Dear Ms. Colvin:

These comments are presented on behalf of Alaska Community Action on Toxics, Alaska Center for the Environment, Alaska Conservation Alliance, Alaska Youth for Environmental Action, Cook Inletkeeper, Denali Citizens Council, Northern Alaska Environmental Center, Southeast Alaska Conservation Council, collectively representing thousands of Alaskans.

Alaska Community Action on Toxics (ACAT) is a statewide non-profit public interest environmental health research and advocacy organization dedicated to protecting environmental health and achieving environmental justice. Alaska Community Action on Toxics mission: to assure justice by advocating for environmental and community health. We believe that everyone has a right to clean air, clean water and toxic-free food. We work to stop the production, proliferation, and release of toxic chemicals that may harm human health or the environment.

Alaska Center for the Environment (ACE) is a non-profit grassroots environmental education and advocacy organization. ACE’s mission is to enhance Alaskans’ quality of life by protecting wild places, fostering sustainable communities and promoting recreational opportunities. ACE advocates for sustainable policy on behalf of 6,000 Alaskan members and empowers our membership to participate in the public process.

Alaska Conservation Alliance, founded in 1997, the Alaska Conservation Alliance is a statewide non-profit 501(c)(3) organization whose primary mission is to protect Alaska's natural environment through voter education, engagement, and advocacy. The Alliance is the only
statewide coalition group unifying Alaska's conservation community and coordinating statewide grassroots into a powerful, cohesive force to impact public policy. We also educate policy makers and the public about environmental issues facing Alaska.

**Alaska Youth for Environmental Action** (AYEA) inspires and trains diverse youth leaders to impact environmental issues through community action projects and campaigns; skills training in leadership, environmental education, civic engagement, and community organizing; and green jobs that sustain our communities and future. AYEA is a program of the National Wildlife Federation with community chapters around the state and individual youth members from over fifty communities. Alaska Youth for Environmental Action’s mission is to educate, inspire, and take action on issues facing our diverse communities.

**Cook Inletkeeper** is a community-based nonprofit organization formed by Alaskans in 1995 to protect water quality and salmon habitat. Inletkeeper combines science, advocacy and education to give Alaskans the tools they need to press for more sustainable uses of our magnificent natural resources.

**Denali Citizens Council** (DCC) is a grassroots citizens organization with over 300 members, most of whom live in the Denali Borough. DCC works to promote the natural integrity of Denali National Park and Preserve and foster responsible planning in the greater Denali park community.

**The Northern Alaska Environmental Center** is a grassroots organization of over 1,500 contributing members based in Fairbanks that promotes conservation of the environment and sustainable resource stewardship in Interior and Arctic Alaska through education and advocacy.

**Southeast Alaska Conservation Council** (SEACC) is a member-based organization with nearly 1,900 members, including Alaskans who participate in the commercial, recreational, and customary and traditional use of fish and wildlife, own tourism and recreation businesses; and run small sawmills. SEACC is dedicated to the conservation of natural resources in Southeast Alaska and elsewhere while providing for balanced, sustainable use of our region's resources.

The above listed organizations assert that the proposed pesticide regulations would weaken democratic participation in decisions that affect water quality, fish habitat, and public health. Alaskans have a right-to-know and right to participate in decisions about pesticide spraying on our public lands. Our organizations and the public have interests at stake that are comprehensively grounded in the Constitution of the State of Alaska and those interests cannot be taken away, without due process: notice and an opportunity to be heard. Since the pesticide spraying may affect land, water and fish that are public trust assets, the public is entitled to notice and the ability to comment before their reasonable concurrent use is affected. If these regulations are implemented, ADEC would abrogate its responsibility to protect the environment and human health.
According to Cox et al. with associated references (2006): “Pesticides are toxic chemicals that are both ubiquitous and unique. Unlike other toxic chemicals, they are designed to kill, repel, or otherwise harm living organisms [U.S. Environmental Protection Agency (EPA) 2005c], and they are one of the few toxic substances that are intentionally applied to the environment [National Research Council (NRC) 1993]. Monitoring programs conducted in the United States have found pesticides in ‘one or more samples from every stream sampled’ (Gilliom et al. 2006), in > 70% of common foods [U.S. Department of Agriculture (USDA) 2006], and ‘in over half of adults and children (Centers for Disease Control and Prevention 2005).’” Given their inherent toxicity and tendency to disperse from the area of application, the State should ensure full public participation in decisions about the use of pesticides and do everything in its power to minimize harm to the environment and public health from exposure to pesticides. We oppose the proposed regulation changes because we find it unacceptable that these proposed pesticide regulations would:

