

Kevin Meyer
Lieutenant Governor
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Anchorage, Alaska 99501
907.269.7460
LT.GOVERNOR@ALASKA.GOV

**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: December 7, 2020

RE: Filed Permanent Regulations: Department of Environmental Conservation

Department of Environmental Conservation Regulation re: Definition of "Radioactive Material" (18 AAC 85)

Attorney General File:	2019200515
Regulation Filed:	12/7/2020
Effective Date:	1/6/2021
Print:	237, April 2021

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

ORDER ADOPTING CHANGES TO REGULATIONS
OF DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The attached 1 page of regulations, dealing with 18 AAC 85 Radiation Protection, is 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; AS 46.03.250; and AS 46.03.260 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 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: November 2, 2020
Anchorage, Alaska

Jason W. Brune Digitally signed by Jason W. Brune
Date: 2020.12.02 09:20:43 -09'00'

Jason Brune, Commissioner

April Simpson for
↑

FILING CERTIFICATION

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

December 7, 2020, at 3:48p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

April Simpson
for Kevin Meyer, Lieutenant Governor

Effective: January 6, 2021

Register: 237, April 2021

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, designate the following state employees to perform the Administrative Procedures Act filing functions of the Office of the Lieutenant Governor:

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on December 11th,
2018.**



K. Meyer
.....

**KEVIN MEYER
LIEUTENANT GOVERNOR**

18 AAC 85.300 is amended to read:

18 AAC 85.300. Disposal by burial in soil. (a) A person may not dispose of radioactive material by burial in soil, unless

(1) the radioactive material proposed for disposal contains only naturally occurring radiation with a radionuclide concentration of less than or equal to five picocuries per gram of radium-226 plus radium-228;

(2) the radioactive material is not low-level radioactive waste regulated by the Nuclear Regulatory Commission and subject to the Northwest Interstate Compact pursuant to AS 46.45.010; and

(3) the radioactive material is disposed in a Class I municipal solid waste landfill, drilling waste landfill, or industrial solid waste landfill that meets the applicable design standards in 18 AAC 60⁵ ^{«no bold/no underline on period»}

(b) Radioactive material that is disposed ^{of} in accordance with (a)(3) ^{of this section} must be managed as waste in accordance with the landfill permit. (Eff. 9/16/71, Register 39; am 4/9/2009, Register 190; am 7/1/2015, Register 214; am 1/6/2021, Register 237)

Authority: AS 46.03.020

AS 46.03.250

AS 46.03.260

MEMORANDUM

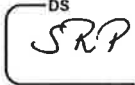
State of Alaska Department of Law

To: The Honorable Kevin Meyer
Lieutenant Governor

Date: December 4, 2020

File No.: 2019200515

Tel. No.: 465-3600

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

Re: Department of Environmental
Conservation Regulation re: 18 AAC
85: Definition of "Radioactive
Material"

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 allow a person to dispose of low-level, naturally occurring radioactive material in soil if the material meets certain conditions.

The July 30 and 31, 2020, public notice and the November 2, 2020, 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 a minor technical correction to conform the regulations in accordance with AS 44.62.125. The corrections are shown on the attached copy of the regulations.

SRP:sjw

Hon. Jason W. Brune, Commissioner
Department of Environmental Conservation

Gary Mendivil, Regulations Contact
Department of Environmental Conservation

Robert J. Blankenburg, Program Manager
Solid Waste and Pesticides Program
Department of Environmental Conservation

Ashton Roberts, Assistant Attorney General
Environmental Section

MEMORANDUM

State of Alaska

Department of Environmental Conservation
Office of the Commissioner

TO: Kevin Meyer
Lieutenant Governor

DATE: November 1, 2020

FILE NO: 2019200515

PHONE NO: 465-5066

FROM: Jason W. Brune
Commissioner

Jason W. Brune
Commissioner
11/1/2020

SUBJECT: 18 AAC 85 Radiation Amendments

I have signed the adoption order for the above referenced changes to the Radiation Protection regulations dealing with changes to disposal of low-concentration radioactive material in soil.

