Aleutians East Borough
Planning Commission Meeting

Meeting: Wednesday, November 21, 2015 – 1:00 p.m.

Roll Call & Establishment of a Quorum

Adoption of Agenda

Agenda

PLANNING COMMISSON MEETING

(packet available on website www.aleutianseast.org)

Date: Wednesday, January 21, 2015
Time: Meeting: 1:00 p.m.
Location: By Teleconference in the locations below:

King Cove AEB office	Akutan city office
Sand Point – AEB office	Cold Bay city office - library
Nelson Lagoon Corp. office	Anchorage – 3380 C Street
False Pass city office	

All communities will be provided with conference calling information for the designated location in your community. Public comments on agenda items will take place immediately after the adoption of the agenda. Additional public comments can be made at the end of the meeting.

PLANNING COMMISSION MEETING AGENDA

1. Roll Call & Establishment of Quorum.

2. Adoption of Agenda

3. Community Roll Call and Public Comment on Agenda Items

4. Minutes
   - March 5, 2014

5. Resolutions
   - Resolution 15-01, Approving the Aleutians East Borough Title 40 Land Use Permit Code Enforcement Manual

6. Old Business
   - None

7. New Business
   - None

8. Reports and Updates

9. Planning Commission Comments

10. Public Comments

11. Next Meeting Date and Time

12. Adjournment

Community Roll Call and Public Comment on Agenda Items

Minutes

Aleutians East Borough
Planning Commission Meeting
March 5, 2014
3:00 P.M.

CALL TO ORDER
The March 5, 2014 Planning Commission meeting was called to order by Chairman Emrich at 3:00 p.m. by teleconference in each community.

ROLL CALL

Chair, Chris Emrich	Present
Chris Babcock	Present
Robert Gould	Present
James Brown	Present
Amy Foster	Present
Josephine Borenin-Shangin	Present
Justine Gundersen	Present

A quorum was present.

Staff Present:
Anne Bailey, Community Development Coordinator
Tina Anderson, Clerk
Susan Harvey, Land Use Permit Project Consultant
Roxann Newman, Finance Director

Adoption of Agenda:
MOTION
Gundersen moved to adopt the agenda and second by Brown. Hearing no objections the agenda was ADOPTED AS PRESENTED.

Community Roll Call and Public Comment on Agenda Items:
All communities were participating. There were no public comments on agenda items.

Minutes, December 18, 2013:
MOTION
Gundersen moved to approve the December 18, 2013 Minutes and second by Brown. There were no objections MOTION PASSED.

RESOLUTIONS

Resolution 14-03, approving revisions to the Onshore Seafood Processing, Large Mining Operations, and Oil & Gas Permits for the Land Use Permitting System:

MOTION
Babcock moved to adopt Resolution 14-03 and second by Foster.

DISCUSSION
None

ROLL CALL
Brown-yes, Gundersen-yes, Babcock-yes, Shangin-yes, Foster-yes, Emrich-yes, Gould-yes.
MOTION PASSED.

Resolution 14-04, Approving the Complaint Form for the Land Use Permitting System:
MOTION
Babcock moved to adopt Resolution 14-04 and second by Shangin.

ROLL CALL
Gould-yes, Foster-yes, Shangin-yes, Babcock-yes, Emrich-yes, Brown-yes, Gundersen-yes.
MOTION PASSED.

PLANNING COMMISSION COMMENTS

Gundersen noted that Bailey caught a signature on elevation permit which should say Planning Commission signature, not Administrator.

PUBLIC COMMENTS None

NEXT MEETING DATE AND TIME
Tentative date May 21.

ADJOURNMENT
MOTION
Gundersen moved to adjourn and second by Brown. Meeting adjourned at 4:39 p.m.

_____ _____

Chairman Date Clerk Dat

Resolutions

AGENDA STATEMENT

January 6, 2015

To: The Aleutians East Borough Planning Commission
From: Anne Bailey

Re: Resolution 15-01 of the Aleutians East Borough Planning Commission Approving the Aleutians East Borough Title 40 Land Use Permit Code Enforcement Manual

The Aleutians East Borough (AEB) is creating a Resource Development Land Use Permitting System to Protect Coastal Resources in the AEB Resource Development District Project (Land Use Permitting System), funded with qualified Outer Continental Shelf oil and gas revenues from the Coastal Impact Assistance Program (CIAP), administered by the Fish and Wildlife Service and the U.S. Department of the Interior. The purpose of this project is to create and implement a permitting system to regulate resource development activities in the AEB coastal zone and maximize resource development opportunities while protecting coastal resources through an organized, efficient permit program consistent with the goals and objectives of the AEB Code.

Task 7 is to develop a Standard Operating Procedure (SOP) Manual (entitled "AEB Title 40 Land Use Permit Code Enforcement Manual") for conducting field inspections and record audits to ensure compliance with the AEB Municipal Code and AEB's Land Use Permits, and for conducting enforcement action when violations are identified. This manual is intended for use by the AEB Staff, the AEB Planning Commission, and the AEB Assembly and provides specific instruction for Borough officials to use to enforce the AEBMC, Title 40 (Planning, Platting, and Land Use). This manual is specific to the enforcement of Land Use Permitting and is not intended for enforcement of all other AEBMC requirements; however, some general procedures and steps described in this manual may be useful to Borough officials when carrying out investigations, inspections, and code enforcement activities for matters not related to AEB's Land Use Permit compliance program.

The AEB Planning Commission held a Planning Commission Workshop on December 16, 2014 to discuss the draft Enforcement Manual. Revisions were recommended and have been addressed as outlined in the attached document entitled "AEB Resource Development Permitting System Task 7 (AEB Title 40 Land Use Permit Code Enforcement Manual)."

Staff Recommendation: Approve Resolution 15-01 of the Aleutians East Borough Planning Commission Approving the Aleutians East Borough Title 40 Land Use Permit Code Enforcement Manual.

Changes Requested by the AEB Planning Commission on December 16, 2014.

1. Overall: Removed the temporary yellow highlighting on the January 2015 approval date, since this is the final version on chapter/section references.

2. Section 1.1. Changed the term “finite” to limited.

3. Section 1.3. Revised to provide further clarity on how to distinguish between high and medium priority violation and to provide a concrete set of hypotheticals.

4. Section 1.6. Added a new section to explain AEB’s procedures for issuing enforcement paperwork by email and certified mail.

5. Section 7.1. Revised the Complaint Resolution Flowchart. This change shows the second step in the process is to determine whether AEB has primary jurisdiction to resolve the complaint. If not, AEB will refer the complaint to the state or federal agency with primary jurisdiction and the resources to handle the complaint.

6. Section 7.1. Changed the order of Steps 2 & 3 to move Step 3 to Step 2. A new paragraph was added at the end of Step 2 to state:

   If the potential violation relates only to the AEB Borough Code, where the Borough has primary and sole jurisdiction, the Borough will take the lead in processing the complaint. If the Borough does not have jurisdiction or primary jurisdiction (meaning the potential violation not only violates Borough Code but also violates state and/or federal laws and regulations), it will be AEB’s practice to refer those complaints for resolution by the state and/or federal agency with primary jurisdiction. State and/or federal agencies have more resources to take the lead. However, if the state and/or federal agencies do not resolve the complaint in a timely or satisfactory manner, and the AEB has jurisdiction, the AEB may opt to pursue complaint resolution later. There may be cases where further investigation is needed to make the jurisdictional determination, in that case, the AEB should pursue its investigation until the circumstances of the potential violation are understood and jurisdiction can be determined.

7. Section 8.1, Step 2. A new paragraph was added at the end of Step 2 to state:

   If the potential violation relates only to the AEB Borough Code, where the Borough has primary and sole jurisdiction, the Borough will take the lead in processing the complaint. If the Borough does not have jurisdiction or primary jurisdiction (meaning the potential violation not only violates Borough Code but also violates state and/or federal laws and regulations), it will be AEB’s practice to refer those complaints for resolution by the state and/or federal agency with primary jurisdiction. State and/or federal agencies have more resources to take the lead. However, if the state and/or federal agencies do not resolve the complaint in a timely or satisfactory manner, and the AEB has jurisdiction, the AEB may opt to pursue complaint resolution later. There may be cases where further investigation is needed to make the jurisdictional determination, in that case, the AEB should pursue its investigation until the circumstances of the potential violation are understood and jurisdiction can be determined.

8. All Table of Contents: Updated with new pagination.

9. Appendix 5: Fixed auto renumbering error.

RESOLUTION 15-01

A RESOLUTION OF THE ALEUTIANS EAST BOROUGH PLANNING COMMISSION APPROVING THE ALEUTIANS EAST BOROUGH TITLE 40 LAND USE PERMIT CODE ENFORCEMENT MANUAL

WHEREAS, the Aleutian East Borough (AEB) is creating a Resource Development Land Use Permitting System to Protect Coastal Resources in the AEB Resource Development District Project (Land Use Permitting System), funded with qualified Outer Continental Shelf oil and gas revenues from the Coastal Impact Assistance Program (CIAP), administered by the Fish and Wildlife Service and the U.S. Department of the Interior; and

WHEREAS, the purpose of this project is to create and implement a permitting system to regulate resource development activities in the AEB coastal zone and maximize resource development opportunities while protecting coastal resources through an organized, efficient permit program consistent with the goals and objectives of the AEB Code; and

WHEREAS, one of the project tasks is to develop a Standard Operating Procedure (SOP) Manual (entitled "AEB Title 40 Land Use Permit Code Enforcement Manual") for conducting field inspections and record audits to ensure compliance with the AEB Municipal Code and AEB's Land Use Permits, and for conducting enforcement action when violations are identified; and

WHEREAS, the AEB Planning Commission held Planning Commission Workshop on December 16, 2014 wherein it discussed the AEB Title 40 Land Use Permit Code Enforcement Manual.

NOW THEREFORE BE IT RESOLVED that the Aleutians East Borough Planning Commission approves the AEB Title 40 Land Use Permit Code Enforcement Manual.

PASSED AND APPROVED by the Aleutians East Borough Planning Commission on this 21st day of January 2015.

_____

Chris Emrich, Chair

ATTEST:

_____

Tina Anderson, Clerk

ALEUTIANS EAST BOROUGH

TITLE 40 LAND USE PERMIT CODE ENFORCEMENT MANUAL

Authority: Aleutians East Borough Municipal Code Title 40

Standard Operating Procedure	
Effective Date:	January 2015
Revision Date(s):	
Revision No:	

Purpose:

In 2013-2014, the Aleutians East Borough (AEB), with grant funds from the Coastal Impact Assistance Program, developed a Resource Development Land Use Permitting System to oversee responsible resource use and extraction opportunities that will create local jobs and revenue while protecting community values and the environment. The AEB Municipal Code (AEBMC) was revised to include the new Resource Development Land Use Permitting System.

Effective January 1, 2015, Title 40 of the AEBMC requires a land use permit to be obtained for the following list of land uses within the Aleutians East Borough (AEB) boundaries, except for within the AEB cities where land use planning authority has been delegated to the city.

1. Commercial Recreation;
2. Research;
3. Sand, Gravel, and Rock Mining;
4. Mineral & Coal Exploration & Small Mining Operations;
5. Large Mining Operations;
6. Oil & Gas;
7. Offshore & Direct Marketing Seafood Processing; and,
8. Onshore Seafood Processing.

Task 7 of the grant provided funding to develop a Standard Operating Procedure (SOP) Manual for conducting field inspections and record audits to ensure compliance with the AEBMC and AEB's Land Use Permits, and for conducting enforcement action when violations are identified. This manual is simply titled "AEB's Title 40 Land Use Permit Code Enforcement Manual."

This manual is intended for use by the AEB Staff, the AEB Planning Commission, and the AEB Assembly. It provides instruction on the deliberative process, and is not intended for distribution outside of the AEB. Any request for a copy of this manual should be submitted in writing to the Borough Clerk as a formal records request.

This manual provides specific instruction for Borough officials to use to enforce the AEBMC, Title 40 (Planning, Platting, and Land Use). This manual is specific to the enforcement of Land Use Permitting and is not intended for enforcement of all other AEBMC requirements; however, some general procedures and steps described in this manual may be useful to Borough officials when carrying out investigations, inspections, and code enforcement activities for matters not related to AEB's Land Use Permit compliance program.

Revision History:

This is the first version of the AEB Title 40 Land Use Permit Code Enforcement Manual.

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1. Compliance with AEB Municipal Code

The Aleutians East Borough Municipal Code, Title 40, Section 40.01.050 (AEBMC § 40.01.050) requires compliance with the AEBMC's land use permitting provisions:

A. *Permittees must comply with all terms, conditions, and permit stipulations included in an approved permit.*

B. *Permittee must comply with all local, state, and federal laws, regulations, rules and orders, and requirements and stipulations.*

C. *Any use that does not comply with the applicable provisions of a permit, approval, or other authorization issued under this Code is a violation of this Code.*

D. *Permits are revocable immediately upon violation of any of its terms, conditions, and stipulations or upon failure to comply with any applicable laws, statutes, or regulations.*

E. *Any person may bring to the attention of the Administrator suspected violation of this Code. The complaint must be submitted to the Borough in writing using the Borough Land Use Complaint Form.*

F. *The Administrator is authorized to investigate any credible complaints in order to ensure compliance with this Code. The Administrator, or his authorized representative, has the right to enter and inspect or investigate land uses approved under a Borough permit or approval for compliance with that approval or violations of this Code.*

G. *After a violation has been discovered, investigated, and verified, the Administrator will notify by written finding the person responsible for the violation (Notice of Violation) and the property owner by personal notice, certified mail and/or notice posted on the site of the violation. A copy of the Notice of Violation will concurrently be provided to the Assembly and Planning Commission members.*

H. *The Notice of Violation will specify the violation(s) and may revoke, suspend, or modify any permit or approval that is in conflict with this Code or any applicable state or federal requirement and may specify the range of fines or penalties to be imposed and shall direct the person to cease the violation, or appeal the finding within 10 days after receipt, mailing or posting of the notice.*

I. *The Administrator will provide an update on all Notices of Violation at each scheduled Planning Commission and Assembly meeting.*

J. *The Administrator may elevate a compliance decision to the Planning Commission to decide. The Planning Commission may elevate a compliance decision to the Assembly to decide.*

K. *The Administrator may approve continued operation under a Compliance Plan until the compliance violation is remedied or require the use to cease, or may elevate this decision to the Planning Commission or Assembly to decide.*

L. *Application fees may be collected by the Administrator pursuant to Chapter 40.01.050.*

M. *Penalties for non-compliance may be assessed by the Administrator pursuant to Chapter 1.24, which pertains to penalties.*

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This Standard Operating Procedure (SOP) Manual provides instructions for conducting field inspections and record audits to ensure compliance with AEB's Municipal Code and AEB's Land Use Permits, and for conducting enforcement action when violations are verified.

1.1. Overall Compliance Philosophy & Policy

AEB's overall compliance philosophy and policy is to administer its code enforcement program in a professional, cooperative, solution-oriented, and commonsense manner. Borough officials should endeavor to continually educate individuals, governments, organizations, and businesses subject to AEB's Land Use Permitting Program to ensure they understand their responsibilities, and to provide compliance assistance.

Enforcement action can be very costly. The AEB has limited resources to implement code enforcement. Therefore, whenever possible, Borough officials should first work professionally and cooperatively with the Permittee or Unpermitted Entity to solve most problems that arise. This is especially true in the early years of the permitting program where those subject to the permit requirements may need education and assistance to be successful. However, in the case of a high priority violation (that presents an **immediate or imminent** risk to health, safety, or to the environment), a Borough official may need to resort to immediate court action to abate the violation or go directly to issuing a Notice of Violation.

The term "Permittee" is used throughout this SOP Manual to refer to AEB Land Use Permit holders.

The term "Unpermitted Entity" is used throughout this SOP Manual to refer to individuals, governments, organizations, and businesses, who require an AEB Land Use Permit, but have not obtained one.

The term "Borough" is used throughout this SOP Manual to generally refer to the Aleutians East Borough or AEB. The term "Borough official" means staff that work for the Borough, including the AEB Administrator. Where the AEB Administrator must take action, the "AEB Administrator" title is used.
AEB's overall compliance philosophy and policy promotes the swift resolution of complaints and potential violations that are either identified by (or known to) Borough officials, or reported by a Permittee or Unpermitted Entity. This approach will allow the AEB to focus its efforts and finite resources on improving the quality of life for its current and future residents, businesses, and visitors, while promoting the health, safety, and wellbeing of those who call the Borough home.

Unless the AEB has information to show otherwise, it should start from the assumption that Permittees and Unpermitted Entities may not be aware of their actual or potential violations, and will most likely make a prompt and good faith effort to address the problem. In most cases, the AEB should give the Permittee or Unpermitted Entity the opportunity to remedy the violation, to avoid the cost and complexity of a formal enforcement action. Borough officials should proceed on the basis that notifying the Permittee or Unpermitted Entity of the potential or alleged violation will likely produce a speedy resolution. However, there may be cases where expedient resolution cannot be achieved, or a high-consequence health, safety or enviromental violation may require immediate abatement, such as through a court injunction. In those cases, the AEB has the authority to abate the violation, initiate formal enforcement action, and assess penalties to remedy the violation.

The AEB's code enforcement activities should be commensurate to the severity, impact, frequency, and characteristics of the violation. Borough officials should consider the Permittee's or Unpermitted Entity's past performance and compliance history when making enforcement action determinations.

Code enforcement should be timely, predictable, and designed to achieve compliance. Ultimately, violations must be remedied; pollution must end; and, damages must be repaired and resolved. In all cases, Permittees and Unpermitted Entities should be held financially responsible for remedying compliance violations, and should complete the remedy on a schedule approved by the AEB.

No Permittee or Unpermitted Entity should profit from its noncompliance. Noncompliant Permittees and Unpermitted Entities should not gain a competitive advantage over a similarly situated business that is complying

with the AEBMC. Borough officials must treat all Permittees and Unpermitted Entities equitably and fairly. Therefore, penalties may be required even in cases where rapid and voluntary compliance is achieved, to ensure profit or competitive advantage was not gained by during the violation.

This SOP Manual establishes standardized procedures to guide the AEB to carry out official code enforcement actions when such instances arise. To promote consistent and equitable treatment, the Assembly and Planning Commission have approved fee and penalty schedules that provide instruction to the AEB Administrator regarding the maximum penalty that may be levied for each Land Use Permit violation type.

The AEB Administrator has the authority to use discretion when levying the ultimate penalty amount, using sound judgment based on the severity of violation. The AEB Administrator has authority to initiate and oversee enforcement actions as necessary. However, the AEB Administrator may instead elevate the enforcement case to the Planning Commission for their action. Likewise the Planning Commission may implement enforcement or elevate the decision to the Assembly.

The AEB Administrator may consult with the Mayor, Planning Commission and/or Assembly about general enforcement policy matters and philosphy, to ensure he or she correctly understands how to implement Borough policy and procedure (especially in the case of a new AEB Administrator). The Planning Commission and Assembly are also free to receive informational reports, and copies of final decisions made by the AEB Administrator regarding land use permit enforcement activities so they can serve their oversight and legislative functions.

However, the AEB Administrator *should not* consult with the Mayor, Planning Commission and/or Assembly when making any specific enforcement decision, and instead should only consult with the AEB Attorney. This precaution must be taken to avoid tainting any appeal of the AEB Administrator's decision to the Planning Commission, or possibly to the Assembly (sitting as the Board of Adjustment). Due process requires these bodies remain impartial appeal arbiters. Any pre-appeal determination regarding the nature and extent of an alleged violation could taint any subsequent appeal by violating the Appellant's due process rights. For more information regarding this requirement, see Section 13.4. of this manual.

1.2. Geographical Limitations on AEB's Enforcement Authority

AEBMC § 40.01.050(F) authorizes the AEB Administrator, or another authorized Borough official delegated by the AEB Administrator, to investigate any credible complaints to ensure compliance with the AEBMC, and to enter, inspect, or investigate land uses approved under a Borough permit or approval for compliance.

Title 40's geographic scope is defined at (AEBMC § 40.01.020):

> *This title applies to all private, state, federal, Borough, and municipally owned lands, tidelands, submerged lands and waters within the Borough's boundaries. This title does not apply to federally restricted town site lots or allotments unless allowed by federal law. This title does not apply to any lands within the municipal boundaries of Akutan, Cold Bay, King Cove, False Pass and Sand Point; planning, platting and land use is administered by these municipalities under Sec. 45.05.030, which governs Planning, Platting and Land Use Regulations within the Borough.*

Because the AEB's authority is limited to only those areas described, it is important for Borough officials to first verify the location and nature of the potential or alleged violation and ensure it relates to the AEB's geographic scope of authority. The Borough may need to refer the matter to a city, the Bureau of Indian Affairs, or another state or federal agency if it falls outside the Borough's enforcement authority.

1.3. Enforcement Priorities

The AEB Planning Commission and Assembly determine the Borough's enforcement priorities. The AEB Administrator, or the Administrator's designee, and other Borough officials will implement enforcement. The AEB

Attorney and experts may be assigned to assist depending on case complexity, AEB staffing resources, and the degree of specialized expertise needed.

Enforcement priorities are divided into high, medium, and low categories to aid Borough Staff in determining the urgency and severity of the violation and to provide guidance on an appropriate course of action.

High priority violations present an immediate or imminent risk to health, safety, or the environment and warrant immediate enforcement action to abate the violation.

For example, a high priority violation might potentially involve:

- Toxic or harmful waste discharged into a drinking or fish spawning water resource;
- A temporary structure on the verge of collapse that may pose a danger to children that might attempt to access the structure;
- Hazardous waste stored in leaking, corroded barrels, where the waste is migrating towards a sensitive human or environmental receptor that is likely to suffer adverse health or environmental impacts if not abated; or
- Failure to install required air pollution controls near a populated area, where increased air pollutants may result in adverse health consequences for nearby residents.

Medium and low priority violations do not present an immediate or imminent risk to health, safety, or the environment, and provide an opportunity to use compliance assistance methods to attempt to remedy the violation without the complexity and cost of a formal enforcement action.

For example, a medium priority violation might potentially involve:

- Toxic or harmful waste dumped on land, where the waste is contained and is not an imminent threat human health or sensitive environmental receptors, but requires cleanup;
- A temporary structure that is no longer permitted, and requires removal;
- Hazardous waste stored in barrels that have been improperly abandoned (but not leaking) that requires removal and proper disposal; or
- Failure to install required air pollution controls identified at a pre-startup inspection; however, the combustion equipment has not yet been put into full time operation, and poses no imminent health threat.

While the Borough may attempt compliance assistance, these methods may not always be successful or further investigation may reveal the violation was in fact of high priority. In these cases, immediate enforcement action may be required to abate the violation.

In accordance with the fee and penalty schedules approved by the Planning Commission and Assembly, failure to submit a land use permit has its own unique classification. The Planning Commission and Assembly instructed Borough officials to ensure permit applications were submitted in a timely manner, and to assess a penalty to those who do not submit a permit or a timely permit application. In this way, companies that do apply for permits will not suffer a competitive disadvantage over companies that do not comply.

High, medium, and low priority violation descriptions are provided below for reference. The AEB Administrator, Planning Commission, and Assembly have the authority and discretion to determine which category the violation actually falls into based on the specific case and supporting evidence. These descriptions are provided as guidance and are not intended to limit enforcement of a medium or low priority violation if the circumstances support it. The purpose of defining medium and low priority violations is to identify the types of violations that might be most efficiently handled through a compliance assistance process; however, the Borough is under no obligation to implement compliance assistance if the circumstances warrant moving directly to enforcement and penalty assessment.

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High Priority Violations: This class of violations is reserved for those actions or conditions that present an **immediate or imminent** risk to health, safety, or to the environment. The AEBMC § 40.01.010 lists priorities for the AEB Land Use Permitting Program. Five of the highest priority elements are listed below.

- Protection of public health, safety, morals, and general welfare, as well as the historical, economic, social, and cultural interest of the Borough's residents;
- Protection of fish resources and continuation of a productive commercial fishery;
- Protection of subsistence resources;
- Identification, avoidance, and mitigation of the negative effects of development; and,
- Protection of human health and the environment by prohibiting adverse impacts of industrial pollution.

In sum, any immediate or imminent risk to public health, safety, morals, and general welfare, fish resources, subsistence resources is a High Priority Violation.

The Fee & Penalty Schedules approved by the Assembly assigns higher penalty amounts to violations that are intentional acts or omissions, or the result of gross negligence.

Present, immediate, and real risks to public health and safety, or detrimental impacts to the natural environment must be immediately abated. This may include immediate initiation of formal enforcement action proceedings. If the violation presents immediate danger or emergency, the matter should be brought to the attention of the AEB Attorney to determine whether the Borough should petition the court for injunctive relief (a court order to halt the violation).

Medium Priority Violations: This class of violations is reserved for those actions or conditions that **do not present immediate or imminent** risks to health, safety, or to the environment, but nonetheless could at some point result in some adverse effect upon the Borough and its residents. Many of the potential violations identified in AEBMC § 40.01.050 and AEBMC § 40.01.010 may be classified Medium Priority. For example, a Medium Priority Violation may occur for:

- Noncompliance with the terms, conditions, and permit stipulations included in an approved permit;
- Noncompliance with local, state, and federal laws, regulations, rules and orders, and requirements and stipulations;
- Noncompliance with the goals, objectives and policies of the Borough's Comprehensive Plan;
- Adverse impacts on the environment, natural resources, neighboring properties and communities, and on public infrastructure; and,
- Adverse impacts on subsistence and other lifestyles that exist within communities.

In sum, violations that do not present immediate or imminent risk to public health, safety, morals, and general welfare, fish resources, subsistence resources are Medium Priority Violations.

While, Medium Priority Violations do not present an immediate threat to health, safety, or the environment; however, the Borough's intervention should nonetheless be prompt to remedy the violation.

Low Priority Violations ["Minor Infractions"]: All other violations that are innocuous in nature, and present no threat to health, safety, or the environment, fall within the Low Priority Violation category. It is the Borough's policy to take action on these complaints as resources allow, but to focus its efforts and resources on resolving High and Medium Priority Violations when they exist. An example of a low priority violation may be operations

generating noise in the evening disturbing residential sleep. This problem would likely be resolved by a phone call from a Borough Official to the Permittee, who may not be aware of the concern, and immediately resolved.

1.4. AEB Code Enforcement Official Code of Ethics

Borough officials, and members of the Planning Commission and Assembly, should conduct their duties in a manner that recognizes and respects the legal rights of any suspected or alleged violators under the AEBMC, and any other applicable provisions of state or federal law.

Borough officials, and members of the Planning Commission and Assembly, must:

- Adhere to the letter of the law, and act in accordance with the spirit and intent of the law.
- Execute their official duties with consistency, fairness, integrity, and honor.
- Obey the very laws they are charged with enforcing to provide a good example to the individuals whose permit uses they are charged with monitoring.
- Be professional and courteous at all times.
- Be non-confrontational and show a high level of respect for complainants and violators alike.
- Maintain in confidence any information received of a confidential nature, including the name or names of complainants, unless compelled to do so by law.
- Avoid any conduct that might bring discredit upon the Borough, including the making of statements, boasts, or promises that might create even the appearance of impropriety with respect to one's official duties.
- Strive at all times to demonstrate a commitment to impartial and professional service to the Borough and its people. This can only be achieved if code enforcement officials do not permit personal feelings, prejudices, animosities, familial ties, or friendships to affect or otherwise influence official decision-making. This means that, even when permit holders who may have violated applicable code provisions treat the Borough's code officials with disrespect or animosity, the official must always strive to conduct enforcement activities courteously and without an air of superiority or malice.

Conflicts of interest, as well as the mere appearance of impropriety, must always be avoided. The public's confidence and trust in the Borough is vital to achieving maximum levels of compliance with a minimal potential for conflict. Consequently, if a Borough official, or member of the Planning Commission or Assembly, knows a property or business owner personally, or has some a financial interest in the development or use, it may be difficult to fairly adjudicate a complaint or resolve a violation. In such a case, the person may have a conflict of interest.

When conflicts of interest arise for a Borough official, the official shall notify his or her supervisor, and another impartial Borough official should be assigned.

In cases where, an enforcement action is elevated by the AEB Administrator to the Planning Commission or subsequently elevated to the Assembly. AEBMC § 2.22.100 provides specific instruction to Planning Commission and Assembly members on financial conflicts of interest.

> *"A member of the governing body shall declare a substantial financial interest that the member has in an official action and ask to be excused from a vote on the matter. The Presiding Officer shall rule on the request for abstention (excused). The decision of the Presiding Officer on the request may be overridden by the majority vote of the Assembly. An employee or official of the Borough, other than an Assembly member may not participate in an official action in which he has a substantial financial interest."*

Borough officials, and members of the Planning Commission and Assembly, should not accept gifts, loans, or other items of value during the course of carrying out official Borough business. Borough officials, and members of the Planning Commission and Assembly, may accept food and refreshments of nominal value while at a business meeting, a business location or inspection site (e.g., a cup of coffee, a sandwich, transportation to the site and accommodations at the site by the Permittee if commercial transportation or accommodations are not available); however, Borough officials, and members of the Planning Commission and Assembly, should refuse anything else of value.

Borough officials, and members of the Planning Commission and Assembly, who are offered a bribe or something of value during an inspection should reject the offer and should immediately notify the AEB Administrator of the problem. The AEB Administrator should consult with the AEB Attorney to on how to proceed.

See Chapter 13.4 for further guidance on Due Process, *ex parte* communications and conflicts of interest.

1.5. Fees & Penalties

AEBMC § 40.01.060 provides the Planning Commission with the authority to propose a schedule of fees and penalties for Assembly approval. In 2013, a separate permit fee and penalty schedule was approved for each Land Use Permit type by the Planning Commission and the Assembly; a copy of each is provided in Appendix 1 for reference.

The Permit Fee & Penalty Schedule was written in an instructive manner. The schedule states that Notices of Violation and penalties "will" be issued when violations are reported to and confirmed by the Borough, or found by the Borough.

During development of this SOP Manual, the Planning Commission clarified the intent of the Permit Fee & Penalty Schedule was to instruct the AEB Administrator, to issue Notices of Violation and penalties and levy automatic penalties for High Priority Violations

Additionally, the Permit Fee & Penalty Schedule instructs Borough officials to issue a letter for Failure to Submit a Land Use Permit Application (where required), and to levy an automatic penalty.
The Planning Commission clarified that while the Notice of Violation and penalty tool can be used to resolve Low and Medium Priority Violations, it would prefer the AEB Administrator first attempt to resolve Low and Medium Priority Violations using compliance assistance and complaint resolution processes (further described below). This will allow AEB to resolve most matters in a simple, efficient fashion, reserving finite enforcement resources to a limited number of cases. If those methods are unsuccessful, a Notice of Violation and associated penalty can be issued to remedy the violation. The Planning Commission also clarified that even if Low or Medium Priority Violations are resolved using compliance assistance and complaint resolution processes, there may be a need to levy a penalty if economic benefit was gained thorough noncompliance or if the Borough incurred substantial cost remedying the violation. There may also be circumstances where compliance assistance methods are not effective or will not be useful. The AEB Administrator has the discretion to determine whether compliance assistance methods will be helpful or whether it would be best to move directly to enforcement and levy a penalty.

In sum, the Planning Commission instructs the AEB Administrator to take the following actions:

1. **Failure to Submit a Required Land Use Permit Application Letter:** be issued in cases where an Unpermitted Entity failed to submit a Land Use Permit Application in a timely manner. The letter will provide a copy of the permit application form, and will request the application be submitted with the required permit fee, along with the penalty amount for late application.

2. **Compliance Assistance Letter:** be issued in cases where a potential or alleged Low or Medium Priority Violation is identified by (or known to) the Borough. This letter will request information to invalidate the potential or alleged violation or remedy it.

3. **Notice of Complaint Letter:** be issued in cases where an alleged Low or Medium Priority Violation complaint has been filed with the Borough, which AEB has determined to be credible. This letter will request information to invalidate the alleged violation or remedy it.

4. **Self-Reported Violation Confirmation Letter:** be issued by the Borough in response to a Self-Reported Violation. This letter confirms receipt of the Self-Reported Violation notification, documents whether the Borough agrees with the proposed remedy (or provides alternative instruction to remedy the violation), and levies a fine (if required).

5. **Notice of Violations:** be issued where: (1) a High Priority Violation has been identified and confirmed by the Borough; (2) a High Priority Violation alleged by a Complainant is determined by the Borough to be credible; (3) a Low or Medium Priority Violation warrants resolution that has not been achieved by other means; or, (4) a Low or Medium Priority Violation warrants a penalty because an economic benefit was enjoyed thorough noncompliance or the Borough incurred substantial cost remedying the violation.

There may be some Low Priority Violations the Borough decides can be resolved with a phone call, or decides there are insufficient resources to pursue. In these cases, the Borough will simply document the matter was resolved by telephone, or its decision to not pursue the matter.

While the Planning Commission instructs the AEB Administrator to first attempt to use Compliance Assistance or Complaint Notification Letters to resolve potential or alleged violations, the AEB Administrator has the authority to determine whether these processes will be most efficient is under no obligation to use these methods if they will not be efficient or add value.

The AEB Administrator may find the violation is significant enough, requires significant Borough resources and time to resolve, or warrants a penalty. In these cases, the AEB Administrator will take the next step of issuing a formal Notice of Violation to remedy the violation and collect a penalty.

Cases that involve High Priority Violations should be immediately brought to the attention of the AEB Administrator and the AEB Attorney. In these instances, a Notice of Violation should be issued at a minimum; however, a more immediate court action may be necessary to abate the violation.

1.6. Administrative Procedures for Enforcement Paperwork

It is the AEB's practice to transmit a copy of all final enforcement decisions by electronic mail ("email") and by United States Postal Service Certified Mail. AEB staff should request a return receipt on both the email and the certified mail transmittal to ensure the Borough has a record of when the email and the hard copy (certified mail copy) were received. While the email copy will provide advanced notice to the recipient, enforcement action dates and timeframes will be determined by the date the certified mail return receipt is signed by the recipient.

The AEB Administrator has the discretion to determine the most appropriate way to transmit non-final enforcement paperwork, such as draft audit or inspection reports where AEB is seeking input from the operator. At a minimum this paperwork should be sent by email. However, in cases where the audit or inspection report may lead to further enforcement action the Administrator may decide to also send this paperwork by United States Postal Service Certified Mail.

2. Identifying AEB Land Use Permit Code Violations

AEB Land Use Permit Code violations may be committed by an AEB Land Use Permit holder (Permittee), or an individual, government, organization or business that has failed to obtain a required permit (Unpermitted Entity). The Borough may become aware of potential permit violations in three primary ways: (1) complaints; (2) discovery by Borough officials; and, (3) self-reported violations by a Permittee or Unpermitted Entity.

