

DEPARTMENT OF ENVIRONMENTAL CONSERVATION



18 AAC 63

Siting of Hazardous Waste Management Facilities

As Amended through April 8, 2012

IMPORTANT NOTE TO READER

THE REGULATIONS REPRODUCED HERE HAVE BEEN PROVIDED BY THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AS A PUBLIC COURTESY. WHILE EVERY EFFORT HAS BEEN MADE TO ASSURE THE ACCURACY OF THE REPRODUCED VERSION, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION CANNOT GUARANTEE ITS ABSOLUTE ACCURACY. PAPER COPIES OF THE REGULATIONS AS ORIGINALLY FILED WITH THE LIEUTENANT GOVERNOR ARE AVAILABLE FOR THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

THE REGULATIONS HAVE AN EFFECTIVE DATE OF APRIL 8, 2012, ARE IN REGISTER 202, AND WILL APPEAR IN OFFICIAL PUBLISHED FORM IN THE JULY 2012 SUPPLEMENT TO THE ALASKA ADMINISTRATIVE CODE.

Chapter 63

Siting of Hazardous Waste Management Facilities

Article

1. Applicability and Basic Requirements. (18 AAC 63.010 - 18 AAC 63.050)
2. Requirements for Hazardous Waste or PCB Incinerators, Hazardous Waste Land Facilities, Chemical Waste Landfills, and Hazardous Waste Underground Injection Wells (18 AAC 63.100 - 18 AAC 63.130)
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Article 1

Applicability and Basic Requirements

Section

- 10. Applicability.
- 20. Pre-application requirements.
- 30. Application requirements.
- 40. Location requirements.
- 50. Financial assurance and compliance history.

18 AAC 63.010. Applicability. (a) No person may construct or operate a hazardous waste management facility for which a permit is required under 18 AAC 62, a hazardous waste underground injection well classified under 40 C.F.R. 144.6(a)(1), a PCB incinerator for which approval to dispose of polychlorinated biphenyls (PCBs) or PCB Items is required under 40 C.F.R. 761.70, or a chemical waste landfill for which approval is required under 40 C.F.R. 761.75, without the required permit or approval and the corresponding approval under this chapter for the siting of that facility.

(b) Department approval under this chapter is not required for a facility that, on March 31, 1989

(1) is in compliance with the RCRA (Resource Conservation and Recovery Act of 1976) interim standards set out at 40 C.F.R. Part 265 (codified as of July 1986);

(2) has received a Part B permit under 40 C.F.R. Part 264; or

(3) is disposing of hazardous wastes in a permitted underground injection well classified as Class I under 40 C.F.R. 144.6(a)(1). (Eff. 3/13/89, Register 109)

Authority:	AS 46.03.020	AS 46.03.110	AS 46.03.296
	AS 46.03.299	AS 46.03.302	AS 46.03.313

18 AAC 63.020. Pre-application requirements. (a) At least 120 days before submitting to the department an application for siting approval under this chapter, an applicant who proposes to construct or operate a facility described in 18 AAC 63.010(a) shall

(1) prepare a preliminary application that contains the information required by 18 AAC 63.030(c)(1) - (13), and a fact sheet that describes the facility and summarizes the content of the preliminary application;

(2) publish notice of the proposed project in two editions of a newspaper of general circulation, and announce the notice at least twice a day for one week on a radio station, in the area where the facility is proposed to be located; and

(3) by certified mail, return receipt requested, send written notice of the proposed activity to the commissioner and

(A) to the city council of that city, if the proposed facility is to be located in a city,

(B) to the highest elected official of the organized borough in which the proposed facility is to be located, if the proposed facility is to be located in an organized borough but not in a city; or

(C) to the highest elected official of the nearest city or borough, if the proposed facility is to be located in the unorganized borough and not in a city.

(b) The public notice required by (a)(2) of this section must

(1) describe the proposed facility, including methods and technologies of hazardous waste management;

(2) identify

(A) the owner and operator of the facility;

(B) the proposed location of the facility;

(C) proposed routes of transportation to and from the proposed site; and

(D) the types, estimated quantities, and sources of hazardous waste to be stored, treated, or disposed of at the facility;

(3) offer to any interested person, without charge, a copy of the fact sheet described in (a)(1) of this section; and

(4) specify a location at which two copies of the preliminary application described in (a)(1) of this section are available for public review.