DEC proposed this regulation change as a result of unintended consequences resulting from 2015 regulations changes. Prior to the 2015 regulations change, there was a mechanism in 18 AAC 85.300 through which low-concentration radioactive material could be allowed for disposal via burial in soil. This resulted in material with background level or de minimis level natural radiation not allowed for disposal in Alaska, which was both not the intent of the 2015 regulations change, and contrary to statutory requirements in AS 46.03.250, which requires DEC to "...adopt regulations establishing standards governing the discharge of low level radioactive materials to the air, water, land, and subsurface land of the state...".

We received one comment that noted that the amendment might lead to reduced environmental protection. The Solid Waste Program has determined that this change will pose minimal risk to the public.

Please let me know if you have any questions or require additional information. In addition, your staff may contact Christine Carpenter, Environmental Health Division Director at (907) 269-7644 or at Christina.Carpenter@alaska.gov.

LAND DISPOSAL OF LOW LEVEL NATURALLY-OCCURRING RADIOACTIVE
MATERIAL NOTICE OF PROPOSED CHANGES
IN THE REGULATIONS OF THE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION

BRIEF DESCRIPTION

The ADEC proposes to change regulations because of unintended consequences from a 2015 regulations change that resulted in material with low-level, natural radiation no longer being allowed for disposal. The proposed regulations change will allow for land disposal of these materials in certain permitted Alaska landfills with the most protective containment design. This regulatory change is necessary for compliance with statutory requirements in AS 46.03.250.

The ADEC proposes to adopt regulation changes in Title 18, Chapter 85 of the Alaska Administrative Code, dealing with land disposal of low level naturally-occurring radioactive material, including:

- (1) 18 AAC 85.300 is amended to allow disposal of waste containing certain low-level, naturally-occurring radiation in a Class I municipal solid waste landfill, drilling waste monofill, or industrial waste monofill that meets the design standards in 18 AAC 60.

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 Rebecca Colvin, ADEC Division of Environmental Health at 555 Cordova St. Anchorage, AK 99501. Additionally, the ADEC will accept comments by facsimile at 907-269-7510, by electronic mail at rebecca.colvin@alaska.gov, and online at <http://dec.alaska.gov/eh/solid-waste/>. The comments must be received not later than 11:59 pm on August 31, 2020.

You may submit written questions relevant to the proposed action to Rebecca Colvin by email at rebecca.colvin@alaska.gov or at 555 Cordova St. 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 Alaska Online Public Notice System and at <http://dec.alaska.gov/eh/solid-waste/>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Kate Orozco at 907-465-6171 or TDD Relay Service 1-800-770-8973/TTY not later than August 24, 2020, 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 Rebecca Colvin by email at rebecca.colvin@alaska.gov or online at <http://dec.alaska.gov/eh/solid-waste/>.

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 46.03.020; AS 46.03.250; AS 46.03.260

Statutes being implemented, interpreted, or made specific: AS 46.03.250; AS 46.03.260

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

Date: July 28, 2020

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

Jason Brune, Commissioner
Department of Environmental Conservation

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Alaska Department of Environmental Conservation
2. General subject of regulation: Disposal of radioactive material
3. Citation of regulation (may be grouped): 18 AAC 85.300
4. Department of Law file number, if any: 2019200515

5. Reason for the proposed action:

- ☐ Compliance with federal law or action (identify): _____
- ☐ Compliance with new or changed state statute
- ☐ Compliance with federal or state court decision (identify): _____
- ☐ Development of program standards
- ☒ Other (identify): Compliance with existing state statute AS 46.03.250

6. Appropriation/Allocation: Environmental Health/Solid Waste

7. Estimated annual cost to comply with the proposed action to:

A private person: No additional costs to comply. The change in regulation will allow the Department to meet the intent of AS 46.03.250, which directs the Department to adopt regulations establishing standards governing the discharge of low-level radioactive materials to subsurface land of the state. The change in regulation will allow materials with naturally occurring radionuclide concentration of less than or equal to 5 pCi/g of radium-226 plus radium-228 to be disposed of in Alaska at a Class I Municipal Solid Waste Landfill, Drilling Waste Landfill, or Industrial Solid Waste Landfill. Current regulation requires any material with radionuclide concentration to be disposed of through the Northwest Interstate Compact. The disposal option in Alaska will lead to cost savings to those who generate waste material with low radionuclide concentrations in Alaska.

