ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7611 SENATE RESOURCES

TABLE 8. Present Value of Investments and Future Benefits
Tongass National Forest
Fiscal Years 1989 and 1990

	FY 1989	FY 1990
1. PRESENT VALUE BENEFITS		
Timber	25,972,319	38,213,887
Recreation	0	94,838
Wildlife	26,685	456,453
Fisheries	3,912,963	2,100,866
TOTAL PRESENT BENEFITS	29,911,967	40,866,044
2. NEGATIVE EFFECTS		
Wildlife	611,801	790,356
3. VALUE OF INVESTMENTS		
Timber	18,200,561	19,745,018
Roads	46,775	16,628
Recreation	0	10,405
Wildlife	0	2,003
Fisheries	821,968	659,387
TOTAL INVESTMENTS	**19,069,304**	**20,433,441**
4. PRESENT NET VALUE	10,230,862	19,642,247

TABLE 9. Employment, Income, and Physical Accomplishments
Tongass National Forest
Fiscal Years 1989 and 1990

	FY 1989	FY 1990
1. EMPLOYMENT		
Direct Jobs	2,083	2,214
Indirect and Induced Jobs	1,776	1,881
Total Jobs	**3,859**	**4,095**
2. LOCAL FISCAL EFFECTS		
Total Personal Income	128,505,000	136,364,000
Federal Income Tax Generated	24,416,000	25,909,000
Cumulative Value to Local Communities	530,000,000	562,450,000
25% Fund Payment to State	4,989,178	8,888,674
3. TIMBER PROGRAM ACCOMPLISHMENTS		
Volume Offered - Net Sawlog	320,000,000	334,300,000
Volume Sold - Net Sawlog	252,000,000	286,513,000
Volume Harvested - Net Sawlog	377,000,000	399,000,000
- Utility and Firewood	68,000,000	73,000,000
Total Harvest Volume	445,000,000	472,000,000
Regeneration Treatment (Acres)	7,908	8,128
Timber Stand Improvement (Acres)	2,414	2,792
Total Acres Harvested	13,470	14,234
4. ROADS CONSTRUCTED IN SUPPORT OF TIMBER PROGRAM		
Appropriated	8	32
Purchaser Credit	149	123
Total Road Miles	157	155

Alaska State Legislature

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Juneau, AK 99811

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Senate Resources Committee

April 27, 1992

VIA FACSIMILE

The Honorable Dana Rasmussen
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

Dear Administrator Rasmussen:

The Senate Resources Committee requests your presence, or that of your representative who has background and policy authority in this area, on May 4, 1992 to testify at an oversight hearing on the relationship of State Water Quality Standards to the Clean Water Act National Pollutant Discharge Elimination System Permitting (NPDES) process. This relationship is an issue of concern to the Committee because of the impact on Alaska from the approach taken by the Environmental Protection Agency (EPA) in its November 19, 1991 proposed rulemaking entitled. "Amendments to the Water Quality Standards Regulation to Establish the Numeric Criteria for Priority Toxic Pollutants Necessary to Bring All States Into Compliance with Section 303(c)(2)(B) (hereinafter "EPA proposed rule"). By this proposed rulemaking, EPA seeks to set water quality standards for Alaska for all the priority toxic pollutants for which EPA has issued section 304(a) water quality guidance criteria that have not already been promulgated by Alaska. While this regulation is still in draft and has just recently been received by the Office of Management and Budget in Washington, D.C., EPA Region 10 seems to have already begun applying it as seen by the appearance of human health criteria at 10^{-6} imposed in the preliminary draft permits for two pulp mills.

The Committee needs to know what this portends for Alaska. Accordingly, the Committee would appreciate it if you would provide us written responses in advance[1] and come to the May 4, 1992 oversight hearing prepared to answer the following questions:

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[1] The Committee would appreciate it if in your written response to be submitted in advance you would first list the question and then follow that

Al Ewing

(1) Even though the human health criterion appeared in the preliminary draft permit for the two pulp mills, is the Committee right to be concerned that the approach taken by EPA's rulemaking as reflected in those permits would impact not only the pulp mills, but would also apply to those in the fish processing, mining and oil and gas industries and municipalities which require an NPDES permit?

(2) Does EPA intend to delay issuance of NPDES permits to affected municipalities and industries while DEC proceeds with amendments to Alaska's water quality standards? Will EPA delay issuance of it NPDES permits while the state completes its triennial review process? If so, how will this affect entities seeking permit renewals?

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(4) Has EPA considered the socio-economic impact of EPA's proposed rule on industry and municipalities in Alaska? What, if anything, can EPA do to help reduce these costs through its rulemaking?

(5) Please explain how the impact on receiving water quality from applying the human health factor to the toxic criteria pollutants differs from the impact on receiving water quality from requiring an entity to meet drinking water quality standards. If the human health criteria is more stringent for specific parameters, must DEC make Alaska's drinking water quality standards more stringent? Does EPA know what industries and municipalities would be impacted by such DEC action and at what cost to those industries and municipalities?

(6) Has EPA Office of Counsel or the Department of Justice examined the legal basis for EPA's application of the draft rule to the pulp mills' preliminary draft permits? What is that legal justification?

(7) Have you determined whether EPA's proposed rule falls within the 90 day moratorium on regulations adversely affecting industry announced by the President in his State of the Union address?

(8) Has EPA determined whether the state or the EPA interpretation of the state's WQS is entitled to primacy? Did DEC provide input on EPA's interpretation of the state's WQS set forth in the preliminary draft permits for the pulp mills?

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with the answer. We understand that the time is short but would appreciate having your written response by noon on May 1, 1992.

(9) It is my understanding that EPA engaged in a lengthy multimedia review of the Sitka pulp mill in August 1990 which resulted in a finding of no dioxin levels in the mills' effluent above normal background as measured by what was expected in the rest of the United States. Is this the case? What were the findings?

(10) In describing the source of the Alaska specific list of toxic priority pollutants promulgated for Alaska by EPA in new regulation 40 CFR § 131.36 (see pages 58449-58450 of EPA's proposed rule), EPA used, among other things, the so-called section 304(l) list "identifying toxic pollutants likely to impair designated uses." (See page 58431) It is my understanding that this 304(l) list was prepared by DEC. Please set forth a detailed history and chronology of DEC's compilation and submission of the section 304(l) list. What were the criteria used for inclusion on the list of an Alaska water body likely to be impaired?

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(11) As a justification for promulgating water quality standards for priority toxic pollutants for the State of Alaska (and the other 14 states), EPA states in its draft proposed rule:

> "Until standards for toxic pollutants are in place, neither EPA nor the States can fully focus on the emergency, ecologically based water quality activities such as wetlands criteria, biological criteria and sediment criteria."

Id. at 58429. What is EPA doing in these regards? How will these things affect Alaska?

Thank you for your cooperation and for providing written responses to these questions in advance of the hearing. I look forward to seeing you, or your representative, at the May 4, 1992 hearing.

Yours very truly,

Lloyd Jones

Senator Lloyd Jones, Chair

cc: The Honorable John Sandor,
Commissioner, Alaska Department of Environmental Conservation

The Honorable Charles Cole,

The Honorable Paul Rusanowski
Division of Governmental Coordination, State of Alaska

United States
Environmental Protection
Agency

Region 10
1200 Sixth Avenue
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Alaska
Idaho
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Washington

EPA

Reply to
Attn of: WD-139

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Dear Senator Jones:

Thank you for the invitation to attend the May 4, 1992, oversight hearing. Unfortunately, I will be unable to attend. Al Ewing, the Assistant Regional Administrator for the Alaska Operations Office, will be attending in my place.

Enclosed, as requested, are responses to questions you asked in your April 27, 1992 letter. Please call me or Harold Geren of my staff at (206) 553-8414 if you have any further questions.

Sincerely,

for Dana A. Rasmussen
Regional Administrator

cc: John Sandor, Commissioner ADEC
Charles Cole, Attorney General, State of Alaska
Paul Rusanowksi, Division of Governmental Coordination
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The above-described approach would also apply to other permits. Where necessary, those permits would contain limitations to protect human health. It is unlikely that such pollutants will be present in discharges from fish processing facilities. However, mining, oil and gas, and municipal permits could require limitations based on human health criteria, depending upon whether any of those pollutants were discharged at levels that could exceed the criteria.

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This question implies that the amendments to the state standards are being undertaken to deal with the National Toxics Rule. It is true that some of the amendments are being proposed to address issues in the Toxics Rule: however, there are also a number of revisions that the state is considering to clarify existing standards or to address pollutants other than those addressed in the Toxics Rule.

There are approximately 40 permits scheduled for issuance or reissuance in the next six months which could be delayed. Most (31) of the 40 permits are for placer mining operations which may not be directly affected by the DEC promulgation. EPA is working with the state to expedite the amendments to the state standards and to ensure a rapid review of the proposed changes. In addition, EPA is continuing to work on the technical and administrative parts of the permits that are not affected by the proposed standards amendments, so that when the amendments are completed, the permits may be issued expeditiously.

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estimate with limited value for evaluating the merits of the rule.

EPA plans, however, to include additional descriptive material related to economics and provide examples of potential impacts. These examples will be based on a best-case, worse-case scenario using several example industries based on data from EPA and the public.

One final note, the proposed rule establishes a legal minimum standard for states that have not complied with the statutory mandate to adopt numeric criteria for toxic pollutants. The statute mandating the rule does not allow cost to be a consideration in setting water quality criteria. However, while criteria may not consider cost, implementation of criteria may do so, for example, in the designation of mixing zone sizes.

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Id. at 58429. What is EPA doing in these regards? How will these things affect Alaska?

EPA has been expending considerable time and resources on bringing states into compliance with section 303(c)(2)(B). EPA is pleased that this rulemaking is coming to a close so that we can again pay attention to other priority activities such as developing guidance and criteria for wetlands, biocriteria and sediment.

At this point in time, EPA has made varying degrees of progress in publishing guidance and criteria for each of these subject areas. The process will be long term. States will be encouraged to periodically update their standards in response to new information released by EPA.

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> "Until standards for toxic pollutants are in place, neither EPA nor the States can fully focus on the emergency, ecologically based water quality activities such as wetlands criteria, biological criteria and sediment criteria."

Id. at 58429. What is EPA doing in these regards? How will these things affect Alaska?

EPA has been expending considerable time and resources on bringing states into compliance with section 303(c)(2)(B). EPA is pleased that this rulemaking is coming to a close so that we can again pay attention to other priority activities such as developing guidance and criteria for wetlands, biocriteria and sediment.

At this point in time, EPA has made varying degrees of progress in publishing guidance and criteria for each of these subject areas. The process will be long term. States will be encouraged to periodically update their standards in response to new information released by EPA.

United States
Environmental Protection
Agency

Region 10
1200 Sixth Avenue
Seattle WA 98101

Alaska
Idaho
Oregon
Washington

EPA

SEP 2 1991

Reply to
Attn of: WD-139

John A. Sandor
Commissioner
Alaska Department of Environmental Conservation
P.O. Box 0
Juneau, Alaska 99811-1800

Dear Mr. Sandor:

I have enclosed the U.S Environmental Protection Agency's (EPA) final lists of waters required under Clean Water Act Section 304(l)(1)(A)(ii) (the long list), and EPA's Response to Public Comments.

As you know, on May 31, 1990, EPA withdrew our approval of Alaska's long list and proposed our own long list. At that time, we also solicited public comments and any additional information or petitions to add waters to the list. Today I am transmitting our final listing decisions made in response to these public comments and to further data evaluation by EPA.

I appreciate the assistance of you and your staff in developing this list. Please call me if you have any questions concerning our actions, or have your staff call Judith Leckrone at (206) 553-6911.

Sincerely,

Dana A. Rasmussen
Regional Administrator

Enclosures

United States
Environmental Protection
Agency

Region 10
1200 Sixth Avenue
Seattle WA 98101

Alaska
Idaho
Oregon
Washington

EPA

Reply To
Attn Of: WD-139

SEP 24 1991

Dear Interested Party,

I have enclosed a letter from Dana Rasmussen, U.S. Environmental Protection Agency (EPA) Regional Administrator, to John Sandor, Commissioner of the Alaska Department of Environmental Conservation that transmits and summarizes EPA's notice of final decision and response to comments regarding the listing of Alaskan waters under Section 304(l)(1)(A)(ii) of the Clean Water Act.

If you have any questions or would like additional information, please contact Judith Leckrone in the Office of Water Planning, Water Quality Section at (206) 553-6911.

Sincerely,

Harold Burd

for Robert S. Burd
Director, Water Division

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 SIXTH AVENUE

SEATTLE, WASHINGTON 98101

I. NOTICE OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY'S LIST OF WATERS IN ALASKA REQUIRED BY SECTION 304(l)(1)(A)(ii) OF THE CLEAN WATER ACT AS AMENDED BY THE WATER QUALITY ACT OF 1987

II. TODAY'S ACTION

The U.S. Environmental Protection Agency (EPA) is issuing a final list of waters in Alaska that meet the requirements of Section 304(l)(1)(A)(ii) of the Clean Water Act. The list of waters can be found in Attachment A of this notice.

III. DESCRIPTION OF SECTION 304(l) REQUIREMENTS:

Section 304(l) of the Clean Water Act (the Act) as amended by the Water Quality Act of 1987 required every state to develop lists of impaired waters, identify certain point sources and amounts of pollutants causing toxic impact, and to develop individual control strategies for each identified point source.

Section 304(l) required the state to submit the above information in four lists. The first list included waters which,

after application of the technology-based requirements of section 301(b)(2) of the Act, could not reasonably be expected to attain or maintain certain state numeric water quality standards (those developed in accordance with section 303(c)(2)(B) of the Act) for the toxic pollutants listed under section 307(a) of the Act. (Paragraph (1)(A)(i) of section 304(l) required this list.)

The second list included all waters which, after application of the technology-based requirements of section 301(b)(2) of the Act, could not reasonably be expected to attain or maintain water quality standards for any conventional, nonconventional or toxic pollutant due to any point or nonpoint source of pollution; this list was also to include waters classified for uses not meeting the fishable or swimmable goals of the Act. (Paragraph (1)(A)(ii) of section 304(l) required this list.)

The third list included waters not meeting numeric or narrative water quality standards for the toxic pollutants listed under section 307(a) of the Act due entirely or substantially to discharges from point sources. (Paragraph (1)(B) of section 304(l) required this list.)

The fourth list was a list of point sources discharging the section 307(a) pollutants into waters listed under paragraph (1)(B). This list of point sources was to include the amount of pollutant which the point source was discharging into the water.

The state was to develop and submit an individual control strategy for each point source on the third list. The individual control strategy was to be a draft or final National Pollutant

Discharge Elimination System permit. The individual control strategy was to be designed to ensure that applicable water quality standards are achieved no later than three years after the establishment of the individual control strategy.

