

HB

46

<target><bill>HB 46</bill><subject>HB
46</subject><comm>HFSH26</comm></target>

REPRESENTATIVE PAUL SEATON

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ALASKA STATE LEGISLATURE

House District 35

HB 46

Sponsor Statement

Mixing zones are areas in a water body surrounding or downstream of a discharge where state water quality standards may be exceeded while the effluent plume is diluted by the receiving water. Our public waters receive varying amounts of pollution under the parameters of discharge permits as specified by the Department of Environmental Conservation.

Current regulations allow freshwater spawning areas to be designated as mixing zones if salmon are not actively spawning at the time of wastewater discharge. HB 46 would change that regulation to prevent discharge of pollutants into any freshwater spawning area.

HB 46 is also a public right-to-know bill. It seeks to create accountability by allowing the public to have clear and easy access to information regarding the amount and nature of pollutants that are discharged under permit into Alaska water.

Finally, current law doesn't adequately provide opportunity for public awareness and involvement in a comment process for the expansion of commercial sewage containment facilities. HB 46 allows the public to be involved if a sewage lagoon is expanded by more than 50% of its originally permitted size.

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ALASKA STATE LEGISLATURE

House District 35

HB 46

Sectional Summary

Section 1 adds language to AS. 46.03 to require an annual report that details the amount, nature, and description of a pollutant permitted for discharge into a mixing zone. This section does not apply to existing permits. As suggested by the Department of Environmental Conservation (DEC), This section does not apply to information about water temperature, acidity, alkalinity, or dissolved oxygen. This section does not apply permits for streambed disturbance, turbidity, or private sewage systems.

Section 2 prohibits DEC from authorizing a mixing zone in an area in a lake, stream, river or other flowing fresh water in an area where anadromous fish spawn or resident fish redds are located. This section does not apply to the renewal of a mixing zone for a public or private domestic wastewater facility that became a spawning area after initial authorization. This section does not apply to facilities that do not have DEC discharge permits. This section does not apply to the authorization of turbidity mixing zones for placer mines.

Section 3 adds language allowing public comment on expansions of sewage treatment facilities if that expansion causes a 50% or greater increase in the size of the facility.

Section 4 adds applicability language for section 1 and section 2.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 46
() Publish Date: _____

Identifier (file name): HB046-DEC-WQ-03-27-2009 Dept. Affected: Environ. Conservation
Title Mixing Zones/Sewage Systems RDU Division of Water
Component: Water Quality
Sponsor Representative Seaton
Requester House Special Committee on Fisheries Component Number 2062

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES								
Personal Services	37.6		37.6	37.6	37.6	37.6	37.6	37.6
Travel	2.5		2.5	2.5	2.5	2.5	2.5	2.5
Contractual	19.5		19.5	4.5	4.5	4.5	4.5	4.5
Supplies	6.9		0.5	0.5	0.5	0.5	0.5	0.5
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	66.5	0.0	60.1	45.1	45.1	45.1	45.1	45.1

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
1002 Federal Receipts							
1003 GF Match							
1004 GF	66.5		60.1	45.1	45.1	45.1	45.1
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	66.5	0.0	60.1	45.1	45.1	45.1	45.1

Estimate of any current year (FY2009) cost: 5.0

POSITIONS

	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Full-time							
Part-time	1.0		1.0	1.0	1.0	1.0	1.0
Temporary							

ANALYSIS: (Attach a separate page if necessary)

HB 46 will require the Department of Environmental Conservation (DEC) to gather annual pollutant loading data from wastewater discharge permittees with mixing zones, and to compile and publish the data on the DEC website.

The projected cost includes 1 Permanent Part-Time Environmental Program Specialist III for developing regulations, contractual cost for making changes in the computer information system, travel cost for conducting workshops for permittees, and cost of office supplies and equipment.

Prepared by: Lynn J. Tomich Kent Phone (907) 269-7599
Division Water Date/Time 3/27/09 10:27 AM
Approved by: Larry Hartig Date 3/27/2009
Commissioner

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 46
 () Publish Date: _____

Identifier (file name): HB046-DEC-WQ-01-22-2010 Dept. Affected: Environmental Conservation
 Title Mixing Zones/Sewage Systems RDU Division of Water
 Component Water Quality
 Sponsor Representative Seaton
 Requester House Special Committee on Fisheries Component Number 2062

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services	37.8		37.8	37.8	37.8	37.8	37.8	37.8
Travel	2.5		2.5	2.5	2.5	2.5	2.5	2.5
Contractual	22.0		22.0	22.0	22.0	22.0	22.0	22.0
Supplies	7.5		0.5	0.5	0.5	0.5	0.5	0.5
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	69.8	0.0	62.8	62.8	62.8	62.8	62.8	62.8

CAPITAL EXPENDITURES								
-----------------------------	--	--	--	--	--	--	--	--

CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF	69.8		62.8	62.8	62.8	62.8	62.8	62.8
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	69.8	0.0	62.8	62.8	62.8	62.8	62.8	62.8

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time	1.0		1.0	1.0	1.0	1.0	1.0	1.0
Temporary								

ANALYSIS: (Attach a separate page if necessary)

HB 46 will require the Department of Environmental Conservation (DEC) to gather annual pollutant loading data from wastewater discharge permittees with mixing zones, and to compile and publish the data on the DEC website.

The projected cost includes 1 Permanent Part-Time Environmental Program Specialist III for developing regulations, contractual cost for making changes in the computer information system, travel cost for conducting workshops for permittees, and cost of office supplies and equipment.

Prepared by: Lynn J. Tomich Kent
 Division: Water
 Approved by: Larry Hartig
Commissioner

Phone (907) 269-7599
 Date/Time 1/22/10 4:30 PM
 Date 1/25/2010

AMENDMENT

OFFERED IN THE HOUSE

BY

TO: HB 46

PASSED

- 1 Page 3, line 24, following "for a":
- 2 Insert "commercially operated"

No OBJECTION

2/16/10

AMENDMENT

OFFERED IN THE HOUSE
TO HB 46

Page 3, following line 21

Insert:

(4) "useful life" means the anticipated time in which a facility can continue to be operated without replacement or major renovation.

PASSED
NO
OBJECTION

AMENDMENT

OFFERED IN THE HOUSE
TO HB 46

Page 3, line 5

After "authorization" delete "."

Insert:

“, or for an area where spawning was ongoing at the time of initial authorization, if that authorization occurred more than five years prior to the effective date of the bill.”

PASSED
NO OBJECTION

FOR NOT YET
PERMITTED VILLAGE
OUTFALLS.

House Fisheries January 28th, 2010

1. Call to Order.

Good morning and welcome to the House Special Committee on Fisheries.

Mention **Date & Time** for the Record.

Note committee members **in attendance for the Record**.

Remind folks to **turn off their cell phones**, etc...

2. We will be bringing up HB46, which was first heard during the 2009 session.

Rep. Seaton and staff will refresh the committee's memory concerning the bill. And the committee will **invite Rep. Seaton to join us in discussion**.

I also understand that **Lynn Kent, DEC's director of Water Quality** will be on hand for questions.

Public Testimony opened during the last hearing on the bill remains open, and I understand that we do have members of the public who want to express their views today.

House Fisheries February 16th, 2010

1. Call to Order.

Good morning and welcome to the House Special Committee on Fisheries.

Mention **Date & Time** for the Record.

Note committee members **in attendance for the Record.**

Remind folks to **turn off their cell phones**, etc...

HCR 15—BRISTOL BAY MINING STUDY—has been postponed from the agenda today because the resolution's sponsor has been weather delayed in Kodiak.

2. Today we will be hearing:

- **HJR 46—Mixing Zones/Sewage Systems**

AND

- **HB365—Fish Processor Fees, Licenses, Records**

3. Turning first to HB 46:

- **Public testimony on the bill has been closed.**
- We will bring the bill sponsor forward for questions and committee discussion.
- **DEC Director of the Division of Water Lynn Kent** is on line for questions.

4. Turning now to HB 365:

- Rep. Millet and/or her staff will present the bill.

STATE OF ALASKA

SARAH PALIN, GOVERNOR

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DEPT. OF ENVIRONMENTAL CONSERVATION
DIVISION OF WATER
DIRECTOR'S OFFICE

February 13, 2007

The Honorable Paul Seaton
House of Representatives
Alaska State Capitol, Room 102
Juneau, AK 99801-1182

Re: HB 74

Dear Representative Seaton:

Thank you again for the opportunity to testify on HB 74 at the House Fisheries Committee meetings on February 7 and 12. Several questions came up during the hearings. I've paraphrased those questions, and provided answers, along with some clarifying information.

CSHB 74 does not simply reinstate the Department's spawning area protections that have been in regulation since 1995. Rather, it represents a significant departure from the Department's prior regulations. HB 74 defines spawning area on a spatial basis only. While the Department's prior regulations were silent on the definition of spawning area, in practice, the Departments of Natural Resources and Fish and Game have historically and currently define spawning areas using both spatial and temporal aspects when evaluating projects involving waterbodies. This is an important distinction when considering mixing zones.

1. What facilities will not be able to get a mixing zone authorization under HB 74?

Facilities that currently have an authorized mixing zone that relies upon timing restrictions to avoid spawning impacts (except those placer mines specifically addressed in HB 74) could not be re-authorized under HB 74. These facilities' mixing zone authorizations are limited to times when spawning is not occurring. While HB 74 allows for timing restrictions for mixing zones for placer mines, it does not address other facilities that currently rely on timing restrictions to avoid spawning times. Examples of such facilities include:

- Village domestic wastewater lagoons that have a current permit and mixing zone authorization to discharge to a river when fish are not spawning will not qualify for the "grandfather" clause of HB 74, Section 1, AS 46.03.065(b). The "grandfather" clause is dependent upon an "area where spawning was not ongoing at the time of the initial authorization and the mixing zone became a spawning area after the date of the initial authorization". These facilities were initially authorized to discharge to an "area" that was already a spawning "area" (defined by HB 74 as a physical location) when the mixing zone was authorized. As such, they do not qualify for the "grandfather" provision in section (b) of the bill.

Currently unpermitted domestic wastewater discharges cannot obtain a mixing zone authorization under HB 74 involving a spawning area, even if spawning began after the facility first began discharging. Some village domestic wastewater lagoons do not discharge to surface waters. Others must occasionally discharge to a river. Unfortunately some village lagoons don't yet have a permit from EPA, and would therefore not be eligible for a mixing zone if it involves spawning areas (defined only spatially) under HB 74 when they are first permitted. They will not qualify for the "grandfather" clause because they don't have a prior authorization, even though they are existing facilities. They also, under HB 74, cannot utilize the timing restrictions that were available both under old DEC regulations and under the current DEC regulations.

Existing and future industrial dischargers with previously authorized mixing zones where spawning begins in the mixing zone after initial authorization can not be re-authorized under HB 74. The same situation that exists for domestic discharges, i.e. spawning begins in a mixing zone after initial authorization, can also happen to industrial discharges. Example:

- Golden Heart Utilities (GHU). Spawning grayling were identified in their previously authorized mixing zone. See the description of this situation under question number 3. GHU is an industrial discharger that would not qualify for the "grandfather" clause under HB 74.

Domestic wastewater dischargers that are NOT municipal or village dischargers, where spawning begins in the mixing zone after initial authorization cannot be re-authorized under HB 74. Not all owners and operators of domestic wastewater systems are municipal or village governments. Examples include school districts, health clinics, and remote lodges; subdivision and other community systems operated by private non-profits; and community systems run by private, for profit companies.

