



TRUSTEES FOR ALASKA

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August 2, 2012

Rebecca Colvin
Solid Waste and Pesticide Program, Division of Environmental Health
Department of Environmental Conservation
555 Cordova Street
Anchorage, AK 99501
Rebecca.colvin@alaska.gov

Submitted via email

RE: Changes to Pesticide Control Regulations

Dear Ms. Colvin:

Trustees for Alaska submits the following comments regarding the Alaska Department of Environmental Conservation's ("DEC") proposed changes to the Alaska Pesticide Control Program on behalf of Alaska Community Action on Toxics, Alaska Center for the Environment, Alaska Survival, Cook Inletkeeper, Denali Citizens Council, and Resurrection Bay Conservation Alliance.

DEC should not adopt these proposed regulatory changes because they eliminate vital public protections provided by the permitting process, deny the public a due process right to comment, are outside of DEC's statutory authority, would allow for restricted-use pesticide application as well as other dangerous pesticides without a permit, and because the reasons that DEC supplied for revising the pesticide regulations have no merit.

I. COMMENTERS MAY BE ADVERSELY AFFECTED BY THE ISSUANCE OF THESE REGULATIONS.

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. ACAT works to stop the production, proliferation, and release of toxic chemicals that may harm human health or the environment. ACAT has long been active on pesticide issues, including the use of pesticides in Alaska, and has advocated for community-right-to know, the precautionary principle, and the right to participate in decisions that affect our health and 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. ACE is concerned about the loss

of public process for the application of pesticides on state lands and the attendant risks to human health and the environment.

Alaska Survival is an Alaska non-profit corporation with members from throughout the state working to address the adverse impacts of pesticide and herbicide use on humans, fish and wildlife, and the Alaska environment, and to stop the unnecessary use of these harmful chemicals.

Cook Inletkeeper is a member-supported nonprofit organization with offices in Homer and Anchorage which works to protect clean water and healthy salmon. Cook Inletkeeper has a long history of working to protect Cook Inlet from the harmful effects of toxic chemicals, such as pesticides, and to protect the Cook Inlet watershed and the life it sustains. Cook Inletkeeper has expressed concerns about the harmful effects that pesticide application can have on fish, wildlife, and nearby waters. The Proposed Regulations directly and adversely affect Cook Inletkeeper's interests in clean water and healthy salmon by eliminating public input on particular pesticide applications that are likely to result in contamination of nearby waters, soil, fish and wildlife.

Denali Citizens Council ("DCC"), a community based public interest group with 350+ members, has worked since 1974 to raise awareness about issues affecting the livelihoods, lifestyles and well being of the ecosystems and communities surrounding Denali National Park and Preserve. DCC is concerned about, and directly affected by, decisions that eliminate opportunities for public comment, such as the Proposed Regulations. They are also concerned about pesticide applications in Alaska, especially the Alaska Railroad right-of-way and Parks Highway.

Resurrection Bay Conservation Alliance ("RBCA"), based in Seward, formed to advance the environmental integrity of our community. RBCA focuses on watershed issues like air and water pollution, protection and restoration of habitat, reducing bear and human conflicts, pursuing new energy sources and weighing in on development proposals. RBCA is concerned about the loss of public participation regarding the application of pesticides on state lands and its members are directly affected by the Proposed Regulations given the herbicide applications by the Alaska Railroad at and near Seward.

II. FACTUAL AND PROCEDURAL BACKGROUND

Currently, the use of pesticides in Alaska is governed by the Alaska Pesticide Control Program.¹ One of the requirements of the program is that government entities obtain a permit before applying pesticides on state-owned lands.² Before the pesticide is applied, the permit applicant must submit an application to DEC which identifies, among other things, the pesticide to be used, why it is being used in this instance, how it will be applied, a description of the potentially affected waters and soil, and a certification that applying the pesticide will not cause "an unreasonable adverse effect."³ DEC cannot approve the permit application until after two consecutive notices of the application are provided in "in a newspaper of general circulation in the area that would be affected by the operation."⁴ More importantly, the public has the

¹ 18 AAC 90.500 *et. seq.*

² *Id.*

³ 18 AAC 90.515.

