

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




530 West 7<sup>th</sup> 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:** March 9, 2018

**RE:** Filed Permanent Regulations: Department of Environmental Conservation

Department of Environmental Conservation regulations re: water quality standards and antidegradation implementation methods (18 AAC 70.015; 18 AAC 70.016; 18 AAC 70.990)

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Attorney General File: JU2015200094

Regulation Filed: 3/7/2018

Effective Date: 4/6/2018

Print: 226, July 2018

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

ORDER ADOPTING CHANGES TO  
REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

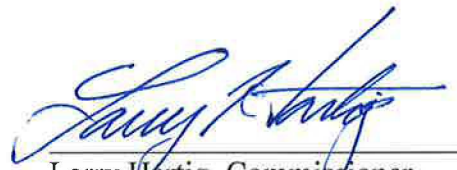
The attached 19 pages of regulations, dealing with water quality standards and antidegradation implementation methods are hereby adopted and certified to be a correct copy of the regulation changes that the Department of Environmental Conservation adopts under the authority of AS 46.03 and AS 46.14 and 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.

In considering public comments, 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 30<sup>th</sup> day after they have been filed by the lieutenant governor as provided in AS 44.62.180.

DATE: February 28, 2018  
Anchorage, Alaska



Larry Hartig, Commissioner  
Department of Environmental Conservation

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on March 7, 2018, at 4:55p m., I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.



Byron Mallott, Lieutenant Governor

Effective: April 6, 2018

Register: 226, July 2018

18 AAC 70.015(a)(2) is amended to read:

(2) if the quality of a water exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality must be maintained and protected unless the department, in its discretion, upon application, and after compliance with (b) of this section, allows the reduction of water quality for a short-term variance under 18 AAC 70.200, a zone of deposit under 18 AAC 70.210, a mixing zone under 18 AAC 70.240, or another purpose as authorized in a department permit, certification, or approval; the department will authorize a reduction in water quality only after the applicant submits evidence in support of the application and the department finds that

(A) allowing lower water quality is necessary to accommodate important economic or social development in the area where the water is located;

(B) except as allowed under this subsection, reducing water quality will not violate the applicable criteria of 18 AAC 70.020 or 18 AAC 70.025 or the whole effluent toxicity limit in 18 AAC 70.030;

(C) the resulting water quality will be adequate to fully protect existing uses of the water; **and**

(D) [THE METHODS OF POLLUTION PREVENTION, CONTROL, AND TREATMENT FOUND BY THE DEPARTMENT TO BE THE MOST EFFECTIVE AND REASONABLE WILL BE APPLIED TO ALL WASTES AND OTHER SUBSTANCES TO BE DISCHARGED; AND

(E)] all wastes and other substances discharged will be treated and controlled to achieve

(i) for new and existing point sources, the highest statutory and regulatory requirements; and

(ii) for nonpoint sources, all cost-effective and reasonable best management practices;

18 AAC 70.015 is amended by adding a new subsection to read:

(d) For purposes of (a) of this section, the highest statutory and regulatory requirements are

(1) any federal technology-based effluent limitation identified in 40 C.F.R. 122.29 and 125.3, revised as of July 1, 2017 and adopted by reference;

(2) any minimum treatment standards identified in 18 AAC 72.050;

(3) any treatment requirement imposed under another state law that is more stringent than a requirement of this chapter; and

(4) any water quality-based effluent limitations established in accordance with 33 U.S.C. 1311(b)(1)(C) (Clean Water Act, sec. 301(b)(1)(C)). (Eff. 11/1/97, Register 143; am 4/8/2012, Register 202; am 4 / 6 / 2018, Register 226)

<b>Authority:</b>	AS 46.03.010	AS 46.03.070	AS 46.03.110
	AS 46.03.020	AS 46.03.080	AS 46.03.710
	AS 46.03.050	AS 46.03.100	[AS 46.03.720]

18 AAC 70 is amended by adding a new section to read:

**18 AAC 70.016. Antidegradation implementation methods for discharges authorized**

**under the federal Clean Water Act. (a) General requirements for antidegradation**

**analyses.** The department's antidegradation policy under 18 AAC 70.015 applies to all waters of this state. The provisions of 18 AAC 70.015(a)(1) - (3) identify three tiers of water quality and water quality protection, Tiers 1, 2, and 3 respectively. In implementing the antidegradation policy for a water of the United States within this state, the following provisions apply:

(1) the department will make an antidegradation analysis and findings for discharges subject to authorization by the department under

(A) 18 AAC 83 (Alaska Pollutant Discharge Elimination System (APDES) Program); and

(B) 33 U.S.C. 1341 (Clean Water Act, sec. 401) water quality certifications; for 33 U.S.C. 1341 (Clean Water Act, sec. 401) water quality certifications of 33 U.S.C. 1344 (Clean Water Act, sec. 404) permits, the department may determine upon review whether an evaluation and findings of no significant degradation under 33 U.S.C. 1344 and under 40 C.F.R. Part 230, revised as of July 1, 2017 and adopted by reference, are sufficient to comply with state antidegradation requirements for Tiers 1 and 2 under this section with regard to water quality impacts to receiving water immediately surrounding the dredge or fill material; in the antidegradation findings the department will consider where the fill would be placed and impacts to the receiving water from the fill activity; only temporary and limited degradation may be authorized in Tier 3 water, in accordance with (d)(4)(A) of this section;

(2) the department will not make an antidegradation analysis and findings for

(A) activities proposed for the express purpose of watershed protection or

restoration if the applicant supplies information and the department finds that the antidegradation analysis is not required because the lowering of water quality would be temporary and limited and is necessary to secure long-term water quality improvement, including projects for the protection or attainment of existing and designated uses in water where the department determines that those uses have been impaired or threatened due to the loss or diminishment of the water's natural characteristics; projects under this subparagraph shall implement all department-required practicable best management practices;