2.1. Complaints

AEBMC § 40.01.050(E) provides the process for filing a complaint regarding a land use permit, an activity that is operating without a required land use permit, or for making the Borough aware of other potential code violations:

> *"Any person may bring to the attention of the Administrator suspected violation of this Code. The complaint must be submitted to the Borough in writing using the Borough Land Use Complaint Form."*

In turn, AEBMC § 40.01.050(F) authorizes the AEB Administrator to investigate credible complaints:

> *"The Administrator is authorized to investigate any credible complaints in order to ensure compliance with this Code. The Administrator, or his authorized representative, has the right to enter and inspect or investigate land uses approved under a Borough permit or approval for compliance with that approval or violations of this Code."*

2.1.1. Filing a Complaint - AEB Land Use Complaint Form

A copy of the AEB Land Use Complaint Form (approved by the Planning Commission and Assembly) is provided in Appendix 2. AEB's Complaint Form includes a complete set of instructions. The complaint form must be filled out and submitted to the AEB. Oral complaints may be received at the AEB office by telephone. Borough officials should request the Complainant to follow up its oral complaint with a written AEB Land Use Complaint Form, and should explain what action AEB will take after the complaint form is received.

Typically, Borough officials will await receipt of a completed complaint form before investigating a complaint. However, where a High Priority Violation is alleged, AEB may decide immediate action and investigation is required before the written AEB Land Use Complaint Form is filed. The AEB Administrator, or the Administrator's designee, is authorized to make this decision.

2.1.2. Complaint Confidentiality

Complaints cannot be submitted anonymously. The Complainant must provide full contact information when filing a complaint. This information is required so that AEB staff and management may contact the Complainant. If enforcement action is taken, the Complainant may be called to testify as a witness.

Although the Complainant must be known to the AEB, and the complaint will be registered in AEB's permit recordkeeping system and available to the public on the website, the Complainant's name will not be listed in the public access section of the permit database located on the AEB's website.

It is AEB's policy that the name of the Complainant will be withheld from the public section of the permit database, and will not be otherwise disclosed to the public unless compelled by a public records request or legal proceeding. The Borough Clerk handles all Borough record requests. The Borough Clerk must obtain the AEB Administrator's approval prior to releasing a Complainants name. The AEB Administrator may consider consulting with the AEB Attorney before releasing names.

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2.1.3. Administering the Complaint

Complaints may be handled in four ways, depending on the credibility, nature, and severity of the complaint.

1. **Dismissal:** In cases where the complaint is immediately determined not worthy of pursuit, or not credible, the Borough will dismiss the complaint. The Borough official will document the reason for dismissal on Section 11 of the complaint form, and contact the Complainant to explain the Borough's determination.

2. **Failure to Submit a Land Use Permit Application Letter:** This letter is issued in cases where a complaint alleges an Unpermitted Entity failed to submit a Land Use Permit Application in a timely manner and the Borough determines the complaint is credible. This letter will provide a copy of the permit application form, and request the application be submitted with the required permit fee, along with the penalty amount for late application. [See Chapter 6 of this SOP Manual for instructions on preparing and issuing a Failure to Submit a Land Use Permit Application Letter].

3. **Notice of Complaint Letter:** This letter is issued in cases where a complaint alleges a Low or Medium Priority Violation and the Borough determines the complaint is credible. The letter provides the recipient with an opportunity to clear up any misunderstanding, and to work cooperatively to resolve the matter, avoiding the need for the Borough and the subject to enter into a protracted enforcement case, which may involve great expense to both parties. In this way, alleged violations that are not credible are quickly laid to rest, and confirmed violations are resolved. The letter requests information that will be used to invalidate the alleged violation, or to remedy it. [See Chapter 7 of this SOP Manual for instructions on preparing and issuing a Notice of Complaint Letter]. The Notice of Complaint Letter is not used High Priority Violations that are confirmed credible by the Borough.

4. **Notice of Violation and/or Court Injunction:** Should be issued to remedy High Priority Violations or for Low or Medium Priority Violations where:

    a. The prior two steps (Notice of Complaint Letter, or Failure to Submit a Land Use Permit Application Letter) does not result in compliance, and enforcement action must escalate to remedy the noncompliance; or,

    b. A penalty is warranted.

[See Chapter 10 of this SOP Manual for instructions on preparing and issuing a Notice of Violation and the process for working with AEB's Attorney to obtain a Court Injunction].

2.2. Violation Found by, or Known to, the Borough

A Borough official may discover a potential violation during the process of processing a permit application approval or renewal, during the inspection of a permitted facility, or during a record audit.

A Borough official may also become aware of an Unpermitted Entity due to knowledge of the area (e.g., fish processing activity, sand and gravel operations), a routine review of state business licenses (e.g., commercial recreation guides and outfitters) or private, state, or federal leasing processes (e.g., mining or oil and gas).

Violations found by AEB (or known to AEB) may be handled in three ways, depending on the credibility, nature, and severity of the alleged or confirmed violation.

1. **Failure to Submit a Land Use Permit Application Letter:** This letter is issued in cases where an Unpermitted Entity failed to submit a Land Use Permit Application in a timely manner. The letter will provide a copy of the permit application form, and will request the application be submitted with the required permit fee, along with the penalty amount for late application. [See Chapter 6 of this SOP Manual for instructions on preparing and

issuing a Failure to Submit a Land Use Permit Application Letter].

2. **Compliance Assistance Letter:** This letter is issued in cases where a potential Low or Medium Priority Violation occurred to notify the Permittee, and request cooperation and resolution. This letter also provides the opportunity to clear up any misunderstanding, avoiding the need for both sides (Borough and subject) to enter into a protracted enforcement case, involving great expense to both parties. This way, potential violations identified by the Borough that have a valid explanation for being dismissed or invalid are quickly laid to rest, and confirmed violations are resolved. The letter requests information to invalidate the alleged noncompliance or remedy it. [See Chapter 8 of this SOP Manual for instructions on preparing and issuing a Compliance Assistance Letter].

3. **Notice of Violation and/or Court Injunction:** Should be issued to remedy High Priority Violations or for Low or Medium Priority Violations where:

    a. The prior two steps (Compliance Assistance Letter, or Failure to Submit a Land Use Permit Application Letter) does not result in compliance, and enforcement action must escalate to remedy the noncompliance; or,

    b. A penalty is warranted.

[See Chapter 10 of this SOP Manual for instructions on preparing and issuing a Notice of Violation and the process for working with AEB's Attorney to obtain a Court Injunction].

2.3. Self-Reported Violations by AEB Land Use Permit Holders.

Permittees are encouraged to self-report violations of the AEBMC. Self-reported violation(s) may be initially reported by a telephone call to a Borough official, and must be followed by a written letter that must be received by the Borough within seven (7) calendar days. The Permittee's letter must summarize the violation(s) and explain steps it plans to take to remedy the violation and mitigate future problems. The Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB.

The self-reported violation process is only available to an existing AEB Land Use Permit holder, and does not apply to an Unpermitted Entity that failed to obtain a required AEB Land Use Permit. [See Chapter 6 of this SOP Manual for instructions on preparing and issuing a Failure to Submit a Land Use Permit Application Letter].

If the Permittee provides a self-reported violation of a permit term or condition, within seven (7) calendar days of the violation, and the Permittee agrees to remedy the violation, the Borough will assess a reduced penalty, compared to a higher penalty that would be assessed the violation was reported to the Borough or was found by the Borough.

Appendix 1 includes a fee and penalty schedule for each type of AEB Land Use Permit. Each schedule includes a reduced penalty for self-reporting.

In all cases, the AEB should respond in writing to confirm receipt of a self-reported violation. The Borough will issue a Self-Reported Violation Confirmation Letter. This letter includes the Borough's appreciation for the self-reporting, and confirms whether the Permittee's proposed remedy is acceptable to the Borough. If not, the letter should list any other action required. The Borough's letter also lists the penalty amount assessed for the violation. Self-Reported Violations that are intentional acts or omissions, or the result of gross negligence are assessed higher penalties. [See Chapter 9 of this SOP Manual for instructions on preparing and issuing a Self-Reported Violation Confirmation Letter].

3. Investigating Potential or Alleged Violations

There are four primary methods used to identify and investigate potential or alleged violations: (1) meeting with the parties involved; (2) record audits; (3) interviews with fact witnesses; and, (4) field inspections that may include sampling and evidence collection. Chapter 3 of this SOP Manual provides instruction for identifying and investigating potential or alleged violations.

3.1. Meetings with the Parties Involved

The most cost effective and efficient first step to investigate a potential violation (identified by the Borough) or alleged violation (subject of a complaint) is to meet with the parties involved, discuss the matter, and seek resolution. It is very important for Borough officials to keep accurate records of all meetings held relating to potential or alleged violations of a Permittee or Unpermitted Entity in the Borough's permit recordkeeping system.

Example phone and meeting log templates are provided in Appendix 3.

Whenever the Borough seeks to meet with a Permittee or Unpermitted Entity regarding a potential or alleged violation, it is important for the AEB Administrator, or designee, to clearly communicate the meeting is investigational only, and no final determination regarding violation has been reached. Further, the AEB staff should not publicly disclose information related to the investigation while it is still pending.

3.2. Record Audits for Permitted Land Uses

Due to the remote location of potential land use permit holder activities, and the cost of conducting inspections within the AEB, a cost-effective method (and a potential first option in each instance) is to conduct a record audit at AEB's office(s) to identify and investigate potential or alleged violations. A record audit simply means a review of the paperwork already on file at the AEB office(s), or paperwork the AEB requests to be submitted during the audit.

A record audit will likely be the first step in identifying and investigating a potential or alleged violation at a permitted facility, unless an immediate physical (e.g., field investigation) or legal action is required to abate a present, immediate, and real risk to public health and safety, or to the natural environment.

A record audit for a permitted land use within AEB is conducted by first reviewing records related to the permit on file at the AEB's offices. Additional records may be requested of the Permittee, if needed to verify compliance with permit stipulations. If a number of records are needed (or in question) a field inspection may be the most efficient method to review a large number of records kept by the Permittee. During the inspection, the Borough official can review the records and identify specific records needed to verify compliance or support an enforcement case, and narrow its record request.

The AEB developed a SOP Manual for processing permit applications in 2013, which includes instructions for Borough officials to follow. Those instructions recommend, at a minimum, Borough officials complete a record audit of all regular submissions required by the AEB (e.g., annual and quarterly reports), and verify all taxes have been paid on time. Permit checklists were developed for each permit type including a list of record audits to be performed with respect to each permit.

The checklist for processing each permit type recommends record audits for each permit, including:

1. Annual, Quarterly and/or Final Report Review
   a. Verify receipt;
   b. Review content for issues/concerns; and,
   c. If issues/concerns are identified additional action may be recommended/required.

2. Survey Reports required for Mining Operations

a. Verify receipt;
b. Review content for issues/concerns; and,
c. If issues/concerns are identified additional action may be recommended/required.

3. Severance Tax Payment
   a. Verify receipt;
   b. Review content for issues/concerns; and,
   c. If issues/concerns are identified additional action may be recommended/required.

Additionally, if resources allow, a more thorough record audit can be performed to verify compliance with each permit stipulation listed on the permit, as well as other AEBMC requirements. This process involves listing permit stipulations and code requirements, and collecting records from the AEB's files or from the permit holder to verify compliance with each. The most effective method is to create a table that lists each audit item in the first column, the Borough's findings in the second column, and any required/recommended action in the third column.

For example, large mining and oil and gas operations are required to prepare and comply with a number of approved plans such as: Study & Project Monitoring Plan, Local Economic Development Plan, Field Office Plan, Infrastructure Support Plan, Transportation Plan, Historical and Cultural Resources Protection Plan, Good Neighbor Plan, Pollution Prevention Plan, Hazards Assessment Plan, Reclamation Plan, and Emergency Plan. During an audit, the AEB could request information from the permit holder to verify what actions they have taken to comply with those plans. If the audit was prompted by an alleged or potential violation, the Borough may want to clarify the audit is part of an investigation.

A complaint or self-reported violation (by permit holder) may identify other specific record audits to be performed.

For smaller audits with no issues/concerns identified, the Borough would document its work in the Borough's permit recordkeeping system.

For more in-depth audits, or audits that identify potential or actual violations, an audit report should be prepared. The audit report may be attached to a Compliance Assistance Letter or a Notice of Violation, or used in a Court Action. The report should be reviewed and approved by the AEB Administrator, and documented in the Borough's permit recordkeeping system.

Example audit report letters and report templates are provided in Appendix 4.

3.3. Interviews

During an inspection, or during the course of an investigation, Borough officials may need to conduct interviews to obtain information. The subject of the investigation, employees working at the permitted site, a Complainant, or other fact witnesses may be intereviewed. For example, a interview may be conducted with a Complainant to obtain additional factual information about the complaint. An interview may be conducted with a Permittee, Unpermitted Entity, (or one of their staff members) during a field inspection, or to investigate a spill, damage, or other incident.

Information collected during an interview should be carefully and completely documented in the Borough's permit recordkeeping system; it may be used later to support an enforcement action. The most efficient method is to record the interview. Borough officials must obtain consent to record an interview.

Recommendations for conducting effective interviews are listed below:

1. **Contact the person to be interviewed**. Provide your name, title and explain the purpose of the interview and schedule the time and place. There may also be unscheduled improptu interviews that take place during an inspection at a permitted location, unpermitted location, or at a spill site.

2. **Request Permission to Record Interview**. The most efficient method is to make an oral recording of the interview. Borough officials must request permission from the Interviewee to record the interview. If the

Interviewee consents to be recorded, start the recording and request the Interviewee to orally provide its consent a second time on the recording. For example, the Borough official may turn on the recorder(s), describe the purpose of the interview, who is present, state that the Interviewee consented to be orally recorded, and again request the Interviewee to consent a second time. Use two recording devices (one for backup), to ensure the interview is successfully recorded. Clearly mark the recording tape and store in the Borough's permit recordkeeping system. If using digital recording, ensure the recording is stored in the Borough's electronic files, with a backup.

3. **Written Record of Interview (when oral recording is not an option)**. If the Interviewee does not consent to be recorded, the inteview must be carefully documented in interview notes. Take careful notes during the interview on a piece of paper. Request the interviewee to review your notes at the end of the interview, and recommend corrections if necessary. Make the corrections (if required) and request the Interviewee to sign the interview notes as correct and accurate. It is best to have a witness also sign the notes, stating they were present during the interview and they witnessed the Interviewee signing the interview notes.

4. **Attornies Present**. An Interviewee may request their attorney to be present. If so, this should be accomodated. In this case, the Borough Officials may also want to have the AEB Attorney present. However, most interviews will not require attornies to be present.

5. **Witnesses**. Whenever possible, the AEB should have two Borough Officals at an interview. One official should conduct the interview; the other records the interview (oral recording or takes notes) and serves as a witness. This is especially important when investigating alleged or potential violations that may result in enforcement action.

6. **Document Purpose of Interview**. At the start of the recording (or written record) document the: (1) date; (2) location; (3) purpose of the interview; (4) names and titles of the Borough Officials present; (5) name and title of Interviewee; and, (6) names and titles of any attornies present and who they are respresenting. Document the method agreed to for recording the interview (oral or written), and obtain consent for that method, if necessary. Collect phone, address and email information for each person.

7. **Document information about Interviewee**. At the beginning of the interview, the Borough Official should note the interviewee's name, position, job duties, relationship to the Permittee or Unpermitted Entity, and obtain current contact information (e.g., phone number and address).

8. **Document More Specific Informaton about Interviewee**. Obtain more specific information about the Interviewee. Clarify why the person is being interviewed (e.g., the individual is a community member that filed a complaint, or is an employee of the Permittee or Unpermitted Entity). For employees at a permitted facility, collect information on their position, job duties, and relationship to the permitted facility.

9. **Be Professional.** Borough officials should be professional and cooperative at all times. Do not intimidate the witness, accuse, or assign blame. Being interviewed, especially when alleged or potential noncompliance may involve a penalty or enforcement action, is stressful for the Interviewee and witnesses. Be patient and respectful.

10. **List of Questions**. The Borough Offical should prepare a list of questions in advance of the interview, although other questions may arise during the interview or during the course of an investigation that can be added.

    Ask open-ended questions allowing the interviewee to fill in details. Phase questions beginning with "who," "what," "when," "where," "why," or "how."

    Rephrase questions if the Interviewee does not provide an adequate answer. For example, if a response is "I don't know the answer." Inquire why they do not (e.g., if the matter is within their job duties, or they were present during the spill) or inquire who would know the answer.

    Use a logical questioning pattern. For example, start from the beginning of the problem (past) to the present in chronological order.

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In some cases, the Interviewee may continue to talk without being questioned. If the Interviewee is staying on course and providing useful information, let them continue without interruption. They may provide you answers to questions you were not aware were important.

Ask one question at a time; avoid compound questions. Be sure you get a clear answer to each question. If the response is unclear, or unexpected, repeat or rephrase information to verify that you have accurately understood the response.

11. **Listen Carefully & Be Patient**. Listening carefully gives the Interviewee confidence you are paying attention and engaged throughout the interview. Don't be in a rush. If you pause to wait for more information, the Interviewee may reveal something else that you may not have anticipated. Consider the Interviewee may be nervous or under stress; give them time to warm up to the interview process and become more comfortable.

12. **Collect Evidence**. In some cases, the Borough official may collect evidence at the interview or after the interview. For example, a Complainant may come to the interview with photographs, a jar of contaminated soil, or a recording. The Borough official may accept this evidence, and should carefully inquire about the chain of custody (e.g., when was the sample taken, by whom, and how can the Borough verify its authenticity). The Borough official may also want to collect its own evidence. [See Subchapter 3.4 on Conducting Field Inspections for instruction on evidence collection.]

13. **Summarize**. The Borough official should conclude the interview by summarizing key information and ensuring the Interviewee agrees with those key points or facts, or provides the opportunity to correct or clarify.

14. **Thank Interviewee**. The Borough official should thank the Interviewee, and provide contact information to reach the Borough official with additional information.

15. **Sign Written Interview Record**. In cases where it was not possible to record the interview (e.g., impromptu interviews where recorders were not available or where the Interviewee did not consent to an orall recording), allow the Interviewee time to read your written notes, make corrections (if necessary) and sign the record as accurate. Preferrably a second witness should sign the record. Optimally the interview can be typed on a portable computer and printed prior to signature; however, in most field conditions this may not be possible. Hand written notes are fine and should be legible.

During the course of the interview, the Borough may identify additional person(s) to be interviewed. In some cases, it may be necessary and beneficial to interview a range of different employees or concerned citizens to acquire a better overall picture of facility operations or the complaint. For example, the AEB may want to interview:

- Neighbors on adjacent properties;
- Other people who may be directly affected by the land use, or damage that is caused by the use;
- Company officials at the permitted facility (or unpermitted facility that should have a permit);
- Individual employees who manage or conduct operations at the permitted facility (or unpermitted facility that should have a permit); or,
- People directly involved with the spill, hazard, damage, adverse impact, or incident.

3.4. Field Inspections

Field inspections may be conducted prior to issuing a permit (to collect information to aide AEB in making its permit decision) or after the permit is issued to verify compliance with AEB's Municipal Code (AEBMC) and the specific stipulations placed on the land use permit.

A standard stipulation in each AEB Land Use Permit, approved by the Permittee when applying for the permit, authorizes AEB to enter and inspect the permitted location:

> *Authorized representatives of the AEB have the right to enter and inspect the operations approved under this permit at any time to ensure that the activity is being or has been accomplished in accordance with the terms and conditions of this permit.*

Field inspections may also be conducted to follow up on a complaint or Borough concern about land uses that may have occurred without a required permit.

Further, AEBMC § 40.01.050(F) expressly authorizes the AEB to investigate code violations:

> *The Administrator is authorized to investigate any credible complaints in order to ensure compliance with this Code. The Administrator, or his authorized representative, has the right to enter and inspect or investigate land uses approved under a Borough permit or approval for compliance with that approval or violations of this Code.*

For land uses with an AEB Land Use Permit, the Borough has express authority to enter onto a Permittee's land to investigate credible complaints of actual or alleged violations of the Borough's permitting code. A standard permit stipulation found in each AEB permit reads:

> *Authorized representatives of the AEB have the right to enter and inspect the operations approved under this permit at any time to ensure that the activity is being or has been accomplished in accordance with the terms and conditions of this permit.*

Each Permittee agrees to this standard permit stipulation when it submits an application. By approving the "Certification of Accuracy and Agreement to Comply, Indemnify and Hold Harmless" the Permittee agrees to "comply with all permit stipulations placed on this permit." However, if a Permittee were to deny entry to a Borough official, it may be necessary to obtain a search warrant.

In the case of an Unpermitted Entity, the Borough official should entry to conduct the inspection; however, if the Unpermitted Entity refuses access, the Borough will have to obtain a search warrant. The Borough will need to show the court why the Unpermitted Entity requires an AEB Land Use Permit, why an inspection is needed, and AEB's land use code authority.

3.4.1. When Should Inspections Be Conducted?

Ideally, inspections should be conducted on a routine, consistent basis and in response to credible complaints. A consistent inspection approach for all Permittees will ensure that no single entity feels unjustly targeted. Inspections may also be required to follow up on a suspected violation identified by Borough officials or self-reported.

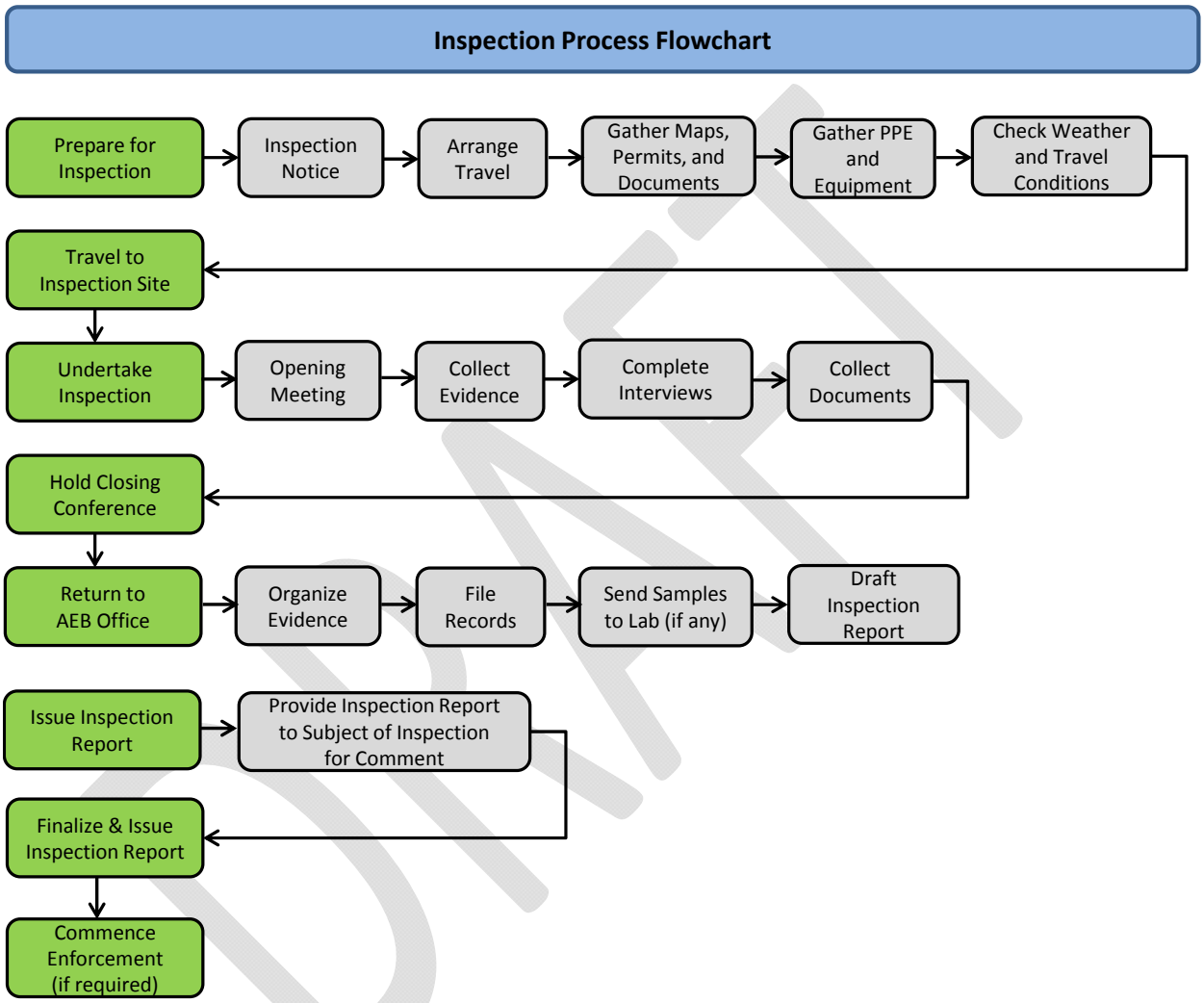
Due to AEB's remote location, lack of road system, and the expense of conducting inspections, it is anticipated that a limited number of field inspections will be completed each year. Inspections will likely be in response to credible complaints, an incident or problem reported by a Permittee, record audits that identify probable violations requiring field verification, and for higher risk and consequence facilities. It is anticipated that personnel resources and budget constraints may limit AEB's ability to conform to a rigid inspection schedule and may require prioritizing complaint-based inspections over regular inspections.

The AEBMC describes the purpose of the land use planning, platting, and permitting program. Important considerations listed in AEBMC § 40.01.010 aide in prioritizing inspection resources. When determining inspection priorities, AEB staff members should prioritize according to the following enforcement goals:

- Protection of public health, safety, morals, and general welfare, as well as the historical, economic, social, and cultural interest of the Borough's residents;
- Protection of fish resources and continuation of a productive commercial fishery;
- Protection of subsistence resources;

- Ensuring future growth and development is in accord with the values of its residents;
- Identifying, avoiding, and mitigating the negative effects of development; and,
- Protection of human health and the environment by prohibiting adverse impacts of industrial pollution.

A summary of typical inspection steps is provided in the Inspection Process Flowchart below.



3.4.2. Who Conducts the Inspection?

AEB does not currently (as of Year 2014) have a field inspector on staff. Field inspections will be conducted by Borough officials, as resources are available. AEB may also hire consultants to provide additional field inspection support or hire a field inspector in the future, should it be warranted by Resource Development activity.

In most cases, one inspector will be assigned to conduct the field inspection. However, more than one inspector may be required in certain cases. The AEB Administrator will assign the appropriate number of field inspectors taking into account the following considerations:

- Inspection complexity;
- Inspector's experience level (a senior staff or consultant may be required to train a less experienced staff);
- Hazardous conditions or weather;
- Known or suspected compliance violations where evidence is collected requiring a second witness; or,
- Where the Permittee, or Unpermitted Enity may be hostile.

At least two inspectors should be sent to locations where hazardous weather or safety risks may be present, so the "buddy-system" can be used to ensure inspector health and safety.

At least two inspectors should be present for all field inspections at the sites of known or alleged violations to ensure that there are two witnesses for any enforcement actions regarding suspected or actual compliance violations. New inspectors should be mentored by experienced inspectors, until fully trained in AEB's inspection process.

If there is a potential threat to inspector safety, the Borough should consider whether State Trooper support is required.

A consultant might be necessary in those cases where the inspection requires special expertise. For example, the AEB may contract with an expert in oil and gas, mining, fisheries, materials sampling, environmental remediation, biology, or other fields as the situation requires. Contract experts participating in a field investigation should in every case be provided a copy of this manual to review, prior to the field investigation.

3.4.3. Safety

The safety of Borough officials, experts, and all others involved in any field inspection is paramount. Prior to conducting a field inspection, the Borough official or contracted inspector must be properly trained and qualified to conduct a safe field inspection, or be accompanied by a Borough expert with this training and expertise.

Borough officials and experts must be outfitted with appropriate Personal Protective Equipment (PPE) and equipment that is necessary for the field inspection.

This SOP Manual addresses many of the potential safety hazards that may be encountered during a field inspection; there may be others. This manual supplements, but does not replace, the more formal safety, hazard assessment, and training courses that may be required by AEB or taken by Borough experts.

A number of safety hazards may be encountered at a permitted location during the course of a field inspection. Common safety hazards and tips are described in this section; however, the ultimate responsibility for safety rests with Borough officials and Borough experts inspecting the location.

If a Borough official or Borough expert questions whether any aspect of the inspection can be carried out safely, the inspection should stop and the AEB Administrator should be contacted for further instruction. The Borough official should reschedule inspections to avoid travel in dangerous weather conditions.

At no time should a Borough official or Borough expert put themselves, the Permittee, or others at risk.

1. **Buddy System**: Where inspection hazards are expected to be significant, the Borough should assign at least two people to work as a team to watch out for each other's safety (using the "buddy-system").

2. **Weather Hazards**: Gather information on the current weather conditions and the forecast for the duration of the planned inspection period. Weather hazard information should be collected for the entire travel area, starting from the inspector's departure point, the route to the permit site (or inspection location), the inspection location, and the return route.

Collect weather information such as the temperature, wind speed, wind chill, visibility, sea state, road conditions, transportation limits, and identify any other weather-related hazards.

Transportation from the AEB offices to an inspection location may require a combination of transportation modes, including air (e.g., fixed wing aircraft or helicopter), overland (e.g., truck, snow machine, ATV, tracked vehicle), or by vessel. Poor weather conditions may prevent or impede safe transportation. Keep in mind that the AEBMC and AEB Land Use Permits all pertain to areas outside Borough cities (because the cities are delegated authority to administer their own land use permitting programs), so most of the inspections will be remote.

High winds, poor visibility, poor road conditions, or rough sea states may make an inspection unsafe. It is the responsibility of the Borough official(s) and Borough expert(s) to examine the weather conditions and consult with the AEB Administrator, to determine when it is safe to travel to and conduct an inspection.

3. **Personal Protective Equipment.** Borough official(s) and Borough expert(s) must carefully assess the type of Personal Protective Equipment (PPE), food, water and other safety equipment needed to carefully carry out the inspection in the weather conditions known or predicted to occur during the inspection. Rain coats, warm clothing, hats, gloves, and other protective items may be needed.

   The potential for frostbite, hypothermia, dehydration, or being stranded in foul weather conditions are hazards that must be considered and addressed by the inspector before leaving on an inspection. Selection of the correct PPE, and wearing that equipment during an inspection, will mitigate risk.

   The Borough official(s) and Borough expert(s) should consider the inspection location and the potential hazards present when selecting PPE, and consult with the Permittee to verify their PPE requirements. For example, most industrial locations require hard hats, steel-toed boots, NOMEX (fire resistant clothing), safety glasses with side shields and hearing protection. When in doubt, contact the facility in advance to confirm the PPE requirements to prevent access from being denied.

4. **Communication Equipment.** Borough official(s) and Borough expert(s) should always make sure to carry communication systems with adequate battery backup (and test those systems routinely) to be able to call the AEB Administrator or other resources for help.

5. **Transportation.** Borough official(s) and Borough expert(s) should have a safe and reliable transportation plan before leaving for an inspection, and reassess the safety of the transportation plan as the weather conditions change during the course of travel to and from the inspection location. It is likely that small aircraft, vessels, and land based vehicles will be used to access inspection sites. AEB will likely contract these transportation services, and use Borough vehicles in locations where they are available, or rent a vehicle.

   Before traveling by vehicle to an inspection location: Verify that headlights and emergency flashers are functional; check for tool kit, spare tire, jack, tow strap, and shovel; fill fuel tank, check oil, and wiper fluid; and identify next re-fueling location (pack additional fuel, if needed when traveling to remote locations, in poor weather or in areas where fuel may not be readily available).

   When traveling by contract boat or small contract aircraft, request a safety briefing and ensure the contractor has all required safety equipment and functional communication systems before departing.

6. **Point of Contact:** Before leaving for the inspection, the Borough official(s) and Borough expert(s) should inform the AEB Administrator, or designee, of departure date and time, expected return date and time, and route of travel.

7. **Food & Water:** Bring plenty of water to prevent dehydration, and pack food in case transportation is impeded by foul weather conditions.

8. **Physical Hazards:** Physical hazards will be present at most inspections. Remain observant, assess all hazards, determine whether it is safe to enter the area, and ensure that the correct PPE is used. Common physical hazards include:

   - **Slips, Trips and Falls**: snow, ice, wet and/or uneven floor surfaces, floor coverings, changes in floor levels, trailing cables, poor lighting, and poor housekeeping can all increase the risk of slipping and falling.
   - **Poor Lighting**: Flashlights or headlamps may be needed.
   - **Noise**: Industrial and construction sites can pose noise hazards requiring hearing protection.
   - **Electrical Hazards**: Exposed wires, high voltage electrical equipment, or other electronic cables and equipment can cause shock or even death. Do not touch exposed wires, high voltage electrical equipment, or other electronic cables and equipment.
   - **Fatigue and Stress**: Fatigue and stress reduces sound judgment and can increase the risk of physical harm.
   - **Transportation Hazards**: Poor weather conditions may prevent or impede safe transportation.
   - **Overhead Hazards**: Hardhats are essential at industrial or construction sites, as there may be a risk of equipment or stored items falling from overhead.
   - **Wildlife Hazards**: Generally wildlife avoids humans, but may become unpredictable due to stress, poor health, infection (e.g., rabies), the need to protect young offspring, or when their habitat is invaded. Be vigilant and keep a constant watch for potential wildlife encounters.
   - **Observe Signs**: Observe and obey all signs and hazard placards.
   - **Limitations**: Notify the AEB Administrator of any injury, physical limitation, or other health issues that may limit your ability to carry out an inspection prior to scheduling an inspection.

9. **Human Hazards**: Humans can become unpredictable under stress, or in the face of an alleged compliance violation. Permittees or Unpermitted Entities may attempt to deny entry to a site or even threaten harm to the inspector. Some Permittees or Unpermitted Entities may be armed with weapons for safety purposes (e.g., wildlife protection), or to be used in the conduct of business (e.g., commercial recreation operators).

   Inquire whether there are weapons at the site, and ensure that they are secured.

   If threatened, leave the site immediately. Keep a safe distance and contact the AEB Administrator for further instruction. Note all dangerous behavior in the inspection report, and whether the inspection was terminated. If there is imminent danger, contact a Public Safety Officer or an Alaska State Trooper to assist.

10. **Fire & Explosion Hazards:** Fuels and chemicals found at industrial and construction sites can pose a fire or explosion hazard. Prior to entering the site, gather information on potential risks from the operator or owner, identify any potential fire and explosion hazards, and select the correct PPE for the inspection. Wear NOMEX fire retardant clothing at sites where fire or explosion hazards may potentially exist.

    Combustion requires fuel, an ignition source, and sufficient oxygen. Never enter a site until the fire and explosion hazards are understood and you are confident that it is safe to enter. Never enter an area that is ignited, or where there is a known fire or explosion risk.

    Inspectors should never smoke during an inspection. Those who smoke should consult with the owner or operator to identify a safe smoking area free of fire and explosion hazards.

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11. **Chemical Hazards:** Chemical hazards may be present at industrial and construction sites. Prior to entering the site, gather information from the operator or owner about the potential for hydrogen sulfide exposure[1] or other chemical risks. Select the correct PPE for the inspection.

