

**DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**



18 AAC 15

Administrative Procedures

As Amended Through November 7, 2017

**Bill Walker
Governor**

**Larry Hartig
Commissioner**

IMPORTANT NOTE TO READER

THE REGULATIONS REPRODUCED HERE HAVE BEEN PROVIDED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AS A PUBLIC COURTESY. WHILE EVERY EFFORT HAS BEEN MADE TO ASSURE THE ACCURACY OF THE REPRODUCED VERSION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION CANNOT GUARANTEE ITS ABSOLUTE ACCURACY. PAPER COPIES OF THE REGULATIONS AS ORIGINALLY FILED BY THE LIEUTENANT GOVERNOR ARE AVAILABLE FROM THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

THE REGULATIONS HAVE AN EFFECTIVE DATE OF NOVEMBER 7, 2017, ARE IN REGISTER 224, AND WILL APPEAR IN OFFICIAL PUBLISHED FORM IN THE JANUARY 2018 SUPPLEMENT TO THE ALASKA ADMINISTRATIVE CODE.

Chapter 15. Administrative Procedures.

Article

1. Coverage of Chapter (18 AAC 15.010)
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Article 1. Coverage of Chapter.

Section

010. Coverage of chapter

18 AAC 15.010. Coverage of chapter. (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 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 to the surface waters of the state 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 and 18 AAC 83.905.

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

(1) permit, approval, or certification decisions involving matters described in (a) or (b) of this section, including decisions to amend, suspend, revoke, or re-issue permits, approvals, or certifications; 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. (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; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.320	AS 46.03.730
	AS 46.03.100	AS 46.03.330	AS 46.03.880
	AS 46.03.110	AS 46.03.720	AS 46.04.890

Article 2. Permit Procedures.

Section

- 020. Permit applications
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- 060. Public hearings
- 070. Preissuance conference
- 080. Decision on application
- 090. Permit terms and conditions
- 100. Permit limitations
- 110. Administrative continuance of expiring permits

18 AAC 15.020. Permit applications. (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. (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)

Authority: AS 46.03.020 AS 46.03.110 AS 46.03.720

AS 46.03.090	AS 46.03.320	AS 46.03.730
AS 46.03.100	AS 46.03.330	

18 AAC 15.030. Signing of applications. 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. (Eff. 11/25/77, Register 64)

Authority:	AS 46.03.020(10)	AS 46.03.110	AS 46.03.330
	AS 46.03.090	AS 46.03.160	AS 46.03.720
	AS 46.03.720		

18 AAC 15.040. Requests for additional information. (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 specific 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(b) will be held in abeyance until service of the information, or holding of the site visit. (Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.110	AS 46.03.330
	AS 46.03.090	AS 46.03.160	AS 46.03.720
	AS 46.03.100	AS 46.03.320	

Editor's note: As of Register 208 (January 2014), and acting under AS 44.62.125(b)(6), the regulations attorney made a technical revision to 18 AAC 15.040(b).

18 AAC 15.050. Public notice. (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. (Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.100	AS 46.03.330
	AS 46.03.090	AS 46.03.110	AS 46.03.720

18 AAC 15.060. Public hearings. (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. (Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.100	AS 46.03.330
	AS 46.03.090	AS 46.03.110	AS 46.03.720

18 AAC 15.070. Preissuance conference. (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 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. (Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 8/2/90, Register 115; am 7/11/2002, Register 163)

Authority:	AS 46.03.020	AS 46.03.110	AS 46.03.720
	AS 46.03.090	AS 46.03.320	AS 46.03.730
	AS 46.03.100	AS 46.03.330	

18 AAC 15.080. Decision on application. (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. (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)

Authority: AS 46.03.020 AS 46.03.110 AS 46.03.720
AS 46.03.090 AS 46.03.330 AS 46.03.730
AS 46.03.100

18 AAC 15.090. Permit terms and conditions. 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. (Eff. 11/25/77, Register 64; am 11/7/87, Register 100; am 7/11/2002, Register 163)

Authority: AS 46.03.020 AS 46.03.100 AS 46.03.330
AS 46.03.090 AS 46.03.110 AS 46.03.720

18 AAC 15.100. Permit limitations. (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. (Eff. 11/25/77, Register 64; am 1/7/87, Register 100; am 7/11/2002, Register 163)

Authority: AS 46.03.020 AS 46.03.100 AS 46.03.720
AS 46.03.090 AS 46.03.110

18 AAC 15.110. Administrative continuance of expiring permits. (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. (Eff. 12/16/2004, Register 172; am 7/29/2006, Register 179)

Authority: AS 46.03.020 AS 46.030100 AS 46.03.1

Article 3. Adoption of NPDES Permits.

