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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Gary Mendivil
Department of Environmental Conservation

FROM: Scott Meriwether, Office of the Lieutenant Governor 465.4081 

DATE: April 4, 2017

RE: Filed Permanent Regulations: Department of Environmental Conservation

Environmental Conservation - approval of laboratories for analyzing samples from contaminated sites, underground storage tanks (USTs), and other regulated sites or facilities (18 AAC 75.990; 18 AAC 78.007; 18 AAC 78.090(g); 18 AAC 78.235(d); 18 AAC 78.271(c); 18 AAC 78.275(e),(f); 18 AAC 78.600; 18 AAC 78.615(b); 18 AAC 78.800 - 18 AAC 78.815; 18 AAC 78.995)

Attorney General File:	JU2015200917
Regulation Filed:	4/4/2017
Effective Date:	7/1/2017
Print:	222, July 2017

cc with enclosures: Linda Miller, Department of Law
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO
REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The attached 16 pages of regulations, dealing with how laboratories are approved under 18 AAC 78 (Underground Storage Tanks) for conducting laboratory analyses of soil, water, or air samples at leaking underground storage tanks and contaminated sites, are adopted and certified to be a correct copy of the regulation changes that the Department of Environmental Conservation adopts under the authority of AS 46.03 and AS 46.04 after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Environmental Conservation paid special attention to the cost to private persons of the regulatory action being taken. Public comments were received from six parties and responses were provided to those comments. Changes were made to address a number of the comments. In addition, the Department of Environmental Conservation also gave special attention to alternate practical methods in this regulatory action, as required by AS 46.03.024.

The regulation changes adopted under this order take effect on July 1, 2017 as provided in AS 44.62.180.

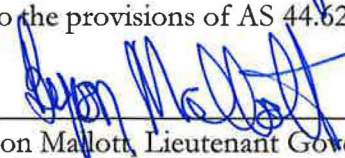
DATE: March 29, 2017



Larry Hartig, Commissioner
Department of Environmental Conservation

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on April 4, 2017,
at 945a a.m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.



Byron Mallott, Lieutenant Governor

Effective: July 1, 2017.

Register: 222, July 2017.

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18 AAC 75.990(183) is repealed and readopted to read:

(183) "DRO" or "diesel range organics" means mid-range petroleum products, including diesel fuel, with petroleum hydrocarbon compounds corresponding to an alkane range from the beginning of n-decane (C₁₀) to the beginning of n-pentacosane (C₂₅) and with a boiling point range between approximately 170 - 400 degrees Celsius;

18 AAC 75.990(184) is repealed and readopted to read:

(184) "GRO" or "gasoline range organics" means light range petroleum products, including gasoline, with petroleum hydrocarbon compounds corresponding to an alkane range from the beginning of n-hexane (C₆) to the beginning of n-decane (C₁₀) and with a boiling point range between approximately 60 - 170 degrees Celsius;

18 AAC 75.990(186) is repealed and readopted to read:

(186) "RRO" or "residual range organics" means heavy range petroleum products, including lubricating oils, with petroleum hydrocarbon compounds corresponding to an alkane range from the beginning of n-pentacosane (C₂₅) to the beginning of n-hextriacontane (C₃₆) and a boiling point range between approximately 400 - 500 degrees Celsius;

(Eff. 5/14/92, Register 122; am 9/25/93, Register 127; am 4/4/97, Register 142; am 4/11/97, Register 142; am 1/22/99, Register 149; am 8/27/2000, Register 155; am 10/28/2000, Register 156; am 11/27/2002, Register 164; am 12/14/2002, Register 164; am 1/30/2003, Register 165; am 8/8/2003, Register 167; am 5/26/2004, Register 170; am 12/30/2006, Register 180; am 10/9/2008, Register 188; am 4/8/2012, Register 202; am 9/4/2014, Register 211; am 6/17/2015,

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Register 214; am 4/16/2016, Register 218; am 11/6/2016, Register 220; am 3/23/2017, Register 221; am 7 / 1 / 2017, Register 222)

Authority:	AS 46.03.020	AS 46.03.755	AS 46.04.055
	AS 46.03.050	AS 46.03.822	AS 46.04.070
	AS 46.03.710	AS 46.04.020	AS 46.08.140
	AS 46.03.740	AS 46.04.030	<u>AS 46.09.010</u>
	AS 46.03.745	AS 46.04.035	AS 46.09.020

18 AAC 78.007 is amended to read:

18 AAC 78.007. UST Procedures Manual. The department's *Underground Storage Tanks Procedures Manual (UST Procedures Manual)*, dated **March 22, 2017** [AUGUST 18, 2014], is adopted by reference. The department will use this version of the *UST Procedures Manual* in making determinations under this chapter. (Eff. 1/22/99, Register 149; am 6/25/99; Register 150; am 4/16/2000, Register 154; am 1/30/2003, Register 165; am 6/17/2015, Register 214; am 7 / 1 / 2017, Register 222)

Authority: AS 46.03.020 AS 46.03.365

18 AAC 78.090(g) is amended to read:

(g) Laboratory analyses submitted to fulfill the requirements of this section must be performed by a laboratory approved by the department under **18 AAC 78.800 - 18 AAC 78.815** [18 AAC 78.800 - 18 AAC 78.810].

(Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 11/3/95, Register 136; am 1/22/99,

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Register 149; am 6/25/99, Register 150; am 1/30/2003, Register 165; am 7/25/2012, Register 203; am 6/17/2015, Register 214; am 7/1/2017, Register 222)

Authority: AS 46.03.020 AS 46.03.380 AS 46.03.405
AS 46.03.365

18 AAC 78.235(d) is amended to read:

(d) Laboratory analyses submitted to fulfill the requirements of this section must be performed by a laboratory approved by the department under 18 AAC 78.800 - 18 AAC 78.815 [18 AAC 78.800 - 18 AAC 78.810].

(Eff. 11/3/95, Register 136; am 1/22/99, Register 149; am 1/30/2003, Register 165; am 6/17/2015, Register 214; am 7/1/2017, Register 222)

Authority: AS 46.03.020 AS 46.03.365

18 AAC 78.271(c) is amended to read:

(c) Laboratory analyses that are submitted to comply with this section must be performed by a laboratory approved [OR PROVISIONALLY APPROVED] under 18 AAC 78.800 - 18 AAC 78.815 for each analyte and matrix [PARAMETER] analyzed and analytical method used. The owner or operator shall ensure that reports submitted to the department include the current state laboratory [UST] identification number for the laboratory that performed the analysis.

(Eff. 1/22/99, Register 149; am 6/17/2015, Register 214; am 7/1/2017, Register 222)

Authority: AS 46.03.020 AS 46.03.365 AS 46.03.375

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18 AAC 78.275(e) is amended to read:

(e) Laboratory analysis submitted to comply with this chapter must be performed by a laboratory approved under 18 AAC 78.800 - 18 AAC 78.815 for each **analyte and matrix** analyzed [PARAMETER] and analytical method used.

18 AAC 78.275(f) is amended to read:

(f) The owner or operator shall submit the results of the laboratory analyses for samples collected under this chapter and shall include the current state laboratory [UST] identification number for the laboratory that performed the analyses. (Eff. 1/22/99, Register 149; am 6/25/99, Register 150; am 6/17/2015, Register 214; am 7/1/2017, Register 222)

Authority:	AS 46.03.020	AS 46.03.745	AS 46.04.070
	AS 46.03.740	AS 46.04.020	AS 46.09.020

18 AAC 78.600(a) is amended to read:

(a) Soil samples from an excavation or stockpile created as part of a corrective action must be collected as required by 18 AAC 78.605, analyzed in accordance with Chapter 2 of the *UST Procedures Manual*, **analyzed by a laboratory approved by the department under 18 AAC 78.800 - 18 AAC 78.815**, and reported as required by 18 AAC 78.276. If laboratory results indicate that the concentrations of a contaminant are below the applicable soil cleanup levels determined under 18 AAC 75.340 and 18 AAC 75.341, the department will determine soil corrective actions to be adequate, unless subsequent evidence shows that the testing was not representative or that sampling did not detect all contamination.

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18 AAC 78.600(d) is amended to read:

(d) If using method two or method three for determining the applicable soil cleanup levels as described in 18 AAC 75.340 and 18 AAC 75.341, or if applying the groundwater cleanup levels at Table C in 18 AAC 75.345, the owner or operator shall ensure that, after completing site corrective action activities, the risk from contaminants does not exceed a cumulative carcinogenic risk standard of 1 in 100,000 across all exposure pathways and a cumulative noncarcinogenic risk standard at a hazard index of one, reported to one significant figure across all exposure pathways. **Instructions for determining** [GUIDANCE ON] cumulative risk **are** [DETERMINATIONS IS] provided in the department's **Procedures for Calculating Cumulative Risk, dated September 15, 2016, and** [CUMULATIVE RISK GUIDANCE, DATED JUNE 9, 2008. THE DEPARTMENT'S CUMULATIVE RISK GUIDANCE, DATED JUNE 9, 2008, IS] adopted by reference.