- Eliminate permit requirements for the spraying of pesticides by state agencies on state public lands and rights-of-ways. This, among other things, means that there would be no requirement to identify water bodies, water courses, private drinking water sources, or to establish buffers necessary to safeguard the state’s water resources, sensitive waterways, drinking water sources, fish and wildlife habitat, or public health;
- Prevent public participation in decisions about pesticide spraying on public lands and rights-of-way—with no public hearings, opportunity for written public comments, or way to appeal bad decisions. This would deprive Alaskans of our right to speak out about potential harm to our drinking water, fishing streams, lands held in the public trust, subsistence uses, dangers to our children and public health;
- Promote the application of potentially harmful pesticides and herbicides without consideration of toxicity and effects to human health and the environment;
- Weaken public right-to-know requirements to notify the public about places where the pesticides will be sprayed.

Given the serious nature of the proposed changes to the pesticide regulations, we reiterate our assertion that the Alaska Department of Environmental Conservation must extend the public comment period and hold public hearings. The current comment period is insufficient because it is concurrent with the time that most Alaskans are busy with subsistence activities, commercial fishing, family activities, travel, or running businesses in the busy summer season. Alaskans should have adequate opportunities through public hearings to voice their concerns about these significant and detrimental regulatory changes.

In addition to the concerns stated above, the proposed regulations are ill-conceived and ill-advised based on our assessment as follows:

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• ADEC would essentially relinquish its regulatory and oversight authority because there would be no requirement for the applicator agency to submit a permit application to ADEC. Thus, the public would lose the decision-making and oversight authority of ADEC concerning particular pesticide products, application methods, sensitive locations, and threats to environmental and public health.
• ADEC would not be required to accept public comment, evaluate, establish mitigating measures, or authorize, by permit or otherwise, specific spraying protocols.
• ADEC would not be required to be notified of a spray operation until 15 days prior to the commencement of spraying.
• The proposed regulations would promote rather than control or manage pesticide use on state lands because there would be no required assessment by ADEC of the toxicity of a particular pesticide and its risk to human health and the environment, and the public would have no opportunity to weigh in on such risks.
• The proposed regulations would include no requirements for the identification of water bodies or private drinking water sources located near a spray application area. The regulations would not require analysis of the drainage capacity of soils in the treatment area. ADEC would relinquish its authority to impose no-spray buffers to water bodies or to private wells or other private water sources.
• The proposed regulations would have no requirement to identify and specifically describe the type of pesticide and formulation, such as active and “inert” ingredients, surfactants, EPA registration number, toxicity, precautionary measures, etc. In addition, the proposed regulations would eliminate any required review by other agencies with particular expertise.

We are particularly concerned because the proposed regulations would eliminate the requirement for public participation in decisions about the use of pesticides that might affect environmental and public health on public lands. If the regulations are put into effect, there would be no opportunity for the public to submit comments, to provide testimony at a public hearing, or to appeal a bad decision. Public expertise and local knowledge would thus be eliminated from the decision-making process.

The public owns and uses state lands and rights of way and therefore has a basic right to take part in the decisions about how the lands are used. The public is also potentially adversely affected by the use of pesticides on its lands (and on adjacent private land) and also has a basic right to be heard. If these regulations are adopted, people will be exposed to potentially harmful chemicals without notification or consent when using state lands and rights-of-ways. What kind of democracy is it where persons who would be potentially harmed by a government agency action are prevented from standing up and being heard?

