts per billion, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, in concentrations less than 100 parts per billion, either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(l) **Disclosure regarding asbestos or hazardous substances in discharge.** An applicant for an APDES permit under this section must disclose in an application whether the applicant knows or has reason to believe that asbestos or any of the hazardous substances listed in Table V of Appendix D to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010, are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged and report any quantitative data it has for any pollutant.

(m) **Disclosure regarding certain chlorinated compounds.** An applicant for an APDES permit under this section must disclose in an application and report qualitative

Not Official Law of Alaska

data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if the applicant

(1) uses or manufactures the following:

(A) 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T);

(B) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP);

(C) 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon);

(D) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel);

(E) 2,4,5-trichlorophenol (TCP);

(F) hexachlorophene (HCP); or

(2) knows or has reason to believe that TCDD is or may be present in an effluent.

(n) **Small business exemption.** An applicant under this section is exempt from the quantitative data requirements in (i)(1) or (k) of this section for the organic toxic pollutants listed in Table II of Appendix D to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010, if that applicant qualifies as a small business under one of the following criteria:

(1) the applicant is a coal mine with an expected total annual production of less than 100,000 tons per year;

(2) the applicant has gross total annual sales averaging less than \$233,000 per year in 2003 dollars.

(o) **Additional information.** In addition to the information reported on the application form, an applicant under this section shall provide to the department, at the department's request, any other information that the department may reasonably require to assess the discharges of the facility and to determine whether to issue an APDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and information required to determine the cause of the toxicity.

(p) Definition: In this section, "storm water event" means a rainfall greater than .1 inch. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Not Official Law of Alaska

18 AAC 83.315. Permit application requirements for manufacturing, commercial, mining, and silvicultural facilities that discharge only non-process wastewater. (a) **Information requirements.** An applicant for an APDES permit that is a manufacturing, commercial, mining, or silvicultural discharger that discharges only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department for all discharges, except for storm water discharges, using the applicable forms specified in 18 AAC 83.305(a):

- (1) the number of each outfall, the latitude and longitude to the nearest 15 seconds, and the name of each receiving water;
- (2) for a new discharger, the date of expected commencement of discharge;
- (3) an identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or non-contact cooling water;
- (4) an identification of cooling water additives, if any, that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;
- (5) effluent characteristics prepared and submitted as described in (b) and (c) of this section;
- (6) a description of the frequency of flow and duration of any seasonal or intermittent discharge, except for storm water runoff, leaks, or spills;
- (7) a brief description of any treatment system used or to be used;
- (8) any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits under 18 AAC 83.545;
- (9) the signature of the certifying official under 18 AAC 83.385.

(b) **Effluent characteristics.** Except as otherwise provided in (d), (e), or (g) of this section, an APDES permit application for a discharger described in (a) of this section must include quantitative data for the following pollutants or parameters:

- (1) biochemical oxygen demand;
- (2) total suspended solids;

Not Official Law of Alaska

(3) fecal coliform, if believed present or if sanitary waste is or will be discharged;

(4) total residual chlorine, if chlorine is used;

(5) oil and grease;

(6) chemical oxygen demand, if non-contact cooling water is or will be discharged;

(7) total organic carbon, if non-contact cooling water is or will be discharged;

(8) ammonia, as N;

(9) discharge flow;

(10) pH;

(11) temperature, both in winter and summer, respectively.

(c) **Grab sampling and data collection.** For purposes of the data required under (b) of this section,

(1) grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform; for all other pollutants, 24-hour composite samples must be used;

(2) the quantitative data may be collected over the past 365 days, if that data remains representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken; and

(3) the applicant shall collect and analyze samples in accordance with 40 C.F.R. Part 136, adopted by reference in 18 AAC 83.010.

(d) **Waiver.** The department may waive the testing and reporting requirements for any of the pollutants or flow listed in (b) of this section if the applicant requests a waiver with its application or earlier, and demonstrates that information adequate to support permit issuance can be obtained through less stringent requirements.

(e) **Additional information if applicant is a new discharger.** If the applicant is a new discharger, the applicant shall

(1) complete and submit Item IV of EPA Form 2E, adopted by reference in 18 AAC 83.305(a)(1)(D), or the department equivalent, by providing quantitative data in compliance with that section no later than two years after the discharge commences,

Not Official Law of Alaska

except that the applicant need not complete those portions of Item IV requiring tests that the applicant has already performed and reported under the discharge monitoring requirements of its APDES or NPDES permit; and

(2) include estimates and the source of each estimate instead of sampling data for the pollutants or parameters listed in (b) of this section;

(f) **Reportable measurements of pollutants.** For purposes of the data required under this section, all pollutant levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(g) **Exemption.** An applicant's duty, under (b) and (e) of this section to provide quantitative data or estimates of certain pollutants does not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant shall report the presence of those pollutants. If the requirements of 18 AAC 83.545 are met, net credit may be provided for the presence of pollutants in intake water. (Eff. 7/29/2006, Register 179; am __/__/____, Register __)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.320. Permit application requirements for new and existing concentrated animal feeding operations. An applicant for an APDES permit for a new or existing concentrated animal feeding operation, as defined in 40 C.F.R. 122.23(b) and adopted by reference in 18 AAC 83.010, shall provide the following information to the department, using the applicable forms specified in 18 AAC 83.305(a):

- (1) the name of the owner or operator;
- (2) the facility location and mailing addresses;
- (3) latitude and longitude of the production area, measured at the entrance to the production area;
- (4) instead of the map or alternative information required by 18 AAC 83.305(b)(7), a topographic map of the geographic area in which the concentrated animal feeding operation is located, showing the specific location of the production area;
- (5) specific information about the number and type of animals, including if applicable: beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, or other animals, whether in open confinement or housed under roof;

Not Official Law of Alaska

(6) the type of containment and total capacity in tons or gallons of any anaerobic lagoon, roofed storage shed, storage pond, under-floor pit, above-ground storage tank, below-ground storage tank, concrete pad, impervious soil pad, or other structure or area used for containment and storage of manure, litter, and process wastewater;

(7) the total number of acres available and under the applicant's control for land application of manure, litter, or process wastewater;

(8) estimated amounts of manure, litter, and process wastewater generated per year in tons or gallons;

(9) estimated amounts of manure, litter, and process wastewater transferred to other persons per year in tons or gallons;

(10) certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage. (Eff. 7/29/2006, Register 179; am __/__/__, Register __)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.325. Permit application requirements for new and existing concentrated aquatic animal production facilities. An applicant for an APDES permit for a new or existing concentrated aquatic animal production facility shall provide the following information to the department, using the applicable forms specified in 18 AAC 83.305(a):

(1) the maximum daily and average monthly flow from each outfall;

(2) the number of ponds, raceways, and similar structures;

(3) the name of the receiving water and the source of intake water;

(4) for each species of aquatic animal, the total yearly and maximum harvestable weight;

(5) the calendar month of maximum feeding and the total mass of food fed during that month. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Not Official Law of Alaska

18 AAC 83.330. Permit application requirements for new and existing POTWs and other dischargers designated by the department. (a) **Permit application.** Except as provided in (b) of this section, an applicant that is a POTW and any other discharger designated by the department shall provide the information in this section to the department, using the applicable forms specified in 18 AAC 83.305(a). A permit applicant under this section shall submit all information available at the time of permit application; however, an applicant may provide information by referencing information previously submitted to the department.

(b) **Waiver.** The department may waive any requirement of this section if the department has access to substantially identical information, or if that information is not of material concern for a specific permit, if approved by the regional administrator.

(c) **Information requirements.** An applicant under this section must provide the following information:

(1) name, mailing address, and location of the facility for which the application is submitted;

(2) name, mailing address, electronic mail address, and telephone number of the applicant, and a statement whether the applicant is the facility's owner, operator, or both;

(3) a list of all environmental permits or construction approvals received or applied for, including dates, under any of the following programs or types of activities:

(A) hazardous waste management program under 42 U.S.C. 6921-6939e (Resource Conservation and Recovery Act);

(B) underground injection control program under 42 U.S.C. 300f – 300j-26 (Safe Drinking Water Act);

(C) APDES or NPDES program under 33 U.S.C. 1342 (Clean Water Act, sec. 402);

(D) prevention of significant deterioration program under 42 U.S.C. 7470 – 7492 (Clean Air Act);

(E) nonattainment program under 42 U.S.C. 7501 – 7515 (Clean Air Act);

(F) national emission standards for hazardous pollutants preconstruction approval under 42 U.S.C. 7412 (Clean Air Act);

(G) ocean dumping activities under 33 U.S.C. 1412 – 1414(b) (Marine Protection Research and Sanctuaries Act);

Not Official Law of Alaska

(H) dredge or fill activities under 33 U.S.C. 1344 (Clean Water Act, sec. 404);

(I) other relevant environmental programs or activities, including those subject to state jurisdiction and approval;

(4) the name and population of each municipal entity served by the facility, including unincorporated connector districts, a statement whether each municipal entity owns or maintains the collection system and, if the information is available, whether the collection system is a separate sanitary sewer or a combined storm and sanitary sewer;

(5) a statement whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

(6) the facility's design flow rate, or the wastewater flow rate the plant was built to handle, annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

(7) a statement identifying the types of collection systems, either separate sanitary sewers or combined storm and sanitary sewers, used by the treatment works, and an estimate of the percent of sewer line that each type comprises;

(8) the following information for outfalls to waters of the United States and other discharge or disposal methods:

(A) for effluent discharges to waters of the United States, the total number and types of outfalls including treated effluent, combined sewer overflows, bypasses, constructed emergency overflows;

(B) for wastewater discharged to surface impoundments, the location of each surface impoundment, the average daily volume discharged to each surface impoundment, and a statement whether the discharge is continuous or intermittent;

(C) for wastewater applied to the land, the location of each land application site, the size in acres of each land application site, the average daily volume in gallons per day applied to each land application site, and a statement whether the land application is continuous or intermittent;

(D) for effluent sent to another facility for treatment prior to discharge, the means by which the effluent is transported, the name, mailing address, electronic mail address, contact person, and phone number of the organization transporting the discharge; if the transport is provided by a party other than the applicant, the name, mailing address, electronic mail address, contact person, phone number, and APDES or NPDES permit number, if any, of

Not Official Law of Alaska

the receiving facility, and the average daily flow rate from this facility into the receiving facility in million gallons per day;

(E) for wastewater disposed of in a manner not included in (c)(8)(A) through (D) of this section, including underground percolation and underground injection, a description of the disposal method, including the location and size of each disposal site, if applicable, the annual average daily volume in gallons per day disposed of by this method, and a statement whether disposal by this method is continuous or intermittent; and

(9) the name, mailing address, electronic mail address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the POTW facility.

(d) Additional information for design flow greater than .1 million gallons per day. In addition to the information described in (c) of this section, an applicant under this section with a design flow greater than or equal to 0.1 million gallons per day must provide the following information:

(1) the current average daily volume in gallons per day of inflow and infiltration, and a statement describing steps the facility is taking to minimize inflow and infiltration;

(2) a topographic map, or other map if a topographic map is unavailable, extending at least one mile beyond property boundaries of the treatment plant including all unit processes, and showing

(A) the treatment plant area and unit processes;

(B) the major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant, including outfalls from bypass piping, if applicable;

(C) each well where fluids from the treatment plant are injected underground;

(D) wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the property boundaries of the treatment works;

(E) sewage sludge management facilities including on-site treatment, storage, and disposal sites; and

(F) each location at which waste classified as hazardous under 42 U.S.C. 6921 – 6939e (Resource Conservation and Recovery Act) enters the treatment plant by truck, rail, or dedicated pipe;

Not Official Law of Alaska

(3) a process flow diagram or schematic as follows:

(A) a diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system, including a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points and approximate daily flow rates between treatment units; and

(B) a narrative description of the diagram; and

(4) the following information regarding scheduled improvements:

(A) the outfall number of each affected outfall;

(B) a narrative description of each required improvement;

(C) scheduled dates for commencement and completion of construction, commencement of discharge and attainment of operational level, and actual completion date for any event listed in this sub-paragraph that has been completed;

(D) a description of permits and clearances concerning other federal and state requirements.