The deadline for submitting lists of waters, point sources, amounts of pollutants and the individual control strategies by each state to the EPA was February 4, 1989. The state of Alaska's lists were submitted to EPA, Region 10, on February 23, 1989 (for the section 304(l)(1)(A)(i) and (B) lists), on April 12, 1989 (for the section 304(l)(1)(C) list), and on May 26, 1989 (for the section 304(l)(1)(A)(ii) list).

For states such as Alaska which are not authorized by the EPA to issue permits under the National Pollutant Discharge Elimination System program, the EPA was to develop the individual control strategies. The only individual control strategy required for Alaska was for the Alyeska ballast water treatment facility, which was issued by the EPA on May 8, 1989.

Not later than 120 days after a state submitted the lists and individual control strategies to the EPA, the EPA was to approve or disapprove the lists and control strategies. If a state failed to submit a list or control strategy, or the EPA did not approve a list or control strategy, the EPA, in cooperation with the state and after opportunity for public comment, was to develop the lists and control strategies.

The EPA issued a decision on June 9, 1989, to approve the state of Alaska's submissions under section 304(l). Notice of

the EPA's decisions was published in local Alaska newspapers on June 26, 1989. Since all lists were approved or conditionally approved, and because the state had conducted a public review of its proposed lists of waters and sources, the EPA did not solicit additional public comments or petitions to add waters or sources to Alaska's lists.

IV. EPA'S WITHDRAWAL OF APPROVAL AND DISAPPROVAL OF ALASKA'S SECTION 304(l)(1)(A)(ii) LIST:

On May 31, 1991, the EPA withdrew its previous approval of the state of Alaska's list of waters required by section 304(l)(1)(A)(ii) (the "long list"), and consequently disapproved the state's list. The EPA's prior approval of this list was conditioned upon the state's commitment to further evaluate waters suspected of being impaired or threatened by timber harvesting and placer mining. The basis for the EPA's withdrawal was the failure of the state to fulfill that commitment.

The EPA's prior approval of Alaska's long list of waters was largely based on statements in the state's May 26, 1989 letter to the EPA that "completion of the [Clean Water Act section] 319 assessment will result in a number of additional waterbodies being documented as impaired." The EPA interpreted this statement as a commitment that further evaluation of the information available to the state, or additional documentation of actual or threatened impairment, would occur. EPA's approval of the Alaska long list was conditioned on Alaska's fulfillment

of this commitment. However, the listings of impaired waters in the section 319 Nonpoint Source Assessment and the state's 1990 report required by section 305(b) of the Act, did not differ significantly from the state's final long list of waters, and did not adequately address waters degraded or threatened by forest practices and other activities.

The state's preliminary long list, submitted to the EPA in October 1988, included numerous waters impaired or threatened by forest practices and other activities. Since the state conducts only limited monitoring of ambient water quality, many of their listing decisions on this preliminary list were based upon "best professional judgment." The final long list submitted by the state on May 26, 1989, however, was limited to "....only those waters that are confirmed to violate one or several water quality standards." This decision to restrict the long list to waters with documented violations of water quality standards does not meet the requirements of section 304(l)(1)(A)(ii) (see below). In addition, given the paucity of ambient monitoring data on streams in Alaska affected by timber harvesting and other activities, the decision effectively deleted all such streams from the list. As a result, the final long list contained 112 fewer waterbodies than the preliminary list.

The EPA, therefore, proposed on May 31, 1990, to issue its own list of waters, based on the state's preliminary long list. At this time, the EPA provided a 120-day public comment period during which the EPA solicited public comment on its proposal to

issue its own long list, and encouraged all parties to submit both data and recommendations based upon "best professional judgement" to the EPA during the public comment period.

V. DESCRIPTION OF TODAY'S ACTION

Today's action responds to public comment and issues a final list of waters to meet the statutory requirements of Section 304(l)(1)(a)(ii) of the Act. Today's list of waters differs from the final list issued by the state primarily in that today's list includes waters that EPA believes based on professional judgment, "cannot reasonably be anticipated to attain or maintain ... that water quality which shall assure protection of public health, public water supplies, agricultural or industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water." This is the section 304(l)(1)(A)(ii) language which clearly does not limit EPA or the state to listing under this paragraph of section 304(l) only those waters with documented violations of water quality standards, as the state did.

Best Professional Judgment

The State of Alaska is extremely large and its ambient water quality monitoring network is quite limited. Consequently, there are only a few waters where documented violations of water quality standards exist. Data and information on water quality impacts of resource extracting industries (e.g. mining and forestry) is particularly limited. Consequently, EPA believes

that it is appropriate to rely on the best professional judgment of field personnel in order to evaluate whether a water is impaired.

The EPA considers the use of best professional judgment to be appropriate in making listing decisions under section 304(l) where adequate ambient monitoring data does not exist. Listing decisions under section 304(l) were intended to cast a "broad net" in the list development and review process, and were to include both waters reasonably believed to be degraded as well as waters whose quality was reasonably believed to be threatened. In evaluating a broad universe of waters for possible inclusion on the lists, states were to list waters which "....the data and information show, after assurance of its reliability and the use of professional judgment, cannot reasonably be anticipated by the state to attain or maintain applicable water quality standards..." (see preamble to the regulations for implementing section 304(l) in the June 2, 1989 Federal Register Vol. 54 No. 105 at 23868)

Use of best professional judgment by EPA and the states to assess water quality and habitat conditions is a common, accepted practice. EPA's guidance for the Clean Water Act Section 305(b) Reports states that waters for which ambient monitoring data is scarce or nonexistent "should be included in the 305(b) process if the state has any reasonable basis for evaluation." The guidance calls these "evaluated" waters (as opposed to monitored waters).

> "Evaluated waters" are those waterbodies for which the use support decision is based on information other than current site-specific ambient data, such as land use, location of

sources, predictive modelling using estimated input variable, surveys of fisheries personnel, and citizen complaints.

Guidelines for Listing Decisions

EPA has listed only those waters today for which it was able to identify and evaluate impacts based on quantitative data or on adequate best professional judgment. The Alaska Department of Conservation (ADEC) in 1987 conducted a one-time survey of field professionals by distributing questionnaires to state and federal resources agencies throughout the state. Though the information provided by these questionnaires is limited, EPA reviewed them along with data submitted in response to its May 31, 1990, request for data and public comments. In addition, EPA contracted with the University of Alaska to evaluate available forestry related data, and conducted limited site visits in conjunction with U.S. Forest Service staff.

Today's decisions are based on these review and collection activities. EPA used the following guidelines when deciding which waters to list on today's final list.

- Include all of the waters that ADEC included on its May, 1989, final list.
- Include all waters that ADEC identified as water quality-limited in July, 1990.
- Include all waters that ADEC identified as impaired in its 1990 Clean Water Act Section 305(b) Report.
- Include waters for which ADEC had received a returned questionnaire which indicated that the respondent had based his or her judgment of "impaired" or "threatened" on

verifiable quantitative or qualitative data and information.

- Delete all those waters for which there was no questionnaire available and were listed as "threatened' or "unimpacted" in Alaska's 1988 Clean Water Act Section 305(b) water quality report. Many of the waterbodies that were listed in the 1988 305(b) report were pristine, and there was little or no explanation on how a proposed management activity would threaten water quality.
- Include all waters that the U.S. Forest Service identified as having adversely impacted fisheries or water quality, or both, in its October, 1990, public comments to EPA.
- Add or delete waters in response to other public comments or petitions when the comments or petitions relied upon quantitative or qualitative data.
- Add or delete waters for which any other quantitative or qualitative data exists or information based on Best Professional Judgment exists that EPA believes indicates that the addition or deletion of the water is appropriate.

Need for Improved and Ongoing Water Quality Assessment

EPA recognizes that there is widespread disagreement on the actual water quality status of many of the state's waters. Some waters not listed on today's list may in fact have serious water quality or fisheries impacts, or conversely, waters listed may not be as severely impacted as the available data indicates. However, water quality assessment and problem identification is an ongoing process and EPA is working with the State of Alaska to improve the state's water quality problem identification

protocols. In addition, EPA is under court order to take all necessary steps to ensure that degraded Alaskan waters are identified. Finally, proposed revisions to EPA's Water Quality Management regulations (40 CFR Part 130) would require all states to identify and report their degraded waters every two years. Therefore, EPA is requesting that the state clarify the water quality status of those waters not listed today, or those mistakenly listed, in subsequent Alaska Section 305(b) water quality reports.

VI. PUBLIC COMMENT AND REQUESTS FOR PUBLIC HEAKING

Since the EPA is making final decisions on the listing of waterbodies, no further public comment or requests for hearing are solicited.

VII. PETITIONS TO ADD WATERS

Because a 120-day public comment period, including an opportunity to petition to add waters to the list, has already occurred, the EPA is not accepting further petitions to add to the list.

VIII. EPA RESPONSE TO COMMENTS

The Regional Administrator has considered all petitions and comments received after the May 31, 1990, notice and has provided a written response to these comments and petitions. This response to comments and petitions will be available to the

public, and can be obtained by contacting the person named at the end of this notice.

IX. ADDITIONAL INFORMATION ABOUT THE EPA'S DECISIONS OF APPROVAL AND DISAPPROVAL AND SECTION 304(l)

The administrative record containing the EPA's documentation on its decision under section 304(l) is on file and may be inspected at the EPA, Region 10 office between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday except holidays. To make arrangements to examine the administrative record, contact the person named at the end of this notice.

The administrative record is also available at the Alaska Operations Office of the EPA at Room 537, Federal Building, 222 W. 7th Avenue, #19, Anchorage, Alaska, (907) 271-5083 or 3200 Hospital Drive, Suite 101, Juneau, Alaska (907) 586-7619.

For additional information about section 304(l), see the EPA's publication Final Guidance for Implementation of Requirements Under Section 304(l) of the Clean Water Act as Amended (March 1988), and final regulations under section 304(l) published in the Federal Register June 2, 1989.

Copies of these documents and of section 304(l) of the Act may be obtained by writing or calling the EPA contact person named below.

Judith Leckrone
Office of Water Planning, WD-139
U.S. EPA, Region 10
1200 Sixth Avenue
Seattle, Washington 98101
(206) 553-6911

Dana Rasmussen
Regional Administrator

9-24-91
Date

ATTACHMENT A

FINAL

CLEAN WATER ACT

SECTION 304(l)(1)(A)(ii) LIST

FOR THE STATE OF ALASKA

SEPTEMBER 1991

THE SECTION 304(l) LONG LIST

The Section 304(l) long list is a comprehensive list of waters of concern in the state of Alaska. According to Section 304(l) of the Clean Water Act (the Act) this list must include all waters which are not reasonably expected to attain or maintain water quality standards for any conventional, nonconventional or toxic pollutant due to any point or nonpoint source of pollution. It must also include those waters classified for uses that do not meet the fishable or swimmable goals of the Act.

The attached long list of waters was prepared by the U.S Environmental Protection Agency, Region 10 (EPA). The Alaska Department of Conservation (ADEC) had submitted its own long list of waters as required by Section 304(l), but EPA ultimately disapproved that list because it believed it was inadequate. (Please see the document Notice of the U.S. EPA's List of Waters in Alaska Required By Section 304(l)(1)(A)(ii) of the Clean Water Act of 1987, September, 1991, for a full description of the requirements of Section 304(l), a history of Section 304(l) activities in Alaska, and the specific guidelines EPA used to develop this list.)

A water's presence on the Section 304(l) long list does not necessarily mean that sources to that water will be subject to any source control activities. The long list serves as a universe from which EPA or the state can choose waters for further monitoring and assessment to determine if a water needs to be placed on one of the other lists of waters described below. However, waters not listed on the long list can also be listed on the other lists as well.

States are required to submit several lists of waters to EPA pursuant to various sections of the Act. These lists do overlap, and understandably can cause confusion. Therefore, the following is a brief description of the other lists.

The Section 303(d) list of water quality-limited waters.

The Section 303(d) list of waters is a subset of the long list of waters. These waters are "water quality-limited" and therefore require the establishment of a total maximum daily load (TMDL). Water quality-limited waters are those waters that still do not meet water quality standards even after the sources of pollution to the water have applied technology-based controls to their discharges. A TMDL establishes the allowable loadings of a pollutant into a waterbody.

The Section 305(b) Report list of impaired waters.

The Section 305(b) Report is a report on the state's overall water quality. Every state is required to submit a 305(b) report to EPA every two years. All waters that appear on the Section 305(b) Report list of impaired waters also appear on the long list of waters.

The state has identified the waters on the Section 305(b) Report list as impaired though not necessarily water quality-limited, therefore ADEC did not include these waters in its July, 1990, Section 303(d) list of waters. These waters are candidates for a TMDL but need further assessment and monitoring to determine if one is necessary.

The Section 319 nonpoint source list.

The nonpoint source list is a subset of the long list waters. These waters are impacted primarily by nonpoint sources of pollution. Section 319 of the Act requires that every state prepare an assessment report that identifies all waterbodies affected by nonpoint source pollution. The state must also identify the types of nonpoint source pollution that affect the waterbody (e.g agriculture, mining). The Act also requires each state to prepare a Management Strategy that includes plans for reducing pollution from each of those types of sources and to the particular waterbodies.