(c) The written notice required by (a)(3) of this section must

(1) include an offer to meet with the affected city council or borough assembly in one or more informal public meetings to describe the proposed facility;

(2) discuss how the proposed facility will meet applicable state and federal requirements for the protection of public health and the environment; and

(3) discuss public health and environmental issues, including

(A) how the applicant will monitor for facility emissions to the air, water, and land;

(B) how the applicant will report emissions and spills to the public;

(C) how the applicant will respond to on-site accidents and spills and assist in emergencies involving shipments to and from the facility; and

(D) a description of proposed routes of transportation to and from the site, including safety considerations.

(d) Within 10 days after receiving notice from an applicant under (a)(3) of this section, the commissioner will appoint a seven-member advisory committee that consists of

(1) two persons who live near the proposed facility or along a transportation route to the facility;

(2) two persons recommended by the affected borough or city;

(3) a representative of the applicant; and

(4) two other persons who have social, cultural, or technical expertise essential for the advisory committee's function.

(e) An applicant must

(1) provide each member of the advisory committee with a copy of the preliminary application;

(2) participate in public meetings held by the committee to provide an overview of the proposed project, focusing on the public health and environmental issues set out in (c)(3) of this section, and to respond to concerns expressed by the public or by members of the advisory committee; and

(3) prepare written responses to concerns expressed during the pre-application period.

(f) The advisory committee shall

(1) elect a chairperson from among its members;

(2) schedule and hold three public meetings, at which the applicant provides information described in (c)(2) of this section;

(3) summarize information and facts about the proposed project;

(4) provide a forum for public discussions about the site and facility, and encourage a dialogue between the public and the applicant to answer questions and resolve any concerns; and

(5) report to the commissioner, summarizing the public meetings on the proposed project.

(g) The advisory committee shall hold its first meeting within 20 days after appointment. Within 80 days after appointment, the committee shall prepare a written report summarizing concerns expressed during the public meetings, how the applicant addressed or failed to address those concerns, and any commitments made by the applicant in response to the concerns. The committee shall submit the report to the applicant for written comment. Within 10 days after submitting the report to the applicant, and after considering the applicant's response, if any, the committee shall prepare a final report for distribution to the commissioner, the applicant, and any other person who participated in the pre-application process. (Eff. 3/31/89, Register 109)

Authority: AS 46.03.020 AS 46.03.313

18 AAC 63.030. Application requirements. (a) Upon completion of the pre-application requirements in 18 AAC 63.020, but no later than three years after the date of the advisory committee's final report, an applicant must submit to the commissioner a completed application, which must be signed as follows:

(1) in the case of a corporation, by a principal executive officer of at least the level of vice president, or that person's authorized representative if the representative is responsible for the overall management of the project or operation;

(2) in the case of a partnership, by a general partner;

(3) in the case of a sole proprietorship, by the proprietor; or

(4) if the operator is a municipal, state, federal, or other public agency, by a principal executive officer, an elected official, or other authorized employee.

(b) repealed 4/8/2012.

(c) An application for siting approval must include

(1) a cover letter that

(A) identifies the owner and operator of the facility;

(B) contains a statement that the applicant is aware of all applicable local ordinances and local zoning requirements; and

(C) briefly describes

(i) the type of facility proposed;

(ii) the types, estimated quantities, and sources of wastes to be managed; and

(iii) the population and geographical area to be served;

(2) an aerial photograph, or set of photographs, on a scale of one centimeter equals 60 meters, which

(A) was taken within one year before the submittal date of the application, during a period of either minimum spring snow cover or minimal fall foliage cover; and

(B) includes an area extending out at least 3,500 meters in each direction from the proposed location of the active portions of the facility;

(3) a map, on the same scale and covering the same area as the aerial photograph described in (2) of this subsection, which clearly shows

(A) the location of the proposed activity;

(B) the property boundaries within which the proposed activity will take place;

(C) the existing and proposed vehicular access to the proposed activity;

(D) the applicable setback requirements of 18 AAC 63.040;

(E) identification of existing and proposed wells and boreholes;

(F) the location and boundaries of all rivers, lakes, streams, wetlands, floodplains, and tidal and freshwater drainages; and

(G) the location of any sole-source aquifer designated under 42 U.S.C. 300h-3 (sec. 1424 of the Safe Drinking Water Act; Public Law 93-523);

(4) an aerial photograph, or set of photographs, on a scale of one centimeter equals 600 meters, which

(A) was taken within one year before the submittal date of the application, during a period of either minimum spring snow cover or minimal fall foliage cover; and

(B) includes an area extending out at least 5,000 meters in each direction from the location of the proposed active portions of the facility;

(5) a map, on the same scale and covering the same area as the aerial photograph described in (4) of this subsection, which clearly shows

(A) the location of any area described in 18 AAC 63.040(c), including any critical habitat area, state game refuge, state game sanctuary, state range area, state wildlife reserve, areas subject to potential geophysical hazards, national wildlife refuge, national monument, and any designated wild and scenic river; and

