

Title 18 Environmental Conservation

Chapter 15

Administrative Procedures

Article

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Article 1

Coverage of Chapter

Section

10. Coverage of chapter.
18 AAC 15.010. Coverage of chapter

Statute text

(a) The provisions of 18 AAC 15.020 - 18 AAC 15.100 apply to application procedures for the following permits or written approvals:

(1) waste management and disposal permits under AS 46.03.100 and 18 AAC 60.215, but not to Alaska Pollutant Discharge Elimination System permits issued under 18 AAC 83.005 - 18 AAC 83.990;

(2) sewerage system and treatment works plan approvals and permits under AS 46.03.100, 18 AAC 72.200, 18 AAC 72.215, 18 AAC 72.220, 18 AAC 72.225, 18 AAC 72.240, 18 AAC 72.500, and 18 AAC 72.600;

(3) public water system plan approvals under AS 46.03.720 and 18 AAC 80.200;

(4) surface oiling permits under AS 46.03.740 and 18 AAC 75.730;

(5) permits under AS 46.03.320, AS 46.03.330, AS 46.03.730, 18 AAC 90.500, and 18 AAC 90.505 for public pesticide programs or projects, and water or aerial application of pesticides;

(6) permits and short-term variances under AS 46.03.100 and 18 AAC 70.200 for disposal of wastewater into or upon the waters or land of the state, except for point source discharges subject to 18 AAC 15.120 or 18 AAC 83.005 - 18 AAC 83.990.

(b) The provisions of 18 AAC 15.130 - 18 AAC 15.180 apply to certification procedures under 33 U.S.C. 1341 (Clean Water Act, sec. 401).

(c) The provisions of 18 AAC 15.185 apply to an informal department review authorized by a provision of this title.

(d) The provisions of 18 AAC 15.190 apply to the review of a fee decision of the department under 18 AAC 31.050(n), 18 AAC 32.610, 18 AAC 34.910, 18 AAC 50.430, 18 AAC 60.700, 18 AAC 72.961, 18 AAC 80.1910(i), and 18 AAC 83.905.

(e) The provisions of 18 AAC 15.195 - 18 AAC 15.340 apply to the conduct of adjudicatory hearings to review

(1) permit, approval, or certification decisions involving matters described in (a) or (b) of this section; and

(2) decisions authorized to be reviewed in an adjudicatory hearing by a provision of this title other than (a) or (b) of this section.

History

History: Eff. 11/25/77, Register 64; am 8/2/90, Register 115; am 2/15/98, Register 145; am 7/11/2002, Register 163; am 9/6/2003, Register 167; am 12/16/2004, Register 172; am 7/29/2006, Register 179

Annotations

Authority: AS 46.03.020

AS 46.03.100

AS 46.03.110

AS 46.03.320

AS 46.03.330

AS 46.03.720

AS 46.03.730

Editor's note: As of Register 178 (July 2006), the regulations attorney made technical revisions under AS 44.62.125(b)(6), to 18 AAC 15.010(b) and (d), and to the history note for 18 AAC 15.010.

Article 2
Permit Procedures

Section

- 20. Permit applications.
 - 30. Signing of applications.
 - 40. Requests for additional information.
 - 50. Public notice.
 - 60. Public hearings.
 - 70. Preissuance conference; ex parte communications.
 - 80. Decision on application.
 - 90. Permit terms and conditions.
 - 100. Permit limitations.
 - 110. Administrative continuance of expiring permits.
- 18 AAC 15.020. Permit applications

Statute text

(a) Except as provided in 18 AAC 15.130 - 18 AAC 15.140, an applicant for a permit or written approval subject to 18 AAC 15.020 - 18 AAC 15.100 must serve a complete application on the department.

(b) An applicant must serve a complete application under (a) of this section for the department's review at least

(1) five days before the proposed commencement of the operation, for applications for surface oiling permits;

(2) 30 days before the proposed commencement of construction, installation, modification, or improvement, for applications for plan approvals or permits for a sewerage system treatment works, or public water system;

(3) 60 days before the proposed commencement of construction, installation, modification, or improvement, for applications for plan approvals or permits for a municipal sewerage system, treatment works, or public water system project that involves state or federal monetary assistance;

(4) 60 days before the proposed commencement of the operation, for an application for a solid waste disposal permit, short-term variance from water quality standards, or wastewater disposal permit; and

(5) 100 days before the proposed commencement of a pesticide use that requires a permit under 18 AAC 90.500 or 18 AAC 90.505, if public notice is required under 18 AAC 90.520; if public notice is not required, the applicant shall submit the application at least 70 days before the proposed commencement of the pesticide use.

History

History: Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 8/2/90, Register 115; am 2/15/98, Register 145; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.320

AS 46.03.330

AS 46.03.720

AS 46.03.730

18 AAC 15.030. Signing of applications

Statute text

All permit or approval applications must be signed as follows:

(1) in the case of corporations, by a principal executive officer of at least the level of vice president or his duly authorized representative, if the representative is responsible for the overall management of the project or operation;

(2) in the case of a partnership, by a general partner;

(3) in the case of a sole proprietorship, by the proprietor; and

(4) in the case of a municipal, state, federal or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.

History

History: Eff. 11/25/77, Register 64

Annotations

Authority: AS 46.03.020(10)

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.160

AS 46.03.330

AS 46.03.720

18 AAC 15.040. Requests for additional information

Statute text

(a) If, within the time period for review of the application established in 18 AAC 15.020(b), the department determines that either further information or a site visit is necessary in order to evaluate the operation, the department will serve notice on the applicant of the information required and, in addition, establish a deadline for receipt of the requested information or the holding of the site visit. If the applicant fails to provide the requested information, or does not permit a site visit within the deadline period, the department will deny the application.

(b) The time period for review of the application established in 18 AAC 15.020(c) and (d) will be held in abeyance until service of the information, or holding of the site visit.

History

History: Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.160

AS 46.03.320

AS 46.03.330

AS 46.03.720

18 AAC 15.050. Public notice

Statute text

(a) Immediately after the service of a complete application for a solid waste disposal permit, a short-term variance from water quality standards, or a wastewater disposal permit, the department will publish two consecutive notices of the application in a newspaper of general circulation in the area that would be affected by the operation, and in other media the department considers appropriate to achieve sufficient public notice.

(b) In a public notice under this section, the department will include

(1) information on the nature and the location of the proposed activity;

(2) information on how the public can receive more information, including a statement that an interested person will be sent a copy of the application upon request; and

(3) a statement that a person may submit comments on the application by filing written comments with the department before the published comment deadline.

(c) A person required to have a permit for a public pesticide program or project, or for the water or aerial application of pesticides, shall publish a public notice in accordance with (a) and (b) of this section, if required by 18 AAC 90.520(a). An affidavit of publication in conformity with the requirements of (b) of this section must be included with the application. The public notice must include a statement that the department will hold a public hearing on the application if 50 or more residents in the affected area, or the governing body of an affected municipality, make a request to the department for a hearing within 30 days after publication of the second notice.