18 AAC 78.600(e) is amended to read:

(e) If proposing an alternative cleanup level for soil or groundwater, based on a site-specific risk assessment under method four in 18 AAC 75.340(f) or under the provisions of 18 AAC 75.345(b)(2), the owner or operator shall ensure that the risk from contaminants does not exceed a cumulative carcinogenic risk standard of 1 in 100,000 across all exposure pathways and a cumulative noncarcinogenic risk standard at a hazard index of **one, reported to one significant figure, across all** [1.0 FOR EACH] exposure **pathways** [PATHWAY]. **Instructions for determining** [GUIDANCE ON] cumulative risk **are** [DETERMINATIONS IS] provided in the department's **Procedures for Calculating Cumulative Risk** [CUMULATIVE RISK

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GUIDANCE], adopted by reference in (d) of this section. [INSTEAD OF THE RISK STANDARD REQUIRED BY THIS SUBSECTION, THE DEPARTMENT MAY CONSIDER A RISK STANDARD CONSISTENT WITH THE RANGE ACCEPTABLE UNDER 40 C.F.R. 300.430, REVISED AS OF JULY 1, 2002, ADOPTED BY REFERENCE, BASED ON

- (1) SITE-SPECIFIC CONDITIONS;
- (2) LAND USE;
- (3) CONTAMINANT CHARACTERISTICS;
- (4) STATUTORY COMPLIANCE;
- (5) PROTECTION OF HUMAN HEALTH AND SAFETY, AND OF THE ENVIRONMENT;
- (6) ABILITY OF CORRECTIVE ACTION TO BE IMPLEMENTED;
- (7) LONG-TERM AND SHORT-TERM EFFECTIVENESS;
- (8) USE OF TREATMENT TECHNOLOGIES;
- (9) PUBLIC COMMENT; AND
- (10) COST.]

(Eff. 1/22/99, Register 149; am 8/27/2000, Register 155; am 1/30/2003, Register 165; am 6/17/2015, Register 214; am 7/1/2017, Register 222)

Authority:	AS 46.03.020	AS 46.03.740	AS 46.04.020
	AS 46.03.050	AS 46.03.745	AS 46.04.070
	AS 46.03.365	AS 46.03.822	AS 46.09.020
	AS 46.03.710		

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Editor's note: The department's *Procedures for Calculating Cumulative Risk* [CUMULATIVE RISK GUIDANCE], adopted by reference in 18 AAC 78.600, may be viewed at or obtained from the department's offices in Anchorage, Fairbanks, Juneau, and Soldotna or the department's Internet website at

http://dec.alaska.gov/spar/csp/guidance_forms/csguidance.htm

[HTTP://DEC.ALASKA.GOV/SPAR/GUIDANCE.HTM].

As of Register 188 (January 2009), the regulations attorney made technical revisions under AS 44.62.125(b)(6), to 18 AAC 78.600(e) and (f), reflecting the Department of Environmental Conservation's renumbering of paragraphs in 18 AAC 78.345(b), effective 10/9/2008 (Register 188).

18 AAC 78.615(b) is amended to read:

(b) Groundwater monitoring wells must be installed, developed, and decommissioned in accordance with an approved method that is [THE DEPARTMENT'S RECOMMENDED PRACTICES FOR MONITORING WELL DESIGN, INSTALLATION, AND DECOMMISSIONING, APRIL 1992, ADOPTED BY REFERENCE, OR ANOTHER METHOD THAT THE DEPARTMENT DETERMINES TO BE] protective of human health and safety, and of the environment. Samples must be collected in accordance with the *UST Procedures Manual*.

(Eff. 1/22/99, Register 149; am 6/25/99, Register 150; am 7/1/2017, Register 222)

Authority: AS 46.03.020 AS 46.03.050 AS 46.03.365

[EDITOR'S NOTE: RECOMMENDED PRACTICES FOR MONITORING WELL DESIGN, INSTALLATION, AND DECOMMISSIONING, ADOPTED BY REFERENCE IN 18 AAC 78.615, MAY BE VIEWED AT OR REQUESTED FROM THE DEPARTMENT'S ANCHORAGE, FAIRBANKS, JUNEAU, AND SOLDOTNA OFFICES.]

The article heading of 18 AAC 78, Article 8, is changed to read:

Article 7 [8]. [UNDERGROUND STORAGE TANK] Laboratory Approval.

18 AAC 78.800 is repealed and readopted to read:

18 AAC 78.800. Approval requirements. (a) Laboratory chemical analyses of soil, water, and air required to be conducted under this chapter or under 18 AAC 75.355(e) must be performed by a laboratory approved by the department under 18 AAC 78.800 - 18 AAC 78.815. If an owner, operator, responsible person, or other party submits samples of soil, water, or air under 18 AAC 75.355(e), 18 AAC 78.090, 18 AAC 78.235, 18 AAC 78.271, 18 AAC 78.275, or 18 AAC 78.600 - 18 AAC 78.620, the manager of the laboratory that performs the chemical analysis shall include with each analysis the current state laboratory identification number. The department will assign a laboratory identification number if the department approves an application under (b) of this section. The department will not accept the submission of a soil, water, or air sample analysis without that number. In this subsection, "responsible person" has the meaning given in 18 AAC 75.990.