ALASKA §304(1) LONG LIST OF WATERBODIES

Alaska ID Number	Waterbody	Location	Causes
1. Southeast Alaska			
	Southeast Mainland		
10101-004	Bradfield R	S of Wrangell	TH
	Ketchikan		
10102-003	Unnamed Cr	Ketchikan	LF
10102-010	Hoadly Cr	Ketchikan	UR LD RD
10102-011	Herring Bay Cr	Ketchikan	UR LD
10102-012	ADF&G 101-45-10500	George Inlet	TH RC
10102-601	Ward Cove	Ketchikan	IN Pulp Mill
	Prince of Wales		
10103-004	Dog Salmon Creek	Port St. Nicholas	TH RC
10103-007	Harris R-below Fuber cr	Hollis	TH RD
10103-011	Natzuhini Cr	Hydaburg	TH RC
10103-012	Staney Cr	Prince of Wales Is	TH
10103-023	N Fork Deer Cr	Prince of Wales Is	TH RC
10103-026	Black Cr	Prince of Wales Is	TH RC RD RE
10103-029	Rush Cr		TH
10103-031	Fuber Cr	Prince of Wales Is	RC
10103-401	Dora Lake	Prince of Wales Is	TH RC
10103-601	Thorne Bay	Prince of Wales	HA SE LTF
	Southeast Mainland — Central		
10201-002	Hobart Bay Cre	N of Petersburg	TH
	Kulu - Kuprеanof - Mitkof - Etolin - Zarembo - Wrangell Islands		
10202-601	Wrangell Narrows	Petersburg	TH UR ST PP RD SF
10202-602	Rowan Bay	Kuiu Is	TH
	Baranof - Chichagof Islands		
10203-005	Granite Cr	Sitka	UR GH
10203-022	Katlian R	Sitka N	TH
10203-024	Nakwasina Cr	Sitka N	TH
10203-025	Rodman Cr	Sitka N	TH
10203-601	Silver Bay	Sitka	IN Pulp Mill
10203-602	Klag Bay	Chichagof Island	MI TA
10203-603	Long Island	Port Frederick	TH
10203-604	Herring Cove	Sitka	LF Woodwaste
	Lynn Canal		
10301-002	Salmon Cr	Juneau	UR DDE PCB
10301-003	Sawmill Cr	Haines	UR ST CH SM RD
10301-005	Duck Cr	Juneau	UR PP LF CH RD LD
10301-008	Gold Cr	Juneau	GH UR
10301-009	Jordan Cr	Juneau	UR LD LA
10301-010	Lawson Creek	Douglas	UR RD CH SM
10301-011	Lemon Cr	Juneau	UR PP MI LF SM GH
10301-012	Mendenhall R	Juneau	UR SE
10301-014	Pederson Hill Cr	Juneau	UR SE LD
10301-017	Vanderbilt Cr	Juneau	UR GM LF

Cause Codes:

Cd= Cadmium	IN= Industrial	Pb= Lead	SE= Sewage Discharge	TA= Tailings
CH= Channelized Stream	LD= Land Development	PCB	SF= Seafood Processing	TN= Timber Harvest
DA= Dam/Flow Regulation	LF= Landfill	PP= Petroleum Products	SM= Streambank Modif.	TO= Toxic Substances
GM= Gravel Mining	MI= Mining	RC= Road Construction	ST= Septic Tanks	UR= Urban Runoff
Hg= Mercury	OG= Oil & Gas	RD= Road Runoff	STP=Sewage Treatment Plant	Zn= Zinc

ALASKA §304(l) LONG LIST OF WATERBODIES

Alaska ID Number	Waterbody	Location	Causes
	Lynn Canal (con't)		
10301-020	Salmon Cr	Juneau	UR ED
10301-401	Twin Ls	Juneau	UR LD RE
	Chilkat - Skagway Rivers		
10303-004	Pullen Cr	Skagway	UR IN LD CH RD
10303-601	Skagway Harbor	Skagway	Ore facility Pb Zn Cd Hg
	Yakutat Bay		
10401-601	Sawmill Cove	Yakutat	TH

2. Southcentral Alaska

	Eastern Prince William Sound		
20201-401	Robe L	Valdez	DA UR
20201-402	Eyak L	Cordova	UR SE ST RD LD
20201-602	Port Valdez	Valdez	OG BWT plant
20201-605	Prince William Sound		OG PP
	Western Prince William Sound		
20202-001	Clear Cr	Seward	UR ST TO
20202-602	Kenai Fjords	South Central Alaska	OG PP
	Lower Kenai Peninsula		
20301-601	Seldovia Bay	Seldovia	SE
	Upper Kenai Peninsula		
20302-002	Kenai R	Kenai	UR ST RE STP
20302-404	Fire L	Anchorage	UR
20302-701	Kenai Wetlands	Kenai OG Fields	OG IN PP
	Anchorage		
20401-001	Cherry Hill Cr	Anchorage	PP
20401-002	Glacier Cr	Anchorage	PP UR
20401-003	Chester Cr	Anchorage	UR SE ST SM PP
20401-004	Campbell Cr	Anchorage	UR ST RD STP SE
20401-005	Fish Cr	Anchorage	UR DA RD LD ST PP SM
20401-006	Furrow Cr	Anchorage	UR SE LD SM CH
20401-007	Rabbit Cr	Anchorage	UR ST SM
20401-014	Eagle R	Eagle R	UR SE
20401-017	Little Campbell Cr	Anchorage	UR ST RC SM LD
20401-019	Peters Cr	Anchorage	UR
20401-020	Ship Cr	Anchorage	UR PP PCB
20401-401	Mirror Lake	Anchorage	UR ST RD
20401-402	Campbell Lake	Anchorage	UR LD
20401-403	Cheney Lake	Anchorage	UR
20401-404	Conners Lake	Anchorage	UR
20401-407	Goose L	Anchorage	UR
20401-408	Hidden Lake	Anchorage	UR
20401-410	Jones L	Anchorage	UR LD
20401-412	L Hood/Spenard	Anchorage	UR

Cause Codes:

CD= Cadmium	IN= Industrial	Pb= Lead	SE= Sewage Discharge	TA= Tailings
CH= Channelized Stream	LD= Land Development	PCB	SF= Seafood Processing	TH= Timber Harvest
DA= Dam/Flow Regulation	LF= Landfill	PP= Petroleum Products	SM= Streambank Modif.	TO= Toxic Substances
GM= Gravel Mining	MI= Mining	RC= Road Construction	ST= Septic Tanks	UR= Urban Runoff
Hg= Mercury	OG= Oil & Gas	RD= Road Runoff	STP=Sewage Treatment Plant	Zn= Zinc

ALASKA §304(1) LONG LIST OF WATERBODIES

Alaska ID Number	Waterbody	Location	Causes
	Anchorage (con't)		
20401-413	L Otis	Anchorage	UR
20401-414	Little Campbell L	Anchorage	UR
20401-415	Meadow L	Anchorage	UR
20401-417	Sand L	Anchorage	UR
20401-419	University L	Anchorage	UR
20401-421	Westchester Lagoon	Anchorage	UR ST PP LD RD RE
20401-601	Port of Anchorage	Anchorage	PP HA
	Matanuska		
20402-401	Walby L	Wasilla	UR RD ST
	Upper Susitna River		
20501-002	Gold Cr	N of Anchorage	PM SE RE
	Yentna River		
20504-001	Cache Cr	NW of Anchorage	PM TA
20504-003	Mills Cr	NW of Anchorage	PM
	Lower Susitna River		
20505-409	Lucille L	Wasilla	UR RC RE RD LD
20505-410	Wasilla L	Wasilla	UR RD RE ST
	Redoubt - Trading Bays		
20601-002	Cappe Cr	Cook Inlet	Natural silt
	Tuxedni - Kamishak Bays		
20602-601	Lower Cook Inlet	South Central Alaska	OG PP
	Kodiak - Afognak Islands		
20701-001	Kodiak Landfill	Kodiak	LF
20701-003	Buskin Cr	Kodiak	UR LF ST
20701-405	Beaver Lake	Kodiak	UR
20701-600	Women's Bay	Kodiak	PP
20701-604	St Paul's Harbor	Kodiak	UR SF STP PP
20701-605	Gibson Cove	Kodiak	IN SF PP UR RD SD
20701-606	Shelikof Strait	Alaska Peninsula	OG PP
20701-609	W. Gulf of Alaska		OG PP
20701-610	Katmai Nat. Mon.	Alaska Peninsula	OG PP

3. *Southwest Alaska*

	Fox Islands		
30102-601	Unalaska Bay	Akutan Harbor	IN SF STP SE
30102-602	Illiuliuk Bay	Dutch Harbor	SF SE PP
30102-603	Dutch Harbor	Dutch Harbor	PP SE SF
30102-604	Akutan Harbor	Akutan	SF
	Western Aleutian Islands		
30103-003	Fox Valley Cr	Great Sitkin Island	PP

Cause Codes:

Cd= Cadmium	IN= Industrial	Pb= Lead	SE= Sewage Discharge	TA= Tailings
CH= Channelized Stream	LD= Land Development	PCB	SF= Seafood Processing	TH= Timber Harvest
DA= Dam/Flow Regulation	LF= Landfill	PP= Petroleum Products	SM= Streambank Modif.	TC= Toxic Substances
GR= Gravel Mining	MI= Mining	RC= Road Construction	ST= Septic Tanks	UR= Urban Runoff
Hg= Mercury	OG= Oil & Gas	RD= Road Runoff	STP=Sewage Treatment Plant	Zn= Zinc

ALASKA §304(1) LONG LIST OF WATERBODIES

Alaska ID Number	Waterbody	Location	Causes
	Naknek		
30204-001	Naknek R	King Salmon/Naknek	UR IN STP PP SF SE
30204-002	King Salmon Cr	King Salmon	LF TO
30204-003	Eskimo Cr	King Salmon	UR SE PP
	Holitna River		
30404-002	Mukslulik Cr		
	Aniak		
30501-001	Red Devil Cr	Aniak	TA Hg Mine
30501-001	Cinnabar Cr		
	Kuskokwim Delta		
30502-002	Tuluksak R	E of Bethel	PM TA
30502-801	Cape Newenham	Kuskokwim	LF RD PP SE

4. Yukon Alaska

	Fortymile River		
40104-001	Buckskin Cr		
40104-002	Chicken Cr	Canada Border	PM
40104-003	Jack Wade Ck	Canada Border	PM
40104-004	S Fork Fortymile R		
40104-005	Walker Fork Cr	Forty Mile River	PM
40104-008	N Fork Fortymile R	Chicken	PM
40104-010	Fortymile R	E of Fairbanks	PM
	Eagle to Circle		
40401-003	American Cr	Canada Border	PM
	Birch-Beaver Creeks		
40402-001	Beaver Cr	Central	PM
40402-001	Birch Cr Dr	Central	PM
40402-002	Bedrock Cr	Central	PM
40402-002	Crooked Cr	Central	PM
40402-004	Boulder Cr	Central	PM
40402-005	Ketchem Cr	Central	PM
	Ramparts		
40404-001	Minook Cr	Rampart	PM
	Healy Lake		
40503-001	Delta Clearwater R	Delta	UR AG RE
	Chena River		
40506-002	Chena Slough	East of Fairbanks	UR GM RCRD
40506-003	Noyes Slough	Fairbanks	GM UR LD RC
40506-007	Chena R	Fairbanks Portion	UR LF RC LD RD GM PCB

Cause Codes:

Cd= Cadmium	IN= Industrial	Pb= Lead	SE= Sewage Discharge	TA= Tailings
CH= Channelized Stream	LD= Land Development	PCB	SF= Seafood Processing	TM= Timber Harvest
DA= Dam/Flow Regulation	LF= Landfill	PP= Petroleum Products	SM= Streambank Modif.	TO= Toxic Substances
GM= Gravel Mining	MI= Mining	RC= Road Construction	ST= Septic Tanks	UR= Urban Runoff
Hg= Mercury	OG= Oil & Gas	RD= Road Runoff	STP=Sewage Treatment Plant	Zn= Zinc

ALASKA §304(l) LONG LIST OF WATERBODIES

Alaska ID Number	Waterbody	Location	Causes
	Tanana Flats		
40507-004	Pile Driver Slough	Eielson AFB	AG RC RD LF
	Nenana River		
40508-001	Valdez Cr	Cantwell	PM PP
40508-007	Lignite Cr	Healy	MI(Coal)
	Tolovana River		
40509-001	Goldstream Cr	Fairbanks	PM UR AG TA
40509-002	Chatanika R	Fairbanks	PM
40509-003	Tolovana R	Fairbanks	PM
40509-004	Faith Cr	Chatanika Dr	PM
40509-004	Livengood Cr	Livengood	PM
	Kantishna River		
40510-002	Kantishana R Dr	W of Healy	PM
	Lower Tanana River		
40511-001	Tanana R Dr	Manley	PM
40511-002	Baker Cr Dr	Manley Hot Springs	PM
40511-006	Patterson Cr Dr	W of Fairbanks	PM
	Upper Koyukuk River		
40601-003	Koyukuk R Dr (Mid)	NW of Fairbanks	PM
40601-005	Slate Cr	Coldfoot	PM RC

5. *Northwest Alaska*

	Nome		
50104-001	Sneke R Dr	Nome	UR SE IF LD PM
50104-001	Center Cr	Nome	LF
50104-009	Solomon R Dr	Nome	PM RE
50104-013	Shovel Cr	Nome	PM PP RC
50104-014	Sinuk R	Teller	GM
	Selawik River		
50301-401	Shungnak L	Selawik	PP
50301-402	Kotzebue Lagoon	Kotzebue	UR GM PP RC
	Wulik-Kivalina Rivers		
50404-006	Wulik R	Kivalina	PM
50404-007	Red Dog Cr Dr	Nome	UR MI RC RD
50404-008	Ikalukrok Cr	Kivalina	Nat. high
50404-801	Red Dog Port	Kivalina	IN MI SM HA

Cause Codes:

Cd= Cadmium	IN= Industrial	Pb= Lead	SE= Sewage Discharge	TA= Tailings
CH= Channelized Stream	LD= Land Development	PCB	SF= Seafood Processing	TH= Timber Harvest
DA= Dam/Flow Regulation	LF= Landfill	PP= Petroleum Products	SM= Streambank Modif.	TO= Toxic Substances
GM= Gravel Mining	MI= Mining	RC= Road Construction	ST= Septic Tanks	UR= Urban Runoff
Hg= Mercury	OG= Oil & Gas	RD= Road Runoff	STP=Sewage Treatment Plant	Zn= Zinc

ALASKA §304(l) LONG LIST OF WATERBODIES

Alaska ID Number	Waterbody	Location	Causes
6. *Arctic Alaska*			
	Northwest Coast		
60202-401	S/Mid Salt	Lagoon Barrow	LF SE
	Lower Colville River		
60304-601	Nearshore Beaufort Lgn	Colville to Beechey PT	OG
	Kuparuk River		
60401-002	Putuligayuk R	North Slope	OG MI IN GM
60401-004	Ugnuravik R	Prudhoe Bay	OG SM RC RD
60401-401	Big L	Prudhoe Bay	OG
60401-601	Nearshore Beaufort Lgn	Beechey Pt to Prudhoe	OG
60401-702	N Slope Wetlands	Colville to Prudhoe	OG GM PP RC
	Sagavanirktok River		
60402-005	Sagavanirktok R Dr	Prudhoe Bay	OG GM SM LD
60402-601	Nearshore Beaufort Lgn	Prudhoe Bay to Foggy Is.	OG temp. Salinity
60402-702	N Slope Wetlands	Prudhoe Bay to	OG GM PP RC IN LF TO
	Mikkelson Bay		
60403-601	Nearshore Beaufort Lgn	Foggy Is Bay to Canning	OG
60403-702	N Slope Wetlands	Foggy Is Bay to Canning	OG

Cause Codes:

Cd= Cadmium	IN= Industrial	Pb= Lead	SE= Sewage Discharge	TA= Tailings
CH= Channalized Stream	LD= Land Development	PCB	SF= Seafood Processing	TH= Timber Harvest
DA= Dam/Flow Regulation	LF= Landfill	PP= Petroleum Products	SM= Streambank Modif.	TO= Toxic Substances
GR= Gravel Mining	MI= Mining	RC= Road Construction	ST= Septic Tanks	UR= Urban Runoff
Hg= Mercury	OG= Oil & Gas	RD= Road Runoff	STP=Sewage Treatment Plant	Zn= Zinc

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION 10

RESPONSE TO COMMENTS ON EPA'S PROPOSED SECTION 304(l)(1)(A)(ii) LIST FOR THE STATE OF ALASKA

SEPTEMBER, 1991

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10

RESPONSE TO COMMENTS
ON EPA'S PROPOSED SECTION 304(l)(1)(A)(ii) LIST
FOR THE STATE OF ALASKA

Comments on the U.S. Environmental Protection Agency (EPA), Region 10, decisions to list waters in the State of Alaska under Clean Water Act section 304(l)(1)(A)(ii) were received from the parties listed below.