Section

120. Adoption of NPDES permits

18 AAC 15.120. Adoption of NPDES permits. (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. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; am 7/29/2006, Register 179)

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. (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. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority: AS 46.03.020 AS 46.03.110

18 AAC 15.140. Public notice. (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. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority: AS 46.03.020 AS 46.03.110

18 AAC 15.150. Public hearings. (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). (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163)

Authority: AS 46.03.020 AS 46.03.110

18 AAC 15.160. Department decision. 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. (Eff. 11/25/77, Register 64; 7/11/2002, Register 163)

Authority: AS 46.03.020 AS 46.03.160

18 AAC 15.170. Period required to process certification. 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)). (Eff. 11/25/77, Register 64)

Authority: AS 46.03.020 AS 46.03.160

18 AAC 15.180. Certification for other federal licenses and permits. (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, sec. 401) must serve upon the department a copy of the application for the 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. (Eff. 11/25/77, Register 64; am 11/10/94, Register 132; am 1/17/2002, Register 161; am 7/11/2002, Register 163)

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. (a) The informal review process allows the requester to address, with the department division that issued a contested decision, concerns over the decision without entering into a formal adjudicatory hearing process. An informal review request is not required before making a request for an adjudicatory hearing. A person authorized under 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), proceedings on a request for adjudicatory hearing do not begin until after the proceeding on a request for informal review, if requested, of the contested decision are completed. A request for informal review must be made not later than 20 days after issuance of the department's decision reviewable under this section. The request may be made by mail, electronic mail, or facsimile, and must include

(1) the information required by 18 AAC 15.200(c) and (d); and

(2) subject to the restrictions of 18 AAC 15.245, copies of any documents or data that would assist the director in concluding the informal review.

(b) Not later than seven days after receipt of a request for informal review, the director will decide if the request merits informal review. If the director decides that the request does not merit informal review, the director shall inform the requester in writing of this decision and include the reasons for the decision. The director's informal review decision is not itself subject to appeal, but the requester may seek a formal adjudicatory hearing on the underlying decision under 18 AAC 15.200 or AS 44.62, if either of those options is available to the requester. In the denial, the director shall include a statement informing the requester if either of those options is available to the requester.

(c) If informal review is granted, the director may request additional information from the requester. Additional information requested as part of the informal review process does not become part of the agency decision record under 18 AAC 15.237, unless previously and timely submitted to the division during its review before issuance of the contested decision. The director shall issue a final decision not later than 20 days after receipt of the request for informal review or receipt of additional information requested, whichever is later. The director's informal review decision itself is not subject to an appeal. Rather, the director shall advise the requester and all other parties of the appropriate appeal procedure described in (d) of this section based on the director's final decision after granting informal review.

(d) In making a final decision after granting an informal review, the director may:

(1) affirm the contested decision; the director shall advise the requester and all other parties of the right to seek, not later than 30 days after issuance of the director’s decision affirming the contested decision, an adjudicatory hearing under 18 AAC 15.200 or AS 44.62, if either of those options is available to the requester or other parties;

(2) remand the entire decision to the division staff for action in accordance with the director’s decision; the director shall advise the requester and all other parties of the right to seek an informal review or an adjudicatory hearing under 18 AAC 15.200 or AS 44.62 if either of those options is available to the requester or other parties not later than 30 days after the division staff issues a final decision on remand; or

(3) change the contested decision as follows,

(A) if the change is minor the director shall advise the requester and all other parties of the right to seek an adjudicatory hearing under 18 AAC 15.200 or AS 44.62 on the contested decision as revised by the director, if either of those options is available to the requester or other parties not later than 30 days after issuance of the director’s revised decision.

(B) if the change is substantive the director shall direct the division staff to re-notice the contested decision; once finalized and issued, the revised decision is subject to informal review in accordance with this section or to a request for an adjudicatory hearing under 18 AAC 15.200 or AS 44.62, if either of those options is available to the requester or other parties not later than 30 days after issuance of the revised decision.

