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Lieutenant Governor
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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

M E M O R A N D U M

TO: Gary Mendivil
Department of Environmental Conservation

FROM: April Simpson, Office of the Lieutenant Governor 465.4081 

DATE: February 4, 2020

RE: Filed Permanent Regulations: Department of Environmental Conservation

Department of Environmental Conservation: regulations re: water quality standards
variances (18 AAC 70.205; 18 AAC 70.230(a) - (c); 18 AAC 70.990(79))

Attorney General File:	2018200808
Regulation Filed:	2/4/2020
Effective Date:	3/5/2020
Print:	233, April 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS
OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The attached 3 page[s] of regulations, dealing with **Water Quality Standards at 18 AAC 70** are adopted and certified to be a correct copy of the regulation changes that the **Department of Environmental Conservation** adopts under the authority of AS 46.03.020 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the **Department of Environmental Conservation** paid special attention to the cost to private persons of the regulatory action being taken.

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: _____

11/14/19



Jason W. Brune, Commissioner

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

Febr. 4th, ²⁰²⁰~~2019~~, at 1:45 Pm., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Lieutenant Governor

Effective:

March 5, 2020.

Register:

233, April 2020.

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

18 AAC 70.205. Water Quality Standards Variance. (a) Upon application or on its own initiative, the department may authorize a water quality standards variance, ^{that establishes} ~~which allows~~ ^{an} ~~for the establishment of~~ a time limited designated use and ^{the} ~~the~~ associated water quality ^{criteria} ~~criteria~~ that represents the highest attainable condition, consistent with the requirements of federal regulations under 40 C.F.R.131.14, revised as of July 1, 2019, ~~August 21, 2015,~~ and adopted by reference.

(b) An applicant requesting a water quality standards variance under this section shall submit supporting documentation consistent with 40 C.F.R. 131.14(b) to the department. ^{the} ~~the~~ department will review and determine whether the information is sufficient ^{if determined} ~~if determined~~ necessary, the department may request additional information.

(c) A water quality standards variance is subject to public participation procedures under revised as of July 1, 2019, and adopted by reference, the procedures of AS 44.62.180 - 44.62.290, 40 C.F.R. 131.20(b), ~~as amended through August 21, 2015,~~ and other applicable state and federal statutes and regulations.

(d) The department may terminate, modify, or deny a subsequent water quality standards variance if the department determines ^{that the variance} ~~it~~ is not being implemented as authorized or is resulting in a significant adverse environmental effect. ^v

(Eff. 3/5/2020, Register 233)

Authority: AS 46.03.020 AS 46.03.070 AS 46.03.100
~~AS 46.03.024~~ AS 46.03.080 AS 46.03.120
AS 46.03.050

(a)
18 AAC 70.230 is amended to read:

18 AAC 70.230. Procedure for designated use reclassification; reclassified waters.

(a) Upon application, petition or on its own initiative, the department may adopt, modify, or repeal protected water use classes in 18 AAC 70.050 for a water of the state in accordance with 40 C.F.R. Part 131.10, revised as of July 1, 2019, and as amended through August 21, 2015, adopted by reference. [AT LEAST ONCE EACH YEAR, THE DEPARTMENT WILL HOLD ONE OR MORE PUBLIC HEARINGS FOR THE PURPOSE OF REVIEWING THE CLASSIFICATION OF STATE WATER UNDER 18 AAC 70.050 OR (e) OF THIS SECTION. THE DEPARTMENT WILL CONSIDER INFORMATION OBTAINED FROM THAT PROCESS, AND FROM OTHER SOURCES CONSIDERED APPROPRIATE BY THE DEPARTMENT, IN DETERMINING WHETHER TO PROCEED WITH RECLASSIFICATION OF STATE WATER UNDER (b) OF THIS SECTION.]

18 AAC 70.230 (b) is amended to read:

(b) Before changing 18 AAC 70.050 or (e) of this section to reclassify state water, the department will hold at least one public hearing and otherwise comply with 40 C.F.R. 131.20(b), adopted by reference in 18 AAC 70.205(c), the procedures in AS 44.62.180 - 44.62.290. [40 C.F.R. PART 131, AS AMENDED THROUGH] 131.20(b) [131], as amended through August 21, 2015 [AUGUST 15, 1997], and other

applicable state and federal statutes and regulations.

18 AAC 70.230 (c) is amended to read:

(c) An applicant or petitioner seeking reclassification of a waterbody under this section shall provide to the department all available evidence reasonably necessary to demonstrate that a reclassification will comply with this section. [AN INTERESTED PERSON MAY PETITION THE DEPARTMENT TO ADOPT OR REPEAL A CLASSIFICATION OF STATE WATER UNDER 18 AAC 70.050 OR (e) OF THIS SECTION IN ACCORDANCE WITH AS 44.62.220 - 44.62.230.]