Placer mines that cannot meet the 500' mixing zone length restriction imposed by HB 74 cannot be re-authorized under HB 74. There are about 28 placer mines that have authorized mixing zones that exceed 500' in length. These mines are already

doing everything they can to ensure that the mixing zone is as small as practicable. They would not qualify for a mixing zone under HB 74, even though they currently operate without adverse impacts to spawning fish.

2. How many inspections does DEC conduct? How many are domestic vs. industrial wastewater dischargers? How often does DEC collect independent samples? Are inspections announced or unannounced?

Fiscal Year	Domestic Wastewater Facility Inspection	Industrial Wastewater Facility Inspections	Total Inspections	% that included sample collection
FY 05			128	23%
FY 06	18	54	72	13%
FY 07- <i>first half year</i>	31	41	72*	22%

*In FY 07 DEC is increasing the number of compliance and enforcement staff in preparation for primacy of the federal wastewater discharge permit program.

These numbers do not include any inspections or monitoring that might be done by EPA, DNR or ADF&G.

DEC has not kept records regarding whether or not inspections were announced or unannounced, but many of the inspections are announced in order to ensure that the facility will have the appropriate staff available during the inspection.

3. How many facilities have requested a mixing zone and how many has DEC denied?

The DEC permit database does not specifically track whether permittees have an authorized mixing zone, however, during the last legislative session, DEC estimated that there are approximately 440 authorized mixing zones. DEC cannot track those facilities that chose not to apply for a mixing zone authorization knowing that they couldn't comply with the stringent mixing zone provisions. Facilities generally don't apply if they know they can't be approved.

DEC denied mixing zone authorizations for three placer mines under the current general permit for placer mines. Habitat biologists determined that there was no time when wastewater could be discharged to avoid fish spawning.

Golden Heart Utilities in Fairbanks (GHU) is another example where DEC has denied a mixing zone. GHU applied to renew a discharge permit for backwash water from its drinking water facility when it was discovered that grayling spawn in

the mixing zone. The discharge contains lime sludge, a water softening by-product that has been shown to have no effect on grayling spawning. Nevertheless, the spawning area provision of DEC's old regulations prohibited designating a mixing zone for any discharge.

While DEC did not deny the mixing zone for a domestic wastewater discharge permit for the Pogo Mine camp, the owner had to conduct extensive surveys of the Goodpaster River in order to find a small area where State habitat biologists concurred was not suitable for spawning. Pogo placed their domestic outfall in that location in order for DEC to approve a small mixing zone for domestic wastewater which, due to the innocuous nature of the discharge, would not have affected fish spawning anywhere on the river.

4. The term "useful life" appears in State statutes multiple times. Why does the use of this term in HB 74 cause DEC concerns? Will DEC amend prior testimony on the issue?

DEC, with assistance from the attorney general's office has evaluated other uses of the term "useful life" in Alaska Statutes. The term, or its plural variant, appears in 13 different sections of Alaska Statutes, in a wide variety of contexts. Its usage ranges from the leasing of state lands for oil pipelines (AS 38.35.110) to care of elderly Alaskans (AS 47.45.240). In one context, salmon tax credits, the Legislature has defined the term, somewhat circularly, as "the useful life of equipment that is or would be applicable for purposes of depreciation." AS 43.75.036(i)(5). See also AS 43.75.035(i)(5). The legislature has simply used the term, without definition, in the various other statutory contexts where it appears.

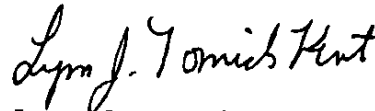
Two of the statutes where the term is used do involve DEC. AS 29.60.520 governs the award of grants to municipalities that have been affected by the release of a hazardous substance. The statute allows grant moneys to be used to repair or replace equipment whose "useful life" has been shortened by its use in cleaning up such a release.

The other statute with a connection, however attenuated, with DEC is AS 46.11.900, the definitions that govern a program designed to encourage energy conservation in publicly financed buildings. Lending institutions are directed to consider the "life cycle energy costs" when financing buildings. AS 46.11.050(a). The definitions explain that "life cycle cost" is determined over the "useful life" of the building.

Neither of these two statutes, nor any of the other existing 11 statutes where the term is used, sheds any light on how the same term might be interpreted and applied in the new proposed context of HB 74. While not an insurmountable issue, the Department would need to define the term in practice or in regulation in order to consistently apply it to the mixing zone requirements. While complete facility

abandonment is clear cut, DEC would need to evaluate whether any of a wide range of facility modifications represents the end of the "useful life" of the facility and it is now considered a new facility that no longer meets the "grandfather" clause of HB 74. Examples include changes that increase or decrease the volume of discharge; decrease the toxicity of the effluent; increase the concentration of effluent; treat the wastewater using different treatment technologies; and facility maintenance and upgrades.

Sincerely,



Lynn J. Tomich Kent
Director

cc: House Special Committee on Fisheries
House Resources Committee

Enclosure 1

Currently Authorized Mixing Zones

157 Municipal Wastewater Treatment Plants

Municipal Wastewater (Sewage) Treatment plants discharge to both fresh and marine water. Their mixing zones vary in size.

204 Seafood Processors

Most of the seafood processors discharge to marine waters under several general and individual permits, the bulk of them under general permits. The mixing zone under these general permits is described as a cylindrical volume of water, with a horizontal radius of 100 feet from the diffuser and the full depth of the waterbody.

59 Placer Mines

Placer mines operate under a general permit, with site-specific, freshwater mixing zones.

15 Oil and Gas Related Facilities

All oil and gas related facilities with authorized mixing zones discharge to marine waters.

3 Large Mines (all others meet WQS at end of pipe or do not discharge to surface water)

Greens Creek Mine has domestic and industrial discharges to marine waters of Hawk Inlet. Red Dog Mine has an industrial discharge to Ikalukrok and Red Dog Creeks. Usibelli Coal mine is in the process of collecting data that will support future mixing zone authorizations for their multiple discharges into Hoseanna Creek.

1 Fertilizer Plant

Agrium has an industrial discharge to Cook Inlet.

From: Louie Flora [mailto:Louie_Flora@legis.state.ak.us]
Sent: Thursday, October 30, 2008 10:38 AM
To: Milli
Subject: FW: Homer Honey Bear Septage Disposal Facility

Problem with the existing permit is no chance for public hearing. See below.

From: Evans, Renee L (DEC) [mailto:renee.evans@alaska.gov]
Sent: Tuesday, October 23, 2007 4:38 PM
To: Louie Flora
Cc: Kent, Lynn J T (DEC); Stambaugh, Sharmon M (DEC)
Subject: RE: Homer Honey Bear Septage Disposal Facility

Louie - In response to your questions:

The public process occurs at the time the State permit is first issued. A public notice is not required to administratively continue a permit or to renew or amend the permit. The process for renewing a permit is found in regulation at 18 AAC 15.100, see below:

18 AAC 15.100. Permit limitations

- a) The department will set a fixed term, not to exceed five years, for a permit or variance other than a plan approval for a
- (1) sewerage system or treatment works; or
 - (2) public water system
- d) **An application for a renewal of a permit, or amendment to a permit or variance, will be treated in the same manner as the initial application, except that public notice or hearing will not be provided for applications for renewal or amendment.** Application for renewal or amendment must be made no later than 30 days before the expiration of the permit or the planned effective date of the amendment. The department will, however, approve an amendment to a permit or variance on an emergency basis if necessary to protect public health, life, or property.

As long as the regulations and statutes are followed a State permit may be administratively continued. The regulation is as follows:

18 AAC 15.110. Administrative continuance of expiring permits

- (a) The conditions of an expired permit issued under AS 46.03.100 continue to be fully effective and enforceable until the effective date of a new or renewed permit if the
- (1) permittee has timely submitted an application to renew the expiring permit or for a new permit that satisfies the requirements of 18 AAC 15.020 or 18 AAC 15.100(d) and any applicable requirements of 18 AAC 60 or 18 AAC 72; and
 - (2) department has not denied the application or revoked the continued permit.

- b) This section does not apply to Alaska Pollutant Discharge Elimination System permits, whether originally issued by the United States Environmental Protection Agency under 33 U.S.C. 1342 (Clean Water Act, sec. 402) or by the department under 18 AAC 83.005 - 18 AAC 83.990. Provisions for the continuation of expiring Alaska Pollutant Discharge Elimination System permits are set out in 18 AAC 83.155.

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

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<http://www.state.ak.us/dec/>

DIVISION OF WATER
OFFICE OF THE DIRECTOR

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.

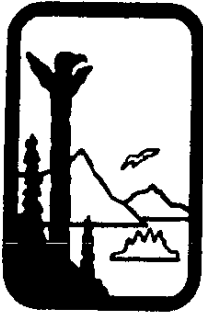
Sincerely,

Lynn J. Tomich Kent

Lynn J. Tomich Kent
Director

Enclosures

cc: House Special Committee on Fisheries members
Representative Paul Seaton



STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF WATER

Primary Treated Domestic Wastewater From Coastal
Communities with a Secondary Treatment Waiver

GENERAL PERMIT NO. 2003DB0096

See this General Permit for additional permit requirements. The GP is available online at:

http://www.state.ak.us/dec/water/vwdp/online_permitting/dom_wv_apps.htm

AUTHORIZATION NUMBER 1019

THE FOLLOWING FACILITY IS AUTHORIZED TO DISCHARGE IN ACCORDANCE WITH THE GENERAL PERMIT 2003DB0096 AND ANY SITE SPECIFIC REQUIREMENTS LISTED IN THIS AUTHORIZATION:

Issued to:

Facility Name: Wastewater Treatment Facility

Location of Discharge:

Outfall Latitude: Longitude:

Waterbody or Surface
discharged to:

Maximum Volume: 20,000 GPD

Type of Disinfection: None

Type of Facilities: Community Septic Tanks

Effluent Compliance
Point End of the treatment process prior to discharge into the receiving water

Waterbody Compliance
Point Outer edge of the mixing zone

SITE SPECIFIC PERMIT REQUIREMENTS UNDER THIS AUTHORIZATION (in addition to those required in the general permit):

1. This authorization is effective on September 7, 2007 and expires on February 28, 2009. If general permit 2003DB0096 is modified or renewed during the term of the written authorization, the new permit requirements apply.
2. See the attached discharge monitoring report for a summary of site specific limitations and monitoring requirements. Note: Effluent monitoring will only be required if a visible discharge is coming from the overflow pipe. If the discharge is taking place subsurface only, effluent samples are not required.
3. The solids, sludge and scum level, in each community septic tank shall be measured at least twice a year.
4. The accumulated sludge and other residuals from the community septic tanks shall be removed at least annually and disposed of in a sludge disposal site or disposed of in another departmentally approved manner.

