

**STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER**

**Administrative Decision
General Permit ADL 109213
Personal Use Water Lines
AS 38.05.850**

Proposed Action

The Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW) will authorize an Over the Counter (OTC) Permit Program to allow for Personal Use Water Lines (PUWL) on state-owned, DMLW-managed lands. To qualify for the PUWL OTC permit, the applicant must meet specific parameters. Permits may last for up to 10 calendar years and require an application fee of \$240 and an annual fee of \$240 due by April 1st of every calendar year that the permit is in effect.

Scope of Decision

The scope of this decision is limited to determining if it is appropriate for DNR to issue OTC permits for personal use water lines for up to a 10-year term as a revocable-at-will special land use permit (SLUP).

Statutory Authority

This decision is being adjudicated pursuant to AS 38.05.035(a) (powers and duties of the director), AS 38.05.850 (permits), 11 AAC 96.010 (uses requiring a permit), 11 AAC 58.210 (special land use permits) and 11 AAC 05.180 (fees) as modified by the current Director's Fee Order.

Background

The purpose of the PUWL OTC permit program is to streamline the permitting process and reduce backlog. Traditionally, DMLW has authorized PUWLs under a land use permit or an easement since PUWLs are not a generally allowed use of state land per 11 AAC 96.020. Processing permits and easements is time consuming for staff, and for low-impact activities like PUWLs, this process is not necessary. DMLW can streamline authorization of PUWLs by allowing individuals to apply for an OTC permits for non-commercial use as long as the PUWL falls within the parameters identified in this decision. If the PUWL falls outside of the parameters identified here, the applicant must apply for a permit or an easement.

For de minimis activities on state land, the division intends to move toward a more streamlined and efficient permitting process. PUWLs fit within the scope of an OTC permit because this type of activity is commonly authorized, has not resulted in conflict, has little associated infrastructure and complexity, is low impact, and can be removed quickly.

Agency Scoping

DNR conducted agency scoping from May 24, 2021, through June 8, 2021. The purpose of scoping was to collect feedback from other agencies on establishing parameters and stipulations for the PUWL OTC permit.

The following agencies received the scoping notice:

- Department of Transportation and Public Facilities (DOT&PF)
- Alaska Department of Fish and Game (ADF&G)
- Department of Environmental Conservation (DEC)
- DNR, Division of Forestry (DOF)
- DNR, Division of Agriculture
- DNR, DMLW Water Section
- DNR, DMLW Mining Section
- US Army Corps of Engineers (USACE)

DMLW received the following feedback:

DEC: If there is a possibility the applicant will use this water for drinking in their dwelling, point applicants to DEC websites with information for private water systems that include potential contaminants to be aware of in surface waters and treatment recommendations. Such websites include: www.dec.alaska.gov/eh/dw/dwp/.

Please observe Alaska DEC Drinking Water regulation 18 AAC 80.015 Well protection, source water protection, and well decommissioning: (a) A person may not (1) cause pollution or contamination to enter a public water system; or (2) create or maintain a condition that has a significant potential to cause or allow the pollution or contamination of a public water system (<https://dec.alaska.gov/eh/dw/regulations/>).

DNR response: Thank you for the feedback. DNR will include DEC drinking water related information in the OTC permit to point applicants to pertinent information. DNR will include stipulations in the permit protecting public water systems.

DNR, DMLW Water Section: Per 11 AAC 93.035, water uses over 500 gallons per day (gpd) need to contact the DNR Water Section regarding an application for a water right or a temporary water use authorization.

DNR Response: Thank you for the feedback. The OTC permit will include information pointing applicants to the Water Section if water use is over 500gpd.

DOT&PF:

1. DNR does not have authority to authorize activities on DOT&PF properties (including within section-line easements where DOT&PF is the permitting authority under 17 AAC 15.031).
2. Activities should not be allowed in conflict with other state uses.
3. At no time may any utility of any kind or catchment system conduit pass through a drainage system culvert nor may a utility impede the cleaning or dressing of ditch lines or other maintenance and operations. In addition, they may not be attached to bridges, overpasses, or other DOT&PF- authorized installations.
4. DOT&PF stresses the importance of tracking, locating, mapping, and marking/signing the existence of these installations to notify others and the public at large, particularly for

buried and submerged systems and to warn against tampering or disruption. In some cases, requiring surveying before installation to ensure that they are on DNR property (and not on private or other state or federal lands) may be necessary.

5. Advise not permitting this activity for longer than 5 years.
6. DOT&PF cautions against allowing these activities on DNR properties where DOT&PF will need to acquire and develop a future airport, highways, public facilities, trails, boardwalks, pipelines, utilities, etc.
7. Conduct agency review for each application.
8. Require check valves or backflow preventers to reduce risk of contamination of the source.

DNR Response: Thank you for the feedback.

1. DNR will only authorize these PUWL OTC permits on DNR lands.
2. DNR has general stipulations in place that will address this comment.
3. DNR will include stipulations in the permit addressing this comment.
4. DNR intends to have these authorizations serialized in our Alaska mapper system; applicants will be required to provide a GPS location of where the activity will take place.
5. In response to #5 and #8, DNR is utilizing the OTC permitting process to streamline de minimis activities on state owned lands. Authorizing these permits for up to a 10-year term is in line with authorizing activities under a Special Land Use Permit (SLUP), 9/9/20 guidance memo from DMLW Director's Office. There is no limit to the number of times a permit may be reissued for an activity, so allowing a 10-year term reduces the burden on staff to adjudicate an authorization every 5 years. Since PUWLs are often in remote locations and tend to not interfere with other uses of state land, DNR does not see a land management issue with authorizing a revokable permit on a 10, rather than 5-year term.
6. These authorizations are revokable at will and can be easily removed from state land if other uses of state land are proposed in the future.
7. Conducting agency review for each OTC permit would not be efficient nor reasonable for the OTC program.
8. DNR will include a stipulation in the permit addressing this comment.

