

State of Alaska

# DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## DIVISION OF WATER



**18 AAC 69**

### **Commercial Passenger Vessel Environmental Compliance Program**

*Public Comment Version  
November 17, 2017*

18 AAC 69.018 is amended to read:

**18 AAC 69.018. Waiver of deadlines; alternative terms and conditions.** (a) If a report, plan, fee, or other requirement of an owner or operator under this chapter has a specific date by which it must be submitted, the department will waive compliance with that deadline if the owner or operator demonstrates, to the satisfaction of the department, a reasonable basis for the waiver. A decision made after January 1 by an owner or operator to operate a vessel in that calendar year provides a reasonable basis to grant a waiver of deadlines in that calendar year.

(b) If the department waives a deadline under this section, the department will set a reasonable time for compliance and provide the owner or operator with a written or electronic notice of that deadline promptly.

(c) Notwithstanding any requirement of this chapter, the department may establish alternative terms and conditions to the extent allowed by **AS 46.03.462(k)** [AS 46.03.462(c)].

(Eff. 11/15/2002, Register 164; am \_\_/\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 46.03.460 AS 46.03.462

18 AAC 69.046 is amended to read:

**18 AAC 69.046. Best management practices plan.** (a) An owner or operator of a small commercial passenger vessel who intends to operate under a plan for alternative terms and conditions under **AS 46.03.462(k)** [AS 46.03.462(c)] must operate in accordance with a best management practices plan approved by the department under this section. If an owner or operator of a small commercial passenger vessel operating under alternative terms and conditions under **AS 46.03.462(k)** [AS 46.03.462(c)] fails to operate in accordance with an approved best

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management practices plan, the vessel discharges must meet the standard terms and conditions in **AS 46.03.462(e)** [AS 46.03.462(b)] **or AS 46.03.463(b) or AS 46.03.463(c)**.

(b) On or before March 1 of each calendar year, except in a calendar year in which an approved best management practices plan is effective, an owner or operator of a small commercial passenger vessel who intends to operate under a plan for alternative terms and conditions under **AS 46.03.462(k)** [AS 46.03.462(c)] shall submit an application on a form provided by the department. The application must include

- (1) the vessel name;
- (2) the name, telephone number, facsimile number, mailing address, and electronic mail address of the person responsible for the implementation of the plan;
- (3) repealed 12/16/2013;

(4) a certification that for physical or economic reasons the vessel is unable to practicably comply with the standard terms and conditions in **AS 46.03.462(e)** [AS 46.03.462(b)] **or AS 46.03.463(b) or AS 46.03.463(c)**, and additional supportive documentation that may include a

(A) letter signed by a naval architect, registered engineer, or classification society stating that new or modified waste treatment systems that would produce sewage, graywater, or other wastewater that complies with the standard terms and conditions in **AS 46.03.462(e)** [AS 46.03.462(b)] **or AS 46.03.463(b) or AS 46.03.463(c)** can not be installed without requiring additional stability testing or relicensing by the United States Coast Guard; or

(B) statement from the owner or operator that provides

(i) the estimated costs of installing new or modified waste treatment systems on the vessel that would produce sewage, graywater, or other wastewater that complies with the standard terms and conditions in

**AS 46.03.462(e)** [AS 46.03.462(b)] **or AS 46.03.463(b) or AS 46.03.463(c);**

(ii) the reasons why the costs are not practicable; and

(iii) supporting information from vendors; and

(5) a best management practices plan that meets the requirements in (c) of this section.