(b) To obtain approval of the laboratory, the laboratory manager must submit

(1) a complete application on a form supplied by the department;

(2) a valid certificate from a NELAP or DoD-ELAP accreditation body for each analytical method, analyte, and matrix for which samples under 18 AAC 75.355(e), 18 AAC 78.090, 18 AAC 78.235, 18 AAC 78.271, 18 AAC 78.275, or 18 AAC 78.600 - 18 AAC 78.620 will be processed by the laboratory; and

(3) the limit of detection and reporting limit for each analytical method, analyte, and matrix for which samples under 18 AAC 75.355(e), 18 AAC 78.090, 18 AAC 78.235, 18 AAC 78.271, 18 AAC 78.275, or 18 AAC 78.600 - 18 AAC 78.620 will be processed by the laboratory.

(c) To maintain approval of the laboratory, and not later than three working days after the change in certification occurs, the laboratory manager must report to the department any change in certification status under a NELAP or DoD-ELAP accreditation body for each analytical method, analyte, and matrix for which the department has issued approval. Laboratory approval under this section is valid only if the NELAP or DoD-ELAP certification of the method, analyte, and matrix is currently valid.

(d) To renew approval of the laboratory, the laboratory manager must reapply for approval under (b) of this section not later than 30 days before certification under a NELAP or DoD-ELAP accreditation body expires.

(e) Laboratory approval runs concurrently with certification from the NELAP or DoD-ELAP accreditation body. The expiration date of approval granted under this section for an analytical method, analyte, or matrix is the same date that the laboratory's corresponding certificate from the NELAP or DoD-ELAP accreditation body expires.

(f) The department will maintain a list of approved and provisionally approved

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laboratories and will distribute the list to interested persons upon request. (Eff. 11/3/95, Register 136; am 1/22/99, Register 149; am 6/25/99, Register 150; am 7/1/2017, Register 222)

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.365
AS 44.46.025

Editor's note: Information on NELAP is available at: <http://www.nelac-institute.org/content/NELAP/>. Information on DoD-ELAP is available at: <http://www.denix.osd.mil/edqw/home/> [1. THE EPA'S GUIDANCE ON PREPARATION OF LABORATORY QUALITY ASSURANCE PLANS, REVISION NO. 1, ADOPTED BY REFERENCE IN 18 AAC 78.800, MAY BE REVIEWED AT THE DEPARTMENT'S OFFICES IN ANCHORAGE, FAIRBANKS, JUNEAU, AND SOLDOTNA, OR MAY BE OBTAINED FROM THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, 1200 SIXTH AVENUE, SEATTLE, WA 98101, PHONE: (360) 871-0748, FAX: (360) 871-8747.

2. THE AMERICAN ASSOCIATION FOR LABORATORY ACCREDITATION MAY BE CONTACTED AT 5301 BUCKEYSTOWN PIKE, SUITE 350, FREDERICK, MD 21704-8307, PHONE: (301) 644-3248.

3.] Application materials are available **on the department's website at: <http://dec.alaska.gov/spar/csp/index.htm> or can be requested from the Division of Spill Prevention and Response, Contaminated Sites Program; telephone (907) 269-7503** [UPON REQUEST FROM THE ALASKA ENVIRONMENTAL HEALTH LABORATORY, 5251 HINKLE ROAD, ANCHORAGE, ALASKA 99507, TELEPHONE: (907) 375-8200, FAX:

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(907) 929-7335. [APPLICATION MATERIALS INCLUDE THE NAMES AND ADDRESSES OF SUPPLIERS LISTED BY THE AMERICAN ASSOCIATION FOR LABORATORY ACCREDITATION. THE DEPARTMENT'S LIST OF SUPPLIERS IS UPDATED ON A PERIODIC BASIS AND MAY NOT REFLECT RECENT CHANGES].

[4. AS OF REGISTER 179 (OCTOBER 2006), AND ACTING UNDER AS 44.62.125(b)(6), THE REGULATIONS ATTORNEY MADE A TECHNICAL REVISION TO 18 AAC 75.800(b)(2). THIS CHANGE REFLECTS THE ENACTMENT OF SEC. 2, CH. 102, SLA 2006, EFFECTIVE AUGUST 5, 2006, WHICH REPEALED AS 46.03.060 AND 46.03.363.]

18 AAC 78.810 is repealed and readopted to read:

18 AAC 78.810. Laboratory status. Based on the department's review of the application submitted under 18 AAC 78.800(b) and any change in certification status reported by the laboratory manager under 18 AAC 78.800(c), and subject to 18 AAC 78.815, the department will place a laboratory in one of the following classifications:

(1) "provisionally approved," for a limited approval that allows a laboratory to operate as an approved laboratory while the laboratory's application is pending due to circumstances described in (A) or (B) of this paragraph, or for one year, whichever period is less; for a laboratory with provisional approval, the laboratory manager shall ensure that all requirements for full approval are completed before provisional approval expires or the department will deny approval upon reapplication; the department will grant provisional approval to a laboratory that is not currently provisionally approved and that has not previously

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been denied approval, if at least one of the following circumstances exist:

(A) the department cannot process applications for approval in a timely manner;

(B) the department determines that the laboratory has minor deficiencies in its application;

(2) "approved," for a laboratory that meets the requirements of 18 AAC 78.800; the department will send a letter of acceptance and a certificate of approval to the laboratory manager; an approval is effective for the period described in 18 AAC 78.800(c) and (e);

(3) "disapproved," for a laboratory that does not meet the requirements of 18 AAC 78.800 and is not approved or provisionally approved. (Eff. 11/3/95, Register 136; am 1/22/99, Register 149; am 6/25/99, Register 150; am 7/1/2017, Register 222).

