



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

**Department of Environmental
Conservation**

DIVISION OF ADMINISTRATIVE SERVICES

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The Honorable Neal Foster
Chair, House Finance Subcommittee
State Capitol Room 410
Juneau AK, 99801

Dear Representatives Foster:

Thank you for the opportunity to provide you with a brief overview of the Division of Environmental Health on February 2nd. During our meeting several questions arose that required additional information. I have responded to these questions below. If you would like additional information, or have additional questions, I am happy to assist.

Are there a lot of incidents at pools? (Rep. Wool)

Risks in aquatic facilities include communicable diseases, chemical burns, inhalation hazards, disembowelment, drowning, slips and falls, and injuries associated with diving in shallow areas. Over the years, the Department has received complaints of swimmers' itch in non-regulated water bodies, pseudomonas folliculitis, drowning, and chemical burns. FY2016 activities included responding to reported illnesses (*Cryptosporidiosis*), positive tests for bacteria (*Pseudomonas aeruginosa*), reports of cloudy water or debris filled water, and unsatisfactory water quality samples. In each of these instances, Department staff worked with operators on a corrective action plan.

There is a responsibility to the public to ensure that these facilities are safe. Currently no other agency has authority for the safety and sanitation of public pools and spas. It should be noted that, similar to food borne illnesses, incidents and injuries are generally underreported to the regulatory authorities.

Additional information about pools and spas can be found on the Department's website at:
http://dec.alaska.gov/eh/fss/Public_Facilities/Pool_Spa_Home.html

For pools at schools, do you do anything different? Would school pools be impacted if there was a discontinuation of services? (Rep. Johnson)

The plan review and inspection process is the same whether the pool or spa is at a school or another public facility. There are currently 125 pools and spas in Alaska outside of the Municipality of Anchorage (which are regulated by the MOA). Many of these pools are associated with a school, although the exact number of pools operated by schools is unknown. Regardless, many of the pools are municipal pools and are utilized by children, the elderly, pregnant women, and other immune compromised individuals. For schools that do not operate their own pool, school field trips may involve visits to the city pool.

Department inspectors work with pool operators to correct unsafe and unsanitary conditions. If plan review and inspection services were discontinued, there would be no regulatory oversight over school pools, increasing the risk of illness and injury to students, staff, and the public.

Provide a written response to the Legislative Finance recommendations in the Indirect Expenditure Report (Rep. Foster)

The following items were identified by Legislative Finance for reconsideration by the legislature. The Department has responded to each item below. There were multiple questions specifically related to Pool & Spa facilities and Hairdressers & Nail Salons that are addressed in the responses.

In FY2016, the FSS program responded to a significant General Fund cut of \$869.3. Eight PCNs were eliminated. The program adjusted to these cuts by ceasing review, inspection, and enforcement services for all low-risk facilities, including barber, hairdresser, manicurist, or esthetician shops and schools. The FSS program also ceased inspections for public accommodations and low-risk food establishments.

Pool & Spa Facility Inspections

In order to allow for maximum utilization and cross training of staff, the Food Safety and Sanitation (FSS) program does not allocate positions to certain activities, with the exception of shellfish sanitation. Environmental Health Officers (EHOs) are trained to inspect a variety of businesses such as restaurants, markets, food processors (general and seafood), pools and spas, etc. When traveling to communities for FDA contract inspections around the state, an EHO will inspect the high and medium risk facilities in the area during the same trip, including public pools and spas.

In FY2016, the FSS program completed 67 inspections and two plan reviews for new pools. Each inspection takes approximately one hour, not including travel time. Plan reviews are extensive, and can take more than two weeks to complete. Expenditures in FY2016 for all Department pool and spa activity totaled \$20.5. Average expenditures for FY2012 to FY2015 were \$26.0 per year.

Revision of AS 44.46.025(a) would enable the Department to adopt regulations that allow fees for regulatory services such as inspection, permitting, and plan review and approval of public pools and spas. However, if this section is changed to allow the collection of fees, AS 44.46.025(d) still prohibits the Department from collecting fees from schools, which would limit the fees collected since many of the facilities are owned by schools. The Department estimates that an annual fee of \$300 - \$350 per non-exempt facility would be sufficient to cover allowable costs.