History

History: Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.330

AS 46.03.720

18 AAC 15.060. Public hearings

Statute text

(a) The department will hold a public hearing on a permit application for a public pesticide project if, within 30 days after the second publication of notice under 18 AAC 15.050(c), a hearing is requested by

(1) 50 residents of the affected area; or

(2) the governing body of an affected municipality.

(b) The department will hold a public hearing on an application for a short-term variance from water quality standards, or on a permit or approval application, if it determines that good cause exists.

(c) The hearing will be held no sooner than 15 nor more than 30 days following publication of the notice under (e) of this section.

(d) The public hearing will be held at the closest practicable location to the site of the operation.

(e) Notice of the time, place, and scope of the hearing will be published in a newspaper of general circulation for the area that would be affected by the operation.

(f) The appropriate division director shall appoint a designee to preside at the hearing. Testimony will be presented in the order, and subject to time limitations, established by the presiding officer.

(g) At the close of each witness' testimony, the witness may be questioned by the presiding officer and the department staff.

(h) A hearing under this section will be tape recorded.

History

History: Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.330

AS 46.03.720

18 AAC 15.070. Preissuance conference; ex parte communications

Statute text

(a) The provisions of this section apply solely to an application for a solid waste disposal permit, public pesticide program or project permit, permit for the water or aerial application of pesticides, short-term variance from water quality standards, or wastewater disposal permit.

(b) At any time before the department's decision under 18 AAC 15.080, the applicant may request a preissuance conference from the department. The request may be made orally.

(c) A preissuance conference is a discretionary, informal, and nonadjudicative procedure for the purpose of discussing the progress of the application and narrowing areas of disagreement between the parties. The conference may be tape recorded. The commissioner will appoint a designee to preside at the conference.

(d) The department office will establish a time and place for holding the conference.

(e) Upon the granting of a request for a preissuance conference, the time period for review of the application established in 18 AAC 15.020(b) will be held in abeyance until completion of the conference.

(f) If practicable, communications between the applicant and an employee of the department regarding the application, other than at the preissuance conference, should be in writing. If oral communications are made, the department employee will prepare a memorandum for the record specifying the person with whom he or she communicated, the date and time of the communication, and a brief summary of the substance of the communication.

History

History: Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 8/2/90, Register 115; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.320

AS 46.03.330

AS 46.03.720

AS 46.03.730

18 AAC 15.080. Decision on application

Statute text

(a) For an application served under 18 AAC 15.020(a), the appropriate division director or designee, within the applicable time period established in 18 AAC 15.020(b), shall serve the department's decision on the applicant. The decision will include

(1) the permit, variance, or written approval, if it is the department's determination that a permit or variance should be issued, or written approval granted;

(2) a brief summary of the basis for the department's decision, if the department's decision is to deny a permit, variance, or approval, or to subject a permit, variance, or approval to conditions specific to the activity; the department will provide a summary of the basis for its decision to grant a permit, variance, or approval in a case in which public comment adverse to the application has been received; and

(3) a statement that a person aggrieved by the department's decision may request an adjudicatory hearing under 18 AAC 15.200.

(b) The department's decision will also be served on each person who submitted timely comments on the application under 18 AAC 15.050(b)(3), or who testified at a public hearing held under 18 AAC 15.060.

History

History: Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 4/1/99, Register 149; am 10/1/99, Register 151; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.330

AS 46.03.720

18 AAC 15.090. Permit terms and conditions

Statute text

As the department considers necessary to ensure that applicable criteria will be met, the department will attach terms and conditions to a permit, variance, or approval, including

(1) operating, monitoring, inspection, sampling, and reporting requirements

(2) requirements to ensure department access to records; and

(3) the posting of a performance bond or other surety.

History

History: Eff. 11/25/77, Register 64; am 11/7/87, Register 100; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.330

AS 46.03.720

18 AAC 15.100. Permit limitations

Statute text

(a) The department will set a fixed term, not to exceed five years, for a permit or variance other than a plan approval for a

(1) sewerage system or treatment works; or

(2) public water system.

(b) Except as otherwise prohibited, a permit, variance, or approval may not be assigned without prior written approval of the appropriate division director. The appropriate division director will grant approval under this subsection if that director finds that the assignee has assumed the obligations of the permittee, and that the assignment will not result in an appreciable change in the operation.

(c) A permit or variance authorizes only that operation specified in the permit or variance. Any expansion, modification, or other change in a facility process or operation which might result in an increase in emissions or discharges, or might cause other detrimental environmental impacts from the permittee's facility, requires a new permit or variance. Any other change in the operation requires an amendment to the permit or variance.

(d) An application for a renewal of a permit, or amendment to a permit or variance, will be treated in the same manner as the initial application, except that public notice or hearing will not be provided for applications for renewal or amendment. Application for renewal or amendment must be made no later than 30 days before the expiration of the permit or the planned effective date of the amendment. The department will, however, approve an amendment to a permit or variance on an emergency basis if necessary to protect public health, life, or property.

History

History: Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.720

18 AAC 15.110. Administrative continuance of expiring permits

Statute text

(a) The conditions of an expired permit issued under AS 46.03.100 continue to be fully effective and enforceable until the effective date of a new or renewed permit if the

(1) permittee has timely submitted an application to renew the expiring permit or for a new permit that satisfies the requirements of 18 AAC 15.020 or 18 AAC 15.100(d) and any applicable requirements of 18 AAC 60 or 18 AAC 72; and

(2) department has not denied the application or revoked the continued permit.

(b) This section does not apply to Alaska Pollutant Discharge Elimination System permits, whether originally issued by the United States Environmental Protection Agency under 33 U.S.C. 1342 (Clean Water Act, sec. 402) or by the department under 18 AAC 83.005 - 18 AAC 83.990. Provisions for the continuation of expiring Alaska Pollutant Discharge Elimination System permits are set out in 18 AAC 83.155.

History

History: Eff. 12/16/2004, Register 172; am 7/29/2006, Register 179

Annotations

Authority: AS 46.03.020

AS 46.03.100
AS 46.03.110

Article 3
Adoption of NPDES Permits

Section
120. Adoption of NPDES permits.
18 AAC 15.120. Adoption of NPDES permits

Statute text

(a) A person who conducts an operation which results in the disposal of wastewater into the water of the state need not apply under secs. 20 - 100 of this chapter if the disposal is permitted under an NPDES permit, and the department has certified the NPDES permit in accordance with secs. 130 - 170 of this chapter.

(b) Any reissuance of or modification to a certified NPDES permit must be certified by the department under secs. 130 - 170 of this chapter. This requirement applies whether the reissuance or modification was brought about by reapplication, or by stipulation or other agreement between EPA and the permittee. Notwithstanding (c) of this section, if any NPDES permit is reissued or modified without certification under secs. 130 - 170 of this chapter, that permit will not be considered a permit under AS 46.03.100.

(c) For persons subject to (a) of this section, the NPDES permit constitutes the permit required under AS 46.03.100. The NPDES permit will be enforced by the department under AS 46.03, and may be modified or terminated for purposes of AS 46.03.100 under AS 46.03.120. Any rights or privileges inuring to the benefit of EPA in the NPDES permit, including any right to enter, inspect, sample, and have access to records, also inure to the benefit of the department. Any reports or other information filed with EPA in accordance with the NPDES permit must be contemporaneously filed with the department.

