

The following questions were provided to the department by the public regarding proposed amendments at 18 AAC 70.010(d). DEC responses are noted in green.

New 7/10/24. Does the department have any guidance for determining whether a water is or is not subject to 33 U.S.C 1251-1387, Clean Water Act provisions?

DEC does not have a department-specific guidance for determining whether a water is subject to 33 U.S.C 1251-1387.

New 7/10/24. Does the department consider waters impacted by climate change as meeting the definition of “Natural Condition” as defined in the Guidance for the Implementation of Natural Condition- Based Water Quality Standards, dated November 15, 2006?

DEC does not have a policy specific to “waters impacted by climate change” at this time. Per DEC’s 2006 Natural Conditions Guidance (Sections 1.3 and 2.1.2):

DEC anticipates that the natural condition provision would most frequently apply to parameters such as:

- Bacteria attributed to wildlife including waterfowl,
- Metals derived from natural mineral deposits,
- Nutrients attributed to background soil, vegetation or wildlife sources,
- Sediments from natural stream morphology processes or organic matter,
- Temperature due to seasonal shifts and other natural processes, and
- Dissolved oxygen due to seasonal shifts and other natural processes.

Natural condition-based standards are not appropriate for human created substances that do not naturally exist in the environment. . .

The level of human use must be limited such that it is not expected to have any measurable effect on the natural condition of the parameter being considered. The “natural condition” is a relative concept that may include minor human activity or development, but excludes watersheds with pervasive hydrologic or riparian changes.

New 7/10/24. How is "water quality based effluent limits" defined, and how does it differ from the current language (quality standard)?

DEC amended 18 AAC 70.010(d) to include the phrase “water quality based effluent limits” for multiple reasons, all in an effort to increase clarity. First, the current wording of this paragraph states “[w]hen establishing a water quality standard based on the natural conditions in a permit...” This is inaccurate. Water quality standards are never established in a permit. A permit establishes effluent limitations that conform to the promulgated water quality standards in 18 AAC 70. Next, effluent limitations issued in discharge permits may be based on water quality standards or technology based standards. The State of

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Alaska has not promulgated any technology based water quality standards, so it is appropriate at 18 AAC 72.010(d) to specify a permit would establish water quality based effluent limits, since technology based effluent limits are not applicable. For these reasons, DEC intends for the phrase “water quality based effluent limits” to have a plain language definition of an effluent limit which is based on water quality standards versus technology based standards or any other standard.

New 7/10/24. 18 AAC 60 contains language regarding ‘background’ conditions for groundwater quality is this defined the same as natural conditions?

DEC defines “natural condition” at 18 AAC 70.990(41):

(41) "natural condition" means any physical, chemical, biological, or radiological condition existing in a waterbody before any human-caused influence on, discharge to, or addition of material to, the waterbody . . .

“Background” conditions are not defined in 18 AAC 60. In the context of this regulation amendment, the two terms are synonymous to one another.

Is the substitution of 18 AAC 60 for solid waste only?

No, the solid waste regulations referenced under this action at 18 AAC 60.800 establishes groundwater protection monitoring from a potential pollutant source based on undisturbed, prevailing groundwater quality.

Can these water quality-based effluent limitations rely on mixing zones?

This regulation revision does not affect mixing zone regulations at 18 AAC 70.240.

Does it pertain to the entirety of 18 AAC 60 or just the monitoring and corrective actions on groundwater?

DEC’s authority to develop and issue groundwater discharge authorizations are founded in Alaska Statute (AS) 46.03.100(d), which states, “*The department may issue an integrated waste management and disposal authorization covering multiple related or unrelated waste management or disposal activities to be conducted at a facility, including generation, treatment, storage, and disposal of solid or liquid waste.*” 18 AAC 70.010(d) refers to 18 AAC 60 such that all applicable sections regarding the management of solid waste and groundwater impacts are applicable.

Does a natural conditions finding have to be made prior to developing effluent limitations? Or does 18 AAC 60 stand on its own?

The procedures in 18 AAC 60 stand on their own and do not require a natural condition finding. A natural condition finding as per 70.010(d)(1) alters the regulatory WQC which can be then used to establish permit effluent limits. The procedures under 18 AAC 60 establishes monitoring triggers. Both processes utilize the prevailing, undisturbed water quality as the basis.

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Since 18 AAC 60 mentioned groundwater monitoring, is the agency contemplating WQB effluent limits for groundwater discharge?

No. DEC already has authority to establish water quality-based effluent limits for discharges to groundwater if necessary.

Can you speak to the non-applicability of groundwater standards in 18 AAC 70 and all the monitoring described in 18 AAC 60. Is the monitoring to be compared with a specific finding of a Natural Conditions criteria or 18 AAC fresh water criteria?

The proposed revision to 18 AAC 70.010(d) establishes the applicability of various existing regulatory methodologies available for discharges which are not regulated under the Clean Water Act. For these discharges, the Department may establish WQBELs or utilize applicable procedures for managing discharges where the conditions of the receiving water prior to anthropogenic inputs do not meet WQS for a specific pollutant or pollutants.