

**DEC Request for Adjudicatory Hearing Form** Pursuant to 18 AAC 15.200

A request for adjudicatory hearing must be submitted using this form and timely served upon the Commissioner by electronic mail or U.S. mail (see 18 AAC 15.200(a), (c) and (e), as well as on the division that issued the decision and the permittee. Attn: Emma Pokon, Commissioner -Alaska Department of Environmental Conservation

P.O. Box 111800  
Juneau, AK 99811-1800 or DEC.Commissioner@alaska.gov

Shaundy Perry, Director

**Air Quality**

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P.O. Box 111800 Juneau,  
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465-5129  
Jason.Olds@alaska.gov

**Spill Prevention &**

**Response** Teresa Melville-  
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[Teresa.Melville@alaska.gov](mailto:Teresa.Melville@alaska.gov)

**Environmental Health**

**Christina Carpenter, Director**  
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**Water**

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Randy.Bates@alaska.gov

**Requestor Contact Information**

Name*	Jim and Nancy Oliver	Telephone*	907-277-5767
Address*	8050 S. Alix Drive Wasilla, Alaska 99623	Fax	
		Email Address	swi@mtaonline.net
		Date	5/30/24

Please provide the name(s), mailing address(es), electronic mail address(es) and telephone number(s) for the individual(s) or organization(s) bringing forward this request for adjudicatory hearing ( see 18 AAC 15.200(c) and 18 AAC 15.920(13))

\*Required

**Identification of Represented Parties**

For each requester named above that is a member organization, please provide the names and addresses of members who are adversely affected by the decision who are being represented by the organization in this matter (see 18 AAC 15.200(c)(3))

We, the following individuals, are directly and adversely affected by the decisions being sought for review.

Jim Oliver  
8050 S. Alix Drive  
Wasilla, Alaska 99623

Nancy Oliver  
8050 S. Alix Drive  
Wasilla, Alaska 99623

## Decision and Issues to be Reviewed

Please identify the permit or other decision you are seeking to have reviewed. Please include information such as **the date of the decision**, who made the decision, the title of the document within which the decision is contained or the permit number. **The requester bears the burden of presenting evidence in the hearing request. If the decision is not available on the department's web pages, please provide an electronic copy of the decision document.** If the department provided an opportunity for public comment on the permit, approval or decision, you must have provided comments during the public notice period or commented at a public hearing regarding the permit, approval or decision. Please also identify where you commented on the issues being appealed.

The following information identifies the source of the decisions being sought for review.

Date of decision: 5/8/24

Person who made the decision: Robert Blakenburg, Solid Waste, Hazardous Waste, & Pesticides Program Manager

Title of applicable document: Notice of Denial - Safety Waste Medical Waste Treatment Permit

\*\*See the document: "2024May8 - Permit Denial.pdf"

## Issues to be Decided

Please provide the following information for each question of material fact or law (collectively referred to as "contested issues" you are asking to be reviewed as part of the adjudicatory hearing request. Attach additional pages as needed if you are seeking to raise more than three issues or if you need more space for your response relating to an issue.

In summary, the whole matter began with creation of a slew of allegations, followed by supposed finding of facts and conclusions, and followed by supposed agreement on a consent order, these done with little to no checks and balances, little to no due process, and at odds with State law and administrative code. The COBC was then used to order payment of a substantial penalty along with additional oversight charges, which are ongoing, and create a history of noncompliance, which was then used to deny a needed permit.

Consequently, we are now living stress-filled lives, with little to no income, and saddled with a substantial fine and exposure to further oversight charges. With no correction of administrative error(s) and reversal of decision(s) by an Administrative Law or Superior Court Judge, we will be regulated out of our 30-year business, in other words robbed of our livelihood.

We identified 4 main issues for review. In this document are listed three of them with the fourth listed in the document: "2024May30 - Contested Issue #4.pdf"

**Contested Issue 1:**

**Contested Issue and Location of the Issue**

The reason for permit denial was said to be a history of noncompliance, however, there has never been an assessment performed, in accordance with State law and administrative code, of whether each alleged violation did in fact occur or threatened to occur and what corrective and preventative actions have been taken.  
Location of issue: See the document: "2022Oct24 - NOV.pdf"

**Explanation and reasons the contested issue is relevant to the decision**

See the above statement and refer to the following documents.  
2022Nov7 - NOV Response.pdf  
2022Dec5 - Current Compliance.pdf  
2024Jan9 - Evidence of Compliance Affidavit.pdf

**How are requesters directly and substantively affected?**

Denial of permit deprives us of our livelihood and our means to pay bills and support our family, as we have done with our waste business for the past 30 years of our lives.

**Any suggested terms or conditions?**

We are petitioning for the performance of a finding of facts and conclusions of law by an independent hearing panel regarding each alleged violation in the NOV of 10/24/22 and corrective or preventative actions taken.  
See the document: 2024May29 - Petition #1.pdf

**Why should your request be granted?**

To uphold Article 1, Sections 1 and 7 of the Alaska Constitution and provide due process rather than regulating a "mom and pop" entity out of business, with no due process.

**Contested Issue 1**

a) A concise statement of the contested issue proposed for hearing (see 18 AAC 15.200(c)(4)(C))

b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)

c) An explanation of how the decision was in error with respect to the contested issue

d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision)

e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion or

- 1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s):
- 2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and
- 3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above

(f) Identify when and where you raised this issue in testimony or comments you provided to DEC. If your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC 15.245)\*\*

(g) Suggested alternative terms and conditions that in your judgement are required for the Division's decision to be in accord with the facts or law applicable to the issue you are raising.

(h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.

(i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim. (see 18 AAC 15.200(a))

\*\* this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either (1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or (2) as the owner or operator of the stationary air source.