(d) If a certified NPDES permit, or any portion of the permit, is stayed pending a challenge to the permit, that permit will not be considered a state permit under AS 46.03.100 during the period of the stay.

(e) If a portion of a certified NPDES permit is stayed pending a challenge to the permit, that portion of the permit that is stayed will not be considered to be part of a state permit under AS 46.03.100 during the period of the stay. The remainder of the NPDES permit that is not stayed will be considered a state permit under AS 46.03.100 unless the department determines otherwise. The department will provide written notification to the

permittee if the department determines that any portion of the partially-stayed NPDES permit will not be considered a state permit under AS 46.03.100 during the period of the stay.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; am 7/29/2006, Register 179

Annotations

Authority: AS 46.03.020

AS 46.03.110

Article 4

Certification

Section

- 130. NPDES certification procedure.
- 140. Public notice.
- 150. Public hearings.
- 160. Department decision.
- 170. Period required to process certification.
- 180. Certification for other federal licenses and permits.
- 18 AAC 15.130. NPDES certification procedure

Statute text

(a) Contemporaneous with the filing with EPA of an application for an NPDES permit, or for a modification or reissuance of an NPDES permit, a copy of the application and all supporting information, together with a cover letter requesting certification, must be served on the department. If the certification request involves a modification to an NPDES permit which does not involve application, for which EPA does not intend to issue public notice, the department will require a copy of the proposed modification at least 60 days before any deadline established by EPA for certification action on the modification, or 60 days before the proposed effective date of the modification, whichever is the sooner. All supplementary forms or other information pertaining to the application must be served on the department at the time of their filing with EPA.

(b) Within 30 days after receipt of an application for certification, the department will, if necessary, serve notice upon the applicant that additional information is necessary in order for the department to determine whether the discharge will comply with the applicable provisions of 33 U.S.C. 1311, 1312, 1313, 1316, and 1317 (Clean Water Act), secs. 301, 302, 303, 306, and 307, and that the additional information must be served upon the department within 30 days after receipt of the request. If the information is not served upon the department within the time period specified, certification will be denied unless a time extension is approved by the department upon the applicant's showing, to

the department's satisfaction, that additional time is necessary to provide the needed information.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.110

18 AAC 15.140. Public notice

Statute text

(a) Public notice of the certification application will be published jointly with notice of the proposed action by EPA under 40 C.F.R. 124.10. The notice will include the information required by 18 AAC 15.050(b).

(b) If the certification request involves a proposed modification to an NPDES permit for which EPA does not propose to issue public notice, the department will issue public notice in conformity with 18 AAC 15.050(b) within 10 days after receipt of the certification application. However, the department will not provide public notice for proposed modifications to an NPDES permit, if the department determines that the proposed modifications will not result in a significant change in the location, volume, type, or concentration of the discharge.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.110

18 AAC 15.150. Public hearings

Statute text

(a) The department will determine whether to hold a public hearing on a certification application under 18 AAC 15.060(b).

(b) If EPA holds a public hearing under 40 C.F.R. 124.12, that hearing, and the hearing under this section, will, when practicable, be held jointly.

(c) If EPA does not hold a public hearing, the hearing under this section will be held no fewer than 30 days after notice of the hearing. The hearing will be noticed and conducted under 18 AAC 15.060(d) - (h).

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.110

18 AAC 15.160. Department decision

Statute text

The department will serve upon the applicant, EPA, and each person who submitted timely comments upon the application or testified at a hearing held under 18 AAC 15.150, the decision of the appropriate division director or designee regarding certification. In the decision, the department will include a summary of the basis of the department's decision.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.110

18 AAC 15.170. Period required to process certification

Statute text

Subject to sec. 130(a) of this chapter, the department will require at least 30 days to act on a request for certification of the regional administrator's determination under 40 C.F.R. sec. 125.3 (39 FR 27080 (July 24, 1974)).

History

History: Eff. 11/25/77, Register 64

Annotations

Authority: AS 46.03.020

AS 46.03.160

18 AAC 15.180. Certification for other federal licenses and permits

Statute text

(a) A person may not undertake a federally licensed or permitted activity requiring certification under 33 U.S.C. 1341 (Clean Water Act, sec. 401) without first applying for

and obtaining certification from the department under this section unless, after application, the department waives its right to certify under 33 U.S.C. 1341(a) (Clean Water Act, sec. 401). An applicant must pay the appropriate fee in 18 AAC 72.956, 18 AAC 72.957, or 18 AAC 72.959 for certification of a federal license or permit.

(b) Certification requests for any federal license or permit other than an NPDES permit will be processed in substantial conformity with secs. 130 - 170 of this chapter. The department will, in its discretion, enter into agreements with federal licensing and permitting agencies to provide for joint public notice and hearing. The department will make a decision on certification applications for other federal licenses or permits within 30 days of receipt of the federal agency's proposed action on the license or permit application.

(c) An applicant for a federal license or permit requiring certification under 33 U.S.C. 1341 (Clean Water Act, section 401) must serve upon the department a copy of the application for a federal license or permit, and all accompanying information, contemporaneous with the submission of the application to the federal licensing or permitting agency. The requirements of 18 AAC 15.120(b) regarding reissuances or modifications to an NPDES permit apply to reissuances, renewals, or amendments to any other federal license or permit requiring certification under 33 U.S.C. 1341.

History

History: Eff. 11/25/77, Register 64; am 11/10/94, Register 132; am 1/17/2002, Register 161; am 7/11/2002, Register 163

Annotations

Authority: AS 44.46.025

AS 46.03.020

AS 46.03.110

Article 5

Informal and Fee Review Procedures

Section

185. Informal review.

190. Fee review.

18 AAC 15.185. Informal review

Statute text

(a) A person authorized by a provision of this title to request an informal review under this section, or a person authorized to request an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340, may request an informal agency review by the director of the department division that issued the contested decision. As provided in 18 AAC 15.200(e),

a request for informal review stays proceedings on a request for an adjudicatory hearing. A request for informal review must be made within 15 days after receiving the department's decision reviewable under this section. The request may be made by mail, electronic mail, or facsimile, and must include

(1) the requestor's name, mailing address, and telephone number;

(2) an identification of the department's decision to be reviewed; and

(3) a clear and concise statement of the reason for the request, including

(A) a statement of the nature and scope of the requestor's interests, and an explanation of how and to what extent those interests would be directly and adversely affected by the decision;

(B) the contested terms and conditions of the department's decision, and proposed alternatives; and

(C) copies of any documents or data that would assist the director in concluding the informal review.

(b) The director of the department division that issued the contested decision may designate a person to conduct the informal review, other than the person who issued the contested decision. Within seven days after receipt of a request for review, the director or designee will decide if the request merits informal review. If the director or designee decides that the request does not merit informal review, the director or designee shall inform the requestor in writing of this decision and include the reasons for the decision. In the denial, the director or designee shall include the statement that the requestor may seek a formal adjudicatory hearing under 18 AAC 15.200 or AS 44.62, if either of those options is available to the requestor.