Alaska Department of Environmental Conservation, (ADEC), Dennis D. Kelso, Commissioner

Forest Alliance, Robert Loiselle, Executive Director

Kotzebue Fisherman's Association, Eugene Smith, Vice President

Salmon Bay Protective Association, Alan Stein

Sealaska Corporation, Richard Harris, Vice President, Resource Planning and Administration

Southeast Alaska Conservation Council, Robert E. Lindekugel, Staff Attorney

Trustees for Alaska, Mike Wenig, Staff Attorney

United States Department of Agriculture, Forest Service, Alaska Region, Michael A. Barton, Regional Forester

Comments are followed by a set of abbreviations that refer to the commentor. Below are the abbreviations assigned to each commentor.

Alaska Department of Environmental Conservation (ADEC)
Forest Alliance (FA)
Kotzebue Fisherman's Association (KFA)
Salmon Bay Protective Association (SBPA)
Sealaska Corporation (SC)
Southeast Alaska Conservation Council (SEACC)
Trustees for Alaska (TA)
USDA Forest Service (FS)

GENERAL COMMENTS

Comment Set #1

Fully support EPA's May 31, 1990, decision to assume responsibility for development of Alaska's list of impaired waters under section 304(l)(1)(A)(ii) of the Clean Water Act. (SEACC)

We fully support and commend EPA's proposed decision to withdraw prior approval and revise the long list to include waters suspected by the State of being impaired. (TA) (KFA)

Response #1 Comment noted.

Comment Set #2

EPA's approval of Alaska's 304(l) short, mini and long lists in June 1989 was not expressed as being "conditional." The public notice unequivocally approved all three lists. (ADEC) (SC)

The State did further evaluate waters on the long list and document additional waters as impaired. (ADEC)

Response #2 The U.S. EPA's prior approval of Alaska's long list of waters was largely based on statements in the state's May 26, 1989 letter to the U.S. EPA that "completion of the [Clean Water Act section] 319 assessment will result in a number of additional waterbodies being documented as impaired." The U.S. EPA interpreted this statement as a commitment that further evaluation of the information available to the state, or additional documentation of actual or threatened impairment, would occur. EPA's approval of the Alaska long list was conditioned on Alaska's fulfillment of this commitment. However, the listings of impaired waters in the section 319 Nonpoint Source Assessment and the state's 1990 report required by section 305(b) of the Act, did not differ significantly from the state's final long list of waters, and did not adequately address waters degraded or threatened by forest practices and other activities.

Comment Set #3

The EPA national final guidance concerning 304(l) clearly supports the State's method in preparing the long list, stating that the final lists will include only those waters with documented violation of water quality standards. (ADEC)

Sole use of best professional judgment to list waters violates EPA's applicable guidance documents, and EPA's own interpretations of its regulations. These documents show that best professional judgment can be used to assess site specific data, but not to replace it. (SC)

Response #3 EPA disagrees. The U.S. EPA considers the use of best professional judgment to be appropriate in making listing decisions under section 304(l) where adequate ambient monitoring data does not exist. Listing decisions under section 304(l) were intended to cast a "broad net" in the list development and review process, and were to include both waters reasonably believed to be degraded as well as waters whose quality was reasonably believed to be threatened. In evaluating a broad universe of waters for possible inclusion on the lists, states were to list waters which "....the data and information show, after assurance of its reliability and the use of professional judgment, cannot reasonably be anticipated by the state to attain or maintain applicable water quality standards..." (see Preamble to the regulations for implementing section 304(l) in the June 2, 1989 Federal Register.)

The State of Alaska is extremely large and lacks the resources to develop and maintain a comprehensive ambient water quality monitoring network throughout the state. Consequently, very little ambient water quality data exists for the state of Alaska that definitively documents water quality effects from potentially high impact land use activities such as timber harvesting and placer mining. Therefore, in order to make any listing decisions for section 304(l), EPA must rely to some extent on best professional judgment.

Use of best professional judgment by EPA and the states to assess water quality and habitat conditions is a common, accepted practice. EPA's guidance for the Section 305(b) Reports states that waters for which ambient monitoring data is scarce or nonexistent "should be included in the 305(b) process if the state has any reasonable basis for evaluation." The guidance calls these "evaluated" waters (as opposed to monitored waters).

> "Evaluated waters" are those waterbodies for which the use support decision is based on information other than current site-specific ambient data, such as land use, location of sources, predictive modelling using estimated input variable, surveys of fisheries personnel, and citizen complaints.

In addition, EPA's guidance document for section 304(l), as well as the implementing regulations, specifically refer to including waters identified as impaired or threatened in state's Clean Water Act Section 305(b) Reports.

Comment Set #4

The plain language of section 304(l) requires that the long list be composed of waters which cannot "reasonably be anticipated" to be impaired [sic]. On its face, that standard includes within the long list waters whose impairment is demonstrated by best professional judgment, whether or not there is sufficient data to "definitively" confirm or corroborate that judgment. (TA)

ADEC has refused to include those waters on the long list which its experts consider to qualify for listing based on their "best professional judgment," absent conclusive or definitive data. ADEC's narrow listing approach is contrary to the plain language of the standards for listing in the CWA and EPA's own interpretation of that section. (SEACC)

The state of Alaska clearly lacks the resources for ambient water quality monitoring. Thus, for all practical purposes, the state's use of the" definitive documentation" standard would prevent any impaired streams from ever being classified as such. (TA)

Response #4 EPA agrees, see Response #3.

Comment #5

EPA has misinterpreted both the language and intent of section 304(l) of the Clean Water Act. Section 304(l) was intended to apply to toxic pollutants only, EPA's expansion of this section to non-toxic, nonpoint sources of pollution is without justification and exceeds its statutory responsibilities under the Act. (FS) (SC)

Response #5 EPA disagrees. Only section 304(l)(1)(A)(i) and (304)(1)(B) apply to listing waters affected by toxic pollutants from point sources, section 304(l)(1)(A)(ii) contains no reference to either toxic pollutants or specific types of pollutant sources.

Comment #6

EPA is not authorized under section 304(l) to substitute its own "long list" for that prepared by the state. Section 304(l) only authorizes the administrator to approve or disapprove the individual control strategies submitted by the state.

Response #6 EPA disagrees. Section 304(l)(1) (the introduction to the section) states that "each State shall submit to the Administrator for review, approval and implementation..." The paragraphs that follow this introduction include the lists as well as the individual control strategies.

The implementing regulations for section 304(l) clearly provide disapproval procedures for EPA when a state's lists are inadequate.

Comment #7

Placement of waters on the section 304(l) list may increase the likelihood that these waters will be placed on the state's section 303(d) impaired list. Section 303(d) is intended to identify waters for which effluent limitations need to be placed on point sources. The standards for placement of a water on the 303(d) list should be significantly higher than the 304(l) list. (SC)

Response #7 EPA agrees but emphasizes that the inclusion of a water on the section 304(l) list does not necessarily mean that the water is automatically included on the section 303(d) list. The section 304(l) list is merely a universe of waters from which the 303(d) waters could be selected. However, if a water does not appear on the 304(l) list it does not mean that it cannot eventually appear on the states 303(d) list.

Comment #8

EPA should schedule a public hearing on its proposed disapproval in Juneau, Alaska, following the receipt of comments and possible petitions on October 5, 1990. (FA) (ADEC)

Response #8 EPA chose not to schedule a public hearing on the section 304(l) lists because EPA is working closely with ADEC to design a process for routinely identifying degraded waters. EPA will also be exploring methods to effectively use best professional judgment of the many water quality experts in Alaska. During these activities, both EPA and state are committed to seeking full public participation.

In light of the upcoming activities and opportunities for public participation, which will directly address the concerns of these commentors, EPA believed that it would not be productive to reopen the section 304(l) process for the third time to hold public hearings. Since the time frames for these hearings, if they were to be held, would overlap with the upcoming public process for identifying water quality limited waters under section 303(d) of the CWA, public confusion and duplication would be inevitable.

COMMENTS ON SPECIFIC WATERS

Comment #9

Our review of all streams identified in the state's 1988 305(b) reports indicates that none of these streams located on National Forest lands are impacted by toxic pollutants. Thus none of these streams should be included in the section 304(l) list. (FS)

Response #9 The statutory and regulatory requirements of section 304(l) also addresses waters affected by pollutants not designated as toxic. Please see Response #5.

Comment #10

Analysis conducted to date (12/10/90) indicates that the following waterbodies have been adversely impacted from the standpoints of both water quality and fisheries habitat by past timber harvest related activities. (FS)

10103-031	Fubar Creek - tributary to Harris River
10103-029	Rush Creek

Response #10 EPA is listing these waters on the section 304(l)(1)(A)(ii) list due to water quality and fisheries habitat impacts.

Comment #11

Analysis conducted to date (12/10/90) indicates that the following waterbodies have been adversely impacted from the fisheries habitat standpoint by past timber harvest related activities (FS)

10101-004	Bradfield River
10203-022	Katlian River
10203-024	Nakwasina River
10103-007	Harris River
10203-025	Rodman Creek
10202-602	Rowan Bay - in the immediate vicinity of the LTF
10103-012	Staney Creek
	Thorne Estuary - in the immediate vicinity of the log sort yard

Response #11 EPA is listing these waters on the section 304(l)(1)(A)(ii) list due to fisheries habitat impacts.

Comment #12

The analysis conducted to date indicates the following waterbodies have not been significantly or measurably impacted from either the water quality or fisheries habitat standpoints. (FS)

10103-001	Black Bear Creek - that portion on FS lands
10103-926	Black Creek - tributary to Black Bear Creek, that portion on FS lands
10201-017	Chuck River - that portion on FS lands
10103-017	Dall Island Creeks - that portion on FS lands
10103-004	Dog Salmon Creek
10203-002	Freshwater Creek
10103-008	Hatchery Creek
10203-002	Iyouktug Creek
10401-005	Ophir Creek - watershed mixed ownership
10203-011	Pavlof River
10103-013	Steelhead Creek - tributary to Big Salt Creek, that portion on FS lands
	Hawk Inlet
	Thorne River

Response #12 EPA agrees and is not listing these waters on the Section 304(l)(1)(A)(ii) list.

Comment #13

An analysis of site-specific data on water quality and habitat parameters shows that:

1. The good water quality of Election Creek, Humpback Creek and Gunnuck Creek will be maintained
2. Given the operational constraints of Alaska's new Forest Practices Act that it can reasonably be anticipated that water quality of Deer Creek, North Fork Deer Creek, Steelhead Creek and North Fork Steelhead Creek will be maintained.

The sediment loads found within these seven streams were within the range of expectations for undisturbed old growth forest. (SC)

Response #13 EPA agrees and is not listing the above waters with the exception of North Fork Deer Creek. North Fork Deer Creek is being listed because ADEC identified this water as impaired in its 1990 Section 305(b) report.

PETITIONS TO ADD WATERS TO THE LONG LISTS

From Southeast Alaska Conservation Council

The following waters are located on national forest land on Prince of Wales Island and will suffer long term water quality impacts from streamside logging or landslides induced by logging or roading activities. (SEACC)

Rush Creek (Stream #102-70-1580-2017-3010-4018) near Thorne Bay (slides)

Logjam Creek (Stream #106-30-10670-2004-3030) (streamside logging)

Tolstoi Bay Creek, Ratz Harbor Creek, Slide Creek, and Lava Creek in Thorne Bay area.

Buster Creek (Stream # 106-41-10420), Alder Creek (Stream #106-41-10440), Hole-in-the-Wall Creek

Kina Creek near Kassan Bay

The following waters on national forest lands on Kupreanof and N. Kiui Islands will suffer long term water quality impacts from streamside logging or landslides induced by logging or roading activities. (SEACC)

Big John Creek (Kupreanof)

Straight Creek, Saganaw Creek, Rowan Creek, Browns Creek, Security Creek, Kadake Creek (N. Kuiu)

The following waters on native lands in southeast Alaska will suffer long term water quality impacts from streamside logging or landslides induced by logging or roading activities. (SEACC)

Three Mile Creek near Klawock on Prince of Wales Island (POW)

Klakas Inlet stream near Hydaburg on POW

Trocadero Creek near Craig on POW

Coco Harbor Creek & Brazy Creek near Dall Island

Libby Creek, Salt Chuck and Laura's Creek in Hobart Bay, on mainland between Juneau and Petersburg

Response No quantitative or qualitative information was submitted with this petition to EPA. EPA does not believe it is appropriate to list a water under section 304(l) merely because water quality impacts are anticipated due to planned timber harvest activities in the watershed.

Therefore, EPA is denying the petition to list all the waters indicated above, except Rush Creek. EPA is listing Rush Creek based on analysis conducted by the United States Forest Service. See Response #10.

From Trustees for Alaska

EPA should reclassify Ikalukrok Creek (#50404-008), and the Wulik River (#50404-006) as impaired and list on Alaska's section 304(l)(1)(A)(ii) list.

According to an August 22, 1990 compliance order from ADEC, 1990 water quality samples show that leaching from the Red Dog Mine "has resulted in the pollution of Red Dog Creek, Ikalukrok Creek, and the Wulik River with zinc, cadmium, lead and iron concentrations which greatly exceed concentrations of these metals previously recorded in baseline data."

From Kotzebue Fisherman's Association

EPA should reclassify Ikalukrok Creek (#50404-008), and the Wulik River (#50404-006) as impaired and list on Alaska's section 304(l)(1)(A)(ii) list based on the following information:

- Reports from local people of orange colored water from Red Dog Creek staining Ikalukrok Creek to within a mile of the Wulik River.
- Local fisherman have noticed a reduction in the number of salmon and char in the Wulik River.
- This observation was substantiated by Alaska Department of Fish and Game. Tissue analysis from the Ikalukrok showed substantially higher concentrations of various heavy metals over these of baseline samples from 1982.
- Water quality samples taken by ADEC demonstrated elevated levels of toxic heavy metals in violation of Cominco's NPDES permit and exceeding levels established by the state's water quality standards.

Response EPA agrees and is listing Ikalukrok Creek and the Wulik River on Alaska's 304(l)(1)(A)(ii) list.

From Salmon Bay Protective Association

Hourly temperature data shows violations of Alaska water quality standards on Staney Creek. Please classify it as threatened.

Response EPA agrees and is listing Staney Creek on Alaska's 304(l)(1)(A)(ii) list.