(B) the nature, function, and land use zoning classification of each property immediately adjacent to each active portion of the proposed facility;

- (6) a discussion of how the applicant plans to
 - (A) monitor for facility emissions to the air, water, and land;
 - (B) report emissions and spills to the public;
 - (C) respond to on-site accidents and spills and assist in emergencies involving shipments to and from the facility;
 - (D) prevent or mitigate effects on public health resulting from on-site accidents or spills; and
 - (E) prevent or mitigate conditions that would adversely affect agricultural or natural resources, or fish and wildlife or their habitats;
- (7) a description of routes of transportation to and from the site, and safety considerations;
- (8) a description of potential impact on property values near the site due to construction and operation of the proposed facility;
- (9) a discussion of how the proposed facility is compatible with existing land use patterns;
- (10) proof that the landowner has received written notice that fully describes the proposed activity; the proof must include
 - (A) the pages from a lease agreement that are clearly relevant to the proposed activity, including the signature page; or
 - (B) a written statement signed by the landowner, stating that the landowner consents to the proposed activity;
- (11) the financial assurance and compliance history reports described in 18 AAC 63.050;
- (12) the applicable documents required by 18 AAC 63.100 - 18 AAC 63.130; and
- (13) a written statement confirming that the requirements of 18 AAC 63.020 have been met, and
 - (A) a copy of all supporting documents, including a copy of each public notice required under 18 AAC 63.020(a)(2), and the publisher's affidavit of publication for each notice published in a newspaper;
 - (B) a list of the names and addresses of all persons who sent letters or are known to have attended public meetings concerning the application;

(C) a copy of the applicant's written responses to concerns expressed during the pre-application period, including commitments made by the applicant to address those concerns; and

(D) a copy of the advisory committee's final report.

(d) If an application is deficient, the department will notify the applicant by certified mail within 30 days after receipt of the application, describing the deficiencies and identifying the information that must be submitted. The time period set in 18 AAC 63.500(c) for review of an application will be held in abeyance until receipt of the required information. When the deficiencies are corrected, the application will be considered complete, and the department will continue processing the application. The department will issue its decision on the application within 180 days after determining that the application is complete.

(e) If the applicant fails to submit the application required under this chapter, and the corresponding application required under 18 AAC 62, 40 C.F.R. 144.31, 40 C.F.R. 761.70, or 40 C.F.R. 761.75, within three years after the date of the advisory committee's final report, the applicant must repeat the requirements of 18 AAC 63.020. (Eff. 3/31/89, Register 109; am 4/8/2012, Register 202)

Authority: AS 46.03.020 AS 46.03.313

18 AAC 63.040. Location requirements. (a) The active portion of a hazardous waste management facility that is not subject to the provisions of (e) of this section must meet the applicable setback distance in Table I of this subsection with regard to nearby land use. To meet the setback requirements, the mean annual high water, high lake level, or high stream flow must be used to locate the boundary of the surface water.

TABLE I
Minimum Setback Requirements (in meters)

SITING CRITERIA	TYPE OF FACILITY		
	Storage or Treatment	Incineration	Land Disposal or Underground Injection Well
Any property line	25	150	500
Any public right-of-way	50	200	500
Any surface waters	75	250	750
Water supply point of withdrawal	150	1,500	3,000

The department will, in its discretion, require a greater setback distance for a facility if necessary to protect public health. Upon request by the applicant, and a determination by the department that no risk to public health will result, the department will, in its discretion, waive the setback

requirement for lakes smaller than 10 hectares and streams with a flow rate of one-half cubic meter per second or less.

(b) A hazardous waste management facility that is not described in Table I must meet the setback requirement for a storage or treatment facility. A facility that includes a combination of operational units must meet the most stringent setback requirement applicable to any unit in the combination.

(c) No hazardous waste management facility may be located closer than 100 meters to

(1) a critical habitat area, state game refuge, state game sanctuary, state range area, or state wildlife reserve designated under state law;

(2) a critical habitat area designated by the federal government under 16 U.S.C. 1531 - 1543 (the Endangered Species Act of 1973);

(3) an area subject to high risks from seismic or volcanic activity, steep inclines, ice-affected coasts, floods, tsunamis, or avalanches, unless the facility is designed to withstand the 100-year maximum probable seismic, volcanic, or flooding event, and to prevent release of hazardous substances; the maximum probable seismic, volcanic, or flooding event must be determined within the 99 percent confidence interval;

(4) a national wildlife refuge, national monument, or national park;

(5) a wild and scenic river established under 16 U.S.C. 1271 - 1287; or

(6) a sole-source aquifer designated under 42 U.S.C. 300h-3 (sec. 1424 of the Safe Drinking Water Act; (Public Law 93-523)).