    If you accidentally touch hydrocarbons or other chemicals, immediately wash exposed skin with soap and water, and consult with a medical professional if irritation continues.

    Tanks, small enclosures, storage areas, and other confined areas may contain pockets of trapped gasses and fumes, or lack oxygen. Ditches and depressions may contain denser gasses such as methane, carbon monoxide, or hydrogen sulfide.

    Do not enter confined spaces, areas with elevated hydrogen sulfide, or areas with other chemical hazards. Borough officials are not currently trained or equipped to enter areas that require respirators or to enter confined spaces, nor are they currently equipped with chemically resistant PPE. However, if a Borough official obtains this training, they should consult the AEB Administrator to determine whether they are authorized to enter areas that require respirators or to enter confined spaces during an inspection.

12. **Hire Expert (s) When Needed**: If AEB access to a site requires specialized training and equipment, the Borough may need to hire an expert to perform that portion of the inspection, or consider expanding training and equipment for inspectors in the future.

3.4.4. Inspection Documents

Borough officials and Borough experts should consider carrying the following documents and credentials to an inspection site:

- AEB Inspection Badge and/or AEB Business Card;
- Training certifications (if required);
- Driver's License;
- Travel Documents (e.g., air tickets, lodging reservations, maps);
- Maps and Diagrams of Inspection Location;
- Copy of Relevant Permits, Complaints, and Records for Inspection Location;
- Names, Titles, and Telephone Numbers of Facility Officials;
- Emergency Contact Phone Numbers for AEB Administration, State Troopers, and Rescue.

3.4.5. Inspection Equipment & Supplies

The type of inspection equipment required will vary based on the type of permitted activities. A basic list of equipment is provided below. The Borough officials and experts will need to determine the exact type of equipment needed for each particular inspection location, complexity, and objectives.

[1] For example, hydrogen sulfide, a colorless gas that smells like rotten eggs at low dosages, may be present at oil and gas facilities. Hydrogen sulfide poses a health risk, and inspectors should not remain in areas with hydrogen sulfide vapors. At higher dosages hydrogen sulfide will become odorless and exposure can be fatal. Short term exposure to hydrocarbons and other chemicals may cause headaches, nausea, dizziness, and eye/skin irritation. Prolonged exposure to high concentrations can cause serious health problems and even death.

It may be useful for the AEB to create an inventory of shared inspection equipment that can be used by various Borough officials, and keep this equipment in a locked storage cabinet. Borough staff may be assigned to log the equipment in and out to ensure all equipment is returned and maintained in good operating condition.

Shared inspection equipment may include the following:

- Binoculars;
- Camera and Video Camera (with charger, batteries, and manual);
- Intrinsically Safe Camera and Video Camera (if required);
- Cell Phone (with charger);
- Satellite Phone (with charger);
- Laptop (with charger, batteries, manual, installation disks, and flash drive);
- Flashlight (with extra batteries);
- GPS (with charger, batteries, and manual);
- Compass;
- Measuring tape;
- Range finder (with charger, batteries, and manual);
- VHF radio (with charger, batteries, and manual);
- Sampling equipment;
- Bear spray;
- Food and Water; and,
- Personal Protective Equipment (PPE) – [see Subchapter 3.4.3].

3.4.6. Preliminary Record Review

Borough inspections should be well planned. A preliminary record review should be completed prior to the inspection. Borough officials should compile records associated with the inspection site and review the material to identify site-specific, facility-specific inspection issues.

Records will vary depending on the type of inspection, but would typically include the following:

- Contact information for the Permittee or Unpermitted Entity, including names and titles;
- A copy of the AEB Land Use Permit;
- Past inspection reports;
- Spill or accident reports;
- Complaints related to the permitted or unpermitted location;
- Documents and correspondence regarding past non-compliance, including any notices of violation, enforcement orders, and appeal decisions;
- Photographs of the site and equipment;
- Land ownership records;

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- Maps, surveys, or plats (e.g., location maps, pipeline maps, sensitive area or subsistence use area maps, historic property/cultural site maps);
- Annual and/or Quarterly Reports;
- Spill Reports;
- Reclamation Plans (if a permitted site is being reclaimed); and,
- Compliance Order or other Settlement Agreement instructions.

The AEB may not have all of these records on file. Borough officials may need to collect missing records during or after the inspection. The preliminary record review may identify additional records or information that could help verify permit compliance.

3.4.7. Beginning Inspection Report

An inspection report template is provided in Appendix 5. The template recommends a 10 part inspection report.

1. Inspection Purpose
2. Inspection Site and Location
3. Inspection Notification
4. Inspection Preparation
5. Inspection Process
6. Interviews
7. Inspection Findings
8. Violation Summary
9. Comments/Corrections Provided By Inspection Subject
10. Recommended Action

Prior to the inspection, the Borough official should attempt to complete as much of the inspection report as possible to save time during the inspection. Typically, parts 1-4 can be completed ahead of the inspection.

3.4.8. Inspection Notice

Most commonly, the AEB will provide inspection notice to the Permitted or Unpermitted Entity. This will allow the AEB to coordinate a time, transportation, and access that is convenient to both parties, and ensure key personnel will be available during the inspection.

Where advanced notice is given, it is generally better to provide the least amount of notice possible. Shorter notice provides the AEB a better opportunity to observe the facility/activity in its normal operating condition.

A non-notice inspection may be required in the case of a suspected/alleged violation that could be easily covered up (e.g., improper disposal, unauthorized use, spill). Although advance notice may be appropriate for suspected/alleged violations that are not easily be covered up, such as a permanent facility or structure violation that is not easily remedied/modified.

Borough officials should consult with the AEB Administrator for advice on whether to give notice.

If notice is given, the Borough may want to initially provide notice by telephone. However, in all cases, the official notice should be documented by email or by letter and retained in the permit recordkeeping system.

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3.4.9. Making Travel Arrangements

When inspection notice is given, travel plans should be made when the inspection date is confirmed with the Permittee or Unpermitted Entity. When no inspection notice is given, travel arrangements should be made as soon as the Borough official has reviewed the records and started on the inspection report. At this point, there should be enough information to determine whether an expert should be hired to join the inspection and how many Borough officials should participate.

Some permitted facilities/activities may not be accessible via commercial aircraft, or by overland travel in a Borough vehicle. In these cases, the Permittee may agree to provide transportation (e.g., helicopter, vessel) to the facility/site and the Borough official will need to coordinate transportation arrangements with the Permittee prior to the inspection. However, in the case of a known or suspected violation, or serious complaint, where delayed access by the permit holder may be of concern, or where the Permittee will not provide transport, the Borough may consider contracting its own transportation.

The AEB Administrator must approve all inspection travel, and a copy of the travel arrangements should be provided to the AEB Administrator's assistant in case of an emergency.

3.4.10. Attitude & Appearance

Borough officials and experts must maintain a professional attitude and appearance during the inspection. Borough officials and their experts represent the AEB and should be polite, professional, patient, cooperative, and respectful during the inspection. A cooperative attitude during the inspection will usually maximize Permittee or Unpermitted Entity cooperation.

Most individuals will be cooperative during the inspection. Borough officials should assume cooperation will be given and that the Borough and Permittee have a shared goal of achieving compliance with permit requirements, unless information collected during the inspection informs otherwise.

Borough officials should be dressed in a professional manner for all inspections. The Borough may consider providing its staff with shirts, coats, or hats bearing the AEB emblem. Borough officials should also carry a badge or other official Borough identification (e.g., a business card), to confirm the official's position and provide the Permittee or Unpermitted Entity the inspector is an official representative of the Borough.

Inspections can be stressful for the Permittee or Unpermitted Entity. Borough official(s) should explain the inspection process and answer questions. If a Borough official(s) is unable to answer a question at the time of inspection, a note should be made in the inspection file, and the inspector should commit to a timeframe for providing an answer to the permit holder after the inspection.

The inspection provides the AEB an opportunity to assess compliance and identify problems. In many cases, Borough official(s) may simply need to point out the problem and request resolution. However, in some cases the remedy may take longer and the Borough official should clearly document the problem in its inspection report, and explain the problem to the Permittee or Unpermitted Entity, so they can start working on a solution. In some cases the Borough official(s), and the Permittee or Unpermitted Entity may be able to agree on a solution and a timeframe for completion during the inspection.

3.4.11. Inspection Efficiency

Inspections should be completed efficiently. Inspections are costly for the Borough, and may take the Permittee or Unpermitted Entity away from routine business, or cost the Permittee or Unpermitted Entity money if special transportation, meetings, or accommodations must be made during the inspection. A well-organized pre-inspection plan will ensure the inspection is completed efficiently.

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At the beginning of the inspection, Borough officials should clearly articulate the inspection plan to the Permittee or Unpermitted Entity representative(s), including the inspection purpose, the time needed to inspect the facility/activity, the locations that require inspection and any records required.

Most Permittees and Unpermitted Entities will be cooperative and accommodate the AEB's inspection schedule. However, there may be the occasional Permittee or Unpermitted Entity with a reason to slow the pace of the inspection. They may attempt to distract the inspection by holding meetings, bringing you to places that are outside the scope of your inspection, holding you at one place for too long, or offering you food or extended breaks. If you feel that you are being sidetracked, politely let the personnel know that you need to continue with the inspection.

The Permittee or Unpermitted Entity may have legitimate safety reasons from preventing or delaying access to a particular location; however, there may be cases where safety is used to delay or prevent access to areas where a Borough official may be able to document/confirm a violation.

If the Permittee or Unpermitted Entity prevents the inspection due to a safety or other hazard, the Borough official should collect information regarding the safety or hazard, and verify the condition was present, real, and that there was a valid reason for delaying the inspection. Information collected should be documented in the inspection report, and a follow-up inspection should be scheduled as soon as it is safe to complete the inspection.

There is usually a limited timeframe for completing an inspection and lots to be done. Once the Borough official returns to the office, it may be too late to get a particular piece of information. This means that the official must stay focused on getting all the information needed to complete the inspection report in the time allotted.

The main goal of an onsite inspection is visually witness (and document with cameras) the operations, facility or activities. The Borough official should make every effort to maximize its inspection time examining the operations, facilities, or activities, and avoid being caught-up in lengthy meetings and conservations that could prevent the official from completing the inspection on time. An initial pre-inspection meeting is needed to communicate the inspection steps and goals to the permit holder, but after that initial meeting, the inspector should quickly transition into the physical inspection.

Maintain a methodical pace and demeanor throughout the inspection and stay on track with your inspection plan. Be professional, polite, and maintain a firm pace and schedule to complete your work.

3.4.12. Inspection Entry

Borough official(s) should start the inspection by approaching the front door, main gate, or front office. The official should present credentials (e.g., inspection badge, business card) to the Permittee or Unpermitted Entity and ask for permission to conduct the inspection. In most cases, access will be allowed; however, there may cases where access is denied, and the Borough official(s) must be prepared for these situations and how to respond accordingly.

For example, entry may be denied outright (e.g., access to records or areas of the permitted operation/facility is denied due to a proprietary/privileged information claim, inspector is threatened or put in a dangerous position).

Or other measures may be taken to indirectly deny or impede the inspection (e.g., unreasonable delay, unreasonable restrictions are placed on the inspection, such as prohibitions on photography or sampling, the inspector is asked to sign a "waiver" that would limit AEB's rights to use data obtained from the facility.

If inspection access is denied, the following steps should be taken:

1. Explain the AEB's authority to conduct the inspection. For permitted facilities, remind the Permittee (or its representative at the inspection) the permit approval and acceptance was contingent on an agreement to allow access for inspection, and show them the language in the permit. This will not be helpful in the cases where Unpermitted Entities did not agree to allow access.

2. If denial is clear and nonnegotiable, try to obtain details regarding the denial, including the reason for denial, the name of the person denying access, and when it occurred. This information will be important to document in the inspection report, and may prove valuable for obtaining a warrant.
3. Leave the site and adjust your plan of action. You may be able to make observations from any public areas, such as location outside the facility/activity location, looking onto the facility's property with binoculars or documenting at long range with cameras. However, Borough officials must carefully gauge the how threatening the denial was. If threatened, it may be prudent to immediately leave the area.
4. Because of the high cost to inspect AEB sites, the Borough official should contact the AEB Administrator before leaving the general area. The AEB Administrator may decide it is most efficient to work with the AEB Attorney to obtain a warrant and have the Borough official hold over in that location until one is secured. If there is reason to believe access may be denied, based on a previous experience or in the case of an Unpermitted Entity, you may consider obtaining a warrant before your visit.
5. Accurately document any denied access in the inspection report.
6. In cases where there is only a partial denial of access, such as a refusal to allow photographs, samples or access to records, complete as much of the inspection as possible and accurately document the limitations set by the Permittee or Unpermitted Entity.

3.4.13. Opening Meeting

In order to obtain critical safety information, assure cooperation, and set the tone of the inspection, the Borough official typically holds an opening meeting with the Permittee or Unpermitted Entity. In unique circumstances (e.g., an emergency or to stop the cover-up of a violation), the Borough official may avoid the opening meeting and go straight to the inspection. But in most cases, a briefing session is held.

If Borough official(s) and experts have not already done so upon entry, they will introduce themselves to the Permittee or Unpermitted Entity. Exchanging business cards with each person at the inspection is an efficient way to quickly acquire a complete set of contact information.

If there are two or more Borough officials assigned, one official should run the meeting. The official should:

- Explain the purpose, scope, and authority to conduct the inspection;
- Provide a list of documents/records that the Permittee or Unpermitted Entity should provide during the inspection (this list should be prepared at the AEB office in advance as part of the pre-inspection planning);
- Request copies of the document/records to be provided during the inspection, but no later than the end of the inspection. If there is a legitimate reason the documents cannot be provided during the inspection (e.g., lack of copier, records are not on site, size of document requires special handling) then make arrangements to have records mailed to the AEB office after the inspection;
- Explain that accurate and complete information is needed to properly determine compliance status;
- Clarify whether the inspection will be documented through field notes on observations, interviews, measurements, photographs, taking of samples, or a combination thereof;
- Discuss the areas to be inspected, the inspection priorities and order in which the inspection will be conducted;
- Inquire whether there are PPE or other safety considerations that need to be known to the inspector to safely conduct the inspection;
- Inquire where flash photography is prohibited for safety reasons;
- Inquire about safety (e.g., physical and chemical hazards; other hazards; emergency exit and rallying locations; location of first aid equipment, use of cameras, and whether there are firearms, explosives, or other weapons on site and whether they have been secured.);

- Explain that the inspection process allows AEB to gather data to verify compliance with the AEB permit, or to identify land uses that are required to have a permit that may not have secured one, and that it is the inspector's job is to gather data;
- Explain the Permittee or Unpermitted Entity will be provided an opportunity to provide input during the Closing Conference, and that input will be documented in the inspection report;
- Schedule a time for the Closing Conference (at the end of the inspection);
- Encourage the Permittee or Unpermitted Entity to immediately remedy as many of the problems identified while the Borough is on site, so that the inspector can note in the inspection report the problem was immediately remedied;
- For issues of concern that require additional time to remedy, explain there will be time at the end of the inspection to agree on a plan and a timeline to remedy the problem;
- Explain the inspection report will be prepared at the AEB office, and a copy will be provided (including photos and other evidence collected at the inspection) in a few weeks following the inspection;
- Explain that the inspection report will confirm compliance was achieved, or may identify violations that may require or other compliance assistance or enforcement action steps; and,
- Explain the Permittee or Unpermitted Entity will be provided an opportunity to review the report and determine whether it agrees or disagrees with the inspection findings, and explain the reason for any disagreement.

3.4.14. Inspecting the Location

After the opening meeting, the Borough official(s) and experts (if any) should commence a systematic inspection of the location. Borough official(s) should run the inspection and ensure the inspection stays on track and that Borough inspection priorities are completed. Do not let the Permittee or Unpermitted Entity run the inspection.

The inspection pathway may be based on logical step-wise review of the facility's processes or activities, or if there is an urgent concern, the inspection should start with this area. Or if time is limited, an inspector may find it most logical to start with the highest priorities to ensure they are completed before moving to medium and lower priority areas. If a site is large, it may be helpful for inspectors to trace their path on a site map to ensure no areas were missed.

During the inspection, the Borough official(s) should take notes, photographs, measurements, and may collect samples or request copies of sample results from samples taken and tested by the Permittee or Unpermitted Entity. Borough officials and experts should keep accurate written notes during the inspection, and write neatly and legibly. While these notes will eventually be used to produce a typewritten inspection report, the notes will become part of the official inspection record, and may be used in court or relied upon later.

Borough official(s) may also conduct interviews. It is best to record each site or event with more than one method of documentation (i.e., photos, measurements, as well as written descriptions), particularly where a potential violation may exist.

Taking good notes during the inspection is essential to prepare the inspection report and to form the basis for any enforcement action. A draft inspection report (started at the office in the pre-inspection work) can be attached to a clip board and used to take notes during the inspection; however, it may not be practical to take notes on these forms if it is raining, snowing, or windy, or if the inspector is climbing on or under equipment. Inspectors should always carry a waterproof log book during each inspection, which is small enough to fit in a coat pocket and a fine-tipped permanent marking pen to record data on the inspection forms or the waterproof log book, or a mechanical pencil. This will ensure that if the log book gets wet that data will not be lost. Do not write notes using ink that can run. Notes from the log books can be transcribed onto the inspection report, later at the AEB office.

One log book should be used for each inspection. The inspection name, date, permit number, and Borough official's name should be written on the front of the log book. The log book should be placed in the permit file as part of the inspection record. It is preferable to use one log book per inspection, so that the log book can become part of the permit record. If the same log book is used for more than one inspection, the inspector must make copies of the log book, and place the pertinent sections of the log book into the permit file.

Where a violation is suspected, the Borough should (at a minimum) attempt to collect the following information:

- Location;
- Type and amount of materials involved;
- Duration or time frame of the potential violation;
- Date the violation first occurred;
- Number of times the same violation was found at the site;
- Potential for harm;
- Individuals who had knowledge of or were involved in the potential violation; and,
- Statements made by individuals at the site about the potential violation.

Prior to the closing conference, the Borough official(s) and experts (if any) should review the inspection report form and make sure that all inspection objectives have been completed, and that all photos, measurements, and areas have been inspected. It is much easier to get information needed while still at the site.

3.4.15. Sample Collection & Analysis

Sample collection and analysis may be required to document and confirm violations. For example, the Borough may want to collect water, fish, air, or soil samples near a regulated facility. Sampling may be necessary if:

- There is no data or insufficient data about the impact of operations on the surrounding environment;
- The available data is in doubt;
- Data is needed to document an event, spill, or release;
- Sample collection is required by the permit; or,
- The Enforcement Official determines that evidence must be collected to support an enforcement action.

In most cases, it will be best for the Borough to hire sampling experts and independent laboratories to complete the sample collection and analysis. The use of independent, third party analysis is preferred in cases that may result in enforcement action and potential legal proceedings, because sampling quality and results may be questioned if trained, qualified experts do not complete the work. Further, the use of third party analysis may serve to rebut any fear of impartiality or tampering in any subsequent enforcement action.

There may be cases where the Borough only has one opportunity to collect a sample (e.g., chemical contamination that is present, but is migrating toward a water resource and may not be present later). In these cases, it will also be best to use a sample collection expert, because there may not be another opportunity to resample.

In cases where AEB resources do not allow sampling experts to be sent to a location in the Borough, it may consider using Borough officials to collect samples. In this case, the Borough official should consult a sampling expert and speak with the laboratory about the appropriate sampling and quality control procedures to be followed. Whenever possible, obtain written instructions on how to properly collect, preserve, mark and ship the sample to the laboratory for analysis.

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The cost of sampling experts and laboratory analysis is expensive. The need for sampling, sampling experts, and laboratory analysis must be approved by the AEB Administrator. Alternatively, and more commonly, the Borough may request that the Permittee or Unpermitted Entity hire a qualified, independent, third party sampling contractor (at its own expense) to collect and analyze samples and provide AEB with the report findings. Additional procedural guidance is listed below:

1. **Stay Organized & Keep Good Records.** Keep accurate records of sampling contractors, labs, sample collection protocol, sampling quality control, and lab methods. You may be questioned about this in a subsequent enforcement action or legal proceeding.
2. **Sample Log.** Keep a detailed log for each sample. Number and name each sample. Label contents and location sampled.
3. **Photographs and Video.** Take photograph and/or video footage of sampling locations, methods and personnel involved. Whenever possible take photographs of the Permittee or Unpermitted Entity, as well as its personnel, to provide evidence that they were at the sampling site at the time of collection. Take photos or video of the larger area, then narrow documentation to the sample location. This approach will provide both context and an accurate record of location for your sample.

3.4.16. Photographic & Video Evidence

Photographs and videotape can be excellent evidence. However, the authenticity of a photo or video may be questioned in a legal proceeding. Therefore, it is very important that the utmost care is taken by Borough officials when collecting photos or video evidence, or accepting the same from a Complainant.

Additional procedural guidance is provided below:

1. **Explain Your Intentions for taking Photographs and/or Video.** In general, Borough officials should not have to request permission to take photos or video at a permitted location in the Borough. However, as a matter of courtesy the Borough official(s) or Borough expert(s) should explain its plans for collecting photos and video to the people involved in the field inspection. A warrant is not required to collect photographic or video evidence from an Unpermitted Entity if the evidence is collected from off of the property, or if the Unpermitted Entity has already consented to the Borough official's request for entry onto the premises for the purpose of conducting the inspection.

2. **Safety**. There are some facilities, where flash photography can interfere with safety equipment, or can trigger a spark or explosion. This should not be a problem if the Borough official(s) or Borough expert(s) are using intrinsically safe photography equipment that conforms to the safety requirements of the particular environment. However, intrinsically safe equipment is not a common camera or video recorder feature. Borough officials and experts should explain to the Permittee or Unpermitted Entity whether they are using intrinsically safe equipment, and should inquire about any equipment use restrictions.

   In most cases, the Borough official(s) or Borough expert(s) will not have intrinsically safe equipment, and should inquire about the limits and required safety procedures for collecting photos and video where safety equipment or explosion hazards may be present. Typically, in these situations, the Permittee or Unpermitted Entity will send a safety officer with a lower explosive limit (LEL) monitor to tests vapor limits prior to authorizing photos or video.

3. **Stay Organized.** Use a fresh, clean digital camera memory card for each inspection (whenever possible). Set your photo counter to one (1). Download the photos from that memory card immediately after the field inspection, and ensure you make a backup. Or preferably, file the photo card in the Borough's permit recordkeeping system for that site.

4. **Photo Log.** Keep a photo log that corresponds with the photo number on your digital camera. In the log, describe what the photograph is and why you thought it was important to take the photo. It may be difficult to remember the location and reason for each photo later. For example, a photo log may look like this:

Photo 001: Facility entrance with company sign (proves you were at the inspection location).

Photo 002: Permittee officials present at inspection (add names and titles).

Photo 003: Fuel spill source (damaged tank #55). Take a photo of tank and placard.

Photo 004: Fuel contamination at base of damaged tank #55.

Photo 005: Fuel leak draining into Crooked Creek 100' from damaged tank #55.

Photo 006: Fuel spill sheen on crooked creek water (preferably with the Permittee or Permittee staff located in the photo as a witness).

5. **Video Log.** While collecting video evidence, clearly narrate what you are seeing and why you chose to take the video. Ensure that the video clearly shows the location (photograph entrance, company signs, buildings, and equipment placards). Take video of personnel at the location and ask them to provide their names and titles. Take video footage of the larger area, then narrow in on the intended subject. This approach will provide context and location for your video.

6. **Scale**: Use common items to help gauge scale in photographs and video. For example, you might place your boot on the ground next to a fuel leak to show the size of the contaminated soil relative to your boot. Often inspectors will carry measuring tapes or Global Positioning System (GPS) equipment. You can photograph items next to the measuring tape. Or take photos of the GPS readings to document site location.

7. **Photograph Personnel Involved**: Include the Permittee or Permittee's staff in the photograph, and Borough officials and experts. For unpermitted facilities, include a person that was present on site in the photograph (e.g., an owner or operator that should have secured a permit, but did not). This will provide evidence of who was at the inspection. It is especially important to obtain photos of the personnel next to the alleged or confirmed compliance violation.

8. **Photograph Personnel with Violations**: Take photographs of actual or alleged violations that include the Permittee or Unpermitted Entity's staff. This will verify the Permittee or Unpermitted Entity's knowledge of the actual or alleged violation. For example, if there is pollution, ask the permittee to stand near the pollution and take a photograph of both the person and the pollution.

9. **Measurements**. Take photographs or video of all measurements that you take. The photograph or video should show the inspector making the measurement and the unit of measure. For example, if you are verifying whether a fuel tank has the required 110% secondary containment system, photograph the measurements taken to verify the containment volume.

10. **Carry Extra Batteries, Memory Cards, and Camera**. Consider taking extra batteries, memory cards and camera to the inspection, especially where access to electric power may not be available to recharge a battery. Camera failure during an inspection, or exceeding memory card storage capacity, could impede or adversely impact the field inspection.

3.4.17. Record Review & Collection for Evidence

During a field inspection, the Borough official may request the opportunity to review a Permittee's records. Whenever possible the Borough official should review original, hardcopy records.

The Borough official may request a physical hardcopy of records be made or request electronic copies on DVD, CD, or USB drive. Preferably, Borough officials should leave the site with as many of the requested records as possible. If the permittee is missing a requested record, or requests additional time to provide the Borough with a copy, a time table should be set for sending these records to the AEB. The Borough official may want to take a photograph of any document that appears critical, but is being withheld, even if assurances are given that it will be provided later. This will ensure the Borough has a copy of the document if it is withheld, and will have specific information about the

document title, and its content, that may prove useful in a subsequent legal proceeding (e.g., discovery request). This approach will also ensure documents do not disappear from the record.

Depending on the amount of time allocated for the field inspection, some record review may be conducted at the permitted location; however, in many cases, most of the record review will take place back at the AEB office. Typically, the most efficient thing for the inspector to do is to complete a cursory review of the records to ensure that: (1) the requested records were provided; (2) records are legible and complete; and, (3) any missing or illegible records needing further attention have been identified. Document any concerns on the field inspection report. A more thorough analysis of the documents may be completed in the inspection report.

Most Permittees and Unpermitted Entities will be cooperative; however, it is possible they will refuse or fail to provide the requested records. If the applicable permit required the provision of records at the Borough's request, failure to do so is a potential violation of the permit, and should be indicated in the inspection report. Any lack of cooperation should also be indicated in the report. If the inspector is concerned that records or access to data is unfairly denied, the inspector should contact the AEB Administrator for further instruction. A warrant may be necessary to obtain records denied by a Permittee or an Unpermitted Entity. The AEB Administrator will need to work with the AEB Attorney to obtain a warrant.

It is also possible the permit holder will claim business records are confidential. There are legitimate bases for claiming confidentiality, such as where a company has a trade secret that could damage a company's competitive position if it became publically known. If a claim of confidentiality is made, the Borough official should ask the Permittee to assert the basis for confidentiality in a signed, written document. The inspector should note the claim on the inspection report, explain the circumstances under which the claim was made, and attach any written basis for the claim to the inspection report. The AEB Administrator may need to consult with the AEB Attorney to determine whether the claim is legitimate, and whether any follow-up action is appropriate.

3.4.18. Closing Conference

Borough official(s) should end the inspection with a closing conference. The closing conference provides the AEB an opportunity to thank the Permittee or Unpermitted Entity for their cooperation and congratulate them on successful compliance (if achieved), discuss key inspection findings, and agree on any required actions and timelines to remedy problems identified during the inspection.

The closing conference typically includes these steps:

1. Thank the Permittee or Unpermitted Entity for cooperating with the inspection (if true);
2. Congratulate the Permittee or Unpermitted Entity on achieving compliance (if true);
3. Describe inspection findings, including positive findings where the Permittee or Unpermitted Entity has gone beyond compliance, and areas where violations were found;
4. For violations, described the required timeline and remedy;
5. In cases of serious violations (e.g., confirmed High Priority Violations), the Borough official should explain its field inspection report will include a recommendation for enforcement action, that further Borough review of the violation will be conducted at the AEB's offices, and a final administration decision will be forthcoming on enforcement action and penalties;
6. Clearly explain observations regarding the violation and be prepared to answer any questions;
7. Ask questions regarding any unresolved issues and obtain any necessary additional information, giving the Permittee or Unpermitted Entity a deadline for providing this information; and,
8. Explain the timeline for issuing the inspection report and that the Permittee or Unpermitted Entity will have an opportunity to review the report and provide comment.

For most concerns identified during the inspection, the Borough official(s) should simply explain what action is needed to remedy the problem. Usually rapid and cooperative agreement on the remedy and timeline for completion can be accomplished (if the remedy is not complete before the inspection is over).

However, there may be some situations where serious violations, hazards, or conditions were observed during the inspection that need to be immediately addressed, or are so serious that require the Borough official(s) to contact the AEB Administrator to explain the problem prior to the closing conference and obtain advice on how to proceed. In these cases, AEB Administrator should advise the Borough official(s) on what immediate action should be taken, and the Borough official(s) should explain this requirement to the Permittee or Unpermitted Entity during the closing conference.

In serious cases, it may be appropriate to include AEB Administrator (and the AEB Attorney if requested by the AEB Administrator), via teleconference in the closing conference.

3.4.19 Post-Inspection

As soon as the Borough official(s) get back to the office, they should provide initial oral feedback to the AEB Administrator about any violations found (if this was not already done by phone during the inspection). Depending on the gravity of the violation(s), immediate action may be required. The Borough official(s) should prepare the inspection report, as soon as possible, while the inspection details are fresh in your mind, send samples to be tested (if any) and store evidence collected at the site. It is important to be organized, and keep good records. Inspection records may be relied on in court or during an enforcement action.

A checklist of typical post-inspection actions is listed below:

- Draft inspection report;
- File all inspection report notes, records and data gathered;
- Complete photo log, clearly label each photograph, and store photos;
- Complete sample log and send samples to lab (if any);
- Label and store any other evidence;
- Return shared inspection equipment to the inventory so it is available for other Borough officials to use;
- Plug all electronics in (e.g. cellphones, cameras, VHF Radios, GPS) to ensure they are charged and ready for the next inspection; and,
- Repack inspection bags with dry, clean gear and replace any supplies used (e.g., batteries, dry food).

If a Borough official(s) was unable to answer a question at the time of inspection, they should locate the answer and provide it to the Permittee or Unpermitted Entity, as soon as possible after the inspection. It is best to document the answer in the inspection report, and that the information was provided.

3.4.20 Inspection Report

A good inspection report is one that speaks for itself, such that enforcement action could be taken even if the inspector is no longer available. This means that the inspection report form is as complete and supported with photographs, notes, and records.

The following tips may be useful for preparing the inspection report:

- Write the report so that someone not familiar with the site (such as a Planning Commissioner, a future inspector, or the AEB Administrator that has not been to the location) can understand what was inspected and what was found.

- Clearly explain technical and scientific terms and how measurements were made.
- Avoid using abbreviations unless they are written out somewhere earlier in the report.
- Acknowledge best practices and where compliance was achieved (this will bring balance to the report, even when violations are found and will be helpful in selecting the right level of enforcement).
- Describe violations and reference AEB Land Use Permit requirements, the AEBMC, and other applicable standards and requirements.
- List all the personnel present and involved in the inspection.
- Systematically compile all the information collected before, during, and after the inspection, including the notes and photos taken by each inspector.
- Review the entire report from the beginning to the end, and check the spelling and grammar throughout the report. This will ensure that information is consistent throughout and can be understood by anyone reading the report.
- Ask other Borough officials and/or experts that participated in the inspection to review the report. Include any relevant additions and any changes that increase the accuracy of the report.
- Contact the Permittee or Unpermitted Entity to obtain more information if needed.
- Ensure that all information included in the inspection report is accurate, verifiable, and well supported.
- Include photos, and explain where video photography is available.
- Describe samples taken, methods used, and results.
- Describe any other evidence taken and why it is important.

Once the inspection report draft is complete, review it with the AEB Administrator before finalizing it. The AEB Administrator must approve all inspection reports. A copy of all final inspection reports should be provided to the Planning Commission and Assembly.

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4. Rewarding & Recognizing Compliance

The Borough plans to develop a compliance reward and recognition program in the future to reward Permittees who comply with AEB's permit obligations. However, AEB would like to wait to implement this program until it has the opportunity to administer the new permitting system for a period of several years. A compliance reward and recognition program will be considered at the next update of this manual.

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5. Compliance Education

As explained above in Chapter 1.1 of this SOP Manual, it is AEB's overall compliance philosophy and plan to administer its code enforcement program in a professional, cooperative, solution-oriented, and commonsense manner. Borough officials should be cooperative and provide compliance assistance at all times to Permittees and Unpermitted Entities to promote compliance.

Borough officials should endeavor to continually educate businesses subject to AEB's Land Use Permitting Program to ensure their responsibilities are understood and to provide compliance assistance. If Borough officials become reasonably aware of potential compliance violations, or situations that may lead to potential violations, the official should work with the responsible/affected parties to mitigate the problem.

While the Borough does not have an affirmative obligation to notify and prevent all potential violations, or situations that may lead to violations, it is in the Borough's best interest to do so whenever resources allow. This approach will allow AEB to focus its efforts and finite resources on improving the quality of life for its current and future residents, businesses, and visitors, while promoting the health, safety, and wellbeing of those who call the Borough home.

However, no Permittee or business should profit from non-compliance. Permittees and Unpermitted Entities should not gain a competitive advantage over a similarly situated business that does comply with the AEBMC. Therefore, penalties may ultimately be required even in cases where the AEB starts the process with a cooperative, assistance-oriented approach, but additional actions or information reveals the violation was more severe than was initially believed, or profit or a competitive advantage resulted from that non-compliance.

Borough officials must treat all Permittees and Unpermitted Entities equitably and fairly. Therefore, if a Borough official makes it a practice to provide compliance assistance and education in a certain manner, it should render that same courtesy to all similarly situated business. For example, if it is the AEB's practice to obtain a list of guides and outfitters from the state and federal websites each year, and send a letter notifying each of the requirement to obtain a AEB Land Use Permit, that compliance education letter must be provided to all the guides and outfitters operating in the Borough, not just a select few.

The AEB should also keep in mind that compliance education practices, while benefical, can be precedential. For example, a guide and outfitter may take the position that it always awaits the AEB's annual notification before applying for a permit, and may use that as an excuse for a late application (or failure to apply). Compliance education practices and precedents may need to be taken into consideration when remedying violations and assessing penalties.

While it is not AEB's obligation to identify and attempt to prevent permit or code violations in every case, Borough officials who are made aware of (or identify) actual or threatened violations should contact the subject of the concern and address the issue, as soon as possible.

For example:

- Commercial Recreation Operators are required to remove temporary equipment and facilities before the end of each authorized permit term. A Borough official may identify a situation where a Permittee has not removed its equipment and facilities; yet, its permit expiration is rapidly approaching. In this case, the Borough official should call the Permittee and inquire whether the permit will be renewed or discuss plans for equipment and facility removal.