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.365

AS 44.46.025

18 AAC 78.815 is repealed and readopted to read:

18 AAC 78.815. Change in laboratory status. (a) The department will place an approved laboratory in provisionally approved status if the department finds that the laboratory manager has provided inaccurate information in the laboratory's application for approval, unless the grounds listed in (b) or (c) of this section apply. The department may place the laboratory in approved status once accurate information is supplied.

(b) Subject to 18 AAC 78.960, the department will revoke a laboratory's approved or provisionally approved status for all analytes, methods, and matrices if the laboratory manager is found to have

(1) failed to notify the department of a change in the laboratory's certification status under a NELAP or DoD-ELAP accreditation body not later than three working days after the change;

(2) deliberately misrepresented a laboratory's qualifications, capabilities, or experience;

(3) falsified data or a report;

(4) engaged in unethical or fraudulent practices in generating analytical data;

(5) failed to disclose required information in the application submitted under 18 AAC 78.800; or

(6) operated the laboratory under significant deficiencies in quality assurance as evidenced by the production of invalid analytical data or was otherwise not able to provide accurate analytical data using approved methods.

(c) Subject to 18 AAC 78.960, and in addition to the grounds under (b) of this section for revocation of approved or provisionally approved status, the department will revoke the approved or provisionally approved status of a laboratory that is principally owned, operated, or controlled by an entity that has been suspended, revoked, or otherwise restricted in its laboratory operation by a federal agency or by an agency of this state or another state, if the suspension, revocation, or restriction is based on grounds listed in (b)(2) - (6) of this section or on significant deficiencies in quality assurance.

(d) The department will conduct periodic reviews of the approved and provisionally approved laboratories on the list it maintains to verify that information provided to the department concerning the status of each laboratory is accurate and current.

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(e) If under (b) or (c) of this section the department revokes a laboratory's approved or provisionally approved status, the laboratory may not re-apply for approval for at least 12 months from the date of revocation. (Eff. 1/22/99, Register 149; am 7/1/2017, Register 222)

Authority: AS 44.46.020 AS 46.03.020 AS 46.03.365
AS 44.46.025

The article heading for Article 9 is renumbered to read:

Article 8 [9]. General Provisions.

18 AAC 78.995(48) is repealed:

(48) repealed 7/1/2017;

18 AAC 78.995(69) is repealed:

(69) repealed 7/1/2017;

18 AAC 78.995(103) is repealed:

(103) repealed 7/1/2017;

18 AAC 78.995(104) is repealed:

(104) repealed 7/1/2017;

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18 AAC 78.995(105) is repealed:

(105) repealed 7/1/2017;

18 AAC 78.995(121) is repealed:

(121) repealed 7/1/2017;

18 AAC 78.995(128) is repealed:

(128) repealed 7/1/2017;

18 AAC 78.995 is amended by adding new paragraphs to read:'

(166) "analyte" means a substance whose chemical constituents are being identified and measured;

(167) "DoD-ELAP" means Department of Defense Environmental Laboratory Accreditation Program;

(168) "matrix" means the non-analyte components of a sample;

(169) "NELAP" means the National Environmental Laboratory Accreditation Program. (Eff. 3/25/91, Register 118; am 8/21/91, Register 119; am 1/27/94, Register 129; am 6/23/94, Register 130; am 8/4/94, Register 131; am 11/3/95, Register 136; am 1/22/99, Register 149; am 4/16/2000, Register 154; am 1/30/2003, Register 165; am 7/25/2012, Register 203; am 6/17/2015, Register 214; am 7/1/2017, Register 222)

Authority:	AS 44.46.020	AS 46.03.070	AS 46.03.740
	AS 44.46.025	AS 46.03.365	AS 46.03.758

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AS 46.03.020

AS 46.03.375

Sec. 7, ch. 96, SLA 1990

AS 46.03.050

MEMORANDUM


State of Alaska Department of Law

To: Hon. Byron Mallott
Lieutenant Governor

Date: April 3, 2017

File No.: JU2015200917

Tel. No.: 465-3600

From: Steven C. Weaver 
Sr. Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Re: Regulations re: approval of
laboratories for analyzing samples
from contaminated sites, underground
storage tanks (USTs), and other
regulated sites or facilities (18 AAC
75.990; 18 AAC 78.007; 18 AAC
78.090(g); 18 AAC 78.235(d);
18 AAC 78.271(c); 18 AAC
78.275(e), (f); 18 AAC 78.600; 18
AAC 78.615(b); 18 AAC 78.800 -
18 AAC 78.815; 18 AAC 78.995)