(B) emergency response actions under the direction of a federal or state on-scene coordinator, designated under 33 U.S.C. 1321, AS 46.04.020, or AS 46.09.020, if any lowering of water quality is temporary and limited and existing uses are maintained and protected; the responsible party whose actions or lack of action necessitated an emergency response action shall address any lowering of water quality that is not temporary and limited; existing law may be used to address restoration, rehabilitation, replacement, or acquisition of the equivalent for the affected natural resources, including long-term water quality impacts;

(C) 33 U.S.C. 1341 (Clean Water Act, sec. 401) certifications where the department has waived certification under 33 U.S.C. 1341(a); this subparagraph does not alter federal agencies' existing obligations under 40 C.F.R. 230.10(b)(1) to issue permits in compliance with state water quality standards, including antidegradation provisions; or

(D) amendments to this chapter, including amendments to the water use classes and subclasses, amendments to water quality criteria, adoption of site-specific

criteria, and the reclassification of waters;

(3) an antidegradation analysis is tier-specific as described under (b), (c), and (d) of this section; antidegradation analyses and department findings for Tier 1 and Tier 2 protection levels are on a parameter-by-parameter basis; analysis and department findings for Tier 3 water are on a basis of a designated water;

(4) an antidegradation analysis for a discharge under 18 AAC 83 (Alaska Pollutant Discharge Elimination System (APDES) Program) specified in (1)(A) of this subsection is subject to the public participation and intergovernmental review procedures under 18 AAC 83.120; an antidegradation analysis for a 33 U.S.C. 1341 (Clean Water Act, sec. 401) certification of a discharge under (1)(B) of this subsection is subject to the public participation and intergovernmental review procedures under 18 AAC 70.015(c);

(5) the applicant shall submit sufficient information to complete an antidegradation analysis under (b), (c), and (d) of this section on department-approved forms; the department will review and determine whether the information is sufficient; information required for department review must include

(A) identification of the receiving water, including the geographic extent potentially affected by the proposed discharge;

(B) a description of the project purpose;

(C) the type of facility, activity, and discharge;

(D) the discharge rate;

(E) parameters of concern in the discharge and the respective concentrations, persistence, and potential impacts to the receiving water;

(F) data on parameters that may alter the effects of the discharge to the receiving water;

(G) which tier should apply for each parameter of concern, if applicable; and

(H) any additional information as requested by the department;

(6) if determined necessary by the department the following baseline water quality provisions apply:

(A) the applicant shall submit sufficient and credible baseline water quality information for the receiving water in order for the department to determine the applicable tier protection level and the assimilative capacity of the receiving water, including the capacity to accommodate future development activities or multiple discharges;

(B) the level of baseline water quality data necessary for department review must be relative to the size of the project, characteristics of the proposed discharge, and the characteristics of the receiving water including special management or habitat designations, as applicable; and

(C) when evaluating whether the information submitted is sufficient and credible or whether additional information may be required, the department will consider all relevant factors, including

(i) the sensitivity of the receiving water to degradation of existing or designated uses;

(ii) the types of parameters of concern in the proposed discharge;

(iii) the available dilution or assimilative capacity of the receiving water for the proposed discharge, including the impacts of authorized discharges;

(iv) representativeness of any surrogate water information proposed for baseline water quality relative to the receiving water under review, including geographic, hydrologic, geologic, water use, and water quality characteristics;

(v) the validity of any baseline concentrations assumed to be below detection levels;

(vi) the quantity, date of analysis, analytical method, detection level, and spatial and temporal scope of any submitted data; and

(vii) whether the data considers applicable seasonal or natural variability.

(b) **Tier 1 analysis of existing use protection.** Tier 1 applies to all water of the United States within this state and receives the protection under 18 AAC 70.015(a)(1). The following apply for a Tier 1 antidegradation analysis:

(1) the department will conduct a Tier 1 antidegradation analysis for all discharges specified in (a)(1) of this section;

(2) for (a)(1)(B) of this section, the finding of no significant degradation under 33 U.S.C. 1344 (Clean Water Act, sec. 404) and under 40 C.F.R. Part 230, revised as of July 1, 2017 and adopted by reference, fulfills Tier 1 antidegradation finding requirements for dredge or fill material;

(3) the applicant shall submit sufficient information required under (a)(5) of this

section and if requested under (a)(6) of this section in support of the application;

(4) Tier 1 is the only antidegradation protection level for a parameter if the receiving water is not also designated a Tier 3 water and if the applicable water quality criteria are exceeded for that parameter as demonstrated by one or more of the following:

(A) the receiving water is listed under 33 U.S.C. 1313(d) (Clean Water Act, sec. 303(d)) for that parameter;

(B) the department determines a Tier 1 protection level for that parameter based on information in the most recent state report issued under 33 U.S.C. 1315(b) (Clean Water Act, sec. 305(b));

(C) the department has previously issued a Tier 1 finding for that parameter in the water and is re-evaluating that finding; the water remains Tier 1 for the applicable parameter unless sufficient and credible information is provided for the department to review and determine that the protection level for the parameter should be revised;

(5) the department will not authorize a discharge to a Tier 1 water unless the department finds that

(A) existing uses and the water quality necessary for protection of existing uses have been identified based on available evidence, including water quality and use related data, information submitted by the applicant, and water quality and use related data and information received during public comment;

(B) existing uses will be maintained and protected; and

(C) the discharge will not cause water quality to be lowered further where

the department finds that the parameter already exceeds applicable criteria in 18 AAC 70.020(b), 18 AAC 70.030, or 18 AAC 70.236(b).