⁴ 18 AAC 90.520; 18 AAC 15.050.

opportunity to submit written comments to DEC about the proposed application.⁵ A public hearing on the permit application will be required if requested by more than 50 residents of the affected area, or by the governing municipality.⁶ After the permit is issued, DEC retains the right to modify, suspend or revoke any permit if the pesticide application would violate the Pesticide Control Program or if it would result in “an unanticipated effect on human health, safety, or welfare, animals, or the environment.”⁷

DEC issued a public notice on May 21, 2012, that it intended to remove the permitting requirements of the Pesticide Control Program for pesticide applications on state lands, except for aerial applications and applications to water. Besides those exceptions, the revised pesticide regulations (“Proposed Regulations”) remove the requirement for government entities to obtain a permit before applying pesticides on state land, as well as many of the safety-oriented protections contained in the current Pesticide Control Program.⁸ The Proposed Regulations would eliminate the requirement that applicators justify their use of pesticides in the permit application, eliminate public disclosure and the opportunity for comment, and remove DEC’s authority to modify, suspend, or revoke a permit if a violation is discovered.⁹ Instead, all the pesticide applicator must do is write up an Integrated Pest Management Plan (“IPM plan”), post it on the DEC website, notify DEC at least 15 days before application, post a notification of when the application(s) will occur in a local newspaper, and identify a Person in Charge of the pesticide application operation.¹⁰

III. DEC SHOULD REJECT THE PROPOSED REVISIONS TO THE ALASKA PESTICIDE CONTROL PROGRAM

A. DEC Did Not Afford An Adequate Amount of Time for the Public to Respond to the Pesticide Rule Changes.

With a rule change as sweeping as the Proposed Regulations, DEC should afford additional time for the public to provide comments on the rule changes. These changes come at the worst time of year for sport, commercial, and subsistence fishermen, and recreational users of state lands. Therefore, the deadline for public comments on the Proposed Regulations should be extended beyond the August 2nd deadline.

In addition, the comment period should be extended because the “fact sheet” that DEC displayed on its website, which is the principal source of information about the Proposed Regulations for much of the public, is disingenuous and does not accurately characterize the changes to the Pesticide Control Program. For instance, the fact sheet does not say that the Proposed Regulations dispense with the permit requirements for pesticide applications on state lands (except for aerial and water applications); it merely says that “application would occur following criteria laid out in regulation.” That description is not likely to spur the public to figure out the substantial differences between the current permit regulations and the Proposed Regulations and the fact that the public loses notice and comment rights about toxic pesticide

⁵ *Id.*

⁶ 18 AAC 90.520; 18 AAC 15.060.

⁷ 18 AAC 90.540.

⁸ Proposed Regulation, 18 AAC 90.500.

⁹ *Id.*

¹⁰ Proposed Regulations, 18 AAC 90.640; 18 AAC 90.645; 18 AAC 90.650.

applications that currently exist. These omissions in the fact sheet misinform the public about the Proposed Regulations and constitute a dereliction of DEC's duty to properly inform the public about this rulemaking. As a result, DEC should revise the fact sheet to provide accurate information and give the public additional time to respond to the Proposed Regulations.

B. DEC's Proposed Regulations will Eliminate Protections Afforded by the Permit Requirement for Pesticide Applications on State Lands.

The requirement that is currently in place that state agencies obtain a permit for applying pesticides on state lands affords numerous protections to the public, which has a fundamental interest in ensuring safe application of pesticides. DEC's Proposed Regulations will practically eliminate the protections in place for public notice and comment, public health and safety, and environmental protection when pesticide application takes place on state-owned lands.

