Byron Mallott Lieutenant Governor State Capitol Juneau, Alaska 99811 907.465.3520 WWW.LTGOV.ALASKA.GOV



530 West 7th Ave, Suite 1700 Anchorage, Alaska 99501 907.269.7460 LT.GOVERNOR@ALASKA.GOV

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:

February 23, 2018

RE:

Filed Permanent Regulations: Department of Environmental Conservation

Department of Environmental Conservation regulations re: best management practices

6

for small commercial passenger vessels under the commercial passenger vessel environmental compliance program (18 AAC 69.018(c); 18 AAC 69.046; 18 AAC

69.945: 18 AAC 69.955(a)(1))

Attorney General File:

JU2017200692

Regulation Filed:

2/22/2018

Effective Date:

3/24/2018

Print:

225, April 2018

cc with enclosures:

Linda Miller, Department of Law

Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The attached 6 pages of regulations, dealing with best management practices for small cruise ships and ferries under the Commercial Passenger Vessel Environmental Compliance Program are hereby 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 46.14 and after compliance with the Administrative Procedures 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.

Although no public comments were received, the Department of Environmental Conservation paid special consideration to the cost to private persons of the regulatory action being taken. 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 the 30th day after they have been filed by the lieutenant governor as provided in AS 44.62.180.

DATE: February 21, 2018

Juneau, Alaska

Larry Hartig, Commissioner

Department of Environmental Conservation

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on

2018, at .m., I filed the attached regulations according to the provisions of AS 44.62.040

44.62.120.

Byron Mallott, Lieutenant Governor

Effective:

March 24, 2018

Register:

225, April 2018

Register 225, April 2018 ENVIRONMENTAL CONSERVATION 18 AAC 69.018(c) is amended to read:

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

2/23/2018

(Eff. 11/15/2002, Register 7; am 3/24/2018, Register 225)

Authority: AS 4

AS 46.03.460

AS 46.03.462

18 AAC 69.046(a) is amended to read:

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

18 AAC 69.046(b) is amended to read:

(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 <u>AS 46.03.462(k)</u> [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 <u>AS 46.03.462(b) and (e) and 46.03.463(b) and (c)</u> [AS 46.03.462(b)], 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(b) and (e) and 46.03.463(b) and (c) cannot** [AS 46.03.462(b) 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(b) and (e) and 46.03.463(b) and (c) [AS 46.03.462(b)];

- (ii) the reasons why the costs are not practicable; and
- (iii) supporting information from vendors; and
- (4) [(5)] a best management practices plan that meets the requirements in (c) of

Register 225, April 2018 ENVIRONMENTAL CONSERVATION this section.

18 AAC 69.046(d) is amended to read:

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

18 AAC 69.046(e) is amended to read:

(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.

18 AAC 69.046(f) is amended to read:

- (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 <u>AS 46.03.462(k)</u> [AS 46.03.462(c)] not later than 30 days after receipt of an application that the department determines meets the requirements of <u>AS 46.03.462(k)</u>

[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 a 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.

18 AAC 69.046(g) is amended to read:

(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.

(Eff. 5/18/2006, Register 178; am 12/16/2013, Register 208; am 3/24/2018, Register 225)

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://dec.alaska.gov/water/cruise-ships

[HTTP://DEC.ALASKA.GOV/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 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)] 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 11/5/2017, Register 224; am 3/24/2018, Register 225)

Authority: AS 46.03.020 AS 46.03.880

18 AAC 69.955(a)(1) is amended to read:

(1) receives a request for an alternative term or condition under AS 46.03.462(k)

[AS 46.03.462(c) OR (e)]; and

(Eff. 11/15/2002, Register 164; am 5/18/2006, Register 178; am 3/24/2018, Register 225)

Authority: AS 46.03.020 AS 46.03.460

MEMORANDUM

State of Alaska Department of Law

To: Hon. Byron Mallott Lieutenant Governor

Date: February 22, 2018

File No.: II J'

JU2017200692

Tel. No.:

465-3600

From: Steven C. Weaver

Sr. Assistant Attorney General and Assistant Regulations Attorney Legislation and Regulations Section

Re: Department of Environmental
Conservation regulations re: best
management practices for small
commercial passenger vessels under

the commercial passenger vessel environmental compliance program (18 AAC 69.018(c); 18 AAC 69.046;

18 AAC 69.945; 18 AAC

69.955(a)(1))

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 February 22, 2018 from the Regulations Attorney. In accordance with the enactment of ch. 21, SLA 2017 (HCS SB 3(TRA))--particularly sec. 4, ch. 21, SLA 2017, codified at AS 46.03.462(k)--the regulations update the commercial passenger vessel environmental compliance program (AS 46.03.460 - 46.03.490) to reflect current statutory provisions allowing a small commercial passenger vessel to submit, for department approval, a plan for alternative terms and conditions of vessel discharges that incorporates the best management practices for protecting the environment to the maximum extent feasible.