(d) No person may construct a hazardous waste land facility, or a chemical waste landfill, so that the active or closed portions are in wetlands.

(e) A temporary facility operating in remedial response to a release of a hazardous substance, hazardous waste, PCBs, or PCB Items, need not comply with the requirements of this section unless the department determines that a setback is necessary to protect public health. (Eff. 3/31/89, Register 109)

Authority: AS 46.03.020 AS 46.03.313

18 AAC 63.050. Financial assurance and compliance history. As required by 18 AAC 63.030(c)(11) an application for siting approval under this chapter must also include

(1) a report that demonstrates the financial qualifications of the applicant as described in 40 C.F.R. 264.143 (codified as of July 1986); and

(2) a report of the most recent three-year compliance history of each similar facility owned or operated by the applicant, including

(A) the location and name of each similar hazardous waste management facility, hazardous waste underground injection well, chemical waste landfill, or PCB incinerator;

(B) a copy of all written correspondence from the United States Environmental Protection Agency (EPA) or any other applicable regulatory agency, related to the compliance history and present compliance status;

(C) a copy of all written responses by the applicant to past violations identified by the EPA and other appropriate regulatory agencies; and

(D) a description of any corrective actions taken to prevent future violations. (Eff. 3/31/89, Register 109)

Authority: AS 46.03.020 AS 46.03.313

Article 2

Requirements for Hazardous Waste or PCB Incinerators, Hazardous Waste Land Facilities, Chemical Waste Landfills, and Hazardous Waste Underground Injection Wells

Section

- 100. Risk assessment.
- 110. Information required for hazardous waste or PCB incinerators.
- 120. Geotechnical information required for hazardous waste land facilities and chemical waste landfills.
- 130. Geologic and hydrological information required for hazardous waste land facilities, chemical waste landfills, and hazardous waste underground injection wells.

18 AAC 63.100. Risk assessment. In addition to the other applicable requirements of this chapter, an application for a hazardous waste or PCB incinerator, hazardous waste land facility, chemical waste landfill, or hazardous waste underground injection well must also include a report identifying the risk the facility might pose to the public, including

(1) a description of the hazardous waste, PCBs, or PCB Items associated with the operation of the facility;

(2) identification of each hazardous constituent, as listed in 40 C.F.R. Part 261, Appendix VIII (codified as of July 1986), that is expected to be discharged or released from the facility into the air, water, land, or subsurface land in a quantity or concentration that could pose a substantial present or potential hazard to human health, or could cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, based on

(A) existing data of its known capacity to cause an adverse effect, as published by the

(i) United States Department of Health and Human Services, National Institute for Occupational Safety and Health, in its Registry of Toxic Effects of Chemical Substances;

(ii) United States Environmental Protection Agency; and

(iii) Agency for Toxic Substance and Disease Registry;

(B) the potential severity of an adverse effect;

(C) toxicological and carcinogenic factors; and

(D) known adverse effects on humans; and

(3) for each hazardous constituent identified under (2) of this section, a risk assessment that

- harm;
- (A) determines the probability that the discharge or release will cause harm;
- (B) identifies the nature of the harm;
- (C) identifies the target population that might be the recipient of that harm; and
- (D) includes a statistical validation of the calculated probability. (Eff. 3/31/89, Register 109)

Authority: AS 46.03.020 AS 46.03.313

18 AAC 63.110. Information required for hazardous waste or PCB incinerators. In addition to the other applicable requirements of this chapter, an application for a hazardous waste or PCB incinerator must also include a report that

- (1) describes how the hazardous waste incinerator would meet the requirements of 40 C.F.R. Part 264, Subpart O (codified as of July 1986), or how the PCB incinerator would meet the requirements of 40 C.F.R. 761.70 (codified as of July 1986);
- (2) assesses the impact on the ambient air quality of a regulated air contaminant under 18 AAC 50, or any toxic air contaminant, that the facility is expected to emit;
- (3) includes conclusive evidence that the expected maximum emissions from the facility will not cause a violation, or contribute to an existing violation, of the ambient air quality standards set out at 18 AAC 50.020(a) or of allowable increments set out in 18 AAC 50.020(b);
- (4) provides the results of tests representative of surface water samples taken within a 1,000 meter radius from the proposed facility for the presence of any hazardous constituent identified under 18 AAC 63.100(2);
- (5) contains conclusive evidence that the proposed emission control system represents the best available control technology for each regulated air contaminant or toxic air contaminant from each source, as "source" is defined in 18 AAC 50.900;
- (6) includes an analysis of the impact of expected maximum omissions from the facility on fish, wildlife, water, visibility, vegetation, and soils; and
- (7) includes a proposed monitoring program for determining air, groundwater, and surface water quality on a continual basis during the operation of the facility and for at least three years after closure. (Eff. 3/31/89, Register 109)