**(c) Tier 2 analysis for the lowering or potential lowering of water quality not exceeding applicable criteria.** Tier 2 applies when the water quality for a parameter in a water of the United States within this state does not exceed the applicable criteria under 18 AAC 70.020(b), 18 AAC 70.030, or 18 AAC 70.236(b) and receives the protection under 18 AAC 70.015(a)(2). The following apply for a Tier 2 antidegradation analysis:

(1) Tier 2 is presumed for all water as the default protection level for all parameters unless

(A) the water is listed under 33 U.S.C. 1313(d) (Clean Water Act, sec. 303(d)) for the applicable parameter;

(B) the department determines a Tier 1 protection level for the applicable parameter based on information in the most recent state report issued under 33 U.S.C. 1315(b) (Clean Water Act, sec. 305(b));

(C) available evidence is provided for department review to determine if a parameter is only subject to Tier 1 analysis and the department finds that

(i) the applicable parameter level persistently exceeds water quality criteria in 18 AAC 70.020(b), 18 AAC 70.030, or 18 AAC 70.236(b); and

(ii) the failure to have water quality that does not exceed applicable criteria is not the result of a permit violation for discharge to the receiving water, unlawful discharge from a nonpoint source, or a spill; or

(D) the water is designated Tier 3;

(2) when evaluating development of a license or general or individual permit for a discharge specified in (a)(1) of this section, and if that discharge will lower or have the potential to lower water quality of Tier 2 water, the department will conduct a Tier 2 antidegradation analysis and make findings for

(A) a proposed new or expanded discharge; for a proposed expanded discharge under a reissued license or general or individual permit, a Tier 2 antidegradation analysis will only be conducted for the portion of the discharge that represents an increase from the existing, authorized discharge;

(B) an existing discharge that did not previously require authorization, if the applicant is proposing an expanded discharge;

(C) an existing discharge where a license or permit was previously required but had not been issued;

(D) a previously expired license or permit that had not been administratively extended; or

(E) a previously terminated discharge, if the applicant is seeking reauthorization;

(3) the department will not conduct a Tier 2 antidegradation analysis for

(A) reissuance of a license or general or individual permit for a discharge that the applicant is not proposing to expand;

(B) issuance of a license or general or individual permit for an existing discharge that did not previously require authorization and that the applicant is not proposing to expand; or

(C) reissuance of an administratively extended license or permit, if the applicant is not proposing an expanded discharge;

(4) for a discharge specified in (a)(1) of this section, the applicant shall submit sufficient information in support of the application; the amount of information and level of detail necessary must be relative to the size of the project or facility, the characteristics of the proposed discharge, and the characteristics of and potential risk to the receiving water; information required for department review includes

(A) information required under (a)(5) of this section;

(B) any information requested under (a)(6) of this section;

(C) a description and analysis of a range of practicable alternatives that have the potential to prevent or lessen the degradation associated with the proposed discharge;

(D) identification of receiving water quality and accompanying environmental impacts on the receiving water for each of the practicable alternatives in (C) of this paragraph;

(E) evaluation of the cost for each of the practicable alternatives in (C) of this paragraph, relative to the degree of water quality degradation;

(F) identification of a proposed practicable alternative that prevents or lessens water quality degradation while also considering accompanying cross-media environmental impacts; if the applicant has selected a non-degrading alternative, the social or economic importance analysis in (G) of this paragraph is not required; and

(G) an analysis that supports the accommodation of important social or

economic development in the area where the receiving water is located, for the proposed discharge that will lower or has the potential to lower water quality;

(5) to demonstrate under (4)(G) of this subsection the accommodation of important social or economic development, the applicant shall complete either

(A) a social importance analysis identifying each affected community in the area where the receiving water for the proposed discharge is located and demonstrating that a lowering of water quality accommodates important social development under 18 AAC 70.015(a)(2)(A), including in one or more of the following areas:

- (i) community services provided;
- (ii) public health or safety improvements;
- (iii) infrastructure improvements;
- (iv) education and training;
- (v) cultural amenities;
- (vi) recreational opportunities; or

(B) an economic importance analysis identifying each affected community in the area where the receiving water for the proposed discharge is located and demonstrating that a lowering of water quality accommodates important economic development under 18 AAC 70.015(a)(2)(A), including in one or more of the following areas:

- (i) employment, job availability, and salary impacts;
- (ii) tax base impacts;

(iii) expanded leases and royalties;

(iv) commercial activities;

(v) access to resources;

(vi) access to a transportation network;

(6) the department may require the analysis of specific alternatives or request additional information that the department determines necessary to assess the submitted alternatives analysis, social importance analysis, or economic importance analysis;

(7) if, after review of available evidence, the department finds that the proposed discharge will lower water quality in the receiving water, the department will not authorize a discharge unless the department finds that

(A) the reduction of water quality meets the applicable criteria of 18 AAC 70.020(b), 18 AAC 70.030, and 18 AAC 70.236(b), unless allowed under 18 AAC 70.200, 18 AAC 70.210, or 18 AAC 70.240;

(B) each requirement under (b)(5) of this section for a discharge to a Tier 1 water is met;

(C) point source and state-regulated nonpoint source discharges to the receiving water will meet requirements under 18 AAC 70.015(a)(2)(D); to make this finding the department will

(i) identify point sources and state-regulated nonpoint sources that discharge to, or otherwise impact, the receiving water;

(ii) consider whether there are outstanding noncompliance issues with point source permits or required state-regulated nonpoint source best

management practices, consider whether receiving water quality has improved or degraded over time, and, if necessary and appropriate, take actions that will achieve the requirements of 18 AAC 70.015(a)(2)(D); and

