



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

**Administrative Decision
Over the Counter Permit ADL 234110
Storage
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 to allow for storage on state-owned, DMLW-managed lands. To qualify for a storage OTC permit, the applicant must meet specific parameters that will be outlined in this decision and the OTC permit. Permits may be issued for up to a 5-year term and are subject to application and annual fees.

Scope of Decision

The scope of this decision is limited to determining if it is appropriate for DNR to issue OTC permits for certain storage activities on state land.

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), and 11 AAC 05.180 (fees) as modified by the current Director's Fee Order.

Background

The purpose of the OTC permit program is to streamline the permitting process and reduce backlog.

Traditionally, DMLW has authorized the storage of equipment, gear, non-occupiable structures, and other items for greater than 14 days under a land use permit (LUP), as the activity is not a generally allowed use of state land per 11 AAC 96.020. LUPs may take up to 30 days to adjudicate, and this process may not be necessary for low-impact activities like many storage permits. DMLW can streamline the authorization of storage activities by allowing applicants to apply for an OTC permit, provided that the storage falls within the parameters identified in this decision. If the storage falls outside of the parameters identified within this decision, then the applicant may apply for a LUP.

For de minimis activities on state land, DMLW intends to move towards a more streamlined and efficient permitting process. Many storage activities 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.

This OTC process is not valid for storage on mining properties such as claims or leases. Any storage associated with an Application for Permits to Mine in Alaska (APMA) will continue to be adjudicated by the DMLW Mining Section and subject to the appropriate fee schedules.

Agency Scoping

DNR conducted agency scoping from May 26, 2022 through June 24, 2022. The purpose of scoping was to collect feedback from other agencies on establishing parameters and stipulations for the storage OTC permit. DNR, DMLW respectfully thanks the agencies that have participated in the creation of this OTC.

The following agencies received the scoping notice:

- Alaska Department of Fish and Game (ADF&G), Access Defense Section:
 - marla.carter@alaska.gov
 - colton.percy@alaska.gov
- Department of Environmental Conservation (DEC):
 - Agency Reviews: dec.agencyreviews@alaska.gov
- Office of History & Archaeology: oha.revcomp@alaska.gov
- DMLW:
 - Materials Regulation: dnr.materials.regulation@alaska.gov
 - Mining: dnr.fbx.mining@alaska.gov
 - SAIL: dnr.dmlw.SAIL@alaska.gov

DMLW received the following feedback:

DNR SAIL: SAIL gave the following feedback-

- Suggests a maximum of 55 gallons of fuel be stored under the OTC as this is the reportable amount per Department of Environmental Conservation (DEC) regulation, however, larger volumes can be discussed. All fuel must be stored at least 100 feet from any waterbody.

DNR Lands Response: Standard permit stipulations will require all fuel to be stored at least 100 feet from any waterbody. The OTC criteria limits fuel storage to no more than 55 gallons.

- Recommends the OTC program not include storage which is authorized by separate DMLW entities, such as the State Pipeline Coordinators Section (SPCS).

DNR Lands Response: The OTC program is intended to reduce adjudication times for permits authorized by the DMLW Lands Section. The OTC permits will only be used to authorize storage that would otherwise be authorized by an LUP by DMLW. DMLW will not be authorizing activities that are under the purview of other sections or divisions within DNR.

- Recommends the OTC permit includes standard storage stipulations such as spill notification, fuel storage, and refueling guidance.

DNR Lands Response: Noted. Stipulations addressing those issues will be included in the permit.

- Recommend not excluding OTC permits from navigable waters within federal Conservation System Units (CSU).

DNR Lands Response: The OTC permit program is for state owned, DMLW managed lands. As there is the potential for controversy by issuing OTC permits for use of state shorelands (submerged lands) within navigable waters within CSUs, DMLW proposes to not issue storage OTC permits within state shorelands within CSUs at this time.

DEC-Drinking Water Program: Ask that if a project is located near an active registered Public Water Source (PWS) that the applicant adhere to the “Recommendations for General Project Activities near a Public Water Source”.

DNR Lands Response: The storage OTC permit will have a stipulation with a link to the “Recommendations for General Project Activities Near a Public Water Source.”