Authority: AS 46.03.020 AS 46.03.313

18 AAC 63.120. Geotechnical information required for hazardous waste land facilities and chemical waste landfills. (a) In addition to the other applicable requirements of this chapter, each application for a hazardous waste land facility or chemical waste landfill must also include a proposed groundwater monitoring program that meets the requirements of

(1) 40 C.F.R. 265.91 (codified as of July 1986), for a hazardous waste land facility; or

(2) 40 C.F.R. 761.75(b)(6) (codified as of July 1986), for a chemical waste landfill.

(b) An application for a hazardous waste land facility or chemical waste landfill must also include a geotechnical report that contains

(1) borehole (drill-hole) logs that include

(A) the names of drillers and loggers;

(B) detailed descriptions of all geologic layers penetrated;

(C) methods of drilling and sampling;

(D) sample depths;

(E) dates of boring;

(F) water-level measurements during and after drilling with time and conditions of hole when made;

(G) substrate test data plotted on boring logs, including field classification, torvane, pocket penetrometer, and laboratory data;

(H) exact locations of test holes, plotted on the map required by 18 AAC 63.030(c)(3);

(I) standard penetration test blow counts by ASTM D1586-84; and

(J) thermal condition and percent ice content, if any;

(2) the results of subsurface lithologic sampling from every well, test-hole, or borehole drilled; and

(3) the geologic properties and groundwater occurrence at each identified lithologic unit of the site.

(c) To conduct the tests and collect the data required under (b) of this section, not less than one subsurface boring must be made in proposed active portions for each hectare or portion of a hectare. Boring information may be supplemented with geophysical testing, such as resistivity, seismic refraction, and gravity surveys. Where feasible, borings must be located so

that there is a minimum of one boring for each major geomorphic feature, such as a ridge, a lowland, or drainage swale, and all borings must extend not less than 30 meters below the anticipated bottom elevation of any installed or constructed liner.

(d) At each boring required under (c) of this section, representative substrate or rock samples must be collected from each geologic layer, or every two meters, whichever is less, using either Shelby-tube or split-spoon samplers. If a significant change in lithology, such as bedrock or frozen substrate, is encountered within the boring depth specified, continuous rotary-cut core samples must be collected and field identified. Refrigerated, freezing-point-depressed fluids approved by the department must be used for the coring of frozen rock or substrate. Field identifications of bedrock samples must be verified by laboratory inspection of hand specimen and thin section. Test holes must be cased and abandoned holes plugged in such a way as to preclude the possibility of having them conduct hazardous waste to the subsurface. Estimates of rock porosity must be made. Samples must be tested for

(1) particle size distribution by both sieve and hydrometer method;

(2) Atterberg Limits and associated parameters (plasticity index, liquidity index, and natural moisture content) according to ASTM D4318-84 and ASTM D424-59;

(3) classification under the unified soil classification system, according to ASTM D287-85;

(4) moisture content, according to ASTM D422-63; and

(5) permeability with water by the triaxial cell method as described in EPA publication SW-925, 1984, constant head method, ASTM D2434-68; by approved in-situ field method; or by any other method approved by the department.

(e) Permeability of rock under (d)(5) of this section must be determined by a method that adequately accounts for the presence of joints and fractures; permeability of frozen substrate or rock must be determined only by procedures that have been approved in advance by the department. Samples collected for determination of permeability by the triaxial cell method must be collected by the standard undisturbed 7.6 centimeter diameter Shelby-tube soil sampling technique; nonstandard sampler and hammer combinations may be used as appropriate in coarse granular substrate. (Eff. 3/31/89, Register 109)

Authority: AS 46.03.020 AS 46.03.313

18 AAC 63.130. Geologic and hydrological information required for hazardous waste land facilities, chemical waste landfills, and hazardous waste underground injection wells. (a) An applicant seeking approval under this chapter for a site proposed for use as a hazardous waste land facility, chemical waste landfill, or hazardous waste underground injection well must demonstrate to the department's satisfaction that the naturally occurring geologic strata are capable of preventing the release of waste to the environment for 1,000 years, or some demonstrated shorter time period in which the wastes would be transformed to an innocuous

condition. The geologic strata must be of sufficient integrity to withstand the maximum probable 1,000-year seismic, volcanic, or flooding event. The maximum probable seismic, volcanic, or flooding event must be determined within the 90 percent confidence interval.