(c) A best management practices plan must include

(1) the average number of gallons of sewage, graywater, and other wastewater that will be discharged by the vessel expressed as an eight-hour average volume and a daily total volume for each day of the vessel's usual scheduled voyage in the marine waters of the state, including volumes discharged while in port;

(2) for a vessel that has operated in the marine waters of the state within the two years immediately preceding the date of submission of the plan, a description of the quality of the sewage, graywater, and other wastewater discharged by the vessel summarized from analytical testing data from samples taken

(A) for fecal coliform bacteria, total suspended solids, pH, biochemical oxygen demand and residual chlorine;

(B) within the previous two years; and

(C) while the vessel operated in the marine waters of the state;

(3) for a vessel that has not operated in the marine waters of the state within the two years immediately preceding the date of submission of the plan, analytical testing data from samples

(A) for fecal coliform bacteria, total suspended solids, pH, biochemical oxygen demand, and residual chlorine;

(B) taken and analyzed in accordance with a quality assurance project plan established under 18 AAC 69.025(a); and

(C) that are most likely to be representative of the discharges of sewage, graywater, and other wastewater from that vessel;

(4) for a vessel that will not discharge sewage, graywater, or other wastewater while the vessel is traveling at speed of less than six knots or is located less than one nautical mile from the nearest shore, a statement by the owner or operator that the vessel will not discharge sewage, graywater, or other wastewater while the vessel is traveling at a speed of less than six knots or is located less than one nautical mile from the nearest shore;

(5) for a vessel that will discharge sewage, graywater, or other wastewater while the vessel is traveling at a speed of less than six knots or is located less than one nautical mile from the nearest shore, operating practices that

(A) preclude the discharge of sewage, graywater, or other wastewater

(i) within 100 meters horizontally of mean lower low water tidal datum of the tidally affected portions of waters identified under 5 AAC 95.011 as important for the spawning, rearing or migration of anadromous fish;

(ii) from March 1 through June 15 of each calendar year, within waters that are of a depth of 20 meters vertically of mean lower low water tidal datum, and that are identified in the department's set of maps entitled, *Herring Spawning Areas in Alaska*, dated November 2005 and adopted by reference; and

(iii) within areas designated under AS 16.20 as refuges, sanctuaries, and critical habitat areas under AS 16.20; and

(B) protect the environment to the maximum extent feasible by

(i) reducing the amount of sewage, greywater, or other wastewater discharges identified in (1) of this subsection to the maximum extent practicable;

(ii) improving the quality of sewage, graywater, or other wastewater discharged by reducing the fecal coliform bacteria and residual chlorine included under (2) or (3) of this subsection to the maximum extent practicable;

(iii) minimizing the risk to human health caused by exposure to the vessels sewage, graywater, or other wastewater discharges; or

(iv) dispersing sewage, graywater, and other wastewater discharged into the marine waters of the state to the maximum extent practicable;

(6) a description of the crew or passenger training programs, vessel scheduling, or other means that will be used to implement the best management practices described in (4) or (5) of this section; and

(7) a description of the record keeping documents, including logbooks, that will be used to demonstrate compliance with the best management practices described in (4) or (5) of this subsection.

(d) The department will approve or disapprove a plan for alternative terms and conditions under **AS 46.03.462(k)** [AS 46.03.462(c)] not later than 30 days after receipt of an application submitted under (b) of this section.

(e) The department will approve a plan for alternative terms and conditions under **AS 46.03.462(k)** [AS 46.03.462(c)] that meets the requirements of **AS 46.03.462(k)** [AS 46.03.462(c)] and (b) of this section for a period of five years after the approval date, unless the plan is modified or terminated under (f) of this section.

(f) The department will

(1) approve the transfer of an approved plan for alternative terms and conditions under **AS 46.03.462(k)** [AS 46.03.462(c)] to a new owner or operator of the vessel covered by that plan if the succeeding owner or operator certifies in writing to the department that the succeeding owner or operator assumes responsibility for compliance with the plan;

(2) approve a modification to an approved plan for alternative terms and conditions under **AS 46.03.462(k)** [AS 46.03.462(c)] not later than 30 days after receipt of an application that the department determines meets the requirements of **AS 46.03.462(k)** [AS 46.03.462(c)] and (b) of this section; or

(3) terminate an approved plan for alternative terms and conditions under **AS 46.03.462(k)** [AS 46.03.462(c)]

(A) immediately, if the owner or operator requests that the plan be terminated; or

(B) after the department provides written notice to the owner or operator, 30 days before the date of termination, if the department finds that

(i) the owner or operator failed to operate according to an approved plan; or

(ii) changes in the factual basis underlying the application submitted under (b) of this section have occurred, including significant change in the operating area or the sewage, graywater, or other wastewater discharge quantity or quality such that the plan fails to protect the environment to the maximum extent feasible.