(Eff. 11/1/97, Register 143; am 3/5/2020, Register 233)

Authority: AS 46.03.020
AS 46.03.050

AS 46.03.070

AS 46.03.080

11 Publisher: To reflect the addition of 18 AAC 70.990(79), please change the period at the end of 18 AAC 70.990(78) to a semicolon

18 AAC 70.990 is amended by adding ^{a new paragraph} ~~one definition~~ to read:

^{lowercase} (79) "Water Quality Standards Variance" ^{means} is a time-limited designated use and criterion

^(A) ^{one or more} for ^{one or more} specific pollutant^s or water quality parameter^s that reflect the highest attainable

condition during the term of the water quality standard variance. ^{and 9(B)}

Authority: 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

(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; am 3/5/2020, Register 233)

MEMORANDUM

State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: January 30, 2020

File No.: 2018200808

Thru: Susan R. Pollard *SRP*
Chief Assistant Attorney General
and Regulations Attorney
Legislation and Regulations Section

Tel. No.: 465-3600

From: Steven C. Weaver *SCW*
Senior Assistant Attorney General
Legislation and Regulations Section

Re: Department of Environmental
Conservation regulations re: water
quality standards variances (18 AAC
70.205; 18 AAC 70.230(a) - (c);
18 AAC 70.990(79))

The Department of Law has reviewed the attached regulations of the Department of Environmental Conservation against the statutory standards of the Administrative Procedure Act. Based upon our review, 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. The regulations were adopted by the Department of Environmental Conservation after the close of the public comment period. The regulations establish requirements and procedures for water quality standards variances and update requirements and procedures for reclassifying designated uses of state waters.

The July 31, 2019 public notice and the November 14, 2019 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.

We have made some technical corrections to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SCW

cc w/ enc: Hon. Jason W. Brune, Commissioner
Department of Environmental Conservation

Gary Mendivil, Regulations Contact
Department of Environmental Conservation

Amber LeBlanc, Acting Director
Division of Water
Department of Environmental Conservation

Nancy Sonafrank
Division of Water
Department of Environmental Conservation

Brock Tabor
Division of Water
Department of Environmental Conservation

Jennifer Currie, Senior Assistant Attorney General
Environmental Section

WATER QUALITY STANDARDS: PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

BRIEF DESCRIPTION

The Alaska Department of Environmental Conservation (DEC), Division of Water proposes to amend regulations in 18 AAC 70 of the Alaska Administrative Code, dealing with state water quality standards. DEC is clarifying its authority and policies to adopt water quality standards variances and reclassify designated uses of state waters.

The DEC proposes to adopt regulation changes in Title 18, Chapter 70 of the Alaska Administrative Code dealing with water quality standards. DEC is proposing new language in 18 AAC 70.205 that allows DEC to authorize water quality standards variances in accordance with federal regulations at 40 C.F.R. 131. DEC is also proposing to amend 18 AAC 70.230 to clarify DEC policy regarding the reclassification of designated uses in certain state waters and ensure consistency with federal regulations at 40 C.F.R. 131.

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 Water Quality Standards Section, DEC Division of Water at 410 Willoughby Avenue, Suite 303, P.O. Box 111800, Juneau, Alaska 99811-1800. Additionally, DEC will accept comments by facsimile at (907) 465-5274 and by electronic mail at denise.elston@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 no later than **5:00 p.m. on September 16, 2019**.

Oral or written comments also may be submitted at a public hearing to be held on September 3, 2019 in the DEC Spruce Conference Room, Second Floor, 410 Willoughby Avenue, Juneau. The hearing will be held from 4:00 p.m. to 6:00 p.m. and may be extended to accommodate those present before 6:00 p.m. who did not have an opportunity to comment. Those individuals who cannot attend the public hearing but wish to participate via teleconference may do so by calling (800) 315-6338, Access Code 51851.

You may submit written questions relevant to the proposed action to Denise Elston by electronic mail at denise.elston@alaska.gov or to Water Quality Standards Section, DEC Division of Water at 410 Willoughby Avenue, Suite 303, P.O. Box 111800, Juneau, Alaska 99811-1800. All questions must be received at least 10 days before the end of the public comment period. DEC will aggregate its response to substantially similar questions and make the questions and responses available on the DEC Water Quality Standards webpage at <http://dec.alaska.gov/water/water-quality/standards/>.

DEC may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

The State of Alaska, Department of Environmental Conservation complies with Title II of the Americans with Disabilities Act of 1990. If you are a person with a disability who may need a special

accommodation in order to participate in this public process, please contact Theresa Zimmerman at (907) 465-6171 or TDD Relay Service 1-800-770-8973/TTY or dial 711 within 30 days of publication of this notice to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes are available on the Alaska Online Public Notice System and by contacting Denise Elston at denise.elston@alaska.gov or (907) 465-5018. A copy of material proposed for adoption by reference may be viewed at the agency's office at 410 Willoughby Ave, Suite 303, P.O. Box 111800, Juneau, Alaska 99811.