Alaska State Legislature

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Senate Resources Committee

April 27, 1992

The Honorable John Sandor
Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801

Dear Commissioner Sandor:

The Senate Resources Committee requests your presence on May 4, 1992 to testify at an oversight hearing on the relationship of State Water Quality Standards to the Clean Water Act National Pollutant Discharge Elimination System Permitting (NPDES) process. This relationship is an issue of concern to the Committee because of the impact on Alaska from the approach taken by the Environmental Protection Agency (EPA) in its November 19, 1991 proposed rulemaking entitled "Amendments to the Water Quality Standards Regulation to Establish the Numeric Criteria for Priority Toxic Pollutants Necessary to Bring All States Into Compliance with Section 303(c)(2)(B) (hereinafter "EPA proposed rule"). By this proposed rulemaking, EPA seeks to set water quality standards for Alaska for all the priority toxic pollutants for which EPA has issued section 304(a) water quality guidance criteria that have not already been promulgated by Alaska. While this regulation is still in draft and has just recently been received by the Office of Management and Budget in Washington, D.C., EPA Region 10 seems to have already begun applying it as seen by the appearance of human health criteria at 10^{-6} imposed in the preliminary draft permits for two pulp mills.

The Committee needs to know what this portends for Alaska. Accordingly, the Committee would appreciate it if you would provide us written responses in advance[1] and come to the May 4, 1992 oversight hearing, prepared to answer the following questions:

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[1] The Committee would appreciate it if in your written response to be submitted in advance you would first list the question and then follow that with the answer. We understand that the time is short but would appreciate having your written response by noon on May 1, 1992.

(1) Even though the human health criterion appeared in the preliminary draft permit for the two pulp mills, is the Committee right to be concerned that the approach taken by EPA's rulemaking as reflected in those permits would impact not only the pulp mills, but would also apply to those in the fish processing, mining and oil and gas industries and municipalities? What would the permitting and cost impacts to each of these entities be and what resources would DEC need to find out?

(2) In its Proposed Rule of November 19, 1991, EPA lists Alaska as one of fifteen states that has not yet complied with Section 303(c)(2)(B) of the Clean Water Act. (Fed. Reg. Vol. 56 No. 223, November 19, 1991 at page 58428). Assuming that the State does intend to comply with section 303(c)(2)(B), please tell us:

(a) the rulemaking process by which you intend to comply - will it be the triennial review or a more expedited process?

(b) other than yourself as commissioner, who on your staff is the person primarily charged with responsibility for completing the process on time? (Please bring this person to the hearing with you.)

(c) please provide the schedule for completing the rulemaking process.

(d) what additional resources do you need from the Administration and the Legislature to meet this schedule? Could additional resources speed up this schedule?

(e) what technical research has been and is being done to respond to EPA's requirements?

(f) what is the working arrangement with EPA R-10 to coordinate compliance with EPA's proposed rules? Does EPA intend to delay issuance of NPDES permits to affected municipalities and industries while DEC completes the rulemaking process? If so, how will this affect entities seeking permit renewals?

(g) Has DEC checked with other states that have not yet complied with section 303(c)(2)(B) of the Clean Water Act to determine what those states are doing in response to EPA's proposed rule?

(3) Have you determined how many Alaskan industries and municipalities are seeking new NPDES permits which will be delayed while DEC promulgates new water quality standards to deal with EPA's proposed rules? What can DEC do to speed up the process to provide these entities undelayed permits?

(4) Has EPA considered the socio-economic impact of EPA's proposed rule on industry and municipalities in Alaska? What impact will EPA's

proposed rule have in causing the loss of existing industry and discouraging new industry from coming to Alaska?

(5) Have you or the Attorney General determined what impact these socio-economic costs have on EPA's proposed rule or its application to individual permittees? What impact, if any, will these socio-economic costs have on DEC's rulemaking?

(6) It is my understanding that the EPA Regional Administrator has commented that Alaska's water quality standards are more stringent than necessary. If so, in what regards? Do you agree with this? Will these problems be addressed during DEC's rulemaking process?

(7) Please explain how the impact on receiving water quality from applying the human health factor to the toxic criteria pollutants differs from the impact on receiving water quality from requiring an entity to meet drinking water quality standards. If the human health criteria is more stringent for specific parameters, does DEC intend to make drinking water quality standards more stringent? What industries and municipalities would be impacted by such DEC action and at what cost to those industries and municipalities?

(8) Has DEC or the Attorney General examined the legal basis for EPA's application of the draft rule to the pulp mills' preliminary draft permits? Does DEC plan to object to the inclusion of the draft rule's requirements to these permits?

(9) It is my understanding that EPA has issued 31 draft permits for placer mining operations that include EPA's proposed rule. Is this correct? Does DEC plan to object to the inclusion of the draft rule requirements in these permits?

(10) Has the Attorney General's office reviewed EPA's legal justification for promulgating water quality standards for the State of Alaska (see pages 58429-58431 of the proposed rule)? Does the Attorney General agree with EPA's analysis? Specifically, EPA's determination that it has authority to promulgate standards for the state because of "the state's failure to complete the timely review and adoption of the necessary standards required by section 303(c)(2)(B) despite information that providing toxic pollutants may interfere with designated uses of the State waters." If not, why not? What is the difference between "designated" and "existing" uses? How are most waters of the state "designated?" Is this classification too stringent under existing circumstances?

(11) Do you know whether EPA or the federal OMB has determined whether EPA's proposed regulation falls within the 90 day moratorium on regulations adversely affecting industry announced by the President in his State of the Union address? What role do the socio-economic costs of complying with EPA's proposed rule addressed in questions 4 and 5 play in a determination whether the proposed rule is subject to the moratorium? What, if any, additional

resources would the Administration need to do so? Does DEC plan to contact the Congressional delegation on this point?

(12) Has DEC or the Attorney General determined whether the state or the EPA interpretation of the state's WQS is entitled to primacy? Did DEC provide input on EPA's interpretation of the state's WQS set forth in the preliminary draft permits for the pulp mills?

(13) In describing the proposed rules for application of the human health factor, EPA appears willing to accept a state's assertion of what pathways exist for consumption of toxic pollutants. (See pages 58432-58433). If water and fish consumption pathways exist simultaneously, application of the human health criteria is more severe. It therefore seems logical that application of the human health criteria in fresh water has the potential to result in more stringent limitations than to marine waters (which people do not drink). Does DEC contend that in addition to being a pathway for fish, marine waters constitute a pathway for water consumption? Since Alaskans do not drink marine water, why is marine water currently required in the state water quality standards to achieve the more stringent of the 96 hour LC50 x .01, drinking water standards, or Goldbook?

(14) At page 58426 of the proposed rule, EPA uses dioxin as an example of the "difficulties faced by states in adopting criteria for priority toxic pollutants." However, EPA suggests that its dioxin effort shows the benefits of its efforts because 38 states have adopted human health based criteria for dioxin while 11 states "have proposed, or are expected to propose, numeric human health based criteria for dioxin."

At page 58436 of the proposed rule, however, EPA then makes the following statement which is inconsistent with its use of the dioxin example at page 58426:

> "On September 11, 1991 EPA's Office of Research and Development (ORD) began reassessing the scientific models and exposure scenarios used to predict the risks of biological effects from exposure to low levels of dioxin. This reassessment has the potential to alter the risk assessment for dioxin and accordingly the Agency's regulatory decisions related to dioxin. At this time, EPA is unable to say with any certainty what the degree or direction of any changes in risk estimates might be. This rulemaking includes a proposed Agency action with regard to dioxin that may be affected by the reassessment."

What is the present status of DEC's rulemaking, if any, on dioxin? In light of the foregoing statement that EPA is reassessing its position, how could the State reach any substantive conclusions on dioxin? Do the mills not run a substantial risk of being driven out of business to achieve an undetectable dioxin standard set out in the proposed rule and in the pulp mills' permits that may not be necessary to protect human health? Has DEC determined what other parameters listed by

EPA for promulgation as state water quality standards may also need "reassessment" based on technical data? Has the state considered taking the same approach with dioxin for marine waters as was taken by Alabama, Louisiana, Maryland and Virginia?

(15) It is my understanding that EPA engaged in a lengthy multimedia review of the Sitka pulp mill in August 1990 which resulted in a finding of no dioxin levels in the mills' effluent above normal background as measured by what was expected in the rest of the United States. Is this the case? What were the findings?

(16) At pages 58476-58477 of the proposed rule, EPA explains why it believes Alaska has not met the requirements of section 303(c)(2)(B) of the Clean Water Act? Do you and the Attorney General agree with EPA's explanation of why Alaska does not comply and if you do not agree, why not?

(17) In describing the source of the Alaska specific list of toxic priority pollutants promulgated for Alaska by EPA in new regulation 40 CFR § 131.36 (see pages 58449-58450 of EPA's proposed rule), EPA used, among other things, the so-called section 304(l) list "identifying toxic pollutants likely to impair designated uses." (See page 58431) It is my understanding that this 304(l) list was prepared by DEC. Please set forth a detailed history and chronology of DEC's compilation and submission of the section 304(l) list. What were the criteria used for inclusion on the list of an Alaska water body likely to be impaired?

It is my understanding that in the final submission of the section 304(l) list, DEC asserted that only 47 water bodies were impaired, but that EPA insisted upon using a list of 112 Alaskan water bodies. Is this correct? If so, how did this come about and which list does DEC believe is the correct list and why?

(18) At page 58476 EPA admits that "For most priority toxic pollutants [in Alaska], however, available data on the discharge and presence of priority toxic pollutants are spatially and temporarily limited." EPA nevertheless chose to apply them to Alaska. Given EPA's admission that there is a lack of evidence of toxic pollutant problems in Alaska, what effort has DEC made to limit the application of EPA's proposed rule to those water bodies within Alaska which DEC believes to have been adversely affected by toxic pollutants? What challenge to EPA's proposed rule on the basis of EPA's own above admission that there is a lack of evidence of toxic pollutant problems in Alaska does DEC intend to make and when will it be made? Given EPA's admissions that there is a lack of evidence of toxic pollutant problems in Alaska, has DEC identified any environmental benefits to be derived for the state which would offset the socio-economic impacts you have identified?

(19) In the preliminary draft permits, DEC is invited to design a mixing zone for the mill outfalls. Does DEC intend to work with the mills in this regard?

(20) Is DEC reviewing the permit limit derivations set forth in the preliminary draft permit for each mill for accuracy and consistency with the state interpretation of its own state water quality standards? Will the results of this analysis be reflected in DEC's rulemaking process for state water quality standards?

(21) Does DEC agree with EPA's application of the human health criteria from EPA's November 19, 1991 proposed toxics rule to the state's mixing zone regulation (18 AAC 70.032) as was done in the preliminary draft pulp mill permits? If not, why not?

(22) Has DEC determined the capital and operating costs to the pulp mills of complying with EPA's preliminary draft permit?

(23) As a justification for promulgating water quality standards for priority toxic pollutants for the State of Alaska (and 14 other states), EPA states in its draft proposed rule:

> "Until standards for toxic pollutants are in place, neither EPA nor the States can fully focus on the emergency, ecologically based water quality activities such as wetlands criteria, biological criteria and sediment criteria."

Id. at 58429. What is EPA doing in these regards? How will these things affect Alaska? How is DEC organized to handle these matters?

Thank you for your cooperation and for providing written responses to these que ions in advance of the hearing. By copy of this letter to Attorney General Charles Cole, I am asking him to prepare written responses to all questions regarding the Attorney General's opinion. I am also asking him or his representative to appear with you at the May 4, 1992 hearing to respond to questions. Finally, by copy of this letter, I am asking Paul Rusanowski, Director of the Division of Governmental Coordination, to appear with you at the May 4, 1992 hearing to respond to questions.

Yours very truly,

Lloyd Jones

Senator Lloyd Jones, Chair

cc: The Honorable Dana Rasmussen, Administrator
Region 10, United States Environmental Protection Agency

The Honorable Charles Cole
Attorney General, State of Alaska

The Honorable Paul Rusanowski
Division of Governmental Coordination, State of Alaska

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FEDERAL WASTEWATER DISCHARGE (NPDES) PERMITS AND THE ALASKA WATER QUALITY Standards

Prepared for the Senate Resources Committees

of the Alaska State Legislature

Alaska Department of Environmental Conservation

May 4, 1992

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FEDERAL WASTEWATER DISCHARGE (NPDES) PERMITS AND THE ALASKA WATER QUALITY Standards

INTRODUCTION

My name is John Sandor, Commissioner of the Department of Environmental Conservation. With me today are other DEC personnel as well as representatives of the Division of Governmental Coordination, Office of the Governor; and the Department of Law. Those who are prepared to supplement my statement or answer questions within their fields of expertise are:

Dr. Paul Rusanowski, Director of the Division of Governmental Coordination
Janet Kowalski, Division of Governmental Coordination
Marie Sansone, Department of Law
Dick Stokes, Regional Administrator for DEC's Southeast Region
Mike Menge, Director, Division of Environmental Quality
Jim Powell, Acting Deputy Director, Division of Environmental Quality
Doug Redburn, Chief of the Water Quality Management Section
Dave Sturdevant, Water Quality Standards Coordinator

We are pleased to be able to respond to your April 27 request for specific information and response to questions included in this letter. We have prepared a formal statement with the responses to question raised, and a draft of this material was presented to the Committee. It is my intention to summarize our statement, and then suggest your Committee members raise whatever questions they may have. We will do our best to respond to these questions.

First of all, I want to acknowledge our appreciation for your keen interest and concern in these issues. The preliminary draft NPDES Permit changes have the potential of profoundly impacting the communities of Ketchikan and Sitka, and the entire Southeast Alaska Region. The extension of these permit requirements to NPDES permits to communities, fish processing facilities, miners and others would have major adverse effects on the entire state.

Let me begin by explaining the relationship of the State Water Quality Standards to federal "NPDES" wastewater discharge permits and to the National Toxics Rule being promulgated by the Environmental Protection Agency. I'd like to set the stage by giving an overview of where we are today, and then proceed with a discussion of issues.

Nationally, as well as in Alaska, we are at a turning point in the evolution of both State Water Quality Standards and NPDES permits. Due to mandates in the Clean Water Act and federal regulations, the Standards and the NPDES permits are now required to incorporate specific criteria to control toxic pollutants. Virtually all states are working to adopt toxic pollutant criteria and implement them in this new generation of more stringent and more complex NPDES permits.

DRAFT

In 1987, benchmark amendments to the Clean Water Act required each state to adopt specific numeric criteria for EPA's toxic "priority pollutants." In 1986, Alaska had adopted all of EPA's toxic criteria by reference in the Water Quality Standards, but had not adopted a Human Health risk level for carcinogens. Early in 1990, Alaska initiated the process called "Triennial Revision" of Water Quality Standards expressly to adopt toxic numeric criteria and a risk level. Our target now is to complete the Triennial process by the end of 1992.

In November of last year, EPA issued the draft National Toxics Rule. This regulation would promulgate federal toxic criteria for all states not fully in compliance with the Clean Water Act. Alaska is included in the rule, particularly for Human Health criteria for carcinogens. This presents some issues we will discuss later. We understand the proposed rule recently was sent to the White House Office of Management and Budget for review and approval. We do not know whether the proposed rule is subject to the President's moratorium on issuance of new regulations, or whether it is being evaluated for potential economic impact.