In order to establish a process for issuing annual permits and collecting fees for work related to pools and spas, the Department would require additional funding to promulgate new regulations. That would include work with the Department of Law as well as stakeholder outreach including website development, factsheet development and printing, and public outreach and training. It is anticipated the Department would need to also hire a long term non-permanent position to support the additional workload.

Hair & Nail Salon Inspections

Prior to July 2015, the Department's activities related to these establishments was to accept applications, review plans for new facilities, maintain files, respond to sanitation-related complaints, provide technical assistance, and communicate our non-objection to Department of Commerce, Community and Economic Development (DCCED) for initial licenses.

Personnel services and supplies expended on barber, hairdresser, manicurist, or esthetician shops and schools from FY2011 to FY2015 averaged only \$5.0 annually. Accepting an RSA from DCCED to fund the continuation of these activities would not have provided sufficient funds to hire an additional position and would therefore have resulted in diverting the already reduced FSS program staff resources away from regulatory oversight of high-risk establishments, which had been challenging to sustain even prior to the program cuts in FY2016. The program does still receive an RSA from DCCED for the inspection of body art facilities, which are considered high-risk in relation to public health.

Overnight Accommodation Facility Inspections and Public Toilets, Showers, and Laundromat Facility Inspections

Prior to July 2015, the Department only conducted inspections of these public facilities on a complaint basis. These facilities have low risk to public health. The Department would need to develop a regular inspection program to justify annual permits for these facilities which would take additional resources both to establish and maintain.

Cheese Testing

There are currently no businesses that require this testing. The last time there were businesses in this category was FY2013, and the amount foregone in revenue was minimal at only \$0.4.

Dairy Testing

There are currently two dairy operators in the state of Alaska. The revenue impact identified in the Indirect Expenditure Report is \$33.5 and only reflects the amount of the current fee in regulation, not the full cost of maintaining the program. It would be a financial burden to spread the cost of maintaining a dairy program across only two operators.

Fishmeal Testing

The Department is reviewing this exemption and may eliminate it in regulation.

Shellfish Testing (Paralytic Shellfish Toxin and Growing Waters)

The Environmental Health shellfish program is two-fold: The Food Safety and Sanitation (FSS) program permits 268 commercial shellfish growers and harvesters, while the Environmental Health Laboratory (EHL) performs analytical testing on growing waters and marine toxins. The revenue impact identified in the Indirect Expenditure Report between the two categories of shellfish testing is \$73.0 and only reflects the amount of the current fees in regulation, not the full cost of testing. These operators cover the cost of collecting samples and shipping them to the EHL, but the cost of analytical testing is funded with UGF and Commercial Passenger Vessel Environmental Compliance fees. The Department is currently conducting an economic analysis and may propose an increase to FSS permit fees, but it recognizes it would be a financial burden to the industry to pay the full cost of maintaining both the permitting and testing aspects of this program.

Slaughter Facility Testing

There are currently six facilities that require this testing. The revenue impact is minimal at only \$1.2.

If the State did not provide dairy testing, would it be allowable for a third party laboratory be able to provide that service? (Rep. Foster)

Alaska's dairy industry operates under the Pasteurized Milk Ordinance (PMO), which was developed by the FDA in collaboration with the dairy industry, and allows producers to ship interstate and sell milk to the military and school lunch programs. The PMO outlines the requirements that dairy producers must operate under, including inspection by a certified technician four out of each six months.

The FDA sets standards, but the U.S. government does not operate a federal dairy inspection and certification program, and each state is expected to run a dairy program to ensure dairy producers are operating in compliance with the PMO. The Department has adopted the PMO by reference, and the Department's Office of the State Veterinarian (OSV) maintains the staff and resources necessary to carry out this program in Alaska.

The Environmental Health Laboratory (EHL) is a State Dairy Central Lab and is audited and approved by the FDA to conduct regulatory testing for dairy producers under the PMO. There are no other labs in Alaska that are FDA approved to sample dairy products in accordance with the PMO. Outsourcing these testing services would be challenging due to temperature and hold time limits and the willingness of out-of-state FDA approved labs to accept the samples. The Department does not anticipate that any cost savings would be realized by outsourcing testing services since program staff would still be responsible for collecting the samples and shipping them out of state. Current testing services are leveraged with manufactured food and shellfish toxin testing, utilizing staff that perform multiple methods for other FDA approved programs.