(e) **Outfall information.** An applicant under this section must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

(1) for each outfall,

(A) the outfall number;

(B) the borough, and city or town in which the outfall is located;

(C) the latitude and longitude, to the nearest second;

(D) the distance from shore and depth below surface;

(E) the average daily flow rate, in million gallons per day;

(F) if the outfall has a seasonal or periodic discharge, the number of times per year the discharge occurs, the duration of each discharge, the flow of each discharge, and the months in which discharge occurs; and

(G) a statement whether the outfall is equipped with a diffuser and the type of diffuser used, such as high-rate;

Not Official Law of Alaska

(2) for each outfall discharging effluent to waters of the United States, the following receiving water information, if the information is available,

(A) the name of each receiving water;

(B) the name of each watershed, river or stream system and United States Soil Conservation Service or Natural Resource Conservation Service watershed code if known;

(C) the name of each state management or river basin and United States Geological Survey hydrologic cataloging unit code if known; and

(D) the critical flow of each receiving stream and total hardness of the receiving stream at critical low flow;

(3) for each outfall discharging to waters of the United States, the following information describing the treatment of the discharges:

(A) the highest level of treatment, including primary, equivalent to secondary, secondary, advanced, or other treatment level provided for

(i) the design biochemical oxygen demand removal percentage;

(ii) the design suspended solids removal percentage;

(iii) the design phosphorus removal percentage;

(iv) the design nitrogen removal percentage; and

(v) any other removals that an advanced treatment system is designed to achieve; and

(B) a description of the type of disinfection used, and a statement whether the treatment plant de-chlorinates if disinfection is accomplished through chlorination.

(f) **Testing and effluent monitoring.** In addition to 18 AAC 83.335, and except as provided in (h) of this section, an applicant under this section shall undertake sampling and analysis and submit effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the United States, except for combined sewer overflows, including the following if applicable:

(1) sampling and analysis for the pollutants listed in Appendix J, Table 1A to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010;

Not Official Law of Alaska

(2) for an applicant with a design flow greater than or equal to 0.1 million gallons per day, sampling and analysis for the pollutants listed in Appendix J, Table 1 to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010, except that a facility that does not use chlorine for disinfection, does not use chlorine elsewhere in the treatment process, and has no reasonable potential to discharge chlorine in the facility's effluent, is not required to sample or analyze chlorine;

(3) sampling and analysis for the pollutants listed in Appendix J, Table 2 to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010, and for any other pollutants for which the state or EPA has established water quality standards applicable to the receiving waters if the facility is

(A) a POTW that has a design flow rate equal to or greater than one million gallons per day;

(B) a POTW that has an approved pretreatment program;

(C) a POTW that is required to develop a pretreatment program;

or

(D) any POTW, as required by the department to ensure

compliance with this chapter.

(4) sampling and analysis for additional pollutants, as the department may require, on a case-by-case basis;

(5) data from a minimum of three samples taken within four and one-half years before the date of the permit application; to meet this requirement,

(A) samples must be representative of the seasonal variation in the discharge from each outfall;

(B) existing data may be used, if available, in lieu of sampling done solely for the purpose of this application;

(C) additional samples may be required by the department on a case-by-case basis; and

(6) all existing data for pollutants specified in (1) – (4) of this subsection collected within four and one-half years of the application; this data must be included in the pollutant data summary submitted by the applicant, except that if the applicant samples for a specific pollutant on a monthly or more frequent basis, only the data collected for that pollutant within one year of the application must be provided.

Not Official Law of Alaska

(g) **Sampling methods.** To meet the information requirements of (f) of this section, an applicant must

(1) collect samples of effluent and analyze the samples for pollutants in accordance with analytical methods approved under 40 C.F.R. Part 136, adopted by reference in 18 AAC 83.010, unless an alternative is specified in the existing APDES or NPDES permit;

(2) use the following methods:

(A) grab samples for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform;

(B) twenty-four hour composite samples for all other pollutants; for a composite sample, only one analysis of the composite of aliquots is required;

(3) provide at least the following information for each parameter:

(A) maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(B) average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

(C) the analytical method used;

(D) the threshold level, such as the method detection limit, minimum level, or other designated method endpoint for the analytical method used; and

(4) report metals as total recoverable, unless the department requires otherwise.

(h) **Outfall samples.** When an applicant under this section has two or more outfalls with substantially identical effluent discharging to the same receiving water segment, the department may, on a case-by-case basis, allow the applicant to submit sampling data for only one outfall. The department may also allow an applicant to composite samples from one or more outfalls that discharge into the same mixing zone.

(i) **Signature.** An application under this section must be signed by a certifying official in compliance with 18 AAC 83.385. (Eff. 7/29/2006, Register 179; am __/__/__, Register __)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Not Official Law of Alaska

18 AAC 83.335. Whole effluent toxicity monitoring for POTWs and other designated dischargers. (a) An applicant for a permit under 18 AAC 83.330 shall submit information on effluent monitoring for whole effluent toxicity, including an identification of any whole effluent toxicity tests conducted during the four and one-half years before the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

(b) An applicant under 18 AAC 83.330 shall submit to the department, in compliance with (c) – (g) of this section, the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows, if the applicant

(1) has a design flow rate greater than or equal to one million gallons per day;

(2) has an approved pretreatment program or is required to develop a pretreatment program; or

(3) is required to comply with this section by the department, based on consideration of the following factors:

(A) the variability of the pollutants or pollutant parameters in the POTW effluent based on chemical-specific information, the type of treatment plant, and types of industrial contributors;

(B) the ratio of effluent flow to receiving stream flow;

(C) existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(D) receiving water characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water or a water designated as an outstanding natural resource water; and

(E) other considerations, including the history of toxic impacts and compliance problems at the POTW that the department determines could cause or contribute to adverse water quality impacts.

(c) When an applicant under 18 AAC 83.330 has two or more outfalls with substantially identical effluent discharging to the same receiving water segment, the department may, on a case-by-case basis, allow the applicant to submit whole effluent toxicity data for only one outfall. The department may also allow an applicant to composite samples from one or more outfalls that discharge into the same mixing zone.

Not Official Law of Alaska

(d) An applicant under (b) of this section that is required to perform whole effluent toxicity testing must provide

(1) results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(2) results from four tests performed at least annually in the four and one half year period before the application, if the results show no appreciable toxicity using a safety factor determined by the department.

(e) An applicant under (b) of this section must conduct tests with no less than two species, including fish, invertebrate, or plant, and test for acute or chronic toxicity, depending on the range of receiving water dilution. Unless the department directs otherwise, an applicant shall conduct acute or chronic testing based on the following dilutions:

(1) acute toxicity testing if the dilution of the effluent is greater than 1000:1 at the edge of the mixing zone;

(2) acute or chronic toxicity testing, if the dilution of the effluent is between 100:1 and 1000:1 at the edge of the mixing zone; acute testing may be more appropriate at the higher end of this range (1000:1), and chronic testing may be more appropriate at the lower end of this range (100:1);

(3) chronic testing if the dilution of the effluent is less than 100:1 at the edge of the mixing zone.

(f) An applicant required to perform whole effluent toxicity testing under (b) of this section shall provide

(1) the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance;

(2) the results using the form provided by the department, or test summaries, if available and comprehensive, for each whole effluent toxicity test conducted under this section for which the information has not been reported previously to the department;

(3) for whole effluent toxicity data submitted to the department within four and one-half years before the date of the application, the dates on which the data were submitted and a summary of the results; and

(4) any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past four and one-half years revealed toxicity.

(g) For purposes of the whole effluent toxicity testing required by this section, an applicant must conduct testing using methods approved under 40 C.F.R. Part 136,

Not Official Law of Alaska

adopted by reference in 18 AAC 83.010; however, an applicant for a facility in this state is exempt from the chronic toxicity testing methods under 40 C.F.R. Part 136, and shall instead perform chronic toxicity testing in accordance with the methods specified by the department under 18 AAC 70.030. (Eff. 7/29/2006, Register 179; am __/__/____, Register __)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.340. Information requirements for industrial discharges to POTWs. (a) An applicant for a permit as a POTW under 18 AAC 83.330 shall state in its application the number of significant industrial users and categorical industrial users discharging to the POTW. A POTW with one or more significant industrial users shall provide the following information for each significant industrial user that discharges to the POTW:

- (1) the name and mailing address of the significant industrial user;
- (2) a description of all industrial processes that affect or contribute to the significant industrial user's discharge;
- (3) the principal products and raw materials of each significant industrial user that affects or contributes to that significant industrial user's discharge;
- (4) the average daily volume of wastewater discharged by the significant industrial user, indicating the amount attributable to process flow and non-process flow;
- (5) a statement whether the significant industrial user is subject to local limits;
- (6) a statement whether the significant industrial user is subject to one or more categorical standards, and if so, under which category and subcategory;
- (7) a statement whether any problems at the POTW, including upsets, passthrough, or interference have been attributed to the significant industrial user in the past four and one-half years.

(b) The information required in (a) of this section may be waived by the department for a POTW with a pretreatment program if the applicant has submitted either of the following that contains information substantially identical to the information required in (a) of this section:

- (1) an annual report submitted within one year of the application;
- (2) a pretreatment program. (Eff. 7/29.2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
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Not Official Law of Alaska

AS 46.03.010

AS 46.03.050

AS 46.03.110

18 AAC 83.345. Information requirements for a POTW receiving hazardous or corrective action wastes. (a) A POTW receiving hazardous or corrective action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

(1) if the POTW receives, or has been notified that it will receive by truck, rail, or dedicated pipe, any wastes that are regulated as hazardous wastes under 42 U.S.C. 6921 - 6939e (Resource Conservation and Recovery Act) and 40 C.F.R. Part 261, adopted by reference in 18 AAC 62.020, the applicant must report the following:

(A) the method of delivery, including by truck, rail, or dedicated pipe, by which the waste is received;

(B) the applicable hazardous waste number designated in 40 C.F.R. Part 261 for the transported waste, and the amount received annually of each hazardous waste;

(2) if the POTW receives, or has been notified that it will receive, wastewater that originates from remedial activities, including those undertaken under 42 U.S.C. 9601 – 9675 and 42 U.S.C. 6924(u) or 42 U.S.C. 6928(h), the applicant must report the following:

(A) the identity and description of each site or facility at which the wastewater originates;

(B) the identity of any known hazardous constituents listed in Appendix VIII to 40 C.F.R. 261, adopted by reference in 18 AAC 62.020, in the wastewater;

(C) the extent of any treatment the wastewater receives or will receive before entering the POTW.

(b) An applicant under this section is exempt from the requirements of (a)(2) of this section if the applicant receives no more than 15 kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 C.F.R. 261.30(d) and 40 C.F.R. 261.33(e), adopted by reference in 18 AAC 62.020. (Eff. 7/29/2006, Register 179)

Authority: AS 44.46.020
AS 46.03.010

AS 46.03.020
AS 46.03.050

AS 46.03.100
AS 46.03.110

18 AAC 83.350. Information requirements for a POTW with combined sewer systems and overflows. A POTW applicant with a combined sewer system must provide the following information on the combined sewer system and outfalls:

(1) a system map indicating the location of

Not Official Law of Alaska

(A) all combined sewer overflow discharge points;

(B) any sensitive use area potentially affected by combined sewer overflows including beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems;

(C) outstanding national resource waters potentially affected by combined sewer overflows; and

(D) waters supporting threatened and endangered species potentially affected by combined sewer overflows;

(2) a system diagram of the combined sewer collection system that includes the locations of

(A) major sewer trunk lines, both combined and separate sanitary;

(B) points where separate sanitary sewers feed into the combined sewer system;

(C) in-line and off-line storage structures;

(D) flow-regulating devices; and

(E) pump stations;

(3) information on each outfall for each combined sewer overflow discharge point covered by the permit application, including

(A) the outfall number;

(B) the borough and city or town in which the outfall is located;

(C) the latitude and longitude, to the nearest second;

(D) the distance from shore and depth below surface;

(E) a statement whether the applicant monitored any of the following in the past year for a combined sewer overflow:

(i) rainfall;

(ii) overflow volume;

(iii) overflow pollutant concentrations;

Not Official Law of Alaska

- (iv) receiving water quality;
- (v) overflow frequency; and
- (F) the number of storm events monitored in the past year;
- (4) information regarding the number of combined sewer overflows from each outfall in the past year and, if available,
 - (A) the average duration per event;
 - (B) the average volume for each event; and
 - (C) the minimum rainfall that caused a combined sewer overflow event in the last year;
- (5) information about receiving waters, including
 - (A) the name of each receiving water;
 - (B) the name of each watershed, river, or stream system and the United States Soil Conservation Service or Natural Resource Conservation Service watershed code, if known; and
 - (C) the name of each state management or river basin and the United States Geological Survey hydrologic cataloging unit code, if known; and
- (6) a description of any known water quality impact caused by the combined sewer overflow operations, including permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or the exceedance of any applicable state water quality standard, on the receiving water. (Eff. 7/29/2006, Register 179)

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.100
AS 46.03.010 AS 46.03.050 AS 46.03.110

18 AAC 83.360. Permit application requirements for new sources and new discharges. (a) An applicant for an APDES permit for a new manufacturing, commercial, mining, or silvicultural discharge, except for a new discharge from a facility subject to the requirements of 18 AAC 83.315, or a new discharge of storm water associated with industrial activity that is subject to the requirements of 40 C.F.R. 122.26(c)(1), adopted by reference in 18 AAC 83.010, except as provided by 40 C.F.R. 122.26(c)(1)(ii), adopted by reference in 18 AAC 83.010, shall provide the following information to the department, using the applicable forms specified in 18 AAC 83.305(a):

Not Official Law of Alaska

(1) the latitude and longitude to the nearest 15 seconds of the expected outfall location and the name of each receiving water;

(2) the expected date the discharge will commence;

(3) the following information on flows, sources of pollution, and treatment technologies:

(A) a narrative describing the treatment that the wastewater will receive, identifying all operations contributing wastewater to the effluent, stating the average flow contributed by each operation, and describing the ultimate disposal of any solid or liquid wastes not discharged;

(B) a line drawing of the water flow through the facility with a water balance as described in 18 AAC 83.310(b);

(C) if any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration, and maximum daily flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks;

(4) if a new source performance standard promulgated under 33 U.S.C. 1316 or an effluent limitation guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable calculation of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard, as required by 18 AAC 83.520(b) – (d), for each of the first three years; the applicant may submit alternative estimates if production is likely to vary;

(5) the effluent characteristics information as described in (b) of this section;

(6) the existence of any technical evaluation concerning the applicant's wastewater treatment, along with the name and location of similar plants of which the applicant has knowledge;

(7) any optional information the permittee wishes the department to consider;

(8) the signature of the certifying official under 18 AAC 83.385.