(c) If informal review is granted, the director or designee may request additional information from the requestor. The director or designee shall issue a final decision within 15 days after receipt of the request for informal review or receipt of additional information requested, whichever is later. The director or designee shall also advise the requestor and all other parties of the right to seek an adjudicatory hearing 18 AAC 15.200 or AS 44.62, if either of those options is available to the requestor or other parties.

(d) A person authorized to seek an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340 or AS 44.62 may submit a hearing request within 30 days after a decision is made under (b) or (c) of this section and that decision is served on the requestor.

History

History: Eff. 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.320

AS 46.03.330

AS 46.03.720

AS 46.03.730

AS 46.04.030

AS 46.14.120

AS 46.14.150

18 AAC 15.190. Fee review

Statute text

(a) An applicant for a permit or approval who is authorized by a provision of this title to seek a review of a fee decision of the department under this section may, within 30 days of receipt of the fee invoice, make a written request that the director of the division issuing the invoice review the matter. The applicant need not pay the disputed fee until the director issues a final decision under (b) of this section, and the department will not charge interest while the director considers the request for fee review.

(b) A request for fee review must be accompanied by a written discussion that sets out the reasons why the fee or computation is disputed and how it should be adjusted. The director of the department division issuing the invoice shall issue a written decision on the disputed invoice within 30 days after receiving the request for fee review. A decision made under this subsection is the final agency decision. A person aggrieved by that decision may appeal it to the superior court in accordance with the Alaska Rules of Appellate Procedure.

History

History: Eff. 7/11/2002, Register 163

Annotations

Authority: AS 44.46.020

AS 44.46.025
AS 46.03.020
AS 46.03.070
AS 46.14.140

Article 6
Administrative Appeal Procedures

Section

195. Applicability.
200. Request for an adjudicatory hearing.
205. Alternative dispute resolution.
210. Stay of decision.
220. Action on hearing requests.
225. Additional parties and issues.
230. Consolidation and severance.
235. Hearing officer.
237. Agency decision record.
240. Prehearing document exchange; witness lists.
245. Obligation to submit evidence and raise issues.
247. Subpoenas.
250. Prehearing conference.
255. Summary determination.
260. (Repealed).
270. Hearings.
280. Certification of adjudication record.
290. Proposed findings.
300. Final decision.
305. Reconsideration.
310. Adjustment of deadlines.
320. Contempt.
340. Service under 18 AAC 15.185 - 18 AAC 15.340.
18 AAC 15.195. Applicability

Statute text

As provided in AS 44.62.330(a)(44) and AS 46.35.090(e), the adjudicatory hearing procedures in this chapter are in lieu of and supersede the adjudicatory hearing procedures contained in AS 44.62.330 - 44.62.630 (Administrative Procedure Act).

History

History: Eff. 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020
AS 46.03.090

AS 46.03.100
AS 46.03.110
AS 46.03.320
AS 46.03.330
AS 46.03.720
AS 46.03.730
AS 46.04.030
AS 46.14.120
AS 46.14.150
AS 46.35.090(e)

18 AAC 15.200. Request for an adjudicatory hearing

Statute text

(a) Within 30 days after the department issues a permit decision reviewable under 18 AAC 15.195 - 18 AAC 15.340 or within 30 days after the department issues a final decision under 18 AAC 15.185, whichever is later, a person authorized to request an adjudicatory hearing under this chapter may serve a request upon the commissioner. The request must be in writing and must contain

(1) the requestor's name, mailing address, and telephone number;

(2) the names and addresses of all persons adversely affected by the decision whom the requestor represents;

(3) a memorandum that supports the request; the memorandum must include

(A) a clear and concise factual statement of the nature and scope of the interests of the requestor, and an explanation of how and to what extent those interests would be directly and adversely affected by the decision; that explanation must include a discussion of the factors in 18 AAC 15.220(b)(1)(A);

(B) a clear and concise statement of

(i) each disputed issue of material fact and question of law proposed for consideration at the hearing;

(ii) the relevance to the permit decision of each matter identified under (i) of this subparagraph; and

(iii) the hearing time estimated to be necessary for the adjudication;

(C) a discussion of why the request for hearing should be granted; and

(D) if applicable, specific reference to the contested terms or conditions of the department's decision, as well as suggested alternative terms and conditions that in the requestor's judgment are required to implement applicable requirements of law.

(b) Unless a permit is being renewed, if the application was made solely for a permit amendment, a request for an adjudicatory hearing may not raise issues relating to

(1) the validity of the permit for which an amendment is sought; or

(2) unrelated permit conditions for which an amendment was not sought.

(c) A copy of the request for an adjudicatory hearing must be served on the department office that issued the decision being challenged, and on the permit applicant. A copy of the request also must be provided to the department office in an electronic format, unless the department waives this requirement because the requestor lacks a readily accessible means or the capability to provide items in an electronic format.

(d) The department will issue by mail a notice of the request for hearing to the requestor, to the permit applicant, and to each person who commented on the application or proposed permit decision, and will post that notice on the Alaska Online Public Notice System established under AS 44.62.175. In the notice of request for hearing, the department will inform persons that the hearing request is available for review by contacting the department or by reviewing the department's web site. In the notice, the department will also include the statement that a person who wishes to file a response to the request for hearing must do so by serving a response on the commissioner within 20 days after issuance of the notice.

(e) A request under 18 AAC 15.185 for informal agency review stays the deadlines set out in 18 AAC 15.200 - 18 AAC 15.340 while the request is pending and during any informal review.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.320

AS 46.03.330

AS 46.03.720

AS 46.03.730

AS 46.04.030

AS 46.14.120

AS 46.14.150

AS 46.35.090(e)

18 AAC 15.205. Alternative dispute resolution

Statute text

(a) Notwithstanding 18 AAC 15.195 - 18 AAC 15.340, the department and the parties may engage in alternative dispute resolution, using procedures to which the department and the parties agree, in order to prevent or to minimize the escalation of a dispute or to resolve a dispute that has occurred. However, a request for an adjudicatory hearing must be filed in accordance with 18 AAC 15.200 at the same time as or before a request for alternative dispute resolution.

(b) For purposes of this section, alternative dispute resolution

(1) includes non-binding arbitration, modified adjudication proceedings, non-record abbreviated hearings, or any collaborative method designed to encourage the parties to work together to develop a mutually agreeable solution, including negotiation, mediation, use of a neutral fact-finder, and settlement conferences; and

(2) does not include binding arbitration.

(c) Nothing in this section impairs the ability of a party to an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340 or the hearing officer from pursuing settlement discussions.