Meanwhile, EPA--and states like Washington and Oregon that have primacy for their own NPDES programs--has begun to issue NPDES permits with effluent limits for toxic pollutants sufficient to meet State water quality criteria. These limits are called "water quality-based limits," as opposed to the "technology-based limits" which previously governed permits. We'll discuss these terms shortly. EPA policy published in 1984 contained the directive to incorporate state toxic criteria in NPDES permits. Federal regulations in 1989 clarified and reinforced the requirement. In the late 1980s, then, water quality-based NPDES permits began to hit the streets.

Alaska's precursor to water quality-based permits was the Greens Creek Mine on Admiralty Island in 198___, which attracted relatively little notice. In 1991, controversial draft permits surfaced for the AJ and Kensington mines. As you know, preliminary draft permits for the Ketchikan and Sitka Pulp mills have been released. The pulp mill permits expose the grave concerns on economic and technological feasibility, and hopefully will lead to expedited remedies. These issues are equally important to permits pending for placer mining, seafood processors, municipal sewage treatment plants, and municipal and industrial stormwater discharges.

So, where are we today? First, our Water Quality Standards have not kept pace entirely with evolving national requirements. We are somewhat "behind the curve" in being able to resolve concerns in applying our Standards to NPDES permits. The Standards need revision, both in the short term and in the long run. This need has been recognized for some time. Remedies have been underway since 1991, and now will be accelerated. We are looking at problems with the Standards in three areas:

First is achieving compliance with the Clean Water Act by adopting toxic pollutant criteria.

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Second is adding and clarifying language to resolve some missing pieces and ambiguities that have plagued us.

Third is modifying certain existing criteria that are more stringent than is scientifically justifiable, such as the marine water criterion for "Color," and the "0.01 LC50" chronic toxicity provision.

Our top priority will be to accelerate the revision of Standards for a subset of critical items, with full public process. It is absolutely essential that economic and technological feasibility be an integral part of any revision of Standards and permit requirements. Then we will complete the Triennial Revision already underway. In the long run, we will continue to revise the Standards to create a model product for the twenty-first century. Because of developing national programs, enhancement of Water Quality Standards will continue indefinitely.

Also underway is development of a Memorandum of Agreement with EPA to formalize updated procedures for the development, review and issuance of NPDES permits, and the corresponding State 401 certification and coastal zone consistency review. EPA has pledged to work with the State in addressing both Water Quality Standards and the NPDES process.

We realize the critical nature of these matters to regulated industries and to the public. In a sense, water quality gives us a truckload of issues whose time has come. We expect a vigorous public debate as we work to resolve those issues.

We must proceed quickly, but we also must be cautious enough to avoid wrong turns in the road. Establishing Water Quality Standards is a technical and scientific endeavor, but economic and technological feasibility must be considered as the Standards are revised and applied. Our goal is to develop and implement sound and defensible Water Quality Standards that are applied through a reasonable, cooperative, and public permit process. A companion goal is to consider the socio-economic impact of such Standards on communities and other entities that are affected.

Now let me tackle these subjects one at a time.

THE NEW NPDES PERMITS

"NPDES" stands for National Pollutant Discharge Elimination System. These permits were mandated by the Clean Water Act for industrial and municipal wastewater discharges in 1972. An NPDES permit is scheduled to be reissued every five years, but delays are common.

The new challenge that we face is the matter of water quality-based permits. As stated earlier, water quality-based permits came into effect in the late 1980s. The new and revised permits currently on the table for mines and pulp mills in Alaska

are the first major permits of the new generation. The complexity of these permits, coupled with some "flat tires" in the Water Quality Standards, has us scrambling to fix both technical and procedural problems.

The heart of an NPDES permit is the effluent limits, generally expressed as maximum allowable pollutant concentrations. A permit also contains monitoring, reporting, and compliance requirements.

There are two types of effluent limits. The first type is technology-based limits, which are established by EPA in federal regulation for each category of major industry. These limits are based on "Best Available Technology," or "BAT," and its relatives "BCT" and "BPT"--Best Conventional Technology and Best Practicable Technology. Technology-based limits include consideration of "economic achievability."

The second type is water quality-based limits, which are derived directly from the State Water Quality Standards for receiving waters. Water quality-based limits are intended to assure that Water Quality Standards are met after dilution of the effluent in the defined mixing zone. EPA regulations require that EPA incorporate water quality-based effluent limits in an NPDES permit whenever a pollutant in the discharge causes, has reasonable potential to cause, or contributes to, exceedance of a water quality criterion.

For a given pollutant, a permit by federal regulation (___ CFR ___) must contain the more stringent of either technology-based or water quality-based limits. The water quality-based limits usually are more stringent, especially for toxic pollutants. So the State Water Quality Standards play a crucial role in determining the effluent limits in an NPDES permit.

THE NPDES PERMIT PROCESS

NPDES permits are issued by EPA, but the State must certify under Section 401 of the Clean Water Act that each permit will meet State Water Quality Standards. The State also must issue a coastal zone consistency determination that the activity complies with the Standards of the Alaska Coastal Management Program (ACMP), which is coordinated through the Division of Governmental Coordination (DGC). Procedures for coordinating the timeframes for the Section 401 certification and the ACMP consistency determination with the NPDES permit program are spelled out in a 1986 agreement among EPA, DEC, and DGC.

There are several steps in the development and issuance of a new or revised NPDES permit. These are depicted graphically on a page at the back of the testimony handout.

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APPLICATION: The operator submits an application to EPA.

PRELIMINARY DRAFT PERMIT: EPA prepares the preliminary draft for review by the State prior to public notice. Resolution of major issues is attempted at this stage.

DRAFT PERMIT: EPA and DEC issue joint public notice soliciting public comment; public workshops and hearings may be held; the draft permit goes through coastal zone consistency review under ACMP, and a consistency determination is issued by the State.

FINAL DRAFT PERMIT: EPA prepares the final draft permit for certification by the State under Section 401.

FINAL PERMIT: EPA issues the final permit to the applicant.

NPDES permits are reviewed by the state at three junctures: the pre-public, preliminary draft permit stage; the draft permit that goes out for public review and state comment; and the final draft permit submitted by EPA for formal State certification.

Considerable effort is made to resolve issues and differences during the State's review of pre-public, preliminary draft permits. Issues are discussed verbally at the staff level, and in written comment.

The State's coastal zone consistency review takes place concurrently with the public comment period for the draft NPDES permit. Additional State comment to EPA occurs during this time, and a consistency determination is issued by the State.

EPA weighs public comments on draft permits, and sends a final draft permit to the State for certification. At this stage, the State of Alaska is prohibited under federal regulation from imposing less stringent conditions on the federal permit.

The Water Quality Standards are the basis for DEC's Section 401 certification. The coastal zone consistency review, coordinated by DGC, also embodies the Water Quality Standards in their entirety, with deference on water quality issues given to DEC. State agency reviews address additional ACMP Standards for coastal development, recreation, energy facilities, habitats, and air, land and water quality.

The State's coastal consistency determination is completed and issued by DGC prior to DEC's 401 certification. DEC is generally obligated to issue its 401 certificate within five days of the coastal consistency determination.

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THE ALASKA WATER QUALITY Standards

Next, I would like to present a overview of the State Water Quality Standards. Please refer to the document in your binders for additional information.

Water Quality Standards are mandated by the Clean Water Act. All states have them. Standards establish allowable limits in all natural waters for pollutants that result from human actions.

Alaska's Water Quality Standards Regulation is in the Administrative Code, 18 AAC 70. Alaska has had Water Quality Standards for forty years. The territorial legislature established the Alaska Water Pollution Control Board in 1949. The first Water Quality Standards were produced in 1952 in a joint effort with northwest states and British Columbia. Many Standards were derived from previous work by the U.S. Public Health Service. The protection of all waters for the highest use was established at this time. With statehood, the 1952 Standards were translated into the State Administrative Code under the Department of Health and Welfare. DEC was established in 1971 and assumed responsibility for the Standards. Minor modifications were made through 1979, when toxic criteria were first adopted by reference. The toxic criteria were updated in 1982 and 1987.

State Water Quality Standards must be approved by EPA. If disapproved, EPA is required to promulgate federal Standards for the State. The State's Triennial Review and Revision of Standards must take place every three years. The Triennial Revision has several phases: first, a public comment period to solicit proposed modifications; second, preparation of draft revisions by DEC; third, public notice and hearings on the draft revisions; fourth, promulgation after review by the Attorney General and the Lieutenant Governor; and fifth, review and approval by EPA. Revision of Standards is an ongoing process, as I will discuss later. The revision process also is depicted graphically at the back of the testimony handout [EXPLAIN].

Water Quality Standards must contain the following elements:

** BENEFICIAL USES to be protected, including public water supplies, fish and wildlife, recreation, agriculture, and industrial purposes;

** WATER QUALITY CRITERIA sufficient to protect the designated uses;

** METHODS to analyze water quality; and

** an ANTIDEGRADATION POLICY.

Alaska's Standards also contain provisions addressing Mixing Zones, Site-specific Criteria, Short-term Variances, Zones of Deposit, Reclassification, and Enforcement Discretion

The Standards apply to fresh waters, to groundwaters, and to marine waters. All waters are protected for all designated uses, except those waters that have been "reclassified."

The seven designated uses for fresh waters are Drinking Water, Aquaculture, Agriculture, Seafood Processing, Industrial, Contact Recreation, Secondary Recreation, Growth and Propagation of Fish. Shellfish, Other Aquatic Life, and Wildlife.

The seven designated uses for marine waters are Aquaculture, Seafood Processing, Industrial, Contact Recreation, Secondary Recreation, Growth and Propagation of Fish, Shellfish, Other Aquatic Life, and Wildlife, and Harvesting for Consumption of Raw Mollusks or Other Raw Aquatic Life.

The Standards cover thirteen pollutants, or groups of pollutants--Fecal Coliform Bacteria, Sediment. Turbidity, Temperature, Dissolved Oxygen, Dissolved Inorganics, pH, Color, Petroleum Hydrocarbons, Residual Chlorine, Residues, and Radioactivity, in addition to Toxic Substances. Under each pollutant, a criterion is stated for each designated use. The criterion may be either a narrative description, or a numeric limit. Because waters are protected for all designated uses, the applicable criterion for a pollutant is the most stringent of the criteria stated.

TOXIC POLLUTANTS

Toxic pollutants are a special case. The criteria for toxic "priority pollutants" are adopted by reference, either from EPA's so-called "Gold Book" or from the Alaska Drinking Water Standards, whichever value is lower.

EPA specifies two classes of criteria: those for protection of Aquatic Life and those for protection of Human Health. Aquatic Life criteria are developed for both fresh water and for salt water.

Human Health criteria are based on consumption of contaminated water and aquatic organisms. Pollutants having Human Health criteria are considered either carcinogens (that is, causing cancer) or non-carcinogens: For carcinogens, criteria are based on Human Health risk levels, which indicate the increased risk of contracting cancer for individuals with a certain exposure to a carcinogen--not the entire population, just exposed individuals. EPA specifies criteria for cancer risk levels of 10^{-5} (one-in-one-hundred-thousand), 10^{-6} (one-in-one-million), and 10^{-7} (one-in-ten-million). Establishing criteria for carcinogens requires first selecting the Human Health risk level that will be applied. For non-carcinogens, criteria are single numbers, and are not based on risk level.

The criteria for carcinogens take into account assumptions for human body weight, lifetime exposure (70 years), rate of consumption of organisms and water, bioconcentration by organisms, and the carcinogenic potency of the pollutant.

For the majority of pollutants, the Aquatic Life criteria are more stringent than the Human Health criteria, and are the ones applied in a permit. However, there are important exceptions, such as Dioxin, which has the most restrictive Human Health criterion. At the 10^{-6} risk level, the Dioxin criteria are expressed in parts per quadrillion.

Alaska has not yet adopted a Human Health risk Level. Therefore, we do not presently advocate applying Human Health criteria for carcinogens in NPDES permits. However, EPA has been applying Human Health criteria in Alaskan NPDES permits, with an assumed risk level of 10^{-6}, based on EPA's interpretation of State Water Quality Standards and expected adoption of this level in the National Toxics Rule.

In the State's Triennial Revision, Alaska will adopt a Risk Level, and adopt specific numeric criteria for toxics. This is necessary to bring the State into compliance with the Clean Water Act. Following this adoption, Alaska will apply Human Health criteria in appropriate situations, for both carcinogens and non-carcinogens.

THE NATIONAL TOXICS RULE

Under the Clean Water Act, EPA is required to promulgate federal criteria for any state which has not fully adopted toxic criteria. EPA has encouraged states since 1988 to complete the adoption of toxic criteria. EPA published guidance to states in 1988 and provided policy guidance to it Regions in 1989. EPA notified Alaska in April 1990 that we would be included in the promulgation. The draft federal regulation, known as the National Toxics Rule, was published in November 1991. The final rule recently was sent to the Office of Management and Budget for review and approval.

The sequence of steps in development of the National Toxics Rule since 1987 is shown another graphic at the back of the testimony handout.

For Alaska, the National Toxics Rule will adopt Human Health criteria for carcinogens, since we have not adopted a Human Health risk level for these compounds. In addition, Alaska is included for acute Aquatic Life criteria and a few chronic Aquatic Life criteria published by EPA after 1985. Alaska is not included for chronic Aquatic Life criteria adopted through 1985 (which are the great majority of such criteria) or for Human Health criteria for non-carcinogens. Any state later achieving compliance will be removed from the federal regulation.

In effect, the National Toxics Rule is one jump ahead of the State in adopting toxic criteria. The difficulty, however, is that the rule likely will impose criteria at the 10^{-6} risk level. These criteria are ten times more stringent than at the 10^{-5} level, and carry substantial economic implications. The State of Alaska would strongly object to blanket adoption of criteria at 10^{-6}. About half of the states instead have chosen

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the 10^{-5} level. Establishing carcinogenic criteria is a complex and technical matter, based on numerous assumptions and uncertainties. We believe examination of each carcinogenic pollutant, particularly the important ones such as Dioxin and Arsenic, is required to establish defensible criteria.

Imposing the 10^{-6} risk level is important in another respect. A provision in the Clean Water Act called "anti-backsliding" may prevent less stringent criteria from being assigned later to a facility initially complying with 10^{-6} criteria. Thus, if the pulp mills, for example, are given effluent limits based on the 10^{-6} risk level, it may be difficult or impossible to revise permits if the State should adopt criteria at a lower risk level. It is therefore essential that the State oppose blanket adoption of criteria based on the 10^{-6} risk level.

REMEDIES UNDERWAY

We are pursuing specific remedies in three areas. These are:

Accelerated revision of selected Water Quality Standards;

A Memorandum of Understanding with EPA to establish new cooperative procedures for the development, review, and issuance of NPDES permits;

Ongoing revision of Alaska's Water Quality Standards.