We have reviewed the attached regulations from the Department of Environmental Conservation against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a specific delegation dated April 3, 2017 from the Regulations Attorney. The regulations update procedures and requirements relating to approval of laboratories analyzing samples from contaminated sites, underground storage tanks (USTs), and other regulated sites or facilities--in particular, replacing the department-centered approval procedure with procedures and requirements for a laboratory to demonstrate appropriate certification from a National Environmental Laboratory Accreditation Program (NELAP) or Department of Defense Environmental Laboratory Accreditation Program (DoD-ELAP) accreditation body--make related conforming changes, and update the adopted-by-reference *Procedures for Calculating Cumulative Risk* and *Underground Storage Tanks Procedures Manual*.

We find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations. We note that the adoption order for these regulations sets a special effective date of July 1, 2017.

Hon. Byron Mallott, Lieutenant Governor
Our file: JU2015200917

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The November 16, 2016 public notice and the March 29, 2017 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

SCW

cc w/enc: (via email)

Hon. Larry Hartig, Commissioner
Department of Environmental Conservation

Gary Mendivil, Regulations Contact
Department of Environmental Conservation

Kristin Ryan, Director
Division of Spill Prevention and Response
Department of Environmental Conservation

Sally Schlichting
Division of Spill Prevention and Response
Department of Environmental Conservation

Jennifer L. Schorr
Assistant Attorney General
Environmental Section

MEMORANDUM


State of Alaska Department of Law

TO: Hon. Byron Mallott
Lieutenant Governor

DATE: April 3, 2017

FILE NO.: JU2015200917

TELEPHONE NO.: 465-3600

FROM: Susan R. Pollard 
Chief Assistant Attorney General
and Regulations Attorney
Legislation/Regulations Section

SUBJECT: Specific delegation of authority regarding regulations review on Department of Environmental Conservation regulations re: approval of laboratories for analyzing samples from contaminated sites, underground storage tanks (USTs), and other regulated sites or facilities (18 AAC 75.990; 18 AAC 78.007; 18 AAC 78.090(g); 18 AAC 78.235(d); 18 AAC 78.271(c); 18 AAC 78.275(e), (f); 18 AAC 78.600; 18 AAC 78.615(b); 18 AAC 78.800 - 18 AAC 78.815; 18 AAC 78.995)

By this memorandum, I am delegating my authority as Regulations Attorney under AS 44.62 to Assistant Attorney General Steven C. Weaver for the above-referenced regulations project. Under this delegation of authority, Steven Weaver has my full authority under AS 44.62 to conduct the legal review under AS 44.62 and take necessary actions on this regulations project.

If you have questions, please let me know.

SCW

cc w/enc: Scott C. Meriwether, AAC Coordinator
Office of the Lieutenant Governor

Steven C. Weaver
Sr. Assistant Attorney General and
Assistant Regulations Attorney
Legislation/Regulations Section

CONTAMINATED SITES: NOTICE OF PROPOSED CHANGES
IN THE REGULATIONS OF ALASKA DEPARTMENT OF ENVIRONMENTAL
CONSERVATION

BRIEF DESCRIPTION

The Alaska Department of Environmental Conservation (DEC) is proposing changes dealing with how laboratories are approved for conducting laboratory analyses of soil, water or air samples at leaking underground storage tanks and contaminated sites.

The DEC proposes to adopt regulation changes in Title 18, Chapter 78 of the Alaska Administrative Code, updating how laboratories are approved for chemical analyses under 18 AAC 75 and 18 AAC 78 and to provide for an effective date of July 1, 2017. The proposed changes include the following:

- (1) Change the heading of Article 8 to remove the words, "Underground Storage Tank"
- (2) Amend 18 AAC 78.800, Laboratory Approval Requirements, to recognize national laboratory approval organizations instead of a state laboratory approval program and make conforming changes.
- (3) Amend 18 AAC 78.810 to revise the process for how the status of a laboratory is determined by the department as approved, provisionally approved or disapproved to conform with changes to 18 AAC 78.800.
- (4) Amend 18 AAC 78.815 to revise the process the department will follow when there is a change in a laboratory's status, to specify that the department will conduct a periodic review of the approved and provisionally approved laboratories to verify status, and make other conforming and housekeeping changes.
- (5) Amend 18 AAC 78.990 to delete the definition of "parameter;" "performance evaluation audit" or "PE;" "PE sample;" "quality assurance manual" or "QA manual;" and provide definitions for "analyte;" "DoD-ELAP;" "matrix;" and "NELAP."
- (6) Housekeeping edits to 18 AAC 78.007, 18 AAC 78.090, 18 AAC 78.235, 18 AAC 78.271, 18 AAC 78.275, 18 AAC 78.600, 18 AAC 78.615 to reflect the above changes, make conforming changes consistent with amendments to 18 AAC 75 for projects JU2011200192 effective June 17, 2015 and JU2015200567 effective November 6, 2016, revise and clarify wording, and correct typographical errors, and correct references to cited regulations.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Sally Schlichting, DEC, 410 Willoughby Ave., Suite 303, P.O. Box 111800, Juneau, AK 99811-1800, by facsimile at: (907) 465-5218, or by e-mail to sally.schlichting@alaska.gov. **All comments must be received by 5:00 p.m. on December 19, 2016.** Comments received after this date will not be considered in final action on these rules.