(b) The demonstration required by (a) of this section must show that

(1) there is a 90 percent probability that the thickness and permeability of the geologic strata immediately surrounding the site will, for 1,000 years, prevent contact with any aquifer suitable for use as a drinking water supply;

(2) the facility will be placed so that disposal locations will not significantly impact or be impacted by any free-flowing or standing surface water for 1,000 years; and

(3) the geochemical characteristics of the geologic strata at the site are compatible with the wastes proposed to be disposed of at the site.

(c) An application for a hazardous waste land facility, chemical waste landfill, or hazardous waste underground injection well must also include

(1) a description of the hydrology of the cataloging unit from the Alaska Hydrologic Unit Map of the area where the proposed facility is to be located, including

(A) a description of the groundwater flow system showing areas of recharge and discharge and direction of groundwater flow;

(B) a description of the climate, including precipitation, temperature, and evapotranspiration;

(C) a description of stream flow characteristics; and

(D) a discussion of any other features, such as wetlands, lakes, glaciers, or permafrost, that relate to the general hydrological setting;

(2) a detailed description of the hydrogeology of the proposed disposal site which includes identification of all hydrostratigraphic units beneath the surface which could reasonably be expected to be impacted within 1,000 years, determinations of direction and rate of groundwater flow, and the technical basis for those determinations;

(3) the location and identification of all aquifers within a 5,000 meter radius of the proposed site, as evidenced by available boring or well logs, other geophysical or geological data, or other available information;

(4) a delineation on the topographic map required by 40 C.F.R. 270.14(b)(19) (codified as of July 1986) of the proposed active portions of the facility and each proposed point of compliance;

(5) identification on the topographic map required by 40 C.F.R. 270.13(h) (codified as of July 1986) of all domestic, municipal, or industrial water wells, and oil and gas

wells and borings, within 5,000 meters in all directions of the property line of the proposed facility; and

(6) a description of any plume of contamination that has entered the groundwater from any solid waste disposal site or any other waste disposal activity on the property at the time the application is submitted, which

(A) delineates the extent of the plume on the topographic map required by 40 C.F.R. 270.14(b)(19) (codified as of July 1986);

(B) delineates the vertical and horizontal distribution of the plume; and

(C) identifies the concentration of each constituent listed in 40 C.F.R. Part 261, Appendix VIII (codified as of July 1986) throughout the plume, and identifies the maximum concentrations of each such constituent in the plume. (Eff. 3/31/89, Register 109)

Authority: AS 46.03.020 AS 46.03.313

Article 3

Review Criteria

Section

500. Application review and department decision.

18 AAC 63.500. Application review and department decision. (a) At any time before the department's decision under this section, the applicant may request an informal pre-issuance conference to discuss the progress of the application. The request will be granted if the applicant demonstrates that holding a conference will materially aid the department in reaching its decision. The conference will be tape recorded. In the department's discretion, the time period set in (c) of this section for review of the application will be held in abeyance until completion of the conference.

(b) If practicable, communications between the applicant and an employee of the department regarding the application should be in writing. If oral communications are made, other than at a pre-issuance conference, the department employee will prepare a memorandum for the record which identifies the person with whom the employee communicated, the date and time of the communication, and briefly summarizes the substance of the communication.

(c) Within 60 days after receipt of a complete application for siting approval, the department will issue either its preliminary decision to approve the application, or its disapproval. If the department's preliminary decision is to approve the application, the department will

(1) make the preliminary decision available for public comment;

(2) send a copy of the preliminary decision to members of the advisory committee and to each person who participated in the pre-application process under 18 AAC 63.020; and

(3) publish notice of a public hearing to be held in the community nearest to the location of the proposed facility.

(d) The department's final decision will be mailed to the applicant, to members of the advisory committee, and to each person who submitted timely comments on the application or who testified at a public meeting held under 18 AAC 63.020 or the public hearing held under this section. The final decision will include

(1) written approval or disapproval of the site proposed in the application, and a summary of the basis for the decision; and

(2) a statement that any person who is aggrieved by the department's decision may request an adjudicatory hearing under 18 AAC 15.195 - 18 AAC 15.340.

(e) Except as provided otherwise in (f) - (i) of this section, the department will, in its discretion, approve an application for the siting of a hazardous waste management facility within 180 days after receiving a complete application that shows that

- (1) the pre-application requirements of 18 AAC 63.020 have been met;
- (2) the application requirements of 18 AAC 63.030 are complete;
- (3) the financial reporting requirements of 18 AAC 63.050 are complete; and

(4) the risk assessment, if required by 18 AAC 63.100, indicates that the risk of morbidity or mortality to an exposed member of the public is

(A) less than a 10^{-6} (one in one million) risk; or

(B) greater than a 10^{-6} (one in one million) but less than a 10^{-4} (one in ten thousand) risk, in which case the department will, in its discretion, impose appropriate terms and conditions under (j) of this section.