(e) With the consent of the parties or good cause shown, the director may shorten or extend a deadline established in (b) or (c) of this section. (Eff. 7/11/2002, Register 163; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.330	AS 46.04.890
	AS 46.03.090	AS 46.03.720	AS 46.14.120
	AS 46.03.100	AS 46.03.730	AS 46.14.150
	AS 46.03.110	AS 46.03.880	AS 46.14.200
	AS 46.03.320	AS 46.04.030	

18 AAC 15.190. Fee review. (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 department 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. (Eff.7/11/2002, Register 163)

Authority: AS 44.46.020 AS 46.03.020 AS 46.14.140
AS 44.46.025 AS 46.03.070

Article 6. Administrative Appeal Procedures.**Section**

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18 AAC 15.195. Applicability. The provisions of 18 AAC 15.185 – 18 AAC 15.340 apply to adjudicatory hearings to review decisions described in 18 AAC 15.010(e), except adjudicatory hearings for administrative penalties under AS 46.03.761(d) or adjudicatory hearings under 18 AAC 23, 18 AAC 30, 18 AAC 31, 18 AAC 32, 18 AAC 34, 18 AAC 52, 18 AAC 60.260, 18 AAC 72.430, 18 AAC 75.550 – 18 AAC 75.570, or 18 AAC 80.1240. (Eff. 7/11/2002, Register 163; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.720	AS 46.04.890
	AS 46.03.090	AS 46.03.730	AS 46.14.120
	AS 46.03.100	AS 46.03.761	AS 46.14.150
	AS 46.03.110	AS 46.03.880	AS 46.14.200
	AS 46.03.320	AS 46.04.030	
	AS 46.03.330		

18 AAC 15.196. Administrative Procedure Act. To the extent provided in AS 44.62.330(a), AS 46.03.880, AS 46.04.890, and AS 46.14.200, the adjudicatory hearing procedures in this chapter supersede the adjudicatory hearing procedures contained in AS 44.62.330 – 44.62.630 (Administrative Procedure Act). (Eff. 11/7/2017, Register 224)

Authority:	AS 44.62.330	AS 46.03.330	AS 46.04.890
	AS 46.03.020	AS 46.03.720	AS 46.14.120
	AS 46.03.100	AS 46.03.730	AS 46.14.150
	AS 46.03.110	AS 46.03.880	AS 46.14.200
	AS 46.03.320	AS 46.04.030	

18 AAC 15.200. Request for an adjudicatory hearing. (a) Not later than 30 days after the department issues a decision reviewable under 18 AAC 15.195 – 18 AAC 15.340 or not later than 30 days after the director 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. A copy of the request for adjudicatory hearing must be served on the director, and on the permit applicant or permittee. Except as provided in AS 46.14.200 for certain persons requesting an air emissions permit hearing, a person who requests an adjudicatory hearing, a person designated to act on the person’s behalf, or an intervenor must have actively raised the issue to the department through participation in the public review process on the draft decision, if the department offered one, either by submitting written comments or by testifying at a public hearing on the draft decision, unless the challenge is to a provision of a final permit that was not in the draft permit that was the subject of the public notice or comment process.

(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) The requester must show in the hearing request that the requirements of (a) – (d) of this section have been met. An adjudicatory hearing request must be in writing on a form provided by the commissioner and must contain

- (1) a description of the decision being reviewed;
- (2) the requester’s name, mailing address, electronic mail address and telephone number;
- (3) the name and address of each person that is adversely affected by the decision and that the requester represents; and
- (4) the information that supports the request, including

(A) a detailed factual statement of the nature and scope of the interests of the requester, or if the requester is an organization, the interests of the representative members of the organization;

(B) an explanation of how and to what extent those interests would be directly and adversely affected by the contested issues in the decision, including a discussion of the factors in (d) of this section;

(C) a clear and concise statement of the contested issues proposed for hearing, identifying for each contested issue:

(i) the disputed issues of material fact and law proposed for review;

(ii) the relevance to the decision of those disputed issues of material fact and law identified under (i) of this subparagraph;

(iii) a detailed explanation of how the decision was in error with respect to the contested issue; and

(iv) the hearing time estimated to be necessary for the adjudication

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

(E) 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 requester's judgment are required to implement applicable requirements of law.