- An offshore seafood processor appears to be withdrawing surface waters at a withdrawal rate that may adversely affect fish habitat. In this case, a Borough official should call the Permittee to discuss the potential concern, find out more information about actual water withdrawals and obtain assurance that water is not being withdrawn at a rate may adversely affect fish habitat. In many cases, a call to simply discuss the matter will head-off the problem, because the Permittee is now aware the Borough will be monitoring the situation

closely.

- An Oil and Gas Permit holder does not appear to be adhering to its Conflict Avoidance Plan. The plan requires that "Commercial Fishing, Subsistence Use, and Sport Harvest Conflicts will be avoided. Commercial fishing, subsistence use, and sport harvest have priority. Permittee's uses of land and wildlife habitat shall minimize adverse impacts on subsistence activities and resources. Noise shall be mitigated to avoid disruption to subsistence activities and nearby communities." Borough officials may not have received a formal written complaint, but have received oral concerns while working in the area from local residents, or during a coffee break at a recent public meeting. In this case, it is best if the Borough official contacts the Permittee to discuss the issue and request resolution, with the goal of preventing the problem from growing into a compliance violation.

- A Borough official may be aware of a new business that requires an AEB Land Use Permit. The Borough official may give the business a courtesy call to notify them of the permit requirement and provide a copy of the permit application, and explain the permitting process and timelines.

In all cases, the Borough official should document compliance education in the Borough's permit recordkeeping system.

The Borough should continue to periodically monitor these warnings to ensure the problem is resolved, contained, and is not brewing into a compliance violation requiring additional Borough action.

The AEB Administrator may want to provide the Planning Commission and Assembly with list of compliance education activities at each meeting to document their efforts.

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6. Failure to Submit a Land Use Permit Application Letter

The Borough should issue a **Failure to Submit a Land Use Permit Application Letter (Initial Notification)** if: (1) a Complainant alleges an Unpermitted Entity failed to submit an AEB Land Use Permit Application in a timely manner and the Borough determines that the complaint has potential merit, or (2) the Borough otherwise becomes aware of an Unpermitted Entity's failure. This letter notifies the Unpermitted Entity an AEB Land Use Permit is required by Title 40 of the AEBMC, provides a copy of the permit application form, and requests the application be submitted along with the required permit fee and the penalty amount for late application.

As a courtesy, the Borough official should also contact the Unpermitted Entity to let them know the letter is being issued, and request cooperation. During this phone call, the Unpermitted Entity may be able to explain why an AEB Land Use Permit Application was not submitted or not needed. This could avoid the need for a letter. If the Unpermitted Entity provides a legitimate explanation for why a permit was not needed, and the Borough official agrees, the official should document this outcome in the Borough's permit recordkeeping system.

An example Failure to Submit a Land Use Permit Application Letter (Initial Notification) is provided in Appendix 6. A copy of each issued letter should be recorded in the Borough's permit recordkeeping system.

The Borough official that issued the letter should follow up with the Unpermitted Entity to ensure the permit application was submitted, along with required permit application fee, and penalty amount for late application. Or, in the case that the Unpermitted Entity has not responded to the letter, the Borough official should use the opportunity to determine whether the business has a valid reason for not submitting an AEB Land Use Permit Application.

The Fee & Penalty Schedule instructs Borough officials to give the business 30 calendar days to apply for the permit. If the permit application is not submitted, or the Unpermitted Entity has not provided a valid excuse within 30 days, then an additional daily penalty starts to accrue under the Schedule.

On day 31, a second letter should be issued notifying the Unpermitted Entity the AEB has not received a response to its Failure to Submit a Land Use Permit Application Letter (Initial Notification) in the time requested. This letter should also explain that, in addition to the penalty listed in the initial letter, a daily penalty began to accrue on day 31. This letter is called a Failure to Submit a Land Use Permit Application Letter (Second Notification). An example is provided in Appendix 6.

If both letters fail to elicit a response, the AEB Administrator may need to initial legal proceedings with the assistance of the AEB Attorney.

The AEB Administrator should provide the Planning Commission and Assembly with list of letters that have been sent to Unpermitted Entities, as well as a summary of the status of each letter at the next Planning Commission and Assembly meetings.

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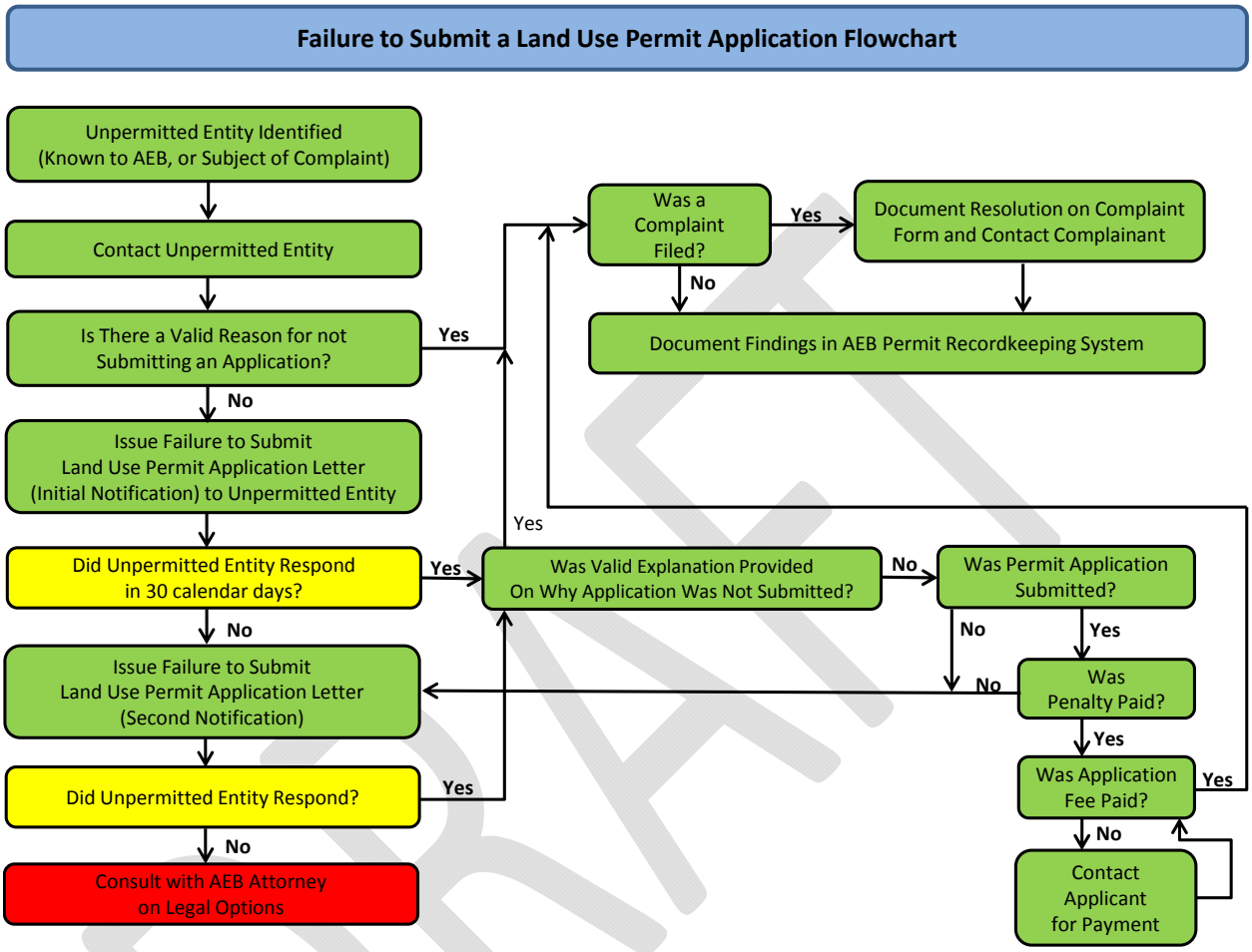
The Failure to Submit a Land Use Permit Application Flowchart below provides a graphic summary of the process.



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7. Notice of Complaint

As explained in Chapter 2.1 of this SOP Manual, the AEB may receive notification of an actual or potential violation by means of a complaint. The AEB Land Use Complaint Form must in all cases be filled out and submitted to the AEB by the Complainant. Oral complaints may be received at the AEB office by telephone; however, Borough officials should request the Complainant to follow-up its oral complaint with a written AEB Land Use Complaint Form, and should explain what action AEB will take after the complaint form is received.

A copy of the AEB Land Use Complaint Form approved by the Planning Commission and Assembly is provided in Appendix 2. AEB's Complaint Form includes a complete set of instructions.

Typically, Borough officials will await receipt of a completed Land Use Complaint Form before investigating a complaint. However, where a high priority violation is alleged, the AEB may decide immediate action and investigation is required before receiving the written AEB Land Use Complaint Form. The AEB Administrator or designee is authorized to make this decision.

7.1. Complaint Resolution Steps

After a complaint form is received, Borough officials will take the following steps:

1. Borough officials will contact both the Complainant and the Permittee or Unpermitted Entity that is the subject of the complaint to discuss it. There may be circumstances in which the Borough decides not to contact the subject of the complaint (e.g., concern the violation may be covered-up prior to a Borough investigation). The AEB Administrator, or its designee, is authorized to make this decision.

2. Next, Borough officials must determine if the:

   a. Borough has jurisdiction over the alleged violation;

   b. Subject of the complaint is the party responsible for the alleged violation;

   c. Complaint is a violation of the AEBMC, AEB Land Use Permit, or other AEB Approval; and,

   d. Complaint may potentially be a violation of other local, state, or federal law or regulation.

   Based on the information received in the complaint, the subject of the complaint and any other agencies that may be involved, AEB officials will determine if further investigation or action is warranted to bring the matter to resolution.

   If the potential violation relates only to the AEB Borough Code, where the Borough has primary and sole jurisdiction, the Borough will take the lead in processing the complaint. If the Borough does not have jurisdiction or primary jurisdiction (meaning the potential violation not only violates Borough Code but also violates state and/or federal laws and regulations), it will be AEB's practice to refer those complaints for resolution by the state and/or federal agency with primary jurisdiction. State and/or federal agencies have more resources to take the lead. However, if the state and/or federal agencies do not resolve the complaint in a timely or satisfactory manner, and the AEB has jurisdiction, the AEB may opt to pursue complaint resolution later. There may be cases where further investigation is needed to make the jurisdictional determination, in that case, the AEB should pursue its investigation until the circumstances of the potential violation are understood and jurisdiction can be determined.

3. Borough officials will then determine whether the complaint appears to be credible, and worthy of pursuit, based on the information from the Complainant and subject of the complaint.

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4. If the Borough official determines the complaint is not credible or worthy of pursuit, the official shall document the reason supporting that determination on Section 11 of the complaint form and in AEB's permit database. A Borough official should contact the Complainant to explain the action taken.

5. If the complaint is credible, but not within the AEB's authority, Borough officials may decide to refer the complaint to other local, state or federal officials. The Borough official shall document the decision to refer on Section 11 of the complaint form and in AEB's permit database. A Borough official should contact the Complainant to explain the action taken.

6. If the complaint appears to be credible, and within AEB's authority, the Borough official shall determine if it:

   a. Relates to failure to submit a permit application;

   b. Involves a low or medium priority violation; or,

   c. Is a high priority violation.

   [See Chapter 1.3 for a definition of low, medium, and high priority violations.]

7. If the complaint involves a failure to submit an AEB Land Use Permit (when required), the Borough official shall issue a Failure to Submit a Required Land Use Permit Application Letter notifying the alleged Unpermitted Entity it may have failed to submit a required permit application. [Follow instructions in Chapter 6 of this SOP Manual to remedy situations where a business/activity failed to submit a required permit.].

8. If the complaint involves a low or medium priority violation, issue a Notice of Complaint Letter to request information to invalidate the alleged noncompliance or remedy it. This letter provides notice a complaint has been received, and that the Borough will be working with the subject of the complaint to resolve the matter. This letter also requests the recipient's input and cooperation. [Follow instructions in Chapter 7 of this SOP Manual to issue a Notice of Complaint Letter and follow-up].

   Note: There may be some circumstances where the Borough decides not to send a **Notice of Complaint Letter** (e.g., when there is concern the violation may be covered-up prior to a Borough investigation). The AEB Administrator or designee has the authority to make this decision.

9. If the complaint involves a high priority violation, the AEB Administrator should consider issuing a **Notice of Violation, and/or initiating a Court-Ordered Injunction**. [Follow instructions in Chapter 10 of this SOP Manual to issue a Notice of Violation or Chapter 12.1 to initial a Court-Ordered Injunction].

   Note: The AEBMC delegates authority to the AEB Administrator to decide what constitutes a minor infraction, or more significant high and medium priority violations.

10. Conduct further investigation while a response to any of the above letters is pending, if necessary. Depending on the nature, urgency, and severity of the complaint, AEB officials may be sent to the location to investigate the complaint (field inspection), may conduct a record audit or interviews, or hold meetings.

11. Prepare a written report summarizing findings. If after further investigation, and response from the subject of the complaint, the Borough determines:

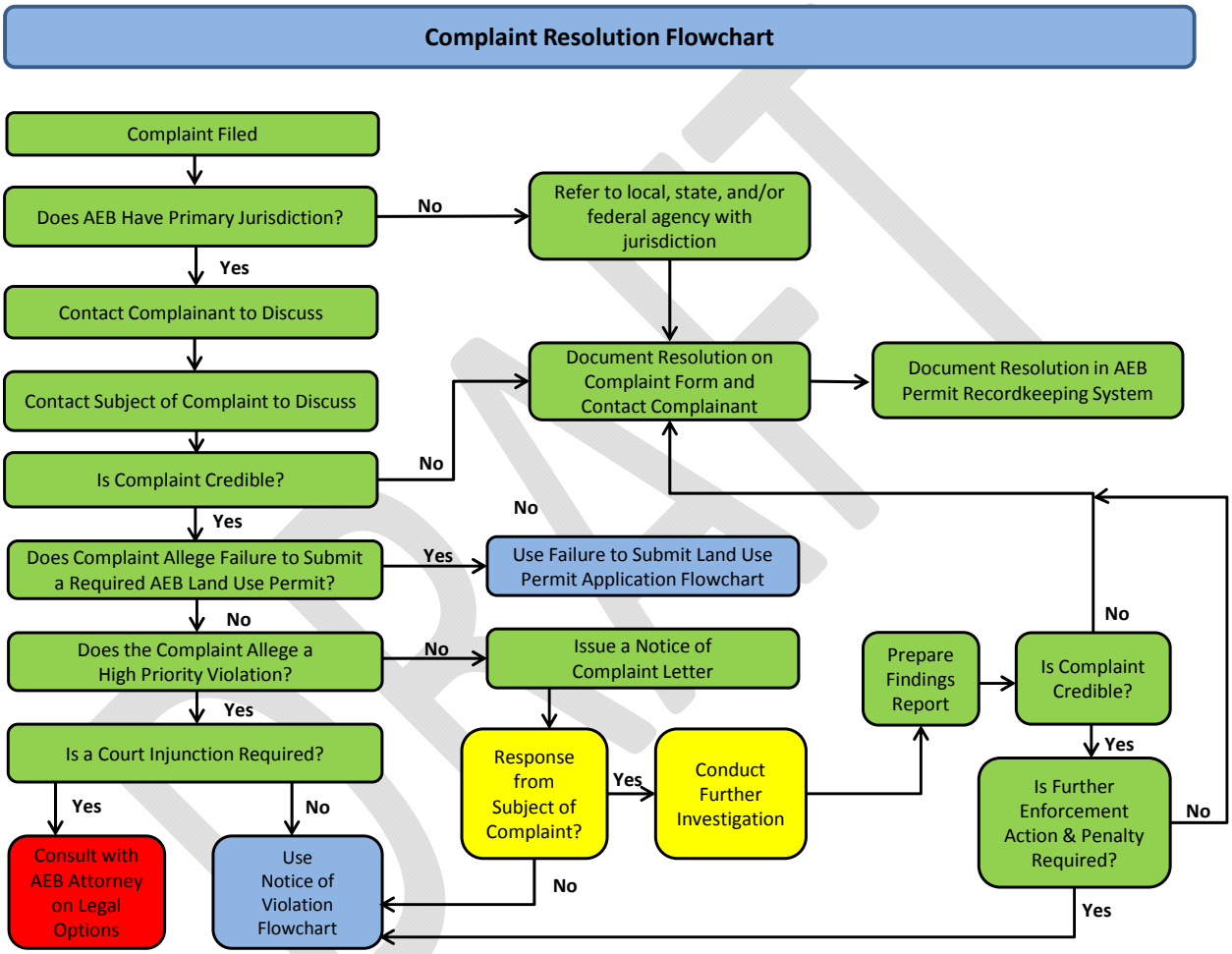
    a. **The complaint is not credible, or is not worthy of enforcement action:** The Borough official should document the reason for dismissing the complaint on Section 11 of the complaint form and in AEB's permit database. The Borough official should then contact the Complainant to explain the action taken.

    b. **The complaint is credible, but can be resolved without the need for formal enforcement action or the need for a penalty:** The Borough official should document the Borough's resolution of the violation on Section 11 of the complaint form and in AEB's permit database. A Borough official should then contact the

Complainant to explain the action taken.

c. **There is a need for formal enforcement action and a penalty**: the Borough official will issue a **Notice of Violation**, if it has not already done so. [See Chapter 10 of this SOP Manual for instructions on preparing and issuing a Notice of Violation]. Complete enforcement action and document on Section 11 of the complaint form and in AEB's permit database. A Borough official should then contact the Complainant to explain the action taken.

The Complaint Resolution Flowchart below provides a graphic summary of the process.



7.2. Dismissed Complaints

In cases where the complaint is immediately determined to be not worthy of pursuit, or not credible, the Borough should dismiss the complaint. There may be situations in which a complaint appears credible at first; however, on further investigation, is dismissed. In these cases, the Borough official should document the reason the complaint is dismissed on Section 11 of the complaint form, and contact the Complainant to explain the Borough's determination. The matter will be closed and no further action will be taken.

It is important to accurately document the reason for dismissing the complaint. This complaint may arise again years later after the Borough official handling the complaint has moved to another job or retired, or the Complaint may

elevate its concerns to the Planning Commission, Assembly or other agency. It is important for the Borough to have accurate and complete records of how they handled the complaint on file for immediate reference.

The AEB Administrator should provide the Planning Commission and Assembly with list of complaints that were dismissed, along with a short explanation of the reasons supporting the dismissal, at the next Planning Commission and Assembly meeting.

7.3. Notice of Complaint Letters

A Notice of Complaint Letter should be issued in cases where the complaint alleges a violation and the Borough determines that the complaint has potential merit. The letter provides opportunity to clear up any misunderstanding and work cooperatively with the Permittee or Unpermitted Entity to resolve the matter, which may avoid the need for a protracted enforcement case, involving great expense to both parties. In this way, unjustified alleged violations are quickly laid to rest, and confirmed violations may be advanced toward resolution. Notice of Complaint letters request information the Borough may use to invalidate any alleged violation, or to develop a plan for remedying it.

More specifically, the Notice of Complaint Letter advises Permittees or Unpermitted Entities that a complaint has been received, and provides notification the Borough will actively pursue resolution of the matter. The letter requests input and cooperation in resolving the matter. A sample Notice of Complaint letter is provided in Appendix 7.

The Notice of Complaint letter is sent to the subject of the complaint, including the following information:

1. Notice that AEB has received a AEB Land Use Complaint Form pertaining to their permitted, or unpermitted, activities.

2. A summary of the complaint, including the time, duration, nature, and type.

3. A summary of any impact resulting from alleged noncompliance.

4. The specific permit conditions or AEBMC provisions that have been potentially violated, with explanations.

5. Notice that the AEB is investigating the complaint, and an anticipated timeframe for that investigation (if known).

6. A request that information and input regarding the complaint be provided to the AEB for consideration as part of the investigation within a specific timeframe, such as 7 calendar days from reciept.

7. A request for cooperation in resolving the complaint.

8. Contact information for the Borough official conducting the investigation.

It is imperative the notice is provided to the subject of the complaint within a reasonable time following the Borough's receipt of any complaint. As a best practice, the notice should be delivered to the subject of the complaint by certified mail.

The AEB Administrator should provide the Planning Commission and Assembly with a list of Notices of Complaint that have been issued, along with a short explanation of the complaint, and the complaint's status, at the next scheduled Planning Commission and Assembly meeting.

7.4. Resolving the Complaint

The AEB has limited resources to conduct investigations and other enforcement activities and must therefore prioritize the use of those resources when resolving complaints. Whenever possible, the Borough should endeavor to

resolve minor infractions rapidly and peacefully, avoiding the cost and complexity of formal enforcement actions. Borough officials should reserve formal enforcement action to the more significant infractions associated with high and medium priority violations.

Complaints may be filed regarding alleged violations that are not significant enough to warrant further investigation, enforcement action, or the imposition of penalties. Nonetheless, these matters should be resolved; however, it may be that these matters may be rapidly and simply resolved through peaceful cooperation and agreement between the Complainant, the subject of the complaint, and the AEB.

In some instances, the subject of a complaint may not be aware that its action or inaction has caused concern sufficient to trigger a formal complaint. Most often, the subject of a complaint will make a prompt and good faith effort to address the problem. For example, a complaint about loud construction noise in the evening disturbing a Complainant's sleep may be rapidly and peacefully resolved by a simple call from a Borough official to the subject of the complaint requesting the construction activity be limited to the hours of 9am through 9pm each day. If the subject of the complaint agrees, the matter can be quickly resolved to everyone's satisfaction. If the AEB Administrator determines no penalty is warranted, the Borough official will simply document the resolution in Section 11 of the AEB Land Use Complaint Form and notify all involved of the planned resolution. The Borough should continue to periodically monitor the situation to ensure the problem is resolved, contained, and is not brewing into a compliance violation requiring future enforcement action.

In other cases, the Borough may upon further investigation verify that the Permittee or Unpermitted Entity has committed a violation of the AEBMC, and/or a violation of a permit condition, warranting a formal Notice of Violation and penalty. In these instances, the next step is the issuance of a formal Notice of Violation. The Notice of Violation process takes the next step of confirming a violation occurred and that a penalty is warranted. The Notice of Violation provides information on the recipient's appeal rights. The AEB Administrator or designee is authorized to decide when to issue a Notice of Violation. [See Chapters 10-11 for instruction on preparing and issuing a Notice of Violation and collecting a penalty.]

The time allotted for correcting the alleged violation will depend upon the totality of the circumstances, including but not limited to: (a) the nature, extent, and difficulty of the work required to achieve resolution; (b) the danger posed by the alleged violation to the health and safety of the public and the environment; (c) the specific time allotments set forth in the particular permit governing the permittee's activities; and (d) the time periods mandated by any law or regulation applicable under the circumstances.

In all cases, the resolution should be documented on Section 11 of the complaint form, and the Borough official handling the complaint should contact the Complainant to explain the Borough's determination/actions. It is important to accurately document resolution. This complaint may arise again years later after the Borough official handling the complaint has moved to another job or retired, or the Complaint may elevate its concerns to the Planning Commission, Assembly or other agency, if they are not satisfied with the resolution. Therefore, it is important for the Borough to have accurate and complete records of how it has handled the complaint on file for immediate reference.

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8. Compliance Assistance Letter

As explained in Chapter 2.2 of this SOP Manual, the AEB may have in some instances itself discovered or become aware of a potential or actual violation. The first step, in most of these cases is for the Borough to contact the Permittee or Unpermitted Entity to discuss the perceived violation and to seek amicable resolution. If the matter cannot be resolved or clarified by a simple phone call or a meeting, or a potential violation is deemed credible, then the AEB will issue a Compliance Assistance letter with the goal of documenting the perceived violation, and seeking resolution.

This process should be followed unless the alleged violation is a high priority. High Priority Violations warrant immediate enforcement action, or a court ordered injunction to abate the violation, and are therefore not eligible for resolution through Compliance Assistance Letters.

In other instances, the Borough may be concerned that alerting the Permittee or Unpermitted Entity could result in its attempt to cover up the violation before the Borough has an opportunity to investigate. If the Borough official addressing a permitting compliance matter reasonably believes that this is a possibility, the official may exercise the discretion to issue a Compliance Assistance Letter until it has had an opportunity to more thoroughly investigate the perceived or suspected violation.

In general, Compliance Assistance Letters should be used for:

- Potential violations that are suspected, but have not yet been confirmed;
- First-time potential violators only (not repeat or recalcitrant violators);
- Failure to follow procedures or maintain required records or plans;
- Failure to submit required information on time;
- Potential violations serious enough to warrant corrective action, but that do not pose an immediate or imminent threat to human health or safety, or to the environment.

Compliance Assistance Letters seek information and resolution and do not include a final enforcement decision or appeal rights. Therefore, the Compliance Assistance Letter is only the first step in an enforcement action, which if not resolved satisfactorily and timely, may prompt the AEB to issue a Notice of Violation and associated penalty.

The Violation Priority Flowchart on the following page provides guidance on which approach to use.

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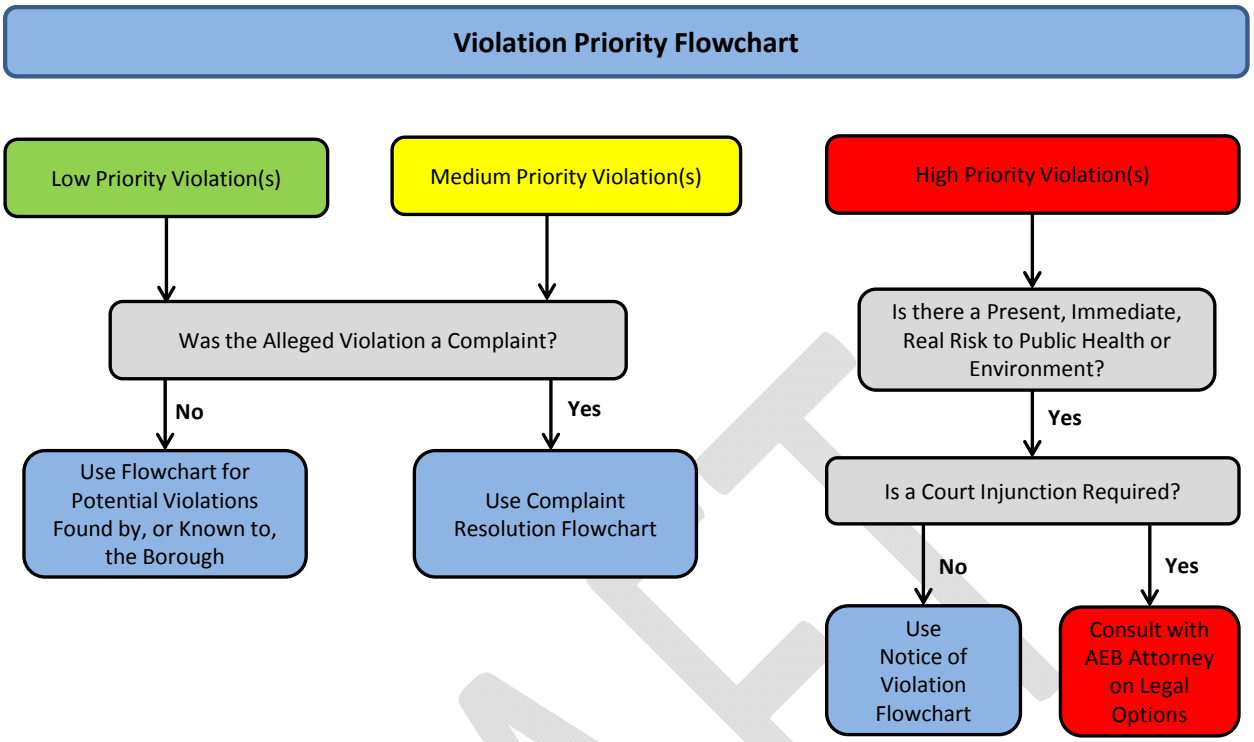


8.1. Compliance Assistance Steps

After a Borough official discovers, or becomes aware of a potential violation, the following steps should be taken:

1. The Borough official will contact the Permittee or operator to discuss the alleged or perceived violation. There may be some circumstances in which the Borough decides not to contact the subject of the complaint (e.g., concern the violation may be covered-up prior to a Borough investigation). Based on what is learned during the initial conversation or meeting, as well as the information and other evidence in hand, the Borough official will determine if a Compliance Assistance Letter is warranted, or whether other enforcement action should be taken.

2. Next, Borough officials must verify whether:

   a. The Borough has jurisdiction over the potential violation;

   b. The complaint is a violation of the AEBMC, AEB Land Use Permit, or other AEB Approval; and,

   c. Other local, state, or federal law or regulation is involved.

   If the potential violation relates only to the AEB Borough Code, where the Borough has primary and sole jurisdiction, the Borough will take the lead in processing the complaint. If the Borough does not have jurisdiction or primary jurisdiction (meaning the potential violation not only violates Borough Code but also violates state and/or federal laws and regulations), it will be AEB's practice to refer those complaints for resolution by the state and/or federal agency with primary jurisdiction. State and/or federal agencies have more resources to take the lead. However, if the state and/or federal agencies do not resolve the complaint in a timely or satisfactory manner, and the AEB has jurisdiction, the AEB may opt to pursue complaint resolution later. There may be cases where further investigation is needed to make the jurisdictional determination, in that case, the AEB should pursue its investigation until the circumstances of the potential violation are understood and jurisdiction can be determined

3. If the perceived or suspected violation is significant enough to justify pursuit, and is within AEB's authority, the Borough official must then determine if:

   a. It relates to failure to submit a permit application;

   b. It involves a low or medium priority violation; or,

   c. Is a high priority violation.

   [See Chapter 1.3 for a definition of low, medium, and high priority violations]

4. If the potential violation involves an alleged failure to submit an AEB Land Use Permit (when required), the Borough official should issue a Failure to Submit a Required Land Use Permit Application. [Follow instructions in Chapter 6 of this SOP Manual to remedy situations where a business/activity failed to submit a required permit.].

5. If a Low or Medium Priority Violation without immediate risk to human health or safety, or to the environment, is identified, issue a Compliance Assistance Letter to request information to either invalidate the alleged violation, or remedy it. This letter provides notice that Borough has found or is aware of a potential violation, and would like to resolve the matter. This letter also requests input and cooperation. [Follow instructions in Chapter 8 of this SOP Manual to issue a Compliance Assistance Letter and follow-up].

   Note: There may be some circumstances where the Borough decides not to send Compliance Assistance Letter (e.g., when there is concern the violation may be covered-up prior to a Borough investigation). The AEB Administrator or designee has the authority to make this decision.

6. If the Borough identifies a High Priority Violation, the AEB Administrator should not issue a Compliance Assistance Letter, and should instead issue a Notice of Violation, and/or consider the initiation of proceedings to obtain a Court-Ordered Injunction. [Follow instructions in Chapter 10 of this SOP Manual to issue a Notice of Violation, or Chapter 12.1 to initiate proceedings to obtain a Court-Ordered Injunction].

   Note: The AEB Administrator is delegated authority to make decisions regarding what constitutes a minor infraction or the more significant High- and Medium-Priority violations.

7. The Borough official should conduct further investigation while a response to the above letters is pending. Depending on the nature, urgency, and severity of the complaint, AEB officials may be sent to the location to investigate the complaint (field inspection), may conduct a record audit or interviews, or hold meetings with the Permittee or Unpermitted Entity.

8. Prepare a written report that summarizes the Borough official's findings. If after further investigation, and reviewing the response from the subject Permittee or Unpermitted Entity, the Borough determines:

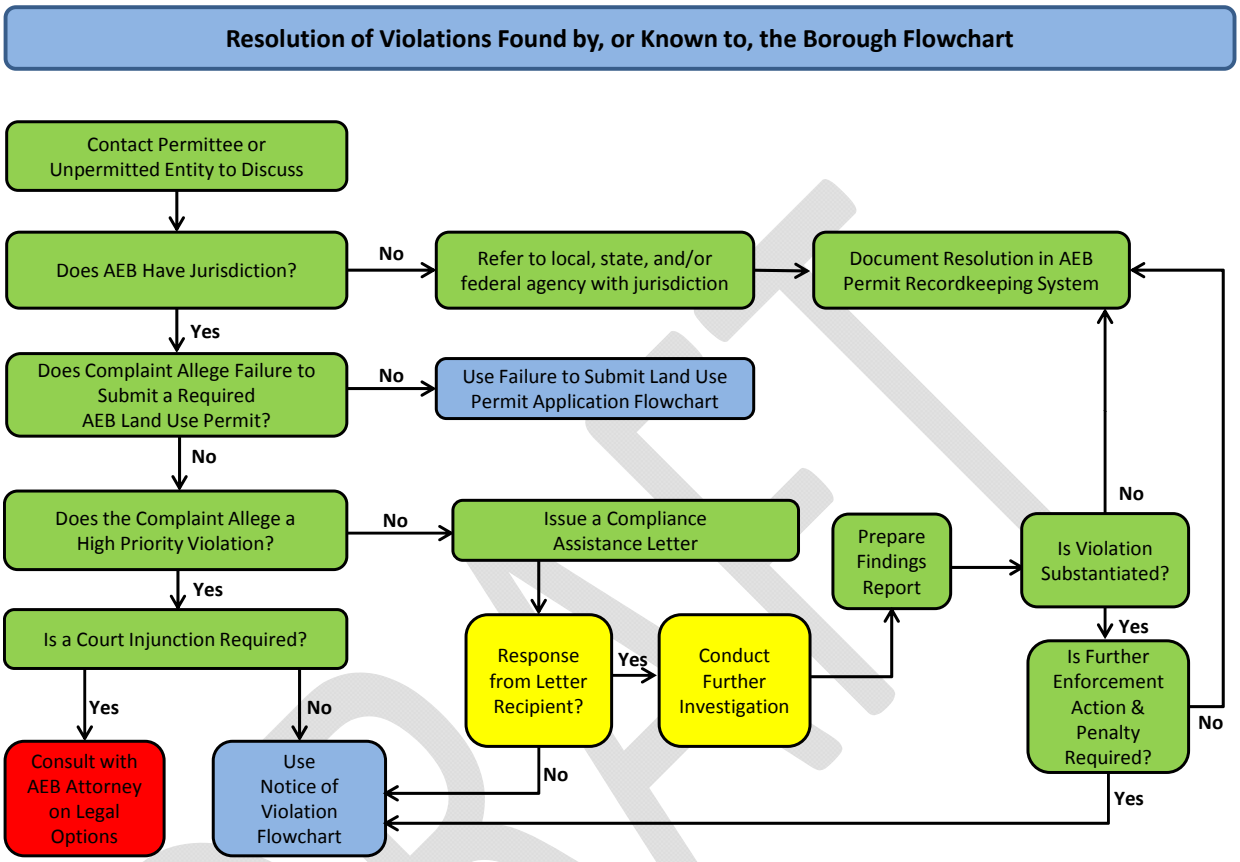
   a. **There is no violation, or it would not be worthy of enforcement action:** The Borough official should dismiss the complaint or enforcement action, and document the reason for doing so in AEB's permit recordkeeping system. A Borough official must then contact the Permittee or Unpermitted Entity about the action taken.

   b. **The violation occurred, but can be resolved without the need for formal enforcement action or the need for a penalty:** The Borough official should document the Borough's resolution of the matter in AEB's permit recordkeeping system. A Borough official must then contact the Permittee or Unpermitted Entity about the action taken.

   c. **There is a need for formal enforcement action and a penalty:** the Borough official will issue a **Notice of Violation**, if it has not already done so. [See Chapter 10 of this SOP Manual for instructions on preparing

and issuing a Notice of Violation]. Document the Borough's resolution in AEB's permit recordkeeping system. A Borough official must then contact the Permittee or Unpermitted Entity about the action taken.