(b) An applicant under this section must provide the following effluent characteristics information:

(1) estimated daily maximum, daily average, and the source of that information for each outfall for the following pollutants or parameters:

(A) biochemical oxygen demand;

(B) chemical oxygen demand;

Not Official Law of Alaska

- (C) total organic carbon;
- (D) total suspended solids;
- (E) flow;
- (F) ammonia, as N;
- (G) temperature, in both winter and summer; and
- (H) pH;

(2) estimated daily maximum, daily average, and the source of that information for each outfall for all the conventional and nonconventional pollutants in Table IV of Appendix D to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010, if the applicant knows or has reason to believe any of the pollutants will be present or if any of the pollutants are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant;

(3) estimated daily maximum, daily average, and the source of that information for the following pollutants if the applicant knows or has reason to believe the pollutants will be present in the discharge from any outfall:

(A) the toxic metals, total cyanide, and total phenols listed in Table III of Appendix D to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010;

(B) the organic toxic pollutants in Table II of Appendix D to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010, except bis (chloromethyl) ether, dichlorofluoromethane, and trichlorofluoromethane; however, this requirement is waived for

(i) an applicant with expected gross sales of less than \$233,000 per year in 2003 dollars for the next three years; and

(ii) a coal mine with expected average production of less than 100,000 tons of coal per year;

(4) the information that 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) may be discharged if the applicant uses or manufactures one of the following compounds, or if the applicant knows or has reason to believe that TCDD will or may be present in an effluent:

(A) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); Chemical Abstract Service (CAS) #93-76-5;

Not Official Law of Alaska

(B) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

(C) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);

(D) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

(E) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4);

(F) hexachlorophene (HCP) (CAS #70-30-4);

(5) the potential presence of asbestos or hazardous substances listed in Table V of Appendix D to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010, if the applicant believes these pollutants will be present in any outfall, except that quantitative estimates are not required unless they are already available at the time the applicant applies for the permit.

(c) No later than two years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of EPA application Form 2C or the department equivalent. The applicant need not complete those portions of Item V or the department equivalent requiring tests already performed and reported under the discharge monitoring requirements of its permit.

(d) The effluent characteristics requirements in 18 AAC 83.315(b), (d), and (e) that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report that a pollutant is present. For purposes of this subsection,

(1) net credits may be provided for the presence of pollutants in intake water if the requirements of 18 AAC 83.545 are met; and

(2) (except for discharge flow, temperature, and pH) all levels must be estimated as concentration and as total mass.

(e) The department may waive the reporting requirements for any of the pollutants and parameters in (b)(1) of this section if the applicant requests a waiver with its application, or earlier, and demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements. (Eff.

7/29/2006, Register 179; am __/__/__, Register __)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | S 46.03.050 | S 46.03.110 |

Not Official Law of Alaska

18 AAC 83.365. Variance requests by non-POTWs. (a) An applicant for an APDES permit for a discharge from a facility that is not a POTW may request a variance under this section from otherwise applicable effluent limitations under any of the statutory or regulatory provisions specified in this section by submitting a request within the times specified in this section.

(b) A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based must explain how the requirements of the applicable regulatory or statutory criteria have been met, and must be filed by the following dates:

(1) a request for a variance from best practicable control technology currently available, by the close of the public comment period under 18 AAC 83.120;

(2) a request for a variance from best available technology economically achievable or best conventional pollutant control technology, by no later than the following:

(A) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated regulations;

(B) 180 days after the date on which an effluent limitation guideline is published in the *Federal Register* for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

(c) An applicant may request a variance under this section for the following:

(1) from the best available technology requirements for 33 U.S.C. 1311(b)(2)(F) non-conventional pollutants under to 33 U.S.C. 1311(c) based on the economic capability of the owner or operator;

(2) under 33 U.S.C. 1311(g); however, the applicant may only request a variance under 33 U.S.C. 1311(g) for ammonia, chlorine, color, iron, total phenols (4AAP) if the administrator determines these pollutants are covered by 33 U.S.C. 1311(b)(2)(F);

(3) for any other pollutant that the administrator lists under 33 U.S.C. 1311(g)(4).

(d) A variance request under (c) of this section must be made as follows:

(1) for a variance from an effluent limitation based upon an effluent limitation guideline, an applicant shall

(A) submit an initial request to the regional administrator, as well

Not Official Law of Alaska

as to the department, stating the name of the discharger, the permit number, the outfall numbers, the applicable effluent guideline, and whether the discharger is requesting a modification under 33 U.S.C. 1311(c), 33 U.S.C. 1311(g), or both; this request must be filed not later than

(i) September 25, 1978, for a pollutant controlled by a best available technology effluent limitation guideline promulgated before December 27, 1977; or

(ii) two hundred and seventy days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977; and

(B) submit a completed request no later than the close of the public comment period under 18 AAC 83.120 demonstrating that the requirements of 18 AAC 15.245, and the applicable requirements of 40 C.F.R. Part 125, adopted by reference in 18 AAC 83.010, have been met; however, the complete request for a variance under 33 U.S.C. 1311(g) must be filed at least 180 days before the EPA must make a decision, unless the regional director of the EPA Office of Water and Watersheds establishes a shorter or longer period;

(2) for a request for a variance from effluent limitations not based on effluent limitations guidelines, an applicant is only required to comply with (d)(1)(B) of this subsection and is not required to file an initial request under (d)(1)(A) of this section.

(e) A discharger who cannot file the timely and complete request for a variance required under (d)(1)(B) or (2) of this section may request an extension. The department may grant or deny an extension, but will not grant an extension of more than six months.

(f) An applicant may request a modification under 33 U.S.C. 1312 (b)(2) of any requirement under 33 U.S.C. 1312(a) for achieving water quality related effluent limitations no later than the close of the public comment period under 18 AAC 83.120 on the permit from which the modification is sought.

(g) An applicant under this section for a variance under 33 U.S.C. 1326(a) for the thermal component of any discharge shall file a variance request with a permit application, except that if thermal effluent limitations are established under 33 U.S.C. 1342(a)(1) or are based on water quality standards, the request for a variance may be filed by the close of the public comment period under 18 AAC 83.120. (Eff. 7/29/2006, Register 179; am __/__/__, Register __)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Not Official Law of Alaska

18 AAC 83.370. Variance requests by POTWs. (a) An applicant for an APDES permit for a discharge from a facility that is a POTW may request a variance from otherwise applicable effluent limitations under any of the statutory provisions specified in this section.

(b) A request for a modification under 33 U.S.C. 1311(h) of any requirement of 33 U.S.C. 1311(b)(1)(B) for discharges into marine waters must be filed in accordance with the requirements of 40 C.F.R. Part 125, Subpart G, adopted by reference in 18 AAC 83.010.

(c) A modification under 33 U.S.C. 1312(b)(2) of any requirement under 33 U.S.C. 1312(a) for achieving water quality based effluent limitations must be requested no later than the close of the public comment period under 18 AAC 83.120 on the permit from which the modification is sought. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.375. Expedited variance procedures. (a) Notwithstanding the filing dates specified in 18 AAC 83.365 and 18 AAC 83.370, the department may, before issuing a draft permit, notify a permit applicant, or a person required to obtain an APDES permit that has not yet submitted an application, that the draft permit will likely contain limitations that are eligible for variances. In the notification, the department may require the applicant, as a condition of any variance request, to submit an explanation of how the requirements of 40 C.F.R. Part 125, adopted by reference in 18 AAC 83.010, that apply to the variance have been met. The department may establish a reasonable time limit for submission of the required information.

(b) When the department receives a variance request after giving notice under (a) of this section, the draft or final permit may contain the alternative limitations that become effective when the variance is granted. (Eff. 7/29/2006, Register 179)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.380. Permit application requirements for facilities with cooling water intake structures. (a) An applicant for an APDES permit

(1) for a new facility, other than an offshore oil and gas extraction facility, with a cooling water intake structure as defined in 40 C.F.R. Part 125, Subpart I, adopted by reference in 18 AAC 83.010, must submit to the department as part of its application the information required under (c)(1) – (3) and (5) and (d) of this section and under 40 C.F.R. 125.86, adopted by reference in 18 AAC 83.010.

Not Official Law of Alaska

(2) for a new offshore oil and gas extraction facility with cooling water intake structures as defined in 40 C.F.R. Part 125, Subpart N, adopted by reference in 18 AAC 83.010, that is a fixed facility must submit to the department as part of its application the information required under (c)(1) – (3) and (5) and (d) of this section and under 40 C.F.R. 125.136, adopted by reference in 18 AAC 83.010;

(3) for a new offshore oil and gas extraction facility that is not a fixed facility must submit to the department as part of its application the information required under (c)(1) – (4), (5)(A), and (5)(C) – (E) of this section, and under 40 C.F.R. 125.136, adopted by reference in 18 AAC 83.010; and

(4) under this section must submit any request for alternative requirements under 40 C.F.R. 125.85, adopted by reference in 18 AAC 83.010, to the department with the permit application.

(b) An applicant for an APDES permit for a Phase II existing facility as defined in 40 C.F.R. Part 125, Subpart J, adopted by reference in 18 AAC 83.010, must submit the information required under (c) – (f) of this section and all applicable provisions of 40 C.F.R. 125.95, adopted by reference in 18 AAC 83.010, to the department as part of the applicant's application, except that the applicant's proposal for information collection must be submitted in compliance with 40 C.F.R. 125.95(b)(1), adopted by reference in 18 AAC 83.010.

(c) The applicant shall submit source water physical data to the department with its application, including

(1) a narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including areal dimensions, depths, salinity, temperature regimes, and other documentation that supports the determination of the water body type where each cooling water intake structure is located;

(2) information identifying and characterizing the source water body's hydrological and geomorphological features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of the studies;

(3) locational maps; and

(4) for new offshore oil and gas facilities that are not fixed facilities, a narrative description and locational maps providing information on predicted locations within the waterbody during the permit term in sufficient detail for the department to determine the appropriateness of additional impingement requirements under 40 C.F.R. 125.134(b)(4), adopted by reference in 18 AAC 83.010; and

(5) a narrative description of the cooling water intake structure(s), including

Not Official Law of Alaska

(A) the configuration of each cooling water intake structure and its location in the water body and in the water column;

(B) latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure;

(C) the operation of each cooling water intake structure, including design intake flows, daily hours of operation, number of days of the year in operation, and seasonal changes, if applicable;

(D) a flow distribution and water balance diagram that includes all sources of water to the facility, recirculating flows, and discharges; and

(E) engineering drawings of each cooling water intake structure.

(d) An applicant under this section shall provide source water baseline biological characterization data to show the biological community in the vicinity of each cooling water intake structure and the operation of each cooling water intake structure. The department may use the source water baseline biological characterization data in subsequent permit renewal proceedings to determine if the design and construction technology plan required under 40 C.F.R. 125.86(b)(3) and (4), adopted by reference in 18 AAC 83.010, must be revised. Supporting information required under this subsection must include existing data if available. However, the applicant may supplement existing data using newly conducted field studies if the applicant chooses to do so. The information the applicant submits must include

(1) a list of the data in (2) - (6) of this subsection that are not available and efforts made to identify sources of the data;

(2) a list of species or relevant taxa for all life stages and their relative abundance in the vicinity of each cooling water intake structure;

(3) identification of the species and life stages that would be most susceptible to impingement and entrainment; species evaluated should include the forage base as well as those most significant to commercial and recreational fisheries;

(4) identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

(5) data representative of the seasonal and daily activities such as feeding and water column migration of biological organisms in the vicinity of each cooling water intake structure;

(6) identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at each cooling water intake structure; and

Not Official Law of Alaska

(7) documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan.