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.

Hon. Byron Mallott, Lieutenant Governor Our file: JU2017200692

The November 22, 2017 public notice and the February 21, 2018 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

Andrew Sayers-Fay, Director Division of Water Department of Environmental Conservation

Edward White Division of Water Department of Environmental Conservation

Chris Peloso, Assistant Attorney General Environmental Section

MEMORANDUM

State of Alaska

Department of Law

TO: Hon. Byron Mallott

Lieutenant Governor

DATE: F

February 22, 2018

FILE NO.:

JU2017200692

TELEPHONE NO.:

(907) 465-3600

FROM: Sus

Susan R. Pollard Chief Assistant Attorney General

and Regulations Attorney
Legislation/Regulations Section

SUBJECT:

Specific delegation of authority

regarding regulations review on best management practices for small commercial passenger vessels under the commercial passenger vessel environmental compliance program (18 AAC 69.018(c); 18 AAC 69.046;

18 AAC 69.945; 18 AAC

69.955(a)(1))

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

SMALL COMMERCIAL PASSENGER VESSEL AND FERRY WASTEWATER DISCHARGES: NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF DEPARTMENT OF ENVIRONMENTAL CONSERVATION

BRIEF DESCRIPTION

Updates are needed to the Commercial Passenger Vessel Environmental Compliance Program regulations due to Senate Bill 3 becoming law in 2017. The law reinstituted the Best Management Practices as an alternative for small commercial passenger vessels and ferries (50 to 249 overnight lower berths) that had expired. Citation updates must be made to match SB3 changes.

The Department of Environmental Conservation proposes to adopt regulation changes in Title 18 of the Alaska Administrative Code, dealing with Chapter 69, Commercial Passenger Vessel Environmental Compliance Program, including the following:

(1) 18 AAC 69 is proposed to be changed as follows: update citations in 18 AAC 69.018, 18 AAC 69.046, 18 AAC 69.945, and 18 AAC 69.955 to match statutes implemented in SB 3 (2017). SB 3 reauthorized Best Management Practices as an alternative to a wastewater discharge permit for small commercial passenger vessels and state ferries.

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 the Commercial Passenger Vessel Environmental Compliance Program at 410 Willoughby Ave., Juneau Alaska 99811-1800. Additionally, the Department of Environmental Conservation will accept comments by electronic mail at DEC.WQ.Cruise@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link. The comments must be received not later than 5:00 PM on December 23, 2017.

The Department will hold a public hearing if requested. You may request a public hearing by contacting Ed White at 907-465-5138 or by email at <u>DEC.WQ.Cruise@alaska.gov</u>. The public hearing is tentatively scheduled to be held on December 1, 2017, at the Department of Environmental Conservation main conference room on the second floor at 410 Willoughby Ave., Juneau Alaska. If requested, the hearing will be held from 12:00 PM to 1:30 PM with the opportunity to participate by telephone. Oral or written comments may be submitted at the hearing. If no request for a public hearing is received by November 29, 2017 at 5 PM, the public hearing will be cancelled. The Department will announce the cancelation of the public hearing or the call in instructions on these websites: http://dec.alaska.gov/commish/public-notices.htm, and http://dec.alaska.gov/commish/public-notices.htm, and http://dec.alaska.gov/commish/public-notices.htm, and http://dec.alaska.gov/commish/public-notices.htm, and http://dec.alaska.gov/commish/public-notices.htm].

You may submit written questions relevant to the proposed action to the Commercial Passenger Vessel Environmental Compliance Program at DEC.WQ.Cruise@aklaska.gov or to 410 Willoughby Ave., Juneau Alaska 99811-1800. The questions must be received at least 10 days before the end of the public comment period. The Department of Environmental Conservation will aggregate its response to substantially similar questions and make the questions and

responses available on the Alaska Online Public Notice System and Commercial Passenger Vessel Environmental Compliance Program website.

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 not later than <u>December 15, 2017</u>, to ensure that any necessary accommodation can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System or at http://dec.alaska.gov/water/cruise_ships/Law_and_Regs/2017_update.html and by contacting the Commercial Passenger Vessel Environmental Compliance Program at 907-465-5138.

After the public comment period ends, the Department of Environmental Conservation 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 of the final regulation may be different from that of the proposed regulation. YOU SHOULD COMMENT DURING THE TIME ALLOWED IF YOUR INTERESTS COULD BE AFFECTED. Written comments received are public records and subject to public inspection.