The Resolution of Violations Found by, or Known to, the Borough Flowchart is shown below.



8.2. Compliance Assistance Letter

A Compliance Assistance Letter should be issued in most cases in which a suspected or alleged violation may have occurred to notify the Permittee or Unpermitted Entity of the alleged violation, and to request cooperation to achieve resolution of the matter. Compliance Assistance Letters may only be used with respect to Low- or Medium-Priority violations. The letter provides the Permittee or Unpermitted Entity an opportunity to clear up any misunderstanding and to work cooperatively with the Borough to resolve the matter, avoiding the need for the parties to enter into a protracted enforcement case, which may involve great expense to both parties. In this way, unjustified alleged violations, and violations that are innocuous in nature, are quickly laid to rest. Compliance Assistance Letters request information used to either invalidate the alleged noncompliance or, if a violation is confirmed, to remedy it.

A sample Compliance Assistance Letter is provided in Appendix 8.

Compliance Assistance Letters issued by AEB should include the following information:

1. Notice that the AEB has found or is aware of a potential violation of the AEBMC or permit requirement.

2. A summary of the alleged violation, which includes a description of the time of its occurrence, duration, nature, and type.

3. An explanation of the specific permit conditions or AEBMC provisions alleged to have been violated.

4. Notice that the AEB is investigating the matter and anticipated timeframe for that investigation, if known.

5. A request for information and input regarding potential violations (list a date that information should be provided by AEB for consideration as part of the investigation, such as 7 calendar days from reciept).

6. A request for cooperation in resolving the matter.

7. Contact information for the Borough official conducting the investigation.

The AEB Administrator should provide the Planning Commission and Assembly with list of Compliance Assistance Letters that have been issued, with a short explanation of the complaint, and resolution status, at the next scheduled Planning Commission and Assembly meeting.

8.3. Obtaining Compliance

In most cases, the Compliance Assistance Letter should result in resolving the suspected or alleged violation. However, if a Permittee or Unpermitted Entity fails to comply with the instructions set forth in the Compliance Assistance Letter, or the violation continues or worsens, the Borough may determine the violation warrants a formal action and the imposition of a penalty.

The collection of penalties according to the current Fee & Penalty Schedule requires the Borough issue a formal Notice of Violation. The AEB Administrator, or its designee, is authorized to make the decision regarding whether the issuance of a Notice of Violation is warranted under the circumstances. [See Chapters 10-11 for instruction on preparing and issuing a Notice of Violation and collecting a penalty.]

The time allotted for correcting the alleged violation will depend upon the totality of the circumstances, including but not limited to: (a) the nature, extent, and difficulty of the work required to achieve resolution; (b) the danger posed by the alleged violation to the health and safety of the public and the environment; (c) the specific time allotments set forth in the particular permit governing the permittee's activities; and (d) the time periods mandated by any law or regulation applicable under the circumstances.

In cases where other state and federal permits are required, the Borough may want to contact state and federal agencies and notify them of the noncompliance. The Borough will want to determine if the noncompliance is also a violation of a state or federal permit, because those agencies may also want to pursue enforcement action or take the lead on enforcement. Having a state and/or federal agency take the lead on enforcement may be a more economical solution for the Borough in some cases.

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9. Self-Reported Violation Confirmation Letter

Permittees are encouraged to self-report violations of the AEBMC. A Self-Reported Violation Confirmation Letter should be issued by the Borough in response to a Self-Reported Violation. This letter confirms receipt of the Self-Reported Violation notification, documents whether the Borough agrees with the proposed remedy (or provides alternative instruction to remedy the violation), and levies a fine (if required). The self-reported violation process is only available to an existing AEB Land Use Permit holder, and does not apply to an Unpermitted Entity that failed to obtain a required AEB Land Use Permit.

A Self-Reported Violation Confirmation Letter template is provided in Appendix 9.

The process for handling a Self-Reported Violation is as follows:

1. Borough official receives a Self-Reported Violation within seven (7) calendar days of the violation and Permittee agrees to remedy the violation.

2. Borough official requests the Permittee to follow its oral report, or email notification, with a letter more fully describing the Self-Reported Violation and provide written agreement to remedy the violation (if not already resolved), including the steps to be taken and a proposed timeline for resolution. In most cases, the Borough should request this letter be produced and sent to the Borough within five (5) calendar days.

3. Borough official reviews the Permittee's Self-Reported Violation, and discusses the proposed resolution with the AEB Administrator.

4. The Borough issues a letter acknowledging the self-reported violation. This letter includes the Borough's appreciation for the self-reporting, and confirms whether the Permittee's proposed remedy is acceptable to the Borough. If not, the letter should list any other action required. The Borough's letter also lists the penalty amount assessed for the violation. Appendix 1 includes a fee and penalty schedule for each type of AEB Land Use Permit. Each schedule includes a reduced penalty for self-reporting. Self-Reported Violations that are intentional acts or omissions, or the result of gross negligence are assessed higher penalties.

5. Borough official ensures the Self-Reported Violation is resolved and penalty is paid.

6. Borough official files all records related to the Self-Reported Violation and resolution in the AEB permit recordkeeping system.

The Fee & Penalty Schedule instructs Borough officials provide 30 calendar days to pay the reduced penalty. If the penalty is not paid by day 31, a second letter should be issued notifying the Permittee that in addition to the penalty listed in the initial letter, a daily penalty began to accrue on day 31. An example letter is provided in Appendix 9. If both letters fail to elicit a response, the AEB Administrator may need to initial penalty collection proceedings with the assistance of the AEB Attorney.

The AEB Administrator should provide the Planning Commission and Assembly with a list of letters that have been sent, as well as a summary of the status of each letter at the next Planning Commission and Assembly meetings.

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10. Notice of Violation

A Notice of Violation (NOV) is a formal, written notification of significant noncompliance that is sent by the AEB to parties that the Borough has determined have violated applicable provisions of the AEBMC, or the conditions of permits that they hold. Notices of Violation explain to the recipient the nature of the violation(s) that the AEB has determined occurred, orders that specific steps be taken to remedy the violation(s), and in most cases, imposes a penalty upon the recipient. Notices of Violation may also communicate the Borough's decision to suspend, revoke, or modify an existing permit, may impose additional permit requirements, or order that the recipient enter into a Compliance Plan with the Borough.

A Notice of Violation should not come as a surprise to the recipient. Prior to issuing the Notice of Violation, Borough officials should have both contacted the recipient to discuss the confirmed violation, and advised the recipient that a Notice of Violation will, or has been, issued. In most cases, the AEB has taken several steps described in this SOP Manual to educate, assist, notify, and resolve the alleged or potential violation. When these steps prove unfruitful or the matter requires direct movement to a Notice of Violation due to severity or repeat violations, enforcement must escalate.

A Notice of Violation alerts the violator that serious, potentially serious, or repeated violations exist. The violator is or will be requested to take certain steps to address the violation. The Notice of Violation also lists the penalty and notifies the violator of its appeal rights. Importantly, Notices of Violation may be issued notwithstanding the Borough's pursuit of civil or criminal actions against Permittees or Unpermitted Entities, or any other legal remedies that are authorized by law.

As explained above in Chapter 2 of this SOP Manual, a Notice of Violation may be required:

1. To abate present, immediate, and real risk to public health and safety, or detrimental impacts to the natural environment;
2. To resolve compliance matters that remain unresolved, despite the Borough's efforts to work cooperatively to resolve complaints, and provide compliance assistance; or,
3. When further investigation confirms a compliance violation merits formal enforcement and a penalty.

Unlike Compliance Assistance letters and Notices of Complaint, Notices of Violation constitute an official and final decision by the AEB Administrator regarding a violation or violations. Notices of Violation must be delivered to the Permittee, Unpermitted Entity, and property owner (if applicable) by certified mail, hand delivery, and if the address of the recipient is unknown, by posting the Notice of Violation at the site of the violative activity. In addition, the AEB Administrator must provide copies of all Notices of Violation to Assembly and Planning Commission members, and must provide updates regarding all such notices at each scheduled Planning Commission or Assembly meeting.

A sample Notice of Violation is provided in Appendix 10.

10.1. Notice of Violation Steps

The following steps should be taken to issue and remedy a Notice of Violation:

1. Borough officials prepare a Notice of Violation case file about the violation including:
    a. How and when the Borough learned of the violation (e.g., self-reported, found by the Borough, or a complaint was filed).
    b. Whether and when an inspection was conducted (including the inspection report if any);
    c. Whether and when an audit was conducted (including the audit report if any);

d. Whether and when any other correspondence or compliance assistance preceded the Notice of Violation (e.g., Notice of Complaint or Compliance Assistance Letters);

e. A copy of all correspondence and other records, photographs, or evidence relating to the violation;

f. The specific AEBMC provisions or permit conditions violated;

g. Whether and when the Borough contacted the Permittee or Unpermitted Entity regarding the violation;

h. Important conversations between Borough officials and the Permittee or Unpermitted Entity, either by telephone, mail, email, or other means; and,

i. Any acknowledgement by the Permittee or Unpermitted Entity that the violation or underlying activities occurred.

Note: Care should be taken in compiling the Notice of Violation case file, since this file may be disclosed (or be discoverable) in subsequent appeal proceedings or court actions.

2. Using the guidance in Chapter 11 of this SOP Manual, and the Assembly approved Fee & Penalty Schedules included in Appendix 1 of this SOP Manual, the Borough official develops written justification for the penalty amount.

3. If the violation is ongoing, the Borough official makes a list of specific actions that must be taken to bring the violation into compliance.

4. Using the Notice of Violation template (Appendix 10) the Borough official will prepare a draft Notice of Violation and case file, and review the draft with the AEB Administrator. The AEB Administrator will likely request the AEB Attorney to review the Notice of Violation for legal conformity prior to issue and contact with the violator.

5. Finalize the Notice of Violation and obtain AEB Administrator approval.

6. The AEB Administrator, or Borough official delegated by the AEB Administrator (although due to the significance of a Notice of Violation this will be typically handled by the AEB Administrator), will contact the Permittee or operator to discuss the confirmed violation and explain a Notice of Violation will be forthcoming.

7. Deliver the Notices of Violation to the Permittee, Unpermitted Entity, and property owner (if applicable) by certified mail, hand delivery, and if the address of the recipient is unknown, by posting the Notice of Violation at the site of the violative activity.

8. Provide copies of all Notices of Violation to Assembly and Planning Commission members, and provide updates regarding all such notices at each scheduled Planning Commission or Assembly meeting.

9. Continue to maintain a complete record about all matters pertaining to the Notice of Violation, including a log and copy of all correspondence and activity (e.g., phone calls, meetings, penalty payments, etc.) until the violation is remedied.

10. File all records related to the Notice of Violation and resolution in the AEB permit recordkeeping system.

10.2. Notice of Violation Resolution

A Notice of Violation typically takes one of four pathways. Either the recipient agrees to (1) immediate resolution or (2) resolution using a Compliance Agreement tool, (3) appeals the decision, or (4) if the violation remains unresolved through administrative proceedings, the Borough may elect to take the matter to court.

1. **Immediate Resolution:** There may be cases in which the resolution of a Notice of Violation is sufficiently easy that the violating party is capable of correcting their violation and complying with the Borough's directions almost immediately. If the recipient of a Notice of Violation responds promptly, agrees to remedy the violation and pay whatever penalty was imposed, and demonstrates their compliance to the Borough's satisfaction the violation can quickly be resolved. In this case, the Borough official need only document the resolution of the Notice of Violation within the AEB permit recordkeeping system and close the Notice of Violation case file.

2. **Resolution via a Compliance Order by Consent:** In some instances, the AEB may have issued a Notice of Violation, but the totality of the circumstances indicate that enforcement proceedings in the Superior Court are certain, and that the costs for litigating those proceedings will work a hardship upon the Borough. In those instances, the Borough may determine that, instead of imposing the final action originally contemplated in a Notice of Violation, the Borough's best interests may be served by entering into a negotiated contractual agreement that both achieves compliance and allows a Permittee to preserve most or all of its rights under a permit. Such a contractual agreement is typically called a Compliance Order by Consent (COBC). These documents specifically outline the steps that a Permittee must take to achieve compliance, and to prevent future violations, and explain the consequences for failing to take the actions prescribed therein. The negotiation and drafting of Compliance Orders by Consent are legally complex endeavors. Consequently, if the AEB Administrator suspects that a Compliance Order by Consent may be desirable, the AEB Attorney should be notified as soon as possible, and engaged to prepare the Compliance Order by Consent. The final Compliance Order by Consent is a negotiated settlement that both parties (the Borough and the violator) sign. It will include a list of allegations made by the Borough about the violation. Often the violator disputes those allegations, but agrees to amicable resolution of Borough concerns. The Compliance Order by Consent includes a specific list of steps that must be taken, on a specific timeline, along with a penalty. If a Compliance Order by Consent is agreed upon by both parties, the Borough must monitor it to completion to ensure all the agreed elements are completed, and the penalty is paid. Once complete, all documents relating to the violation and resolution should be stored in the AEB permit recordkeeping system and the Notice of Violation and Compliance Order by Consent case file should be closed.

3. **Administrative Appeal:** Notices of Violation recipients may contest the AEB Administrator's determination that a violation has been, or continues to be, committed. Because Notices of Violation, as well as the penalties, conditions, and permit effects that they may prescribe, are considered the AEB Administrator's final decision with respect to a previously alleged or perceived violation, the recipient's only method for contesting them is through the appeals process.

   The first step in the administrative appeal process is for the recipient to appeal to the Planning Commission for relief. Subsequent appeals can be made to the Assembly (acting as the Board of Adjustment), or later to the courts. The administrative process is outlined at Chapter 14 of this Manual.

4. **Court Action**: When administrative options have been exhausted, and violations have not been remedied and/or penalties have not been paid, court action may be required. The AEB Administrator must obtain Planning Commission and Assembly approval to initiate a court action. Once permission is obtained, the AEB Administrator will work closely with AEB's Attorney to initiate court action. Court Action is described further in Chapter 12.

There may be circumstances where a Permittee or Unpermitted Entity agrees to immediately resolve the violation, but is resistant or slow to pay the associated penalty. The Fee & Penalty Schedule instructs Borough officials provide 30 calendar days to pay the reduced penalty. If the penalty is not paid by day 31, a second letter should be issued notifying the Permittee that in addition to the penalty listed in the initial letter, a daily penalty began to accrue on day 31. An example letter is provided in Appendix 10. If both letters fail to elicit a response, the AEB Administrator may need to initiate penalty collection proceedings with the assistance of the AEB Attorney.

The AEB Administrator should provide the Planning Commission and Assembly with list of letters that have been sent, as well as a summary of the status of each letter at the next Planning Commission and Assembly meetings.

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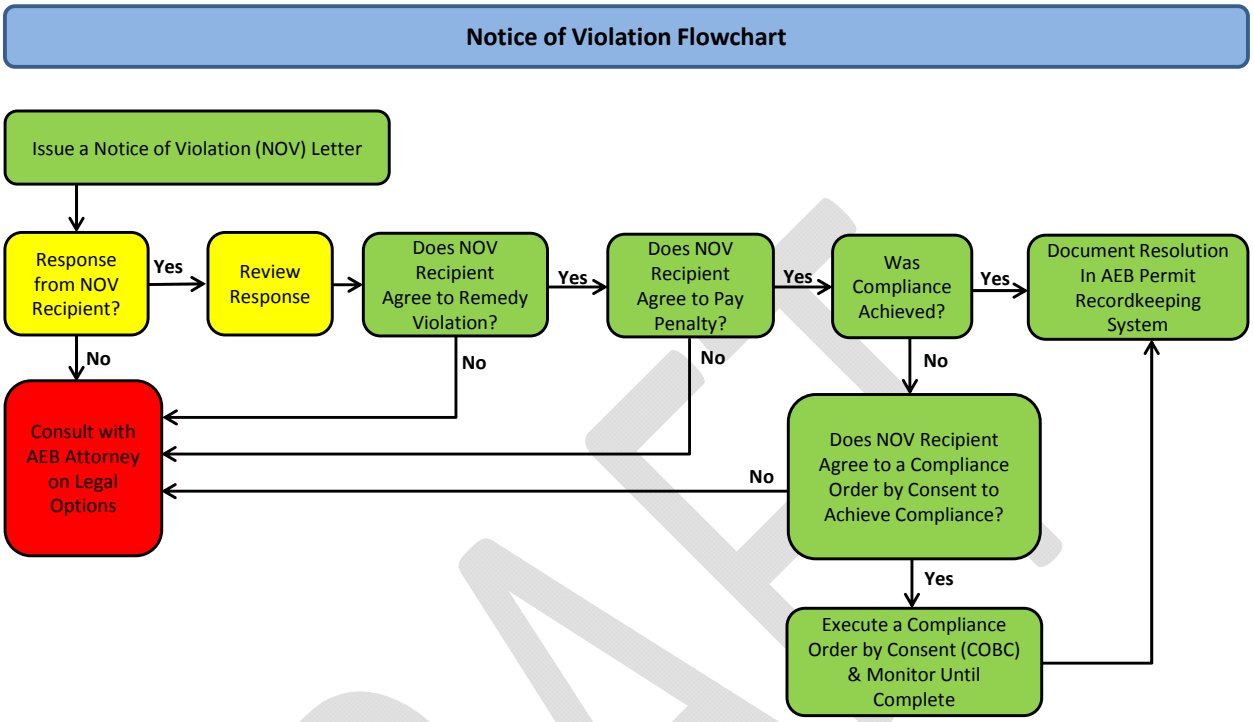
A Notice of Violation Flowchart is provided below:



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11. Guidance on Assessing Penalties

The Assembly and Planning Commission approved fee and penalty schedules that provide instruction to the AEB Administrator on the maximum penalty that can be levied for each Land Use Permit violation type (See Appendix 1). The AEB Administrator has the authority to use discretion when levying the ultimate penalty amount, using sound judgment. The AEB Administrator may also elevate the enforcement case to the Planning Commission for their action.

When determining the penalty amount, the AEB Administrator should consider:

- Severity, impact, frequency and characteristics of the violation;
- Significance of any actual public health or environmental impact caused by the violation;
- The Permittee or Unpermitted Entity's past performance and compliance history;
- Whether the violation occurred, despite the Permittee's good faith efforts to attempt to comply;
- Size of the company, and resources to comply. Large companies have substantial permit application and compliance experience; whereas, smaller companies may need additional compliance assistance in early stages of this new permitting program.
- The fact that all Permittees that signed the "Certification of Accuracy and Agreement to Comply, Indemnify and Hold Harmless" section of the permit application form confirmed that they have reviewed the AEB penalty schedule, agree to immediately notify AEB of any potential violations, remedy any violations on the schedule required by AEB, and pay penalties within 30 days."
- The Permittee's or Unpermitted Entity's responsiveness to the Borough's request for cooperation in resolving the noncompliance;
- The Permittee's or Unpermitted Entity's speed in resolving violations;
- Whether the violation was self-reported by the Permittee or Unpermitted Entity, reported by complaint, or discovered by the Borough;
- Whether the Permittee or Unpermitted Entity profited as a result of its violation. Non-compliant Permittees and Unpermitted Entities should not enjoy a competitive advantage over a similarly situated business that does comply with the AEBMC. Therefore, penalties may be assessed against Permitted or Unpermitted Entities even in cases where rapid and voluntary resolution is achieved, taking into account any profit or competitive advantage that stems from violations;
- Costs incurred by the Borough to remedy the non-compliance;
- The ways in which the Borough has treated violations by similarly situated entities in the past; and
- Whether the violation was an intentional act or omissions or a result of gross negligence. Intentional and reckless behaviors that result in violations may warrant a substantially higher penalty.

If the Borough Administrator determines that a penalty should be assessed in any instance other than for failure to obtain a required permit, a Notice of Violation should be issued that explains the particular facts of the violation that, in light of these criteria, support the penalty amount assessed. Notices of Violation that are issued for failure to obtain a permit need only state that failure to obtain the permit was the reason for the penalty.

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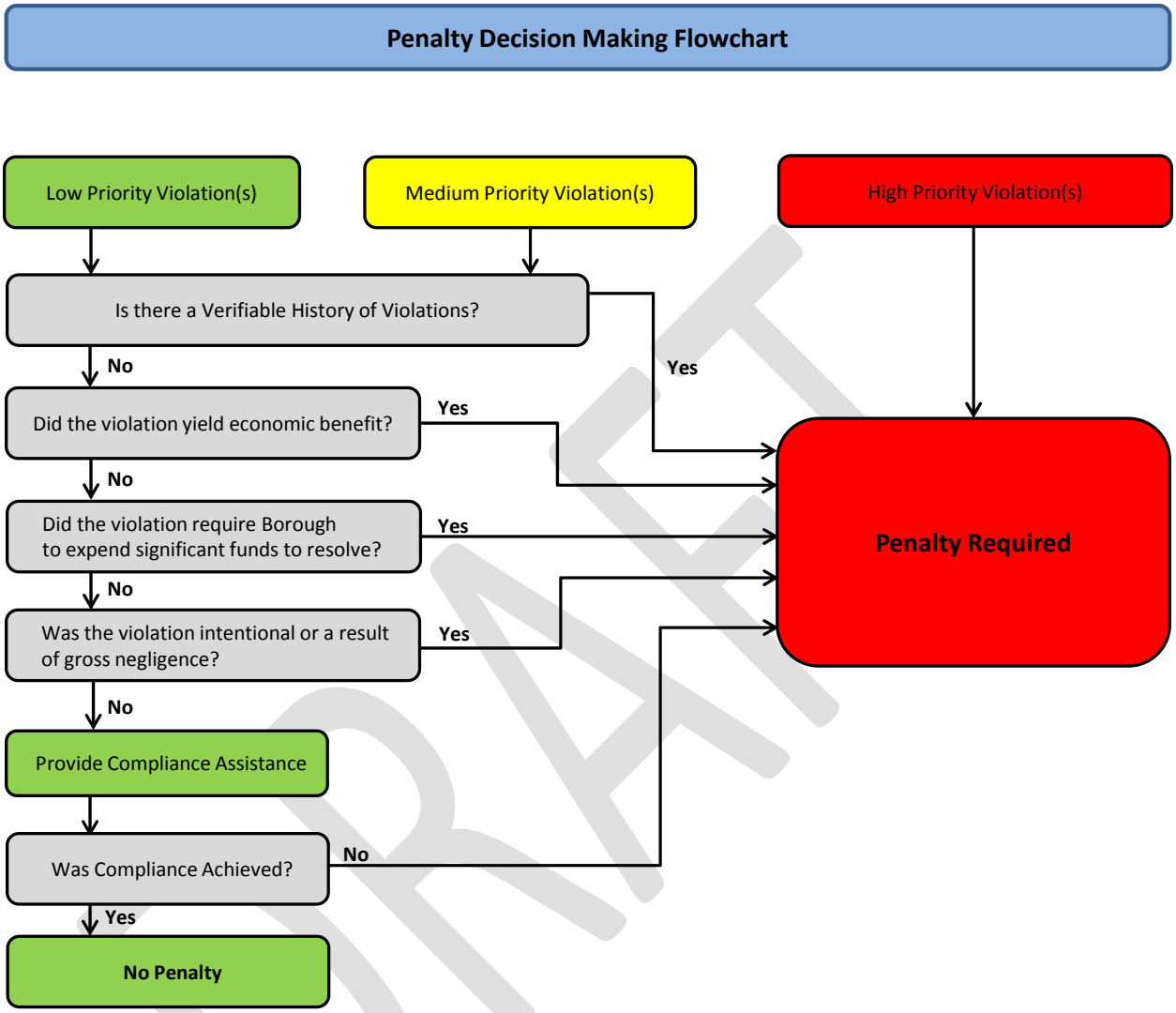
The Penalty Decision Making Flowchart below provides a graphic summary of the process.



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12. Court Actions

When administrative options have been exhausted, and violations have not been remedied and/or penalties have not been paid, or the Borough needs a warrant, court action may be required. The AEB Administrator has the authority to take any action allowed by AEBMC with expenditure up to $100,000 including initiating a court action; however, if those funds were not available in the budget, the Assembly would need to appropriate the funds. Expenditures above $100,000 will require Assembly approval. . If the AEB Administrator determines that court action is needed, the Administrator will work closely with AEB's Attorney to initiate court action.

12.1. Court Actions to Obtain Injunctive Relief

In some circumstances, the Borough official charged with administering a permit compliance matter may discover an alleged or actual violation may present an immediate and serious threat to the health and safety of the public, or to the environment. In these instances, the threat of serious and irreparable harm makes it impractical to pursue compliance using the typical administrative means. Instead, the Borough may have an obligation to seek immediate judicial intervention to contain the violation, and to assure that every action is taken to protect the Borough's people and the environment.

In these instances, the Borough official should contact the AEB Attorney as soon as possible to assess the situation, and initiate whatever judicial proceedings are necessary to obtain a Court-Ordered Injunction. Injunctions can both prohibit certain actions, and compel other actions. For example, injunctions may order a Permittee or Unpermitted Entity to discontinue the permitted activity pending an investigation, or to immediately begin the clean up of an environmental hazard.

12.2. Court Actions to Obtain a Warrant

Although both the AEBMC and the express conditions of the Borough's permits authorize the Borough to enter onto a Permittee's property under certain circumstances related to investigation activities, it is conceivable that the Borough may at some point be refused entry to a permitted facility, or be refused consent to collect samples and other evidence.

The refusal of entry may also occur with respect to the facilities or property of Unpermitted Entities. Unlike Permittees, these entities have not consented to the Borough's entry as an express condition of a permit. Consequently, the Borough's ability to claim entry authority has increasingly limited legal support, which may make it difficult for the Borough to confirm whether the Unpermitted Entity is engaging in activity that requires a permit issued by the Borough.

In those instances, the Borough should immediately contact the AEB Attorney to initiate judicial proceedings to obtain a warrant authorizing the Borough's entry, and the collection of samples and other evidence, to be used in an enforcement action or in the investigatory process.

Court Actions to Collect a Penalty or Resolve a Violation

It is conceivable that at some point, the Borough will be faced with a situation in which a Permittee or Unpermitted Entity refuses to pay the fine that has been assessed as a result of some violation of the AEB Permitting Code. If the Permittee or Unpermitted Entity has exhausted its administrative remedies and the fine remains due and owing, the Borough may be required to take steps for the collection of outstanding penalties.

It is the Borough's policy that penalties are due on the timeframe specified in the AEB Fee & Penalty Schedules. All letters and notices assessing a penalty will be sent by U.S. Certified Mail with request for the recipient to sign a receipt confirming the date received. The date the U.S. Certified Mail receipt is signed will start the penalty payment clock.

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If the initial penalty payment is not made in the amount and within the time specified on the AEB Fee & Penalty Schedule, a compounding daily penalty will trigger and will continue to accrue unabated until paid. If the initial penalty payment is not made, the Borough will send a follow-up U.S. Certified Mail confirming it did not receive the initial penalty payment in time, and making notification that an additional daily penalty will be applied until the penalty is paid, encouraging the Permittee or Unpermitted Entity to pay the outstanding penalty and resolve the non-compliance. If the penalty is not paid within 30 days from receipt of this second letter, the Borough may consider taking further action to collect the outstanding penalty amount.

In some cases, it may be necessary for the Borough to initiate a civil action to collect the penalty. The Borough could consider garnishing Alaska Permanent Dividend Funds for business owned by Alaska residents, filing in small claims court, turning the matter over to a collection agency, or going to state court. The cost of collection and other administrative and political ramifications of taking such actions should be carefully considered by the AEB Administrator before proceeding.

The AEB Administrator should contact the AEB Attorney if efforts to collect a properly imposed fine have failed, to determine what legal action, if any, is necessary.

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13. Appeal Process

The AEBMC provides an appeals process for a Permit Applicant or any Aggrieve Party to appeal a decision made by the Borough.

Decisions made by the AEB Administrator may be first appealed to the Planning Commission [AEBMC 40.02.010]. In turn, decisions by the Planning Commission may be appealed to the Borough Assembly sitting as the Board of Adjustment [AEBMC 40.03 et seq.]. If administrative appeals to the Borough are exhausted and the Appellant remains unsatisfied, the Borough Code provides that the decision may be appealed to the Superior Court. [AEBMC 40.03.080; 40.04 et seq.].

13.1. Administrative Hearings before the Planning Commission

If the AEB Administrator issues a Notice of Violation against any Permittee with respect to their permit, AEBMC § 40.01.080(A) provides that the Permittee (or any other "Aggrieved Party") may appeal that action to the Planning Commission, subject to the provisions set forth at AEBMC § 40.02.

Failure to Submit a Land Permit Application Letter, Notices of Violation, as well as any other communications from the AEB that may be considered a determination affecting the rights and obligations of a Permittee or Unpermitted Entity, must contain paragraphs in the final decision advising the subject of the enforcement about its appeal rights. Note this does not include Compliance Assistance Letters or Notice of Complaint Letters, which do not assess penalties and fines, and simply request more information and cooperation in resolving the matter without the need for official enforcement action.

13.1.1. Notice of Appeal

Notices of Violation, or other final enforcement or penalty decisions issued by the Administrator, must be appealed to the Planning Commission within 14 calendar days of the Permittee's receipt by certified mail. If a Permittee or aggrieved party fails to do so, the Notice of Violation (or other final enforcement or penalty decision) is considered final, and may not be subsequently appealed.

This means that in most cases, unless a Permittee or Unpermitted Entity has properly exercised its right to appeal permitting decisions pursuant to the AEBMC, it will not be permitted to initiate an appeal at the Superior Court level. This is because individuals and entities have an obligation to exhaust administrative remedies before appealing administrative decisions to the Superior Court unless there exists some ordinance or provision in a permit or contract purporting to grant the right to appeal prior to administrative exhaustion.

Notices of Appeal must be submitted to the Borough clerk. A Notice of Appeal must specifically state what portion(s) of the Administrator's decision is being appealed, the basis for the party's reason for appealing the decision, and must explain what it is that the appealing party would like for the Planning Commission to do to afford the party relief. Notices of Appeal must also include a $500.00 appeal fee, which will be returned if the Planning Commission, after conducting the appeal, agrees with the Appellant, and overturns the decision of the Administrator. AEBMC § 40.02.020 (B).

The Borough Clerk is the only individual authorized to determine whether a Notice of Appeal meets acceptability criteria. The Clerk is also responsible for the preparation and distribution of the appeal record, and for coordinating with staff member and Planning Commissioners regarding the scheduling of the appeal hearing.

If the Borough Clerk determines that all requirements are met, a notice of the appeal shall be sent by certified mail to the Appellant, the current permit holder or applicant, adjoining property owners, Planning Commission members, and to all interested parties that submitted written comments regarding the underlying decision, if applicable.

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The Borough Clerk's notice must: (1) include the Appellant's Notice of Appeal; (2) describe the Administrator's underlying decision from which the Appellant appeals; (3) provide notice of the date and time for the appeal hearing; (4) explain that interested parties may submit written comments to the Planning Commission regarding the appeal; and, (5) explain that the appeal record will within 30 days be available for public inspection, and copying for a fee, at both the Administrator's and the Borough Clerk's offices.

The appeal record must be completed within 30 calendar days from the date that the Clerk mailed notice of the appeal by certified mail. The appeal record must include the Administrator's written Notice of Violation (or other final enforcement or penalty decisions), and all supporting documentation that the Administrator considered when making its decision, as well as other evidence that supported the Administrator's decision. This may in some instances include relevant written communications that are not privileged. In addition, the appeal record must include the written comments of interested parties that are submitted to the Clerk following the Notice of Appeal.

The Borough Clerk must, by certified mail, serve a complete copy of the appeal record upon the permit applicant / permittee, and upon the Appellant. Copies of the appeal record must also be delivered to the Borough staff members that have been assigned responsibility for the appeal, as well as to Planning Commissioners.

13.1.2. Scheduling the Appeal Hearing

The Clerk maintains primary responsibility for ensuring that appeals to the Planning Commission are scheduled to occur within the timeframes prescribed by the AEBMC. Appeal hearings are conducted at the Planning Commission's first regular meeting following the Borough Clerk's completion of the appeal record, so long as that meeting is more than seven (7) calendar days after the appeal record has been completed and delivered to Planning Commissioners. If a regular meeting of the Planning Commission is scheduled to occur in less than seven (7) calendar days, the appeal hearing may not occur until the Planning Commission's next scheduled regular meeting.

13.1.3. Conduct and Procedure of Appeal Hearing

Appeals before the Planning Commission are open to the public, and are recorded. Although any member of the public is permitted to attend appeal hearings, only those individuals who have received written notice of the appeal from the Borough Clerk, and who have submitted written comments regarding the appeal that have been included in the appeal record before the Planning Commission, may present oral argument during the appeal proceedings.

The procedures for the presentation of oral argument to the Planning Commission during appeal hearings are set by ordinance, and shall proceed accordingly. The general procedures regarding the presentation of evidence and arguments may be altered only if the Planning Commission finds that there exists good cause to change the order of presentations and the time limits set forth at AEBMC § 40.02.040(C).

As a general matter, oral arguments are subject to the following order and time constraints:

1. The Administrator begins by explaining the decision to the Planning Commission, the evidence supporting the decision, and the reasoning that led to it, in a presentation lasting no more than 10 minutes.

2. The Appellant(s) then each have 10 minutes to present a case to the Planning Commission that the Administrator's decision is erroneous and should be overturned.

3. Interested parties whose timely written comments have been included in the appeal record may then each make a 10-minute presentation supporting or opposing the Administrator's action.

4. The Appellant and the Administrator are then given 10 minutes each for rebuttal.

Although the Planning Commission should strive to abide by these procedures, its failure to make adjustments to accommodate the specific circumstances will not invalidate appeals proceedings. AEBMC §40.02.040(D) provides

that failure to do so "shall not affect the validity of the decision so long as the Appellant has had a reasonable opportunity to be heard."

13.1.4. Planning Commission's Appeal Authorities and Duties

The Planning Commission is charged with determining whether the Administrator's decision was reasonable and just, based solely upon the evidence contained in the appeal record and the written and oral argument presented during the appeal proceedings. Although Planning Commission appeals are quasi-judicial in nature, they are not subject to the strict rules of evidence employed by Alaska's courts; however, Commissioners should conduct appeals proceedings in a way that provides all parties an equal opportunity to voice their opinions and concerns.