(e) If an applicant supplements the information requested in (d)(1) - (6) of this section with data collected using field studies, supporting documentation for the source water baseline biological characterization must include

(1) a description of all methods and quality assurance procedures for sampling; and

(2) data analysis including a description of

(A) the study area including, at a minimum, the area of influence of each cooling water intake structure;

(B) taxonomic identification of sampled and evaluated biological assemblages, including all life stages of fish and shellfish; and

(C) sampling and data analysis methods; the sampling and data analysis methods the applicant uses must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body.

(f) An applicant for an APDES permit for a Phase II facility as defined in 40 C.F.R. Part 125, Subpart J, adopted by reference in 18 AAC 83.010, shall provide the following information for each cooling water intake structure used:

(1) a narrative description of the operation of the cooling water system, including

(A) the system's relationship to cooling water intake structures;

(B) the proportion of the design intake flow that is used in the system;

(C) the number of days of the year the cooling water system is in operation;

(D) seasonal changes in the operation of the system, if applicable; and

(2) design and engineering calculations prepared by a qualified professional and supporting data to support the description required by (1) of this subsection. (Eff. 7/29/2006, Register 179; am __/__/____, Register __)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Not Official Law of Alaska**18 AAC 83.385. Signature requirements for permit applications and reports. (a)**

An APDES permit application must be signed as follows:

(1) for a corporation, a responsible corporate officer shall sign the application; in this subsection, a responsible corporate officer means

(A) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or

(B) the manager of one or more manufacturing, production, or operating facilities, if

(i) the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental statutes and regulations;

(ii) the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and

(iii) authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(2) for a partnership or sole proprietorship, the general partner or the proprietor, respectively, shall sign the application; and

(3) for a municipality, state, or other public agency, either a principal executive officer or ranking elected official shall sign the application; in this subsection, a principal executive officer of an agency means

(A) the chief executive officer of the agency; or

(B) a senior executive officer having responsibility for the overall operations of a principal geographic unit or division of the agency.

(b) Any report required by an APDES permit, and a submittal with any other information requested by the department, must be signed by a person described in (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if

Not Official Law of Alaska

(1) the authorization is made in writing by a person described in (a) of this section;

(2) the authorization specifies either

(A) an individual or a position having responsibility for the overall operation of the regulated facility or activity, including the position of plant manager, operator of a well or a well field, superintendent or position of equivalent responsibility; or

(B) an individual or position having overall responsibility for environmental matters for the company; and

(3) the written authorization is submitted to the department.

(c) If an authorization under (b) of this section is no longer effective because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of (b) of this section must be submitted to the department before or together with any report, information, or application to be signed by an authorized representative.

(d) Any person signing a document under (a) or (b) of this section shall certify as follows: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." (Eff. 7/29/2006, Register 179)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Not Official Law of Alaska**Article 5. Permit Conditions – General.****Section**

- 405. Conditions applicable to all permits
- 410. Special reporting obligations
- 415. Bypass; terms and conditions
- 420. Upset; terms and conditions
- 425. Case-by-case permit conditions and monitoring; reporting requirements
- 430. Effluent limitations and standards; monitoring waiver
- 435. Water quality standards and state requirements
- 440. Technology-based controls for toxic pollutants
- 445. Notification level
- 450. Twenty-four hour reporting for certain pollutants
- 455. Monitoring requirements
- 460. Pretreatment program for POTWs
- 475. Best management practices
- 480. Reissued permits
- 485. Privately-owned treatment works
- 490. Grants
- 495. Coast Guard
- 500. Navigation
- 505. Qualifying state, tribal, or local programs involving small construction activity
- 510. Qualifying state, tribal, or local programs involving other construction activity
- 515. Effluent limitations for outfalls and discharge points
- 520. Production-based limitations
- 525. Effluent limitations for metals
- 530. Effluent limitations for continuous discharges
- 535. Effluent limitations for non-continuous discharges
- 540. Mass limitations
- 545. Credits for pollutants in intake water
- 550. Limitations on internal waste streams
- 555. Adjustments in calculating effluent limitations
- 560. Schedules of compliance

18 AAC 83.405. Conditions applicable to all permits. (a) **Incorporation of conditions.** The conditions in (b) – (l) of this section and in 18 AAC 83.410 – 18 AAC 83.420 apply to all APDES permits and must be incorporated into the permits expressly or by reference along with any additional conditions required under this chapter. Any section incorporated by reference in a permit must be identified by a specific citation.

(b) **Duty to comply.** A permittee shall comply with all conditions of that permittee's APDES permit. Any permit noncompliance constitutes a violation of 33 U.S.C. 1251 – 1387 (Clean Water Act) and this chapter, and is grounds for an

Not Official Law of Alaska

enforcement action including termination, revocation and reissuance, or modification of a permit, or denial of a permit renewal application. A permittee shall comply with effluent standards or prohibitions established under 33 U.S.C. 1317(a) for toxic pollutants within the time provided in the regulations that establish those effluent standards or prohibitions even if the permit has not yet been modified to incorporate the requirement.

(c) **Duty to reapply.** If a permittee wishes to continue an activity regulated by a permit after its expiration date, the permittee must apply for and obtain a new permit.

(d) **Need to halt or reduce activity not a defense.** In an enforcement action, a permittee may not assert as a defense that compliance with the conditions of the permit would have made it necessary for the permittee to halt or reduce the permitted activity.

(e) **Duty to mitigate.** A permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

(f) **Proper operation and maintenance.** A permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances that the permittee installs or uses to achieve compliance with the conditions of the permit. The permittee's duty to operate and maintain properly includes using adequate laboratory controls and appropriate quality assurance procedures. However, a permittee is not required to operate back-up or auxiliary facilities or similar systems that a permittee installs unless operation of those facilities is necessary to achieve compliance with the conditions of the permit.

(g) **Permit actions.** A permit may be modified, revoked and reissued, or terminated for cause as provided in 18 AAC 83.130. If a permittee files a request to modify, revoke and reissue, or terminate a permit, or gives notice of planned changes or anticipated noncompliance, the filing or notice does not stay any permit condition.

(h) **Property rights.** A permit does not convey any property rights or exclusive privilege.

(i) **Duty to provide information.** A permittee shall, within a reasonable time, provide to the department any information that the department requests to determine whether a permittee is in compliance with the permit, or whether cause exists to modify, revoke and reissue, or terminate a permit. A permittee shall also provide to the department, upon request, copies of any records the permittee is required to keep under the permit.

(j) **Inspection and entry.** A permittee shall allow the department, or an authorized representative, including a contractor acting as a representative of the department, at reasonable times and on presentation of credentials establishing authority and any other documents required by law, to

Not Official Law of Alaska

(1) enter the premises where a permittee's regulated facility or activity is located or conducted, or where permit conditions require records to be kept;

(2) have access to and copy any records that permit conditions require the permittee to keep;

(3) inspect any facilities, equipment, including monitoring and control equipment, practices, or operations regulated or required under a permit; and

(4) sample or monitor any substances or parameters at any location for the purpose of assuring permit compliance or as otherwise authorized by 33 U.S.C. 1251-1387 (Clean Water Act).

(k) **Monitoring and records.** A permittee must comply with the following monitoring and recordkeeping conditions:

(1) samples and measurements taken for the purpose of monitoring must be representative of the monitored activity;

(2) the permittee shall retain records of all monitoring information for at least three years, or longer at the department's request at any time, from the date of the sample, measurement, report, or application; monitoring records required to be kept include

(A) all calibration and maintenance records;

(B) all original strip chart recordings or other forms of data approved by the department for continuous monitoring instrumentation;

(C) all reports required by a permit; and

(D) records of all data used to complete the application for a permit;

(3) records of monitoring information must include

(A) the date, exact place, and time of any sampling or measurement;

(B) the name of any individual who performed the sampling or measurement;

(C) the date any analysis was performed;

(D) the name of any individual who performed any analysis;

(E) any analytical technique or method used; and

Not Official Law of Alaska

(F) the results of the analysis; and

(4) monitoring must be conducted according to test procedures approved under 40 C.F.R. Part 136, adopted by reference in 18 AAC 83.010, unless other test procedures have been specified in the permit.

(l) **Signature requirement; penalties.** Any application, report, or information submitted to the department in compliance with a permit requirement must be signed and certified in accordance with 18 AAC 83.385. Any person who knowingly makes any false material statement, representation, or certification in any application, record, report or other document filed or required to be maintained under a permit, or who knowingly falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under a permit shall, upon conviction, be subject to penalties under 33 U.S.C. 1319(c)(4). (Eff. 7/29/2006, Register 179; am __/__/____, Register __)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.410. Special reporting obligations. (a) **Planned changes.** The permittee shall give notice to the department as soon as possible of any planned physical alteration or addition to the permitted facility if

(1) the alteration or addition may make the facility a “new source” under one or more of the criteria in 18 AAC 83.990(44); or

(2) the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged if those pollutants are not subject to effluent limitations in the permit, or to notification requirements under 18 AAC 83.610.

(b) **Anticipated noncompliance.** A permittee shall give seven days notice to the department before commencing any planned change in the permitted facility or activity that may result in noncompliance with permit requirements.

(c) **Transfers.** A permittee may not transfer a permit for a facility or activity to any person except after notice to the department. The department may modify or revoke and reissue the permit to change the name of the permittee and incorporate other requirements of 33 U.S.C. 1251 – 1387 (Clean Water Act).

(d) **Monitoring reports.** At the intervals specified in the permit, monitoring results must be reported on the EPA discharge monitoring report form, as revised as of March, 1999, adopted by reference. If the permittee monitors any pollutant more frequently than the permit requires using test procedures approved under 40 C.F.R. Part 136, adopted by reference in 18 AAC 83.010, or as specified in the permit, the results of that additional monitoring must be included in the calculation and reporting of

Not Official Law of Alaska

the data submitted in the discharge monitoring report. All limitations that require averaging of measurements must be calculated using an arithmetic mean unless the department specifies another method in the permit.

(e) **Compliance schedules.** A permittee must submit progress or compliance reports on interim and final requirements in any compliance schedule of a permit no later than 14 days following the scheduled date of each requirement.

(f) **Twenty-four hour reporting.** A permittee shall report any noncompliance event that may endanger health or the environment as follows:

(1) a report must be made

(A) orally within 24 hours after the permittee becomes aware of the circumstances; and

(B) in writing within five days after the permittee becomes aware of the circumstances;

(2) a report must include the following information:

(A) a description of the noncompliance and its cause;

(B) the period of noncompliance, including exact dates and times;

(C) if the noncompliance has not been corrected, a statement regarding the anticipated time the noncompliance is expected to continue; and

(D) steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance;

(3) an event that must be reported within 24 hours includes

(A) an unanticipated bypass that exceeds any effluent limitation in the permit;

(B) an upset that exceeds any effluent limitation in the permit;

(C) a violation of a maximum daily discharge limitation for any of the pollutants listed in the permit as requiring 24 hour reporting;

(4) the department may waive the written report on a case-by-case basis for reports under (3) of this subsection if the oral report has been received within 24 hours.

(g) **Other noncompliance.** A permittee shall report all instances of noncompliance not reported under (d), (e), and (f) of this section at the time the permittee

Not Official Law of Alaska

submits monitoring reports. A report of noncompliance under this subsection must contain the information listed in (f)(2) of this section.

(h) **Corrective information.** If a permittee becomes aware that it failed to submit a relevant fact in a permit application, or submitted incorrect information in a permit application or in any report to the department, the permittee shall promptly submit the relevant fact or the correct information. (Eff. 7/29/2006, Register 179; am __/__/__, Register __)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Editor's Note: A copy of EPA's discharge monitoring report form specified and adopted by reference in 18 AAC 83.410(d) is available for examination at the Department of Environmental Conservation, Division of Water area offices in Juneau, Anchorage, and Fairbanks. The form may also be viewed through EPA's website at <http://cfpub.epa.gov/npdes/pareas.cfm>.

18 AAC 83.415. Bypass; terms and conditions. (a) Bypass is prohibited, and the department may take enforcement action against a permittee for any bypass, unless

(1) that bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) there were no feasible alternatives to the bypass, including use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime; however, this condition is not satisfied if the permittee, in the exercise of reasonable engineering judgment, should have installed adequate back-up equipment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) the permittee provides notice to the department of a bypass event in the following manner, as appropriate:

(A) for an anticipated bypass, the permittee submits notice at least ten days before the date of the bypass; the department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the conditions of (a) (1) and (2) of this section;

(B) for an unanticipated bypass, the permittee submits 24-hour notice as required in 18 AAC 83.410(f).

(b) Notwithstanding (a) of this section, a permittee may allow a bypass that

(1) does not cause an effluent limitation to be exceeded, and

Not Official Law of Alaska

(2) is for essential maintenance to assure efficient operation. (Eff. 7/29/2006, Register 179)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.420. Upset; terms and conditions. (a) In any enforcement action for noncompliance with technology-based permit effluent limitations, a permittee may claim upset as an affirmative defense. A permittee seeking to establish the occurrence of an upset has the burden of proof to show that the requirements of (b) of this section are met.