1. The Proposed Regulations drastically reduce public knowledge and participation in the pesticide application process.

Under the current regulations, a pesticide applicator spraying on state lands must take a hard look at their pesticide use and supply both the public and DEC with data and information about their spraying in the permit application.¹¹ However under the Proposed Regulations, this documentation would not be required. Rather, the new provision replaces the application disclosure with an IPM plan. Notice to the public would be provided by posting the IPM plan on the DEC website and in a newspaper, unless special notice provisions are triggered. Mere newspaper notice is not likely to inform many people of the application, and with no opportunity to object or comment, the public has no recourse.

Special notice is required for pesticide applications near schools (18 AAC 90.625), and "public places" (18 AAC 90.630), which includes "(1) common areas of an apartment building or other multi-family dwelling; (2) that portion of a government office or facility to which access is not ordinarily restricted to employees; and (3) plazas, parks, and public sports fields."¹² It is clear that DEC does not interpret "public place" to include railroad rights-of-way and other state lands that are regularly utilized by the public, and therefore pesticide applications on those lands will not trigger the special notice requirements. Instead, DEC will only require an IPM plan with minimal notice.¹³

In fact, notice under the Proposed Regulations lacks most of the information that is required under the current regulations' permit application and notice provisions (18 AAC 90.515, 18 AAC 90.520). Under the Proposed Regulations, since there is no permit application, all the applicator need specify in its public notice is the location of the proposed activity, pesticides to be used, the target species for the pesticide application, the method of applying the pesticide, and how the public can receive more information.¹⁴ The applicator does not need to specify the formulation of pesticide used, which is often a large factor in the toxicity of the pesticide; each type of adjuvant to be used; the percentage of each active ingredient in each formulation; the rate

¹¹ 18 AAC 90.515.

¹² AS § 46.03.320.

¹³ Commenters believe that DEC's interpretation is legally incorrect, which is another reason that the Proposed Regulations should not be adopted.

¹⁴ Proposed Regulation, 18 AAC 90.640(b).

of application for each active ingredient to be applied; a detailed description of the treatment area where the pesticide will be applied; the proposed date and time of each pesticide application; the method of disposal of excess pesticides and empty pesticide containers; special precautions to protect human health, safety, and welfare, animals, and the environment; evidence that the person who is applying the pesticide is appropriately certified; information that demonstrates that the pesticide to be applied does not cause an unreasonable adverse effect; and any endangered species that may be impacted by the spraying operation.¹⁵ Under the current regulations, the public can request a copy of the permit application, which must contain all of this information,¹⁶ but with the Proposed Regulations, neither DEC nor the public will be supplied with this important information.

The Proposed Regulations would provide the public with much less information about pesticide applications and remove opportunities for the public to comment before pesticides are applied on public lands. It is disturbing that the public will have no information about the formulations of each pesticide that is applied. There are many different pesticides and pesticide formulations available today, which vary according to level of toxicity, persistence in soils, and migration characteristics. This means that the risk to human health and the environment varies among the various pesticides and pesticide formulations used. The Proposed Regulations do not consider the varying levels of risk to human health and the environment presented by the various pesticide formulations. In addition, the fact that the Proposed Regulations do not require the applicator to notify the public about the proposed date and time of each pesticide application is especially worrisome. Under the Proposed Regulations, the only clue that the public would have about impending pesticide application is the fact that it is published in a newspaper for two consecutive days, which must be done at least 30 days in advance of spraying.¹⁷ But since the applicator is not required to provide the date of application, all that the public would know is that pesticide application will occur sometime after 30 days. This gives the public no ability to prepare for impending pesticide applications or to take precautions which would minimize exposure to the pesticides.

