



Update on Alaska's Mixing Zone Regulation

EPA–Tribal Government-to-Government Consultation
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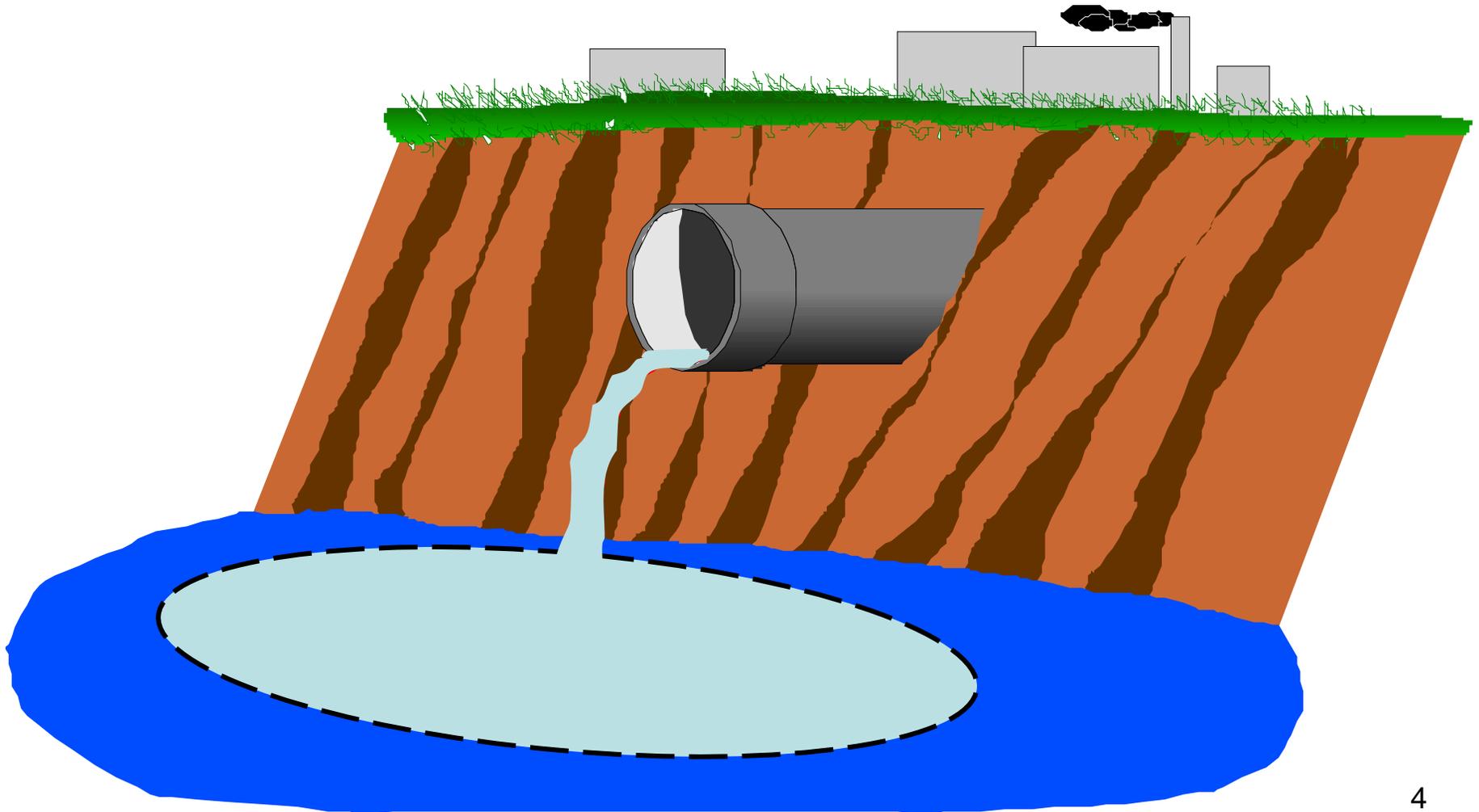
Presentation overview

- **History/status of Alaska mixing zone regulation**
- **State and EPA roles in water quality standards**
- **Key aspects of revised regulation**
- **What we have heard Tribes say about regulation**
- **Next steps**

