



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

AUG 25 2006

Reply To
Attn Of: OWW-131

«AddressBlock»

Re: Alaska's Proposed Changes to the "Natural Condition" Based Water Quality Criteria Provisions – Please Notify EPA by October 6, 2006 if You Wish to Initiate Government-to-Government Consultation with EPA

«GreetingLine»

On August 16, 2006, the State of Alaska, Department of Environmental Conservation (DEC) proposed changes to the portions of its water quality standards (WQS) that specify the procedures and requirements DEC uses to develop water quality criteria that are based on the "natural condition" of a water body. The purpose of this letter is to notify you of this proposed change and to invite you to contact us if you wish to initiate government-to-government consultation with EPA regarding this matter.

Background

All States adopt as part of their WQS water quality criteria that will protect the designated uses of the waters to which they apply. These criteria may be numeric values or they may be narrative statements, and may be established for all waters in the State designated for a particular use, or they may be established on a site-specific basis. In all cases, criteria must be based on sound scientific rationale.

DEC is currently proposing to change the procedures and requirements it uses to develop criteria that are based on the site-specific, "natural condition" of the water body¹. Alaska's current WQS provide that when a water body is demonstrated to have naturally-occurring pollutant concentrations that are higher than the corresponding State water quality criteria, then the naturally-occurring pollutant level may replace the State criteria for that water body. DEC is proposing changes to the regulatory provisions that specify how this is to be done. DEC is also proposing to adopt regulatory guidance describing in detail what is considered a natural condition and how a criterion based on the natural condition will be used in DEC authorizations and decisions such as discharge permits, impaired water body listings, and water body recovery plans. The public notice for the proposed changes can be found at the following web site:

¹ Alaska WQS define "natural condition" as "any physical, chemical, biological, or radiological condition existing in a waterbody before any human-caused influence on, discharge to, or addition of material to, the waterbody" (18 AAC 70.990(41)).

<http://www.dec.state.ak.us/water/wqsar/trireview/naturalconditions.htm>. DEC is accepting comments on the proposed revisions through October 2, 2006. EPA encourages you to provide comments to DEC if you have an interest in this proposed revision. Information on how to provide comments is available at the web site indicated above.

Government-to-Government Consultation

In addition, 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 natural conditions criteria provisions as described on the previous page, the changes would not be effective for CWA purposes unless the State submits them to EPA for review and EPA approves them.

In preparation for our anticipated review and action, we wish to offer federally-recognized Alaska Tribes the opportunity to initiate government-to-government consultation with EPA regarding this anticipated action. ***If your Tribal government wishes to initiate government-to-government consultation, notify Lisa McGuire, EPA's coordinator for Alaska WQS review, no later than October 6, 2006.*** You may reach Ms. McGuire by phone at (206) 553-0226, by fax at (206) 553-0165, or by e-mail at mcguire.lisa@epa.gov. The purpose of notifying Ms. McGuire is to indicate that your Tribe may wish to consult with EPA regarding EPA's action, and to discuss options and schedules for conducting government-to-government consultation.

If 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

cc: Jim Powell
Alaska Department of Environmental Conservation
Water Quality Standards Section Manager
610 University Ave.
Fairbanks, AK 99709-3643