(iii) coordinate with other state or federal agencies as necessary to comply with (i) and (ii) of this subparagraph;

(D) the alternatives analysis provided under (4)(C) - (F) of this subsection demonstrates that

(i) a lowering of water quality under 18 AAC 70.015(a)(2)(A) is necessary; when one or more practicable alternatives that would prevent or lessen the degradation associated with the proposed discharge are identified, the department will select one of the alternatives for implementation; and

(ii) the methods of pollution prevention, control, and treatment applied to all waste and other substances to be discharged are found by the department to be the most effective and practicable;

(E) except if not required under (4)(F) of this subsection, the social or economic importance analysis provided under (4)(G) and (5) of this subsection demonstrates that a lowering of water quality accommodates important social or economic development under 18 AAC 70.015(a)(2)(A); and

(F) 18 AAC 70.015 and this section have been applied consistent with 33 U.S.C. 1326 (Clean Water Act, sec. 316) with regard to potential thermal discharge impairments.

**(d) Tier 3 analysis for the protection of water quality in outstanding national**

**resource water.** Tier 3 applies to a designated water, and upon designation receives the protection under 18 AAC 70.015(a)(3). The following apply for a Tier 3 antidegradation analysis:

(1) for all discharges specified in (a)(1) of this section to a Tier 3 or tributary to a Tier 3 water that will degrade or have the potential to degrade the existing water quality of a Tier 3 water, the department will conduct a Tier 3 antidegradation analysis and make findings when reviewing

(A) a proposed new or expanded discharge;

(B) an existing discharge that did not previously require authorization, if the applicant is proposing an expanded discharge;

(C) an existing discharge where a license or permit was previously required but had not been issued;

(D) a discharge with a previously expired license or permit that had not been administratively extended; or

(E) a previously terminated discharge, if the applicant is seeking reauthorization;

(2) the applicant shall submit sufficient and credible information in support of the application; information required for department review must include

(A) information required under (a)(5) of this section;

(B) applicable baseline water quality information requested under (a)(6) of this section for the Tier 3 water where the proposed discharge is to a Tier 3 water, and for the Tier 3 water and the receiving water where the proposed discharge is to a water

tributary to the Tier 3 water and will degrade or potentially degrade the existing quality of a Tier 3 water;

(C) information on the quality of the existing or proposed expanded discharge to the Tier 3 water; and

(D) information on the effect of the proposed new or expanded discharge to the water quality of the Tier 3 water;

(3) the department will not authorize a new zone of deposit under 18 AAC 70.210 or new mixing zone under 18 AAC 70.240 in a designated Tier 3 water;

(4) the department will not authorize a discharge to a Tier 3 water or tributary to a Tier 3 water unless the department finds that

(A) the lowering of water quality is temporary and limited, including any lowering of water quality due to dredging or fill placement authorized under a 33 U.S.C 1344 (Clean Water Act, sec. 404) permit;

(B) no lowering of the Tier 3 water quality will occur and existing uses and Tier 3 water quality will be maintained and protected;

(C) a discharge to a tributary to a Tier 3 water meets all applicable requirements under (b) and (c) of this section;

(D) existing state-regulated nonpoint sources to the Tier 3 water are using all state-required practicable best management practices; the department will consider available information that documents whether state-regulated nonpoint sources to the Tier 3 water are using best management practices to ensure that no lowering of water quality will occur and existing uses will be maintained and protected; and

(E) there is no proposal for a new zone of deposit under 18 AAC 70.210 or new mixing zone under 18 AAC 70.240 in a Tier 3 water.

(e) **General permit antidegradation analysis.** The department will apply the antidegradation policy under 18 AAC 70.015 and implementation methods set out in this section for each new or reissued general permit under 18 AAC 83 (Alaska Pollutant Discharge Elimination System (APDES) Program) at the time a general permit is issued. At the time a general permit is issued, the department

(1) will obtain available evidence, as necessary, to support tier-specific requirements and findings under this section;

(2) will make findings on how the antidegradation policy under 18 AAC 70.015 and the antidegradation implementation requirements under this section are met; and

(3) may request information from potential applicants who may discharge under the general permit in order to conduct the antidegradation analysis.

(f) **Temporary and limited degradation of water quality.** A temporary and limited degradation of water quality is limited to the shortest possible time, generally weeks or months, and is limited in impact. An activity with a temporary and limited effect may not degrade water quality permanently. The department will allow the activity only after all practicable means are implemented to minimize the degradation. In determining if proposed degradation of water quality would be temporary and limited, the department will consider the following factors:

(1) the length of time during which water quality will be lowered; activities under this paragraph may include temporary activities that require more than one construction season to complete;

- (2) the percent change in ambient conditions;
- (3) parameters and characteristics, including the potential for cumulative effects;
- (4) the likelihood for long-term water quality benefits to the water body after the short-term degradation;
- (5) the degree to which achieving the applicable water quality standards or criteria during the proposed activity will be at risk; and
- (6) the potential for any residual long term effects on existing uses. (Eff.