History

History: Eff. 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.320

AS 46.03.330

AS 46.03.720

AS 46.03.730

18 AAC 15.210. Stay of decision

Statute text

(a) The department's decision is effective when issued. The department's decision is not automatically stayed during the pendency of proceedings under this chapter. A requestor may, contemporaneous with the service of the request for a hearing under 18 AAC 15.200, serve upon the commissioner a request for stay of the department's decision, or a portion of it, pending completion of proceedings under this chapter. The request must be supported by a written memorandum setting out each reason why the decision should be stayed. A person requesting a stay must serve a copy of the request and supporting memorandum on the department office that issued the decision being challenged and on the permit applicant. A copy of the request for stay also must be provided to the department office in an electronic format, unless the department waives this requirement because the requestor lacks a readily accessible means or the capability to provide items in an electronic format. The department will issue by mail a notice of the request for stay to the requestor, to the permit applicant, and to each person who commented on the application or proposed permit decision, and will post that notice on the Alaska Online Public Notice System established under AS 44.62.175. In the notice of request for stay, the department will inform persons that the request for stay is available for review by contacting the department or by reviewing the department's website. In the notice, the department also will include the statement that a person who wishes to file a response to the request for stay must do so by serving a response on the commissioner within 20 days after issuance of the notice. In reviewing a request for stay, the commissioner or a designee assigned under 18 AAC 15.235.(a)(1)(A) will consider

(1) the relative harm to the person requesting the stay, the permit applicant, and public health, safety, and the environment, if a stay were granted or denied;

(2) the resources that would be committed during the pendency of proceedings under this chapter if a stay were granted or denied; and

(3) the likelihood that the person requesting the stay will prevail in the proceedings on the merits.

(b) No stay will be granted on a denial of a permit application or request for certification for either a new operation, or an operation that began after the effective date of the statute or regulation requiring a permit.

(c) Within 20 days after the department issues the notice of request for stay under (a) of this section, the department staff, a requestor, the permit applicant, and a potential intervenor may serve a responsive memorandum upon the commissioner and all others appearing in the proceeding.

(d) The commissioner or a designee assigned under 18 AAC 15.235(a)(1)(A) will issue a decision on the request for stay within 15 days after the expiration of the deadline for a responsive memorandum under (c) of this section.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.320

AS 46.03.330

AS 46.03.720

AS 46.03.730

AS 46.04.030

AS 46.14.120

AS 46.14.150

AS 46.35.090(e)

18 AAC 15.220. Action on hearing requests

Statute text

(a) The department staff, the permit applicant, and potential intervenors may serve a response to a request for an adjudicatory hearing within 20 days after issuance, under 18 AAC 15.200(d), of a notice of the request for hearing. A response may include or address any matter that may assist the commissioner or a designee as assigned under 18 AAC 15.235(a)(1)(A) in deciding whether the hearing request should be granted or denied. The requestor may reply within seven days after service of any response to the request for an adjudicatory hearing.

(b) Within 30 days after the time has expired for a requestor to reply to responses to the request, the commissioner or a designee assigned under 18 AAC 15.235(a)(1)(A) will issue a decision on a request for an adjudicatory hearing. The commissioner or designee will

(1) grant a request for a hearing if the commissioner or designee finds that

(A) the request discloses that the requestor would be directly and adversely affected by the department's decision so as to justify an adjudicatory hearing; in determining whether a requestor is directly and adversely affected by the department's decision, the commissioner or designee will consider the nature of the interest asserted by the requestor, whether that interest is one that the applicable statutes and regulations were intended to protect, and the extent to which the department's decision directly and substantively impairs that interest;

(B) the requestor has raised a genuine issue of disputed fact material to the decision; and

(C) the request for hearing satisfies the requirements of 18 AAC 15.200;

(2) remand the permit decision to the department staff, with instructions as appropriate, if the commissioner or designee finds that the staff or the applicant has failed to comply with a statutory or regulatory requirement or that the permit could be amended to accommodate concerns raised in the request without raising a substantive issue that might give rise to a separate hearing request from another person;

(3) deny a request for an adjudicatory hearing and grant a hearing on the existing agency record and on written briefs, if the commissioner finds that the request does not raise a genuine issue of disputed fact material to the decision but does raise a disputed and significant issue of law or policy; or

(4) deny the request for an adjudicatory hearing and issue a final agency decision if, after reviewing the request, response, and reply, the commissioner or designee finds that

(A) that a hearing should not be granted under (1) of this subsection;

(B) a remand should not be granted under (2) of this subsection; and

(C) a hearing on the existing record and on written briefs should not be granted under (3) of this subsection.

(c) If the commissioner or designee grants an adjudicatory hearing request or a hearing on the existing record and on written briefs, the department will publish notice of the action in a newspaper of general circulation for the affected area, and will send a copy of the public notice to each person who submitted timely written comments on the contested application, who testified at a public hearing before the department's decision on the application, or who submitted a request for hearing.

(d) If the commissioner or designee grants a hearing on the existing record and on written briefs, the commissioner or designee will establish, after the time for intervention has expired under 18 AAC 15.225, a briefing schedule for submission of an opening brief by each requestor, a responsive brief by each respondent, and a reply brief by each requestor. The commissioner or designee may allow the parties to supplement the agency record with additional information submitted with the briefs.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.320

AS 46.03.330

AS 46.03.720

AS 46.03.730

AS 46.04.030

AS 46.14.120

AS 46.14.150

AS 46.35.090(e)

18 AAC 15.225. Additional parties and issues

Statute text

(a) A person who wants to intervene in proceedings granted by the commissioner or designee under 18 AAC 15.220(b)(1) or (b)(3) may serve upon the commissioner a request to intervene that contains the information and meets the requirements specified in 18 AAC 15.200, within 15 days after publication of notice or mailing of notice under 18 AAC 15.220(c), whichever occurs last. A person requesting to intervene must serve a

copy of the request to intervene on each party. An existing party may submit an objection to a request to intervene within 15 days after service of the request.

(b) Each requestor, the permit applicant, and the department office that issued the challenged decision are automatically parties to the proceeding and need not file requests for intervention.

(c) The commissioner or designee will grant or deny the request to intervene within 10 days after the expiration of the deadline to object. The commissioner or designee will grant the intervention request if the commissioner or designee finds that the potential intervenor meets the standing requirements of 18 AAC 15.220(b)(1)(A) and the potential intervenor's interests are not adequately represented in the adjudication.

(d) If more than one hearing request concerning a department decision, including requests to intervene, is granted, all granted requests will be automatically joined in a single proceeding.

History

History: Eff. 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.320

AS 46.03.330

AS 46.03.720

AS 46.04.030

AS 46.14.120

AS 46.14.150

AS 46.35.090(e)

18 AAC 15.230. Consolidation and severance

Statute text

(a) The commissioner may consolidate, in whole or in part, two or more proceedings to be held under this chapter, if the commissioner determines that a joint hearing on any or all of the matters at issue would expedite or simplify consideration of the issues and that consolidation would not prejudice a party. Consolidation does not affect the right of a party to raise issues that might have been raised had consolidation not occurred.

(b) If the commissioner determines that consolidation is not conducive to an expeditious, full, and fair hearing, a party or issue may be severed and heard in a separate proceeding.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.320

AS 46.03.330

AS 46.03.720

AS 46.03.730

AS 46.04.030

AS 46.14.120

AS 46.14.150

AS 46.35.090(e)

18 AAC 15.235. Hearing officer

Statute text

(a) The commissioner may

(1) designate a department employee to

(A) make a final decision under 18 AAC 15.200 - 18 AAC 15.225 or to prepare a recommended decision for the commissioner's consideration; or

(B) act as a hearing officer for a hearing under this chapter, and to

(i) make a final decision in the hearing; or

(ii) prepare a recommended decision for the commissioner's consideration; or

(2) appoint an individual from outside the department to act as a hearing officer for a hearing under this chapter, and to prepare a recommended decision for the commissioner's consideration.