The accelerated revision of Water Quality Standards is expected to focus on the following items:

Adoption of a Human Health risk level, and adoption of Human Health criteria for selected carcinogens, particularly Dioxin, Arsenic, Chloroform and Cyanide;

Deletion of the 0.01 LC50 surrogate chronic toxicity provision from the toxic criteria; and addition of discretionary use of standard chronic toxicity protocols;

Modification of selected non-toxic criteria, particularly Color, Total Hydrocarbons, Sediment, and Fecal Coliform Bacteria; and

Clarification of language in the Mixing Zone provision.

Here is our timeline for the accelerated revision. We will go to public notice July 1 for 30-day public review of the draft regulation. The final regulation will be approved by the Commissioner and the Attorney General by August 15, and signed by the Lieutenant Governor by September 1. At that point the regs go to EPA for review and approval; but are in effect in the State and will be applied by EPA.

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Work has already begun on the Memorandum of Understanding (MOU) regarding the NPDES process. The MOU will set out improved cooperative procedures for developing permits, emphasizing early communication and issue resolution between the two agencies. It will provide for annual meetings to plan for short-term and long-term NPDES schedules; to identify scientific, technical and economic issues that need assessment; and to identify NPDES issues that may be controversial. It also will provide for working groups to address scientific and technical issues, and economic issues.

Completing the Triennial Revision will be a part of the ongoing revision of Water Quality Standards. The Triennial will complete the adoption of toxic pollutant criteria. In subsequent revisions, we expect to reorganize the presentation of the Standards and clean up additional language. We will re-examine and justify criteria for all of the pollutants, because they were established 10 years ago and more. Many comments on various criteria were received in the initial Triennial public comment period. Another critical detail is to update the laboratory analytical methods by which pollutants are measured, and to prepare a field manual. Also pending is clarification of the Antidegradation policy, and developing implementation procedures. With each of these measures, we will need to provide guidance and training to our field staff. Further on, we will deal with other national programs, such as standards for sediments, wetlands, and biological factors.

DEC also is addressing the issue of protection of all State waters for all designated uses. The Clean Water Act requires designated uses to be established, with criteria sufficient to protect those uses. At present, reclassification of a specific waterbody can remove uses if a rigorous analysis shows that the uses are not existing, and are not attainable. Reclassification actions currently are under discussion with the Municipality of Anchorage. During ongoing revisions of the Standards, we will be developing realistic reclassification procedures that reflect existing and planned waterbody uses. This effort will address a critical need for updating the blanket classification in the 1950s of all waters for all uses, and will establish a more flexible approach to recognizing actual uses and quality of waters. Such an approach is used in a number of other states. Modification of our present classification scheme will be an involved and lengthy process.

The measures I have described will bring up a wide variety of legal and procedural issues. We will continue to work closely in these efforts with the Division of Governmental Coordination, and with the Attorney General's Office.

SUMMARY

Here are the conclusions we would like to leave you with:

Water Quality Standards and NPDES permits are mandates of the Clean Water Act.

We are in a new generation of Standards and permits because of the requirements

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concerning toxic pollutants.

We recognize a range of problems, large and small, in the present system. The issues are complex. Perhaps inevitably in a time of change, we are somewhat behind the curve in having remedies to these problems.

The process to develop remedies is well underway, and is being accelerated. The Triennial Revision of Standards has been underway since 1990, with completion due in late 1992.

Revision and refinement of Water Quality Standards will be an ongoing process in the State.

DEC is working closely with EPA, the Governor's Office, and the Attorney General in tackling these issues.

We are especially conscious of the need for full public involvement in this process.

Thank you. We'll be glad to answer any questions you may have.

RESPONSE TO QUESTIONS CONCERNING NPDES PERMITS AND THE ALASKA WATER QUALITY STANDARDS

Prepared for the Senate Resources Committee

of the Alaska State Legislature

Alaska Department of Environmental Conservation

May 4, 1992

RESPONSE TO QUESTIONS CONCERNING NPDES PERMITS AND THE ALASKA WATER QUALITY STANDARDS

This document presents responses by the Department of Environmental Conservation and the Department of Law to questions posed by Senator Lloyd Jones, Chair of the Senate Resources Committee, in a letter dated April 27, 1992. The questions and responses concern the relationship of the Alaska Water Quality Standards to federal "NPDES" wastewater discharge permits and to the proposed federal National Toxics Rule.

Each question is stated or summarized, followed by the response. As requested, the Department of Law separately is providing responses to questions within its jurisdiction. Department of Law responses are incorporated in this document. Each response notes whether the source is "DEC" or "Law."

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(1) Would human health criteria as applied by EPA in the preliminary draft pulp mill permits also impact the fish processing, mining, and oil and gas industries and municipalities? What would the permitting and cost impacts to each of these entities be and what resources would DEC need to find out?

Response, DEC: EPA apparently is basing application of human health criteria in the preliminary draft permits on the State's adoption of federal criteria by reference in the State Water Quality Standards. However, because Alaska has not adopted a human health risk level, EPA itself has made a determination to apply criteria at the 10^{-6} risk level. Until the State adopts a risk level and numeric criteria, we presume EPA will apply the 10^{-6} criteria in permits for all industries. After the State adopts a risk level and numeric criteria, those criteria will become the operable criteria, applied in all permits.

Water quality criteria should be applied uniformly in all permits, unless site-specific criteria are justified for a given facility. The mixing zone is the main tool available to provide flexibility in the discharge limits for a given facility.

DEC has not determined cost impacts for the various industries, and does not presently have the capability for rigorous economic analysis. The Department is currently working with the University of Alaska's Environment and Natural Resources Institute to develop methodologies for the generation of economic impact information.

(2) How will the State achieve compliance with section 303(c)(2)(B)) of the Clean Water Act, which requires adoption of numeric criteria for toxic pollutants?

(a) What rulemaking process will be used?

Response, DEC: The State will comply with section 303(c)(2)(B) in two phases. Through an expedited process to be completed this summer, we will selectively adopt some of the more controversial human health criteria at issue in permits. These include dioxin, arsenic, chloroform and cyanide. The department has largely completed technical research on these pollutants, initiated over one year ago with the Triennial Revision process. Remaining criteria, both human health and aquatic life, will be adopted through an ongoing process of Water Quality Standards review and revision. The department will continue its deliberate review of options for criteria. We feel that blanket adoption of a risk level for all carcinogens--while a quicker solution--is ill-advised due to a number of assumptions we are investigating.

(b) Other than yourself as commissioner, who on your staff is the person primarily charged with responsibility for completing the process on time?

Response, DEC: Mike Menge, director of the Division of Environmental Quality, is my immediate subordinate responsible for completing the revisions.

(c) Please provide the schedule for completing the rulemaking process.

Response, DEC: The revision schedule will occur in two phases: expedited revisions and an ongoing. The expedited revision calls for public notice of the draft revisions by July 1, with a thirty-day public comment period and public hearing. The schedule calls for adoption of final regulations by the Commissioner August 15, and filing with the Lieutenant Governor by September 1. EPA has up to 60 days to review and approve the regulations.

Phase 2 really represents a process which will be ongoing for the next several years. During this time it is the Department's intention to completely modernize the Alaskan Water Quality Standards to bring them in tune with the needs of the times.

It is important to note that it is the Department's full intention to undertake this process with full public participation. We believe that these are Alaskan regulations that deserve the input and support of all the State's citizens and special interest groups.

(d) What additional resources do you need from the Administration and the Legislature to meet this schedule? Could additional resources speed up this schedule?

Response, DEC: The expedited revision process is resource intensive. The department will be expanding its existing water quality standards team to obtain help from a variety of sections, including the Department of Law for drafting assistance. For selected human health criteria, we also may be convening

smaller working groups which include outside technical experts. While additional resources would assist the department in selected areas, our real needs are to enlist the help of technical experts in the issues being addressed through the expedited process. In the FY 93 budget, the department likely will submit a request for a modest staff increase in the Water Quality Standards section (3 or 4 positions) and an amount of contractual services dollars to accomplish a wide variety of water quality and stream classification related activities.

(e) What technical research has been and is being done to respond to EPA's requirements?

Response, DEC: A great deal of review of human health criteria for the majority EPA's 126 priority pollutants has been completed, including dioxin and arsenic. Further review of cyanide and chloroform is required for adoption of human health criteria in the expedited revision of Standards. Additionally, the department has received many responses from its water quality standards working group and help group--consisting of members of industry, environmental groups, agencies and the general public--for eight key pollutants being considered for revision.

(f) What is the working arrangement with EPA to coordinating compliance with EPA's proposed toxics rule? Will EPA delay issuance of NPDES permits, and how will this affect permit applicants?

Response, DEC: It is likely that the National Toxics Rule will be promulgated before the State completes adoption of all toxic criteria. If so, the criteria in the rule will become the operable, federally-imposed criteria in the State. EPA has agreed to delay issuance of key NPDES permits now in draft until criteria issues are resolved. We presume that additional permits also would be delayed. However, permits cannot be delayed indefinitely, so the State must proceed with revision of Standards as quickly as possible. We will continue to work with EPA and facilities in reviewing current draft permits to seek site-specific remedies such as mixing zone flexibility, outfall considerations, and process considerations. It is important to note that, if reissuance of existing NPDES permits is delayed, facilities will be able to continue operating under current permits by having those permits extended administratively. For new facilities, delay in permit issuance could result in delay of start-up dates.

(g) Has DEC checked with other states that have not yet complied with section 303(c)(2)(B) of the Clean Water Act to determine what those states are doing in response to EPA's proposed rule?

Response, DEC: DEC has made contacts with Washington, Oregon and Idaho to obtain their Water Quality Standards, and has discussed the matter with EPA. We will expand this investigation as our effort continues.

(3) Has DEC determined many new industry/municipal NPDES permits may be delayed? What can DEC do to speed up the process?

Response, DEC: At this time, DEC does not have an accurate count of new and potentially delayed permits. DEC has initiated a tally of expected new and revised permits statewide. To minimize delays, DEC needs to carry out the proposed actions: the expedited revision of Standards; the ongoing revision of Standards; and the MOU on NPDES process.

(4) Has EPA considered the socio-economic impact of the proposed toxic rule, and what impact will this rule have on existing and new industry in Alaska?

Response, DEC: EPA will need to respond to the question about socio-economic impacts. Regarding the second part of the question: it would be difficult to imagine a case where imposition of more stringent permit requirements would not have a negative economic impact on both existing and potential industrial activities within the state. The severity of those impacts could only be determined by an examination of specific industries and specific permit stipulations.

(5) Has DEC or the Attorney General determined what impact socio-economic costs may have on EPA's proposed National Toxics Rule or its application to individual permittees? What impact will socio-economic costs have on DEC's rulemaking?

Response, DEC: DEC has no current information concerning impact of socio-economic costs on development of the National Toxics Rule. However, the draft rule contains the following information on the regulatory impact analysis (paraphrased). Executive Order 12291 requires EPA to perform regulatory impact analyses for major regulations--those that impose an annual cost to the economy of $100 million or more. While the National Toxics Rule is considered a major regulation, the regulatory impact analysis has been waived by the Office of Management and Budget. The reason is that the rule establishes a "legal minimum standard" where states have failed to comply with the Clean Water Act mandate. The economic impacts therefore are no different than what would occur if states acted to adopt their own standards.

The draft rule states that a meaningful estimate of costs to dischargers through NPDES permits is difficult develop due to assumptions required and inherent uncertainties. Costs incurred depend upon the type and amount of pollutants discharged and the extent of additional treatment requirements. The draft rule recognizes that increased costs may be incurred by both point sources and nonpoint sources. The draft rule also states that societal benefits are expected through reduction of risk to human health and ecological impacts on aquatic life.

DEC believes there is a flaw in EPA's rationale in that the National Toxics Rule itself indeed will have economic impact on dischargers to the extent that the

risk level and corresponding criteria imposed by the federal rule are more stringent than what would be adopted by the State.

In both rule-making and administrative processes, DEC is taking steps to reasonably and properly incorporate economic considerations.

In the next 30 days, DEC will be working with the University of Alaska Anchorage / Environmental and Natural Resources Institute to assess economic and technological impacts of the preliminary draft permits for the Ketchikan and Sitka pulp mills. In addition, steps are currently underway to create long-term procedures which would generate economic impact information. This information would then be available for all decision makers to use during their consideration of proposed revisions to Alaska's Water Quality Standards.

NPDES permits are required for pulp mills, seafood processing and other major facilities in the state. These facilities employ a significant percentage of the work force in the communities where they are located. Consequently, if an NPDES permit causes a facility to be shut down due to the cost of compliance, the impact of the permit can be significant.

Because of the Socio-Economic impact NPDES permits may have on a community, DEC is developing an MOU with EPA to develop a process to identify potentially controversial permit-related technological, scientific, or economic issues early in the process. Early identification of these potentially controversial elements will allow enough time to engage in a full analysis of the impacts before a permit is issued.

Response, Law: By statute, the Attorney General is the legal advisor to the governor and other state officers, AS 44.23.020, and consequently, would rely upon DEC or other state agencies to evaluate the socio-economic impacts of the proposed National Toxics Rule.

From a legal standpoint, there are two reasons why the proposed rule may result in greater costs to industry than state-adopted water quality standards for toxic pollutants. First, subject to EPA approval, the state may adopt standards less stringent than the proposed rule. 56 Fed. Reg. 58,433, 58,436. Second, procedural mechanisms such as variances and the site-specific criteria process that are available under state regulations will not be available for the toxic pollutants subject to the proposed federal standards without additional federal rulemaking on a case-by-case basis. Id. at 58,433. The preamble to the proposed rule states:

> EPA cautions States and the public that promulgation of a Federal rule removes most of the flexibility available to States for modifying their standards on a discharger-specific or stream-specific basis. For example, variances, site-specific criteria and schedules of compliance

> actions pursuant to State law for federally promulgated criteria are precluded. Each of these types of modifications would require federal rulemaking on a case-by-case basis to change the Federal rule for that State.

Id. These procedures, along with mixing zones and the adjustment of designated uses, are legal mechanisms by which socio-economic considerations can be factored into the permitting process. See, e.g., Id. at 58,441.

(6) It is my understanding that the EPA Regional Administrator has commented that Alaska's water quality standards are more stringent than necessary. If so, in what regards? Do you agree with this? Will these problems be addressed during DEC's rulemaking process?

Response. DEC: DEC believes the Regional Administrator's comments have been made only in regard to selected elements of the Water Quality Standards: the sediment standard for fresh waters; the color standard for marine waters; specific language dealing with chronic toxicity protocols; and the fecal coliform standard for contact recreation. Since the State has not adopted a standard for dioxin or other carcinogenic pollutants, her comments did not address these compounds. The department feels that some of the comments were based on misinterpretation of the State's discretion in its water quality standards, particularly with respect to authorizing mixing zones for carcinogenic compounds. This misinterpretation of the State's mixing zone regulations since has been corrected. The department does not agree, as a general statement, that its standards are more stringent than the those of the federal government. This is because in the vast majority of cases, the department has adopted criteria identical to the federal criteria.