(g) An owner or operator may not implement a modification to a plan for alternative terms and conditions under **AS 46.03.462(k)** [AS 46.03.462(c)] until the department approves the modification and the owner or operator is notified of that approval in writing by the department.

(h) A best management practices plan that is modified retains its original expiration date, unless the owner or operator requests that the department review and approve the modification as a new application under (b) of this section.

(i) An owner or operator must

(1) maintain a copy of the approved plan on board the vessel for which the plan was approved;

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(2) maintain for 12 months the record keeping documents described in the approved plan on board the vessel for which the plan was approved;

(3) provide the department access, upon request, to record keeping documents required in the approved plan; and

(4) submit copies of the record keeping documents required in the approved plan within 21 days after receipt of a written or electronic request from the department. (Eff.

5/18/2006, Register 178; am 12/16/2013, Register 208; am \_\_/\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 46.03.460 AS 46.03.462 AS 46.03.465

**Editor's note:** Information regarding catalogued waters that are important for the spawning, rearing, or migration of anadromous fish is available from the Department of Fish and Game's *Catalog of Waters Important for the Spawning, Rearing or Migration of Anadromous Fishes*, adopted by reference by the Department of Fish and Game in 5 AAC 95.011, and is also located on the Department of Fish and Game's Internet website at <http://www.adfg.alaska.gov/sf/SARR/AWC>. The Department of Environmental Conservation's set of maps entitled *Herring Spawning Areas in Alaska*, adopted by reference in 18 AAC 69.046(c)(5)(A)(ii), is available at the department's offices in Juneau and Anchorage, and is also located on the Department of Environmental Conservation's Internet website at [http://www.dec.state.ak.us/water/cruise\\_ships](http://www.dec.state.ak.us/water/cruise_ships).

As of Register 186 (July 2008), and acting under AS 44.62.125(b)(6), the regulations attorney made a technical change to 18 AAC 69.046(c)(5)(A)(i) and the editor's note to reflect Executive Order 114 (2008). Executive Order 114 transferred functions related to protection of

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fish habitat in rivers, lakes, and streams from the Department of Natural Resources to the Department of Fish and Game.

18 AAC 69.945 is amended to read:

**18 AAC 69.945. Appeals.** Not later than 30 days after a final department decision under AS 46.03.462(k) [AS 46.03.462(c)], 18 AAC 69.045(c), or 18 AAC 69.950 any person may submit a request for an adjudicatory hearing under 18 AAC 15.195 – 18 AAC 15.340. (Eff. 11/15/2002, Register 164; am \_\_/\_\_/\_\_\_\_, Register \_\_\_\_)

**Authority:** AS 46.03.020 AS 46.03.880

18 AAC 69.955 is amended to read:

**18 AAC 69.955. Public information.** (a) The department will maintain a list of interested persons who wish to be informed when the department

(1) receives a request for an alternative term or condition under AS 46.03.462(k) [AS 46.03.462(c) or (e)]; and

(2) makes a final decision under 18 AAC 69.950.

(b) When the department receives a request or makes a decision described in (a) of this section, a copy or summary of the request or decision will be

(1) provided to each person who has requested information about the decision or request; and

(2) posted on the department's Internet web site. (Eff. 11/15/2002, Register 164, am 5/18/2006, Register 178; am \_\_/\_\_/\_\_\_\_, Register \_\_\_\_)

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**Authority:** AS 46.03.020 AS 46.03.460