The lack of public comment is also very troublesome, and as discussed in Section C below, violates the right to due process. With public comments, the public could express their views and concerns about proposed pesticide applications on state lands before a final decision is made. The Proposed Regulations completely remove the public from the equation. To provide an example of how public comment could benefit the decisionmaking process, one need only consult DEC's 2007 decision on the Alaska Railroad Corporation Permit Application for Pesticide Use for Vegetation Management on Railways and Rail Yards. In that case, concerns raised in 1,083 written public comments and seven public hearings led DEC to find that the "possibility of pollution of water resources [is] compelling."¹⁸ The lack of similar process in the Proposed Regulations eliminates even the possibility of the public understanding and having any say in their exposure to toxic pesticides.

¹⁵ 18 AAC 90.515; 18 AAC 50.050.

¹⁶ 18 AAC 50.050.

¹⁷ Proposed Regulation, 18 AAC 90.640(b).

¹⁸ Department of Environmental Conservation, Division of Environmental Health, Alaska Railroad Corporation Permit Application for Pesticide Use for Vegetation Management on Railways and Rail Yards, Decision Document, February 2007 ("2007 Decision Document").

2. *The IPM plan will not make up for the protections that the permit process afforded.*

The Proposed Regulations' IPM plan provision will in no way provide as much public health and safety and environmental protection as requiring a permit application for each instance of spraying on state lands and subsequent public notice and comment. While the IPM plan could have been a helpful measure if it required agencies to *require* non-chemical methods of pest and plant control before resorting to pesticide application, the Proposed Regulations lack any mandate to use non-chemical practices first. All that is required in the IPM plan is a "description" of attempts to use non-chemical practices, not a requirement to actually use them.¹⁹ The other requirements for the IPM plan are general and limited and would not provide for adequate protection of public health and the environment. For example, the IPM plan must describe the pesticide products used, but need not identify the formulation used, timing of application, or a detailed description of the affected area. As a result, the Proposed Regulations eliminate access to valuable information that the current permit application process provides, including information about pesticide concentration, a description of the spraying area, the timing of spraying, and the applicator's certification. This *lack* of protection puts public health at an unacceptable risk.

3. *The Proposed Regulations contain no provision for DEC review.*

The Proposed Regulations do not require DEC to review and evaluate the IPM plan before an entity undertakes to apply a pesticide. Under the current regulations, there are multiple levels of DEC review. First, DEC makes an initial determination based on the application, public comments, and consultation with other agencies about whether to issue the permit.²⁰ Second, DEC retains oversight over the permit after its issuance and can modify, suspend, or revoke a permit if it discovers a violation or unexpected impact to public health or the environment.²¹ The Proposed Regulations, on the other hand, contain no provision to replace DEC review when an entity applies pesticides on state land. Rather, the Proposed Regulations have a simple checklist-type approach for pesticide application under Proposed Regulation, 18 AAC 90.640(a), without any provision requiring rigorous DEC review. Nor does it appear that DEC retains the right to modify, suspend, or revoke an IPM plan if it subsequently discovers a violation. At the very least, the Proposed Regulations should require DEC to review and evaluate, and approve or deny the IPM plan. However, as discussed throughout these comments, this is no substitute for requiring a permit and providing notice and a public process.

4. *DEC's risk perception is arbitrary.*

DEC's existing regulations require a permit when pesticides are applied on "to the waters of the state" or if sprayed "by aircraft or helicopter."²² This regulation remains in effect with the Proposed Regulations. However, under the Proposed Regulations, no permit would be required, and no public comment would be available if the pesticide application were to occur on public lands in an area where it could easily reach adjacent and subsurface waters, or could be applied near trails where recreational users, often including young children, frequently travel. Though

¹⁹ Proposed Regulation, 18 AAC 90.645(1).

²⁰ 18 AAC 90.525.

²¹ 18 AAC 90.540.

²² 18 AAC 90.505.

the potential for pesticides reaching waterbodies and affecting recreational users on state land presents a grave and serious risk, DEC has apparently determined that it is not a risk worthy of public comment or agency review. DEC has failed to explain why applying pesticides directly to waters or spraying by aircraft or helicopter presents any more of a risk that requires heightened permitting protections. Therefore, the disparate treatment that the Proposed Regulations give to equally risky pesticide application locations and methods can only be viewed as arbitrary.