EFFLUENT LIMITATIONS AND MONITORING FOR THE**OUTFALL:**

(Effluent samples will only be required if effluent is coming from the overflow discharge pipe. If the discharge is ONLY taking place via percolation through the lagoon bank effluent sampling is not possible)

Effluent Characteristics	Effluent Limitations				Monitoring Requirements		
	Parameter	Daily Minimum	Monthly Average	Daily Maximum	Units	Sample Frequency	Sample Type
Volume	N/A	Report	20,000		gpd	1/week	Estimate or Measured
Biochemical Oxygen Demand (BOD ₅ Day)	N/A	140	200		mg/l	1/month	Composite ¹ or Grab
Total Suspended Solids	N/A	140	200		mg/l	1/month	Composite or Grab
Fecal Coliform Bacteria ²	N/A	200	800		#/100 ml	1/month	Grab
Total Chlorine Residual	N/A	N/A	N/A		mg/l	1/week	Grab
pH	6.0	N/A	9.0		Std. Units	1/week	Grab
Dissolved Oxygen	Report	N/A	N/A		mg/l	Upon Dept Request	Grab
Floating Solids & garbage	N/A	N/A	0		N/A	daily	Observation
Foam	N/A	N/A	0		N/A	daily	Observation
Oily Sheen	N/A	N/A	0		N/A	daily	Observation
Outfall Inspection							
Minimum frequency for visual inspection of Outfall: Monthly							
Report outfall condition, i.e. damaged, exposed, operating normally. If not operating normally describe deficiency(s).							
Sludge Disposal and Septic Tank Monitoring							
Required Removal Frequency:	The accumulated sludge and other residuals from each individual community septic tank shall be removed at least once per year and disposed of in a fenced sludge disposal site located near the existing landfill or disposed of in another departmentally approved manner.						
Report:	Dates of pumping						
Report:	Depth of sludge in tank before pumping, total volume of sludge removed, and disposal location						
Solids monitoring frequency	The accumulated solids, sludge and scum level, in each septic tank shall be measured at a minimum of twice a year.						

¹ Composite samples must consist of at least four equal volume grab samples, two of which must be taken during periods of peak flow.

² All fecal coliform average results must be reported as a geometric mean

MIXING ZONE AUTHORIZATION:

This discharge is assigned a mixing zone to meet the Alaska Water Quality Standards (18 AAC 70) for fecal coliform bacteria, chlorine, pH and dissolved oxygen. The mixing zone for the discharge is defined as follows.

The _____ mixing zone is the marine water of _____, within a 150' radius measured from the overflow discharge pipe located at the center of the seaward bank of the lagoon.

It shall be the responsibility of the permittee to inform this department, in writing, if water from inside of the mixing zone is used, or is intended to be used, as a water supply for aquaculture, human consumption or food processing, or if any area inside the mixing zone is used for contact water recreation or the harvesting for human consumption of raw mollusks or other raw aquatic life. These water uses are defined in the Alaska Water Quality Standards (18 AAC 70).

Twice yearly monitoring will be done every 6 months or as close as practical due to weather conditions.

MIXING ZONE LIMITATIONS AND MONITORING:

Mixing Zone Characteristic	Minimum Value	30 Day Average	Maximum Value	Units	Frequency of Analysis	Sample Type
Fecal Coliform Bacteria (edge of mixing zone) ¹	N/A	14	43 ²	#/100 ml	2 x Year ³	Grab
Fecal Coliform Bacteria (shoreline area of human use closest to the outfall in MZ) ¹	N/A	100	200	#/100 ml	2 x Year ³	Grab
Total Chlorine Residual ⁴	N/A	N/A	0.0075	mg/l	2 x Year ³	Grab
pH ⁵	6.5	N/A	8.5	Std. Units	Upon Dept Request	Grab
Dissolved Oxygen	6	N/A	17	mg/l	Upon Dept Request	Grab

1. All mixing zone average fecal coliform results must be reported as the geometric mean. Sample location shall be identified before the first sampling event. All future samples shall be collected as reasonably possible to the original location. The use of a GPS unit or some other location device shall be used to ensure repeatability of original sample location. Shoreline and edge of mixing zone samples may be taken at the same location if that location meets both criteria.
2. Not more than 10% of the samples taken during the reporting period may exceed this value.
3. Sample shall be collected on the same day the effluent is sampled of the corresponding outfall.
4. The effluent limit for chlorine is not quantifiable using EPA approved analytical methods. The Department will use 0.1 mg/L (the Minimum Level for EPA Method 330.3 and Method 330.4) on the Discharge Monitoring Report (DMR) as the compliance evaluation level for this parameter. Test not required if chlorine not used as a disinfectant for the wastewater.
5. Marine water discharges may not vary more than 0.2 pH units outside the naturally occurring range.

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION
DIVISION OF WATER
DIRECTOR'S OFFICE

SARAH PALIN, GOVERNOR

555 Cordova Street
Anchorage, AK 99501-2617
PHONE: (907) 269-7599
FAX: (907) 334-2415
<http://www.state.ak.us/dec/>

April 9, 2009

3/2
JE

The Honorable Bryce Edgmon
Chair, House Fisheries Special Committee
House of Representatives
Alaska State Capitol
State Capitol, Room 416
Juneau, Alaska 99801-1182

Dear Representative Edgmon:

During the March 31, 2009 House Fisheries Special Committee hearing on HB 46, Representative Seaton asked questions about permitting and public notice for the Homer Honey Bear Septage Disposal Facility, currently named Homer Septic Services. The essence of the questions was how a permit could be amended without opportunity for public comment.

In this particular case, this septage lagoon percolates to the subsurface. There is no discharge to surface water and no mixing zone, a primary topic of HB 46. In the case of small discharges that do not discharge to surface water, no permit is required - even though a permit was issued in this case. Recently, the facility has proposed to increase the volume of its discharge from 1500 to 2000 gallons per day (gpd). We intend to issue a plan approval in lieu of a permit due to the low volume and low risk. Plan approval in lieu of a permit is allowed under Department regulations (see enclosed regulation 18 AAC 72.215) and is consistent with current Department practice for routine facilities discharging less than 2500 gpd to the subsurface. A change in waste volume from 1500 to 2000 gpd would not trigger a public notice under the provisions of HB 46.

Sincerely,

Lynn J. Tomich Kent
Lynn J. Tomich Kent
Director

Enclosure

cc: Representative Paul Seaton
Representative Craig Johnson
Representative Wes Keller
Representative Charisse Millet
Representative Cathy Munoz
Representative Bob Buch
Representative Scott Kawasaki

Enclosure

18 AAC 72.215. Permit required

(a) Except for systems exempted from plan review under 18 AAC 72.200(a) or as provided in (b) of this section, in addition to a plan approval required by 18 AAC 72.200, a person who disposes of domestic wastewater in this state must have a permit issued by the department under this chapter or under 18 AAC 83 for that disposal.

(b) The department will issue a plan approval in lieu of a permit issued under this chapter if the department determines that

- (1) the system meets the requirements of AS 46.03 and this chapter;
- (2) the system is protective of public health, public and private water systems, and the environment;
- (3) the discharge is not to a sensitive receiving environment; and
- (4) a permit is not required under 33 U.S.C. 1311 (Clean Water Act, sec. 301).

Louie Flora

From: Evans, Renee L (DEC) [renee.evans@alaska.gov]
Sent: Wednesday, October 17, 2007 11:23 AM
To: Louie Flora
Cc: Stambaugh, Sharmon M (DEC)
Subject: Homer Honey Bear Septage Disposal Facility
Attachments: The status of the engineering study for the facility.doc; To Whom it may concern.doc

<<The status of the engineering study for the facility.doc>> <<To Whom it may concern.doc>>

Mr. Flora - I have attached answers to your questions regarding the status of the engineering reviews/approvals for the Homer Honey Bear Septage Facility and a copy of a letter to be sent to the complainants. I apologize the for the delay. The plan review research took longer than expected and we were waiting for the results of the monitoring well samples. If you have any further questions regarding this facility please let me know. Thank-you,
Renee Evans/ADEC

DEC LETTER TO HONEY BEAR COMPLAINTS 2007

To whom it may concern:

The Alaska Department of Environmental Conservation has received six complaints regarding the Homer Honey Bear Septage Facility located at approximately mile 148.7 of the Sterling Highway.

The complaints allege that septage in excess of 1500 gallons per day is being discharged into the facility, the monitoring wells at the facility are non-functional and odors are present outside the facility.

On June 7, 2007 ADEC staff inspected the Homer Honey Bear Facility. The inspection began at 11 am, the outside temperature was approximately 50 degrees Fahrenheit and the wind was blowing at approximately 10 miles per hour to the east. The facility was located within a fenced, locked area.

ADEC staff reviewed records of the facility. In 1983 the facility was designed and approved to allow an average of 1500 gallons per day of septage to be discharged into the facility on a daily basis. Since that time the facility has been upgraded and is now designed to allow an average of 6000 gallons per day of septage to be discharged. The original amount of 1500 gallons per day of discharge is found in the permit for the facility. The additional discharge of 4500 gallons per day is acknowledged by a plan review in lieu of a permit which is allowed by State of Alaska regulation. The current administratively extended permit will be reissued to reflect, both the current permit and plan review limit of 6000 gallons per day of discharge.

Four monitoring wells are located at the facility to monitor the groundwater and verify water quality standards are being met. All wells are operational. One downgradient well was located outside the fenced area, but within the property boundary. Current sample results show that all water quality parameters are being met. A previous sampling event showed one problem with a lower than normal pH in well #4. The permit requires a pH of not less than 6.5, the pH of well #4 last fall was 6.3. Well #4 is located outside the fenced area. The operator indicated this well had been tampered with and he had replaced and put a better lock on this well.

During the inspection ADEC staff walked along the outside of the fenced area, no odors were evident on the outside of the fenced area. The owner discharged approximately 1500 gallons of septage into the facility during the inspection and ADEC did not detect odors offsite during this discharge. Staff also walked from the facility east toward the Sterling Highway during the time septage was being discharged. The wind was blowing toward the east; no odors were evident within 50 feet on the west side of the Sterling Highway.

No violations of the wastewater disposal permit or the State of Alaska regulations for disposal of wastewater, 18 AAC 72, were noted during our investigations. The facility appeared to be well operated and maintained. ADED considers the complaint investigation closed at this time.

1. The status of the engineering study for the facility. Per the e-mail below from Katie Shows in this office, DEC had requested a copy of the design from the permit holder. Did the department receive this study, and if so, does the existing facility comport with the designed facility?

ADEC received the first set of plans for the facility in 1983. These plans were approved and the facility received its first wastewater permit in 1983. The facility has been upgraded several times over the past 24 years and is currently designed and approved to accept an average of 6000 gallons per day.

2. Have design standards changed at all since this facility was initially and re-permitted?

Current design standards are similar to what they were when the facility was first permitted in 1983.

3. In their letter of May 30th, 2007 (copies faxed to DEC in June) the complainants contend that the type of discharge into the facility may be illegal as it may require additional processing prior to discharge. What type of discharge is permitted for this facility, and did the site inspection include a monitoring of discharge into the facility as it occurred?

Septage from septic tanks is being discharged into the facility. The facility was designed and permitted for this discharge. No additional processing of this type of discharge is required. ADEC staff was onsite as a discharge from the pumper truck occurred.

4. The May 30th letter states that "the permit" allows for no more than 1500 gallons per day to be dumped into the facility. This is stated in a letter from DEC dated January 16, 2001 as well (from William McGee). As our office understands from conversations with DEC currently 6000 gallons per day is allowed into the facility. When did this increase from the originally permitted amount occur? Did the facility increase to roughly four times the 2001 size at some point to accommodate the increased volume?

The facility has increased in size over several years. The facility originally had a primary lined cell and one trench. There are currently 8 trenches in series being used to treat the wastewater.

5. The January 2001 letter from DEC explains that a minimum of 4 monitoring wells are required. Did DEC staff find these four wells to be in working order? If the size of the facility increased from a 1500 gallon per day maximum to a 6000 gallon per day maximum, does DEC require more monitoring wells?

All monitoring wells are currently functioning and operational. As the facility expands more frequent monitoring may be required, but the number of monitoring wells required will not increase. Most subsurface disposal systems require one upgradient and three downgradient monitoring wells.