(b) An individual designated or appointed under (a) of this section

(1) may not have been substantively involved in the decision at issue in the hearing;

(2) must be impartial with respect to the subject of the hearing;

(3) if a public officer within the meaning of AS 39.52 (Executive Branch Ethics Act), may not serve in violation of that chapter; and

(4) if an attorney, must comply with applicable rules of professional conduct.

(c) If the commissioner designates another individual to act as hearing officer under (a)(1)(B) or (a)(2) of this section, the commissioner will give notice at the time of the designation to the parties.

History

History: Eff. 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.330

AS 46.03.720

AS 46.04.030

AS 46.14.120

AS 46.14.150

AS 46.35.090(e)

18 AAC 15.237. Agency decision record

Statute text

(a) If an adjudicatory hearing request is granted, or a hearing on the existing record and written briefs is granted, the department staff shall prepare the agency decision record. In the agency decision record, the department staff shall include the permit application and supporting documentation, written and electronic correspondence concerning the proposed action, additional information submitted by the applicant to the department, public comments and information submitted to the department on the proposed decision, tapes or transcripts of any public hearing, the department's decisional documents, and

other materials that the department considered or relied upon in making the department's decision. Documents exempt from AS 40.25.110 - 40.25.125 will not be included in the agency decision record. The department staff shall number the pages of the agency decision record consecutively throughout the volumes. The department staff are not required to prepare an index of the agency decision record.

(b) Within 30 days after the expiration, under 18 AAC 15.225, of the time for intervention, if a request for intervention is not filed, or within 30 days after service of the commissioner's decision on requests for intervention, whichever is later, the manager for the department program involved in the contested decision shall certify the agency decision record as complete. The program manager shall at the same time also serve notice on all parties that the agency decision record is available for inspection and copying at the requesting party's expense. For good cause shown, the hearing officer may extend the time for preparation and certification of the agency decision record.

(c) The requestor shall pay the cost of gathering and certifying the agency decision record, including the reasonable cost of transcription of the tapes of any public hearing or other permit conference. If more than one requestor are parties, each requestor shall bear, on a pro-rata basis, the cost of gathering and certifying the agency permit record, unless the hearing officer grants another percentage allocation among the requestors. The department may require advance payment of the costs of gathering and certifying the record as reasonably estimated by the department. If the department requires advance payment, the cost of gathering and certifying the agency decision record must be paid before any further proceedings under this chapter. The department will waive all or part of the cost of gathering and certifying the record if the requestor demonstrates, to the department's satisfaction, an inability to pay those costs.

(d) The department will impose copying charges on a party requesting copies of a portion of or the entire agency decision record, unless the number of copies requested is de minimis.

History

History: Eff. 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.320

AS 46.03.330

AS 46.03.720

AS 46.03.730

AS 46.04.030
AS 46.14.120
AS 46.14.150

18 AAC 15.240. Prehearing document exchange; witness lists

Statute text

(a) Within 20 days after the certification of the agency decision record, each requestor shall serve on the hearing officer and all parties

(1) a complete and concise summary of the factual and legal assertions of error that the requestor will present at the hearing;

(2) the name, address, telephone number, and occupation of each witness whom the requestor intends to call at the hearing, the purpose of each witness's testimony, and, if a witness is to testify as an expert, the information and documents required by courts in this state for the disclosure of expert testimony; and

(3) copies of any real or documentary evidence that the requestor intends to introduce at the hearing, and the purpose of the introduction of that evidence.

(b) Within 20 days after the service of the matters specified in (a) of this section, each respondent shall serve upon each party

(1) the name, address, telephone number, and occupation of each witness whom the respondent intends to call at the hearing, the purpose of each witness' testimony, and, if a witness is to testify as an expert, the information and documents required by courts in this state for the disclosure of expert testimony; and

(2) copies of any real or documentary evidence that the requestor intends to introduce at the hearing, and the purpose of the introduction of that evidence.

(c) If a party is both a requestor and a respondent, that party shall serve the items required under (a) of this section as to those issues for which the party is a requestor, and shall serve the items required under (b) of this section as to those issues for which the party is a respondent.

(d) The hearing officer may not permit depositions, interrogatories, requests for admission, and requests for production unless stipulated to by the parties or unless the hearing officer finds good cause for the discovery. For purposes of this subsection, the hearing officer may find good cause upon a compelling showing by the proponent of the discovery that the proposed discovery is essential for a fair hearing in the context of the specific adjudication, will not cause undue delay, and will not unduly increase the cost of the adjudication. The hearing officer shall place appropriate limitations on any discovery allowed under this subsection.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.320

AS 46.03.330

AS 46.03.720

AS 46.03.730

AS 46.04.030

AS 46.14.120

AS 46.14.150

AS 46.35.090(e)

18 AAC 15.245. Obligation to submit evidence and raise issues

Statute text

A party may not submit a factual contention or expert opinion that was not submitted timely to the department before the department's issuance of the contested decision unless the party shows good cause for the failure to submit the item. A party may not raise an issue of fact or question of law that was not raised timely to the department before the department's issuance of the contested decision unless the party shows good cause for the failure to raise each matter. For purposes of this section, grounds upon which a party may show good cause include the following:

(1) the party could not reasonably have ascertained the issues or made the information available within the time required by this chapter; or

(2) the party could not have reasonably anticipated the relevance or materiality of the matter sought to be raised or the information sought to be introduced.

History

History: Eff. 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.320

AS 46.03.330

AS 46.03.720

AS 46.03.730

AS 46.04.030

AS 46.14.120

AS 46.14.150

AS 46.35.090(e)

18 AAC 15.247. Subpoenas

Statute text

(a) In addition to other powers described in this chapter, and subject to 18 AAC 15.240(d), the hearing officer may issue subpoenas requiring the appearance of witnesses and production of evidence if requested by a party. A subpoena issued under this section is enforceable as set out in AS 09.50.010, AS 44.62.590, and Rule 45, Alaska Rules of Civil Procedure.

(b) The party who requested the subpoena shall pay, in accordance with AS 44.62.430, for witness fees, mileage, and expenses.

History

History: Eff. 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

18 AAC 15.250. Prehearing conference

Statute text

(a) The hearing officer may direct the holding of a prehearing conference if a conference might substantially aid resolution of the case. At least 10 days before a prehearing conference, unless the parties agree to a shorter time period, the hearing officer shall

(1) give notice of the conference to each party; and

(2) set the time and place of the conference with due regard for the convenience of the parties.