(f) The department will, in its discretion, approve an application for the siting of a hazardous waste storage or treatment facility within 180 days after receiving a complete application that shows that the applicant has met

- (1) the requirements listed in (e)(1) - (3) of this section; and
- (2) the applicable location requirements of 18 AAC 63.040(a), (b), and (c).

(g) The department will, in its discretion, approve an application for the siting of a hazardous waste underground injection well within 180 days after receiving a complete application that shows that the applicant has met

- (1) the requirements listed in (e)(1) - (4) of this section;
- (2) the applicable location requirements of 18 AAC 63.040(a), (b), and (c); and
- (3) the geologic and hydrological reporting requirements in 18 AAC 63.130.

(h) The department will, in its discretion, approve an application for the siting of a hazardous waste land facility or chemical waste landfill within 180 days after receiving a complete application that shows that the applicant has met

- (1) the requirements listed in (e)(1) - (4) of this section;
- (2) the applicable location requirements of 18 AAC 63.040(a) - (d);
- (3) the geotechnical requirements of 18 AAC 63.120; and
- (4) the geologic and hydrological reporting requirements in 18 AAC 63.130.

(i) The department will, in its discretion, approve an application for the siting of a hazardous waste or PCB incinerator within 180 days after receiving a complete application that shows that the applicant has met

(1) the requirements listed in (e)(1) - (4) of this section;

(2) the applicable location requirements of 18 AAC 63.040(a), (b), and (c); and

(3) the design and air quality analysis requirements of 18 AAC 63.110.

(j) The department will, in its discretion, attach terms and conditions to its approval to ensure compliance with applicable state laws and regulations. The department will, in its discretion, include in its approval any commitments that were made by the applicant during the pre-application period described in 18 AAC 63.020, and that are within the department's authority to require.

(k) An approval under this section is valid only for the operations described in the application, and authorizes only that facility specified in the approval. If the operator subsequently wants to add a different type of operational unit, or modify the existing facility to increase its capacity in a manner that might cause an increase in release or discharge, the owner or operator shall notify the department and must show that the applicable setback requirements under this chapter will continue to be met and that the risk assessment made under this chapter remains valid.

(l) Except in the case of a corporate restructuring, any approval issued under this chapter may not be transferred before the facility has received the corresponding approval required under 18 AAC 62, 40 C.F.R. 144.6, 40 C.F.R. 761.70, or 40 C.F.R. 761.75. After that, the approval under this chapter may be transferred only in conjunction with an approved transfer of the corresponding permit or approval.

(m) An approval under this chapter is void if

(1) the applicant fails to submit an application for a corresponding permit required under 18 AAC 62 or 40 C.F.R. 144.6, or approval required under 40 C.F.R. 761.70, or 40 C.F.R. 761.75; or

(2) an application for a corresponding permit required under 18 AAC 62 or 40 C.F.R. 144.6, or approval required under 40 C.F.R. 761.70, or 40 C.F.R. 761.75 is denied.

(n) The department will deny an application submitted for approval under this chapter if any applicable requirement of this chapter is not met, or if the department determines that the applicant has submitted false information as part of the application process. (Eff. 3/31/89, Register 109; am 7/11/2002, Register 163)

Authority: AS 46.03.020 AS 46.03.313

Article 4

General Provisions

Section

900. Definitions.

18 AAC 63.900. Definitions. Unless the context indicates otherwise, in this chapter

(1) "active portion" means that portion of a hazardous waste management facility where treatment, storage, or disposal operations will be or have been conducted; the active portion of an underground injection well is the confining zone that consists of a geological formation, group of formations, or part of a formation that confines fluid movement to an injection zone;

(2) "approved" means approved in writing by the department;

(3) "aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs;

(4) "ASTM" refers to tests established by the American Society for Testing and Materials, available from the department;

(5) "best available control technology" means that emission limitation that represents the maximum reduction achievable for each air contaminant, taking into account energy, environmental, and economic impacts, and other costs; the resulting emissions must comply with applicable federal emission standards; best available control technology may include, for example, design features, equipment specifications, work practices, operational standards, or combinations of these factors;

(6) "chemical waste landfill" means a landfill at which protection against risk of injury to health or the environment from migration of PCBs to land, water, or the atmosphere is provided from the PCBs or PCB Items deposited in that landfill by locating, engineering, and operating the landfill as specified in 40 C.F.R. 761.75 (codified as of July 1986);

(7) "commissioner" means the commissioner of the Department of Environmental Conservation;

(8) "department" means the Department of Environmental Conservation;

(9) "facility" means all contiguous land, and the structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, PCBs, or PCB Items; a facility may consist of one, several, or a combination of operational units;

(10) "hazardous waste" means waste that is defined as hazardous by 40 C.F.R. 261.3 (codified as of July 1986), or waste that includes a toxic pollutant identified in 40 C.F.R.