4/6/2018, Register 226)

<b>Authority:</b>	AS 46.03.010	AS 46.03.070	AS 46.03.110
	AS 46.03.020	AS 46.03.080	AS 46.03.710
	AS 46.03.050	AS 46.03.100	

18 AAC 70.990 is amended by adding new paragraphs to read:

- (74) "assimilative capacity" means
  - (A) the increment of water quality that is better than the applicable criteria; or
  - (B) the capacity of a specific water to accommodate the addition of a parameter without causing violations of applicable water quality criteria, impairing water quality, or negatively impacting uses;
- (75) "new or expanded," with respect to discharges, means discharges that are regulated for the first time or discharges that are expanded such that they could result in an increase in permitted parameter load or concentration or other changes in discharge

characteristics that could lower water quality or have other adverse environmental impacts;

(76) "parameter" means any chemical, physical, or biological characteristic of water, including a pollutant as defined under 18 AAC 83.990;

(77) "receiving water" means the water, or segment of the water, to which a discharge occurs or is proposed to occur;

(78) "sufficient and credible" means scientifically valid chemical, physical, or biological data that

(A) is of adequate quantity and quality; and

(B) is collected under a sampling and analysis plan, including quality assurance and quality control procedures, and addressing spatial and temporal coverage, as applicable. (Eff. 11/1/97, Register 143; am 4/29/99, Register 150; am 6/22/2003, Register 166; am 3/23/2006, Register 177; am 6/13/2006, Register 178; am 2/5/2017, Register 221; am 4/6/2018, Register 226)

<b>Authority:</b>	AS 46.03.010	AS 46.03.070	AS 46.03.110
	AS 46.03.020	AS 46.03.080	AS 46.03.710
	AS 46.03.050	AS 46.03.100	AS 46.03.720

# MEMORANDUM


State of Alaska  
Department of Law

To: Hon. Byron Mallott  
Lieutenant Governor

Date: March 7, 2018

File No.: JU2015200094

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: water  
quality standards and antidegradation  
implementation methods (18 AAC  
70.015; 18 AAC 70.016; 18 AAC  
70.990)

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 March 6, 2018 from the Regulations Attorney. The regulations update provisions of 18 AAC 70 (water quality standards), in particular establishing criteria and methods for implementing--under 18 AAC 83 (Alaska Pollutant Discharge Elimination System (APDES) program), and for water quality certifications that the Department of Environmental Conservation makes under 33 U.S.C. 1341 (Clean Water Act, sec. 401)--the antidegradation policy for wastewater discharges to waters of the United States in this state.

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: JU2015200094

March 7, 2018  
Page 2

The June 2, 2017 public notice and the February 28, 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

Earl L. Crapps  
Division of Water  
Department of Environmental Conservation

Jennifer A. Currie, Assistant Attorney General  
Environmental Section

# MEMORANDUM

## State of Alaska Department of Law

**TO:** Hon. Byron Mallott  
Lieutenant Governor

**DATE:** March 6, 2018

**FILE NO.:** JU2015200094

**TELEPHONE NO.:** (907) 465-3600

**FROM:** Susan R. Pollard *SRP*  
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:  
water quality standards and  
antidegradation implementation  
methods (18 AAC 70.015;  
18 AAC 70.016; 18 AAC 70.990)

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

ANTIDegradation Implementation Methods: Notice of Proposed  
Changes to the Water Quality Standard Regulations of the  
Department of Environmental Conservation

BRIEF DESCRIPTION

The Alaska Department of Environmental Conservation proposes to amend the water quality standard regulations to address antidegradation implementation methods.

The Alaska Department of Environmental Conservation (ADEC) proposes to adopt regulation changes in 18 AAC 70 of the Alaska Administrative Code, establishing Antidegradation Implementation Methods for APDES permitted wastewater discharges to Waters of the US in the State of Alaska, including the following:

- (1) Amend 18 AAC 70.015 regarding pollution prevention methods and move the language to a new section at 18 AAC 70.016.
- (2) Add a new section at 18 AAC 70.016 to describe levels of protection for waters of the United States within the State of Alaska, consistent with the federal Clean Water Act.
- (3) Amend 18 AAC 70.990 to add new definitions.

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 Earl Crapps at ADEC Division of Water, 555 Cordova Street, Anchorage, AK 99501. Additionally, the ADEC will accept comments by facsimile at 907-269-7509 and by electronic mail at [Earl.Crapps@alaska.gov](mailto:Earl.Crapps@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 August 7, 2017.

ADEC will hold an informational question and answer session to discuss the proposed regulations prior to conducting a public hearing. The session is scheduled for one hour immediately preceding the hearing.

Oral or written comments also may be submitted at a hearing to be held on July 20, 2017, at the ADEC Anchorage Building, 555 Cordova Street, First Floor Main Conference Room, Anchorage, AK 99501. There will be a call-in number if you are not able to attend the meeting in person. The call-in number will be 1-800-315-6338, and the Meet Me Code will be 78594. The hearing will be held from 4:00 pm to 6:00 pm and may be extended to accommodate those present before 5:30 pm who did not have an opportunity to comment. The question and answer session will begin at 3:00 pm.

You may submit written questions relevant to the proposed action to Earl Crapps by e-mail at [Earl.Crapps@alaska.gov](mailto:Earl.Crapps@alaska.gov) and by mail to 555 Cordova Street, Anchorage, AK 99501. The questions must be received at least 10 days before the end of the public comment period. The ADEC will aggregate its response to substantially similar questions and make the questions and responses available on the Division of Water's Antidegradation webpage at

<http://dec.alaska.gov/water/wqsar/Antidegradation>.

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 [Natalie.Wolfe@alaska.gov](mailto:Natalie.Wolfe@alaska.gov) not later than July 13, 2017, 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 and by contacting Earl Crapps by e-mail at [Earl.Crapps@alaska.gov](mailto:Earl.Crapps@alaska.gov) or at (907) 269-7681.

After the public comment period ends, the ADEC 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 are subject to public inspection.