(b) To establish the affirmative defense of upset, a permittee must demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that

(1) an upset occurred and the permittee can identify the cause or causes of the upset;

(2) the permitted facility was at the time being properly operated;

(3) the permittee submitted 24-hour notice of the upset as required in 18 AAC 83.410(f); and

(4) the permittee complied with any mitigation measures required under 18 AAC 83.405(e).

(c) Any determination made in administrative review of a claim that noncompliance was caused by upset, before an action for noncompliance is commenced, is not final administrative action subject to judicial review. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.425. Case-by-case permit conditions and monitoring; reporting requirements. (a) In addition to conditions required in all permits under 18 AAC 83.405 – 18 AAC 83.420 and required in specific categories of permits under 18 AAC 83.610, the department will establish conditions, as required on a case-by-case basis, to assure compliance with any applicable requirement of state law and 33 U.S.C. 1251 – 1387 (Clean Water Act), and regulations, including conditions in compliance with

(1) 18 AAC 83.020, duration of APDES permits;

(2) 18 AAC 83.455, monitoring requirements; and

Not Official Law of Alaska

(3) 18 AAC 83.560, schedules of compliance.

(b) An applicable requirement is a state statutory or regulatory requirement that takes effect before final administrative disposition of a permit and also any requirement that takes effect before the modification or revocation and reissuance of a permit, to the extent allowed in 18 AAC 83.130. New or reissued permits, and modified or revoked and reissued permits to the extent allowed under 18 AAC 83.130, must incorporate each of the applicable requirements referenced in 18 AAC 83.430 – 18 AAC 83.550.

(c) All permit conditions must be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulation or requirement must be given in the permit. The monitoring and reporting requirements in APDES permits must be limited to those requirements mandated by law, including any legal settlements, and those necessary to ascertain compliance with the effluent limitations contained in the permit and with state water quality standards.

(d) In addition to the monitoring and reporting conditions that are contained in an APDES permit under (a) - (c) of this section, the department may require the owner or operator of any point source to perform any activity listed in 33 U.S.C. 1318(a)(A) whenever the department determines it is necessary to carry out the objectives set out in 33 U.S.C. 1318(a). (Eff. 7/29/2006, Register 179)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.430. Effluent limitations and standards; monitoring waiver. (a) An APDES permit must include conditions meeting the following requirements, if applicable, in addition to those set out in other sections of this chapter:

(1) technology-based effluent limitations and standards based on effluent limitations and standards promulgated under 33 U.S.C. 1311, new source performance standards promulgated under 33 U.S.C. 1316, case-by-case effluent limitations determined under 33 U.S.C. 1342(a), or a combination of the three authorities in accordance with 40 C.F.R. 125.3; for new sources or new dischargers, technology-based limitations and standards are subject to the provisions of 40 C.F.R. 122.29(d), adopted by reference in 18 AAC 83.010;

(2) other effluent limitations and standards under 33 U.S.C. 1311 – 1313, 1317, 1328, and 1345; if any applicable toxic effluent standard or prohibition, including any schedule of compliance specified in the effluent standard or prohibition, is promulgated under 33 U.S.C. 1317(a), and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the department shall commence proceedings under this chapter to modify or revoke and reissue the permit to conform to the more stringent toxic effluent standard or prohibition;

Not Official Law of Alaska

(3) requirements applicable to cooling water intake structures under 33 U.S.C. 1326(b), in accordance with 40 C.F.R. Part 125, Subparts I, J, and N, adopted by reference in 18 AAC 83.010; and

(4) for significant industrial users of a POTW without an approved pretreatment program, applicable requirements under 40 C.F.R. Part 403 – 40 C.F.R. Part 471, adopted by reference in 18 AAC 83.010(g).

(b) The department may waive monitoring for certain guideline-listed pollutants as follows:

(1) the department may authorize a discharger subject to technology-based effluent limitations guidelines and standards in an APDES permit to omit sampling of a pollutant found at 40 C.F.R. Part 401 - 40 C.F.R. Part 471, adopted by reference in 18 AAC 83.010, if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger;

(2) a monitoring waiver under this subsection is not available during the term of the first permit granted to a discharger, and is effective only for the term of the permit in effect when the waiver is granted;

(3) a permittee shall submit a request for a monitoring waiver under this subsection when applying for a reissued permit or for modification of a reissued permit; the request must demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger; and

(4) if a monitoring waiver is granted, the permit must include the monitoring waiver as an express permit condition, and the reasons supporting the waiver must be documented in the permit's fact sheet.

(c) Nothing in this section supersedes certification processes and requirements already established in existing effluent limitations guidelines and standards. (Eff. 7/29/2006, Register 179; am __/__/____, Register __)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.435. Water quality standards and state requirements. (a) An APDES permit must include conditions to meet any applicable requirement in addition to or more stringent than promulgated effluent limitations guidelines or standards under 33 U.S.C. 1311, 1314, 1316, 1317, 1328, and 1345 if necessary to

Not Official Law of Alaska

(1) achieve water quality standards established under 33 U.S.C. 1313, including state narrative criteria for water quality;

(2) attain or maintain a specified water quality through water quality-related effluent limits established under 33 U.S.C. 1312;

(3) incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state statute or regulations in accordance with 33 U.S.C. 1311(b)(1)(C);

(4) ensure consistency with the requirements of a water quality management plan approved by EPA under 33 U.S.C. 1288(b);

(5) incorporate 33 U.S.C. 1343 criteria for ocean discharges under 40 C.F.R. 125.120 – 125.124, adopted by reference in 18 AAC 83.010; and

(6) incorporate alternative effluent limitations or standards where warranted by fundamentally different factors under 40 C.F.R. 125.30 – 125.32, adopted by reference in 18 AAC 83.010.

(b) Effluent limitations in a permit must control all pollutants or pollutant parameters, either conventional, nonconventional, or toxic pollutants, that the department determines are or may be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an excursion above any state water quality standard, including state narrative criteria for water quality.

(c) To determine whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a state water quality standard, the department will use procedures that account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing when evaluating whole effluent toxicity, and, if applicable, the dilution of the effluent in the receiving water.

(d) When the department determines, using the procedures in (c) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a state numeric criteria within a state water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

(e) When the department determines, using the procedures in (c) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

Not Official Law of Alaska

(f) Except as provided in this subsection, when the department determines, using the procedures in (c) of this section, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable state water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not required if the department demonstrates in the fact sheet of the APDES permit, using the procedures in (c) of this section, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative state water quality standards.

(g) When the state has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable state water quality standard, the department will establish effluent limits using one or more of the following options:

(1) establish effluent limits using a calculated numeric water quality criterion for the pollutant that the department demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use; the criterion may be derived using a proposed state criterion, or an explicit state policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant risk assessment data, exposure data, or other information that may include EPA's *Water Quality Standards Handbook* as revised as of August 1994, adopted by reference;

(2) establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under 33 U.S.C. 1314(a), supplemented if necessary by other relevant information;

(3) establish effluent limits on an indicator parameter for the pollutant of concern, if

(A) the permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(B) the fact sheet sets out the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern that are sufficient to attain and maintain applicable water quality standards;

(C) the permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(D) the permit contains a reopener clause allowing the department to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

Not Official Law of Alaska

(h) When developing water quality-based effluent limits under this section, the department shall ensure that

(1) the level of water quality to be achieved by limits on point sources established under this section is derived from, and complies with, all applicable water quality standards; and

(2) effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the state and approved by EPA under 40 C.F.R. 130.7, as revised as of July 1, 2005. (Eff. 7/29/2006, Register 179; am __/__/__, Register __)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Editor's note: Copies of EPA's *Water Quality Standards Handbook*, adopted by reference in 18 AAC 83.435(g)(1), may be obtained by contacting the U.S.E.P.A. Office of Water, Office of Science and Technology, 1200 Pennsylvania Avenue, NW, Washington, DC 20460 at (202) 566-0430, or by visiting the office's website at <http://www.epa.gov/waterscience/standards/handbook/>.

18 AAC 83.440. Technology-based controls for toxic pollutants. (a) An APDES permit must include limitations established under 18 AAC 83.430 and 18 AAC 83.435 to control toxic pollutants that the department determines are or may be discharged at a level greater than the level achievable by the technology-based treatment requirements appropriate to the permittee under 40 C.F.R. 125.3(c), adopted by reference in 18 AAC 83.010.

(b) In determining whether to include limitations on toxic pollutants in a permit under this section, the department will consider information reported in a permit application under 18 AAC 83.310 or in a notification under 18 AAC 83.610, or other relevant information. The fact sheet must explain the development of limitations included in the permit.

(c) Limitations included in a permit under this section may include:

(1) the toxic pollutants identified for limits under (a) of this section; or

(2) other pollutants which, in the determination of the department, will provide treatment of the pollutants to the levels required by 40 C.F.R. 125.3(c), adopted by reference in 18 AAC 83.010. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Not Official Law of Alaska

18 AAC 83.445. Notification level. An APDES permit must include a condition requiring a notification level that exceeds the notification level of 18 AAC 83.610(b)(1)(A) – (C), if the permittee in a petition or the department on its own initiative, seeks a new notification level. A new notification level imposed under this section may not exceed the level that can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 C.F.R. 125.3(c), adopted by reference in 18 AAC 83.010. (Eff. 7/29/2006, Register 179; am __/__/____, Register __)

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.100
AS 46.03.010 AS 46.03.050 AS 46.03.110

18 AAC 83.450. Twenty-four hour reporting for certain pollutants. A permit must list pollutants for which the permittee is required to report violations of maximum daily discharge limitations within 24 hours under 18 AAC 83.410(f). Listed pollutants must include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance. (Eff. 7/29/2006, Register 179)

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.100
AS 46.03.010 AS 46.03.050 AS 46.03.110

18 AAC 83.455. Monitoring requirements. (a) A permit must include the following requirements for monitoring and reporting:

(1) provisions concerning the proper use, maintenance, and installation of appropriate monitoring equipment or methods, including biological monitoring methods;

(2) the type, intervals, and frequency of monitoring required to yield data that are representative of the monitored activity, including continuous monitoring when appropriate;

(3) provisions for reporting the results of monitoring, including frequency, appropriate for the regulated activity based on the impact of that activity and as specified in (b) – (e) of this section;

(4) monitoring sufficient to assure compliance with permit limitations for

(A) the mass or other measurement specified in the permit for each pollutant limited in the permit;

(B) the volume of effluent discharged from each outfall; and

(C) other appropriate measurements, including

(i) pollutants in internal waste streams under
18 AAC 83.550;

Not Official Law of Alaska

(ii) pollutants in intake water for net limitations under 18 AAC 83.545;

(iii) frequency, rate of discharge, and other requirements for noncontinuous discharges under 18 AAC 83.535; and

(iv) pollutants subject to notification requirements under 18 AAC 83.610; and

(5) analyses of pollutants using test procedures approved under 40 C.F.R. Part 136, adopted by reference in 18 AAC 83.010, for pollutants with approved test procedures, and using test procedures specified in the permit for pollutants without approved methods.

(b) Except as provided in (d) and (e) of this section, the department will establish requirements to report monitoring results, including the frequency of required reports, on a case-by-case basis depending on the nature and effect of the discharge. The department will require a monitoring report from a permittee under this subsection at least once a year.

(c) The department will establish requirements to report monitoring results, including the frequency of required reports, for storm water discharges associated with industrial activity that are subject to an effluent limitation guideline, on a case-by-case basis depending on the nature and effect of the discharge. The department will require monitoring results from a permittee under this subsection at least once a year.

(d) Except as provided in (c) of this section, the department will establish monitoring report requirements for stormwater discharges associated with industrial activity, on a case-by-case basis, with a frequency dependent on the nature and effect of the discharge, but in no case less than a year. A permit for a discharge described in this subsection must, at a minimum, require the discharger to

(1) conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

(2) maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

(3) sign and certify the report in compliance with 18 AAC 83.385; and

(4) submit, once every three years, a registered professional engineer's certification that the facility is in compliance with the permit, or to comply with

Not Official Law of Alaska

alternative requirements approved by the department if an annual inspection is impracticable for a discharger of storm water associated with industrial activity from inactive mining operations.

(e) A permit that does not require monitoring results reports at least annually must require the permittee to report, at least annually, all instances of noncompliance not reported under 18 AAC 83.410(f). (Eff. 7/29/2006, Register 179; am __/__/____, Register __)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.460. Pretreatment program for POTWs. (a) A POTW permit must include pretreatment program conditions requiring the permittee to

(1) identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under 33 U.S.C. 1317(b) and 40 C.F.R. Part 403, adopted by reference in 18 AAC 83.010;

(2) submit a local program when required by and in accordance with 40 C.F.R. Part 403, adopted by reference in 18 AAC 83.010, to assure compliance with pretreatment standards to the extent applicable under 33 U.S.C. 1317(b); the local program must be incorporated into the permit as described in 40 C.F.R. Part 403, adopted by reference in 18 AAC 83.010, and must require all indirect dischargers to the POTW to comply with the reporting requirements of 40 C.F.R. Part 403, adopted by reference in 18 AAC 83.010; and

(3) provide a written technical evaluation of the need to revise local limits under 40 C.F.R. 403.5(c)(1), adopted by reference in 18 AAC 83.010, following permit issuance or reissuance.