ADF&G: ADF&G provided the following comments:

- Recommends that photos with date stamps of storage site(s) be provided upon permit issuance, expiration, and before permit renewal(s). Requirements for site restoration following disturbance should be added to the permit.

DNR Lands Response: As the storage which would take place under the OTC program is low impact, DMLW is not requiring photos at issuance, expiration, or before permits renewal at this time and is not requiring a closure report. DMLW reserves the right to require photos documenting site remediation prior to permit closure if DMLW deems them to be necessary. Permit stipulations will require the permittee to remove all personal property and return the site to a condition acceptable to DMLW.

- Storage space authorized under the OTC should not be rented out to third parties.

DNR Lands Response: The storage OTC permit may not be transferred or assigned.

- Storage sites should be protected from hazardous material leaks. Batteries should be removed or need to be contained in a box or placed over absorbent material as they are prone to freezing and leaking during the winter months. Containment should be placed around any fuel-operated vessels in case of leakage from the stored vessel. Storage of equipment should be located at least 100ft from any waterbody. Maximum length of fuel storage should be explicitly stated rather than “seasonal, temporary, or removed at end of use.”

DNR Lands Response: Standard stipulations require batteries be stored in adequate secondary containment. Stipulations also require stored vessels to be completely drained of fuel during the off-season with no fuel stored on board. During seasonal use, a maximum of 12 gallons is allowed to be stored within the boat or immediately landward. Standard permit stipulations require reporting if any fuel spills into water.

Stored equipment will be required to have containment, including drip pans, per stipulations. Fuel storage authorized under the OTC will be temporary and must be removed at the end of seasonal use or on an annual basis. It is anticipated that most fuel storage needs will be for the summer season, however, there may be winter fuel storage needs which are also low impact and appropriate for the OTC. By limiting fuel storage to seasonal use only, whatever season it is, DMLW is maximizing the potential of the storage OTC.

- Storage locations should be clearly labeled with the owner, contact information, and permit number.

DNR Lands Response: Permittees will be required to post a placard using a DMLW provided template containing the requested information.

- Storage sites should be maintained in a manner that prevents attracting bears and other wildlife. Sites should be inspected periodically to ensure degradation of storage material(s) or their containers/coverings (e.g., tarps, plastic covers, buildings, etc.) has not occurred and is not becoming a pollutant. Other than fuel, ADF&G does not recommend authorizing the storage of hazardous materials such as waste, illegal materials, explosives, live animals or obvious trash or materials that break down (i.e. Styrofoam).

DNR Lands Response: Standard permit stipulations require that authorized sites be maintained in a neat, clean condition with nothing stored which may become an attractant to wildlife. All waste must be transported to a DEC approved facility. DMLW staff will review the OTC permit application, and if the proposed storage appears inappropriate for the OTC process, such as the items described above, DNR will require the applicant to pursue an LUP and reject the OTC application.

- ADF&G recommends the OTC not authorize brush clearing beyond what is allowed for trail clearing under the Generally Allowed Uses of State Land (11 AAC 96.020).

DNR Lands Response: Stand permit stipulations require the permittee to limit brush clearing to what is absolutely necessary without destruction of the vegetative mat.

- Storage sites should not impede public access.

DNR Lands Response: Standard stipulations require that public use of and access to state lands may not be impeded by this authorization.

- If the land is designated as “Habitat” in an area plan, the permit should go out for agency review to ensure there wouldn’t be impacts on fish and wildlife.

DNR Lands Response: The purpose of the OTC process is to streamline the authorization of storage activities which pose little risk to state interests, including

fish and wildlife resources. OTC permits would only be issued for storage activities which are not likely to create significant wildlife or habitat concerns. If a storage activity does have the potential to impact fish and wildlife, regardless of the area plan, the applicant will be instructed to pursue a LUP. Land classification and agency review are part of the LUP adjudication process.