Aside from conducting an appeals hearing that is fair and impartial to all parties involved, the Planning Commission's most important duty is to render a decision on the merits of the controversy before it. The AEBMC requires the Commission to come to a decision that either affirms or reverses the Administrator's decision, in whole or in part. This means that the Planning Commission has the authority to agree with a part of the Administrator's action, and to disagree on other parts.

For example, the Administrator could conceivably issue a Notice of Violation that both suspended a permittee's operations for a period of time, and imposed the requirement that the permittee agree to operate under a Compliance Plan after the suspension expires. If after considering the appeal record and written and live testimony of the parties during the appeal hearing, the Commission may disagree the permittee's operations should have been suspended, but may agree the permittee should continue to operate under a Compliance Plan. The Commission could then reverse the Administrator's decision with respect to the suspension, but uphold the Compliance Plan requirement for continued operation.

13.1.5. Planning Commission's Finding and Decision

The AEBMC § 40.02.050 states:

> *Every decision of the Planning Commission to affirm or reverse an action of the Administrator shall be based upon findings and conclusions adopted by the Planning Commission. Such findings must be reasonably specific so as to provide…a clear and precise understanding of the reason for the decision.*

Consequently, when the Planning Commission decides any appeal regarding an enforcement action, it may not simply affirm or deny the Borough's underlying action. It must provide a written decision that not only communicates the Planning Commission's ultimate decision, it must explain how it reached that decision, and identify the evidence that supported it.

As explained by the State of Alaska in the Alaska Planning Commission Handbook:

> *Findings are nothing more than a statement by the commission of the evidence and reasoning it used to arrive at a decision. They are the road map that shows the reasoning process that got the commission from the evidence presented during the public hearing to its final conclusion to grant or deny the applicant's request.*

More specifically, whenever the Planning Commission issues any decision regarding an appeal from an enforcement action, it must issue "reasonably specific" findings that support its decision. To ensure that its findings are sufficiently specific, the Commission's decision should adhere to the following format:

1. The decision should begin with a short introductory section identifying the parties, and providing a brief overview of the issues that it has been asked to decide by the appealing party.

2. An explanation of the legal standards that govern the Planning Commission's determination of the issues presented on appeal. That is, the decision should identify the specific provisions of State Statute or Borough Ordinance (AEBMC) that set the standards to be met for the appellant to receive a favorable decision.

4. The decision should then identify the facts that exist within the record relevant to the determination of whether the legal standards have been met. This evidence can include the live testimony provided to the Planning Commission during the appeals hearing.

5. The facts should then be compared against the relevant legal standards, or the conditions that the Appellant must prove.

6. The decision should explicitly state whether the identified facts show that a standard or condition has been met, and state whether the facts show that all standards and conditions have been met.

7. If the Planning Commission decides that the facts do not show that one or more necessary elements of a required standard or condition have been met because no evidence has been presented on that point, the decision should say so explicitly.

8. If the Planning Commission decides that evidence presented to it by any party is unreliable or is not convincing, the Commission should clearly state that it did not rely on that evidence because it found it to be unpersuasive, and explain the reason for its conclusion.

9. The decision would then go on to state whether it has decided, based upon its findings and conclusions, to affirm or reverse the Administrator's enforcement action.

AEBMC § 40.02.050(C) requires the Planning Commission to send a copy of its written decision by certified mail to the Appellant, all adjoining property owners, and all interested parties that submitted written comments to the Commission, within 5 days of the decision, and the Commission's approval of the findings of fact. The Planning Commission must also provide each member of the Borough Assembly with a copy of the decision. A transmittal letter should accompany the decision, and should explain that: (1) the Commission has reached a decision; (2) the decision is considered final; and, (3) the recipient has the right to appeal the decision within 14 days of receipt.

13.2. Administrative Hearings before the Board of Adjustment

AEBMC § 40.03.040(A) states that decisions of the Planning Commission are "final unless appealed to the Board of Adjustment within 14 calendar days of receipt of the Planning Commission's decision…by certified mail."

Decisions by the Planning Commission may be appealed by a permit applicant, permit holder, or any other aggrieved party that met the requirements of AEBMC § 40.02.010, or submitted timely written comments or gave oral testimony to the Planning Commission at the underlying public hearing regarding the appeal. If the Board of Adjustment receives timely Notice of Appeal, the decision of the Planning Commission is stayed until such time that the Board renders its own decision on appeal.

13.2.1. Notice of Appeal

The procedural requirements for initiating appeals from decisions of the Planning Commission are identical to those governing appeals from decisions by the AEB Administrator. Notices of Appeal must be submitted to the Borough Clerk. A Notice of Appeal must specifically state the reasons for the appeal, and must explain what it is that the appealing party would like the Board of Adjustment to do. Notices of Appeal must also include a $500.00 appeal fee, which will be returned if the Board of Adjustment, after conducting the appeal, agrees with the Appellant, and overturns the decision of the Planning Commission.

13.2.2. Scheduling the Appeal Hearing

AEBMC § 40.03.060(A) requires:

> *The Board of Adjustment shall hold an appeal hearing on the appeal at its first regular meeting which must be at least seven…calendar days after the appeal record has been completed and provided to the Board of Adjustment.*

The appeal proceedings before the Board of Adjustment should be scheduled as soon as possible following the Borough Clerk's receipt of a written notice of appeal. All parties to an appeal (which may include interested community members and the owners of properties affected by the activities subject to the permit) should be given reasonably adequate time to prepare for the public appeal proceedings.

Although the AEBMC does not identify a specific time in which appeals proceedings must occur, it does make clear that they may not, as a general rule, take place less than 15 days following an Appellant's submission of a Notice of Appeal. For example, AEBMC § 40.03.050(C) of the Borough Code requires:

> *The Permit Applicant, Appellant, adjoining property owners, and all persons that submitted written comments on the decision under appeal may submit to [the] Borough Clerk written argument supporting or opposing the appeal within 15 calendar days of receipt of the notice of appeal.*

13.2.3. Conduct and Procedures of Appeal Hearing

Appeals before the Board of Adjustment are open to the public, and must be recorded. Although any member of the public is permitted to attend appeal hearings, only those individuals who have received written notice of the appeal from the Borough Clerk, and who have submitted written comments regarding the appeal that have been included in the appeal record before the Board, may present oral argument during the appeal proceedings.

The procedures for the presentation of oral argument to the Board during appeal hearings is set forth at Section AEBMC § 40.03.060, and shall proceed accordingly. The general procedures regarding the presentation of evidence and arguments may be altered only if the Commission finds that there exists good cause to change the order of presentations and the time limits set forth at AEBC 40.03.060(C).

As a general matter, oral arguments are subject to the following order and time constraints:

1. The Planning Commission Chairman begins by explaining the decision to the Planning Commission, the evidence supporting the decision, and the reasoning that led to it, in a presentation lasting no more than 10 minutes.

2. The Appellant(s) then each have 10 minutes to present a case to the Planning Commission that the Administrator's decision is erroneous and should be overturned.

3. Interested parties whose timely written comments have been included in the appeal record may then each make a 10-minute presentation supporting or opposing the Planning Commission's action.

4. The Appellant(s) and the Planning Commission Chairman are then given 10 minutes each for rebuttal.

Although the Planning Commission should strive to abide by these procedures, its failure to make adjustments to accommodate the specific circumstances will not invalidate appeals proceedings. Section 40.03.060(D) provides that failure to do so "shall not affect the validity of the decision so long as the Appellant has had a reasonable opportunity to be heard."

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13.2.4. Board of Adjustment Appeal Authorities and Duties

The Board of Adjustment is charged with determining whether the Planning Commission's decision was reasonable and just, based solely upon the evidence contained in the appeal record and the written and oral argument presented during the appeal proceedings. Although appeals before the Board of Adjustment are quasi-judicial in nature, they are not subject to the strict rules of evidence employed by Alaska's courts; however, Board Members should conduct appeals proceedings in a way that provides all parties an equal opportunity to voice their opinions and concerns.

Aside from conducting an appeals hearing that is fair and impartial to all parties involved, the Board of Adjustment's most important duty is to render a decision on the merits of the controversy before it. The AEBMC requires the Board to come to a decision that either affirms or reverses the Planning Commission's decision, in whole or in part. This means that the Board has the authority to agree with a part of the Planning Commission's action, and to disagree on other parts.

For example, the Planning Commission could conceivably uphold a Notice of Violation that both suspended a permittee's operations for a period of time, and imposed the requirement that the permittee agree to operate under a Compliance Plan after the suspension expires. If after considering the appeal record and written and live testimony of the parties during the appeal hearing, the Board may disagree with the determination that the permittee's operations were rightfully suspended, but may agree with the Planning Commission's decision to uphold enforcement of the permittee's Compliance Plan. The Board could then reverse the Planning Commission's decision with respect to the suspension, but uphold the Compliance Plan requirement for continued operation.

Although its powers and duties are substantially similar to those of the Planning Commission, the Board of Adjustment is granted wider discretion in crafting its decisions. For example, AEBMC 40.03.060(D) provides that, "The Board of Adjustment may exercise its independent judgment on the legal and factual issues raised by the Appellant." Similarly, AEBMC 40.03.070(A) provides that, "The Board of Adjustment may make its own findings on factual issues, based upon evidence in the record."

13.2.5. Board of Adjustment Finding and Decision

AEBMC § 40.03.070(A) charges the Board of Adjustment with rendering a decision for every appeal that is properly brought before it. AEBMC § 40.03.060(E) provides that, in doing so, the Board must base its decision solely upon the appeal record, the written and oral arguments, and the testimony and evidence presented at the appeal. The Board is not required to grant any deference to any previous decision by the Planning Commission, but may instead "exercise its independent judgment on the legal and factual issues raised by the Appellant."

As with decisions by the Planning Commission, AEBMC § 40.03.070(B) provides that, "Every decision of the Board of Adjustment to affirm or reverse an action of the Planning Commission shall be based upon findings and conclusions adopted by the Board of Adjustment. Such findings must be reasonably specific so as to provide…a clear and precise understanding of the reason for the decision." Consequently, when the Board of Adjustment decides any appeal regarding an enforcement action, it may not simply affirm or deny the Planning Commission's underlying action. It must provide a written decision that not only communicates the Board's ultimate decision, it must explain how it reached that decision, and identify the evidence that supported it.

As explained by the State of Alaska in the Alaska Planning Commission Handbook:

> *Findings are nothing more than a statement…of the evidence and reasoning it used to arrive at a decision. They are the road map that shows the reasoning process that got the [administrative body] from the evidence presented during the public hearing to its final conclusion to grant or deny the applicant's request.*

Whenever the Board issues any decision regarding an appeal from an enforcement action, it must issue "reasonably specific" findings that support its decision. To ensure that its findings are sufficiently specific, the Board's decision should adhere to the following format:

1. The decision should begin with a short introductory section identifying the parties, and providing a brief overview of the issues that it has been asked to decide by the appealing party.

2. An explanation of the legal standards that govern the Board's determination of the issues presented on appeal. That is, the decision should identify the specific provisions of State Statute or Borough Ordinance (AEBMC) that set the standards to be met for the appellant to receive a favorable decision.

3. The decision should then identify the facts that exist within the record relevant to the determination of whether the legal standards have been met. This evidence can include the live testimony provided to the Board during the appeals hearing.

4. The facts should then be compared against the relevant legal standards, or the conditions that the Appellant must prove.

5. The decision should explicitly state whether the identified facts show that a standard or condition has been met, and state whether the facts show that all standards and conditions have been met.

6. If the Board decides that the facts do not show that one or more necessary elements of a required standard or condition have been met because no evidence has been presented on that point, the decision should say so explicitly.

7. If the Board decides that evidence presented to it by any party is unreliable or is not convincing, the Commission should clearly state that it did not rely on that evidence because it found it to be unpersuasive, and explain the reason for its conclusion.

8. The decision would then go on to state whether it has decided, based upon its findings and conclusions, to affirm or reverse the Planning Commission's enforcement action.

It is fundamentally important that any decision rendered by the Board is supported by sufficient findings and conclusions. The sufficiency of findings becomes especially important if, and when, an appeals decision by the Board is later appealed to the Alaska Superior Court. As the Alaska Planning Commission Handbook explains:

> *One of the most common reasons that courts overrule [administrative] decisions is that the [administrative body] has failed to prepare findings. The lack of findings will result in a remand to the [administrative body] or, if justice requires, a de novo hearing by the court where the court orders a new hearing and assumes the role of the [administrative decision maker].*

Because the issuance of decisions that are unsupported by sufficient findings may result in remand and/or the requirement that the Borough defend its action in court, the Board should always consider consulting with the AEB Attorney prior to issuing a final decision. When asked to decide whether a decision by a municipality's administrative authority should be upheld, an Alaska court will not ask whether it would have made the same decision if it were in the administrative agency's position. Instead, it will ask whether there existed substantial evidence within the record to support that decision. The AEB Attorney can assist the Board in refining its decision to ensure that it is supported by findings that show that substantial evidence existed that caused the Board to decide one way or another.

As with appeals decisions rendered by the Planning Commission, AEBMC § 40.03.080 requires Board decisions be sent by certified mail "to the Permit Applicant, Appellant, adjoining property owners, and all persons that submitted written comments on the decision under appeal…." In addition, a copy of the Board's decision must be given to the AEB Administrator, and to each member of the Planning Commission. The decision should be accompanied by a

letter explaining that Board's decision is final, and notifying the recipient of the right to judicial appeal of the decision.

13.3. Appeal to Superior Court

AEBMC § 40.03.080 provides that, "An Aggrieved Party may appeal the final decision of the Board of Adjustment…to the Superior Court within 30 days of the date of the decision." As soon as the Borough receives a Notice of Appeal with respect to any decision rendered by the Board of Adjustment, the matter should be immediately referred to the AEB Administrator and AEB Attorney.

13.4. Guidance on Due Process, Ex Parte Communications & Conflicts of Interest

One of the most important considerations that members of administrative bodies charged with quasi-judicial decision making authority must keep in mind when conducting appeals is whether the appeal process has been fair. Such fairness is guaranteed by the Due Process clauses of the United States and Alaska Constitutions, which generally provide that government entities are not permitted to take unfair or unreasonable actions against an individual, if those actions would affect the individual's rights. Translated into the realm of Planning Commission and Board of Adjustment appeals, the guarantee of Due Process requires, at a minimum, that individuals appealing Borough decisions must be given a full and fair opportunity to be heard, and that the administrative body hearing the appeal will act impartially and fairly to resolve the appeal. Alaska law provides that, not only must administrative appeals *be* fair, they must also *appear* fair.

Although the principle of Due Process is too wide in scope to meaningfully address for the purposes of this manual, there are two mistakes that administrative bodies commonly make that can violate Due Process, and thereby compromise or even invalidate an entire appeal process. The first occurs when members of the administrative body engage in *ex parte communications* with a party to an appeal. he second occurs when members of the administrative body have a *conflict of interest* that prevents them from acting as, or appearing to be, an impartial decision maker in an appeal.

Ex parte communications occur when a member of an administrative body charged with deciding an appeal from a Borough permitting decision or enforcement action engages in any communications with an interested party outside of the appeals forum, and that communication concerns or relates to the subject of the appeal. The prohibition on *ex parte* communications is designed to prevent interested parties from attempting to influence the outcome of an appeal by making arguments or offering evidence outside of the proper forum, which deprives other interested parties from offering rebutting evidence, or from understanding the specific grounds for the administrative body's decision.

Ex parte communications are fundamentally unfair, and violate Due Process. Because of this, Alaska law provides that decisions of administrative bodies following *ex parte* communications are invalid, void and unenforceable. Members of the Planning Commission and Board of Adjustment must not engage in *ex parte* communications during the course of any pending appeal with any interested party. Not only does this mean that members should not discuss the appeal with the individuals or entities appealing a permitting or enforcement decision, it also means that they should not discuss the appeal with Borough staff members involved in the underlying decision.
It is understandable that in communities as tight-knit as the Aleutians East Borough, it may be impossible or at least impractical for members of administrative bodies to avoid any and all contact with interested parties during the course of an appeal. Consequently, Commission and Board members should be prepared to take steps to prevent *ex parte* communications if they arise. If a commissioner or board member finds that he or she may be in a situation where an *ex parte* communication may occur, he or she should immediately halt the conversation, notify the individual that commissioners and board members are not permitted to hear anything about the matter except through the formal appeals procedure. The commissioner or board member should then advise the individual that any comments should be submitted in writing to the Borough Clerk for inclusion in the appeal record. If the commissioner or board member finds that he or she cannot halt a conversation because it has occurred in a professional or social environment over which he or she has no control, the commissioner or board member should leave the room.

Should a commissioner or board member believe that, despite his or her best efforts, an *ex parte* communication may have occurred, he or she should immediately contact the Borough Attorney, or the attorney retained by the Borough to provide advice regarding the appeal. The attorney will then determine what steps the Commission or Board should take to correct the *ex parte* communication, and protect the integrity of the appeals process.

Conflicts of Interest may also serve to invalidate and render void decisions by the Planning Commission or Board of Adjustment. Therefore, it is important that commissioners and board members understand what constitutes a conflict of interest, and are capable of recognizing them should they arise with respect to an appeal from a Borough permitting or enforcement decision.

Both AS 29.20.010 and AEBMC 2.20.100 prohibit Borough employees and officials from participating in any official action in which they have a significant financial interest. The AEBMC does not specifically define what constitutes a "significant financial interest" for the purposes of determining when a conflict of interest exists, in effect granting discretion to the administrative body to determine whether a member's financial interest in the outcome of an official action is sufficiently significant to require that a member abstain from participation. Although this discretion is broad, it is not absolute. The Planning Commission and Board of Adjustment must always avoid conflicts of interest when hearing appeals from permitting or enforcement actions. These bodies may only do so if they are informed by their members that potential conflicts may exist, prior to the member's participation in an appeal.

If a commissioner or board member discovers, at any point, that he or she, a family member, a business partner, or a close friend, stands to receive *any financial benefit* as the result of the outcome of the appeal, that fact should be disclosed to the administrative body immediately. The commissioner or board member should explain to the presiding officer the specific nature of the financial benefit and ask to be excused from participation in the matter. The presiding officer must then make a determination as to whether the commissioner or board member has a conflict of interest requiring abstention from the proceedings. If the other members of the Commission or the Board disagree with the presiding officer's decision, they may override it by a majority vote.

Further, as previously explained, Alaska law provides that not only must administrative appeals be fair, they may not even have the *appearance of impropriety*. This is commonly referred to as the "appearance of fairness doctrine." It is especially important to consider the doctrine in tandem with any questions regarding conflicts of interest, because its operation may in some cases require commissioners and board members to abstain from participation in an appeal even if they do not have a significant financial interest in the outcome. Consequently, if a commissioner or board member believes that there exist facts that may call into question an official's ability to fairly and impartially participate in the appeal, it should be disclosed to the administrative body immediately so that the official may abstain if necessary.

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14. Recordkeeping

All communications with Permittees, Unpermitted Entities, Complainants, and other persons regarding AEB's Land Use Permit Systems and enforcement of compliance should be well documented. Copies of all correspondence, phone records, records of meetings, inspections, audits, interviews, and other relevant information should be kept in AEB's permit recordkeeping system.

Accurately documenting all conversations and meetings held is good administrative practice, and allows any AEB staff to open the file and observe the history of actions taken on the permit. This practice also provides an accurate record on the permit if the applicant, public, AEB management, or legal counsel has a question. These documents will serve as an important set of records if the permit is appealed, or if there is an enforcement action. It is very important to keep accurate, detailed, and complete records. Make factual notes and keep track of action items and commitments. Appendix 3 contains example Phone and Meeting Logs forms, for use if helpful and efficient.

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15. Acronyms List

AEB.....Aleutians East Borough

AEBMC .....Aleutians East Borough Municipal Code

COBC.....Compliance Order by Consent

GPS.....Global Positioning System

H_2S.....Hydrogen Sulfide

LEL .....Lower Explosive Limit

NOV .....Notice of Violation

PPE.....Personal Protective Equipment

SOP.....Standard Operating Procedure

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ALEUTIANS EAST BOROUGH

TITLE 40 LAND USE PERMIT CODE ENFORCEMENT MANUAL

Authority: Aleutians East Borough Municipal Code Title 40

Standard Operating Procedure	
Effective Date:	January 2015
Revision Date(s):	
Revision No:	

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Appendix 1: Fee & Penalty Schedules

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ALEUTIANS EAST BOROUGH

COMMERICIAL RECREATION OPERATOR LAND USE PERMIT

Authority Aleutians East Borough Municipal Code Title 40

PERMIT FEE & PENALTY SCHEDULE

(Pursuant to AEBMC 40.01.060)
AEB Assembly Resolution 14-13
January 2014

Commercial Recreation Operator Land Use Permit Application Fees

$50/yr **New Permit Application**
Once approved, the permit is valid for a one year period (January 1st through December 31st)

$25/each **Amendment to Existing Approved Permit Application**
Once approved, the amendment is valid for original permit term.

Commercial Recreation Operator Penalties

$0 **Failure to Submit a Land Use Permit Application, Initial Notification (Year 2014)**
No penalty will be assessed for failure to submit a land use permit application during the year 2014. This time is allowed for the Borough to educate the Commercial Recreation Operators of the new requirement and to provide the Operators with the opportunity to come into compliance within 30 days.

During the calendar year 2014 the Borough will be conducting outreach and education about the new Commercial Recreation Operator Land Use Permit requirement and process. During this time, the Borough will issue letters to Commercial Recreation Operators that have failed to submit a permit application. The letter will state that a permit is required, provide a copy of the permit application, and notify the Operator that failure to submit a permit within 30 days from the date the Borough letter was issued will result in a daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a permit application is received.

$250 **Failure to Submit a Land Use Permit Application, Initial Notification (Starting January 1, 2015)**
Failure to submit a land use permit application prior to conducting land use activities on or after January 1, 2015 will be assessed a $250 penalty. The Borough will issue a letter notifying the Commercial Recreation Operator that it has failed to submit a land use permit application, assessing the $250 penalty, and providing the Commercial Recreation Operator with a land use permit application form. In addition to the $250 penalty, the $50 application fee must also be paid.

The Borough will issue a letter to Commercial Recreation Operators that have failed to submit a land use permit application. The letter will state that a land use permit is required, provide a copy of the permit application, and notify the Operator that failure to apply for a permit within 30 days from date the Borough letter was issued will result in a daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a land use permit application is received.

$50/day **Failure to Submit a Permit Application, 31 days after Initial Notification (Starting 2013)**
If the Borough has issued a letter to Commercial Recreation Operator notifying the Operator that it has failed to submit a land use permit, and that Operator does not submit a land use permit application within 30 days from date the Borough letter was issued, a daily penalty of $50/day will

$100 Self-Reported Violation Reported within Seven (7) Calendar Days and Operator Agrees to Remedy Violation.

The Borough encourages Permittees to immediately report any violation, of a permit term or condition to the Borough. The self-reported violation may be initially reported by a telephone call to the AEB Administrator, followed by a written letter that must be received by the Borough within seven (7) calendar days. The Permittee's letter must summarize the violation and explain steps the Permittee plans to take to remedy the violation and mitigate future problems. Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB.

If the Permittee provides a self-reported violation of a permit term or condition, within seven (7) calendar days of the violation, and the Permittee agrees to remedy the violation, the Borough will assess the Permittee a penalty of $100. The Borough will issue the Permittee a letter acknowledging receipt of the self-reported violation, request payment of the $100 penalty within 30 days, and verify agreement with the Operator's plan to remedy the violation or establish different requirements for violation remedy than proposed by the Operator. The Borough's letter will also explain that failure to pay the $100 penalty by day 30, will result in an additional daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$500 Notice of Violation Issued by Borough

Violations reported to and confirmed by the Borough, or found by the Borough will result in a Notice of Violation being issued by the Borough to the Permittee. The Borough's Notice of Violation will explain the violation, request payment of the $500 penalty within 30 days, explain the steps the Permittee must take, and establish a timeframe for remedying the violation. Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB. The Borough's letter will also explain that failure to pay the $500 penalty by day 30, will result in an additional daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$50/day Failure to Pay Notice of Violation Penalty, 31 days after Initial Notification

If the Borough has issued a letter notifying the Permittee of the requirement to pay a penalty, and the Permittee does not submit payment within 30 days from date the Borough letter was issued, a daily penalty of $50 per day will be assessed. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$100/day Failure to Remedy Violation, As Agreed with Borough

Failure to remedy a violation as agreed with the Borough will result in a $100/day penalty. Upon determination that a Permittee has failed to remedy a violation, the Borough will issue a letter stating that the Permittee must immediately remedy the violation and that a $100/day penalty will be assessed from the day that the remedy was originally required, as agreed to by the Permittee and the Borough.

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ALEUTIANS EAST BOROUGH

SAND, GRAVEL, ROCK MINING LAND USE PERMIT

Authority Aleutians East Borough Municipal Code Title 40

PERMIT FEE & PENALTY SCHEDULE

(Pursuant to AEBMC 40.01.060)
AEB Assembly Resolution 14-13
January 2014

Sand, Gravel and Rock Mining Land Use Permit Application Fees

$100 **New Permit & Renewal Application**
Once approved, the permit is valid for a period required to complete the mining, up to a maximum of five (5) years. After (5) years, the permit must be renewed.

$50/each **Amendment to Existing Approved Permit Application**
Once approved, the amendment is valid for original permit term.

Penalties for Sand, Gravel and Rock Mining Operations

$0 **Failure to Submit a Land Use Permit Application, Initial Notification (Year 2014)**
No penalty will be assessed for failure to submit a land use permit application during the year 2014. This time is allowed for the Borough to educate miners of the new requirement and to provide the miners with the opportunity to come into compliance within 30 days.

During the calendar year 2014 the Borough will be conducting outreach and education about the new Sand, Gravel and Rock Mining Permit requirement and process. During this time, the Borough will issue letters to miners that have failed to submit a permit application. The letter will state that a permit is required, provide a copy of the permit application, and notify the Operator that failure to submit a permit within 30 days from the date the Borough letter was issued will result in a daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a permit application is received.

This interim compliance assistance process does not apply to payment of Severance Tax required by AEBMC, Chapter 60.40 for sand, gravel, and rock mining. The Severance Tax requirement has been in place since 2005, and Chapter 60.40 includes a process and penalties for noncompliance.

$1,000 **Failure to Submit a Land Use Permit Application, Initial Notification (Starting January 1, 2015)**
Failure to submit a permit application prior to conducting land use activities on or after January 1, 2015 will be assessed a $1,000 penalty. The Borough will issue a letter notifying the miner that it has failed to submit a permit application, assessing the $1,000 penalty, and providing the miner with a permit application form. In addition to the $1,000 penalty, the $100 application fee must also be paid.

The Borough will issue a letter to the miners who have failed to submit a land use permit application. The letter will state that a permit is required, provide a copy of the permit application, and notify the Operator that failure to apply for a permit within 30 days from date the Borough letter was issued will result in a daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a permit application is received.

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$100 **Self-Reported Violation Reported within Seven (7) Calendar Days and Operator Agrees to Remedy Violation.**

The Borough encourages Permittees to immediately report any violation of a permit term or condition to the Borough. The self-reported violation may be initially reported by a telephone call to the AEB Administrator, followed by a written letter that must be received by the Borough within seven (7) calendar days. The Permittee's letter must summarize the violation and explain steps the Permittee plans to take to remedy the violation and mitigate future problems. The Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB.

If the Permittee provides a self-reported violation of a permit term or condition, within seven (7) calendar days of the violation, and the Permittee agrees to remedy the violation, the Borough will assess the Permittee a penalty of only $100. The Borough will issue the Permittee a letter acknowledging receipt of the self-reported violation, request payment of the $100 penalty within 30 days, and verify agreement with the Operator's plan to remedy the violation or establish different requirements for violation remedy than proposed by the Operator. The Borough's letter will also explain that failure to pay the $100 penalty by day 30 will result in an additional daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$500 **Notice of Violation Issued by Borough**

Violations reported to and confirmed by the Borough, or found by the Borough will result in a Notice of Violation being issued by the Borough to the Permittee. The Borough's Notice of Violation will explain the violation, request payment of the $500 penalty within 30 days, explain the steps the Permittee must take, and establish a timeframe for remedying the violation. Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB. The Borough's letter will also explain that failure to pay the $500 penalty by day 30 will result in an additional daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$50/day **Failure to Pay Notice of Violation Penalty, 31 days after Initial Notification**

If the Borough has issued a letter notifying the Permittee of the requirement to pay a penalty, and the Permittee does not submit payment within 30 days from date the Borough letter was issued, a daily penalty of $50 per day will be assessed. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$100/day **Failure to Remedy Violation, As Agreed with Borough**

Failure to remedy a violation as agreed with the Borough will result in a $100/day penalty. Upon determination that a Permittee has failed to remedy a violation, the Borough will issue a letter stating that the Permittee must immediately remedy the violation and that a $100/day penalty will be assessed from the day that the remedy was originally required, as agreed to by the Permittee and the Borough.

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ALEUTIANS EAST BOROUGH

RESEARCH
LAND USE PERMIT

Authority Aleutians East Borough Municipal Code Title 40

PERMIT FEE & PENALTY SCHEDULE

Approved by AEB Assembly
(Pursuant to AEBMC 40.01.060)
AEB Assembly Resolution 14-13
January 2014

Research Land Use Permit Application Fees

$500 **New Permit & Renewal Application**
Research Conducted in Support of Resource Development
Once approved, the permit is valid for period required to complete the research, up to a maximum of five (5) years. After (5) years, the permit must be renewed.

$250/each **Amendment to Existing Approved Permit Application**
Research Conducted in Support of Resource Development
Once approved, the amendment is valid for original permit term.

No Fee **New Permit & Renewal Application**
Research Conducted for Other Purposes
Once approved, the permit is valid for period required to complete the research, up to a maximum of five (5) years. After (5) years, the permit must be renewed.

No Fee **Amendment to Existing Approved Permit Application**
Research Conducted for Other Purposes
Once approved, the amendment is valid for original permit term.

Penalties for Researchers

$0 **Failure to Submit a Land Use Permit Application, Initial Notification (Year 2014)**
No penalty will be assessed for failure to submit a land use permit application during the year 2014. This time is allowed for the Borough to educate Researchers of the new requirement and to provide the Researchers with the opportunity to come into compliance within 30 days.

During the calendar year 2014 the Borough will be conducting outreach and education about the new Researcher Land Use Permit requirement and process. During this time, the Borough will issue letters to Researchers that have failed to submit a permit application. The letter will state that a permit is required, provide a copy of the permit application, and notify the Operator that failure to submit a permit within 30 days from the date the Borough letter was issued will result in a daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a permit application is received.

$1,000 **Failure to Submit a Land Use Permit Application, Initial Notification (Starting January 1, 2015)**
Research Conducted in Support of Resource Development
Failure to submit a land use permit application prior to conducting land use activities on or after January 1, 2015 will be assessed a $1,000 penalty. The Borough will issue a letter notifying the Researchers that it has failed to submit a land use permit application, assessing the $1,000 penalty, and

providing the Researcher with a land use permit application form. In addition to the $1,000 penalty, the $500 application fee must also be paid.

The Borough will issue a letter to Researchers that have failed to submit a land use permit application. The letter will state that a land use permit is required, provide a copy of the permit application, and notify the Operator that failure to apply for a permit within 30 days from date the Borough letter was issued will result in a daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a permit application is received.

$100 **Failure to Submit a Land Use Permit Application, Initial Notification (Starting January 1, 2015)**

Research Conducted for Other Purposes

Failure to submit a land use permit application prior to conducting land use activities on or after January 1, 2015 will be assessed a $100 penalty. The Borough will issue a letter notifying the Researchers that it has failed to submit a land use permit application, assessing the $100 penalty, and providing the Researcher with a permit application form. In addition to the $100 penalty, the $50 application fee must also be paid.

The Borough will issue a letter to Researchers that have failed to submit a land use permit application. The letter will state that a land use permit is required, provide a copy of the permit application, and notify the Researcher that failure to apply for a permit within 30 days from date the Borough letter was issued will result in a daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a permit application is received.

$50/day **Failure to Submit a Land Use Permit Application, 31 days after Initial Notification (Starting 2013)**

If the Borough has issued a letter to Researchers making notification that they have failed to submit a land use permit, and that Researchers does not submit a permit application within 30 days from date the Borough letter was issued, a daily penalty of $50/day will be assessed. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a land use permit application is received.

$100 **Self-Reported Violation Reported within Seven (7) Calendar Days and Operator Agrees to Remedy Violation.**

The Borough encourages Permittees to immediately report any violation, of a permit term or condition to the Borough. The self-reported violation may be initially reported by a telephone call to the AEB Administrator, followed by a written letter that must be received by the Borough within seven (7) calendar days. The Permittee's letter must summarize the violation and explain steps the Permittee plans to take to remedy the violation and mitigate future problems. Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB.

If the Permittee provides a self-reported violation of a permit term or condition, within seven (7) calendar days of the violation, and the Permittee agrees to remedy the violation, the Borough will assess the Permittee a penalty of $100. The Borough will issue the Permittee a letter acknowledging receipt of the self-reported violation, request payment of the $100 penalty within 30 days, and verify agreement with the Operator's plan to remedy the violation or establish different requirements for violation remedy than proposed by the Operator. The Borough's letter will also explain that failure to pay the $100 penalty by day 30, will result in an additional daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$500 **Notice of Violation Issued by Borough**

Violations reported to and confirmed by the Borough, or found by the Borough will result in a Notice of Violation being issued by the Borough to the Permittee. The Borough's Notice of Violation will explain the violation, request payment of the $500 penalty within 30 days, explain the steps the Permittee must take, and establish a timeframe for remedying the violation. Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB. The Borough's letter will also explain that failure to pay the $500 penalty by day 30, will result

in an additional daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$50/day **Failure to Pay Notice of Violation Penalty, 31 days after Initial Notification**
If the Borough has issued a letter notifying the Permittee of the requirement to pay a penalty, and the Permittee does not submit payment within 30 days from date the Borough letter was issued, a daily penalty of $50 per day will be assessed. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$100/day **Failure to Remedy Violation, As Agreed with Borough**
Failure to remedy a violation as agreed with the Borough will result in a $100/day penalty. Upon determination that a Permittee has failed to remedy a violation, the Borough will issue a letter stating that the Permittee must immediately remedy the violation and that a $100/day penalty will be assessed from the day that the remedy was originally required, as agreed to by the Permittee and the Borough.

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ALEUTIANS EAST BOROUGH

ONSHORE SEAFOOD PROCESSING LAND USE PERMIT

Authority: Aleutians East Borough Municipal Code Title 40

PERMIT FEE & PENALTY SCHEDULE

(Pursuant to AEBMC 40.01.060)
AEB Assembly Resolution 14-13
January 2014

Onshore Seafood Processing Land Use Application Fees

$1,000 **New Permit & Renewal Application**
Once approved, the permit is valid for a period up to a maximum of five (5) years. After (5) years, the permit must be renewed.