(b) A permit issued to a POTW that is not required to develop a local program under (a)(2) of this section must require the POTW to develop effluent limits when required by and in compliance with 40 C.F.R. 403.5(c)(2), adopted by reference in 18 AAC 83.010.

(c) The department will enforce compliance with pretreatment standards, including local limits, established under 40 C.F.R. Part 403 or developed by a POTW as part of its local program or in accordance with (b) of this section.

(d) A POTW that is a sludge-only facility must develop a pretreatment program under 40 C.F.R. Part 403, adopted by reference in 18 AAC 83.010, when the regional administrator determines that a pretreatment program is necessary to assure compliance with 33 U.S.C. 1345(d). (Eff. 7/29/2006, Register 179; am __/__/____, Register __)

Not Official Law of Alaska

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.100
AS 46.03.010 AS 46.03.050 AS 46.03.110

18 AAC 83.475. Best management practices. A permit must include best management practices to control or abate the discharge of pollutants in the permit when

(1) authorized under 33 U.S.C. 1314(e) for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

(2) authorized under 33 U.S.C. 1342(p) for the control of storm water discharges;

(3) numeric effluent limitations are infeasible; or

(4) the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of 33 U.S.C. 1251 – 1387 (Clean Water Act). (Eff. 7/29/2006, Register 179)

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.100
AS 46.03.010 AS 46.03.050 AS 46.03.110

18 AAC 83.480. Reissued permits. (a) Except as provided in (b) of this section, when a permit is renewed or reissued, interim effluent limitations, standards, or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit, unless the circumstances on which the previous permit was based have materially and substantially changed since the permit was issued, and the change in circumstances would constitute cause for permit modification or revocation and reissuance under 18 AAC 83.135.

(b) In the case of effluent limitations established on the basis of 33 U.S.C. 1342(a)(1)(B), a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under 33 U.S.C. 1314(b) after the original issuance of the permit to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous permit, except that a permit under this subsection may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if

(1) a material and substantial alteration or addition to the permitted facility that justifies the application of a less stringent effluent limitation occurred after permit issuance;

(2) information other than revised regulations, guidance, or test methods that would have justified the application of a less stringent effluent limitation is now available but was not available at the time of permit issuance, or the department

Not Official Law of Alaska

determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under 33 U.S.C. 1342(a)(1)(b);

(3) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(4) the permittee has received a permit modification under 33 U.S.C. 1311(c), (g) - (i), (k), (n), or 1326(a); or

(5) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved, but shall not be less stringent than required by effluent guidelines in effect at the time the permit was renewed, reissued, or modified.

(c) A permit to which (b) of this section applies may not be renewed, reissued, or modified to contain an effluent limitation that is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. A permit may not be renewed, issued, or modified to contain a less stringent effluent limitation if implementation of the less stringent limitation would result in a violation of a water quality standard under 33 U.S.C. 1313 or 18 AAC 70. (Eff. 7/29/2006, Register 179)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.485. Privately-owned treatment works. A permit granted to a privately owned treatment works must include any condition expressly applicable to any user, as a limited co-permittee, that may be necessary to ensure compliance with applicable requirements under this chapter. Alternatively, the department may issue a separate permit to the treatment works and to one or more of its users, or may require a separate permit application from any user. The department's decision to issue a permit without conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, must be stated in the fact sheet for the draft permit for the treatment works. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.490. Grants. An APDES permit must include any applicable condition imposed in a grant made by the administrator to a POTW under 33 U.S.C. 1281 and 1284 that is reasonably necessary for the achievement of effluent limitations under 33 U.S.C. 1311. (Eff. 7/29/2006, Register 179)

Not Official Law of Alaska

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.100
AS 46.03.010 AS 46.03.050 AS 46.03.110

18 AAC 83.495. Coast Guard. When the department issues a permit to a facility that may operate at certain times as a means of transportation over water, the permit must require the discharge to comply with any applicable regulation promulgated by the secretary of the department in which the United States Coast Guard is operating that establishes specifications for safe transportation, handling, carriage, and storage of pollutants. (Eff. 7/29/2006, Register 179)

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.100
AS 46.03.010 AS 46.03.050 AS 46.03.110

18 AAC 83.500. Navigation. An APDES permit must include any applicable condition that the Secretary of the United States Army Corps of Engineers considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with 18 AAC 83.120(i). (Eff. 7/29/2006, Register 179)

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.100
AS 46.03.010 AS 46.03.050 AS 46.03.110

18 AAC 83.505. Qualifying state, tribal, or local programs involving small construction activity. For storm water discharges associated with small construction activity identified in 40 C.F.R. 122.26(b)(15), adopted by reference in 18 AAC 83.010, the department may include permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. When a qualifying state, tribal, or local erosion and sediment control program does not include one or more of the elements in (1) - (4) of this section, the department must include those elements as conditions in the permit. A qualifying state, tribal, or local erosion and sediment control program is one that includes a requirement that

(1) any construction site operator must implement appropriate erosion and sediment control best management practices;

(2) any construction site operator must control waste that may cause adverse impacts to water quality, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site;

(3) any construction site operator must develop and implement a storm water pollution prevention plan, which must include site descriptions, descriptions of appropriate control measures, maintenance procedures, inspection procedures, identification of non-storm water discharges, and copies of approved state, tribal, or local requirements; and

Not Official Law of Alaska

(4) a site plan be submitted for review that incorporates consideration of potential water quality impacts. (Eff. 7/29/2006, Register 179)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.510. Qualifying state, tribal, or local programs involving other construction activity. For storm water discharges from construction activity identified in 40 C.F.R. 122.26(b)(14)(x), adopted by reference in 18 AAC 83.010, the department may include permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. A qualifying state, tribal, or local erosion and sediment control program is one that includes the elements listed in 18 AAC 83.505 and any additional requirements necessary to achieve the applicable technology-based standards of best available technology and best conventional technology as determined by the department using best professional judgment. (Eff. 7/29/2006, Register 179)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.515. Effluent limitations for outfalls and discharge points. All permit effluent limitations, standards and prohibitions must be calculated and established for each outfall or discharge point of the permitted facility, except as otherwise provided under 18 AAC 83.475(3) and 18 AAC 83.550. (Eff. 7/29/2006, Register 179; am ___/___/___, Register ___)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.520. Production-based limitations. (a) For a POTW, permit effluent limitations, standards, or prohibitions must be calculated based on design flow. Except for a POTW or as provided in (b) of this section, any permit limitations, standards, or prohibitions that are based on production or other measure of operation must be calculated on a reasonable measure of actual production of the facility, not on the designed production capacity. A new source or new discharger must estimate actual production based on projected production. The measure of production must be calculated over a time period corresponding to the time period of the calculated permit limitations; for example, monthly production must be used to calculate average monthly discharge limitations.

(b) The department may include a condition establishing alternate permit limitations, standards, or prohibitions based upon an anticipated decrease or increase in production levels, but not exceeding maximum production capability.

Not Official Law of Alaska

(c) For the automotive manufacturing industry only, the department may establish a condition under (b) of this section if the applicant satisfactorily demonstrates to the department when the application is submitted that its actual production is substantially below maximum production capability and actual production, as delineated in (a) of this section, has reasonable potential to increase during the term of the permit.

(d) If the department establishes permit conditions under (b) of this section, the permit must require the permittee to

(1) notify the department at least two business days before a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit; the notice must specify the anticipated level and the period during which the permittee expects to operate at the alternate level; if the notice covers more than one month, the notice must specify the reasons for the anticipated production level increase; a new notice of discharge at an alternate level is required to cover a period or production level not covered by a previous notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice;

(2) comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the department under (d)(1) of this section, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice; and

(3) submit with the discharge monitoring report the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production. (Eff. 7/29/2006, Register 179)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.525. Effluent limitations for metals. Any permit effluent limitation, standard, or prohibition for a metal must be expressed in terms of “total recoverable metal” as defined in 40 C.F.R. Part 136, adopted by reference in 18 AAC 83.010, unless

(1) an applicable effluent standard or limitation has been promulgated under 33 U.S.C. 1251 – 1387 (Clean Water Act) and specifies the limitation for the metal in the dissolved, valent, or total form;

(2) in establishing permit limitations on a case-by-case basis under 40 C.F.R. 125.3, it is necessary to express the limitation on the metal in the dissolved, valent, or total form to carry out the provisions of 33 U.S.C. 1251 – 1387 (Clean Water Act); or

Not Official Law of Alaska

(3) all approved analytical methods for the metal inherently measure only its dissolved form, such as hexavalent chromium. (Eff. 7/29/2006, Register 179; am __/__/____, Register __)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.530. Effluent limitations for continuous discharges. For a continuous discharge, any permit effluent limitation, standard, and prohibition, including those necessary to achieve water quality standards, must, unless impracticable, be stated as

(1) a maximum daily and average monthly discharge limitation for any discharger other than a POTW; and

(2) an average weekly and average monthly discharge limitation for a POTW. (Eff. 7/29/2006, Register 179)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.535. Effluent limitations for non-continuous discharges. In a permit, a discharge that is not a continuous discharge must be particularly described and limited, considering the following factors, if applicable:

(1) frequency;

(2) total mass;

(3) maximum rate of discharge of pollutants during the discharge;

(4) prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure. (Eff. 7/29/2006, Register 179)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.540. Mass limitations. (a) In a permit, any limitation, standard, or prohibition of a pollutant must be expressed in terms of mass, except

(1) pH, temperature, radiation, or other pollutants that cannot appropriately be expressed by mass; or

(2) if applicable standards and limitations are expressed in terms of other units of measurement.

Not Official Law of Alaska

(b) If, in establishing permit limitations on a case-by-case basis, the department finds a limitation expressed in terms of mass is infeasible because the mass of the pollutant discharged cannot be related to a measure of operation, such as a discharge of total suspended solids from certain mining operations, the department will limit the pollutant through another appropriate unit of measurement. In this case, the department will include permit conditions to ensure that dilution will not be used as a substitute for treatment.

(c) A pollutant limited in terms of mass may also be limited in terms of other units of measurement, and the permit must require the permittee to comply with both limitations. (Eff. 7/29/2006, Register 179)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.545. Credits for pollutants in intake water. (a) Except as provided in (b) – (e) of this section, upon request of a discharger, the department will adjust technology-based effluent limitations or standards to reflect credit for pollutants in the discharger's intake water if

(1) the applicable effluent limitations and standards contained in 40 C.F.R. Part 401 - 40 C.F.R. Part 471, adopted by reference in 18 AAC 83.010, specifically provide that those limitations and standards must be applied on a net basis; or

(2) the discharger demonstrates that the control system it uses or proposes to use to meet applicable technology-based limitations and standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

(b) The department will not grant credit for generic pollutants such as biological oxygen demand or total suspended solids under this section unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless the department places appropriate additional limits on process water pollutants either at the outfall or elsewhere.

(c) The department will grant credit only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. The department may require additional monitoring to determine eligibility for credits and compliance with permit limits.

(d) The department will grant credit only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The department may waive this requirement if it finds that environmental degradation will not result from a waiver.

Not Official Law of Alaska

(e) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water. (Eff. 7/29/2006, Register 179)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.550. Limitations on internal waste streams. (a) If permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible to monitor, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before those streams are mixed with other waste streams or cooling water streams. In that case, the monitoring required by 18 AAC 83.455 shall also apply to the internal waste streams.

(b) Limits on internal waste streams will be imposed only if the fact sheet sets out the exceptional circumstances that justify those limitations; exceptional circumstances include the following:

- (1) the final discharge point is inaccessible;
- (2) the wastes at the point of discharge are so diluted as to make monitoring impracticable;
- (3) the interferences among pollutants at the point of discharge would make detection or analysis impracticable. (Eff. 7/29/2006, Register 179)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.555. Adjustments in calculating effluent limitations. (a) Except as provided in (b) of this section, when part of a discharger's process wastewater is not being discharged into waters of the United States or contiguous zone because it is disposed into a well, into a POTW, or by land application, thereby reducing the flow or level of pollutants discharged into waters of the United States, the department will adjust the applicable effluent standards and limitations for the discharge in an APDES permit to reflect the reduced raw waste resulting from the disposal. The department will calculate the effluent limitations and standards in the permit by one of the following methods:

(1) if none of the waste from a particular process is discharged into waters of the United States, and effluent limitations guidelines provide a separate allocation for wastes from that process, the department will eliminate any allocation for the process from calculation of permit effluent limitations or standards;

(2) in any case where (a)(1) of this subsection does not apply, the department will adjust effluent limitations by multiplying the effluent limitation derived

Not Official Law of Alaska

by applying effluent limitations guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow; effluent limitations and standards calculated in this manner may be further adjusted under 40 C.F.R. 125.30 – 125.32, adopted by reference in 18 AAC 83.010, to make them more or less stringent if discharge to a well, POTW, or by land application changes the character or treatability of the pollutants being discharged to receiving waters; this method may be algebraically expressed as:

$$P = \frac{E \times N}{T}$$

Where:

P = the permit effluent limitation;

E = the limitation derived by applying effluent guidelines to the total wastestream;

N = the wastewater flow to be treated and discharged to waters of the United States; and

T = the total wastewater flow.