Our organizations have a long history of advocating and ensuring communities’ and individual’s right-to-know about potential hazards and have advocated for strong notification provisions in regulations and permitting. State lands and rights-of-ways are used or in close proximity to walking and biking paths, trails, subsistence use areas, fishing streams, residences, hunting
areas, railroad flag stops, and water sources. At the least, these areas should be protected with adequate buffer zones. It is not enough to inform the public about imminent spray operations with a notice in a local newspaper because it is likely that potentially affected people will not be made aware of pesticide applications. Clear, on-site notification postings must be required for all pesticide applications on state lands and rights-of-way at points of entry and/or regular intervals along the boundaries well in advance of and following pesticide applications. Notification provisions should at least be consistent with notification requirements in and around schools and those areas that are defined as “public places” in AS 46.03.320(c). This is an important requirement so that people have the opportunity to take precautionary measures that prevent exposure to potentially harmful pesticides for themselves, children, and other family members.

The Integrated Pest Management Plan requirements presented in Section 645 are weak. Obviously, pest management planning and prevention is a good idea, particularly in that it can reduce and eliminate the need for pesticide use. But to serve a useful purpose in managing, controlling, and minimizing pesticide use, a plan must be developed according to specific and thorough requirements. To make sure this happens, the regulations must also be specific and thorough. The existing pesticide permit regulation (18 AAC 90.515) serves as a good model of the kinds of things that an IPM Plan should include, and our organizations recommend that the specific stipulations of 90.515 be carried forward to the IPM regulations. The new regulations do not address ADEC’s participation in the development or review or approval of an IPM Plan—only that the plan would be posted on ADEC’s website. ADEC should be required in regulation to review the IMP Plan and make a decision as to its adequacy by approving it or not approving it. And our organizations further assert that recommends the development of every IPM be a full public process.

An ADEC spokesperson was quoted in a recent Anchorage Press article concerning the proposed pesticide regulations stating: “I want people to focus on the fact that these pesticides go through a very rigorous [EPA] process.” This statement is not supported by the facts. According to the 2010 Report of the President’s Cancer Panel: “Registered pesticides contain nearly 900 active ingredients, many of which are toxic. Many of the inert ingredients in pesticides also are toxic, but are not required to be tested for causing chronic diseases such as cancer.” “Approximately 40 chemicals classified by the International Agency for Research on Cancer as known, probable, or possible human carcinogens, are used in EPA-registered pesticides now on the market.” According to Schettler et. al in “Generations At Risk: Reproductive Health and the Environment. Cambridge, MA:MIT Press.

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behind in testing of active ingredients]. Reproductive and developmental toxicity data are often particularly deficient.” Inert ingredients comprise over ninety percent of the product formulation—when Generations At Risk was published (in 2000), there were about 1,200 inert ingredients present in about 20,000 pesticide formulations [that number is much higher now and yet EPA toxicity testing has not kept pace with the introduction of new products]. Colborn states\(^5\) that “an entirely new approach to determine the safety of pesticides is needed. It is evident that contemporary acute and chronic toxicity studies are not protective of future generations. The range of doses used in future studies must be more realistic, based on levels found in the environment and human tissue. In this new approach, functional neurologic and behavioral end points should have high priority, as well as the results published in the open literature. In every instance, the impacts of trans-generational exposure on all organ systems must be meticulously inventoried through two generations on all contemporary use pesticides and new pesticide coming on the market. To protect human health, however, a new regulatory approach is also needed that takes into consideration this vast new knowledge about the neurodevelopmental effects of pesticides, not allowing the uncertainty that accompanies scientific research to serve as an impediment to protective actions.”