6. Despite the finding of DEC staff that odor was not an issue at the facility, what recourse do concerned neighbors have if they find that the odor is impacting their quality of life/property values?

Odors are an issue that is usually dealt with at a local level, i.e. city or borough government level. This is done by land use restrictions and ordinances only allowing certain types of businesses within zoned residential areas. Most landowners work with their local government on zoning.

7. Has DEC staff formally drafted a letter in response to the letters from Dick and Carol Whitney (May 30th, 2007) and Larry Rozak (October 16th, 2006) included in the material faxed to the department in June? Has staff contacted these parties to discuss the results of the site visit?

The Department will provide the complainants with a copy of this letter, which includes information from the site visit. This letter is attached.

If you have any other questions please let me know. Thank-you -- Renee Evans/ADEC

From: Louie Flora [mailto:Louie_Flora@legis.state.ak.us]
Sent: Mon 10/22/2007 9:56 AM
To: Evans, Renee L (DEC)
Cc: Stambaugh, Sharmon M (DEC); Kent, Lynn J T (DEC)
Subject: RE: Homer Honey Bear Septage Disposal Facility

Thank you for the reply. Can you explain the public process for the administrative extension of a wastewater discharge permit vs. reissuance. Per the answers sent the other day from DEC on the Stariski Seware Lagoon "ADEC staff reviewed records of the facility. In 1983 the facility was designed and approved to allow an average of 1500 gallons per day of septage to be discharged into the facility on a daily basis. Since that time the facility has been upgraded and is now designed to allow an average of 6000 gallons per day of septage to be discharged. The original amount of 1500 gallons per day of discharge is found in the permit for the facility. The additional discharge of 4500 gallons per day is acknowledged by a plan review in lieu of a permit which is allowed by State of Alaska regulation. The current administratively extended permit will be reissued to reflect, both the current permit and plan review limit of 6000 gallons per day of discharge." I am unclear if this means that opportunity for public comment on the permit occured once 24 years ago, and has not occured since, or if public comment was accepted and incorporated into each subsequent extension of the permit. The letter states that the permit will be reissued. Will public comment be allowed at some point in the future?

Is it the case with all state dishcharge permits that they may be administratively extended? Can you point me toward the regulation that allows for administrative extension?

Thanks,

Louie Flora,
Staff, Rep. Seaton
(907) 235-2921



WHITNEY'S

30 May, 2007

Representative Paul Seaton

Dear Paul,

As per your instructions we are sending this packet pertaining to the septic dump across from us at mile 148.7 Sterling Highway. We are also sending copies of letters written in regards to this matter. Some of the neighbors were gone and we could not get copies of their letters. Also included with this packet are the pictures we took back in October of 2006. The area on site still looks terrible.

We had our septic pumped last fall by Aardvark from Soldotna and the person pumping informed us that he thought that type of dumping was now illegal and that the sludge should now be processed by a processing plant as his company does in Sterling.

We have highlighted areas for your attention and referenced the matching pictures. There is a requirement to maintain a log of pumping activities and we are curious if this is being done. If in fact this log is kept then it would be interesting to see if they log all the dumps per day. There are four to six trucks a day entering this site and dumping. Each truck holds 3000 gallons. The permit states no more than 1500 gallons per day. This equates to ten times the permitted discharge. There is evidence of medical waste in the ponds. These items could be seen with the naked eye at the time we took the pictures. This permit expired January 15, 2006 and we have not been able to find any up to date permit for this site. The expired permit is issued to Homer Honey Bear Pumping, and there is no such business on the Kenai Peninsula. Rob and Nancy Sherwood, the supposed owners of this pumping business are not listed on the Kenai Peninsula. Also as a requirement, there should be four monitoring wells on site. We were only able to find three and they were non operational. The stench that emanates from the area is nauseous and sickening. There is a requirement that odors must be controlled.

Any assistance you can render will be greatly appreciated as this problem is becoming more of a nuisance and a possible health hazard.

Sincerely

Dick & Carol Whitney

Phone: (907) 567-4361
Cell phone (907) 299-0198
Email:
carol.alaskafishinlady@gmail.com

Mr. & Mrs. Richard F. Whitney
P. O. Box 728
Anchor Point, AK
99556-0728

Dale M. Olsgaard

Dale M. Olsgaard 907-567-3438

October 16, 2006

Larry M. Rozak
P. O. Box 1179
Homer, Alaska 99603
Tele: 907-235-8667 and FAX: 907-235-4866

ATTN: Renee Evans
Alaska Dept. of Environmental Conservation
Division of Air and Water Quality
State Discharge Permit & Certification Program
555 Cordova Street
Anchorage, Alaska 99501

I would like to comment on the impending renewal of ADEC Wastewater Disposal Permit No. 0023-DB016 (DEC File: 2334.45.003) that is currently operating using a temporary extension. This is a Homer Honey Bear Pumping permit for a waste disposal site at Mile Post 148.7 of the Sterling Highway and just east of Stariski Tower.

This wastewater disposal site is located in a residential area with 50 to 70 lots and homesite parcels in the nearby neighborhood with numerous new homes being erected just this last year and many existing homes that are impacted by the odors emitting from this facility. I have spoken with many of these homeowners and they agree with my opinion that we should not have to smell these nauseous odors in our homes, in our yards or in the neighborhood while walking, biking or riding 4-wheelers. These odors also lower the value of our homes and land in the area and could cause a possible health hazard for people with respiratory problems.

I would like to ask the DEC to dramatically tighten the standards under which the permit operates to achieve a no odor/ zero tolerance at all times. On page 3 of the Permit, under Site Operation, part (e) states that the DEC can require trench covers to control offsite odors. I ask that all treatment cells/trenches have required full-time covers in the new permit and that odor controlling additives be added to the sewage on required regular intervals to further help the problem.

A second problem also exists that the total volume of the sewage being dumped appears to be much higher than the current permit allows. The current permit allows the discharge of a maximum of 1,500 gallons per day of wastewater, but the term discharge is confusing in what it applies to. On page 3 of the Permit, under Site Operation, part (a) says that the Permittee is authorized to discharge five types of sewage into septage pits. This appears to mean that the trucks that pump septic tanks can only deliver or discharge into the holding trenches 1500 gallons per day. If this is the meaning of the discharge term, than a severe violation of this permit has occurred repeatedly. In 2004, I witnessed 2 to 6 trucks per day delivering an estimated 5000 to 15,000 gallons (assumes only 2500 gallons per truck that can carry much more) over the course of four months when I worked on my excavator on my land that is adjacent and directly south of the road that leads to the waste disposal site. I also have spoken to my neighbors who have a view of the trucks turning off the Seward Highway heading to the disposal site and they confirm that over the last few years, 2 to 6 trucks dump daily.

The other interpretation of the word discharge could refer to a maximum of 1500 gallons per day of treated wastewater discharge from the holding treatment cells/trenches into the surrounding area. This would allow a maximum of 547,500 gallons per year (1500 gal. x 365 days) and would allow the trucks to deliver much more than 1500 gallons per day. The problem now becomes an average of 4 trucks, holding an average of 10,000 gallons of sewage, delivering an estimated 200 delivery days per year that would deliver 2,000,000 gallons per year. Since the treatment cells only allow 547,500 gallons to pass through; then either 1,452,500 gallons have evaporated into the air and has created a massive odor problem or this wastewater disposal facility still has a severe violation of the permit in dumping quantities of sewage far greater than permitted. If this is the correct interpretation of the word discharge, then I ask that the new permit only allow a yearly total of 547,500 gallons to be dumped into the facility with no more than 90,000 in any month (3000 gal./day x 30 days), which should keep large dumping in short time periods from over loading the system and causing bad odors.

Larry M. Rozak
P.O. Box 1179
Homer, AK 99603

Home Phone: 907-235-8667
Home FAX : 907-235-4866

October 16, 2006

COVER LETTER

To my neighbors in the Stariski area concerned with the local sewage dump site,

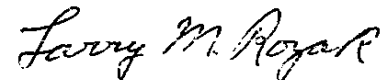
Included with this cover letter is my letter of public comment on the impending renewal of the Homer Honey Bear Pumping permit that the DEC will decide within weeks or maybe months and selected pages of their 2001 Wastewater Disposal Permit No. 0023-DB016.

I spoke with Renee Evans of the Anchorage Office (Phone: 907-269-7568) that will oversee the renewal of the permit and she informed me that they cannot deny the permit, but can only establish standards for the permit and do inspections for possible violations. She encouraged concerned residents of the Stariski neighborhood to do written public comment on the new permit. She wanted people to specify when they smelled bad odors--was it during a certain time of the month or at times when the wind was right when coming from a facility that smelled all the time.

When you read my written comments, you will see that I am asking the DEC for a no odor/zero tolerance standard in the new renewed permit. This is not only good for our noses, but will prove expensive for Honey Bear Pumping to provide pit/trench covers and other odor controlling additives. If it proves too expensive for Honey Bear to do this, then we all hope they will close down the facility and move to a remote location; therefore I ask that you also stress that you want full time pit/trench covers to control the odors. I also attacked the excessive dumping of sewage above the permitted levels and I ask that if any of you have also witnessed 2 to 6 trucks entering the dump site on a daily basis -- to mention it in your comments.

Thanks for your time and consideration.

Sincerely,



Larry M. Rozak

COPY

made 12/6 W
at 10 AM
December 5, 2006

Stewart E and Gloria L. White
P.O. Box 931
Anchor Point, AK 99556
Tele: (907) 567-1024 and (907) 277-0439

ATTN: Renee Evans
Alaska Dept. of Environmental Conservation
Division of Air and Water Quality
State Discharge Permit & Certification Program
555 Cordova Street
Anchorage, Alaska 99501

RE: Impending Renewal of ADEC Wastewater Disposal Permit No. 0023-DB016
(DEC File: 2334.45.003)

This wastewater disposal site is located at Mile Post 148.7 Sterling Highway in a residential area with 50 to 70 lots and homesite parcels in the area. Numerous new homes are being erected in this area. Our existing homes and area are currently being impacted by the odors emitting from the disposal site. Homeowners that we have spoken with agree with our opinion that we should not have to smell these nauseous odors in our homes, in our yards, while sitting on our decks or in the neighborhood while walking, biking or doing yard chores. The smell lowers the value of our homes and land in the area and could cause possible health problems for people with respiratory problems.

We would like to request that DEC dramatically tighten the standards under which the permit operates to achieve a no odor/zero tolerance at all times. We request that all treatment cells/trenches have required full-time covers in the new permit and that odor controlling additives be added to the sewage on required regular intervals to further help the problem.

Our home is located at Mile Post 148.2 of the Sterling Highway. There are days that walking up our drive, we find it necessary to cover our nose and mouth with a scarf to keep the stench from gagging us. It does not seem fair that the actions of one parcel in our area be allowed to impact the residents and homeowners.

Sincerely,

Stewart E. and Gloria L. White
Homeowner
Block 1, Lot 7 Bishop Subdivision

Harold & Kathryn Hale
P.O.Box 687
Anchor Point, AK 99556
(907) 567-3626
hdhale2@worldnet.att.net

November 8, 2006

Attn: Renee Evens
Ak Dept of Environmental Conservation
Division of Air and Water Quality
State Discharge Permit & Certification Program
555 Cordova Street
Anchorage, AK 99501

Re: ADEC Wastewater
Permit # 0023-DB016
(DECFILE 2334.45.003)

We would like to comment on the above mentioned permit renewal.

One question - "Why can it not be denied?"