129.4 (codified as of July 1986), or is a waste or combination of wastes that, because of quantity, concentration, or physical, chemical, or infectious characteristics, might

A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) pose a substantial present or potential hazard to human health or the environment if improperly managed, treated, stored, transported, or disposed of;

(11) "hazardous waste incinerator" means an enclosed device that

(A) uses controlled temperatures to convert or to change the chemical, physical, or biological character or composition of the hazardous waste;

(B) is not a PCB incinerator and that neither meets the criteria for classification as a boiler nor is listed as an industrial furnace; and

(C) meets the requirements of 40 C.F.R. Part 264, Subpart O (codified as of July 1986);

(12) "hazardous waste land facility" means either a surface impoundment, landfill other than a chemical waste landfill, land treatment facility, or waste pile, that treats, stores, or disposes of hazardous waste;

(13) "hazardous waste management facility" means any facility that treats, stores, or disposes of hazardous waste;

(14) "hazardous waste underground injection well" means a bored, drilled, or driven shaft, or dug hole, the depth of which is greater than the largest surface dimension, which receives hazardous waste that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state;

(15) "injection zone" means a geologic formation, group formation, or part of a formation receiving fluids through an underground injection well;

(16) "PCB" and "PCBs" means a chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains that substance; refer to 40 C.F.R. 761.1(b) (codified as of July 1986) for applicable concentrations of PCBs; PCB and PCBs as contained in PCB Items are defined in 40 C.F.R. 761.3 (codified as of July 1986); in this chapter, inadvertently generated non-Aroclor PCBs are defined as the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and dichlorinated biphenyls by 5;

(17) "PCB incinerator" means an engineered device that

(A) uses controlled flame combustion to change the chemical, physical, or biological character or composition of the PCBs and PCB Items;

(B) neither meets the criteria for classification as a boiler nor is listed as an industrial furnace; and

(C) meets the requirements of 40 C.F.R. 761.70 (codified as of July 1986);

(18) "PCB Item" means a PCB Article, PCB Article Container, PCB Container, or PCB Equipment, as defined in 40 C.F.R. 761.3 (codified as of July 1986), that deliberately or unintentionally contains or has as part of it any PCB or PCBs;

(19) "point of compliance" means the vertical plane located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated waste;

(20) "release" means spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing a hazardous substance or pollutant or contaminant, but excludes

(A) a release that results in exposure to persons solely within a workplace, with respect to a claim that those persons might assert against their employer;

(B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in 42 U.S.C. 2014 (the Atomic Energy Act of 1954), if that release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under 42 U.S.C. 2210(a) (section 170 of the Act), or for the purposes of 42 U.S.C. 9604 (sec. 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; CERCLA), or any response action, any release of source byproduct, or special nuclear material from a processing site designated under 42 U.S.C. 7912(a)(1) or 7942(a) (section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978); and

(D) the normal application of fertilizer;

(21) "risk assessment" means the methods and procedures described by the EPA in the Federal Register, Vol. 51, No. 185, pages 33992 - 34003, Wednesday, September 24, 1986;

(22) "temporary" means operating in connection with a remedial response to the release of hazardous waste, PCBs, or PCB Items into the environment; a facility is temporary if it is operated more than one day and is removed from the site as soon as practicable after the operation is completed, but in no case longer than 1,000 days after the date of installation;

(23) "water" or "waters" means lakes, bays, sounds, ponds, impounding reservoirs, springs, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea, and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering upon the state or under jurisdiction of the state; "water" or "waters" does not include ponds or lagoons or parts of wastewater treatment systems which are lined or constructed in such a manner that seepage into the ground is not allowed;

(24) "water supply" means any of the waters of the state which are used or designated to be protected for fresh water or marine water uses, including water used for drinking, culinary, food processing, agricultural, aquacultural, seafood processing, or industrial purposes; and

(25) "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions; "wetlands" generally includes tundra and swamps, marshes, bogs, and similar areas. (Eff. 3/31/89, Register 109)

Authority:	AS 46.03.020	AS 46.03.110	AS 46.03.296
	AS 46.03.299	AS 46.03.302	AS 46.03.313