Statutory authority: AS 46.03.460-490

Statutes being implemented, interpreted, or made specific: AS 46.03.462; AS 46.03.463; AS 46.03.465

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

Date: November 17, 2017

Larry Hartig, Commissioner

ADDITIONAL REGULATION NOTICE INFORMATION (AS 44.62.190(d))

1.	Adopting agency: Departm	ent of Environ	mental Conservation		
2.	General subject of regulation: Commercial Passenger Vessel Environmental				
	Compliance				
3.	Citation of regulation (may be grouped): 18 AAC 69				
4.	Department of Law file number, if any: JU2017200692				
5.	Reason for the proposed action:				
	() Compliance with federal law or action (identify):				
	(X) Compliance with new or changed state statute				
	() Compliance with federal or state court decision (identify):				
	() Development of program standards				
() Other (identify):					
6.	Appropriation/Allocation:	Water Division	/Commercial Passenger Vessel Environmental		
	Compliance Program				
7.	Estimated annual cost to comply with the proposed action to:				
	comply. Regulation citation updates allow for				
the continuation of existing compliance cost			st savings to small cruise ships and ferries.		
	Another state agency: No additional costs to comply. Updates allow for a continuation				
	of existing compliance cost savings that would accrue to the Alaska Marine Highway				
	System.				
	A municipality: None.				
8.	Cost of implementation to the state agency and available funding (in thousands of				
	dollars):				
		Initial Year	Subsequent		
	0 1 0	FY 2018	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	\$_0	\$_0		
	Other (identify)	\$_0	\$_0		

The name of the contact person for the regulation:

9.

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION AND FURNISHING OF ADDITIONAL INFORMATION

I, Edward White, Environmental Program Specialist III, 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 69, Commercial Passenger Vessel Environmental Compliance 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 regulation;
- (5) furnished electronically 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 regulation, to the Legislative Affairs Agency, the chair of the Resource 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 regulation 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 regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 1/8/2018	Edual E. whole
	Edward E White, Env Program Specialist III
Subscribed and sworn to before me at $\frac{DE}{1/8/2018}$.	C/Dow, 410 Willoughby Ave. 7303 on
(date)	[notary signature]
[NOTARY SEALO.	Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Edward White, Environmental Program Specialist III for the Department of Environmental Conservation, being duly sworn, state the following:

The Department of Environmental Conservation did not receive any 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 regulation on Small Commercial Passenger Vessel and Ferry Wastewater Discharges.

Date: 1/26/2018	Edual G. alide
	Edward E White, Env Program Specialist III
Subscribed and sworn to before me at $_{1/26/20/8}$.	410 Willayahby Avo, Ste, 303 on
(date)	(h) Dona has

Notary Public in and for the State of Alaska

AFFIDAVIT OF CANCELLATION OF JUNEAU ORAL HEARING

I, Edward White, Environmental Program Specialist III, of the Department of Environmental Conservation, being sworn, state the following:

The Department of Environmental Conservation tentatively scheduled an oral hearing, available upon request as stated in the notice of proposed regulation, for December 1, 2017, from 12:00 to 1:30 pm, at the ADEC Building, 410 Willoughby Ave., Second Floor Main Conference Room, Juneau, AK 99811 No member of the public requested an oral hearing, and the public hearing was cancelled and noticed as stated in the notice of proposed regulation.

Date: 1/26/2018

Edward White, Environmental Program Specialist

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Subscribed and sworn to before me in 410 Willoughby Aw, Ste. 303 on 1/26/2018.

Notary Public in and for the State of Alaska

AFFIDAVIT OF PUBLICATION

STATE OF ALASKA THIRD JUDICIAL DISTRICT

Lisa Hartlieb 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 bas been approved 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 22, 2017

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 22nd day of November, 2017

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

Anchorage, Alaska

MY COMMISSION EXPIRES

State of Alaska

SMALL COMMERCIAL PASSENGER VESSEL AND FERRY WASTEWATER DISCHARGES: NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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The Department of Environmental Conservation proposes to adopt regulation changes in Title 18 of the Alaska Administrative Code, dealing with Chapter 69, Commercial Passenger Vessel Environmental Compliance Program, including the following:

update citations in 18 AAC 69.018, 18 AAC 69.046, 18 AAC 69.945, and 18 AAC 69.955 to match statutes implemented in SB 3 (2017). SB 3 reauthorized Best Management Practices as an alternative to a wastewater discharge permit for small commercial passenger vessels and state ferries.

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 the Commercial Passenger Vessel Environmental Compliance Program at 410 Willoughby Ave. Juneau Alaska 99811-1800. Additionally, the Department of Environmental Conservation will accept comments by electronic mail at DEC.WQ.Crulse@alaska.gov. Comments may also be submitted through the Alaska Online Public Notice System by accessing this notice on the system and using the comment link. The comments must be received not later than 5:00 PM on December 23, 2017.

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Statutes being implemented, interpreted, or made specific: AS 46.03.462; AS 46.03.463; AS 46.03.465

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

Date: November 17, 2017

Larry Hartig, Alaska DEC Commissioner

Published: November 22, 2017