We, my husband and I, live at Mile 148.6 Sterling Hwy, very near the site. We have lived here for 14 years.

The noxious odor, more so in summer and fall, has steadily increased with the number of trucks dumping. The smell is absolutely horrible.

Perhaps an onsite inspection would confirm the abuse of the site.

I am very concerned about seepage into water well and stream contamination. There are treatment facilities available.

Please consider other options to blatant open sewage dumping.

Sincerely,

Harold & Kathryn Hale

Copy
3815

FROM: Roger and Debora Donahue
PO Box 733
Anchor Point, AK 99556

October 31, 2006

TO: Sharmon Stambaugh,
Program Manager, Wastewater Discharge Permits Program
Division of Water Control
Alaska Department of Environmental Conservation

SUBJECT: ADEC Wastewater Disposal Permit No 0023-DB016

We live along the Sterling Highway Mile 148.8, just west of the wastewater disposal site referenced in the above subject line. We built a home in this area in the summer of 2003 and since our occupancy, this disposal site was never a concern or menace until this past summer. Sometime in July 2006, we began to routinely smell odors from this site whenever the air was still or the wind came from the East. On very calm days, odors from the area would settle into our subdivision in pockets and were quite noticeable.

Also this summer, the amount of sewage dump trucks using the site seemed to be greater than years past. We honestly cannot say if we just noticed them more because of the foul odor we had to endure, or whether the sites usage actually increased. But one fact is clear - this site is being heavily used.

Since the odor seemed to be growing worse, we visited the DEC's website to learn the regulations for this type of disposal site and found that this site's permit had expired in January 2006. In September, we wrote an email of our concerns to Mr. David Johnson, Water Division's Soldotna office, but never heard back. Therefore, I am writing to you in hopes you will ensure our concerns are forwarded to the proper office.

Recently, we spoke with another neighbor about this, Mr Larry Rozak, and he told us this disposal site was operating under a temporary permit. If this is the case, we ask you to ensure this facility is meeting all requirements of their permit and State Laws and Regulations prior to issuing them another permit of any type.

We are specifically concerned they are exceeding the allowable wastewater disposal limits specified in their permit. The permit clearly states: "The permit allows the discharge of a maximum of 1,500 gallons per day of wastewater." Since one truck per day would exceed this allowance, we can for certain tell you far more trucks then one visit this site per day.

Additionally, the permit requires that odors are to be controlled so they "are not detectable off the site." We estimate that our home is 3/10th of a mile from the site, but on no-wind days we have often smelled the odors from this facility.

The facility itself seems to be lacking from proper care as the fence is deteriorated and the entire area appears unkempt and unsightly. Due to this apparent lack of proper management and maintenance, we also ask that your Division review the facility's records to ensure they have been

properly monitoring the contaminant levels as required by Appendix A – Specific Permit Conditions, Paragraph c, of their permit. There are many residential homes in this area dependent upon well water and we feel it is imperative they are not exceeding the contaminant levels allowed.

Additionally, please ensure they are complying with paragraph i, maintaining a log of all pumping activity to ensure they are not exceeding allowable wastewater dumping quantities for this facility.

In closing, we ask that you ensure this facility is meeting all the requirements of its permit to ensure the health and safety and quality of life for the residents in this area. Should the facility be in violation of its permit, we ask that you revoke and not renew the permit as allowed by AS 46.03.120.

If you have any questions, or would like additional information, you may reach us at 907-299-3239. Our physical address is 26983, Kazor Circle and our mailing address is:

Roger and Debora Donahue
PO Box 733
Anchor Point, AK 99556

Thank you for your attention to this matter,

Roger E. Donahue

Debora S. Donahue

copy



WHITNEY'S

October 20, 2006

Attn: Renee Evans
Alaska Dept. of Environmental Conservation
Division of Air and Water Quality
State Discharge Permit & Certification Program
555 Cordova Street
Anchorage, Alaska 99501

We (Dick & Carol Whitney) wish to make a statement on the forthcoming renewal of ADEC Wastewater Disposal Permit No. 0023-DB016 (DEC File: 2334.45.003) which is at the present time using a temporary extension. The pumping permit is for Homer Honey Bear which uses a waste disposal site at Mile Post 148.7 of the Sterling Highway and is just east of the Stariski Tower and across the highway from our driveway and home.

This septic wastewater disposal site is in very close proximity to a residential area with between 50 and 100 lots and home sites in the surrounding area, and many new homes have been built this past year and many more are planned in the coming year. These homes are greatly impacted by the horrible odors that are being emitted from this facility. Many of the homeowners in our area agree with my views and observations that we should not have to endure the stench and sickening odors in our homes, in our yards or in our neighborhoods. Have you ever tried to have a wonderful backyard barbeque and try to eat while enduring odors such as these? Have you ever walked, rode a 4-wheeler or bicycle and had to endure a constant stench? These odors decrease the value of our properties and homes, also turn off prospective buyers of properties for sale. These odors also could quite possibly cause a health hazard for people with respiratory problems. There are numerous seniors living in this area.

We would like to request the DEC to implement a tightened standard under which the permit operates to achieve a no odor/no tolerance at all times. On page 3 of the permit, under Site Operations, part (e) states that the DEC can require trench covers to control offsite odors. We ask that all treatment cells/trenches have required full-time covers in the new permit and that odor controlling additives be added to the sewage on regular intervals to further help the problem.

There is also another problem in that the total volume of sewage being dumped appears to be much higher than the current permit allows. The current permit allows for the dumping of 1,500 gallons per day of wastewater, but the term discharge is confusing in what it applies to. On page 3 of the Permit, under Site Operation, part (a) says that the Permittee is authorized to discharge five types of sewage into septic pits. This appears to mean that the trucks that pump septic tanks can only deliver or discharge into the holding trenches 1500 gallons per day. If this is the meaning of the discharge term, then a severe violation of this permit has occurred repeatedly. Over the past few years we have observed the coming and going of these trucks from the south as well as the north and there have always been multiple trucks entering this dumping site. With our drive directly across from the turn in to the site we observe most of the trucks. Those we do not observe we hear as they slow down using their Jake breaks for the turn. One can not miss those big trucks. We have counted as many as 6 trucks entering the dump site throughout the day. I assume a truck carries an estimated 2500 gallons per truck. If one times that by 6, then that site is receiving an estimated 15,000 gallons per day.

This paragraph is borrowed from the letter written by Larry Rozak: The other interpretation of the word discharge could refer to a maximum of 1500 gallons of treated wastewater discharge from the holding treatment cells/trenches into the surrounding area. This would allow a maximum of 547,500 gallons per year (1500 gal. X 365 days) and would allow the trucks to deliver much more than 1500 gallons per day. The problem now becomes an average of 4 trucks, holding an average of 10,000 gallons of sewage, delivering an estimated 200 delivery days per year that would deliver 2,000,000 gallons per year. Since the treatments cells only allow 547,500 gallons to pass through; then either 1,452,500 gallons have evaporated into the air and has created a massive odor problem or this wastewater disposal facility still has a severe violation of the permit in dumping quantities of sewage far greater than permitted. If this is the correct interpretation of the word discharge, then we ask that the new permit only allow a yearly total of 547,500 gallons to be dumped into the facility with no more than 90,000 in any month (3000 gal./day x30 days), which should keep large dumping in short periods from overloading the system and causing bad odors.

We ask the DEC to inspect & test on a monthly basis or at least multiple times a year to determine whether or not the permit has been complied with. We have read the entire permit and can see where the permittee is granted quite a lot of freedom in making reports, keeping their records, making the tests, and complying with the permit. The problem we see is the permittee is being allowed to give accurate information which may or may not be true, consequently if the DEC has not made surprise inspections rarely or not at all, it would encourage the permittee to dump sewage at a much higher rate than the permit allows. This practice would make a lot of money for the permittee with little or no risk of being caught or anything being done about it.

If Homer Honey Bear Pumping has to spend money for pit covers, and odor controlling additives and labor to create a zero tolerance odor facility, and if their profit margins are much lower with fewer trucks delivering sewage to this facility on a daily basis, then this is the cost of doing business in a residential neighborhood. Perhaps they can relocate to a more remote location where no homes exist. The only interest that we the landowners and home owners have is our quality of life that should be nauseous odor free all the time, and a healthy environment to play and relax in. Please mail me a copy of the permit that is approved and renewed for Homer Honey Bear Pumping.

Sincerely

Richard F. Whitney

Carol M. Whitney

Mr. & Mrs. Richard F. Whitney
P. O. Box 728
Anchor Point, AK

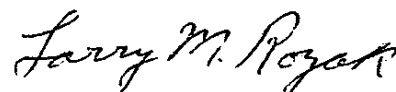
Phone: (907) 567-4361
Cell phone (907) 299-0198
Email:
carol.alaskafishinlady@gmail.com

I ask the DEC to make monthly or multiple inspections & tests per year to determine compliance with this permit. Having read the entire permit, I can see that the permittee is granted a lot of freedom in making reports, keeping records, making tests and complying with the permit. The problem is that the permittee is being trusted to give accurate information and if the DEC has not done a surprise inspection in many years; it would encourage the permittee to dump sewage at much higher rates than the permit allows because it would make a lot of money for the permittee with what appears to be little risk of getting caught.

If Homer Honey Bear Pumping has to spend lots of money for pit covers, odor controlling additives and labor to create a zero tolerance odor facility, than so be it. If their profit margins are much lower with fewer trucks delivering sewage to this facility daily, than that is the cost of doing business in a residential neighborhood. They can always choose to relocate to a remote location where no homes exist. We, the landowners in the neighborhood, are only interested in our quality of life that should be nauseous odor free, all the time.

Please FAX or mail me a copy of the permit that is approved and renewed for Homer Honey Bear Pumping.

Sincerely,



Larry M. Rozak

The following Municipalities, Organizations, and Individuals are on the record in support of past legislation to prohibit mixing zones in freshwater spawning areas

Municipalities

City of Palmer
City of Homer
Kenai Peninsula Borough
City of Valdez

Organizations

Southeast Alaska Regional Dive Fisheries Association
Yukon River Drainage Fisheries Association
Alaska Longline Fishermen's Association
Kachemak Bay Conservation Society
United Southeast Alaska Gillnetters
United Fishermen of Alaska
Cook Inlet Aquaculture Association
Cordova District Fishermen United
Cook Inlet Alliance
Alaska Conservation Alliance
Juneau Douglas Fish and Game Advisory Committee
Chickaloon Village Traditional Council
Igiugig Tribal Village Council
Alaska Trollers Association
Seldovia Village Tribe
Community Rivers Planning Coalition
Kenai Peninsula Fishermen's Association
Trout Unlimited
Yukon River Inter-Tribal Watershed Council
Southwest Alaska Municipal Conference
Native Village of Eklutna

Individuals

Charles Armand Piedra	Juneau, AK
Craig Scola	
Dave Lacey	Fairbanks, AK
Warren Crawford	Kenai, AK
Nina Faust	Homer, AK
Edgar Bailey	Homer, AK
Ward Grant	
Amy Bollenbach	Homer, AK
Dan Dunaway	Dillingham, AK
Carl Rosier	Juneau, AK
Gerald Brookman	Kenai, AK
Claire Holland LeClair	Anchorage, AK
Leif Mjos	Anchorage, AK
Kathleen Menke	Haines, AK
Richard Kanner	Salt Lake City, UT
Demian Schane	Juneau, AK
Linda Johnson	Juneau, AK
Katherine McLaughlin	Chenga Bay, AK
Rachel Swingley	Eagle River, AK