(d) The requester must show in the hearing request

(1) that the requester or, if the requester is an organization, the representative members of the organization, are directly and adversely affected by the contested issues in the department's decision so as to justify relief;

(2) the nature of the interest asserted by the requester;

(3) whether that interest is one the applicable statutes and regulations were intended to protect; and

(4) the extent to which the contested issues in the department's decision directly and substantively impairs that interest.

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

(f) In this section, “contested issues” means the specific disputed issues of material fact and law proposed for review under this section. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.330	AS 46.04.890
	AS 46.03.090	AS 46.03.720	AS 46.14.120
	AS 46.03.100	AS 46.03.730	AS 46.14.150
	AS 46.03.110	AS 46.03.880	AS 46.14.200
	AS 46.03.320	AS 46.04.030	

18 AAC 15.205. Alternative dispute resolution. (a) Notwithstanding 18 AAC 15.195 – 18 AAC 15.340, the department and the parties may engage in alternative dispute resolution as provided in 2 AAC 64.200. However, a request for 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. (Eff. 7/11/2002, Register 163; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.110	AS 46.03.720
	AS 46.03.090	AS 46.03.320	AS 46.03.730
	AS 46.03.100	AS 46.03.330	

18 AAC 15.210. Stay of decision. (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 requester may, not later than the deadline for service of a 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 division director and on the permit applicant or permittee. A copy of the request for stay also must be provided to the commissioner in an electronic format, unless the department waives this requirement because the requester lacks a readily accessible

means or the capability to provide items in an electronic format. The commissioner will issue by mail, facsimile transmission, or electronic mail a notice of the request for stay to the requester, to the division director, to the permit applicant or permittee, and to each person who commented on the application or draft 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 commissioner will inform persons that the request for stay is available for review by contacting the department or by reviewing the department's web site. In the notice, the commissioner also will include the statement that a person who wishes to oppose or support the request for stay must do so by serving a response on the commissioner on or before a date established by the commissioner and by serving copies as required under (b) of this section.

(b) Not later than the time that the commissioner sets in the notice of request for stay under (a) of this section, the division director, a requester not requesting the stay, the permit applicant or permittee, and a potential intervenor may serve a responsive memorandum upon the commissioner, the stay requester, the permit applicant or permittee, and division director in the manner required under 18 AAC 15.340. A potential intervenor need not file a request to intervene under 18 AAC 15.225 in order to submit a responsive memorandum to a request for stay. A potential intervenor submitting a responsive memorandum to a request for stay must file a motion to intervene if the person wishes to participate in a proceeding that the commissioner grants under 18 AAC 15.220.

(c) The commissioner will issue a decision on a request for stay made under (a) of this section. In reviewing a request for stay, the commissioner will consider

(1) whether the person requesting the stay will suffer irreparable harm if the stay is not granted;

(2) whether the rights of other persons and the public interest can be adequately protected if the stay is granted;

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

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

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

(d) When considering the likelihood of a person prevailing on the merits for purposes of (c)(5) of this section, the commissioner will consider the nature of the threatened injury. If the requesting person faces irreparable harm and the rights of other persons can be adequately protected, the person requesting the stay must raise serious and substantial questions on the merits of the department's decision in order for the commissioner to grant a stay. If the harm to the person requesting the stay is less than irreparable or if the rights of other persons cannot be

adequately protected if the commissioner grants a stay, the person requesting the stay must meet the heightened standard of a clear showing of probable success on the merits in order for the commissioner to grant a stay. The commissioner will not impose or continue a stay of the department's decision if the commissioner finds that to impose or continue the stay would be contrary to the public interest. The commissioner will not grant a stay 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. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; am 11/7/2017, Register 224)

Authority: AS 46.03.020 AS 46.03.730 AS 46.14.120
AS 46.03.100 AS 46.03.880 AS 46.14.150
AS 46.03.110 AS 46.04.030
AS 46.03.320 AS 46.04.890
AS 46.03.720

18 AAC 15.220. Action on hearing requests. (a) As provided in AS 44.64.060(b), the commissioner will, not later than 10 days after receiving a properly served hearing request

(1) deny the request

(A) for a reason provided by law; or

(B) by vacating and remanding the matter to the division director for further action; or

(2) conditionally approve the hearing request and refer the request to the office of administrative hearings (AS 44.64.010) for a recommended decision whether the request meets the requirements of 18 AAC 15.200 and the scope of any hearing on the request.