Environmental Considerations

The environmental risks associated with this authorization are minimal and are mitigated by the stipulations of the permit.

Discussion

DMLW has previously issued guidance approving the authorization of PUWLs as revocable-at-will special land use permits (SLUPs). On September 29, 2020, DMLW adopted a memorandum entitled "Delegation and use of SLUPs as a license to use land." This memo provides guidance for the use of easements, permits, and SLUPs, including when to use these different authorization types for different activities. The memo recommends authorizing PUWLs as special land use permits. Given this existing policy, and the Division's desire to streamline authorizing low impact activities, authorizing PUWLs as SLUPs for a 10-year term under the OTC permitting process is warranted.

PUWLs typically take water from a public water source and divert it to a private residence. Under the OTC permit authorized by this decision, permit holders may do this by using a gravity fed system to move water, including an intake structure/holding tank at the water source and non-metal plastic polyethylene piping (polypipe) or hose to move water from the source to their residence. To qualify for an OTC permit, the following parameters must be met:

- Piping must have an inner diameter that is 6 inches or less.
- Total length on state land cannot exceed 1000 linear feet of piping.
- Allow above ground plastic, easily removable storage tanks that are less than 350 gallons and include a protective screen or cover over the tank.
- Are limited to non-metal plastic polypipe or hose only.
- Can be buried if only hand tools are used in accordance with 11 AAC 96.020.
- Can only be gravity fed.
- Prohibit the use of water pumps on state land.
- Cannot hinder access to state land.
- PUWL installation and operation must be conducted in a manner that minimizes disturbances or change of character to land, water, and fish and wildlife resources.
- Prohibit hydroelectric or electric power in this OTC permit.
- Do not require bonding.
- Require an application fee of \$240.00 and an annual fee of \$240.00.
- Must be located on DNR land.

If the PUWL falls outside of the parameters identified here, the applicant must apply for a permit or an easement.

The OTC permit authorizes the installation and use of a PUWL over state land. Applicants will be required to meet the parameters outlined on the PUWL OTC permit application. The permit will convey no interest in state land and is revocable with or without cause. No preference right for use or conveyance of state land is granted or implied by the issuance of this permit. It is not transferable and cannot be assigned, subleased, or rented. The OTC permit is subject to annual land use fees in the amount of \$240.00 due on or before April 1 of each year authorized.

Performance Guaranty and Insurance

Performance guarantees are means to assure performance and to provide ways to pay for corrective action if the grantee fails to comply with the requirements set forth in the permit document. They are also used to protect state land from damage and to make certain that improvements are removed and that the land is returned in a usable condition upon termination of the permit.

Insurance is a means to protect the state from liabilities incurred through the use of state property, or from damage to state property as a result of accidental or catastrophic events. This type of protection is necessary in the event of an accident or negligence that was consequentially connected to activities conducted on state land, and/or if the state is named in a lawsuit as a result of an accident or negligence.

DMLW will not require permit applicants to furnish a performance guaranty or insurance prior to permit issuance due to the limited risk and temporary nature of the activity and the fact that these permits will only be issued for non-commercial use. General Permit stipulations will reserve DMLW's ability to require a performance guaranty or insurance at any time if determined to be in the best interest of the State.

Fees

11 AAC 05.180(d)(1)(C): \$240 application fee

11 AAC 05.180(d)(2)(E): \$240 annual use fee

Fees: \$240 application fee and \$240 annual fee plus \$120 for each additional acre.

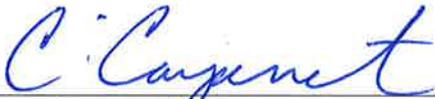
Relevant Fee Regulation(s): 11 AAC 05.180(d)(1)(C), 11 AAC 05.180(d)(2)(E), and Directors Fee Order #3

Term

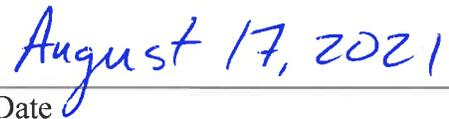
Effective use dates: Up to 10 years

Manager's Decision

Based upon the information received by other agencies, the need to streamline the permitting process, as well as review of relevant planning documents, statutes, and regulations related to this activity, it is the decision of DMLW to issue this General Permit on the condition that all permit stipulations are followed as described in the attached OTC permit. During the period of any OTC permit, an inspection may be conducted at the discretion of the Department of Natural Resources to ensure permit compliance.



Chris Carpeneti
Acting Southeast Regional Manager



Date

A person affected by this decision may appeal it in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to (907) 269-8918, or sent by e-mail to dnr.appeals@alaska.gov. Under 11 AAC 02.030, appeals and requests for reconsideration filed under 11 AAC 02 must be accompanied by the fee established in 11 AAC 05.160(d)(1)(F), which has been set at \$200 under the provisions of 11 AAC 05.160 (a) and (b).

This decision takes effect immediately. If no appeal is filed by the appeal deadline, this decision becomes a final administrative order and decision of the department on the 31st calendar day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to the Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.