David Swingley
Richard Hahn
Julie Hursey
Sally McGuire
Kathy Wartinbee
Charles Herndon
Robert Stell
Judy Brakel
Jim Chumbley
Duane Howe
John Lyle
Marion Nelson
Susan Clardy
Will Ellen
Martha Ellen
Sara Petty
Hayden Kaden
Nancy Hillstrand
Izetta Chambers
Jeff Mitchell
David Davis
Julie Davis
Adi Jo Davis
Marcia Jacobs
Bill Cook
Will Files
David Wartinbee
David Blount
William Lindow
Kate Sandberg
Paul McCollum
Anne Mosness
Dan Bilderback
Marv Smith
Adam Bauer
Tom Pogson
Doug Fine
Ellen Wolf
Julie Obermeyer
Kelly Oblad
Lorie Oblad
Kathy Oblad
Darwin Oblad
John Strassenburgh
Kaarle Strailey
Joe Faith
Betty Bonin
Darcy Dugan
Craig Matkin
Fred Dean
Alyce Todd
Gene Glaab

Eagle River, AK
Soldotna, AK
Petersburg, AK

Soldotna, AK
Anchorage, AK
Juneau, AK
Gustavus, AK
Homer, AK
Fairbanks, AK
Kenai, AK

Homer, AK
Homer, AK
Anchorage, AK

Naknek, AK
Seward, AK
Homer, AK
Homer, AK
Homer, AK
Soldotna, AK
Soldotna, AK
Homer, AK
Kenai, AK
Cordova, Ak
Cordova, Ak
Girdwood, Ak
Homer, AK
Bellingham, WA
Anchorage, AK

Homer, AK
Homer, AK

Talkeetna, Ak
Anchorage, AK

Talkeetna, Ak
Fairbanks, AK
Dillingham, AK
Naknek, AK

Fairbanks, AK
Naknek, AK
Naknek, AK

Michael Bavers
Edward Otis
Caroline Crenna
Earl Breyfogle
Dan Strickland

Homer, AK
Sitka, Ak
Anchor Point, AK
Palmer, AK

ALASKA STATE LEGISLATURE



TO THE
AG'S OFFICE
FROM MUNOZ/JOHNSON

February 4, 2010

This is to request your opinion about whether legislating to change Alaska's mixing zone rule, which is a State water quality standard, violates, or would involve, the Federal Clean Water Act's (CWA) rulemaking requirements for making such changes. The CWA provides that water quality standards be developed through public comment and hearings on draft, science-based regulations. We request your opinion about how to ensure that the process for changing a water quality standard adheres to CWA requirements. What burdens would making such a change through legislation place on the State? What administrative and record requirements would be placed on the State by trying to revise a water quality standard through legislation?

Section 303 (c)(1) of the CWA states that:

(1)The Governor of the State or the State water pollution control agency of such State shall from time to time (but at least once each three years beginning with October 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

Subsection 303 (c)(2)(A) states:

(2)(A) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of the water and serve the purposes of this chapter. Such standards shall be established

taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and also taking into consideration their use and value for navigation.

Along with the submission of a new or revised water quality standard to the Administrator, Subsection 303 (c)(2)(B),¹ in part, requires the State to:

adopt toxic criteria for all toxic pollutants listed pursuant to section 1317(a)(1) of this title for which criteria have been published under section 1314(a) of this title, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State as necessary to support such designated uses. Such criteria shall be specific numeric criteria for such toxic pollutants. Where such numeric criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1), or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 1314(a)(8) of this title.

Subsections 303 (c)(3) and (4) describe the process by which the Administrator of the Environmental Protection Agency (EPA) reviews the revised or new standard for consistency with the federal act and promulgates regulations regarding the revised or new water quality standard, if he/she approves it.

The CWA provides that water quality standards be developed through public comment and hearings on draft, science-based regulations. This rule-making process provides the EPA Administrator and the Commissioner of the Department of Environmental Conservation (DEC) an opportunity to determine whether there are science-based, public health and water quality protection reasons to revise or change a standard or to have a more stringent standard than that set by federal or current state law. The legislative process provides for hearings on legislation, but is significantly different than rulemaking because legislation is dependent upon votes, not whether it meets the arbitrary and capricious standard, which is needed to uphold rulemaking.


¹ The full text of CWA § 303 (c) is attached.

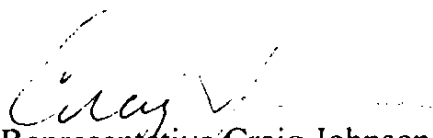
Based on the foregoing the undersigned seek your advice on the following questions:

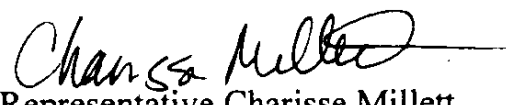
1. Would the information required by CWA § 303 (c)(2)(A) and(2)(B) have to be included in legislation to change a water quality standard?
2. If so, would DEC or the legislation's sponsor be required to provide the information?
3. If the answer to the previous question is that DEC would have to provide the information, what would happen if, based on the science, DEC disagreed with the change? For example, what if DEC found that the proposed, legislated, water quality standard reduced the value of the public water supply?
4. How would such legislation address the requirement in CWA § 303 (c)(2)(B) that the State adopt criteria for toxic pollutants? Would such information have to be included in the legislation? Would DEC be responsible for providing it or verifying it? Again, what if DEC disagreed?
5. How would a record satisfactory to EPA's administrative rules be made as part of such legislation?
6. How would the CWA's public hearing requirement be integrated with the legislative hearings? Would separate public hearings have to be held?
7. If the Administrator of EPA disapproves the proposed, legislated, water quality standard under CWA 303(c)(3) may he/she substitute his/her judgment as to what would be the appropriate standard? (Please consider the last two sentences of CWA § 303(c)(2) in giving your answer.) If so, could the Administrator also substitute his/her judgment as to what should be the appropriate numbers for the toxic substance criteria that CWA § 303 (c)(2)(B) requires a State to submit when adopting or revising its water quality standards? and
8. What would be the status of the proposed, legislated, water quality standard if the Administrator of EPA publishes it and a court determines that it is arbitrary and capricious under the Federal Administrative Procedures Act? Could a third party litigate whether the toxic substance criteria, that CWA § 303 (c)(2)(B) requires a State to submit when adopting or revising its water quality standards, are arbitrary and capricious under the Federal Administrative Procedures Act?

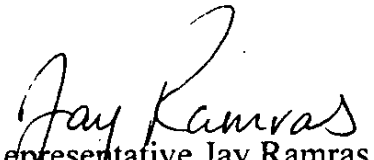
We appreciate your consideration of these issues and look forward to your response.

Sincerely,


Representative Cathy Muñoz
House District 4


Representative Craig Johnson
House District 28


Representative Charisse Millett
House District 30


Representative Jay Ramras
House District 10

February 25, 2010

House Fisheries Committee

Dear Chairman Edgmon,

After contact with the Office of the Attorney General regarding HB 46 there are several points of concern that have been brought to our attention. They relate to federal rule making requirements under the Clean Water Act to legislation that seeks to change a state's water quality standard. Enclosed is a copy of the response received.

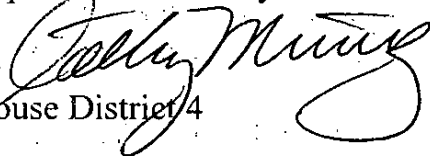
Please note that in answer to question 5 the Senior Assistant Attorney General states that a proposed revision to a water quality standard must include among other things: "analyses conducted to support the standard" and "an explanation of the scientific basis for the standard." In response to question 6 the Senior Assistant Attorney General says that to satisfy the Clean Water Act's public hearing requirements "there must be a public hearing not simply on the language of the standard itself, but after the supporting analyses have been assembled and made available to the public."

Before we hear this bill again we would appreciate the opportunity to hear first from the Senior Assistant Attorney General. Particularly it would be helpful to review: 1) the sufficiency of the analyses conducted to support the proposed legislative revision to Alaska's current mixing zone standard; 2) the scientific basis for the proposed revision; 3) whether items 1 and 2 were sufficiently noticed at the Committee's hearings on the proposed legislative revision to the mixing zone standard to be in compliance with the Clean Water Act's public hearing requirements; and 4) such other steps as may be necessary to make sure that any legislative revisions to Alaska's current mixing zone standard meet Clean Water Act requirements for such revisions.

Thank you for your consideration.

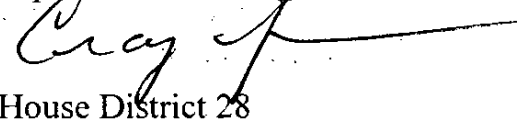
Representative Cathy Munoz

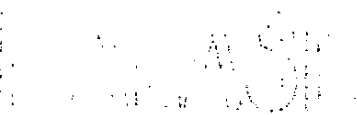
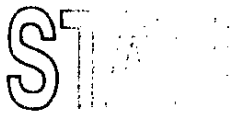
House District 4



Representative Craig Johnson

House District 28





Sean Parnell, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

*KEY BANK BUILDING
100 CUSHMAN STREET, SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907)451-2811
FAX: (907)451-2846*

February 11, 2010

Honorable Cathy Muñoz
Representative of
House District 4
State Capitol, Room 409
Juneau, AK 99801-1182

Honorable Craig Johnson
Representative of
House District 28
State Capitol, Room 126
Juneau, AK 99801-1182

Honorable Charisse Millett
Representative of
House District 30
State Capitol, Room 412
Juneau, AK 99801-1182

Honorable Jay Ramras
Representative of
House District 10
State Capitol, Room 104
Juneau, AK 99801-1182

Re: Mixing Zone Bill Questions, Our File No. 665-09-0019

Dear Honorable Representatives,

Thank you for your letter of February 4, 2010, posing several related questions that arise when a state elects to legislate water quality standards, rather than develop them through regulations. As you appreciate, the answers to your various questions turn on the application and interpretation of federal law. I have consulted with counsel at EPA's Regional Office and at EPA Headquarters in framing my answers to your questions. EPA has occasionally been confronted with similar circumstances in other states, and they recognize that it can be an awkward fit to review water quality legislation under standards and procedures that were designed for review of state water quality regulations.

In addition to the provisions of the Clean Water Act (CWA) that you mention in your letter, there are also federal regulations that govern the process of securing EPA's approval of state water quality standards. The most important regulations for the purposes of your inquiry are 40 CFR § 131.6 and 40 CFR § 131.20. These two regulations set out the requirements for a state's submission of proposed water quality standards to EPA for approval. Both of these regulations will be addressed further below, in responses to each of your numbered questions.

1. Would the information required by CWA § 303(c)(2)(A) and (2)(B) have to be included in legislation to change a water quality standard?

Any new or revised water quality standard, whether enacted as legislation or promulgated as regulations, is subject to EPA review and approval (or disapproval) under CWA § 303(c)(2) & (3).¹ Thus, the substantive review standards set out in CWA § 303(c)(2)(A) would apply to legislation. Also, the procedural requirements of 40 CFR § 131.6 and 40 CFR § 131.20, describing the information that must be submitted to EPA along with the proposed new or revised water quality standard, will also apply. However, such information does not have to be included in the legislation itself; rather, it has to be included in the set of materials ultimately sent to EPA for its approval.

2. If so, would DEC or the legislation's sponsor be required to provide the information?

Federal law does not prescribe which state entity is responsible for forwarding the water quality standard approval packet to EPA for its review. EPA would accept a submission from either ADEC, the agency that normally handles such matters, or from the legislature. EPA would review the submission under the same substantive and procedural standards in either case.