(b) If the commissioner refers a hearing request to the office of administrative hearings, the commissioner will give notice of the referral to the requester, division director, and the permit applicant or permittee. In the notice the commissioner will include a statement that, not later than 20 days after the commissioner gives the notice of referral, the division director and the permit applicant or permittee may file a response with the office of administrative hearings as to whether the hearing request meets the requirements of 18 AAC 15.200 and, if so, the scope of proceedings before the office of administrative hearings. The requester may reply not later than seven days after service of any response to the request for an adjudicatory hearing. The response and any reply must be served as described in 18 AAC 15.340 on the office of administrative hearings, the division director, the permit applicant or permittee, and the requester. Not later than 10 days after the time has expired for a requester to reply to responses to the request, the office of administrative hearings will issue a recommended decision to the commissioner whether the hearing request

(1) meets the requirements of 18 AAC 15.200 and an adjudicatory hearing or hearing on the briefs should be held;

(2) does not meet the requirements of 18 AAC 15.200 and the hearing request should be denied; or

(3) should be denied because the matter should be vacated and remanded to the division director for further action.

(c) Not later than 10 days after receiving a recommended decision of the office of administrative hearings under (b) of this section, the commissioner will make a final decision on the recommendation to:

(1) grant an adjudicatory hearing or hearing on the briefs;

(2) deny the hearing request as not meeting the requirements of 18 AAC 15.200;

or

(3) vacate the contested decision, deny the hearing request, and remand the matter to the division director for further action.

(d) If the commissioner determines that an adjudicatory hearing or a hearing on the existing record and on written briefs should be held, the commissioner will publish notice of the action in a newspaper of general circulation for the affected area, and if sufficient contact information is provided, will send a copy of the public notice to each person who submitted timely written comments on the draft decision, who testified at a public hearing before the department's decision on the draft decision, or who submitted a request for hearing. In the notice, the commissioner will include the statement that a person who wishes to participate in the proceedings may file a request to intervene not later than 15 days after publication of the notice or mailing of the notice, whichever occurs last. In the notice the commissioner will also state that a request to intervene must

(1) meet the requirements of 18 AAC 15.225 and 2 AAC 64.180; and

(2) be served on the administrative law judge, division director, requester, and the permit applicant or permittee.

(e) If the commissioner grants a hearing on the existing record and on written briefs, the administrative law judge will establish, after the time to intervene has expired under 18 AAC 15.225, a briefing schedule for submission of an opening brief by each requester, a responsive brief by each respondent, and a reply brief by each requester. Subject to the requirements of 18 AAC 15.245, the administrative law judge may allow the parties to supplement the agency record with additional information submitted with the briefs. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; am 11/7/2017, Register 224)

Authority: AS 46.03.020 AS 46.03.720 AS 46.04.890
 AS 46.03.100 AS 46.03.730 AS 46.14.120

AS 46.03.110	AS 46.03.880	AS 46.14.150
AS 46.03.320	AS 46.04.030	
AS 46.03.330		

18 AAC 15.225. Additional parties and issues. (a) A person who wants to intervene in proceedings granted by the commissioner may serve upon the administrative law judge a request to intervene that contains the information and meets the requirements specified in 18 AAC 15.200, not later than 15 days after publication of notice or mailing of notice under 18 AAC 15.220(d), whichever occurs last. A person requesting to intervene must serve a copy of the request to intervene on each party. A person requesting to intervene may not raise new contested issues beyond those contained in the request for hearing granted by the commissioner under 18 AAC 15.220(c). An existing party may submit an objection to a request to intervene not later than seven days after service after the request.

(b) Each requester, the permit applicant or permittee, and the division director are automatically parties to the proceeding and need not file requests for intervention.

(c) The administrative law judge will grant or deny the request to intervene not later than 10 days after the expiration of the deadline to object. The administrative law judge will grant the intervention request if the administrative law judge finds that the potential intervenor meets the standing requirements of 18 AAC 15.200 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. (Eff. 7/11/2002, Register 163; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.720	AS 46.04.030
	AS 46.03.100	AS 46.03.730	AS 46.14.120
	AS 46.03.110	AS 46.03.880	AS 46.14.150
	AS 46.03.320	AS 46.03.880	
	AS 46.03.330	AS 46.04.890	

18 AAC 15.230. Consolidation and severance. (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.

(c) After referral to the office of administrative hearings as required or permitted under AS 44.64.030, consolidation or severance shall be governed by 2 AAC 64.190. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.330	AS 46.04.030
	AS 46.03.100	AS 46.03.720	AS 46.04.890
	AS 46.03.110	AS 46.03.730	AS 46.14.120
	AS 46.03.320	AS 46.03.880	AS 46.14.150

18 AAC 15.234. Administrative law judge. (a) Under AS 44.64.030, an administrative law judge will conduct

(1) an adjudicatory hearing granted by the commissioner under this chapter; or

(2) a hearing granted by the commissioner under this chapter on the existing record and on written briefs.

