



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

Reply To
Attn Of: OWW-131

OCT 27 2005

Re: Proposed Changes to Alaska Water Quality Standards: REVISED MIXING ZONE POLICY
If Interested, Please Submit Written Comments to State of Alaska by December 19, 2005, and
Notify EPA of Interest in Government-to-Government Consultation by December 23, 2005

On October 17, 2005, the State of Alaska, Department of Environmental Conservation (DEC) proposed to revise the section of its water quality standards (WQS) that sets forth the State's "mixing zone" policy. Mixing zones are limited areas or volumes of water where initial mixing and dilution of wastewater occurs. Within an authorized mixing zone, numeric water quality criteria may be exceeded but acutely toxic conditions are prevented. In general, mixing zone policies may specify circumstances under which a mixing zone may or may not be authorized. A policy may also specify conditions that may be placed on mixing zones to help ensure that the uses of the receiving water (e.g., growth and propagation of fish, shellfish, other aquatic life, and wildlife) are protected.

The purpose of this letter is to:

- (1) notify you of the State's proposed revisions and to explain how you can provide comments to DEC on the proposed revisions; and
- (2) offer you the opportunity to initiate consultation with EPA regarding our anticipated review and approval or disapproval of these revisions.

The remainder of this letter discusses these two issues.

(1) Alaska's proposed revisions and how to provide comments to the State

Alaska WQS currently has a mixing zone policy in Title 18 of the Alaska Administrative Code (AAC), Chapter 70, Sections 240 through 270 (18 AAC 70.240-270). The current policy includes the factors DEC will consider when deciding whether to authorize a mixing zone, circumstances under which mixing zones are not allowed, limits on the sizes of mixing zones, and the information that applicants for mixing zones must submit to DEC. For your convenience, a copy of the State's current mixing zones policy is enclosed (Enclosure A).

DEC proposed revisions to the existing policy on October 17, 2005. According to DEC's public notice of the proposed revisions, the revisions would:

1. expand the prohibition on mixing zones in fish spawning areas in streams, rivers, and other flowing fresh waters to include lakes;
2. create exemptions to the prohibition on mixing zones in fish spawning habitat
3. reorganize the mixing zone regulations to improve clarity and reduce redundancy;
4. simplify some technical provisions including ones dealing with risk assessment, flow calculations, and mixing zone models; and
5. update a reference to federal technology-based effluent limitations.

The public notice also states that the proposal includes a new definition for shellfish and provides for consideration of measures that would mitigate the potential adverse effects of mixing zones on aquatic resources. A copy of the State's public notice, which also contains the proposed text of the revised policy, is enclosed (Enclosure B). DEC has also provided for public review a comparison of the current and proposed revised mixing zone policy; for your convenience, this comparison is also enclosed (Enclosure C). DEC has prepared, for informational purposes, draft guidance on implementation of the proposed policy (Enclosure D), as well as additional fact sheets and background information on the proposed revision. These additional materials are available at the following web site:
<http://www.dec.state.ak.us/water/wqsar/trireview/mixingzones.htm>.

DEC is currently requesting comments from those whose interests would be affected by these proposed revisions. DEC is also holding a public hearing on December 5, 2005 at which comments may be submitted, and three workshops (Juneau, November 30; Fairbanks, December 1; and Anchorage, December 5) to discuss these revisions. EPA encourages you to provide comments to DEC if you have an interest or concerns regarding their proposed changes. ***Comments must be submitted to DEC no later than 5:00 pm on December 19, 2005. Please see Enclosure B for details on the workshops and public hearing, and on submitting comments to DEC.***

(2) Government-to-government consultation with EPA

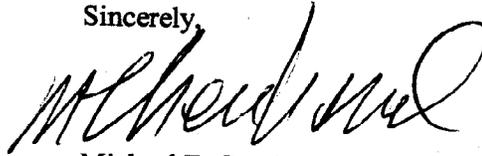
As required by the Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*), revisions to State WQS are subject to EPA review and approval or disapproval ("action") based on whether the revised WQS are consistent with the CWA and the implementing federal regulations. If the State finalizes and adopts the proposed changes to the mixing zone policy, the State must submit the revised policy to EPA for review and approval or disapproval.

In preparation for our anticipated review and action, we wish to offer Alaska Tribes the opportunity to initiate consultation with EPA regarding this anticipated action. To this end, I ask that ***if you wish to initiate consultation with us, please notify Lisa McGuire, EPA's project leader for the mixing zone review, no later than December 23, 2005.*** You may reach Ms. McGuire directly by phone at (206) 553-0226, by fax at (206) 553-0165, or by e-mail at mcguire.lisa@epa.gov. You do not need to provide detailed comments regarding your concerns to EPA at that time, but you are welcome to do so. The purpose of notifying Ms. McGuire is to let EPA know that you may wish to consult with EPA regarding EPA's action, and to discuss options and schedules for conducting our consultation.

In addition to the DEC public notice materials enclosed (Enclosures A, B, and C), I am providing a copy of EPA guidance (Enclosure E) providing general background and explanations of types of provisions that may be found in State mixing zone regulations. I hope that these materials are useful to you as you consider whether to provide comments to DEC and whether you may wish to initiate consultation with EPA.

If at any time you have any questions regarding this letter, please contact me at (206) 553-7151 or Ms. McGuire at (206) 553-0226. Thank you for your attention.

Sincerely,



Michael F. Gearheard, Director
Office of Water and Watersheds

Enclosures

- (A) Current mixing zone policy within Alaska Water Quality Standards (18 AAC 70.240-270), also available at: <http://www.dec.state.ak.us/regulations/pdfs/70mas.pdf>.
- (B) DEC public notice, "Proposal to adopt Regulation Changes dealing with Chapter 70 Water Quality Standards – Mixing Zones," Publish Date 10/17/05, also available at http://www.dec.state.ak.us/public_notices.htm. This public notice also contains the proposed revised text of the mixing zone policy.
- (C) DEC document, "Comparison of the Existing Regulations, the 2004 Proposed Regulations, and the 2005 Proposed Regulations," also available at: http://www.dec.state.ak.us/water/wqsar/trireview/pdfs/current_2004_2005comparison.pdf.
- (D) DEC draft guidance, "Implementation Guidance: 2005 Proposed Mixing Zone Regulations Draft," also available at: <http://www.dec.state.ak.us/water/wqsar/pdfs/mxguidance100405.pdf>.
- (E) EPA guidance on mixing zones in EPA, 1994: "Chapter 5. General Policies" IN: Water Quality Standards Handbook: Second Edition. EPA-823-B-94-005a. Also available at: <http://www.epa.gov/waterscience/standards/handbook/>.

cc: Nancy Sonafrank
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