Basic points about mixing zone regulations

- Regulations define conditions under which State may authorize mixing zones, e.g.:
 - design considerations
 - limits on locations, sizes, pollutants
 - impacts that should be avoided
- Most States have mixing zone regulations
- EPA has guidance for mixing zone regulations

“Mixing zone” schematic



History/status of Alaska mixing zone regulation

- Established in Alaska standards in 1973
- Revised several times (e.g., 1994/6)
- DEC proposed changes in 2004
- DEC again proposed changes in 2005
 - adopted into State law on March 2006
 - expected to be submitted to EPA for review as required by Clean Water Act

State and EPA roles in water quality standards

- **Clean Water Act gives States primary role to develop standards**
- **States must include in their standards:**
 - **designated uses**
 - **criteria to protect the uses**
 - **“antidegradation” policy**
- **States may also include “general policies” in their standards**

State and EPA roles in water quality standards

- **Clean Water Act requires EPA to review and approve or disapprove State standards**
- **EPA must evaluate whether standards meet requirements including those relating to:**
 - **adequate scientific basis**
 - **protection of designated uses**
 - **process used by State to adopt standards**

Key aspects of revised Alaska mixing zone regulation

- Establishes design guidelines
 - treatment requirements
 - size limits
 - critical design flows

Key aspects of revised Alaska mixing zone regulation

- Prohibits harm to key resources or uses
 - subsistence fish and shellfish harvesting
 - water supply and contact recreation
 - freshwater spawning areas for Pacific salmon
 - endangered species

Key aspects of revised Alaska mixing zone regulation

- Limits impacts within mixing zone from:
 - bioaccumulative substances
 - substances that pose health risks (e.g., carcinogens)
 - substances that impart bad taste, color, or odor to harvested resources

Key aspects of revised Alaska mixing zone regulation

- Has draft implementation guidance that discusses issues including:
 - consideration of adverse affects on aquatic life
 - determination of human health risk
 - water quality within the mixing zone
 - computer models, flow calculations, water rights

What we have heard Tribes say about revised regulation

- **“Revised mixing zone regulation should not be approved”**
 - **“revisions could allow mixing zones in sensitive areas that support the Traditional way of life”**
 - **“mixing zones in such areas could threaten Traditional uses of the waters”**

What we have heard Tribes say about revised regulation

- “There is inadequate protection for spawning areas”
 - “loosens protection for freshwater spawning”
 - “no explicit protection for marine/estuarine spawning”
 - “‘loopholes’ (e.g., pre-spawning mixing zones)”
 - “no process for obtaining Traditional/local knowledge of spawning areas”

What we have heard Tribes say about revised regulation

- “There is little or no information on how key provisions will be implemented”
 - “what monitoring data is required?”
 - “what documentation of use is needed?”
 - “how will Traditional knowledge be weighed?”

EPA responses

(Tribal comment in quotes, EPA response in orange)

- “Revised mixing zone regulation should not be approved”
 - *EPA’s regulations and guidance allow for State mixing zone regulations*
 - *EPA’s decision will consider:*
 - *Mixing zone regulation package submitted by State*
 - *EPA’s water quality standards regulation and guidance*
 - *Input from Tribal consultation*
 - *Input from other important sources (e.g., Endangered Species Act consultation)*

EPA responses

(Tribal comment in quotes, EPA responses in orange)

- “There is inadequate protection for spawning areas”
 - *regulation includes several protections for spawning areas*
 - *EPA has provided guidance language to DEC for incorporating Traditional knowledge in spawning area determinations*
 - *mixing zone regulations must protect designated uses in the waterbody as a whole*

EPA responses

(Tribal comment in quotes, EPA response in orange)

- “There is little or no information on how key provisions will be implemented”
 - *EPA has asked DEC to expand its implementation guidance*
 - *EPA has provided guidance language to DEC for obtaining and considering Tribal input when implementing regulation*
 - *EPA will consider State’s guidance as we review the regulation*

Next steps

- **DEC submits revised regulation to EPA**
 - copy of regulation
 - implementation guidance
 - other supporting material
- **EPA shares package with Tribes**
- **EPA schedules conference calls with Tribes**
- **EPA takes action within 60-90 days of State submittal**

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