3. If the answer to the previous question is that DEC would have to provide the information, what would happen if, based on the science, DEC disagreed with the change? For example, what if DEC found that the proposed, legislated water quality standard reduced the value of the public water supply?

If ADEC believes that a bill changing state water quality standards includes provisions that it could not support in a subsequent submission to EPA, then ADEC should advise the legislature about its concerns in hearings on the bill, in order to avoid the situation you describe. If the legislature passed the bill despite ADEC's expressed concerns, and then asked ADEC to submit the new statute to EPA for approval, then ADEC would have to discharge that function professionally. Presumably ADEC would have to include its honest assessment of the new water quality standards in the materials that it submitted to EPA. But if the legislature does not want ADEC to include its own assessment of the new law in the packet submitted to EPA, then the legislature should undertake the submission itself.

¹ All references to the CWA will be to the section number of the Act itself, rather than the codified version.

4. How would such legislation address the requirement in CWA § 303(c)(2)(B) that the State adopt criteria for toxic pollutants? Would such information have to be included in the legislation? Would DEC be responsible for providing it or verifying it? Again, what if DEC disagreed?

The State has already adopted water quality criteria for all the toxic pollutants referred to in CWA § 303(c)(2)(B). Those criteria may be found at 18 AAC 70.020(b)(11) [for freshwater] and 18 AAC 70.020(b)(23) [for marine water]. Those criteria have been approved by EPA. The State must also perform a “triennial review” of its standards under CWA §303(c)(1) to allow for public input on any needed revisions. As long as the State does this, it can adopt other water quality standards, such as rules for mixing zones, without needing to go back and re-visit or re-adopt its existing criteria for toxics.

While the language of CWA § 303(c)(2)(B), read literally, might seem to require that a state re-promulgate its toxics criteria every time it revises any of its water quality standards, it is not interpreted or applied that way in practice. Rather, the section simply imposes an on-going duty on the states to keep their toxics criteria complete and current (*i.e.*, consistent with the requirements of CWA § 303(c)(2)(B)). If a state does so, it may still revise other water quality standards without going back and changing or re-adopting its toxics criteria.

5. How would a record satisfactory to EPA’s administrative rules be made as part of such legislation?

Federal regulations require that a state seeking EPA approval of a proposed revision to a water quality standard submit the following information: analyses conducted to support the standard; an explanation of the scientific basis for the standard; and certification by the Attorney General or other legal authority that it was duly adopted.² Ideally, the sponsor of a bill proposing to change an existing standard should make the first two items available to the committees considering the bill, and to the public, before the bill is enacted. While such supporting materials could be provided to accompany the new law after it was enacted, that sequence would defeat the open public process required for the state’s development of its standards. The federal requirements for public hearings are discussed in the response to the next question.

² These requirements are gleaned from 40 CFR § 131.6 and 40 CFR § 131.20. Note that not all the requirements of the former regulation apply to a revision to an existing water quality standard.

6. How would the CWA's public hearing requirement be integrated with the legislative hearings? Would separate public hearings have to be held?

Federal regulations require that a state hold a public hearing before it revises its water quality standards. *See* 40 CFR § 131.20(b). The governing regulation specifies that “[t]he proposed water quality standards revision and supporting analyses shall be made available to the public prior to the hearing.” *Id.* (emphasis added). Thus, to satisfy this regulation, there must be a public hearing not simply on the language of the standard revision itself, but after the supporting analyses have been assembled and made available to the public. The public hearing must also comply with 40 CFR Part 25. *See* 40 CFR § 131.20(b). Note in particular 40 CFR § 25.5, which describes specific rules governing the public hearing required for a water quality standard revision.

The federal requirements could theoretically be satisfied in either of two ways. If the supporting analyses were made available to the public prior to the legislative hearings on the bill that was revising the standards, and the specific rules applicable to the public hearing were also met, then the legislative enactment process itself could satisfy this regulation. If that does not occur, then there would have to be a subsequent opportunity for public hearing, after the bill was enacted and after the supporting information required by federal regulation is assembled. Presumably this public process could be managed either by ADEC or by some appropriate legislative committee or office.

7. If the Administrator of EPA disapproves the proposed, legislated, water quality standard under CWA § 303 (c)(3) may he/she substitute his/her judgment as to what would be the appropriate standard? (Please consider the last two sentences of CWA § 303 (c)(3) in giving your answer.) If so, could the Administrator also substitute his/her judgment as to what should be the appropriate numbers for the toxic substance criteria that CWA § 303 (c)(3) requires a State to submit when adopting or revising its water quality standards?

Whenever EPA disapproves a state's water quality standard, it has the duty to inform the state of the changes needed to secure approval. It also has the option of promulgating substitute standards for the state. *See* CWA § 303(c)(3). In practice, when EPA has disapproved standard revisions offered by ADEC, it has chosen not to promulgate its own. Rather, EPA has simply allowed the prior version of the State's standards to remain in effect. EPA has followed this course in two recent disapprovals of state water quality standards submitted by ADEC. In taking this position, EPA cites to 40 CFR § 131.21(e), which provides that an EPA-approved standard remains in effect, for purposes of the CWA, “until EPA approves a change, deletion, or addition to that water quality standard.”

Because all of your questions pertain to a bill that would make changes to the rules governing mixing zones, we would expect EPA to follow the same course here. ADEC already has mixing zone regulations that EPA has approved,³ so if EPA disapproves revisions to those rules (whether those revisions be in the form of a bill or a new regulation), EPA would likely simply allow the currently-approved version to remain in effect. But there is no guaranty of that outcome, and EPA would certainly have the option of promulgating its own mixing zone regulations for Alaska if it chose to do so.

In the latter event, I do not think that EPA could also change the State's water quality criteria for toxic pollutants, as those criteria have already been approved by EPA, and are outside the scope of the mixing zone standards that, under our hypothetical scenario, EPA would have disapproved.

8. What would be the status of the proposed, legislated, water quality standard if the Administrator of EPA publishes it and a court determines that it is arbitrary and capricious under the Federal Administrative Procedures Act? Could a third party litigate whether the toxic substance criteria, that CWA § 303 (c)(2)(B) requires a State to submit when adopting or revising its water quality standards, are arbitrary and capricious under the Federal administrative Procedures Act?

As I understand this question, the scenario is that EPA approves the State's revised mixing zone standard, and a third party then brings a legal challenge under the federal APA, and prevails. In that event, the status of the State's revised standard would depend wholly upon the court's ruling. If the court vacates EPA's approval of the new or revised standard in its entirety, then the most likely consequence would be for the State's former mixing zone regulation to remain in effect. But the appropriate remedy would likely be contested by the parties to such a case, and it is impossible to predict with any certainty how the court would rule.

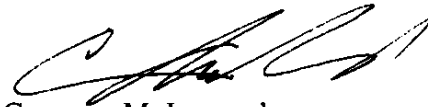
As noted in response to your question 4, the State can adopt a new mixing zone rule without having to re-adopt criteria for toxic pollutants. Therefore, it is highly unlikely that the current, EPA-approved criteria for toxic pollutants would be at issue, since they would be unrelated to a bill that focused solely on mixing zones.

³ You may note that the EPA-approved version of the state's mixing zone regulations is not the version currently included in our state regulations, 18 AAC 70.240, as that regulation is awaiting EPA approval. Rather, for purposes of the CWA, the current mixing zone regulations are the 2003 version, which may be found at <http://dec.alaska.gov/water/wqsar/wqs/pdfs/70mas.pdf>.

I hope that these answers are helpful to you in your further deliberations. Please let our office know if we can be of any further assistance.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: 
Cameron M. Leonard
Senior Assistant Attorney General

STATE OF ALASKA

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF WATER
WASTEWATER DISCHARGE PROGRAM**

FRANK H. MURKOWSKI, GOVERNOR
410 Willoughby Ave
Juneau, Alaska 99801
PHONE: (907) 465-5308
FAX: (907) 465-5274
<http://www.state.ak.us/dec>

June 17, 2005

File # 1533.62.001

Robert Richins
Project Director
Coeur Alaska, Inc.
3031 Clinton Rd., Suite 202
Juneau, AK 99801

Certified Mail#:7004 1160 2848 6328
Return Receipt Requested

RE: ADEC 401 Certification of NPDES Permit No. AK-005057-1

Dear Mr. Richins:

In accordance with Section 401 of the Clean Water Act and provisions of the Alaska Water Quality Standards (18 AAC 70), the Department of Environmental Conservation issues the enclosed Certificate of Reasonable Assurance for the NPDES permit for discharges of wastewater from the Kensington Gold Project located in the Tongass National Forest 45 miles north of Juneau, Alaska.

This certification replaces that dated January 27, 1998 for the same permit number and expires on June 16, 2010.

Any person who disagrees with this decision may request an adjudicatory hearing in accordance with 18 AAC 15.195- 18 AAC 15.340 or an informal review by the Division Director in accordance with 18 AAC 15.185. Informal review requests must be delivered to the Director, Division of Water, 410 Willoughby Ave., Juneau, Alaska 99801, within 15 days after receiving this certification. Adjudicatory hearing requests must be delivered to the Commissioner of the Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, Juneau, Alaska 99801, within 30 days after the date of this certification. If a hearing is not requested within 30 days, the right to appeal is waived.

Please be advised that, pursuant to 18 AAC 15.120(c), the certification of this NPDES permit constitutes the permit required under AS 46.03.100. 18 AAC 15.120(c) also states, "Any rights or privileges inuring to the benefit of EPA in the NPDES permit, including any right to enter, inspect, sample, and have access to records, also inure to the benefit of the department. Any reports or other information filed with EPA in accordance with the NPDES permit must be filed with the department at the same time."

By copy of this letter we advise the EPA and the state Office of Project Management and Permitting of our actions and enclose a copy of the certification for their use.

Sincerely,

SIGNATURE ON FILE

Gretchen Keiser
Program Manager
Wastewater Discharge Program

Enclosures: Certificate of Reasonable Assurance
ADEC Response to Comments on the Draft 401 Certification of NPDES AK-005057-1

cc:

Luke Boles, ADEC/Fairbanks
Cindi Godsey, EPA Reg. X/Anchorage
Hahn Shaw, EPA Reg. X/Seattle
Jim Vohden, ADNR/Fairbanks
Ed Fogels, ADNR/Anchorage

Stan Foo, ADNR/Anchorage
Kenwyn George, ADEC/Juneau
Mac McLean, ADNR, OHMP/Fairbanks
USDA Forest Service
People who commented on the draft 404 certification

STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CERTIFICATE OF REASONABLE ASSURANCE

A Certificate of Reasonable Assurance, as required by Section 401 of the Clean Water Act, was requested by Coeur Alaska, Inc. for the discharge of treated domestic wastewater and treated non-domestic wastewater from the Kensington Mine.

The facility is located in the Tongass National Forest 45 miles northwest of Juneau, Alaska, and proposed to discharge pollutants to Sherman Creek, East Fork Slate Creek, and Lynn Canal.

Public notice of the application for this certification was made in accordance with 18 AAC 15.140.

A State Certificate of Reasonable Assurance is required for the proposed activity because the activity will be authorized by an Environmental Protection Agency permit identified as NPDES Permit No. AK-005057-1 and discharges will result from the activity.