$50/each **Amendment to Existing Approved Permit Application**
Once approved, the amendment is valid for original permit term.

Onshore Seafood Processing Penalties

$0 **Failure to Submit a Land Use Permit Application, Initial Notification (Year 2014)**
No penalty will be assessed for failure to submit a land use permit application during year 2014. This time is allowed for the Borough to educate Operators of the new requirement and to provide the Operators with the opportunity to come into compliance within 30 days.

During the calendar year 2014, the Borough will be conducting outreach and education about the permit requirement and process. During this time, the Borough will issue letters to Operators that have failed to submit a permit application. The letter will state that a permit is required, provide a copy of the permit application, and notify the operator that failure to submit a permit within 30 days from the date the Borough letter was issued will result in a daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a permit application is received.

This interim compliance assistance process does not apply to payment of the Fish Tax required by AEBMC, Chapter 60.20. Chapter 60.40 includes a process and penalties for noncompliance.

$1,000 **Failure to Submit a Land Use Permit Application, Initial Notification (Starting January 1, 2015)**
Failure to submit a permit application prior to conducting land use activities on or after January 1, 2015 will be assessed a $1,000 penalty. The Borough will issue a letter notifying the Operator that it has failed to submit a permit application, assessing the $1,000 penalty, and providing the Operator with a permit application form. In addition to the $1,000 penalty, the $1,000 application fee must also be paid.

The Borough will issue a letter to the Operators who have failed to submit a land use permit application. The letter will state that a permit is required, provide a copy of the permit application, and notify the Operator that failure to apply for a permit within 30 days from date the Borough letter was issued will result in a daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a permit application is received.

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$100 **Self-Reported Violation Reported within Seven (7) Calendar Days and Operator Agrees to Remedy Violation. (excluding violations that occurred due to intentional acts or omissions or gross negligence).**

The Borough encourages Permittees to immediately report any violation of a permit term or condition to the Borough. The self-reported violation may be initially reported by a telephone call to the AEB Administrator, followed by a written letter that must be received by the Borough within seven (7) calendar days. The Permittee's letter must summarize the violation and explain steps the Permittee plans to take to remedy the violation and mitigate future problems. The Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB.

If the Permittee provides a self-reported violation of a permit term or condition, within seven (7) calendar days of the violation, and the Permittee agrees to remedy the violation, the Borough will assess the Permittee a penalty of only $100. The Borough will issue the Permittee a letter acknowledging receipt of the self-reported violation, request payment of the $500 penalty within 30 days, and verify agreement with the Operator's plan to remedy the violation or establish different requirements for violation remedy than proposed by the Operator. The Borough's letter will also explain that failure to pay the $100 penalty by day 30 will result in an additional daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$500 **Notice of Violation Issued by Borough (excluding violations that occurred due to intentional acts or omissions or gross negligence).**

Violations reported to, and confirmed by the Borough, or found by the Borough, will result in a Notice of Violation being issued by the Borough to the Permittee. The Borough's Notice of Violation will explain the violation, request payment of the $500 penalty within 30 days, explain the steps the Permittee must take, and establish a timeframe for remedying the violation. Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB. The Borough's letter will also explain that failure to pay the $500 penalty by day 30 will result in an additional daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$100,000 (maximum) **Violations that Occurred due to Intentional Acts or Omissions or Gross Negligence**

Violations that occurred due to intentional acts or omissions or gross negligence, reported to and confirmed by the Borough, or found by the Borough and confirmed by the Borough, will result in a Notice of Violation being issued by the Borough to the Permittee. The Borough's Notice of Violation will explain the violation and request a penalty payment. The penalty will be set by the Borough based on the circumstances of the violation of up to $1,000 per day for a maximum of $100,000.

The penalty payment must be paid within 30 days, explain the steps the Permittee must take, and establish a timeframe for remedying the violation. Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB. The Borough's letter will also explain that failure to pay the penalty by day 30 will result in an additional daily penalty of $500 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$50/day **Failure to Pay Notice of Violation Penalty, 31 days after Initial Notification**

If the Borough has issued a letter notifying the Permittee of the requirement to pay a penalty, and the Permittee does not submit payment within 30 days from the date the Borough letter was issued, a daily penalty of $250 per day will be assessed. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$100/day **Failure to Remedy Violation, As Agreed with Borough**

Failure to remedy a violation as agreed with the Borough will result in a $100/day penalty. Upon determination that a Permittee has failed to remedy a violation, the Borough will issue a letter stating that the Permittee must immediately remedy the violation and that a $100/day penalty will be assessed from the day that the remedy was originally required, as agreed to by the Permittee and the Borough.

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ALEUTIANS EAST BOROUGH

OFFSHORE & DIRECT MARKETING SEAFOOD PROCESSING LAND USE PERMIT

Authority: Aleutians East Borough Municipal Code Title 40

PERMIT FEE & PENALTY SCHEDULE

(Pursuant to AEBMC 40.01.060)
AEB Assembly Resolution 14-13
January 2014

Offshore & Direct Marketing Seafood Processing Land Use Application Fees

$200 **New Permit & Renewal Application**
Once approved, the permit is valid for a one year period (January 1st through December 31st). The permit must be renewed annually to continue operation.

$50/each **Amendment to Existing Approved Permit Application**
Once approved, the amendment is valid for original permit term.

Offshore & Direct Marketing Seafood Processing Penalties

$0 **Failure to Submit a Land Use Permit Application, Initial Notification (Year 2014)**
No penalty will be assessed for failure to submit a land use permit application during the year. This time is allowed for the Borough to educate Operators of the new requirement and to provide the Operators with the opportunity to come into compliance within 30 days.

During the calendar year 2014, the Borough will be conducting outreach and education about the permit requirement and process. During this time, the Borough will issue letters to Operators that have failed to submit a permit application. The letter will state that a permit is required, provide a copy of the permit application, and notify the operator that failure to submit a permit within 30 days from the date the Borough letter was issued will result in a daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a permit application is received.

This interim compliance assistance process does not apply to payment of the Fish Tax required by AEBMC, Chapter 60.20. Chapter 60.40 includes a process and penalties for noncompliance.

$1,000 **Failure to Submit a Land Use Permit Application, Initial Notification (Starting January 1, 2015)**
Failure to submit a permit application prior to conducting land use activities on or after January 1, 2015 will be assessed a $1,000 penalty. The Borough will issue a letter notifying the Operator that it has failed to submit a permit application, assessing the $1,000 penalty, and providing the Operator with a permit application form. In addition to the $1,000 penalty, the $1,000 application fee must also be paid.

The Borough will issue a letter to the Operators who have failed to submit a land use permit application. The letter will state that a permit is required, provide a copy of the permit application, and notify the Operator that failure to apply for a permit within 30 days from date the Borough letter was issued will result in a daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a permit application is

received.

$100 **Self-Reported Violation Reported within Seven (7) Calendar Days and Operator Agrees to Remedy Violation.**

The Borough encourages Permittees to immediately report any violation of a permit term or condition to the Borough. The self-reported violation may be initially reported by a telephone call to the AEB Administrator, followed by a written letter that must be received by the Borough within seven (7) calendar days. The Permittee's letter must summarize the violation and explain steps the Permittee plans to take to remedy the violation and mitigate future problems. The Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB.

If the Permittee provides a self-reported violation of a permit term or condition, within seven (7) calendar days of the violation, and the Permittee agrees to remedy the violation, the Borough will assess the Permittee a penalty of only $100. The Borough will issue the Permittee a letter acknowledging receipt of the self-reported violation, request payment of the $500 penalty within 30 days, and verify agreement with the Operator's plan to remedy the violation or establish different requirements for violation remedy than proposed by the Operator. The Borough's letter will also explain that failure to pay the $100 penalty by day 30 will result in an additional daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$500 **Notice of Violation Issued by Borough**

Violations reported to, and confirmed by the Borough, or found by the Borough, will result in a Notice of Violation being issued by the Borough to the Permittee. The Borough's Notice of Violation will explain the violation, request payment of the $500 penalty within 30 days, explain the steps the Permittee must take, and establish a timeframe for remedying the violation. Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB. The Borough's letter will also explain that failure to pay the $500 penalty by day 30 will result in an additional daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$100,000 (maximum) **Violations that Occurred due to Intentional Acts or Omissions or Gross Negligence**

Violations that occurred due to intentional acts or omissions or gross negligence, reported to and confirmed by the Borough, or found by the Borough and confirmed by the Borough, will result in a Notice of Violation being issued by the Borough to the Permittee. The Borough's Notice of Violation will explain the violation and request a penalty payment. The penalty will be set by the Borough based on the circumstances of the violation of up to $1,000 per day for a maximum of $100,000.

The penalty payment must be paid within 30 days, explain the steps the Permittee must take, and establish a timeframe for remedying the violation. Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB. The Borough's letter will also explain that failure to pay the penalty by day 30 will result in an additional daily penalty of $500 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$50/day **Failure to Pay Notice of Violation Penalty, 31 days after Initial Notification**

If the Borough has issued a letter notifying the Permittee of the requirement to pay a penalty, and the Permittee does not submit payment within 30 days from the date the Borough letter was issued, a daily penalty of $250 per day will be assessed. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$100/day **Failure to Remedy Violation, As Agreed with Borough**

Failure to remedy a violation as agreed with the Borough will result in a $100/day penalty. Upon determination that a Permittee has failed to remedy a violation, the Borough will issue a letter stating that the Permittee must immediately remedy the violation and that a $100/day penalty will be assessed from the day that the remedy was originally required, as agreed to by the Permittee and the Borough.

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ALEUTIANS EAST BOROUGH

MINERAL & COAL EXPLORATION & SMALL MINING OPERATIONS LAND USE PERMIT

Authority Aleutians East Borough Municipal Code Title 40

PERMIT FEE & PENALTY SCHEDULE

(Pursuant to AEBMC 40.01.060)
AEB Assembly Resolution 14-13
January 2014

Mineral & Coal Exploration & Small Mining Operations Land Use Permit Application Fees

$1,000 **New Permit & Renewal Application**
Once approved, the permit is valid for a period required to complete the operation, up to a maximum of five (5) years. After (5) years, the permit must be renewed.

$500/each **Amendment to Existing Approved Permit Application**
Once approved, the amendment is valid for original permit term.

Penalties for Mineral & Coal Exploration & Small Mining Operations Activities

$0 **Failure to Submit a Land Use Permit Application, Initial Notification (Year 2014)**
No penalty will be assessed for failure to submit a land use permit application during the year 2014. This time is allowed for the Borough to educate miners of the new requirement and to provide the miners with the opportunity to come into compliance within 30 days.

During the calendar year 2014, the Borough will be conducting outreach and education about the permit requirement and process. During this time, the Borough will issue letters to Operators that have failed to submit a permit application. The letter will state that a permit is required, provide a copy of the permit application, and notify the Operator that failure to submit a permit within 30 days from the date the Borough letter was issued will result in a daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a permit application is received.

This interim compliance assistance process does not apply to payment of Severance Tax required by AEBMC, Chapter 60.40 for minerals and coal. The Severance Tax requirement has been in place since 2011, and Chapter 60.40 includes a process and penalties for noncompliance.

$1,000 **Failure to Submit a Land Use Permit Application, Initial Notification (Starting January 1, 2015)**
Failure to submit a permit application prior to conducting land use activities on or after January 1, 2015 will be assessed a $1,000 penalty. The Borough will issue a letter notifying the Operator that it has failed to submit a permit application, assessing the $1,000 penalty, and providing the Operator with a permit application form. In addition to the $1,000 penalty, the $1,000 application fee must also be paid.

The Borough will issue a letter to the Operators who have failed to submit a land use permit application. The letter will state that a permit is required, provide a copy of the permit application, and notify the Operator that failure to apply for a permit within 30 days from date the Borough letter was issued will result in a daily penalty of $50 per day assessed on day 31. The daily penalty will be

assessed starting on day 31 and will continue to be assessed each day until a permit application is received.

$100 **Self-Reported Violation Reported within Seven (7) Calendar Days and Operator Agrees to Remedy Violation.**

The Borough encourages Permittees to immediately report any violation of a permit term or condition to the Borough. The self-reported violation may be initially reported by a telephone call to the AEB Administrator, followed by a written letter that must be received by the Borough within seven (7) calendar days. The Permittee's letter must summarize the violation and explain steps the Permittee plans to take to remedy the violation and mitigate future problems. The Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB.

If the Permittee provides a self-reported violation of a permit term or condition, within seven (7) calendar days of the violation, and the Permittee agrees to remedy the violation, the Borough will assess the Permittee a penalty of only $100. The Borough will issue the Permittee a letter acknowledging receipt of the self-reported violation, request payment of the $100 penalty within 30 days, and verify agreement with the Operator's plan to remedy the violation or establish different requirements for violation remedy than proposed by the Operator. The Borough's letter will also explain that failure to pay the $100 penalty by day 30 will result in an additional daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$500 **Notice of Violation Issued by Borough**

Violations reported to, and confirmed by the Borough, or found by the Borough, will result in a Notice of Violation being issued by the Borough to the Permittee. The Borough's Notice of Violation will explain the violation, request payment of the $500 penalty within 30 days, explain the steps the Permittee must take, and establish a timeframe for remedying the violation. Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB. The Borough's letter will also explain that failure to pay the $500 penalty by day 30 will result in an additional daily penalty of $50 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$50/day **Failure to Pay Notice of Violation Penalty, 31 days after Initial Notification**

If the Borough has issued a letter notifying the Permittee of the requirement to pay a penalty, and the Permittee does not submit payment within 30 days from date the Borough letter was issued, a daily penalty of $50 per day will be assessed. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$100/day **Failure to Remedy Violation, As Agreed with Borough**

Failure to remedy a violation as agreed with the Borough will result in a $100/day penalty. Upon determination that a Permittee has failed to remedy a violation, the Borough will issue a letter stating that the Permittee must immediately remedy the violation and that a $100/day penalty will be assessed from the day that the remedy was originally required, as agreed to by the Permittee and the Borough.

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ALEUTIANS EAST BOROUGH

LARGE MINING OPERATIONS LAND USE PERMIT

Authority Aleutians East Borough Municipal Code Title 40

PERMIT FEE & PENALTY SCHEDULE

(Pursuant to AEBMC 40.01.060)
AEB Assembly Resolution 14-13
January 2014

Large Mining Operations Land Use Permit Fees

$25,000 **Large Mining Operations Permit Fee Fund**
Aleutians East Borough Municipal Code (AEBMC) Chapter 40.20.050
Initial deposit shall be made at submittal of initial application.
The balance shall be returned to the Permittee at the completion of the project and the site has been reclaimed to the AEB's satisfaction or if the application is withdrawn from consideration.

$12,500 **Large Mining Operations Permit Fee Fund Minimum Balance**
AEBMC Chapter 40.20.050.

Penalties for Large Mining Operations

$0 **Failure to Submit a Land Use Permit Application, Initial Notification (Year 2014)**
No penalty will be assessed for failure to submit a land use permit application during the year 2014. This time is allowed for the Borough to educate miners of the new requirement and to provide the miners with the opportunity to come into compliance within 30 days.

During the calendar year 2014, the Borough will be conducting outreach and education about the new Large Mining Operations Permit requirement and process. During this time, the Borough will issue letters to miners that have failed to submit a permit application. The letter will state that a permit is required, provide a copy of the permit application, and notify the Operator that failure to submit a permit within 30 days from the date the Borough letter was issued will result in a daily penalty of $250 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a permit application is received.

This interim compliance assistance process does not apply to payment of Severance Tax required by AEBMC, Chapter 60.40 for mineral and coal mining. The Severance Tax requirement has been in place since 2011, and Chapter 60.40 includes a process and penalties for noncompliance.

$10,000 (maximum) **Failure to Submit a Land Use Permit Application, Initial Notification (Starting January 1, 2015)**
Failure to submit a permit application prior to conducting land use activities on or after January 1, 2015 will be assessed a penalty of $1,000 per day for each day the application was not submitted up to a maximum penalty of $10,000. The Borough will issue a letter notifying the miner that it has failed to submit a permit application, assessing the penalty, and providing the miner with a permit application form. In addition to this penalty, the $25,000 Large Mining Operations Permit Fee Fund must also be paid.

The Borough will issue a letter to the miners who have failed to submit a land use permit application. The letter will state that a permit is required, provide a copy of the permit application, and notify the Operator that failure to apply for a permit within 30 days from the date the Borough letter was issued will result in a daily penalty of $250 per day assessed on day 31. The daily penalty will be assessed

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starting on day 31 and will continue to be assessed each day until a permit application is received.

$500 **Self-Reported Violation Reported within Seven (7) Calendar Days and Operator Agrees to Remedy Violation. (excluding violations that occurred due to intentional acts or omissions or gross negligence).**

The Borough encourages Permittees to immediately report any violation of a permit term or condition to the Borough. The self-reported violation may be initially reported by a telephone call to the AEB Administrator, followed by a written letter that must be received by the Borough within seven (7) calendar days. The Permittee's letter must summarize the violation and explain steps the Permittee plans to take to remedy the violation and mitigate future problems. The Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB.

If the Permittee provides a self-reported violation of a permit term or condition, within seven (7) calendar days of the violation, and the Permittee agrees to remedy the violation, the Borough will assess the Permittee a penalty of only $500. The Borough will issue the Permittee a letter acknowledging receipt of the self-reported violation, request payment of the $500 penalty within 30 days, and verify agreement with the Operator's plan to remedy the violation or establish different requirements for violation remedy than proposed by the Operator. The Borough's letter will also explain that failure to pay the $500 penalty by day 30 will result in an additional daily penalty of $250 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$10,000 (maximum) **Notice of Violation Issued by Borough (excluding violations that occurred due to intentional acts or omissions or gross negligence).**

Violations reported to and confirmed by the Borough, or found by the Borough will result in a Notice of Violation being issued by the Borough to the Permittee. The Borough's Notice of Violation will explain the violation, request a penalty payment of $1,000 per day for each day the violation occurred up to a maximum penalty of $10,000.

The penalty payment must be paid within 30 days, explain the steps the Permittee must take, and establish a timeframe for remedying the violation. Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB. The Borough's letter will also explain that failure to pay the penalty by day 30 will result in an additional daily penalty of $250 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$100,000 (maximum) **Violations that Occurred due to Intentional Acts or Omissions or Gross Negligence**

Violations that occurred due to intentional acts or omissions or gross negligence, reported to and confirmed by the Borough, or found by the Borough and confirmed by the Borough, will result in a Notice of Violation being issued by the Borough to the Permittee. The Borough's Notice of Violation will explain the violation and request a penalty payment. The penalty will be set by the Borough based on the circumstances of the violation of up to $1,000 per day for a maximum of $100,000.

The penalty payment must be paid within 30 days, explain the steps the Permittee must take, and establish a timeframe for remedying the violation. Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB. The Borough's letter will also explain that failure to pay the penalty by day 30 will result in an additional daily penalty of $500 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$250/day **Failure to Pay Notice of Violation Penalty, 31 days after Initial Notification**

If the Borough has issued a letter notifying the Permittee of the requirement to pay a penalty, and the Permittee does not submit payment within 30 days from the date the Borough letter was issued, a daily penalty of $250 per day will be assessed. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

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$500/day **Failure to Remedy Violation, As Agreed with Borough**

Failure to remedy a violation as agreed with the Borough will result in a $500/day penalty. Upon determination that a Permittee has failed to remedy a violation, the Borough will issue a letter stating that the Permittee must immediately remedy the violation and that a $500/day penalty will be assessed from the day that the remedy was originally required, as agreed to by the Permittee and the Borough.

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ALEUTIANS EAST BOROUGH

OIL and GAS
LAND USE PERMIT

Authority Aleutians East Borough Municipal Code Title 40

PERMIT FEE & PENALTY SCHEDULE

(Pursuant to AEBMC 40.01.060)
AEB Assembly Resolution 14-13
January 2014

Oil and Gas Land Use Permit Fees

$50,000 **Oil and Gas Permit Fee Fund**
Aleutians East Borough Municipal Code (AEBMC) Chapter 40.20.060
Initial deposit shall be made at submittal of initial application.
The balance shall be returned to the Permittee at the completion of the project and the site has been reclaimed to the AEB's satisfaction or if the application is withdrawn from consideration.

$25,000 **Oil and Gas Permit Fee Fund Minimum Balance**
AEBMC Chapter 40.20.060.

Penalties for Oil and Gas Operations

$0 **Failure to Submit a Land Use Permit Application, Initial Notification (Year 2014)**
No penalty will be assessed for failure to submit a land use permit application during the year 2014. This time is allowed for the Borough to educate Operators of the new requirement and to provide the Operators with the opportunity to come into compliance within 30 days.

During the calendar year 2014, the Borough will be conducting outreach and education about the new Oil and Gas Land Use Permit requirement and process. During this time, the Borough will issue letters to Operators that have failed to submit a permit application. The letter will state that a land use permit is required, provide a copy of the permit application, and notify the Operator that failure to submit a permit within 30 days from the date the Borough letter was issued will result in a daily penalty of $500 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a permit application is received.

$20,000 (maximum) **Failure to Submit a Land Use Permit Application, Initial Notification (Starting January 1, 2015)**
Failure to submit a permit application prior to conducting land use activities on or after January 1, 2015 will be assessed a penalty of $1,000 per day for each day the application was not submitted up to a maximum penalty of $20,000. The Borough will issue a letter notifying the Operator that it has failed to submit a permit application, assessing the penalty, and providing the Operator with a permit application form. In addition to this penalty, the $50,000 Oil and Gas Permit Fee Fund must also be paid.

The Borough will issue a letter to the Operators who have failed to submit a land use permit application. The letter will state that a permit is required, provide a copy of the permit application, and notify the Operator that failure to apply for a permit within 30 days from the date the Borough letter was issued will result in a daily penalty of $500 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until a permit application is received.

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$1,000 **Self-Reported Violation Reported within Seven (7) Calendar Days and Operator Agrees to Remedy Violation (excluding violations that occurred due to intentional acts or omissions or gross negligence).**

The Borough encourages Permittees to immediately report any violation of a permit term or condition to the Borough. The self-reported violation may be initially reported by a telephone call to the AEB Administrator, followed by a written letter that must be received by the Borough within seven (7) calendar days. The Permittee's letter must summarize the violation and explain steps the Permittee plans to take to remedy the violation and mitigate future problems. The Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB.

If the Permittee provides a self-reported violation of a permit term or condition, within seven (7) calendar days of the violation, and the Permittee agrees to remedy the violation, the Borough will assess the Permittee a penalty of only $1,000. The Borough will issue the Permittee a letter acknowledging receipt of the self-reported violation, request payment of the $1,000 penalty within 30 days, and verify agreement with the Operator's plan to remedy the violation or establish different requirements for violation remedy than proposed by the Operator. The Borough's letter will also explain that failure to pay the $1,000 penalty by day 30 will result in an additional daily penalty of $500 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$20,000 (maximum) **Notice of Violation Issued by Borough (excluding violations that occurred due to intentional acts or omissions or gross negligence).**

Violations reported to and confirmed by the Borough, or found by the Borough, and confirmed by the Borough will result in a Notice of Violation being issued by the Borough to the Permittee. The Borough's Notice of Violation will explain the violation, request a penalty payment of $1,000 per day for each day the violation occurred up to a maximum penalty of $20,000.

The penalty payment must be paid within 30 days, explain the steps the Permittee must take, and establish a timeframe for remedying the violation. Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB. The Borough's letter will also explain that failure to pay the penalty by day 30 will result in an additional daily penalty of $500 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$100,000 (maximum) **Violations that Occurred due to Intentional Acts or Omissions or Gross Negligence**

Violations that occurred due to intentional acts or omissions or gross negligence, reported to and confirmed by the Borough, or found by the Borough and confirmed by the Borough, will result in a Notice of Violation being issued by the Borough to the Permittee. The Borough's Notice of Violation will explain the violation and request a penalty payment. The penalty will be set by the Borough based on the circumstances of the violation of up to $1,000 per day for a maximum of $100,000.

The penalty payment must be paid within 30 days, explain the steps the Permittee must take, and establish a timeframe for remedying the violation. Permittee is financially responsible for remedying the violation, and must complete the remedy on a schedule approved by AEB. The Borough's letter will also explain that failure to pay the penalty by day 30 will result in an additional daily penalty of $500 per day assessed on day 31. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

$500/day **Failure to Pay Notice of Violation Penalty, 31 days after Initial Notification**

If the Borough has issued a letter notifying the Permittee of the requirement to pay a penalty, and that Permittee does not submit payment within 30 days from the date the Borough letter was issued, a daily penalty of $500 per day will be assessed. The daily penalty will be assessed starting on day 31 and will continue to be assessed each day until payment is received.

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$1,000/day Failure to Remedy Violation, As Agreed with Borough

Failure to remedy a violation as agreed with the Borough will result in a $1,000/day penalty. Upon determination that a Permittee has failed to remedy a violation, the Borough will issue a letter stating that the Permittee must immediately remedy the violation and that a $1,000/day penalty will be assessed from the day that the remedy was originally required, as agreed to by the Permittee and the Borough.

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Appendix 2: Complaint Form

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ALEUTIANS EAST BOROUGH

LAND USE COMPLAINT FORM

Authority Aleutians East Borough Municipal Code Title 40

Mail Complaint Form to:
Aleutians East Borough
P.O. Box 349
Sand Point, Alaska 99661
907-383-2699

Part 1: Contact Information for Person Filing Complaint

Name: _____

Organization: _____

Address: (Street)_____(City)_____(State)_____(Zip) _____

Phone: (_____) - _____ - _____ Cell Phone: (_____) - _____ - _____

Email Address: _____@_____._____

Aleutians East Borough Resident: ☐ Yes ☐ No

I certify that the information given by me in this complaint is true, complete, and correct.

Signature: _____ Date: _____

Part 2: Contact Information for Subject of Complaint (if known)

Name: _____

Company Name: _____

Project Name: _____

Address: (Street)_____(City)_____(State)_____(Zip) _____

Phone: (_____) - _____ - _____ Email Address: _____@_____._____

Part 3: Summarize the Complaint

_____

_____

_____

_____

_____

_____

_____

_____

_____

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Appendix 3: Phone and Meeting Log Templates

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Aleutians East Borough Permit Phone Log

Aleutians East Borough
P.O. Box 349
Sand Point, Alaska 99661
907-383-2699

Permit Number: AEB Permit No. _____- _____-_____-_____

Phone Call Summary

AEB Staff Name: _____ Date: _____

Name of Person Spoken To: _____ Phone No.:_____

Company Name: _____

Reason for Call: _____

Summary of Call:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Agreed Actions:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

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Aleutians East Borough Permit Meeting Log

Aleutians East Borough
P.O. Box 349
Sand Point, Alaska 99661
907-383-2699

Permit Number: AEB Permit No. _____- _____-_____-_____

Meeting Summary

AEB Staff Name: _____ Date: _____

Reason for Meeting:_____

Meeting Participant Names and Titles:

_____

_____

_____

Summary of Meeting:

_____

_____

_____

_____

_____

_____

_____

_____

_____

Agreed Actions:

1. _____

2. _____

3. _____

4. _____

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Appendix 4: Audit Report Templates

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Example Initial Audit Report Cover Letter
*Delete this header and enter data into all yellow highlighted areas *

Sent by E-mail and U.S. Certified Mail
[note you must send by certified mail and keep receipt in AEB's permit recordkeeping system]

[Date]

[Name]
[Title]
[Address]
Phone: [phone number]
Fax: [fax number]
E-mail: [e-mail address]

Re: Initial Audit Report for Review and Comment,
for [Name of Permittee]
[Add AEB Permit Type and Permit Number]

Dear [Name],

Please find enclosed an initial audit report summarizing the audit completed by the Aleutians East Borough (AEB) on [date] pertaining to your permitted activities. This intial audit report is being provided to [you, or name of company] for review and comment prior to final issuance. The AEB would like to ensure the audit report accurately reflects the audit process and findings, and is providing [you, or name of company] with an opportunity to correct any inaccurate information, or to provide comments on the initial findings. Please provide any comments or correction on this initial audit report by [date]. The AEB plans to issue a final audit report on [date].

[If the audit went well, and no compliance violations were found, you may consider adding this paragaph; otherwise delete]. The AEB appreciates [your, or name of company] cooperation in completing this audit [here you could describe any particular cooperation or thank individuals for their assistance during the audit]. The AEB congratulates [you, or name of company] on a successful audit and appreciates [your, or name of company] dilegence in meeting the terms and conditions of your AEB Land Use Permit.

[If the audit identified violations you may consider adding this paragaph; otherwise delete]. The AEB appreciates [your, or name of company] cooperation in completing this audit [if true]. While many of the terms and conditions of your AEB Land Use Permit were met, the AEB audit found the following violations [list the violations and describe whether they have been remedied or whether the violations are still unresolved].

[You may consider adding one of the following sentences depending on the situation].

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Due to the nature and severity of these violations, the AEB is in the process of developing a Notice of Violation and will be issuing it under separate cover. [or]. Due [your, or name of company] cooperation in resolving these violations [during the audit, or immediately after the audit], the AEB will not be taking any further enforcement action at this time. The AEB will, however, conduct a follow-up audit on [date] to ensure continued compliance.

The audit report references Aleutians East Borough Municipal Code (AEBMC) requirements. A complete copy of the AEBMC can be found at http://www.aleutianseast.org/ under the Clerk's Department webpage.

Please send any comments or correction on this initial audit report to me by no later than [date] by email at [e-mail address], or U.S. Mail. I can be reached by phone at (907) [phone number] if you have any questions about this letter.

Sincerely,

[name]
[Aleutians East Borough Administrator]

Cc: AEB Assembly
AEB Planning Commission
AEB Clerk
[name], AEB Staff Assigned to Audit
AEB Permit Files

DRAFT

Example Audit Report
*Delete this header and enter data into all yellow highlighted areas *

Re: Audit Report
[Name of Permittee]
[Add AEB Permit Type and Permit Number]

This audit was conducted by the Aleutians East Borough (AEB), in accordance with Title 40 of the Aleutians East Borough Municipal Code (AEBMC). The AEBMC authorizes Borough officials to audit land uses approved under an AEB Land Use Permit to ensure uses are being, or have been conducted, in accordance with the terms and conditions of the permit, and in compliance with the AEBMC. AEBMC § 40.06.030.

1. Audit Purpose
[Name of Permittee] currently holds a valid AEB Land Use Permit [AEB Permit Type and Permit Number]. The purpose of the audit was to [list the purpose, such as an audit of Annual, Quarterly and/or Final Report Review, Survey Reports required for Mining Operations, Severance Tax Payment, Compliance with Study & Project Monitoring Plan, Local Economic Development Plan, Field Office Plan, Infrastructure Support Plan, Transportation Plan, Historical and Cultural Resources Protection Plan, Good Neighbor Plan, Pollution Prevention Plan, Hazards Assessment Plan, Reclamation Plan, and Emergency Plan, compliance with permit stipulations, etc.]

2. Audit Method
[Describe methods you used to conduct the audit. For example, you might explain that you conducted an audit of the Permittee's compliance with the permit stipulations, and in doing so, you listed each permit stipulation, collected records to verify the stipulation compliance, and documented in the audit report how compliance was achieved. Or you could explain that you collected Survey Report data (required to be submitted) for a period of three years and compared that data to Severance Tax Payments made over the same period to ensure tax payment amounts match the amount of gravel or ore removed].

3. Audit Records
[List the audit records used. Explain whether the records were on file with the AEB, or whether additional work was done to collect records from the Permittee or another source. It would be useful to list the date, and title of each record, and potentially provide a brief synopsis, and provide those records in an Appendix to the Audit Report].

4. Audit Findings
[List positive findings. Examples may include: cooperation with the audit, compliance with permit requirements, area(s) where the Permittee went above and beyond compliance, etc.].

[List negative findings. Examples may include: inconsistent records, lack of records, refusal to provide records, records that confirm a violation, etc.]

5. Audit Summary

There were no compliance violations found during the audit. The AEB congratulates [Permittee's name] for compliance with the AEB Land Use Permit.

[Or if violations were found, use this paragraph and delete the prior sentence].

The following list of violations was confirmed during the audit.

1. [Name violation]. This is a violation of [list stipulation of the AEB Land Use Permit or cite AEBMC section and explain why]. [Explain whether the violation has been remedied or whether it is ongoing].

2. [Name violation]. This is a violation of [list stipulation of the AEB Land Use Permit or cite AEBMC section and explain why]. [Explain whether the violation has been remedied or whether it is ongoing].

6. Comments/Corrections Provided By Permittee

The intial audit report was provided to [Permittee name] on [date] for review and comment prior to final issuance to ensure the audit report was accurate, and to provide [Permittee name] with an opportunity to correct any inaccurate information, or to provide comments on the initial findings.

[Use one of the following paragraphs; which ever is correct].

The AEB received the following comments from [Permittee name].

1. [List comment and describe whether AEB corrected the audit report to remedy a factual error or whether it disagreed with the comment and took no action].

2. [List comment and describe whether AEB corrected the audit report to remedy a factual error or whether it disagreed with the comment and took no action].

[Or if no comments were provided, delete prior paragraph and use this sentence].

The AEB did not receive any comments from [Permittee name].

7. Recommended Action

No further action is recommended, except future routine audits to verify continued compliance.

[Or if violations were found, consider using one of these paragraphs below, and delete prior sentence].

Due [Permittee name]'s cooperation in resolving these violations [during the audit, or immediately after the initial audit report was provided], the AEB will not be taking any further enforcement action at this time. The AEB will, however, conduct a follow-up audit on [date] to ensure continued compliance.

Due to the nature and severity of these violations, the AEB is in the process of developing a Notice of Violation [or has issued the NOV if that is the case] and will be issuing it under separate cover.

Example Final Audit Report Cover Letter
*Delete this header and enter data into all yellow highlighted areas *

Sent by E-mail and U.S. Certified Mail
[note you must send by certified mail and keep receipt in AEB's permit recordkeeping system]

[Date]

[Name]
[Title]
[Address]
Phone: [phone number]
Fax: [fax number]
E-mail: [e-mail address]

Re: Final Audit Report, for [Name of Permittee]
[Add AEB Permit Type and Permit Number]

Dear [Name],

Please find enclosed the final audit report summarizing the audit completed by the Aleutians East Borough (AEB) on [date] pertaining to your permitted activities.

The intial audit report was provided to [you, or name of company] on [date] for review and comment prior to final issuance to ensure the audit report accurately reflected the audit process and findings and to provide [you, or name of company] with an opportunity to correct any inaccurate information, or to provide comments on the initial findings.

[Use one of the following paragraphs; which ever is correct].

The AEB received [your, or name of company] comments on [date] for review, and those comments have been recording in the final audit report. The AEB has corrected the audit report to remedy to factual corrections you recomemend, with the exception of [here you can explain changes or comments you do not agree with].

The AEB did not receive any comments from [your, or name of company].