**Statutory authority:** AS 46.03.010; AS 46.03.020; AS 46.03.050; AS 46.03.070; AS 46.03.080; AS 46.03.100; AS 46.03.110; AS 46.03.710; AS 46.03.720

**Statutes being implemented, interpreted, or made specific:** AS 46.03.010 – AS 46.03.120; AS 46.03.710; AS 46.03.720

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

Date: May 31, 2017

A handwritten signature in black ink, appearing to read "Larry Hartig", written over a horizontal line.

Larry Hartig, ADEC Commissioner

ADDITIONAL REGULATION NOTICE INFORMATION  
(AS 44.62.190(d))

1. Adopting agency: Department of Environmental Conservation
2. General subject of regulation: Water Quality Standards
3. Citation of regulation (may be grouped): 18 AAC 70
4. Department of Law file number, if any: JU2015200094
5. Reason for the proposed action:  
(X) Compliance with federal law or action (identify): The Clean Water Act 33 U.S.C. 1313(c) and 40 CFR 131.12 (b) require the state to develop methods for implementing the antidegradation policy that are, at a minimum, consistent with the state's policy at 18 AAC 70.015.  
( ) 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, Wastewater Discharge Authorization Program
7. Estimated annual cost to comply with the proposed action to:

a. Private Persons: There is a potential cost increase to Businesses and or Private Persons with industrial facilities or large projects that will require an Alaska Pollutant Discharge Elimination System (APDES) Individual Permit for a new or increased discharge authorization for regulated pollutants. Activities or discharges include, for example Mining Activities, Oil and Gas Extraction, Domestic and Industrial Utilities, Construction Activities, and Seafood Processing. Individual Permit applicants will now be required to complete and submit their own Antidegradation Analysis. Assuming the applicant employs a consultant at \$150/hour the estimated cost increase ranges from \$6,000-\$18,000 per permit depending on the complexity of the permit. This cost or a portion thereof may recur once every 5 years for any proposed expanded discharge, as long as the permit is needed. These costs could decrease if the applicant is able to complete the required analyses in-house. There may be the potential for utilities and local governments to pass the increased costs to individual rate payers, but there is not enough information to evaluate this potential effect.

b. Another state agency: Limited: There is no expected effect to the majority of state agencies as they typically do not obtain individual wastewater discharge permits. A state agency that requires an APDES Individual Permit would be impacted; see part "a." for the estimated cost.

c. Municipalities: There is a potential cost to local governments that require an APDES Individual Permit for Wastewater Treatment Facilities (WWTF) or Utilities for a new or increased discharge authorization for regulated pollutants. Individual Permit applicants will be required to complete and submit their own Antidegradation Analysis. The cost impacts will likely reflect the cost estimates presented in part "a." above.

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY <u>18</u>	Subsequent Years
Operating Cost	\$ <u>0</u>	\$ <u>0</u>
Capital Cost	\$ <u>0</u>	\$ <u>0</u>
1002 Federal receipts	\$ <u>0</u>	\$ <u>0</u>
1003 General fund match	\$ <u>0</u>	\$ <u>0</u>
1004 General fund	\$ <u>0</u>	\$ <u>0</u>
1005 General fund/program	\$ <u>0</u>	\$ <u>0</u>
Other (identify)	\$ <u>0</u>	\$ <u>0</u>

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

Name: Earl L. Crapps

Title: Environmental Program Manager II

Address: 555 Cordova Street Anchorage, Alaska 99501

Telephone: (907) 269-7681

E-mail address: [earl.crapps@alaska.gov](mailto:earl.crapps@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: May 31, 2017

Prepared by:

Name (printed): Earl L. Crapps

Title (printed): Environmental Program Manager II

Telephone: (907) 269-7681

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION  
AND FURNISHING OF ADDITIONAL INFORMATION

I, Earl L. Crapps, Environmental Program Manager II of the Alaska Department of Environmental Conservation, Division of Water, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 18 AAC 70 of the Alaska Administrative Code, establishing Antidegradation Implementation Methods for APDES permitted wastewater discharges to Waters of the US in the State of Alaska 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.

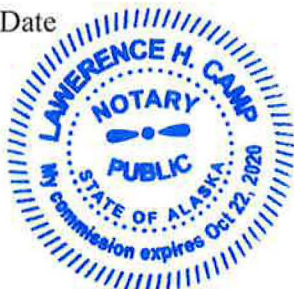
Date: November 17, 2017

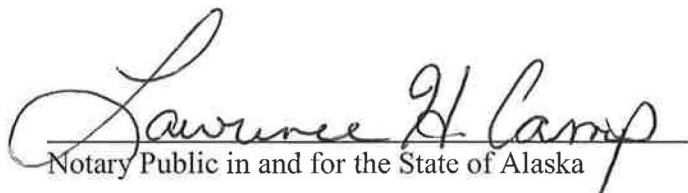


Earl L. Crapps  
Environmental Program Manager II

Subscribed and sworn to before me at 555 Cordova St, Anchorage, AK on  
17 November 2017.

Date



  
Notary Public in and for the State of Alaska

AFFIDAVIT OF ORAL HEARING

I, Earl L. Crapps, Environmental Program Manager II of the Alaska Department of Environmental Conservation, Division of Water, being sworn, state the following:

On July 20, 2017, at 4:00 pm to 6:00 pm, in the ADEC Anchorage Building, 555 Cordova Street, First Floor Main Conference Room, Anchorage, AK 99501, I presided over a public hearing held under AS 44.62.210 for the purpose of taking testimony in connection with the adoption of changes to 18 AAC 70 of the Alaska Administrative Code, establishing Antidegradation Implementation Methods for APDES permitted wastewater discharges to Waters of the US in the State of Alaska.