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

Statutory Authority: AS 46.03.010; AS 46.03.020; AS 46.03.050; AS 46.03.070; AS 46.03.080; AS 46.03.100; AS 46.03.110; AS 46.03.365; AS 46.03.710; AS 46.03.720

Statutes Being Implemented, Interpreted, or Made Specific: AS 46.03.010 – AS 46.03.024; 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

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

July 31, 2019

A handwritten signature in black ink, appearing to read "Jason W. Brune", written over a horizontal line.

Jason W. Brune, Commissioner

ADDITIONAL REGULATIONS 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 2018200808

5. Reason for the proposed action:
- (X) Compliance with federal regulations 40 C.F.R. 131.14
- () Compliance with new or changed state statute
- () Compliance with Federal or state court decision (identify) _____
- () Development of program standards
- () Other: (please list) _____

6. Appropriation/Allocation: Water Division, Water Quality Standards Program

7. Estimated annual costs in the aggregate to comply with the proposed action to:

Private Persons: The amendments are unlikely to result in additional compliance costs.

Other State Agencies: The amendments are unlikely to result in additional compliance costs.

Municipalities: The amendments are unlikely to result in additional compliance costs.

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

	Initial Year FY 2020	Subsequent Years
Operating Cost	\$ _____	\$ _____
Capital Cost	\$ _____	\$ _____
1002 Federal receipts	\$ _____	\$ _____
1003 General fund match	\$ _____	\$ _____
1004 General fund	\$ _____	\$ _____
1005 General fund/ Program	\$ _____	\$ _____
1037 General fund/ Mental health	\$ _____	\$ _____
Other	\$ _____	\$ _____

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

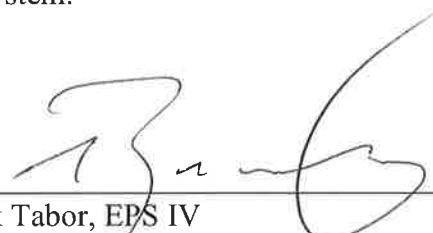
I, Brock Tabor, EPS IV of the Alaska Department of Environmental Conservation, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 18 AAC 70 Water Quality Standards has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to every person who has filed a request for notice of proposed action with the state agency;
- (3) furnished to appropriate state officials;
- (4) furnished to interested persons;
- (5) furnished to the Department of Law, along with a copy of the proposed regulation;
- (6) furnished electronically to incumbent State of Alaska legislators;
- (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).

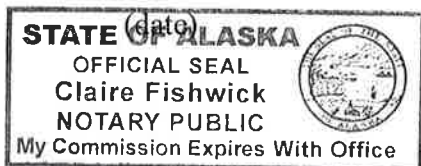
As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (2), (4) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: 11/21/19



Brock Tabor, EPS IV

Subscribed and sworn to before me at Juneau on 11/21/19





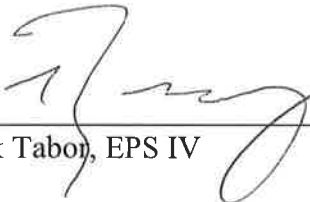
Notary Public in and for the State of Alaska

AFFIDAVIT OF ORAL HEARING

I, Brock Tabor, EPS IV of the Department of Environmental Conservation, being sworn, state the following:

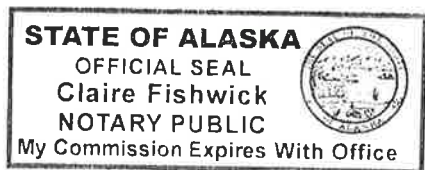
On September 3, 2019, at 4:00 to 6:00PM, in the DEC Spruce Conference Room, 410 Willoughby Avenue, Suite 303, Juneau, Alaska, I presided over a public hearing held under AS 44.62.210 for the purpose of taking testimony in connection with the adoption of changes to 18 AAC 70 Water Quality Standards.

Date: 11/21/19



Brock Tabor, EPS IV

Subscribed and sworn to before me at Juneau on
11/21/19
(date)





Notary Public in and for the State of Alaska

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Brock Tabor, EPS IV for the Department of Environmental Conservation, being duly sworn, state the following:

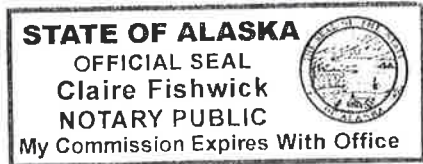
In compliance with AS 44.62.215, the Department of Environmental Conservation has kept a record of its use or rejection of factual or other substantive information that was submitted in writing [and orally] as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Environmental Conservation regulation on Water Quality Standards at 18 AAC 70.

Date: 11/21/19

[Signature]
Brock Tabor, EPS IV

Subscribed and sworn to before me at Tuneau on 11/21/19
(date)

[Signature]
Notary Public in and for the State of Alaska



ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 312019

Order #: W0010938

Cost: \$478.1

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Joleesa Stepetin being first duly sworn on oath deposes and says that she is a representative of the Anchorage Daily 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 new

08/01/2019 - 08/01/2019

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 7th day of August 2019.



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

MY COMMISSION EXPIRES

4/14/21

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

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

July 31, 2019
Jason Brune, Commissioner
Published: August 1, 2019