The State of Alaska has acknowledged the inadequacy of the regulatory system that governs pesticide registration. On August 1, 2006 the Attorney General of Alaska announced that Alaska “joined with 13 other states and the U.S. Virgin Islands to petition the Environmental Protection Agency (EPA) to require pesticide manufacturers to disclose on the label of their product all hazardous ingredients...The EPA currently requires that pesticide labels disclose only the product’s “active” ingredients that contain toxic materials intended to kill insects, weeds, or other target organisms. Pesticide products also contain many other “inert” ingredients, which are intended to preserve or improve the effectiveness of the pesticides’ active ingredients. These “inert” ingredients may be toxic themselves...” The news release further states that “people who use or who are impacted by the use of a pesticide should have notice of all that product’s potential health risks.” According to a review by Cox (2006): “In the United States, the regulatory system for pesticides differs from other toxic chemical regulatory programs. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA 2002), active ingredients—those which “prevent, destroy, repel, or mitigate any pest”—are subject to greater scrutiny than inert (or sometimes other) ingredients (U.S. EPA 1997). The combination of active and inert ingredients, as marketed and used, is called a formulation (U.S. EPA 2006b). In ordinary usage, the word “inert” refers to something that is physically, chemically, or biologically inactive. The U.S. EPA recognizes that the statutory nomenclature for pesticides under FIFRA engenders public misunderstanding, stating that “many consumers have a misleading impression of the term ‘inert ingredient,’ believing it to mean water or other harmless ingredients” (U.S. EPA 1997). In fact, an inert ingredient “may have biological activity of its own, it may be toxic to humans, and it may be chemically active” (U.S. EPA 2002). The arbitrary

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distinction between active and inert ingredients is well illustrated by the > 500 inert ingredients that, according to the U.S. EPA (2006a), have been or are currently used as active ingredients.\(^6\)

Due to flaws in the federal regulatory system and failed implementation, pesticides are introduced to the market with unknown and unevaluated risks to human and environmental health. While manufacturers may eventually submit information, it often takes years before EPA acquires relevant data and often not in time for decisions concerning re-registration that all registered pesticides must go through only every 15 years. Regulatory decisions are rarely altered once data are submitted. Agency decisions concerning pesticide registrations are not keeping pace with science concerning harmful low-dose endocrine and epigenetic effects of pesticides on fish, wildlife, and people.

According to the DEC records, there are 119 restricted use pesticides listed (about 35 of these seem to be restricted by Alaska and not EPA. The agency definition of restricted use pesticide (RUP) is: “RUPs have been determined to be more toxic or have increased risk when used. Pesticides are classified as restricted use for a variety of reasons, such as:

- History of accidents or problems;
- Potential for, or history of, groundwater contamination;
- Acute toxicity to humans;
- Method of application is likely to be hazardous, for example fumigants;
- Toxicity to vulnerable non-target plants or animals, particularly those at some distance from the application site; and
- Carcinogenic or mutagenic product (causes cancer or birth defects).”\(^7\)

RUPs are not available to the general public because of the above safety concerns. At the very least, the agency must require a permit for any proposed use of a restricted use pesticide, although we maintain that permit requirements should be retained for all pesticide applications on state public lands.

There is a provision in Alaska statutes (AS 46.03.330) requiring a public hearing when either a municipality, or fifty residents send in a petition requesting the hearing, when a public pesticide project affects lands owned separately by two or more persons. A regulation may not abrogate a statute on the same subject.

AS 46.03.330. Public Pesticide Programs.
   (a) An officer, agent, or employee of the state, or of a borough or city of any class, may not direct, carry out, or participate in the spraying or application of a pesticide or broadcast chemical in any program or project involving funds, materials, or equipment of the state,


Comments on Proposed Amendments to Pesticide Regulations Under Title 19 Chapter 90 of the Alaska Administrative Code—from Alaska Community Action on Toxics et al., August 2, 2012

... Proposed program if a hearing is requested by the governing body of the jurisdiction. Before a public project that would affect land owned separately by two or more persons is initiated, the person directing the program shall give public notice of the program in the manner required by regulations of the department. The department shall conduct a public hearing on the proposed program if a hearing is requested by the governing body of the affected borough or city, or by a petition signed by at least 50 residents. The requirement for public notice or public hearing may be waived if the commissioner determines that a public emergency exists.