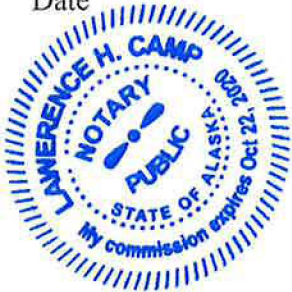
Date: November 17, 2017

Earl L. Crapps

Earl L. Crapps  
Environmental Program Manager II

Subscribed and sworn to before me at 555 Cordova St. Anchorage, AK on

17 November 2017.  
Date



Lawrence H. Camp  
Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Earl L. Crapps, Environmental Program Manager II of the Alaska Department of Environmental Conservation (ADEC), Division of Water, being duly sworn, state the following:

In compliance with AS 44.62.215, the ADEC Division of Water has kept a record of its use or rejection of factual or other substantive information that was submitted in writing and orally as public comment and that was relevant to the accuracy, coverage, or other aspect of the ADEC Division of Water regulation 18 AAC 70 of the Alaska Administrative Code, establishing Antidegradation Implementation Methods for APDES permitted wastewater discharges to Waters of the US in the State of Alaska.

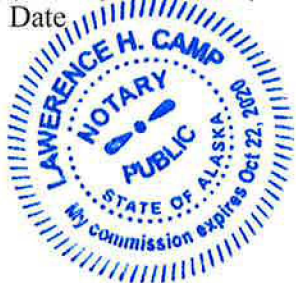
Date: November 17, 2017

Earl L. Crapps

Earl L. Crapps  
Environmental Program Manager II

Subscribed and sworn to before me at 555 Cordova St. Anchorage, AK on  
17 November 2017.

Date



Lawrence H. Camp

Notary Public in and for the State of Alaska

312019  
#1405784  
\$408.38

# AFFIDAVIT OF PUBLICATION

STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

Joleesa Stepetin  
being first duly sworn on oath  
deposes and says that 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

June 2, 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 5 day of June  
20 17

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

**ANGELA M SIMMONS**  
NOTARY PUBLIC  
State of Alaska  
My Commission Expires Apr. 14, 2021

## ANTIDEGRADATION IMPLEMENTATION METHODS: NOTICE OF PROPOSED CHANGES TO THE WATER QUALITY STANDARD REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

### BRIEF DESCRIPTION

The Alaska Department of Environmental Conservation proposes to amend the water quality standard regulations to address antidegradation implementation methods.

The Alaska Department of Environmental Conservation (ADEC) proposes to adopt regulation changes in 18 AAC 70 of the Alaska Administrative Code, establishing Antidegradation Implementation Methods for APDES permitted wastewater discharges to Waters of the US in the State of Alaska, including the following:

- (1) Amend 18 AAC 70.015 regarding pollution prevention methods and move the language to a new section at 18 AAC 70.016.
- (2) Add a new section at 18 AAC 70.016 to describe levels of protection for waters of the United States within the State of Alaska, consistent with the federal Clean Water Act.
- (3) Amend 18 AAC 70.990 to add new definitions.

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 Earl Crapps at ADEC Division of Water, 555 Cordova Street, Anchorage, AK 99501. Additionally, the ADEC will accept comments by facsimile at 907-269-7509 and by electronic mail at [Earl.Crapps@alaska.gov](mailto:Earl.Crapps@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 August 7, 2017.

ADEC will hold an informational question and answer session to discuss the proposed regulations prior to conducting a public hearing. The session is scheduled for one hour immediately preceding the hearing.

Oral or written comments also may be submitted at a hearing to be held on July 20, 2017, at the ADEC Anchorage Building, 555 Cordova Street, First Floor Main Conference Room, Anchorage, AK 99501. There will be a call-in number if you are not able to attend the meeting in person. The call-in number will be 1-800-315-6338, and the Meet Me Code will be 78594. The hearing will be held from 4:00 pm to 6:00 pm and may be extended to accommodate those present before 5:30 pm who did not have an opportunity to comment. The question and answer session will begin at 3:00 pm.

You may submit written questions relevant to the proposed action to Earl Crapps by e-mail at [Earl.Crapps@alaska.gov](mailto:Earl.Crapps@alaska.gov) and by mail to 555 Cordova Street, Anchorage, AK 99501. The questions must be received at least 10 days before the end of the public comment period. The ADEC will aggregate its response to substantially similar questions and make the questions and responses available on the Division of Water's Antidegradation webpage at <http://dec.alaska.gov/water/wqsar/Antidegradation>.

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 [Natalie.Wolfe@alaska.gov](mailto:Natalie.Wolfe@alaska.gov) not later than July 13, 2017, 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 and by contacting Earl Crapps by e-mail at [Earl.Crapps@alaska.gov](mailto:Earl.Crapps@alaska.gov) or at (907) 269-7681.

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**Statutory authority:** AS 46.03.010; AS 46.03.020; AS 46.03.050; AS 46.03.070; AS 46.03.080; AS 46.03.100; AS 46.03.110; AS 46.03.710; AS 46.03.720

**Statutes being implemented, interpreted, or made specific:** AS 46.03.010 - AS 46.03.120; AS 46.03.710; AS 46.03.720

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

Date: May 31, 2017

/s/  
Larry Hartig, ADEC Commissioner

Published: June 2, 2017

### Legals & Public Notices 301

#### FINANCE CORPORATION and Public Comment Period

Corporation proposes to change  
on of the Alaska-Specific Amendments  
rip Edge, of the 2012 International

ments on amending 15 AAC 150.035  
aska-Specific Amendments of the 2012  
lment to Section R905.2.8.5 of the IRC  
ces exemption:

er all plywood edges on roofs with  
ur units vertical in 12 units horizontal  
or a 1" by 2" continuous cedar block  
Underlayment and shingles shall be  
commendations.