(b) The commissioner may designate

(1) the office of administrative hearings to make a recommended or final decision on whether to grant or deny a request for a stay of decision under 18 AAC 15.210;

(2) a department employee to make a final decision on a recommendation by the office of administrative hearings to grant or deny an adjudicatory hearing request under 18 AAC 15.200; or

(3) a department employee or the office of administrative hearings to make a final department decision after hearing by the office of administrative hearings as provided in AS 44.64.060(e).

(c) A department employee designated under (b) of this section

(1) may not have been substantively involved in the contested decision;

(2) shall be impartial with respect to the subject of the contested decision;

(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.

(d) If the commissioner designates another individual to act as designee under (b) of this section, the commissioner will give notice at the time of the designation to the parties. (Eff. 7/11/2002, Register 163; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.720	AS 46.04.120
	AS 46.03.100	AS 46.03.880	AS 46.04.890
	AS 46.03.110	AS 46.04.030	AS 46.14.150
	AS 46.03.330		

18 AAC 15.235. Hearing officer. Repealed. (Eff. 7/11/2002, Register 163; repealed 11/7/2017, Register 224)

18 AAC 15.237. Agency decision record. (a) As provided in AS 44.64.060(b), if a hearing request is referred to the office of administrative hearings under 18 AAC 15.220(a), and not later than 15 days after receiving a hearing request, the division director shall provide to the office of administrative hearings a copy of the contested decision, including any findings document or response to public comments, and any underlying permit documents.

(b) If an adjudicatory hearing request is granted, or a hearing on the existing record and written briefs is granted under 18 AAC 15.220(c), the division director shall supplement the record materials provided under (a) of this section with those portions of the supplemental documents described in this subsection that are relevant to the issues upon which the hearing is granted. The supplemental documents are the application and supporting documentation, written and electronic correspondence concerning the proposed decision, additional information submitted by the permit applicant or permittee to the department, public comments and information submitted to the department on the proposed decision, recordings or transcripts of any public hearing, prior department decisional documents referenced in the contested decision, and other materials that the department considered or relied upon in making the department's decision. The record materials under (a) of this section and the supplemental documents under this subsection constitute the agency decision record. Documents exempt from disclosure under AS 40.25.110 – 40.25.125 may not be included in the agency decision record. Documents or additional information received as part of the informal review process under 18 AAC 15.185 may not be included in the agency decision record, unless those documents or the additional information was previously and timely submitted to the division during its review before issuance of the contested decision. A requester may request to supplement the record under 2 AAC 64.310. The department staff shall number the pages of the agency decision record. The department staff is not required to prepare an index of the agency decision record.

(c) Not later than 20 days of the commissioner's decision granting an adjudicatory hearing or hearing on the existing record and on written briefs under 18 AAC 15.220(c), the division director shall supplement the agency decision record as required under (b) of this section. The division director shall at the same time also serve notice on all parties that the agency decision record is complete. A person may inspect or obtain a copy of the agency decision record both before and after the agency notice is served. A person wishing to obtain a

copy of the agency decision record may do so at the requesting person's expense. For good cause shown, the administrative law judge may extend the time for preparation of the agency decision record.