Can you define which slaughterhouse facilities fall under USDA regulation and which do not? (Rep. Sponholz)

With the exception of reindeer slaughter, Alaska has not operated a meat inspection program since 1999. The USDA has authority over all slaughter facilities in the state (e.g. Mt. McKinley Meat and Sausage) as well as meat processors that sell wholesale (e.g. Mr. Prime Beef). "Meat processors" also include operations that process meat containing foods for wholesale markets. Examples of these products include salads with meat toppings (e.g. DiTo's or Charlie's Produce), frozen pizzas with meat toppings (e.g. Starvin' Marvin's), and meat filled burritos (e.g. Taco Loco Products) which are sold wholesale.

Meat processors that sell *only* to retail customers (e.g. Safeway, Fred Meyer's, etc.) are not under USDA inspection, but do fall within the Department's authority under the Alaska Food Code, carried out by the Food Safety and Sanitation (FSS) program.

According to the USDA Food Safety Inspection Service, slaughter and processing facilities in Alaska that are currently under USDA inspection include:

- Teddy's Tasty Meats*
- Mr. Prime Beef*
- C & J Tendermeat Co.
- Taco Loco Products
- Nuniwarmiut Reindeer & Seafood Products
- Alaska Sausage & Seafood
- DiTo's
- North Star Quality Meats/Alaska Commercial Co.*
- Mike's Quality Meats*
- Delta Meat & Sausage Co.*
- Mt. McKinley Meat & Sausage*
- Charlie's Produce
- Alaska Natural Meats*
- Rabas's Fine Soups
- Mid State Meats*
- Indian Valley Meats
- Starvin Marvin's

* Facilities that have used the EHL for testing services in FY2016 or FY2017.

The Environmental Health Laboratory (EHL) does not have any specific USDA endorsements (certification, proficiency testing, or licensing) to perform these testing services, but it leverages the techniques and instrumentation currently used in other manufactured food/swab testing to perform this work following USDA methods. As such, not all of these businesses are included in the facility count in the Indirect Expenditure report, since the tests required by the USDA are not required to be run at the EHL.

How much of your designated funds are fee-based, and where are the other designated general funds coming from? (Rep. Johnston)

The Division of Environmental Health has \$4,491.7 in designated general funds (DGF) which includes the following fund sources:

- General Fund Program Receipts (\$3,745.9)
- Commercial Passenger Vessel Environmental Compliance Fees (\$437.8)
- Ocean Ranger Fees (\$308.0)

Both Commercial Passenger Vessel Environmental Compliance (CPVEC) and Ocean Ranger (OR) fees are collected from large passenger vessels in Alaska waters based on vessel size. These fees are billed and collected by the Division of Water. While they are not fees directly billed for by the Laboratory Services component, they are still considered fee-based.

The only DGF in the Department of Environmental Conservation that is not fee-based is the Oil and Hazardous Substance Release Prevention and Response Fund. The Response Fund is the primary fund source for the Division of Spill Prevention and Response and is funded by a \$0.05/barrel surcharge on crude oil as well as a \$0.0095/gallon surcharge on refined fuel. The Department also has fee-based revenue that is classified as 'other' fund sources, which were described in the response sent to the committee on January 30, 2017.

How much of your program is federally mandated? (Rep. Johnston)

Please see the chart provided with the Department's response from January 30, 2017, for a detailed breakdown of the Department by program, including indication of which programs are federally required.

What are the matching funds and where are they coming from? (Rep. Johnston)

In the current fiscal year, the Division of Environmental Health will spend approximately \$1.6 million in state match to leverage \$6.9 million in federal funds. State match is primarily funded by UGF and, in the past, has included a small portion of general fund program receipts.

What are we saving money on performing in-house versus letting the feds take over? (Rep. Johnston)

The State of Alaska has been delegated primacy over the following programs that are managed by the Department of Environmental Conservation:

- Air Quality
- Drinking Water
- Wastewater Discharge
- Pesticides

In addition, the Department is authorized to conduct inspections and testing on behalf of the FDA for manufactured food facilities, which includes seafood processors.

These State programs provide a higher level of service, faster turnaround, and give more local control. In addition, these programs provide jobs in Alaska that would go out of state if

the federal government took the programs back. While primacy programs do cost the State unrestricted general funds to manage, they also bring in significant amounts of federal funds, as well as program receipts through permit fees. These programs would still require some form of state-run program even if primacy was turned back over to the federal government.