You may submit written questions relevant to the proposed action to Sally Schlichting by email to sally.schlichting@alaska.gov or by mail to Sally Schlichting, DEC, 410 Willoughby Ave., Suite 303, P.O. Box 111800, Juneau, AK 99811-1800. The questions must be received at least 10 days before the end of the public comment period. DEC will aggregate its response to substantially similar

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Alaska Department of Environmental Conservation
2. General subject of regulation: Contaminated Sites
3. Citation of regulation (may be grouped): 18 AAC 78
4. Department of Law file number, if any: JU2015200917
5. Reason for the proposed action:
☐ Compliance with federal law or action (identify):
☐ Compliance with new or changed state statute
☐ Compliance with Federal or state court decision (identify)
☐ Development of program standards
☒ Other (identify): Shifting program functions to external entities
6. Appropriation/Allocation: The proposed regulation amendments are not expected to require an increased appropriation; the annual agency revenues will be reduced by approximately \$30,000.
7. Estimated annual costs in the aggregate to comply with the proposed action to:
Limited. The change is expected to result in a modest annual cost savings of \$800 to EACH analytical laboratory which already has obtained accreditation from the National Environmental Laboratory Accreditation Program (NELAP) or the Department of Defense Laboratory Accreditation Program (DOD-ELAP). A small subset of laboratories that do not hold NELAP or DOD-ELAP certification will experience an additional cost of \$3,000 to obtain certification. Other State Agencies: No additional costs. Municipalities: No additional costs.
8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY 2017__	Subsequent Years
Operating Cost	\$ 0	\$ 0
Capital Cost	\$ 0	\$ 0
1002 Federal receipts	\$ 0	\$ 0
1003 General fund match	\$ 0	\$ 0
1004 General fund	\$ 0	\$ 0
1005 General fund/ program	\$ (30,000)	\$ (30,000)
1037 General fund/mental health	\$ 0	\$ 0
Other (Response Fund)	\$ 0	\$ 0

9. The name of the contact person for the regulations:

Name: Sally Schlichting

Title: Unit Manager for Technical Services, Policy and Regulations

Address: ADEC, Contaminated Sites Program

410 Willoughby Ave. Suite 303, P.O. Box 111800, Juneau, AK 99811-1800

Telephone: (907) 465-5076

E-mail address sally.schlichting@alaska.gov

10. The origin of the proposed action:

☒ Staff of state agency

☐ Federal government

☒ General public

☐ Petition for regulation change

☐ Other (identify)

11. Date: November 14, 2016

Prepared by:



Name (printed): Sally Schlichting

Title (printed): Unit Manager for Technical Services, Policy and Regulations

Telephone: (907) 465-5076

STATE OF ALASKA)
) ss.
1st JUDICIAL DISTRICT)

AFFIDAVIT OF NOTICE OF PROPOSED ADOPTION OF REGULATIONS
AND FURNISHING OF ADDITIONAL INFORMATION

I, Sally Schlichting, Environmental Program Manager I, of Department of Environmental Conservation, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 18 AAC 78 Underground Storage Tanks dealing with how laboratories are approved for conductin laboratory analyses of soil, water, or air samples at leaking underground storage tanks and contaminated sites, has been given by being

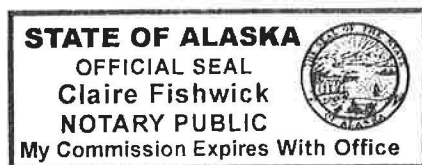
- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulations;
- (5) electronically transmitted to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulations, to the Legislative Affairs Agency, the chair of the Resources Committee of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.


As required by AS 44.62.190, additional regulations notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulations notice information also has been posted on the Alaska Online Public Notice System.

DATE: 1/6/17
Juneau


Sally Schlichting, Environmental Program Manager

SUBSCRIBED AND SWORN TO before me this 6th day of January, 2017.