Pesticide spraying of rights-of-ways (ROW) has a high likelihood of drifting or leaching beyond the highway or railroad ROW. Therefore, many if not all public pesticide projects will be subject to the public hearing requirement. It is difficult to see how the proposed regulations can be reconciled with the statute. When the Legislature enacted the provision for public hearings, the overwhelming implication is that the hearing commentators will have a chance to influence a pesticide permit decision. Yet the proposed regulations leave the agency with no discretion to reject a permit so long as the permittee meets minimum criteria. At the least, any new regulations must include a provision for a real individual permitting process, public commenting and public hearings process. Environmental and health considerations and the public interest demand a real decision-making process in pesticide permitting on state lands and rights-of-way.

Our organizations’ and the public’s interest in the public land and water resources of the State are enshrined in Article VIII of The Constitution of the State of Alaska. State lands and waters are held in trust for the people and the public has a right of reasonable concurrent use. Public land and water are recognized as public assets in which the citizens of the state have a “property-like interest.”[1] Article VIII, § 1 establishes the policy that settlement of state lands and development of state resources must be made available for “maximum use consistent with the public interest.” Article VIII, § 2 requires that utilization, development and conservation of all natural resources including land and waters must be for the “maximum benefit of its people.” Article VIII, § 3 “reserves to the people for common use” the fish, wildlife and waters of the state.[2] This is tantamount to a “usufruct” interest in the State’s land and water resources for the public that cannot be taken away without due process.[3] The Alaska Supreme Court has recognized “usufruct” rights in Pebble Limited Partnership v. Parnell, 215 P.3d 1064, 1073-1074 (Alaska 2009).


[2] In addition, Article VIII, §13 calls for a prior appropriation system of water rights, limited to state’s purposes and to the “general reservation of fish and wildlife.” Article VIII, § 6 identifies land and other interests therein as the state “public domain.”

Court has recognized that the common use clause in Article VIII “strongly protects public access to natural resources”\(^4\) and that the public trust doctrine creates a property-like interest in fish.\(^5\) Article VIII, § 8 ensures that the issuance of permits for exploration of any part of the public domain must be subject to reasonable concurrent uses.

Taken together, these provisions and innumerable decisions of the Alaska Supreme Court interpreting them establish that ACAT, and the public have more than a unilateral expectation that, before an DEC takes an action which threatens to adversely affect the public’s interests under Article VIII, DEC will provide notice calculated to let reasonable concurrent users know that an administrative action that may affect the public use is underway. Without this minimal requisite of due process, the public’s interest and usufruct guaranteed in Article VIII is nullified.

The Alaska Supreme Court declared that “the state holds natural resources such as fish, wildlife and water in ‘trust’ for the benefit of all Alaskans”\(^6\) and has afforded due process to the beneficiaries of the trust—the public—in numerous cases seeking to protect those trust resources because of subsistence, cultural, social, aesthetic, economic, and environmental public interests.\(^7\) The Court has also recognized that the common use clause in Article VIII “strongly protects public access to natural resources”\(^8\) and that the public trust doctrine creates a property-like interest in fish.\(^9\) Therefore, as stated above, our organizations and the public have interests at stake that are comprehensively grounded in the Alaska constitution and those interests cannot be taken away, without due process: notice and an opportunity to be heard. Since the pesticide spraying may affect land, water and fish that are public trust assets,


See also Hammond v. North Slope Borough, 645 P.2d 750, 758 (Alaska 1982) (“We believe that the superior court was correct in its belief that the effect of the sale on the culture and lifestyle of the inhabitants of the area was an important consideration in determining whether the [lease] sale was in the best interests of the state.” (emphasis added)).

\(^{[8]}\) Owsichek, 763 P.2d at 492.

\(^{[9]}\) Pullen, 923 P.2d at 59-61.
the public is entitled to notice and the ability to comment before their reasonable concurrent use is affected.

Thank you for your consideration of these comments. Please confirm receipt and ensure that they are entered into the public record.

Sincerely,

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