(d) The department will impose copying charges on a party requesting copies of a portion of or the entire agency decision, unless the number of copies requested is de minimis. (Eff. 7/11/2002, Register 163; am 8/15/2010, Register 195; am 11/7/2017, Register 224; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.330	AS 46.04.030
	AS 46.03.100	AS 46.03.720	AS 46.04.890
	AS 46.03.110	AS 46.03.730	AS 46.14.120
	AS 46.03.320	AS 46.03.880	AS 46.14.150

18 AAC 15.240. Prehearing document exchange; witness lists. Repealed. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; repealed 11/7/2017, Register 224)

18 AAC 15.245. Obligation to submit evidence and raise issues. 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 a party may show good cause include one or more of the following:

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

(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. (Eff. 7/11/2002, Register 163; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.720	AS 46.04.890
	AS 46.03.100	AS 46.03.730	AS 46.14.120
	AS 46.03.110	AS 46.03.880	AS 46.14.150
	AS 46.03.320	AS 46.04.030	
	AS 46.03.330		

18 AAC 15.247. Subpoenas. Repealed. (Eff. 7/11/2002, Register 163; repealed 11/7/2017, Register 224)

18 AAC 15.250. Prehearing conference. Repealed. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; repealed 11/7/2017, Register 224)

18 AAC 15.255. Summary determination. Repealed. (Eff. 7/11/2002, Register 163; repealed 11/7/2017, Register 224)

18 AAC 15.260. Deciding officer. Repealed. (Eff. 11/25/77, Register 64; repealed 7/11/2002, Register 163)

18 AAC 15.270. Hearings. Repealed. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; repealed 11/7/2017, Register 224)

18 AAC 15.280. Certification of adjudication record. Repealed. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; repealed 11/7/2017, Register 224)

18 AAC 15.290. Proposed findings. Repealed. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; repealed 11/7/2017, Register 224)

18 AAC 15.300. Final decision. Repealed. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; repealed 11/7/2017, Register 224)

18 AAC 15.305. Reconsideration. Repealed. (Eff. 7/11/2002, Register 163; repealed 11/7/2017, Register 224)

18 AAC 15.310. Adjustment of deadlines. For good cause shown, the commissioner or administrative law judge may stay the proceedings under, or shorten or extend a deadline established in, 18 AAC 15.220(b) – (f) and 18 AAC 15.225 – 18 AAC 15.245. (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.720	AS 46.04.890
	AS 46.03.100	AS 46.03.880	AS 46.14.120
	AS 46.03.110	AS 46.03.880	AS 46.14.150
	AS 46.03.330	AS 46.04.030	

18 AAC 15.320. Contempt. The commissioner or administrative law judge may use the procedures set out 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. (Eff. 7/11/2002, Register 163; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.330	AS 46.04.890
	AS 46.03.090	AS 46.03.720	AS 46.14.120
	AS 46.03.100	AS 46.03.730	AS 46.14.150
	AS 46.03.110	AS 46.03.880	
	AS 46.03.320	AS 46.04.030	

18 AAC 15.340. Service under 18 AAC 15.185 – 18 AAC 15.220. (a) As provided in 18 AAC 15.185, 18 AAC 15.200 and 18 AAC 15.900, the deadline for service of a request for informal review under 18 AAC 15.185 or an adjudicatory hearing under 18 AAC 15.200, commences from issuance of the department’s decision on which informal review or an adjudicatory hearing is sought. The deadline for service is computed as provided in 18 AAC 15.900. Issuance of the decision is the date indicated by the postmark if the decision was mailed or the date the facsimile or electronic mail was sent by the department if facsimile transmission or electronic mail was used. If the requester uses mail to serve the request for informal review or request for adjudicatory hearing, service occurs, for the purpose of the requester’s service obligation, on the date of mailing as indicated by the postmark or on the date when the requester sent the request by facsimile transmission or electronic mail if facsimile transmission or electronic mail was used. Service of a request for informal review under 18 AAC 15.185 or an adjudicatory hearing under 18 AAC 15.200 shall be made to the persons set out in 18 AAC 15.185 and 18 AAC 15.200, respectively, and must include an affidavit of service stating the persons who have been served, and the day and manner of service.

(b) After the request for informal review or request for adjudicatory hearing is filed, any matter required to be served under 18 AAC 15.185 – 18 AAC 15.220 shall be submitted by personal delivery, or by first-class, priority, or express United States mail to each party and the commissioner along with proof of service. Upon motion of a party, the director in an informal review under 18 AAC 15.185 or the commissioner in a proceeding under 18 AAC 15.200 may waive the requirement for submission by personal delivery or mail as described in this subsection, to allow service by facsimile transmission or electronic mail. 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.

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

(d) If mail is used for service, service occurs upon mailing for the purpose of the serving person’s obligation. Except as provided in (a) of this section with respect to the time to file a request for informal review or a request for an adjudicatory hearing, if a party has the right or is required to do some act or take some proceedings within a period prescribed in 18 AAC 15.185 – 18 AAC 15.220 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.