[If the audit went well, and no compliance violations were found, you may consider adding this paragaph; otherwise delete]. The AEB appreciates [your, or name of company] cooperation in completing this audit [here you could describe any particular cooperation or thank individuals for their assistance during the audit]. The AEB congratulates [you, or name of company] on a successful audit and appreciates [your, or name of company] dilegence in meeting the terms and conditions of your AEB Land Use Permit.

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[If the audit identified violations you may consider adding this paragaph; otherwise delete]. The AEB appreciates [your, or name of company] cooperation in completing this audit [if true]. While many of the terms and conditions of your AEB Land Use Permit were met, the AEB audit found the following violations [list the violations and describe whether those were remedied on site during the audit or whether the violations are still unresolved].

[You may consider adding one of the following sentences depending on the situation].

Due to the nature and severity of these violations, the AEB is in the process of developing a Notice of Violation [or has issued the NOV if that is the case] and will be issuing it under separate cover.

[or].

Due [your, or name of company] cooperation in resolving these violations [during the audit, or immediately after the audit], the AEB will not be taking any further enforcement action at this time. The AEB will, however, conduct a follow-up audit on [date] to ensure continued compliance.

The audit report references Aleutians East Borough Municipal Code (AEBMC) requirements. A complete copy of the AEBMC can be found at http://www.aleutianseast.org/ under the Clerk's Department webpage.

I can be reached by phone at (907) [phone number] if you have any questions about this final audit report.

Sincerely,

[name]
[Aleutians East Borough Administrator]

Cc: AEB Assembly
AEB Planning Commission
AEB Clerk
[name], AEB Staff Assigned to Audit
AEB Permit Files

DRAFT

Appendix 5: Inspection Report Templates

DRAFT

Example Initial Inspection Report Cover Letter
*Delete this header and enter data into all yellow highlighted areas *

Sent by E-mail and U.S. Certified Mail
[note you must send by certified mail and keep receipt in AEB's permit recordkeeping system]

[Date]

[Name]
[Title]
[Address]
Phone: [phone number]
Fax: [fax number]
E-mail: [e-mail address]

Re: Initial Inspection Report for Review and Comment, for [Name of Permittee or Unpermitted Entity]
[Add AEB Permit Type and Permit Number here if a permit has been issued]

Dear [Name],

Please find enclosed an initial inspection report summarizing the inspection completed by the Aleutians East Borough (AEB) on [date] pertaining to your [permitted or unpermitted] activities. This intial inspection report is being provided to [you, or name of company] for review and comment prior to final issuance. The AEB would like to ensure the inspection report accurately reflects the inspection process and findings, and is providing [you, or name of company] with an opportunity to correct any inaccurate information, or to provide comments on the initial findings. Please provide any comments or correction on this initial inspection report by [date]. The AEB plans to issue a final inspection report on [date].

[If the inspection went well, and no compliance violations were found, you may consider adding this paragaph; otherwise delete]. The AEB appreciates [your, or name of company] cooperation in completing this inspection [here you could describe any particular cooperation or thank individuals for their assistance during the inspection]. The AEB congratulates [you, or name of company] on a successful inspection and appreciates [your, or name of company] dilegence in meeting the terms and conditions of your AEB Land Use Permit.

[If the inspection identified violations you may consider adding this paragaph; otherwise delete]. The AEB appreciates [your, or name of company] cooperation in completing this inspection [if true]. While many of the terms and conditions of your AEB Land Use Permit were met, the AEB inspection found the following violations [list the violations and describe whether those were remedied on site during the inspection or whether the violations are still unresolved].

[You may consider adding one of the following sentences depending on the situation].
Due to the nature and severity of these violations, the AEB is in the process of developing a Notice of Violation and will be issuing it under separate cover. [or]. Due [your, or name of company] cooperation in resolving these violations [during the inspection, or immediately after the inspection], the AEB will not be taking any further enforcement action at this time. The AEB will, however, conduct a follow-up inspection on [date] to ensure continued compliance.

The inspection report references Aleutians East Borough Municipal Code (AEBMC) requirements. A complete copy of the AEBMC can be found at http://www.aleutianseast.org/ under the Clerk's Department webpage.

Please send any comments or correction on this initial inspection report to me by no later than [enter date] by email at [e-mail address], or U.S. Mail. I can be reached by phone at (907) [phone number] if you have any questions about this letter.

Sincerely,

[name]
[Aleutians East Borough Administrator]

Cc: AEB Assembly
AEB Planning Commission
AEB Clerk
[name], AEB Staff Assigned to Inspection
AEB Permit Files

DRAFT

Example Inspection Report
*Delete this header and enter data into all yellow highlighted areas *

Re: Inspection Report
[Name of Permittee or Unpermitted Entity]
[Add AEB Permit Type and Permit Number here if a permit has been issued]

This inspection was conducted by the Aleutians East Borough (AEB), in accordance with Title 40 of the Aleutians East Borough Municipal Code (AEBMC). The AEBMC authorizes Borough officials to enter and inspect land uses approved under an AEB Land Use Permit to ensure uses are being, or have been conducted, in accordance with the terms and conditions of the permit, and in compliance with the AEBMC.

[If the inspection is for an Unpermitted Entity, use this paragraph and delete the prior one]. This inspection was conducted by the Aleutians East Borough (AEB) in accordance with Title 40 of the Aleutians East Borough Municipal Code (AEBMC) that requires a permit to be obtained for [describe the type of permit required but not obtained] land use within the Borough. [name of Unpermitted Entity] consented to allow Borough officials to conduct this inspection. [Or if they did not consent, you can add a line that explains the Unpermitted Entity did not consent to an inspection, you might explain if the AEB conducted an inspection to collect information and evidence from outside the site/location or by warrant].

1. Inspection Purpose
[Name of Permittee] currently holds a valid AEB Land Use Permit [AEB Permit Type and Permit Number]. The purpose of the inspection was to [list the purpose, such as a: routine compliance inspection, complaint investigation, spill response, accident investigation, self-reported violation, post-construction inspection, enforcement action inspection to verify violation resolution, permit closure and reclamation plan verification, or other purpose.]

[For Unpermitted Entities, use this sentence, and delete the prior paragraph]. This is an unpermitted land use. An AEB Land Use Permit is required by Title 40 of the AEBMC [cite code section]. The purpose of the inspection was to [list the purpose, such as collect information on the actual land use activities being conducted, complaint investigation, spill response, accident investigation, etc.]

2. Inspection Site and Location
The inspection was conducted at [enter location, using an address, township/range/section, and/or GPS coordinates]. The land is owned by [the company, federal government, State of Alaska, AEB, Native Corporation, private individual or company, etc.].

3. Inspection Notification
Advance notice of this inspection was provided to [company name or individual] on [date].

[If no notice was provided, use the next sentence and delete the prior one]. No advance notice of this inspection was provided.

4. Inspection Preparation

The following inspection preparations were completed.

4.1 **Inspection Logistics**: [Describe the transportation methods use to get to and from the inspection site. Thank the Permittee or Unpermitted Entity for any transportation assistance or accommodations provided. This will also serve as a useful reference for future inspection logistics planning].

4.2 **Record Review**: The following records were reviewed prior to the inspection, and are relevant to the inspection topics and findings. [List the records, and provide as an attachment. These records may include the permit, permit application, complaint form, self-reported violation notification, prior inspection report, spill or accident report, maps, plats, surveys, etc.].

4.3 **Equipment & Supplies**: [Describe any other preparations completed, such as contacting the Permittee to check on safety protocols and PPE, etc.]

4.4 **Research Compliance Violation & Inspection History.**

Prior to this inspection the [Permitted or Unpermitted Entity] had [no or "a"] history of compliance violations. [List past compliance violations, if any].

Prior to this inspection, the [Permitted or Unpermitted Entity] was inspected [enter number of times] times. The prior inspection history was [satisfactory or deficient]. [Depending on the history, you may want to list the dates and types of inspections].

5. Inspection Process

An opening meeting was held with [list the names, titles and contact information for all individuals at the meeting and their relationship to the inspected site].

[Describe the inspection process used. Here you may want to describe your methods, whether samples were taken, equipment, facilities and activities that were inspected, any problems entering or accessing the facility.]

[Describe the facility, equipment, and/or activities inspected and describe whether those land uses are allowed by the existing approved permit, or whether those land uses lack a permit].

[List each item inspected, describe the findings, include a photo, or describe any other evidence taken and whether the inspection was satisfactory or whether a violation was found].

[Describe evidence collected (e.g., photos, documents, measurements, samples, etc.)]

6. Interviews

[List the name, title, phone number, mailing address and relationship to the inspected site and document the interview here].

7. Inspection Findings

[List positive findings. Examples may include: cooperation with inspection, compliance with permit requirements, area(s) where the Permittee went above and beyond compliance, etc.].

[List negative findings. Examples may include: entry or access problems or denial, early termination of inspection, lack of cooperation, lack of a permit, refusal to provide requested records or access to records, spills, litter, damage, violations of permit, etc.].

8. Violation Summary

There were no compliance violations found during the inspection. The AEB congratulates [Permittee's name] for compliance with the AEB Land Use Permit.

[Or if violations were found, use this paragraph and delete the prior sentence].

The following list of violations was confirmed during the inspection.

3. [Name violation]. This is a violation of [list stipulation of the AEB Land Use Permit or cite AEBMC section and explain why]. [Explain whether the violation was remedied during the inspection or whether it is ongoing].

4. [Name violation]. This is a violation of [list stipulation of the AEB Land Use Permit or cite AEBMC section and explain why]. [Explain whether the violation was remedied during the inspection or whether it is ongoing].

9. Comments/Corrections Provided By Inspection Subject

The intial inspection report was provided to [name] on [date] for review and comment prior to final issuance to ensure the inspection report accurately reflected the inspection process and findings and to provide [name] with an opportunity to correct any inaccurate information, or to provide comments on the initial findings.

[Use one of the following paragraphs; which ever is correct].

The AEB received the following comments from [name].

3. [List comment and describe whether AEB corrected the inspection report to remedy to factual error or whether it disagreed with the comment and took no action].

4. [List comment and describe whether AEB corrected the inspection report to remedy to factual error or whether it disagreed with the comment and took no action].

[Or if no comments were provided, delete prior paragraph and use this sentence].

The AEB did not receive any comments from [name].

10. Recommended Action

No further action is recommended, except future routine inspection to verify continued compliance.

[Or if violations were found, consider using one of these paragraphs below, and delete prior sentence].

Due [name] cooperation in resolving these violations [during the inspection, or immediately after the inspection], the AEB will not be taking any further enforcement action at this time. The AEB will, however, conduct a follow-up inspection on [date] to ensure continued compliance.

Due to the nature and severity of these violations, the AEB is in the process of developing a Notice of Violation [or has issued the NOV if that is the case] and will be issuing it under separate cover.

DRAFT

Example Final Inspection Report Cover Letter
*Delete this header and enter data into all yellow highlighted areas *

Sent by E-mail and U.S. Certified Mail
[note you must send by certified mail and keep receipt in AEB's permit recordkeeping system]

[Date]

[Name]
[Title]
[Address]
Phone: [phone number]
Fax: [fax number]
E-mail: [e-mail address]

Re: Final Inspection Report, for [Name of Permittee or Unpermitted Entity]
[Add AEB Permit Type and Permit Number here if a permit has been issued]

Dear [Name],

Please find enclosed the final inspection report summarizing the inspection completed by the Aleutians East Borough (AEB) on [date] pertaining to your [permitted or unpermitted] activities.

The intial inspection report was provided to [you, or name of company] on [date] for review and comment prior to final issuance to ensure the inspection report accurately reflected the inspection process and findings and to provide [you, or name of company] with an opportunity to correct any inaccurate information, or to provide comments on the initial findings.

[Use one of the following paragraphs; which ever is correct].

The AEB received [your, or name of company] comments on [date] for review, and those comments have been recording in the final inspection report. The AEB has corrected the inspection report to remedy to factual corrections you recomemend, with the exception of [here you can explain changes or comments you do not agree with].

The AEB did not receive any comments from [your, or name of company].

[If the inspection went well, and no compliance violations were found, you may consider adding this paragaph; otherwise delete]. The AEB appreciates [your, or name of company] cooperation in completing this inspection [here you could describe any particular cooperation or thank individuals for their assistance during the inspection]. The AEB congratulates [you, or name of company] on a successful inspection and appreciates [your, or name of company] dilegence in meeting the terms and conditions of your AEB Land Use Permit.

[If the inspection identified violations you may consider adding this paragaph; otherwise delete]. The AEB appreciates [your, or name of company] cooperation in completing this inspection [if true]. While many of the terms and conditions of your AEB Land Use Permit were met, the AEB inspection found the following violations [list the violations and describe whether those were remedied on site during the inspection or whether the violations are still unresolved].

[You may consider adding one of the following sentences depending on the situation].
Due to the nature and severity of these violations, the AEB is in the process of developing a Notice of Violation [or has issued the NOV if that is the case] and will be issuing it under separate cover. [or]. Due [your, or name of company] cooperation in resolving these violations [during the inspection, or immediately after the inspection], the AEB will not be taking any further enforcement action at this time. The AEB will, however, conduct a follow-up inspection on [date] to ensure continued compliance.

The inspection report references Aleutians East Borough Municipal Code (AEBMC) requirements. A complete copy of the AEBMC can be found at http://www.aleutianseast.org/ under the Clerk's Department webpage.

I can be reached by phone at (907) [phone number] if you have any questions about this final inspection report.

Sincerely,

[name]
[Aleutians East Borough Administrator]

Cc: AEB Assembly
AEB Planning Commission
AEB Clerk
[name], AEB Staff Assigned to Inspection
AEB Permit Files

DRAFT

Appendix 6: Failure to Submit a Permit Template

DRAFT

Example Failure to Submit an AEB Land Use Permit Application Letter
(Initial Notification)
*Delete this header and enter data into all yellow highlighted areas *

Sent by E-mail and U.S. Certified Mail
[note you must send by certified mail and keep receipt in AEB's permit recordkeeping system]

[Date]

[Name]
[Title]
[Address]
Phone: [phone number]
Fax: [fax number]
E-mail: [e-mail address]

Re: Failure to Submit an Land Use Permit Application
Initial Notification

Dear [Name],

This letter provides notification that your [activity or business] requires an Aleutians East Borough (AEB) Land Use Permit to operate within the Borough boundaries. A [type of permit] is required pursuant to Title 40 of the Aleutians East Borough Municipal Code (AEBMC). A complete copy of the AEBMC can be found at http://www.aleutianseast.org/ under the Clerk's Department webpage. This letter also follows the Borough's phone call of [date] with [you or name of person spoken to] providing oral notification of this same concern.

A copy of the required AEB Land Use Permit Application is provided for your ease of reference. Electronic versions of the application forms and Fee & Penalty Schedules can be found at http://www.aleutianseast.org/ under the Permitting webpage.

A complete permit application must be received within 30 calendar days from the date this letter was issued, along with the required permit application fee, and penalty of [$enter penalty amount from Fee & Penalty Schedule]. Continued failure to submit a permit application after this 30 day period, may trigger accrual of an additional daily penalty of [$enter penalty amount from Fee & Penalty Schedule] until a complete application is received.

Alternatively, you may provide the AEB with a written explanation of why you believe an AEB Land Use Permit is not required for your [activities or business] within 30 days.

Decisions of the AEB Administrator may be appealed to the AEB Planning Commission, pursuant to the procedures in the Aleutians East Borough Municipal Code, Title 40, Chapter 2 (AEBMC § 40.02). The decision of the AEB Administrator is final unless appealed to the Planning Commission within 14 calendar days of receipt of the AEB Administrator's decision. Appeal requests must be sent to the Borough Clerk's attention, Aleutians East Borough, Sand Point Office, P.O. Box 349, Sand Point Alaska 99661. The appeal request must state the reasons why the appellant believes the decision of the AEB Administrator was improper.AEB Staff, [name] has been assigned to your permit application, and can be reached by e-mail at [e-mail address], or by phone at (907) [phone number] if you have any questions about this letter.

Sincerely,

[name]
[Aleutians East Borough Administrator]

Cc: AEB Assembly
AEB Planning Commission
AEB Clerk
[name], AEB Staff Assigned to Permit
AEB Permit Files

DRAFT

Example Failure to Submit an AEB Land Use Permit Application
(Second Notification)
*Delete this header and enter data into all yellow highlighted areas *

Sent by E-mail and U.S. Certified Mail
[note you must send by certified mail and keep receipt in AEB's permit recordkeeping system]

[Date]

[Name]
[Title]
[Address]
Phone: [phone number]
Fax: [fax number]
E-mail: [e-mail address]

Re: Failure to Submit an Land Use Permit Application Letter
Second Notification

Dear [Name],

This letter provides a **second** notification that your [activity or business] requires an Aleutians East Borough (AEB) Land Use Permit to operate within the Borough boundaries. Initial notification was sent to you on [date].

A [type of permit] is required pursuant to Title 40 of the Aleutians East Borough Municipal Code (AEBMC). A complete copy of the AEBMC can be found at http://www.aleutianseast.org/ under the Clerk's Department webpage.

A copy of the required AEB Land Use Permit Application is provided for your ease of reference. Electronic versions of the application forms and Fee & Penalty Schedules can be found at http://www.aleutianseast.org/ under the Permitting webpage.

A complete permit application was not received by the Borough with within 30 calendar days from the date the initial notification was issued, along with the required permit application fee, and penalty of [$enter penalty amount from Fee & Penalty Schedule].

Continued failure to submit a permit application has triggered accrual of an additional daily penalty of [$enter penalty amount from Fee & Penalty Schedule] starting on day 31, until a complete application is received.

DRAFT

Alternatively, you may provide the AEB with a written explanation of why you believe an AEB Land Use Permit is not required for your [activities or business] within 30 days.

Failure to respond to this letter could result in additional enforcement action.

Decisions of the AEB Administrator may be appealed to the AEB Planning Commission, pursuant to the procedures in the Aleutians East Borough Municipal Code, Title 40, Chapter 2 (AEBMC § 40.02). The decision of the AEB Administrator is final unless appealed to the Planning Commission within 14 calendar days of receipt of the AEB Administrator's decision. Appeal requests must be sent to the Borough Clerk's attention, Aleutians East Borough, Sand Point Office, P.O. Box 349, Sand Point Alaska 99661. The appeal request must state the reasons why the appellant believes the decision of the AEB Administrator was improper.

AEB Staff, [name] has been assigned to your permit application, and can be reached by e-mail at [e-mail address], or by phone at (907) [phone number] if you have any questions about this letter.

Sincerely,

[name]
[Aleutians East Borough Administrator]

Cc: AEB Assembly
AEB Planning Commission
AEB Clerk
[name], AEB Staff Assigned to Permit
AEB Permit Files

DRAFT

Appendix 7: Notice of Complaint Template

DRAFT

Example Notice of Complaint Letter
*Delete this header and enter data into all yellow highlighted areas *

Sent by E-mail and U.S. Certified Mail
[note you must send by certified mail and keep receipt in AEB's permit recordkeeping system]

[Date]

[Name]
[Title]
[Address]
Phone: [phone number]
Fax: [fax number]
E-mail: [e-mail address]

Re: Notice of Complaint
[Add AEB Permit Type and Permit Number here if a permit has been issued]

Dear [Name],

This letter provides notice that the Aleutians East Borough (AEB) received a AEB Land Use Complaint Form on [date] pertaining to your [permitted or unpermitted] activities. This letter also follows the Borough's phone call of [date] with [you or name of person spoken to] providing oral notification of this same concern. [If you received information during that phone call you might summarize it here, and provide the basis for why you are going the next step of issuing the Notice of Complaint Letter.]

The complaint alleges: [summarize the complaint, including the time, duration, nature, and type and impact resulting from alleged noncompliance].

If validated, this alleged complaint potentially violates [list specific permit conditions or Aleutians East Borough Municipal Code (AEBMC) provisions potentially violated, with explanation]. A complete copy of the AEBMC can be found at http://www.aleutianseast.org/ under the Clerk's Department webpage.

The AEB is investigating the complaint [add anticipated timeframe for investigation (if known)]. Your input and cooperation expediently resolving this complaint is requested.

Within seven (7) calendar days from this Notice of Complaint, please contact our office to discuss the complaint or provide a written response. Please explain if the complaint is valid and what steps you are taking or plan to take to resolve the complaint. Alternatively, if the complaint is not valid, please provide information to explain why.

Should the Borough verify that the alleged violation exists during the course of its investigation, [your permit may be subject to revocation, suspension, or modification, and], you may be subject to a penalty.

Failure to respond to this letter could result in additional enforcement action. Your cooperation in resolving this matter in a timely manner will be considered when determining if further enforcement or penalties are needed.

AEB Staff, [name] has been assigned resolve this complaint, and can be reached by e-mail at [e-mail address], or by phone at (907) [phone number] if you have any questions about this letter.

Sincerely,

[name]
[Aleutians East Borough Administrator]

Cc: AEB Assembly
AEB Planning Commission
AEB Clerk
[name], AEB Staff Assigned to Complaint Resolution
AEB Permit Files

DRAFT

Appendix 8: Compliance Assistance Template

DRAFT

Example Compliance Assistance Letter
*Delete this header and enter data into all yellow highlighted areas *

Sent by E-mail and U.S. Certified Mail
[note you must send by certified mail and keep receipt in AEB's permit recordkeeping system]

[Date]

[Name]
[Title]
[Address]
Phone: [phone number]
Fax: [fax number]
E-mail: [e-mail address]

Re: Compliance Assistance Letter
[Add AEB Permit Type and Permit Number here if a permit has been issued]

Dear [Name],

This letter provides notice that the Aleutians East Borough (AEB) [has found or is aware of] a potential compliance violation pertaining to your [permitted or unpermitted] activities. This letter also follows the Borough's phone call of [date] with [you or name of person spoken to] providing oral notification of this same concern. [If you received information during that phone call you might summarize it here, and provide the basis for why you are going the next step of issuing the Compliance Assistance Letter.]

The purpose of this letter is to work with you to bring your [permitted or unpermitted] activities into compliance. The Borough is concerned about the following: [summarize the potential violation].

This matter may violates the Aleutians East Borough Municipal Code (AEBMC) [list specific permit conditions or Aleutians East Borough Municipal Code (AEBMC) provisions potentially violated, with explanation]. A complete copy of the AEBMC can be found at http://www.aleutianseast.org/ under the Clerk's Department webpage.

The AEB is investigating the potential violation [add anticipated timeframe for investigation (if known)]. Your input and cooperation expediently resolving this matter is requested.

Within seven (7) calendar days from this Compliance Assistance Letter, please contact our office to discuss the potential violation or provide a written response. Please explain if the what steps you are taking or plan to take to resolve the violation. Alternatively, if the alleged violation is not valid, please provide information to explain why.

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Failure to respond to this letter could result in additional enforcement action. Should the Borough confirm the violation exists during the course of its investigation, [your permit may be subject to revocation, suspension, or modification, and], you may be subject to a penalty. Your cooperation in resolving this matter in a timely manner will be considered when determining if further enforcement or penalties are needed.

AEB Staff, [name] has been assigned to resolve this complaint, and can be reached by e-mail at [e-mail address], or by phone at (907) [phone number] if you have any questions about this letter.

Sincerely,

[name]
[Aleutians East Borough Administrator]

Cc: AEB Assembly
AEB Planning Commission
AEB Clerk
[name], AEB Staff Assigned
AEB Permit Files

DRAFT

Appendix 9: Self Reported Violation Confirmation Letter Template

DRAFT

Example Self-Reported Violation Letter
*Delete this header and enter data into all yellow highlighted areas *

Sent by E-mail and U.S. Certified Mail
[note you must send by certified mail and keep receipt in AEB's permit recordkeeping system]

[Date]

[Name]
[Title]
[Address]
Phone: [phone number]
Fax: [fax number]
E-mail: [e-mail address]

Re: Self-Reported Violation Confirmation Letter
[Add AEB Permit Type and Permit Number]

Dear [Name],

This letter provides confirmation, of [your or your company's] Self-Reported Violation to the Aleutians East Borough (AEB) on [date]. The violation was initially reported by [phone or email] on [date] and followed by a letter on [date].

The AEB encourages self-reporting of any potential violation and appreciates [your or your company's] cooperation in identifying the problem and proposing a resolution, within the required seven (7) calendar day timeframe. [If the violation was reported later than 7 days, consult with the AEB Administrator on whether the notification still qualifies and whether there were any extenuating circumstances that caused the delay, if so explain here].

[Select the next sentence that is most appropriate, and delete the other options].

The AEB appreciates that [your or your company's] remedied the violation on [date], as described in [your or your company's] letter.

The AEB agrees with [your or your company's] proposed method and timeline for remedying the violation, as described in [your or your company's] letter. [your or your company] is required to submit a follow-up report on [date] to confirm the violation has been remedied.

The AEB does not agree with [your or your company's] proposed method and timeline for remedying the violation, as described in [your or your company's] letter. The AEB requires [you or your company] to take the following actions [list actions required] on the following schedule [list milestone and deadline

schedule]. [You or your company] is required to submit a follow-up report on [date] to confirm the violation has been remedied.

In addition, [you or your company] are hereby ordered to pay a penalty in the amount of [$ enter penalty amount] to the Borough. This is a substantially reduce penalty because you elected to self-report the violation and work cooperatively with the Borough to resolve the violation. This penalty must be paid by [enter date 30 days from this letter] from your receipt of this letter. You are reminded that you agreed to make this payment within 30 days, when you submitted your permit application by signing the Certification of Accuracy and Agreement to Comply section of the permit application.

Failure to pay this penalty on time, or complete the required actions described in this letter, may cause this matter may be referred to the Borough Attorney for whatever legal action.

This is a final determination by the Borough Administrator. In the event that you disagree with the Borough's determination, you have certain rights of appeal that are set forth at AEBMC 40.02.020. A complete copy of the AEBMC can be found at http://www.aleutianseast.org/ under the Clerk's Department webpage. Any appeal of this decision must be received by the Borough Clerk within 14 calendar days of your receipt of this Notice of Violation by Certified Mail.

AEB Staff, [name] has been assigned to this matter, and can be reached by e-mail at [e-mail address], or by phone at (907) [phone number] if you have any questions about this letter.

Sincerely,

[name]
[Aleutians East Borough Administrator]

Cc: AEB Assembly
AEB Planning Commission
AEB Clerk
[name], AEB Staff Assigned
AEB Permit Files

DRAFT

Example Self-Reported Violation Letter
Penalty Not Paid in 30 Days
*Delete this header and enter data into all yellow highlighted areas *

Sent by E-mail and U.S. Certified Mail
[note you must send by certified mail and keep receipt in AEB's permit recordkeeping system]

[Date]

[Name]
[Title]
[Address]
Phone: [phone number]
Fax: [fax number]
E-mail: [e-mail address]

Re: Self-Reported Violation Confirmation Letter
[Add AEB Permit Type and Permit Number]

Dear [Name],

On [date] [you or your company] provided a Self-Reported Violation to the Aleutians East Borough (AEB). The AEB acknowledge the Self-Reported Violation in a letter sent to [you or your company] on [date]. A substantially reduced penalty was assessed because [you or your company] elected to self-report the violation and work cooperatively with the Borough to resolve the violation. Penalty payment was due on [date]. To date, the AEB has not received the penalty payment. This letter reminds you that in addition to the penalty listed in the initial letter, a daily penalty of [$___] began to accrue on [date].

Failure to pay this penalty on time may cause this matter may be referred to the Borough Attorney for legal action.

AEB Staff, [name] has been assigned to this matter, and can be reached by e-mail at [e-mail address], or by phone at (907) [phone number] if you have any questions about this letter.

Sincerely,

[name]
[Aleutians East Borough Administrator]

Cc: AEB Assembly
AEB Planning Commission
AEB Clerk
[name], AEB Staff Assigned
AEB Permit Files

DRAFT

Appendix 10: Notice of Violation Letters

DRAFT

Example Notice of Violation Letter
*Delete this header and enter data into all yellow highlighted areas *

Sent by E-mail and U.S. Certified Mail
[Note you must send by certified mail and keep a receipt in AEB's permit recordkeeping system. You may also need to post this at the site of the violation and hand-deliver it.]

[Date]

[Name]
[Title]
[Address]
Phone: [phone number]
Fax: [fax number]
E-mail: [e-mail address]

Re: Notice of Violation
[Add AEB Permit Type and Permit Number here if a permit has been issued]

Dear [Name],

[The Borough Official should begin each Notice of Violation Letter with a procedural history that details the events leading up to the letter's issuance. It is important to note that the issuance of a Notice of Violation is the terminal step for nearly all of the Borough's Permit Enforcement Activities. As a consequence, there are myriad procedural steps that may have occurred prior to the Borough's issuance of a Notice of Violation Letter, and it is impractical to attempt to create an example that addresses all such potential procedural histories. However, an example is provided below to assist the Borough in understanding the common elements of a Notice of Violation.]

The Notice of Violation should start with a procedural history that might include the following relevant information:

1. How and when the Borough learned of the violation (e.g., self-reported, found by the Borough, or a complaint was filed).
2. Whether and when an inspection was conducted (including the inspection report if any);
3. Whether and when an audit was conducted (including the audit report if any);
4. Whether and when any other correspondence or compliance assistance preceded the Notice of Violation (e.g., Notice of Complaint or Compliance Assistance Letters);

5. A copy of all correspondence and other records, photographs, or evidence relating to the violation;
6. The specific AEBMC provisions or permit conditions violated;
7. Whether and when the Borough contacted the Permittee or Unpermitted Entity regarding the violation;
8. Important conversations between Borough officials and the Permittee or Unpermitted Entity, either by telephone, mail, email, or other means; and,
9. Any acknowledgement by the Permittee or Unpermitted Entity that the violation or underlying activities occurred.

For example:

On [date], the Aleutians East Borough ("Borough") received a complaint regarding activities related to [Permit Name and Number] that the Borough has issued to [you / your company / organization]. Specifically, the complaint alleged [include specific, detailed allegations, if applicable].

Because these allegations, if true, could potentially violate applicable provisions of the Borough Code and/or your permit, [name of Borough official] contacted [name of person spoken to] on [date] to provide verbal notice of the complaint.

Based upon the information contained in the complaint and gathered during [Borough official's name]'s conversation with you, a site inspection of [name of the property or site description] was conducted on [date] by [name of Borough official]. During that site inspection [Borough official name] met with [Permittee's representative], and conducted a [visual, records, facilities, etc.] inspection of [describe subject of the inspection with particularity].

The Borough official's inspection revealed [include detailed description of any conditions support the Borough's decision that a violation had occurred or was occurring]. The Borough official advised you that [describe the conversation with the Permittee's representative following the inspection that explained what violations occurred and gave directions regarding how to abate the violation].

As was explained to [Permittee's representative], [description of violative activities] violates [list specific permit conditions or Aleutians East Borough Municipal Code (AEBMC) provisions potentially violated, with explanation]. A complete copy of the AEBMC can be found at http://www.aleutianseast.org/ under the Clerk's Department webpage.

Accordingly, you are hereby notified that the Borough has determined that you have violated [specific sections of the AEBMC and/or specific permit provisions]. You are hereby ordered to correct these violations by [specific description of actions that must be taken to bring the Permittee's activities into compliance]:

1. Action item #1.
2. Action item #2.
3. Action item #3.
4. Etc.

In addition, you are hereby ordered to pay a penalty in the amount of [penalty amount] to the Borough. You have [number] days from your receipt of this Notice of Violation to complete the actions ordered, to pay the penalty, and to achieve compliance with the requirements of the Borough Code. Your failure to comply with this Notice of Violation will result in [specific consequences of non-compliance, including suspension, revocation, or modification of the permit]. Further, if you fail to comply with this Notice of Violation and Order, this matter may be referred to the Borough Attorney for legal action that may be necessary to ensure your compliance.

This Notice of Violation is a final determination by the Borough Administrator. In the event that you disagree with the Borough's determination, you have certain rights of appeal that are set forth at AEBMC 40.02.020. A complete copy of the AEBMC can be found at http://www.aleutianseast.org/ under the Clerk's Department webpage.

Any appeal of this decision must be received by the Borough Clerk within 14 calendar days of your receipt of this Notice of Violation by Certified Mail.

Should you have any questions, please do not hesitate to contact, [name] who has been assigned resolve this complaint, and can be reached by e-mail at [e-mail address], or by phone at (907) [phone number] if you have any questions about this letter.

Sincerely,

[name]
[Aleutians East Borough Administrator]

Cc: AEB Assembly
AEB Planning Commission
AEB Clerk
[name], AEB Staff Assigned to Notice of Violation
AEB Permit Files

DRAFT

Example Notice of Violation Letter
Penalty Not Paid in 30 Days
*Delete this header and enter data into all yellow highlighted areas *

Sent by E-mail and U.S. Certified Mail
[Note you must send by certified mail and keep receipt in AEB's permit recordkeeping system.]

[Date]

[Name]
[Title]
[Address]
Phone: [phone number]
Fax: [fax number]
E-mail: [e-mail address]

Re: Notice of Violation Penalty Not Paid
[Add AEB Permit Type and Permit Number]

Dear [Name],

On [date] the Aleutians East Borough (AEB) issued a Notice of Violation that included a penalty. Penalty payment was due on [date]. To date, the AEB has not received the penalty payment. This letter reminds you that in addition to the penalty listed in the initial letter, a daily penalty of [$___] began to accrue on [date].

Failure to pay this penalty on time may cause this matter may be referred to the Borough Attorney for legal action.

AEB Staff, [name] has been assigned to this matter, and can be reached by e-mail at [e-mail address], or by phone at (907) [phone number] if you have any questions about this letter.

Sincerely,

[name]
[Aleutians East Borough Administrator]

Cc: AEB Assembly
AEB Planning Commission
AEB Clerk
[name], AEB Staff Assigned
AEB Permit Files

DRAFT

Old Business

None at this time.

New Business

None at this time.

Reports and Updates

To: **Planning Commission**

From: **Anne Bailey, Assistant Borough Administrator**

Subject: **Planning Commission Report**

Date: **January 6, 2015**

Land Use Permitting System Project

- Database: The Aleutians East Borough (AEB) Resource Land Use Permit Management System Database has been launched. To view the site please go to: https://permitting.aleutianseast.org.

- Permits: To date the AEB has received 8 commercial recreation operator permit applications. Two of the 8 have been approved.

Planning Commission

The planning commission budget has a line item for contract labor. I have entered into contract with Harvey Consulting, LLC in amount not to exceed $20,000 to provide assistance to the Borough Planning Commission, Borough Assembly and Borough Staff Members on items relating to the Land Use Permitting System and other planning and zoning issues.

Solstice Alaska has assisted in the database portion of the land use permitting system. Grant funds have ran out to pay for their services, so, I have requested that they still attend the meetings and bill me directly for their services. These fees will be paid for with Planning Commission Contract Labor funds.

If you have any questions, comments or concerns please contact me at (907) 274-7580 or abailey@aeboro.org.

Planning Commission Comments

Public Comments

Nest Meeting Date and Time

Adjournment