

# STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

### DIVISION OF WATER OFFICE OF THE DIRECTOR

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January 26, 2006

Representative Gabrielle Ledoux  
Co-Chair, House Special Committee on Fisheries  
State Capitol, Room 403  
Juneau, AK 99801-1182

Representative William Thomas, Jr.  
Co-Chair, House Special Committee on Fisheries  
State Capitol, Room 428  
Juneau, AK 99801-1182

Dear Representatives Ledoux and Thomas,

Thank you for providing an opportunity for the Department of Environmental Conservation and other members of the administration to testify on House Bill 328 at the January 20 hearing of the House Special Committee on Fisheries. Several questions came up during the hearing (paraphrased below) and some additional information may help to put the administration's position in context.

***Is there a comprehensive list of all currently authorized mixing zones?***

The Department's current permit tracking data system does not specifically track the details of authorized mixing zones, however, the Department can provide general information on authorized mixing zones (see Enclosure 1).

***How many wastewater discharge authorizations are issued each year?***

In FY 2005, the State issued 155 wastewater discharge authorizations; 72 of those included an authorized mixing zone (21 of them in freshwater).

***How does the Department track compliance with authorized mixing zones and how many inspections does the Department conduct?***

Many permitted facilities (with and without authorized mixing zones) are required to conduct self-monitoring and to report the results of that monitoring to the Department and to the Environmental Protection Agency (EPA). These "discharge monitoring reports" are reviewed by the Department for compliance with permit conditions.

During FY 2005, the Department conducted 128 compliance inspections. Facilities chosen for inspection are based on a risk-based ranking system. Samples were collected at a quarter of the inspections to independently verify facility monitoring reports. Since the state currently shares permitting and compliance authority with EPA, they also conducted facility inspections in Alaska. EPA conducted 71 inspections at facilities with wastewater permits during the same State FY 2005 time period. Not all of the State or EPA inspections involve facilities with authorized mixing zones.

***Are there facilities that have a mixing zone authorization with timing restrictions on their discharge to avoid spawning areas?***

Enclosure 2 is a list of authorized mixing zones where there are timing restrictions on the discharge to avoid spawning areas. Many facilities that have authorized mixing zones in waters identified in the anadromous waters catalog, the state list of waters important to the spawning, rearing and migration of anadromous fish. However, these mixing zones are not in spawning areas of listed waterbodies.

***The Committee requested clarification from the Departments of Fish and Game (F&G) and Natural Resources (DNR) regarding the definition of spawning area.***

Fish spawning areas are essential to maintain viable fish populations and must be properly protected. For purposes of permitting various types of activities, the Office of Habitat, Management and Permitting at DNR and DF&G define "freshwater fish spawning areas" as areas within lakes, streams, rivers, or other flowing fresh waters that offer suitable habitat for fish spawning and where spawning adults, incubating eggs, or alevins are present. In identifying and managing spawning areas, the agencies consider the temporal and spatial aspects of spawning habitats and activity, the proposed activity, and potential impacts in such a manner that the continued long-term use and availability of spawning habitat is properly protected.

***Does the permit applicant determine if their proposed discharge will be to a spawning area?***

No. Past and current practice (and now codified in the Department's new regulations) require the Department to defer to the best professional judgment of F&G or DNR to determine whether a proposed mixing zone will affect salmon or resident fish spawning areas. Enclosure 3 is an example of a document used by the Department when gathering information about potential mixing zones. This document includes a section completed with information from DNR or F&G regarding spawning areas (highlighted in the enclosure).

***Does the Department have the discretion to choose which agency (F&G or DNR) provides fish protection input into mixing zone authorization decisions?***

No. The Department consults with the resource agency that has jurisdiction over the waterbody where the proposed discharge will occur. F&G has authority over waters in

legislatively designated special areas (AS 16.20.050) and DNR has authority over all other waters (AS 41.14.870).

I would be happy to provide any other information requested by the committee.

Sincerely,

*Lynn J. Tomich Kent*

Lynn J. Tomich Kent  
Director

Enclosures

cc: House Special Committee on Fisheries members  
Representative Paul Seaton