Another state agency: No additional costs to comply.

A municipality: No identifiable costs to comply. A permitted Class I Municipal Solid Waste Landfill, Drilling Waste Landfill, or Industrial Waste Landfill can accept radiological material with radionuclide concentration of less than or equal to 5 pCi/g of radium-226 plus radium-228; however, the landfills are not obligated to accept the waste.

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

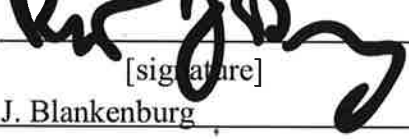
	Initial Year FY <u>21</u>	Subsequent Years
Operating Cost	\$ <u>0</u>	\$ <u>0</u>
Capital Cost	\$ <u>0</u>	\$ <u>0</u>
1002 Federal receipts	\$ <u>0</u>	\$ <u>0</u>
1003 General fund match	\$ <u>0</u>	\$ <u>0</u>
1004 General fund	\$ <u>0</u>	\$ <u>0</u>
1005 General fund/ program	\$ <u>0</u>	\$ <u>0</u>
Other (identify)	\$ <u>0</u>	\$ <u>0</u>

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

Name: Rebecca Colvin
Title: Solid Waste Program Coordinator
Address: 555 Cordova Street; Anchorage, AK 99501
Telephone: 907-269-7802
E-mail address: rebecca.colvin@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: 7/28/20 Prepared by: 
[signature]
Name: Robert J. Blankenburg
Title: Solid Waste Program Manager
Telephone: 907-269-7690

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Robert J. Blankenburg, Program Manager, of the Department of Environmental Conservation, under penalty of perjury, certify the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 18 AAC 85 on land disposal of material with low-level, natural radiation 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.

There is no notary public or other official empowered to administer oaths available to notarize this document as a result of social distancing requirements implemented statewide.

I certify under penalty of perjury that the foregoing is true.

Date: November 2, 2020

**Robert J.
Blankenburg**

Digitally signed by Robert J.
Blankenburg
Date: 2020.11.02 15:22:00 -09'00'

Robert J. Blankenburg, Program Manager
Solid Waste and Pesticides Program

State of Alaska
Anchorage, Municipality of Anchorage

AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Robert. J. Blankenburg, Program Manager for the Department of Environmental Conservation, under penalty of perjury, state the following:

In compliance with AS 44.62.215, the Department of Environmental Conservation has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Environmental Conservation regulation on land disposal of material with low-level, natural radiation.

There is no notary public or other official empowered to administer oaths available to notarize this document as a result of social distancing requirements implemented statewide.

I certify under penalty of perjury that the foregoing is true.

Date: November 2, 2020

**Robert J.
Blankenburg**

Digitally signed by Robert J.
Blankenburg
Date: 2020.11.02 15:24:48 -09'00'

Robert J. Blankenburg, Program Manager
Solid Waste and Pesticides Program

State of Alaska
Anchorage, Municipality of Anchorage

ANCHORAGE DAILY NEWS

AFFIDAVIT OF PUBLICATION

Account #: 270249 ST OF AK/DEC SOLID WASTE MGMT
555 CORDOVA ST, ANCHORAGE, AK 99501

Order #: W0017131

Cost: \$766.96

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Lisi Misa 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 afore-said 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

07/30/2020, 07/31/2020

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 25th day of August 2020.

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.

Date: July 28, 2020
By: /s/ Jason Brune,
Commissioner
Department of Environmental Conservation

Published: July 30, 31/2020