Notary Public in and for the
State of Alaska
My commission expires: with office

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT


I, Sally Schlichting, Environmental Program Manager for the Department of Environmental Conservation being duly sworn, state the following:

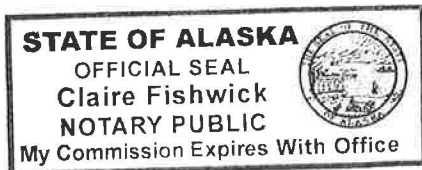
In compliance with AS 44.62.215, the Department of Environmental Conservation has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Environmental Conservation regulations dealing with how laboratories are approved under 18 AAC 78 for conducting laboratory analyses of soil, water, or air samples at leaking underground storage tanks and contaminated sites.

Date: 1/6/17
Juneau, Alaska


Sally Schlichting, Environmental Program Manager

SUBSCRIBED AND SWORN TO before me this 6th day of January, 2017


Notary Public in and for the
State of Alaska
My commission expires: with office



298779
0001396038
\$602.60

AFFIDAVIT OF PUBLICATION

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Emma Dunlap
being first duly sworn on oath deposes and
says that he/she is a representative of the
Alaska Dispatch News, a daily newspaper.
That said newspaper has been approved
by the Third Judicial Court, Anchorage,
Alaska, and it now and has been published
in the English language continually as a
daily newspaper in Anchorage, Alaska, and
it is now and during all said time was
printed in an office maintained at the
aforesaid place of publication of said
newspaper. That the annexed is a copy of
an advertisement as it was published in
regular issues (and not in supplemental
form) of said newspaper on

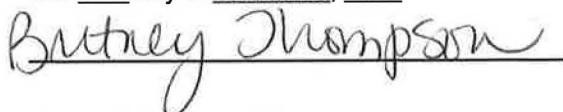
November 16, 2016

and that such newspaper was regularly
distributed to its subscribers during all of
said period. That the full amount of the fee
charged for the foregoing publication is not
in excess of the rate charged private
individuals.

Signed



Subscribed and sworn to before me
this 16th day of November, 2016



Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska

MY COMMISSION EXPIRES

2/23/2019
Notary Public
BRITNEY L. THOMPSON
State of Alaska
My Commission Expires Feb 23, 2019

CONTAMINATED SITES: NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

BRIEF DESCRIPTION

The Alaska Department of Environmental Conservation (DEC) is proposing changes dealing with laboratories approved for conducting laboratory analyses of soil, water or air samples at leak underground storage tanks and contaminated sites.

The DEC proposes to adopt regulation changes in Title 18, Chapter 78 of the Alaska Administrative Code updating how laboratories are approved for chemical analyses under 18 AAC 75 and 18 AAC 78 and to provide for an effective date of July 1, 2017. The proposed changes include the following:

- (1) Change the heading of Article 8 to remove the words, "Underground Storage Tank"
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You may comment on the proposed regulation changes, including the potential costs to private persons complying with the proposed changes, by submitting written comments to Sally Schlichting, DEC, 410 Willoughby Ave., Suite 303, P.O. Box 111800, Juneau, AK 99811-1800, by facsimile at: (907) 465-5218, or by mail to sally.schlichting@alaska.gov. **All comments must be received by 5:00 p.m. on December 9, 2016.** Comments received after this date will not be considered in final action on these rules.

You may submit written questions relevant to the proposed action to Sally Schlichting by email at sally.schlichting@alaska.gov or by mail to Sally Schlichting, DEC, 410 Willoughby Ave., Suite 303, P.O. Box 111800, Juneau, AK 99811-1800. The questions must be received at least 10 days before the end of the public comment period. DEC will aggregate its response to substantially similar questions and make the questions and responses available on http://dec.alaska.gov/spar/regulation_projects/index.htm and on the State of Alaska's online public notice website. The DEC may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Natalie Wolfe at (907) 269-0291 or TDD Relay Service 1-800-770-8973/TTY or dial 711 no later than December 9, 2016 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System at <http://aws.state.ak.us/OnlinePublicNotices/> or at http://dec.alaska.gov/spar/regulation_projects/index.htm and by contacting Sally Schlichting at the address or email above or by phone at (907) 465-5076.

After the public comment period ends, the DEC will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language in the final regulations may be different from that of the proposed regulations. **You should comment during the time allowed if your interests could be affected.** Written comments received are public records and are subject to public inspection.

Statutory Authority: AS 46.03.010, AS 46.03.020, AS 46.03.050, AS 46.03.070, AS 46.03.710

Statutes Being Implemented, Interpreted, or Made Specific:

AS 44.46.020	AS 46.03.380	AS 46.03.822
AS 46.03.020	AS 46.03.405	AS 46.04.020
AS 46.03.050	AS 46.03.710	AS 46.04.070
AS 46.03.070	AS 46.03.740	AS 46.09.020
AS 46.03.365	AS 46.03.745	Sec. 7, ch. 96, SLA 1990
AS 46.03.375	AS 46.03.758	

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation. The annual agency revenues will be reduced by approximately \$30,000.

Date November 15, 2016
Juneau, Alaska

/s/
Larry Hartig, Commissioner

Published: November 16, 2016