(e) After referral of a hearing request to the office of administrative hearings, service shall be governed by 2 AAC 64.920. (Eff. 7/11/2002, Register 163; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.720	AS 46.14.120
	AS 46.03.100	AS 46.03.880	AS 46.14.150
	AS 46.03.110	AS 46.04.030	
	AS 46.03.330	AS 46.04.890	

Article 7. General Provisions.**Section**

900. Time computations

910. Service

920. Definitions

18 AAC 15.900. Time computations. As provided in AS 01.110.080, time computations under this chapter to determine when an act is required to be done is computed by excluding the first day and including the last, unless the last day is a holiday and then it is also excluded. (Eff. 11/25/77, Register 64; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.160	AS 46.14.150
	AS 46.03.100	AS 46.03.330	
	AS 46.03.110	AS 46.03.720	

18 AAC 15.910. Service. (a) Any matter required to be served under 18 AAC 15.020 – 18 AAC 15.080, or a department decision subject to an informal review under 18 AAC 15.185 or an adjudicatory hearing under 18 AAC 15.200, may be served by first-class mail, facsimile transmission, electronic mail, 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) When 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.

(e) For purposes of requesting informal review under 18 AAC 15.185 or requesting an adjudicatory hearing under 18 AAC 15.200, service is governed by 18 AAC 15.340(a). (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.330	AS 46.04.030
	AS 46.03.100	AS 46.03.720	AS 46.04.890
	AS 46.03.110	AS 46.03.880	

18 AAC 15.920. Definitions. As used in this chapter, unless the context otherwise requires

(1) “appropriate division director” with respect to permit or certification procedures under 18 AAC 15.020 – 18 AAC 15.160, means the director of the department division responsible for the permit, approval, or certification at issue;

(2) “commissioner” means

(A) the commissioner of environmental conservation; or

(B) a person designated by the commissioner to act for the commissioner, other than the person who issued the contested decision;

(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) “administrative law judge” means the individual that the office of administrative hearings assigns under AS 44.64.0202(a)(4) to hear

(A) an adjudicatory hearing;

(B) a hearing on the existing record and on written briefs;

(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 or permittee, each person whose request for an adjudicatory hearing or intervention has been granted, and the division director;

(10) “permit”

(A) 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, including the terms and conditions of the permit;

(B) includes an oil discharge prevention and contingency plan under AS 46.04 and the terms and conditions of the department’s approval of the plan;

(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) 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 10 of EPA;

(13) “requester” with respect to

(A) actions under 18 AAC 15.200 – 18 AAC 15.220, means a person requesting an adjudicatory hearing under 18 AAC 15.200 or requesting a stay under 18 AAC 15.210;

(B) actions under 18 AAC 15.225 -18 AAC 15.320,

(i) mean a person whose request for adjudicatory hearing under 18 AAC 15.200 has been granted in whole or in part, a person whose request for stay has been granted in whole or in part, or a person who requests to intervene to contest all or part of the department’s decision had been granted in whole or in part;

(ii) does not include a person whose request for an adjudicatory hearing or request for intervention has been denied in whole;

(14) “respondent” means a person defending the department’s decision.

(15) “draft decision” means

(A) in the case where the division issues a draft permit or decision for comment, the draft permit or draft decision;

(B) a decision other than one described in (A) of this paragraph, means the permit or approved application, along with supporting materials submitted by the permit applicant or permittee and put out for public comment, that formed the basis for the challenged decision.

(16) “division director or director,” with respect to proceedings that are subject to 18 AAC 15.185 – 18 AAC 15.340, means

(A) the director of the division within the department that issued the decision that is being contested in a request for informal review, request for adjudicatory hearing or request for stay; or

(B) a person designated by the director to act for the director, other than the person who issued the contested decision.

(17) “office of administrative hearings” means the independent agency under the direction of the chief administrative law judge and created under AS 44.64.010 in the Department of Administration; (Eff. 11/25/77, Register 64; am 7/11/2002, Register 163; am 11/7/2017, Register 224)

Authority:	AS 46.03.020	AS 46.03.720	AS 46.04.890
	AS 46.03.100	AS 46.03.880	AS 46.14.120
	AS 46.03.110	AS 46.04.030	AS 46.14.150
	AS 46.03.330		