(b) This section does not apply if any adopted effluent limitation guideline

(1) controls concentrations of pollutants discharged but not mass; or

(2) specifies a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(c) This section does not alter a discharger's obligation to meet any more stringent requirements established under this chapter. (Eff. 7/29/2006, Register 179)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.560. Schedules of compliance. (a) An APDES permit may, when appropriate, specify a schedule of compliance leading to compliance with 33 U.S.C. 1251 – 1387 (Clean Water Act) and this chapter. Any schedule of compliance under this section must require compliance as soon as possible, but no later than the applicable statutory deadline under 33 U.S.C. 1251 – 1387 (Clean Water Act). The first APDES permit issued to a new source or a new discharger may contain a schedule of compliance only if necessary to allow the discharger a reasonable opportunity to comply

Not Official Law of Alaska

with requirements issued or revised after construction of the discharger's facility commenced but less than three years before the relevant discharge commenced. For recommencing dischargers, any subsequent permit may contain a schedule of compliance only when necessary to allow that discharger a reasonable opportunity to comply with requirements issued or revised less than three years before recommencement of discharge.

(b) If a permit establishes a schedule of compliance under this section that exceeds one year from the date of permit issuance, the schedule must set out interim requirements and dates for achievement of the interim requirements. If the schedule includes interim requirements,

(1) the time between interim requirements must not exceed one year; or

(2) if the time necessary for completion of any interim requirement, such as the construction of a control facility, is more than one year and cannot easily be divided into stages for completion, the permit must specify dates for the discharger to report progress toward completion of the interim requirements and the projected completion date.

(c) An APDES permit containing a schedule of compliance under this section must be written to require the permittee to notify the department in writing of the permittee's compliance or noncompliance with the interim or final requirements, or if (b)(2) of this section is applicable, to submit progress reports, no later than 14 days following each interim date and the final date of compliance. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Not Official Law of Alaska**Article 6. Requirements and Permit Conditions Specific to Type of Discharge.****Section**

- 605. Domestic wastewater secondary treatment requirements
- 610. Additional conditions applicable to specified categories of permits
- 615. Storm water discharges
- 620. Requirements for concentrated aquatic animal production facilities
- 625. Requirements for aquaculture projects
- 630. Requirements for concentrated animal feeding operations
- 635. Requirements for silviculture
- 640. Requirements for cooling water intake structures

18 AAC 83.605. Domestic wastewater secondary treatment requirements. A permit issued to a domestic wastewater secondary treatment facility must include as a condition compliance with the applicable requirements set out in 40 C.F.R. 133.100 – 40 C.F.R. 133.105, adopted by reference in 18 AAC 83.010. (Eff. 7/29/2006, Register 179)

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| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.610. Additional conditions applicable to specified categories of permits. (a) **Compliance.** A permit issued to specific dischargers described in this section must include as a condition compliance with the applicable requirements under this section.

(b) **Existing manufacturing, commercial, mining, and silvicultural dischargers.** In addition to the reporting requirements under 18 AAC 83.410, an existing manufacturing, commercial, mining, and silvicultural discharger shall notify the department as soon as that discharger knows or has reason to believe that any activity has occurred or will occur that would result in:

(1) that the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

(A) one hundred micrograms per liter (100 µg/l);

(B) two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; 500 micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(C) five times the maximum concentration value reported for that pollutant in the permit application in accordance with 18 AAC 83.310(c) – (g);

Not Official Law of Alaska

(D) the level established by the department in accordance with 18 AAC 83.445;

(2) that any discharge, on a non-routine or infrequent basis, of a toxic pollutant that is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

(A) five hundred micrograms per liter (500 µg/l);

(B) one milligram per liter (1 mg/l) for antimony;

(C) ten times the maximum concentration value reported for that pollutant in the permit application in accordance with 18 AAC 83.310(c) – (g);

(D) the level established by the department in accordance with 18 AAC 83.445.

(c) **POTWs.** Any POTW shall provide adequate notice to the department, including information on the quality and quantity of effluent introduced into the POTW, and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW as soon as the POTW has knowledge of a change, but no later than seven days in advance of any:

(1) new introduction of pollutants into the POTW from an indirect discharger if that introduction of pollutants would be subject to 33 U.S.C. 1311 or 33 U.S.C. 1316 if the POTW directly discharged those pollutants; and

(2) substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

(d) **Municipal separate storm sewer systems.** The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that the department has designated under 40 C.F.R. 122.26(a)(1)(v), adopted by reference in 18 AAC 83.010, shall submit an annual report by the anniversary of the date of the issuance of the permit for that system. The report must include

(1) the status of implementing any component of the storm water management program that is established as a permit condition;

(2) any proposed change to the storm water management program that is established as a permit condition; a proposed change under this subsection must be consistent with 40 C.F.R. 122.26(d)(2), adopted by reference in 18 AAC 83.010;

Not Official Law of Alaska

(3) any necessary revision to the assessment of controls and the fiscal analysis reported in the permit application under 40 C.F.R. 122.26(d)(2), adopted by reference in 18 AAC 83.010;

(4) a summary of data, including monitoring data, that are accumulated throughout the reporting year;

(5) annual expenditures and budget for the year following each annual report;

(6) a summary describing the number and nature of enforcement actions, inspections, and public education programs; and

(7) identification of water quality improvement or degradation.

(e) **Storm water discharges.** An initial permit for discharges composed entirely of storm water issued under 40 C.F.R. 122.26(e)(7), adopted by reference in 18 AAC 83.010, must require compliance with the conditions of the permit as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit.

(f) **Concentrated animal feeding operations.** Any permit issued to a concentrated animal feeding operation must include the applicable requirements set out in 40 C.F.R. 122.42(e), adopted by reference in 18 AAC 83.010. (Eff. 7/29/2006, Register 179; am __/__/__, Register __)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.615. Storm water discharges. A permit issued to any facility discharging storm water must include as a condition compliance with the applicable requirements set out in 40 C.F.R. 122.26, adopted by reference in 18 AAC 83.010. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.620. Requirements for concentrated aquatic animal production facilities. (a) A concentrated aquatic animal production facility is a point source subject to the APDES permit program.

(b) The department may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the United States. In making this designation, the department shall consider the following factors:

Not Official Law of Alaska

- (1) the location and quality of the receiving waters of the United States;
- (2) the holding, feeding, and production capacities of the facility;
- (3) the quantity and nature of the pollutants reaching waters of the United States;
- (4) other relevant factors.

(c) A concentrated aquatic animal production facility designated under (b) of this section is not required to submit a permit application until the department has conducted an on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.625. Requirements for aquaculture projects. A permit issued to any aquaculture facility must include as a condition compliance with the applicable requirements set out in 40 C.F.R. 122.25 and 40 C.F.R. 125.10 – 40 C.F.R. 125.11, adopted by reference in 18 AAC 83.010. (Eff. 7/29/2006, Register 179)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.630. Requirements for concentrated animal feeding operations. A permit issued to any concentrated animal feeding operation must include as a condition compliance with the applicable requirements set out in 40 C.F.R. 122.23, adopted by reference in 18 AAC 83.010. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

18 AAC 83.635. Requirements for silviculture. A silvicultural point source is a point source subject to the APDES permit program. A permit issued to a silvicultural point source must include as conditions of compliance the applicable requirements set out in 40 C.F.R. Part 429, Subpart I and 40 C.F.R. Part 436, Subpart B, as adopted by reference in 18 AAC 83.010. (Eff. 7/29/2006, Register 179; am __/__/____, Register ____)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Not Official Law of Alaska

18 AAC 83.640. Requirements for cooling water intake structures. A permit issued to any new or existing Phase II facility with a cooling water intake structure must include as a condition compliance with the applicable requirements set out in 40 C.F.R. 125.80 through 40 C.F.R. 125.99, adopted by reference in 18 AAC 83.010. (Eff. 7/29/2006, Register 179)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |

Not Official Law of Alaska**Article 7. General Provisions.****Section**

905. Permit fees

990. Definitions

18 AAC 83.905. Permit fees. (a) **General permit fees.** An applicant must pay the appropriate fee listed in Table E of 18 AAC 72.956 to discharge pollutants under an existing general permit issued under this chapter, or for authorization to discharge pollutants under a general NPDES permit issued by EPA that the department has certified under 33 U.S.C. 1341. The provisions of 18 AAC 72.956 apply to payment of the fees under this subsection.

(b) **Individual permit fees.** An applicant must pay the appropriate fee listed in Table F of 18 AAC 72.957 for authorization to discharge pollutants under an individual APDES permit issued under this chapter or for certification of an individual NPDES permit issued by EPA as required by 33 U.S.C. 1341. The provisions of 18 AAC 72.957 apply to payment of the fees under this subsection.

(c) **Hourly and negotiated fees.** The department will calculate a permit fee in compliance with 18 AAC 72.959(b) and payable under 18 AAC 72.959(c) for a permit for a discharge that is

(1) not listed or for which a fee is not listed in (a) or (b) of this section;
and

(2) associated with a facility described in 18 AAC 72.959(a)(2).

(d) **Fee determination or computation appeals.** A person subject to a fee under this chapter who disputes a fee determination or computation of fees may request review under 18 AAC 15.190. (Eff. 7/29/2006, Register 179)

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|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 44.46.025 | AS 46.03.050 | AS 46.03.110 |
| | AS 46.03.010 | | |

18 AAC 83.990. Definitions. Unless the context indicates otherwise, in this chapter

(1) “administrator” means the administrator of the United States Environmental Protection Agency, or an authorized representative;

(2) “Alaska Pollutant Discharge Elimination System” or “APDES” means the state’s program, approved by EPA under 33 U.S.C. 1342(b), for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under 33 U.S.C. 1317, 1328, 1342, and 1345;

Not Official Law of Alaska

(3) “animal feeding operation” has the meaning given in 40 C.F.R. 122.23, adopted by reference in 18 AAC 83.010;

(4) “applicable standards and limitations” means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under 33 U.S.C. 1251 – 1387 (Clean Water Act), including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices and pretreatment standards under 33 U.S.C. 1311 – 1314, 1316 - 1318, and 1343;

(5) “application” means a submission of required information on

(A) the EPA standard national forms for applying for a National Pollutant Discharge Elimination System (NPDES) permit, adopted by reference in 18 AAC 83.305; or

(B) the department equivalent forms adopted by the state for use in the APDES program and approved by EPA for use by the state, including any approved modifications or revisions;

(6) “aquaculture project” has the meaning given in 40 C.F.R. 122.25, adopted by reference in 18 AAC 83.010;

(7) “average monthly discharge limitation” means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month;

(8) “average weekly discharge limitation” means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week;

(9) “best management practices” means

(A) schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States; and

(B) treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage;

(10) “bypass” means the intentional diversion of waste streams from any portion of a treatment facility;

Not Official Law of Alaska

(11) “commissioner” means the commissioner of the Department of Environmental Conservation;

(12) “concentrated animal feeding operation” has the meaning given in 40 C.F.R. 122.23, adopted by reference in 18 AAC 83.010;

(13) “concentrated aquatic animal production facility” means a hatchery, fish farm, or other facility that meets the criteria in Appendix C to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010, or that the department designates under 18 AAC 83.620(b);

(14) “contiguous zone” means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(15) “continuous discharge” means a discharge that occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities;

(16) “Clean Water Act” means the federal law codified at 33 U.S.C. 1251 – 1387, also known or referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972;

(17) “Clean Water Act and regulations” means 33 U.S.C. 1251 – 1387 and applicable regulations promulgated under 33 U.S.C. 1251 – 1387, including the APDES requirements;

(18) “daily discharge” means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling; the daily discharge is calculated for a pollutant with limitations expressed in:

(A) units of mass, as the total mass of the pollutant discharged over the day; and

(B) other units of measurement, as the average measurement of the pollutant over the day;

(19) “department” means the Department of Environmental Conservation;

(20) “direct discharge” means the discharge of a pollutant;

(21) “director” means the commissioner or the commissioner’s designee assigned to administer the APDES program or a portion of it, unless the context identifies an EPA director;

(22) “discharge” when used without qualification means the discharge of a pollutant;

Not Official Law of Alaska

(23) “discharge of a pollutant”