Another area where the State Standards are "too stringent" is the classification of all waters for the protection of all designated uses. Please see the response to Question 10.

These problems will be addressed during DEC's rulemaking process. Our proposed revisions to the water quality standards are based on three objectives: (1) address human health criteria required under the Clean Water Act; (2) revise selected criteria that are scientifically unsupported or do not reflect currently accepted methods; and (3) reduce ambiguity and clarify language in the standards. The specific parameters addressed are included in the attachments.

(7) Explain how the impact on receiving water quality from applying human health criteria for toxic pollutants differs from requiring an entity to meet drinking water quality standards. If the human health criteria are more stringent for specific parameters, does DEC intend to make drinking water quality standards more

stringent? What industries and municipalities would be impacted by such DEC action and at what cost to those industries and municipalities?

Response, DEC: EPA's proposed human health criteria are stricter than the State drinking water maximum contaminant levels (MCLs) for only a few contaminants. For instance, the drinking water MCL for arsenic is 50 micrograms per liter (ug/l). The proposed EPA human health criterion (for consumption of fish and water) for arsenic is 0.018 ug/l at the 10^{-6} risk level. The stricter human health criteria would be more protective of water quality, but also substantially more difficult for dischargers to meet in permits.

DEC does not propose to change the drinking water MCL's because of the promulgation of the proposed human health criteria. Human health criteria are based on protection human health from drinking water and fish consumption or fish consumption alone. Drinking water MCL's are already designed to protect human health for consumption of water. MCL's take the economics of water treatment into account.

(8) Has DEC or the Attorney General examined the legal basis for EPA's application of the draft toxics rule to the pulp mills' preliminary draft permits?

Response, DEC: EPA asserts that the basis for criteria in the preliminary draft pulp mill permits is not the draft National Toxics Rule, but the State Water Quality Standards. However, it is clear that, because Alaska has not adopted a human health risk level, EPA itself has made a determination to apply criteria at the 10^{-6} risk level. These criteria, based on the EPA "Gold Book," are not necessarily the same as updated criteria in the draft toxics rule.

Response, Law: The proposed National Toxics Rule has not as yet been formally adopted by EPA. Therefore, it has no legal effect and cannot provide a legal basis for the pulp mill permit requirements. 5 U.S.C.A. § 553 (1977). EPA's preamble to the proposed rule acknowledges as much: "Formally adopted standards form the legal basis for including water quality-based effluent limitations in NPDES permits to control toxic pollutant discharges." 56 Fed. Reg. 58,421. The proposed rule, once adopted, will become effective 30 days after publication in the Federal Register. See 5 U.S.C.A. § 553(d).

(9) It is my understanding that EPA has issued 31 draft permits for placer mining operations that include EPA's proposed rule. Is this correct? Does DEC plan to object to the inclusion of the draft rule requirements in these permits?

Response, DEC: EPA sent to DEC a pre-public, preliminary draft NPDES permit for 33 placer mining discharges for review. The preliminary draft permit contained an arsenic effluent limit of 50 ug/liter, which is based on the State drinking water MCL. DEC staff received verbal agreement from EPA that this 50 ug/liter limit also would be incorporated in the draft

permits for public review. However, if EPA were to publish or send to DEC draft permits with an arsenic limit based on the proposed toxic rule (0.018 ug/l), DEC would strongly object, since there would be no basis for the effluent limit in State or federal regulations. It also is the State's opinion that arsenic effluent limit of 0.018 ug/liter is unnecessarily stringent to protect human health.

(10) Does the Attorney General agree with EPA's legal justification for promulgating water quality standards for the State of Alaska? What is the difference between "designated" and "existing" uses? How are most waters of the state "designated?" Is this classification too stringent under existing circumstances?

Response, DEC: In short, "designated" uses are those named in the State Water Quality Standards, for which criteria are expressed for each pollutant. By federal law and regulation (40 CFR 131), designated uses must include public water supplies, protection of fish, shellfish and wildlife, recreation on and in the water, agricultural, industrial, and other purposes including navigation. "Existing" uses are uses "actually attained" in a waterbody on or after November 28, 1978. Designated uses are not necessarily existing uses, but rather may be potential uses.

Except for the few waters that have been "reclassified" to eliminate certain uses, all waters are classified for the protection of all uses. Thus, for a given pollutant, the criteria that apply are the most stringent criteria among all designated uses.

Existing uses have little bearing except when a waterbody is proposed for reclassification. Then a Use Attainability Analysis must be conducted to show that designated uses proposed for removal are not existing uses (since 1978), and further, are not attainable.

In some cases, the classification of a waterbody for all uses is "too stringent." This determination would depend on analysis of each situation. The matter of classification will be addressed in the ongoing revision of Water Quality Standards.

Response, Law: We reviewed EPA's legal justification for promulgating federal water quality standards for priority toxic pollutants for the State of Alaska. In general, as explained below, we agree with EPA's analysis that it has statutory authority to adopt these standards for the state. Please refer to our response to question no. 16 for comments on 56 Fed. Reg. 58,476-77, the section pertaining to the State of Alaska.

Under section 303(c)(2)(B) of the Clean Water Act, the state is required to adopt numeric criteria for all pollutants on the section 307(a) list of priority toxic pollutants for which section 304(a) EPA criteria recommendations ("Gold Book" recommendations) are available, the discharge or presence of which could

reasonably be expected to interfere with designated uses. 33 U.S.C.A. § 1313(c)(2)(B). Section 303(c)(2)(B) requires the state to adopt numeric toxic pollutant criteria whenever the state reviews its water quality standards, which under section 303(c)(1) must occur at least once every three years beginning October 18, 1972. The Clean Water Act was amended in 1987, and therefore, in the state's first triennial review occurring after 1987, the state is required to adopt numeric criteria for priority toxic pollutants. As the state has not completed this triennial review, section 303(c)(4)(B) provides EPA the statutory authority to adopt water quality standards to meet the requirements of the Clean Water Act.

After the promulgation of the National Toxics Rule, if the state adopts standards for toxic pollutants which receive EPA approval, removal of the state from the National Toxics Rule will require federal rulemaking procedures. If the state adopts standards no less stringent than the federal rule, EPA will withdraw the federal rule without a notice and comment rulemaking. If, on the other hand, the state adopts standards that are less stringent than the federal rule, EPA will propose to withdraw the rule with a notice of proposed rulemaking and provide for public participation. 56 Fed. Reg. 58,433.

You also asked about the differences between designated and existing uses. Water quality standards consist of the designated uses of the navigable waters involved and the water quality criteria for those uses. "Designated uses" include water supply; water recreation; growth and propagation of fish, shellfish, other aquatic life, and wildlife; and harvesting for consumption of raw mollusks or other raw aquatic life; regardless of whether the use is attained. See 33 U.S.C.A. § 1313(c)(2); 40 C.F.R. § 131.3; 18 AAC 70.020. "Existing uses" are "those uses actually attained in the water body on November 28, 1975, whether or not they are included in the water quality standards." 40 C.F.R. § 131.3(e) EPA selected November 28, 1975 as an index date because it promulgated its original water quality standards regulation on that date. EPA, Introduction to Water Quality Standards 5 (Sept. 1988). An existing use cannot be modified unless uses are added that require more stringent criteria; designated uses, however, may be changed by means of a procedure known as a "use attainability analysis." 40 C.F.R. § 131.10(g).

(11) Has EPA or OMB determined whether EPA's proposed regulation falls within the President's 90-day moratorium on new regulations?

Response. Law: The President's 90-day moratorium on new federal regulations began on January 28, 1992 and concluded on April 27, 1992. Memorandum from the President for Certain Department and Agency Heads 2-3 (Jan. 28, 1992) (President's January 1992 Memorandum). On April 29, the President extended the moratorium for another 120 days. The White House, Office of the Press Secretary, Fact Sheet on the President's Regulatory Reform Initiative (Apr. 29, 1992) (Apr. 1992 Fact Sheet). The moratorium applies to all federal regulations except those

subject to a statutory or court-ordered deadline. A number of other exceptions are also listed in the President's January 1992 Memorandum, none of which appear applicable to the proposed National Toxics Rule.

It is arguable whether the proposed rule is subject to the moratorium. On the one hand, the 1987 amendments did not set a specific deadline for federal action if the states failed to adopt standards for priority toxic pollutants. It can be argued that without a clear statutory deadline for the promulgation of federal standards, the President's moratorium ought to preclude adoption of a final rule. On the other, section 303(c)(4) of the Clean Water Act requires the EPA to adopt any new standard it publishes under that section within 90 days of publication. This statutory provision may provide the requisite statutory deadline to exempt the proposed National Toxics Rule from the moratorium. EPA has requested an exemption from the Office of Management and Budget (OMB). Telephone conversation with Barry Allen, EPA Office of Policy, Planning, and Evaluation (May 1, 1992).

The proposed National Toxics Rule was transmitted to OMB for formal clearance on April 16, 1992. Typically, OMB requires 10 to 30 working days to review a regulation; although, given the controversial nature of the proposed rule, additional time may be required. Telephone conversation with David Sabock, EPA Office of Science and Technology (Apr. 28, 1992). Whether the socio-economic impacts of the proposed rule will play a role in determining whether the rule is subject to the moratorium is unclear. OMB previously waived regulatory (economic) impact analysis for the proposed National Toxics Rule. 56 Fed. Reg. 58,440. However, the President has "requested that all federal agencies prepare a thorough cost-benefit analysis of each major rule issued during the moratorium period." Apr. 1992 Fact Sheet. See also, "Federally Imposed Toxic Pollution Limits Said Unlikely to Be Affected by Moratorium," BNA Environmental Reporter 2374 (Feb. 14, 1992).

(12) Has DEC or the Attorney General determined whether the State or EPA interpretation of the State's Water Quality Standards is entitled to primacy?

Response. Law: You asked whether the state or the EPA's interpretation of the state's water quality standards is entitled to primacy. We found no court decisions that squarely address this question.

The Clean Water Act expressly recognizes the primacy of the states in control of water pollution:

> It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator [of EPA] in the exercise of his authority under

> this chapter [the Clean Water Act].

33 U.S.C.A. § 1251. In Miners Advocacy Council v. State, 778 P.2d 1126, 1133 (Alaska 1989), cert. denied, 493 U.S. 1077 (1990), the Alaska Supreme Court reviewed the legislative history of the Clean Water Act and concluded that the states have broad power and discretion in the prevention and control of water pollution. The court also quoted the following passage from Mobil Oil Corp. v. Kelley, 426 F. Supp. 230, 234 (S.D. Ala. 1976):

> A review of the legislative history of the [Clean Water Act] reinforces the plain meaning of the Act itself to the effect that Congress intended the states to play a paramount role in the certification of potential polluters.

778 P.2d at 1133.

The preamble to the proposed National Toxics Rule also recognizes the primacy of the states. For example, the preamble states, "EPA has demonstrated extensive deference to State primacy and a willingness to provide broad flexibility in their adoption of State standards for toxics." 56 Fed. Reg. 58,431; see also, Id. at 58,430 (referring to "the principle of State primacy"); Id. at 58,433 ("[T]he water quality standards program has been established with an emphasis on State primacy . . . EPA prefers that States maintain primacy . . . .").

Given the statutory policy of state primacy and an administrative policy of deference to the states with respect to water quality standards, and given that the state prepares, reviews, and revises its water quality standards, the state should be given deference in its interpretation of its standards and regulations, so long as its interpretation is consistent with the Clean Water Act. To the extent EPA finds a standard to be ambiguous or susceptible to an interpretation that would be inconsistent with the Clean Water Act, it has the opportunity to disapprove the standard within 90 days of the state's submission of the standard to EPA for approval. 33 U.S.C.A. § 1313(c)(3). Based on the above authorities, it would appear that if EPA has approved a state standard, and its subsequent interpretation is at odds with the state's interpretation, EPA's interpretation should not be accorded deference, unless the state's interpretation is plainly inconsistent with the Clean Water Act.

However, in two recent decisions, the United States Supreme Court emphasized the primacy of the federal government in the NPDES permitting process. United States Dep't of Energy v. Ohio, ___ U.S. ___, 60 U.S. 4325 (Apr. 21, 1992); Arkansas v. Oklahoma, ____ U.S. ___, 112 S.Ct. 1046, 117 L.Ed.2d 239, 60 U.S.L.W. 4176 (Feb. 26, 1992). The Ohio opinion, for example, begins with the statement that Section 402 of the Clean Water Act "gives primary authority to issue such permits to the United States Environmental Protection Agency . . . ." 60 U.S.L.W. at 4326.

In the Arkansas decision, the Court had occasion to address EPA's interpretation of Oklahoma's state water quality standards, but did not reach the question you have asked. Nonetheless, it may prove helpful to summarize some of the Court's observations. Because state standards are promulgated by the states with substantial guidance from EPA and are approved by EPA, the Court characterized state water quality standards as part of the federal law of water pollution control, at least insofar as interstate water pollution is concerned. 60 U.S.L.W. at 4181. Whether the Court would reach the same conclusion for coastal waters or wholly intrastate waters is not clear. Because the Oklahoma standards affected another state and therefore had a "federal character," the Court concluded that "EPA's reasonable, consistently held interpretation of those standards is entitled to substantial deference." Id. The Court found EPA's interpretation of Oklahoma's standards both reasonable and "consistent with the purposes and principles of the Clean Water Act," and its application of the standards, sound. Id. Further, Oklahoma did not dispute EPA's interpretation of its state standards. Id. The Arkansas decision indicates that a state's interpretation of its water quality standards is to be considered, and that EPA's interpretation of the state's standards is to be evaluated to determine whether it is reasonable, consistently held, and consistent with the purposes and principles of the Clean Water Act.

(13) Why do the State Water Quality Standards apply Alaska Drinking Water Standards to marine waters, which do not serve as drinking water?

Response, DEC: DEC can only say that the application of Drinking Water Standards to marine waters is a historical artifact. This concern will be eliminated by adoption in the Triennial Revision of specific numeric criteria for each pollutant in place of the present adoption by reference that leads to this confusion.

(14) What is the status of DEC's rulemaking on dioxin in light of EPA's pending reassessment of dioxin's toxic effects and appropriate criteria? Do the mills run a substantial risk of being driven out of business to achieve an undetectable dioxin standard that may not be necessary to protect human health? Has DEC determined what other parameters listed by EPA for promulgation as State criteria may also need "reassessment" based on technical data?

Response, DEC: DEC has put considerable effort into review of information concerning dioxin toxicity and criteria, and is well aware of EPA's reassessment of dioxin. DEC will continue its independent review, and will propose dioxin criteria as one of the main factors in the expedited revision of Water Quality Standards scheduled to go to public notice July 1, 1992. The State's proposed criteria will be based on current scientific information, and assumptions appropriate to Alaska. Our approach to setting criteria is to "reassess" each carcinogen to determine appropriate criteria levels. Other carcinogens, such as arsenic, clearly need individual assessment. Our current view is that EPA's