NOTE: IF you did not raise your issue before the Division's issuance of the permit or contested decision, then 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.

Contested Issue and location of the Issue

There is little to no evidence showing there was continuation of violations alleged in the NOV. This means "history of noncompliance" is reliant upon citing noncompliance with terms of the COBC. The COBC includes numerous terms written indeterminately and later made unreasonable and it was planned, designed and implemented, at odds with State law and administrative code; therefore upon a finding of COBC illegality, the decision of permit denial should be reversed.

Location of issue: See the document: "2022Oct24 - NOV.pdf"

Explanation and reasons the contested issue is relevant to the decision

See the above statement.

How are requesters directly and substantively affected?

Denial of permit deprives us of our livelihood and our means to pay bills and support our family, as we have done with our waste business for the past 30 years of our lives.

Any suggested terms or conditions

We are petitioning for adjudication, by an independent hearing panel, of the legality of the COBC.

See the document: 2024May29 - Petition #2.pdf

Why should your request be granted?

To uphold Article 1, Sections 1 and 7 of the Alaska Constitution and provide due process rather than regulating a "mom and pop" entity out of business, with no due process.

Contested Issue 2

a) A concise statement of the contested issue proposed for hearing (see 18 AAC 15.200(c)(4)(C))

b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)

c) An explanation of how the decision was in error with respect to the contested issue

d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision)

e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review. more specifically, please include a discussion or

1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s);

2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and

3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above

(f) Identify when and where you raised this issue in testimony or comments you provided to DEC. if your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC15.245)\*\*

(g) Suggested alternative terms and conditions that in your judgement are required for the Division's decision to be in accord with the facts or law applicable to the issue you are raising.

(h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.

(i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim. (see 18 AAC 15.200(a))

\*\* this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either

(1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or (2) as the owner or operator of the stationary air source.

NOTE: IF you did not raise your issue before the Division's issuance of the permit or contested decision, then 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.

Contested issue and location of the issue

Substantial penalties and damages were assessed, using a statute titled "Civil action for pollution; damages", yet there was no incident of pollution whatsoever. The civil assessment, along with other oversight costs, was ordered for payment by the COBC, therefore upon a finding of COBC illegality, the order should be reversed.

Location of issue: See the document: "2023April5 - COBC.pdf"

Explanation and reasons the contested issue is relevant to the decision

See the above statement.

How are requesters directly and substantively affected?

Denial of permit deprives us of our livelihood and our means to pay bills and support our family, as we have done with our waste business for the past 30 years of our lives. The order for payment causes further harm to our economic well being.

Any suggested terms or conditions?

We are petitioning for adjudication, by an independent hearing panel, of the legality of the order for payment of the civil assessment, accrued under AS 46.03.760, and other oversight costs.

See the document: 2024May29 - Petition #3.pdf

Why should your request be granted?

To uphold Article 1, Sections 1 and 7 of the Alaska Constitution and provide due process rather than regulating a "mom and pop" entity out of business, with no due process.

**Contested Issue 3**

- a) A concise statement of the contested issue proposed for hearing (see 18 AAC 15.200(c)(4)(C))
  - b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)
  - c) An explanation of how the decision was in error with respect to the contested issue
  - d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision)
  - e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion or
    - 1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s);
    - 2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and
    - 3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above
  - (f) Identify when and where you raised this issue in testimony or comments you provided to DEC. If your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC 15.245)\*\*
  - (g) Suggested alternative terms and conditions that in your judgement are required for the Division's decision to be in accord with the facts or law applicable to the issue you are raising.
  - (h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.
  - (i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim. (see 18 AAC 15.200(a))
- \*\* this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either (1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or (2) as the owner or operator of the stationary air source.
- NOTE: IF you did not raise your issue before the Division's issuance of the permit or contested decision, then 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.

**Request for Evidentiary Hearing**

With reference to the number of issues listed in your response to "Issues to be Decided" above, please list the number of the issues for which you are requesting an evidentiary hearing that may involve the testimony of factual witnesses, expert witnesses or the offering of additional documents or other evidence not already in the existing agency record.

**Description of Question of Fact to be Raised at an Evidentiary Hearing**

With reference to the number of issues listed in your response to "Request for Evidentiary Hearing" above, please describe each of the factual issues you want considered in an evidentiary hearing. You may reference you answers in you response above if they describe all the questions of fact that you want considered at an evidentiary hearing

**Estimated Time for an Evidentiary Hearing**

Please provide your estimate of the time you think will be needed to conduct the evidentiary hearing you are requesting.

**IF YOU HAVE QUESTIONS**

If you have questions regarding what information needs to be included in this form or questions about the process for requesting an adjudicatory hearing, you may find help by:

1. Reviewing the department's regulations, many of which are referenced in this form. The Administrative Procedures regulations at 18 AAC 15 are available on the Internet at <https://dec.alaska.gov/commish/regulations/> . The definitions of key terms may be found at 18 AAC 15.920.
2. Reviewing the guidance documents posted by the department at <https://dec.alaska.gov/commish/review-guidance/>; or
3. Contacting the department's adjudicatory hearing liaison, Gary Mendivil, in the Commissioner's Office at (907) 465-5061 or at [Gary.Mendivil@alaska.gov](mailto:Gary.Mendivil@alaska.gov)

**Please be aware that failing to comply with the requirements for filing and serving a request for adjudicatory hearing could result in all or a portion of your request being denied.**

**APPLICABLE DEADLINES**

Requests for an adjudicatory hearing must be made not later than 30 days after the issuance of the department's decision or permit, or not later than 30 days after the issuance of a decision on a request for informal review under 18 AAC 15.185, whichever is later. (see 18 AAC 15.200(a))