Environmental Considerations

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

Discussion

To qualify for an OTC storage permit, the following parameters must be met:

- The OTC permit is only valid for storage on general state-owned land. It does not apply to private land, state parks, nor to land owned or managed by other state agencies such as the University of Alaska, Alaska Mental Health Trust, Department of Transportation and Public Facilities, or the Alaska Railroad. Other exceptions may occur because of special conditions in a state land use plan or management plan, or by a “special use land” designation under 11 AAC 96.014.
- Fuel storage must be temporary and may not exceed 55 gallons in either a single container or a combination of containers. No other hazardous materials are permitted to be stored under the OTC. To be temporary fuel storage, the container(s) must be removed at the end of the seasonally authorized period (i.e. if fuel is stored during the summer it must be removed before winter). No year-round fuel storage will be permitted.
- Structures permitted under the OTC shall not be inhabitable. Cargo trailers are permissible, but campers or other occupiable structures do not qualify for the OTC permit. Any structure that can be occupied will continue to be adjudicated by the DMLW Mining Section and subject to the appropriate fee schedules
- OTC permits will not be issued in areas where the Area Plan or Management Plan prohibits storage or limits the duration of storage activities.

Applicants will be required to meet the parameters outlined on the OTC storage permit application. If the nature of the storage falls outside of the parameters, the applicant must apply for a land use permit.

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.

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 insurance or performance guarantees prior to permit issuance due to the limited risk of the activity. 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

As the Storage OTC would allow for a multi-year term, with seasonal storage of fuel, there is increased staff time involved in the authorization. As such a \$240 application fee is due with the application per 11 AAC 05.180 (d)(1)(C) and Directors Fee Order #3.

During the Permits Meeting on July 21, 2020, the three Regions agreed to explore how we charge for storage. Presently we are using the fee regulation 11 AAC 05.180(d)(2)(F) "for commercial use of a structure or facility not covered in (G)...such as...equipment staging area, \$600 for the first acre, plus \$240 for each additional acre" (as adjusted by Director's Fee Order No. 3). As currently applied, the same fee (\$600 annually) is asserted for storing any gear.

To ensure consistent application of the appropriate fee for storage, and to accommodate smaller caches of gear with a more economical rate, we propose to use the following fees for storage on state-owned lands:

For de minimis storage: Per 11 AAC 05.180(d)(2)(K) and Directors Fee Order #3, the fee for activities which may interfere with public use which are not covered by sections (B)-(J) of AS 38.05.850 (d)(2), is \$240 annually.

The criteria for de minimis storage as defined in this decision is as follows:

- Storage does not exceed a footprint of 10 ftx10 ft or 100 sq ft.
- Vessels to include boats, kayaks, canoes, etc. which do not exceed the 100 sq ft footprint defined above.
 - For winter storage, the vessel needs to be pulled ashore, above Ordinary High Water (OHW), and stored in a manner that the vessel will stay intact and hold up to the elements.
- 55 gallon lockable barrels for storage of gear and equipment within 100 sq ft footprint.
- Tent platforms/tree stands, any wooden platform that does not have sides or a roof
- Enclosed cargo trailer or small shed that cannot be used for habitation.
- Fuel storage must be temporary and may not exceed 55 gallons in either a single container or a combination of containers. No other hazardous materials may be stored under the OTC.

Term

Up to five years

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 storage OTC permits on the condition that the proposed storage meets the criteria and all permit stipulations are followed as described in the attached OTC permit. During the term of any OTC permit, an inspection may be conducted at the discretion of DNR to ensure permit compliance. 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.



Ben White, Natural Resource Manager 3
Permit Policy Team Lead

October 13, 2022

Date

An eligible person affected by this decision may appeal to the DNR Commissioner per AS 44.37.011 and 11 AAC 02. Any appeal must be received within twenty (20) calendar days after issuance of this decision under 11 AAC 02.040. An eligible person must first appeal a decision to the Commissioner before seeking relief in superior court. The Alaska Court System establishes its own rules for timely appealing final administrative orders and decisions of the department.

Appeals may be mailed or hand-delivered to the DNR Commissioner's Office, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska, 99501; or faxed to (907)-269-8918; or sent by electronic mail to dnr.appeals@alaska.gov. Appeals must be accompanied by the fee established in 11 AAC 05.160(d)(6), which has been set at \$200 under the provisions of 11 AAC 05.160 (a)-(b). A .pdf or print copy of 11 AAC 02 may be obtained by contacting Erik Fossum via phone at (907) 269-8429, via email at erik.fossum@alaska.gov, and is also available on the department's website at <https://dnr.alaska.gov/mlw/pdf/DNR-11-AAC-02.pdf>.