(b) At the prehearing conference, the hearing officer may address, and may issue an order regarding

(1) the simplification, clarification, consolidation, or limitation of the issues;

(2) the striking of immaterial issues, and the summary disposition of issues over which a genuine dispute does not exist;

(3) the admission of facts and the genuineness of documents, and stipulations with respect to facts and documents;

(4) objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits, or other submissions proposed by a party; however, the failure to raise an evidentiary objection at the conference does not preclude a party from raising the objection at the hearing;

(5) matters of which official notice will be taken in accordance with AS 44.62.480;

(6) establishment of a schedule, including definite or tentative times relating to the progress of the hearing;

(7) subject to 18 AAC 15.240(d), the taking and introduction of depositions;

(8) the use of affidavits in place of oral testimony under the procedures set out in AS 44.62.470;

(9) the acceptance, on good cause shown, of supplements to the witness and evidence lists provided under 18 AAC 15.240, specifically including rebuttal evidence to matters submitted under 18 AAC 15.240(b);

(10) the exclusion of unduly repetitive or irrelevant evidence; and

(11) subject to AS 44.62.420(b), the telephonic participation of witnesses; and

(12) any other matter that will expedite the hearing or aid disposition of the matter.

(c) The hearing officer shall ensure that the prehearing conference is electronically or stenographically recorded.

(d) The hearing officer shall prepare, and shall serve upon all parties, within 10 days after holding the prehearing conference, a written prehearing order reciting the actions taken at the prehearing conference and setting out the schedule for the hearing. In the order, the hearing officer shall include a written statement of the areas of factual agreement and disagreement, of the methods and procedures to be used to develop the evidence, and of the respective duties of the parties in connection therewith. The order controls the subsequent course of the hearing unless modified by the hearing officer for good cause shown.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.330

AS 46.03.720

AS 46.04.030

AS 46.14.120

AS 46.14.150

AS 46.35.090(e)

18 AAC 15.255. Summary determination

Statute text

(a) If determined by the hearing officer to be appropriate for focusing or narrowing the issues for an adjudicatory hearing, a party may move for a summary determination in that party's favor upon any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. This motion shall be filed at least 45 days before the date set for the hearing, except that upon good cause shown the motion may be filed at any time before the close of the hearing.

(b) Any other party may, within 30 days after service of the motion, file and serve a response to it or a counter motion for summary determination. If a motion for summary determination is made and supported, a party opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the hearing officer, that there is a genuine issue of material fact for determination at the hearing.

(c) Affidavits must

(1) be made on personal knowledge;

(2) set out facts that would be admissible in evidence; and

(3) show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(d) The hearing officer may set the matter for oral argument and call for the submission of proposed findings, conclusions, briefs, or memoranda of law. The hearing officer shall rule on the motion not more than 30 days after the date responses to the motion are filed under (b) of this section, or all argument and filings completed under this subsection, whichever is later.

(e) If all factual issues are decided by summary determination, a hearing may not be held and the hearing officer shall prepare a decision under 18 AAC 15.300. If summary determination is denied or if partial summary determination is granted, the hearing officer shall issue a memorandum opinion and order, and shall proceed with the hearing on the remaining issues.

(f) If it appears from the affidavits of a party opposing a motion for summary determination that the party cannot for reasons stated present, by affidavit or otherwise, facts essential to justify the opposition, the hearing officer may deny the motion or order a continuance to allow time for additional affidavits or other information to be obtained.

History

History: Eff. 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100
AS 46.03.110
AS 46.03.320
AS 46.03.330
AS 46.03.720
AS 46.03.730
AS 46.04.030
AS 46.14.120
AS 46.14.150
AS 46.35.090(e)

18 AAC 15.260. Deciding officer

Statute text
Repealed.

History

History: Eff. 11/25/77, Register 64; repealed 7/11/2002, Register 163

18 AAC 15.270. Hearings

Statute text

(a) Unless the hearing officer orders otherwise, the sequence of argument, examination, and summation must conform to the prehearing order. The hearing officer may administer oaths and affirmations and certify official acts. Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on matters relevant to the issues, even if that matter was not covered in the direct examination, impeach a witness regardless of which party first called the witness to testify, and rebut adverse evidence. The hearing officer may question a witness.

(b) In a multiparty proceeding, the hearing officer may limit cross-examination to one party on each side of an issue, if the hearing officer is satisfied that the cross-examination by one party will adequately protect the other parties. A party whose cross-examination is limited may engage in cross-examination as to matters not covered by previous cross-examination.

(c) Subject to 18 AAC 15.245 and (e) and (f) of this section, the hearing officer may admit any material evidence of the type on which a reasonable person might rely in the conduct of serious business affairs. The hearing officer may refuse to admit evidence that is unduly repetitious.

(d) The burden of proof and of going forward with the evidence is on the requestor.

(e) A party may not introduce or advance any issue, testimony, or real or documentary evidence at the hearing that was not disclosed under 18 AAC 15.240 or 18 AAC 15.250(b)(9). The hearing officer may waive this prohibition if the failure to previously disclose was due to

(1) surprise;

(2) newly discovered evidence that, by due diligence, could not have previously been discovered and disclosed; or

(3) fraud, misrepresentation, or other misconduct of a party.

(f) The prohibition in (e) of this section does not apply to evidence offered solely to rebut or impeach matters first disclosed under 18 AAC 15.25 0(b)(9).

(g) The hearing officer shall ensure that the proceedings at the hearing are electronically or stenographically reported.

(h) The hearing officer may require the submission of briefs and proposed findings of fact and conclusions of law after the close of the hearing if the hearing officer finds that they might aid in resolving the case.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.330

AS 46.03.720

AS 46.04.030

AS 46.14.120

AS 46.14.150

AS 46.35.090(e)

18 AAC 15.280. Certification of adjudication record

Statute text

(a) After the hearing, or after the hearing transcript is prepared, if the hearing officer orders a transcript, the hearing officer shall certify the record of the hearing and provide notice of the certification to all parties.

(b) If the hearing officer orders a transcript, the requestor shall bear the cost of transcribing the hearing, except for good cause shown. If more than one requestor are parties, the hearing officer may apportion the costs among the requestors. If a requestor fails to pay for that requestor's portion of the transcript costs as ordered by the hearing officer, the hearing officer may, upon motion by one of the parties or by motion of the hearing officer, withhold final decision in the adjudication and seek enforcement of the transcript assessment using the procedures set out in 18 AAC 15.320.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.330

AS 46.03.720

AS 46.04.030

AS 46.14.120

AS 46.14.150

AS 46.35.090(e)

18 AAC 15.290. Proposed findings

Statute text

Within 10 days after notice of the certification of the adjudication record under 18 AAC 15.280, and if ordered by the hearing officer, a party shall serve upon the hearing officer, and all parties, proposed findings of fact and conclusions of law. The hearing officer may use the proposed findings of fact and conclusions of law as an aid to the hearing officer, and need not issue a ruling to accept or reject the proposed findings and conclusions.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.320
AS 46.03.330
AS 46.03.720
AS 46.04.030
AS 46.14.120
AS 46.14.150
AS 46.35.090(e)

18 AAC 15.300. Final decision

Statute text

(a) The hearing officer will send a copy of the decision with the findings of fact and conclusions of law to the parties as soon as practicable after notice of certification of the record under 18 AAC 15.280 or after submittal of briefs ordered under 18 AAC 15.270(h), whichever occurs later.

(b) A decision under this section will be issued

(1) as a final decision if the commissioner is the hearing officer or if the commissioner instructs a hearing officer designated under 18 AAC 15.235(a)(1)(B(i) to prepare and issue a final decision; or

(2) as a recommended decision; within 15 days after issuance of a recommended decision a party may submit briefing to the commissioner as to whether the commissioner should adopt the recommended decision; the commissioner will issue a final agency decision as soon as practicable after expiration of the time to submit briefing concerning a recommended decision under this paragraph.