The federal government does not currently have capacity to take on any of these programs. It would take a long time for them to get up to speed which would delay development and constructions projects and/or endanger public health and the environment in the meantime.

The Commissioner provided an in-depth overview of the Water and Air primacy programs to the Senate Resources Committee on February 6, 2017. I have attached the presentation and video of the hearing can be found in the Gavel Alaska archives at the following link, with the Commissioner's presentation starting at the 22 minute mark:

<http://www.360north.org/gavel/video/?clientID=2147483647&eventID=2017021069>

Sincerely,



Tom Cherian
Director, Division of Administrative Services

Attachments: DEC Senate Resources Presentation

Cc: Alexei Painter, Legislative Finance Division
Samantha Gatton, Office of Management and Budget
Graham Judson, Staff to Representative Foster



Department of Environmental Conservation

Senate Resources Committee
Commissioner Larry Hartig

February 6, 2017



Agenda



- Overview of DEC Primacy Programs
- Regulations Overview
- New Federal Administration/Congress
- Status Report on Specific Topics



Overview of DEC Primacy Programs



- Air Permits
- Wastewater Permits (APDES)
- Public Drinking Water Systems
- Pesticide Applications



DEC Primacy Programs – Air Quality and Wastewater Permits

- How long has Alaska had primacy?
 - Air - early 1970s
 - Wastewater - 2008
- What is the benefit to Alaska?
 - Improved level of service over EPA
 - Added discretion/flexibility
 - Program experts reside and work in state
- Primacy programs include permitting as well as other activities
 - Compliance, monitoring, standards, plans
 - Overall program funding is a mix of permit fees, federal grant/GF match, and GF.





DEC Primacy Programs – Air Quality and Wastewater Permits

- Permit Performance Update
 - Air permit program received 70 new permit applications and issued 83 major and minor permits (reduced backlog) in 2016
 - In FY2016, 85⁰% of wastewater dischargers had current permits.
 - Program efficiencies – Lean exercises
 - Air minor permit process reduced the median time for permits to go from application to public notice by 35% (from 63 days to 40 days)
 - Water permit program is preparing for a Lean exercise on general permit process



Regulations Overview

- Regulations need periodic review and update to remain current
 - Changes in state statutes and federal requirements (to maintain primacy, e.g.)
 - Fee updates per statute
 - Clarifications and streamlining processes
 - Latest science, standards, and practices
- DEC follows a lengthy, standardized process when developing regulation proposals that includes:
 - Consideration of options and alternatives
 - Evaluation for sound science
 - Evaluation of cost impacts
 - Sound public review process and consideration of public comments
 - Legal review



New Federal Administration/Congress

- Cooperative Federalism
- Recent federal rules may be revisited by Congress or the Administration
 - Waters of the U.S.
 - Clean Power Plan
 - Stream Protection Rule
 - Oil & Gas Methane Rules for New and Modified Oil and Gas Operations
 - BLM Methane and Waste Prevention Rule
 - CERCLA 108(b) Financial Assurances for Mines



New Federal Administration/Congress

- Wetlands
 - Status of Alaska 404 (dredge and fill permits) primacy effort
 - National efforts to look at “Assumable Waters”
 - Continue discussions on mitigation and offsets



New Federal Administration/Congress: Vessel Incidental Discharge Act

- Federal legislation (S. 168)
- National approach to regulating ballast water and incidental discharges
- Key considerations:
 - Risk of Invasive species/ballast water exchange
 - Risk of pollutants being introduced into state waters
 - Adequacy of BMPs and federal oversight
 - Preempting state programs





Status Report on Specific Topics





Coal-related Issues

- Federal environmental regulations
 - Clean Power Plan
 - Fairbanks PM_{2.5} – Best Available Control Technology
- DEC permits coal projects and infrastructure
 - Healy Mine
 - Wishbone Hill Project
 - Chuitna Project
 - Jumbo Dome Project
 - Seward Coal Terminal
 - Interior Coal-fired Power Plants



Tier 3 Waters

- Alaska is currently developing the process for the nomination and designation of Tier 3 Waters
- SB163 and HB283 were introduced during the 2016 legislative session and, based on public feedback, Governor Walker requested more time to dialogue with Tribes and stakeholders
- Legislative Lunch & Learn planned for March
- Public workshops planned for March



Questions?