(A) means any addition of any pollutant or combination of pollutants

(i) to waters of the United States from any point source; or

(ii) to waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation;

(B) includes any addition of pollutants into waters of the United States from

(i) surface runoff that is collected or channeled by humans;

(ii) discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works;

(iii) discharges through pipes, sewers, or other conveyances leading into privately owned treatment works; and

(C) does not include an addition of pollutants by any indirect discharger;

(24) “discharge monitoring report” means the EPA uniform national form, adopted by reference in 18 AAC 83.410(d), for the reporting of self-monitoring results by permittees, including any department equivalent modified to substitute the department’s name, address, logo, and other similar information, as appropriate, in place of information pertaining to EPA;

(25) “draft permit” means a document prepared under 18 AAC 83.115, indicating the department’s tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit;

(26) “effluent limitation” or “effluent limit” means any restriction imposed by the department on quantities, discharge rates, and concentrations of pollutants that are discharged from point sources into waters of the United States, the waters of the contiguous zone, or the ocean;

(27) “effluent limitations guidelines” means a regulation published by the administrator under 33 U.S.C. 1314(b) to adopt or revise effluent limitations, and adopted by reference in 18 AAC 83.010;

Not Official Law of Alaska

(28) “Environmental Protection Agency” or “EPA” means the United States Environmental Protection Agency;

(29) “facility or activity” means any point source or any other facility or activity, including land or appurtenances, that is subject to regulation under the APDES program;

(30) “federal Indian reservation” means all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(31) “general permit” means an APDES permit issued under 18 AAC 83.205, or an NPDES permit issued by EPA under 40 C.F.R. 122.28 before the state’s acceptance of delegation of the NPDES program, authorizing a category of discharges under 33 U.S.C. 1251 – 1387 within a geographical area;

(32) “hazardous substance” means any substance designated under 40 C.F.R. Part 116 in accordance with 33 U.S.C. 1321;

(33) “Indian tribe” means any Indian tribe, band, group, or community recognized by the United States Secretary of the Interior and exercising governmental authority over a federal Indian reservation;

(34) “indirect discharger” means a nondomestic discharger introducing pollutants to a POTW;

(35) “individual control strategy” has the meaning given in 40 C.F.R. 123.46(c), revised as of July 1, 2005, adopted by reference;

(36) “interstate agency” means an agency of two or more states established by or under an agreement or compact approved by the United States Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under 33 U.S.C. 1251 – 1387 and regulations adopted under these provisions;

(37) “major facility” means any NPDES facility or activity classified as a major facility by the regional administrator, or any APDES facility or activity classified as a major facility by the regional administrator in conjunction with the department;

(38) “maximum daily discharge limitation” means the highest allowable daily discharge;

(39) “minor facility” means any facility that is not a major facility;

(40) “municipality” means a city, town, borough, village, district, association, or other public body created by or under state law and having jurisdiction

Not Official Law of Alaska

over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. 1288;

(41) “municipal separate storm sewer system” or “MS4” has the meaning given in 40 C.F.R. 122.26(b)(4) and (b)(7), adopted by reference in 18 AAC 83.010;

(42) “National Pollutant Discharge Elimination System” or “NPDES” means

(A) the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under 33 U.S.C. 1317, 1328, 1342, and 1345;

(B) includes the APDES program as approved by EPA;

(43) “new discharger”

(A) means any building, structure, facility, or installation

(i) from which there is or may be a discharge of pollutants;

(ii) that did not commence the discharge of pollutants at a particular site before August 13, 1979;

(iii) that is not a new source; and

(iv) that has never received a finally effective NPDES permit for discharges at that site;

(B) includes

(i) an indirect discharger that commenced or commences discharging into waters of the United States after August 13, 1979;

(ii) any existing mobile point source other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and

(iii) any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commenced or commences the discharge of pollutants after August 13, 1979, at a site under EPA’s permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area

Not Official Law of Alaska

determined by the regional administrator in the issuance of a final permit to be an area of biological concern considering the factors specified in 40 C.F.R. 125.122(a)(1) - (10), adopted by reference in 18 AAC 83.010; an offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a new discharger only for the duration of its discharge in an area of biological concern;

(44) “new source”

(A) means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced

(i) after promulgation of standards of performance under 33 U.S.C. 1316 that are applicable to a new source; or

(ii) after proposal of standards of performance in accordance with 33 U.S.C. 1316 that are applicable to a new source, but only if the standards are promulgated in accordance with 33 U.S.C. 1316 within 120 days of their proposal;

(B) except as otherwise provided in an applicable new source performance standard, is a source that

(i) is constructed at a site at which no other source is located;

(ii) totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(iii) has processes which are substantially independent of an existing source at the same site, considering such factors as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source;

(C) for purposes of (A) and (B) of this paragraph, is a new source only if a new source performance standard is independently applicable to it; if there is no independently applicable standard, the source is a new discharger;

(D) for purposes of this paragraph, is construction of a new source that has commenced if the owner or operator has

(i) begun, or caused to begin as part of a continuous on-site construction program, any placement, assembly, or installation of facilities or equipment, or significant site preparation work including clearing,

Not Official Law of Alaska

excavation or removal of existing buildings, structures, or facilities that is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) entered into a binding contractual obligation for the purchase of facilities or equipment intended to be used in its operation within a reasonable time; options to purchase or contracts that can be terminated or modified without substantial loss, contracts for feasibility engineering and design studies do not constitute a contractual obligation under this sub-subparagraph;

(E) does not include construction on a site that results in a modification to an existing source subject to 18 AAC 83.130, if the construction does not create a new building, structure, facility, or installation meeting the criteria in (A) - (D) of this paragraph, but otherwise alters, replaces, or adds to existing process or production equipment; and

(F) as used in (A)-(E) of this paragraph,

(i) “existing source” means any source that is not a new source or a new discharger;

(ii) “facility or equipment” means any building, structure, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, if the facility or equipment is of such value as to represent a substantial commitment to construct, but does not include any facility or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source;

(iii) “source” means any building, structure, facility, or installation from which there is or may be a discharge of pollutants;

(45) “owner or operator” means the owner or operator of any facility or activity subject to regulation under the APDES program;

(46) “permit”

(A) means an authorization, license, or equivalent control document issued by the department to implement the requirements of the APDES program and this chapter.

(B) includes an APDES general permit and an EPA-issued NPDES general permit;

Not Official Law of Alaska

(47) “person” means an individual, association, partnership, corporation, municipality, state or federal agency, or an agent or employee thereof;

(48) “point source”

(A) means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged;

(B) does not include return flows from irrigated agriculture or agricultural storm water runoff;

(49) “pollutant”

(A) means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials except those regulated under 42 U.S.C. 2011, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, or agricultural waste discharged into water; and

(B) does not include sewage from vessels or water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well

(i) is used either to facilitate production or for disposal purposes;

(ii) is approved by authority of the department, and

(iii) if the department determines that the injection or disposal will not result in the degradation of ground or surface water resources;

(50) “preliminary draft permit” means a draft permit that the department intends to provide notice of under 18 AAC 83.120 and that is provided in advance to the applicant under 18 AAC 83.115(e);

(51) “pretreatment” has the meaning given in 40 C.F.R. 403.3(q), adopted by reference in 18 AAC 83.010;

(52) “primary industry category” means any industry category listed in Appendix A to 40 C.F.R. Part 122, adopted by reference in 18 AAC 83.010;

Not Official Law of Alaska

(53) “privately owned treatment works” means any device or system that is used to treat wastes from any facility whose operator is not the operator of the treatment works and is not a POTW;

(54) “process wastewater” means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product;

(55) “proposed final permit” means a permit, prepared after the public comment period and any public hearing and administrative appeal, that may be sent to EPA for review before final issuance by the department in this subparagraph
“municipality” includes a municipality that has jurisdiction over the indirect discharges to and the discharges from such a treatment works;

(56) “publicly owned treatment works” or “POTW”

(A) means a treatment works as defined by 33 U.S.C. 1292 that is owned by a municipality or state;

(B) includes

(i) any device and system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature; and

(ii) any sewer, pipe, and other conveyance that conveys wastewater to a POTW treatment plant; and

(57) “recommencing discharger” means a source that recommences discharge after terminating operations;

(58) “regional administrator” means the regional administrator of EPA Region 10 or the authorized representative of the regional administrator;

(59) “schedule of compliance” means a schedule of remedial measures in a permit, including an enforceable sequence of interim requirements such as actions, operations, or milestone events, leading to compliance with 33 U.S.C. 1251 - 1387 and this chapter;

(60) “secondary industry category” means any industry category that is not a primary industry category;

(61) “secretary” means the United States Secretary of the Army, acting through the chief of engineers;

Not Official Law of Alaska

(62) “septage” means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained;

(63) “sewage from vessels” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under 33 U.S.C. 1322;

(64) “sewage sludge”

(A) means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage;

(B) includes solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings under 33 C.F.R. Part 159, and sewage sludge products;

(C) does not include grit, screenings, or ash generated during the incineration of sewage sludge;

(65) “sewage sludge use or disposal practice” means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge;

(66) “significant industrial user” has the meaning given in 40 C.F.R. 403.3(t), adopted by reference in 18 AAC 83.010;

(67) “silvicultural point source”

(A) means any discernible, confined, and discrete conveyance related to rock crushing and gravel washing, log sorting, or log storage facilities that are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States; in this paragraph,

(i) “log sorting and log storage facilities” means facilities where discharges result from the holding of unprocessed wood, such as logs or roundwood with bark or after removal of bark held in self-contained bodies of water such as mill ponds or log ponds, or stored on land for wet decking, where water is applied intentionally on the logs; and

(ii) “rock crushing and gravel washing facilities” means facilities that process crushed and broken stone, gravel, and riprap;

Not Official Law of Alaska

(B) does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff;

(68) “site” means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity;

(69) “state” means the State of Alaska;

(70) “state and EPA Agreement” means an agreement between the regional administrator and the state that coordinates EPA and state activities, responsibilities, and programs, including those under 33 U.S.C. 1251 - 1387;

(71) “storm water” has the meaning given in 40 C.F.R. 122.26(b)(13), adopted by reference in 18 AAC 83.010;

(72) “storm water discharge associated with industrial activity” has the meaning given in 40 C.F.R. 122.26(b)(14), adopted by reference in 18 AAC 83.010;

(73) “total dissolved solids” means the total dissolved solids as determined by use of the method specified in 40 C.F.R. Part 136, adopted by reference in 18 AAC 83.010;

(74) “toxic pollutant” means any pollutant listed as toxic under 33 U.S.C. 1317(a)(1);

(75) “upset” means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee; “upset” does not include the following:

(A) noncompliance to the extent caused by operational error;

(B) improperly designed or installed treatment facilities;

(C) inadequate treatment facilities;

(D) lack of preventive maintenance;

(E) careless or improper operation;

(76) “variance”

Not Official Law of Alaska

(A) means any mechanism or provision under 33 U.S.C. 1311 or 1326 or under 18 AAC 83.160, or in the applicable effluent limitations guidelines, that allows a modification or waiver of the generally applicable effluent limitation requirements or time deadlines of 33 U.S.C. 1251 - 1387;

(B) includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or based upon 33 U.S.C. 1311(c), (g) – (i), or 1326(a);

(77) “waters of the United States” or “waters of the U.S.”

(A) means

(i) all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(ii) all interstate waters, including interstate wetlands;

(iii) all other waters such as intrastate lakes, rivers, streams, including intermittent streams, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or that are used or could be used for industrial purposes by industries in interstate commerce;

(iv) all impoundments of waters otherwise defined as waters of the United States under this paragraph;

(v) tributaries of waters identified in (i) through (iv) of this subparagraph;

(vi) the territorial sea;

(vii) wetlands adjacent to waters, other than waters that are themselves wetlands, identified in (i) through (vi) of this subparagraph;

(B) does not include

(i) waste treatment systems including treatment ponds or lagoons designed to meet the requirements of 33 U.S.C. 1251-1387 (Clean Water Act), other than cooling ponds as defined in 40 C.F.R. 423.11(m),

Not Official Law of Alaska

adopted by reference in 18 AAC 83.010 that also meet the criteria of this paragraph;

(ii) prior converted cropland; however, notwithstanding the determination of an area's status as prior converted cropland by any federal agency other than EPA, the final authority regarding Clean Water Act jurisdiction remains with EPA.

(78) "wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, and generally include swamps, marshes, bogs, and similar areas;

(79) "whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

(80) "severe property damage" means substantial physical damage to property, damage to treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass; in this paragraph, "severe property damage" does not include economic loss caused by delays in production. (Eff. 7/29/2006, Register 179; am __/__/__, Register __)

| | | | |
|-------------------|--------------|--------------|--------------|
| Authority: | AS 44.46.020 | AS 46.03.020 | AS 46.03.100 |
| | AS 46.03.010 | AS 46.03.050 | AS 46.03.110 |