This NPDES permit certification covers wastewater disposal from the following discharges:

1. Outfall 001 – Discharge of mine water to Sherman Creek and is located at Latitude 58° 52' 04" N, Longitude 135° 06' 55" W.
2. Outfall 002 – Discharge of tailings effluent water from the Tailings Storage Facility (TSF) to East Fork Slate Creek and is located at Latitude 58° 49' 58" N, Longitude 134° 57' 58" W. [Note: this is a change to the previous location of Outfall 002 to Camp Creek in the existing permit.]
3. Outfall 003 – Discharge of treated domestic wastewater to Lynn Canal and is located at Latitude 58° 51' 58" N, Longitude 135° 08' 28" W.

The Department reviewed the three discharges described above with respect to the antidegradation policy of the Alaska Water Quality Standards and finds the reduction in water quality to be in accordance with the requirements of 18 AAC 70.015, provided that the terms and conditions of this certification are made part of the final NPDES Permit.

The Department reviewed the applicant's proposal to collect data and request a future modification to permit limits for discharges of tailings effluent water from Outfall 002 based upon site specific criteria established under 18 AAC 70.235 of the State's Water Quality regulations. This certification ensures protection of water quality based upon limits derived from existing Water Quality Standards. Any future modification to the permit will only occur after the necessary data collection and review, public notice, and any necessary regulation changes.

After review of the public comments received in response to the public notice, the Alaska Department of Environmental Conservation certifies that there is reasonable assurance that the activities and the resulting discharges are in compliance with the requirements of Section 401 of the Clean Water Act, which includes the Alaska Water Quality Standards, 18 AAC 70, provided that the terms and conditions of this certification are made part of the final NPDES permit.

Through this certification, in accordance with 18 AAC 15.120 ADOPTION OF NPDES PERMITS, the final NPDES permit will constitute the permit required under AS 46.03.100 Waste management and disposal authorization, provided that the terms and conditions of the final certification are made part of the final NPDES Permit. The department specifies the following permit terms and conditions under authority of AS 46.03.110(d) and 33 U.S.C. § 1341:

Outfall 001 – Discharge of mine water to Sherman Creek

The Department authorizes the Outfall 001 effluent limitations and monitoring frequency for the parameters contained in Table 1 of the Preliminary Final Permit. No mixing zone is authorized.

Dissolved oxygen in the effluent and in Sherman Creek upstream and 500 feet downstream of the discharge shall be recorded weekly during low stream flow periods.

Rationale: Dissolved oxygen is important for the health of aquatic life. Effluent and ambient monitoring for dissolved oxygen will show whether mine water is low in DO and whether there is any depression of oxygen in Sherman Creek caused by the discharge.

Turbidity measurement in Sherman Creek is required in Table 1. This measurement is to be made upstream of the discharge.

Rationale: 18 AAC 70.020(b)(12) bases the allowable turbidity in the effluent on the background turbidity value.

The Total Dissolved Solids (TDS) monthly average and daily maximum effluent limits for the discharge into Sherman Creek are 1000 mg/l. These limits are based on site specific criteria established under 18 AAC 70.236(b)(3). These criteria replace those for aquatic life, aquaculture, and drinking water supply uses in 18 AAC 70.235 and listed in 18 AAC 70.020.

Rationale: The Site Specific Criteria (SSC) for Sherman Creek were public noticed, reviewed in depth by the department, and justified in a decision document that was submitted through the Alaska Administrative Procedure Act to the Department of Law, and then filed by the Office of the Lieutenant Governor as a regulation change. EPA separately reviewed the SSC to determine that the water of Sherman Creek is fully protected for the designated uses at 1000 mg/l of TDS.

Outfall 002 – Discharge of tailings effluent water from the Tailings Storage Facility (TSF) to East Fork Slate Creek

The Department authorizes the Outfall 002 effluent limitations and monitoring frequency for the parameters contained in Table 3 of the Preliminary Final Permit. No mixing zone is authorized. Information on constituents and pollutants in the tailings water was derived from tests on ore samples. The results of the tests and analyses related to the Tailings Storage Facility are in the December 2004, USDA Forest Service Final Supplemental Environmental Impact Statement for the Kensington Gold Project.

Rationale: In this case, the Outfall 002 effluent limitations are set to meet the water quality standards at end of pipe so no mixing zone is needed.

Outfall 003 – Discharge of treated domestic wastewater to Lynn Canal

- 1) The Department authorizes a Mixing Zone (MZ) for Outfall 003 to Lynn Canal for Fecal Coliform Bacteria. The size of the mixing zone is 200 meters (m) wide x 1200 m long (600 m on each side of the outfall pipe). Permit effluent limits that meet water quality standards at the boundary of this mixing zone are 150,000 FC/100 ml daily maximum and 100,000 FC/100 ml monthly average.

Rationale: In accordance with State regulations 18 AAC 70.240, the Department has authority to designate mixing zones in certifications. This mixing zone will ensure that the most stringent water quality standard for fecal coliform bacteria (14 FC/100 ml, 30 day average, and not more than 10% of the samples may exceed 43 FC/100 ml), is met at all points outside of the mixing zone.

The Department considered all aspects required in 18 AAC 70.015 (Antidegradation) and 18 AAC 70.240-270 (Mixing Zones) including, but not limited to, the potential risk to human health and ecological resources based on existing monitoring data of Lynn Canal water quality and mixing zone modeling of the predicted effluent quality from the discharge.

The Department finds that the size of the mixing zone authorized for discharge in this certification is appropriate and provides reasonable assurance that existing uses of the Lynn Canal outside of the mixing zone are maintained and fully protected.

During any commercial fishing opening Coeur Alaska Inc. shall inform ADEC and local fishing organizations of any upset in the treatment system likely to result in an exceedance of permit limits.

Rationale: Sea water used in roe processing that contains fecal coliform bacteria could cause discoloration of the roe, which could affect marketability. There is no health hazard associated with this discoloration.

- 2) The Department requires that if chlorine is used for disinfection, the daily maximum effluent limit for chlorine (Cl) shall be 0.02 mg/L at all times from Outfall 003. Since the current MDL for Cl is 0.1 mg/L, the compliance level for Cl is 0.1 mg/L. If used for disinfection, Cl shall be sampled on a weekly basis from the Outfall 003 discharge. The sampling reduction in footnote 2 of Table 3 in the Preliminary Final Permit applies for Cl if chlorine is used.

Rationale: In accordance with State regulations 18 AAC 15.090, the Department may attach terms and conditions to a permit, variance, or approval, including operating, monitoring, inspection, sampling, access to records and reporting requirements, and the posting of a performance bond or other surety, that it considers necessary to ensure that all applicable criteria will be met.

- 3) The Department requires that signs be placed along the beach near the mixing zone and outfall line for Outfall 003. The signs must provide the identity and telephone numbers of the discharger, and must inform the public that a mixing zone exists, treated wastewater is being discharged, and users of the area should exercise caution.

Rationale: In accordance with AS 46.03.110 (d), the department may specify in a permit the terms and conditions under which waste material may be disposed of. The notification requirement is intended to inform the public of the presence of elevated pollutant levels within the mixing zone.

Receiving water monitoring

The Department requires the receiving water monitoring contained in section 1.E. of the Preliminary Final Permit including the water column monitoring, sediment monitoring, aquatic resource monitoring, and the annual water quality monitoring summary. Sampling, testing and reporting shall be for dissolved metals where required by the state water quality standards.

Rationale: In accordance with State regulations 18 AAC 70.010 the water quality criteria and limits must be met in adjacent surface water and groundwater at and beyond the boundary of the treatment works and, in accordance with 18 AAC 15.090, the Department may attach terms and conditions to a permit or approval, including operating, monitoring, inspection, sampling, access to records and reporting requirements, and the posting of a performance bond or other surety, that it considers necessary to ensure that all applicable criteria will be met. The receiving water monitoring required will verify whether the criteria are met.

June 17, 2005

SIGNATURE ON FILE

Date

Gretchen Keiser
Program Manager
Wastewater Discharge Program



ALASKA MINERS ASSOCIATION, INC.

3305 Arctic Blvd., #105, Anchorage, Alaska 99503 • (907) 563-9229 • FAX: (907) 563-9225 • www.alaskaminers.org

March 8, 2010

Honorable Bryce Edgmon
Chair, House Fisheries Committee
Capitol Building
Juneau, AK 99801

RE: HB-46, Mixing Zones

Dear Representative Edgmon,

Thank you for the opportunity to comment on House Bill 46 which deals with mixing zones. **The Alaska Miners Association opposes this bill and urges that it be rejected.** HB-46 is not needed, it is not scientifically supportable, and it is poor public policy.

No problem has been identified that this bill is meant to correct. Many hundreds, if not thousands, of mixing zones exist throughout the State and no problems have been identified with them. Mixing zones are used primarily for sewage discharges from cities, municipalities and villages. They are also used for hotels, motels, lodges, placer gold mines, and fish processing plants. Only two lode metal mines in the State have mixing zones.

Mixing zones are allowed only after a discharge effluent has been treated to remove a very large percentage of any potential pollutant. The final effluent is then discharged into a receiving waterbody where the effluent mixes with the receiving water, typically a stream or river. Each mixing zone is designed individually for the discharge and for a specific location. For each individual mixing zone, DEC specifies that within a certain distance from the point of discharge, the effluent must be diluted by the receiving water to the point that it will meet the State's extremely stringent water quality standards. DEC requires that the length of each individual mixing zone be the smallest size practical for that discharge.

One example on a mixing zone is at the city of Dillingham. Dillingham has a mixing zone that discharges into the Nushagak River, one of the premier salmon spawning and rearing streams in Alaska. That mixing zone is a rectangle measuring 60 meters (197 feet) by 480 meters (1,574 feet). That length equals 3/10ths of a mile. The treatment of the Dillingham effluent is required to remove all but a minute amount of the pollutants; however, to remove all of the pollutants to meet the State water quality standards at the end of the discharge pipe, would be cost-prohibitive,

and may even be technically impossible. Other municipalities, hotels, motels, lodges, and villages have similar Mixing Zones.

HB-46 is poor public policy. This is because technical details should be addressed in the regulation process where persons with the necessary technical qualifications can focus on the exact details and the broad ramifications of every specific detail and requirement, and provide opportunity for public comment. It is not uncommon for a comment period for these technically complex water quality standards to be 90 days, the same length as this legislative session.

The Alaska Miners Association opposes this bill and urges that it be rejected.

Sincerely,

A handwritten signature in black ink, appearing to read "S.C. Borell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Steven C. Borell, P.E.
Executive Director

Cc: Committee Members
Commissioner Hartig



UNITED FISHERMEN OF ALASKA

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March 16, 2010

Representative Bryce Edgmon, Chairman
House Special Committee on Fisheries
Alaska State Legislature
State Capitol (Mail stop 3100)
Juneau AK 99811-0001

Dear Representative Edgmon,

RE: Support for HB 46 regarding Mixing Zones in freshwaters.

United Fishermen of Alaska (UFA) supports House Bill 46, which would prohibit mixing zones in freshwater spawning waters, and require reporting on mixing zones.

Alaska's salmon are the economic backbone of Alaska's coastal communities, the foundation of rural residents' subsistence, and a primary attraction for many Alaska visitors. To ensure continued abundance, Alaska's salmon waters warrant permanent protection from pollutants and disturbance of natural rearing habitats. Alaska's water resources need to be protected for future generations to continue to provide sustainable world class fisheries for all users.

UFA represents 37 Alaska commercial fishing organizations from fisheries throughout the state and its offshore waters. We appreciate your attention to this matter before the legislature.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark D. Vinsel', is written over a horizontal line.

Mark Vinsel
Executive Director