e proposed new addition to the Alaska-  
wnloaded from www.ahfc.us (click on  
Public Comment).

ns June 1, 2017 and ends on June 22,  
rage time. Comments may be faxed,

ndy Perez  
Finance Corporation  
ge, Alaska 99510 907-330-8151 /  
0-8247 (FAX)  
1-478-2432  
ez@ahfc.us

017 10:00 a.m. – 11:00 a.m.  
Board Room  
Parkway, Anchorage

a teleconference, call 1-877-668-4493,  
you may contact Wendy Perez at 330-

he Americans with Disabilities Act of  
of 1973. Individuals with disabilities  
special modifications to participate in  
Wendy Perez at 330-8151 before 5:00

nd ends, the Alaska Housing Finance  
se or other provisions dealing with the  
otice, or decide to take no action on  
regulations may be different from that  
SHOULD COMMENT DURING THE TIME  
ULD BE AFFECTED.

### Legals & Public Notices 301

#### Tudor Self Storage/Best Storage on Tudor 3521 E. Tudor Rd, Anchorage

A public auction of contents being stored for or by the following  
persons will be held on Saturday, June 3, 2017 at 11am, to satisfy lien  
for storage fees.

UNIT #	NAME	AMOUNT DUE
2101	Willie Eluska	\$852.00
2058	Brent Williams	\$878.80
3048	William Trumbly	\$472.60
3079	Deborah Beauvais	\$ 775.00
4013	Thema Shearrod	\$ 480.00
4021	Sara Doubek	\$ 558.00
A2035	Patricia Rae	\$ 239.80
A3041	Helen Roehl	\$ 588.20
A4001	James Smith 111	\$ 253.00
A4017	Christina Cyphers	\$ 472.00
A4019	Joshua Lancaster	\$ 710.00

Published: May 26, 31 & June 2, 2017

#### Boniface Auction Notice

A public auction of contents being stored for or by the following  
persons will be held at 405 Boniface Pkwy., Anchorage, AK 99504 on  
**Saturday, June 3, 2017 at 1 pm** to satisfy a lien for storage fees.

Name	Unit	Amount
Kandi Hayes	011	\$468.80
Rachel Robinson	132	\$620.40
Danielle Soliai	144	\$648.40
Henry Sam Jr	327	\$1588.00
Arnella Horsford	513	\$1053.20
Caroline Jamison	545	\$845.90
Caroline Jamison	C105	\$1036.30
Dana Ma	CV119	\$1210.00
Dana Ma	E430	\$1642.20
Rose Ene	H008	\$400.00
Caleb Blair	H110	\$596.00
Crystal Martinez	H200	\$600.80

Published: May 26, 31 & June 2, 2017

## Advertise your legal notices

Please call 257-4433, fax to 279-8170  
or email to: legalads@alaskadispatch.com

PUBLIC  
WELL  
ALASKA

December 7, 20

IMPLEMENTATION  
PROPOSED CHANGES  
TY STANDARD  
DEPARTMENT OF  
ISERVATION

of Environmental  
o amend the water quality  
dress antidegradation

of Environmental  
poses to adopt  
AAC 70 of the Alaska  
ablishing Antidegradation  
for APDES permitted  
Waters of the US in the  
the following:

5 regarding pollution  
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0.016.

18 AAC 70.016 to  
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State of Alaska,  
l Clean Water Act.

0 to add new definitions.

proposed regulation  
tential costs to private  
the proposed changes,  
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155 Cordova Street,  
ditionally, the ADEC will  
mile at 907-269-7509  
arl.Crapps@alaska.gov.  
mitted through the  
e System by accessing  
nd using the comment  
e received not later  
2017.

onal question and  
he proposed  
ng a public hearing.  
r one hour immediately



The Division of Motor Vehicles will aggregate  
responses to substantially similar questions and make the questions

**NOTARY PUBLIC  
M. BURNELL  
STATE OF ALASKA**  
My commission Expires December 7, 20\_\_\_\_

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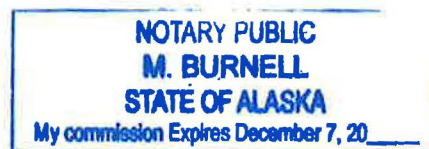
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Statutes being implemented, interpreted, or made specific: AS 46.03.010 – AS 46.03.120; AS 46.03.710; AS 46.03.720

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



Date: May 31, 2017  
/ss/Larry Hartig, ADEC Commissioner  
Publish: June, 2017

# Affidavit of Publication

United States of America

Ad #: 8071731

## SOA Department of Environment Conservation

### ANTIDEGRADATION IMPLEMENTATION METHODS: NOTICE OF PROPOSED CHANGES TO THE WATER QUALITY STANDARD REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

#### BRIEF DESCRIPTION

The Alaska Department of Environmental Conservation proposes to amend the water quality standard regulations to address antidegradation implementation methods.

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**Statutes being implemented, interpreted, or made specific:** AS 46.03.010 - AS 46.03.120;  
AS 46.03.710; AS 46.03.720

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

I, Nicole Quinto, first duly sworn, oath, depose, and say that I am the Principle Clerk of the JUNEAU EMPIRE, a newspaper of general circulation, published in the city of Juneau, State of Alaska; that the publication was published in said newspaper, and on [www.juneauempire.com](http://www.juneauempire.com), the online edition, on the 2nd day of June 2017 and thereafter for 0 additional day(s), the last date of publication being June 2nd, 2017.

.....  
Subscribed and sworn to before me this 22th day of August 2017.

*a. Chilton*  
.....  
Notary Public in and for the State of Alaska.