(c) Unless the final decision involves a remand to department staff, a final decision issued under (b) of this section is a final agency decision for purposes of appeal as provided in AS 44.62.560 - 44.62.570 and shall be issued with a statement that it is a final agency decision and that an aggrieved party, including the department, has 30 days to appeal to the superior court.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020
AS 46.03.090
AS 46.03.100
AS 46.03.110

AS 46.03.330
AS 46.03.720
AS 46.04.030
AS 46.04.120
AS 46.04.150
AS 46.35.090(e)

18 AAC 15.305. Reconsideration

Statute text

A party may request reconsideration of a final decision issued under 18 AAC 15.300. A request for reconsideration must be submitted within 10 days after the final decision is issued. The power to order reconsideration expires 30 days after issuance of the final decision. If no action is taken on a request for reconsideration within the time allowed for reconsideration, the request is considered denied.

History

History: Eff. 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020
AS 46.03.090
AS 46.03.100
AS 46.03.110
AS 46.03.330
AS 46.03.720
AS 46.04.030
AS 46.04.120
AS 46.04.150
AS 46.35.090(e)

18 AAC 15.310. Adjustment of deadlines

Statute text

For good cause shown, the commissioner or hearing officer may shorten or extend a deadline established in 18 AAC 15.240 - 18 AAC 15.300.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020
AS 46.03.090
AS 46.03.100
AS 46.03.110
AS 46.03.330

AS 46.03.720
AS 46.04.030
AS 46.14.120
AS 46.14.150
AS 46.35.090(e)

18 AAC 15.320. Contempt

Statute text

The commissioner or hearing officer may use the procedures set forth in AS 44.62.590 to obtain the assistance of the superior court if a person in the proceeding disobeys or resists a lawful order, refuses to respond to a subpoena, refuses to take oath or affirmation as a witness, refuses to be examined, or is guilty of misconduct at the hearing or so near the hearing as to obstruct the proceeding.

History

History: Eff. 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020
AS 46.03.090
AS 46.03.100
AS 46.03.110
AS 46.03.320
AS 46.03.330
AS 46.03.720
AS 46.03.730
AS 46.04.030
AS 46.14.120
AS 46.14.150
AS 46.35.090(e)

18 AAC 15.340. Service under 18 AAC 15.185 - 18 AAC 15.340

Statute text

(a) Any matter required to be served under 18 AAC 15.185 - 18 AAC 15.340 shall be submitted by personal delivery, or by first-class, priority, or express United States mail to each party and the commissioner or designee along with proof of service. The hearing officer may waive the requirement for submission by personal delivery or mail as described in this subsection, to allow facsimile service or service in an electronic format upon motion of a party. Proof of service must be made by an affidavit of service stating the persons who have been served, and the day and manner of service.

(b) If a pleading or paper filed discloses that a requestor or respondent is represented by counsel, service upon the requestor or respondent must be made upon the requestor's or respondent's attorney.

(c) If mail is used for service, service occurs upon mailing for the purpose of the serving person's obligation. If a party has the right or is required to do some act or take some proceedings within a period prescribed in 18 AAC 15.195 - 18 AAC 15.340 after the service of a notice or other paper upon the party, and if the party is served by mail, three days are added to the prescribed period.

History

History: Eff. 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.320

AS 46.03.330

AS 46.03.720

AS 46.03.730

AS 46.04.030

AS 46.04.120

AS 46.04.150

AS 46.35.090(e)

Article 7

General Provisions

Section

900. Time computations.

910. Service.

920. Definitions.

18 AAC 15.900. Time computations

Statute text

Time computations under this chapter will be made in accordance with AS 01.10.080.

History

History: Eff. 11/25/77, Register 64

Annotations

Authority: AS 46.03.020(10)

AS 46.03.090
AS 46.03.100
AS 46.03.110
AS 46.03.160
AS 46.03.330
AS 46.03.720

18 AAC 15.910. Service

Statute text

(a) Any matter required to be served under 18 AAC 15.020 - 18 AAC 15.080, or before a request for an adjudicatory hearing under 18 AAC 15.200 may be served by first-class mail, facsimile, an electronic format, or personal delivery.

(b) Repealed 7/11/2002.

(c) When a pleading or paper filed in a case discloses that a requestor or respondent is represented by counsel, service upon the requestor or respondent must be made upon his attorney.

(d) If mail is used for service, service occurs upon the date of mailing as indicated by the postmark for the purpose of the serving party's obligation, and upon receipt for the purpose of commencing time limits upon the receiving party.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090
AS 46.03.100
AS 46.03.110
AS 46.03.330
AS 46.03.720
AS 46.04.030

18 AAC 15.920. Definitions

Statute text

As used in this chapter, unless the context otherwise requires

(1) "appropriate division director" means the director of the department division responsible for the permit approval, or certification at issue.

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

(3) "decision" means a department decision to issue, deny, condition, suspend, revoke, or amend a permit, or to take another action reviewable under 18 AAC 15.195 - 18 AAC 15.340;

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

(5) "EPA" means the United States Environmental Protection Agency;

(6) "hearing officer" means

(A) the commissioner, if the commissioner does not designate or appoint a hearing officer under 18 AAC 15.235(a)(1)(B) or (a)(2); or

(B) an individual designated or appointed under 18 AAC 15.235(a)(1)(B) or (a)(2);

(7) "modification of an NPDES permit" includes an action that, as a practical matter, alters the permittee's obligation under the NPDES permit, whether through a consent decree, stipulated agreement, enforcement compliance schedule letter, or any other means;

(8) "NPDES" means the National Pollutant Discharge Elimination System under 33 U.S.C. 1328, 1342, and 1345;

(9) "party" means the permit applicant, each person whose request for an adjudicatory hearing or intervention has been granted, and the department staff,

(10) "permit" means an approval, permit, certification, variance, exemption, delegation, or other authorization of the department subject to review under 18 AAC 15.195 - 18 AAC 15.340;

(11) "permit applicant" means a person who

(A) submitted an application for a permit subject to review under 18 AAC 15.195 - 18 AAC 15.340;

(B) has been issued a permit subject to review under 18 AAC 15.195 - 18 AAC 15.340;
or

(C) who is the subject of a departmental action that is subject to review under 18 AAC 15.195 - 18 AAC 15.340;

(12) "regional administrator" means the administrator of Region X of EPA;

(13) "requestor" means a person requesting an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340, a person requesting a stay under 18 AAC 15.210, or a person who intervenes in order to challenge all or part of the department's decision; "requestor" does not include a person whose request for an adjudicatory hearing or intervention is denied;

(14) "respondent" means a person defending the department's decision.

History

History: Eff. 11/25/77, Register 64; am 7/11/2002, Register 163

Annotations

Authority: AS 46.03.020

AS 46.03.090

AS 46.03.100

AS 46.03.110

AS 46.03.330

AS 46.03.720

AS 46.04.030

AS 46.14.120

AS 46.14.150