C. The Proposed Regulations will Deny the Public Due Process to be Informed of the Application of Pesticides on State Lands and to Provide Meaningful Comment.

The public's interest in the public land and water resources of the State is enshrined in Article VIII of the Alaska Constitution. Public land and water are recognized as public assets in which the citizens of the state have a "property-like interest."²³ Article VIII, section 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, section 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, section 3 "reserves to the people for common use" the fish, wildlife and waters of the state.²⁴ This is tantamount to a "usufructory" interest in the State's land and water resources for the public that cannot be taken away without due process.²⁵ The Alaska Supreme Court has recognized that the common use clause in Article VIII "strongly protects public access to natural resources"²⁶ and that the public trust doctrine requires the State to hold in trust fish, wildlife, and waterways for the benefit of all the people of the state.²⁷

Taken together, these provisions and innumerable decisions of the Alaska Supreme Court interpreting them establish that before DEC takes an action which threatens to adversely affect the public's property interests in state land and water resources under Article VIII, DEC must provide notice that is reasonably calculated to apprise the public that an administrative action affecting its right to enjoy public lands is underway and afford the public an opportunity to present objections.²⁸ Without this minimal requisite of due process, the public's usufructory interest guaranteed in Article VIII is nullified.

The Alaska Supreme Court has afforded due process rights to the beneficiaries of the public trust doctrine—the public—in numerous cases seeking to protect those trust resources because of many different types of public interests including subsistence, cultural, social,

²³ *Pebble Limited Partnership v. Parnell*, 215 P.3d 1064, 1073-1074 (Alaska 2009).

²⁴ 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."

²⁵ A "usufructory interest" is "[t]he right of using and enjoying and receiving the profits of property that belongs to another." *Krize v. Krize* 145 P.3d 481, 491 fn. 7 (Alaska 2006) (quoting Black's Law Dictionary 1544 (6th Ed. 1990)).

²⁶ *Owsichek v. State, Guide Licensing & Control Bd.*, 763 P.2d 488, 492 (Alaska 1988).

²⁷ *Pullen v. Ulmer*, 923 P.2d 54, 59-60 (Alaska 1996); *Brooks v. Wright*, 971 P.2d 1025, 1031 (Alaska 1999).

²⁸ *Smart v. State, Dept. of Health And Soc. Services*, 237 P.3d 1010, 1015 (Alaska 2010) (citing *City of Homer v. Campbell*, 719 P.2d 683, 686 (Alaska 1986)); *State, Dept. of Natural Res. v. Greenpeace, Inc.*, 96 P.3d 1056, 1064 (Alaska 2004).

aesthetic, economic, and environmental.²⁹ These cases establish the principle that the public has a right to receive detailed notice of impending government actions that may affect a property right and the opportunity to provide meaningful public comment. Therefore, the public has 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.

With DEC's Proposed Regulations, the public would be denied an opportunity to comment on IPM plans and would be denied notice of when pesticide applications would occur as outlined in the preceding section. Since the pesticide application may affect land, water and fish that are public trust assets, the public is entitled to notice and the ability to comment before their use of those resources is affected.

D. The Proposed Regulations are Outside of DEC's Statutory Authority.

DEC can only act within its delegated authority from the Legislature.³⁰ If a DEC regulation is misaligned from its statutory directive, the regulation must be struck down. Alaska statutes grant DEC limited powers to regulate pesticides. According to AS 46.03.320, "the department shall by regulation provide for *reasonable* public notification, including written notice posted on the application site, when pesticides and broadcast chemicals are applied in a public place" (emphasis added). Moreover, AS 46.03.730 states that "[a] person may not spray or apply, or cause to be sprayed or applied . . . pesticide[s] or broadcast chemical[s] in a manner that may cause damage to or endanger the health, welfare, or property of another person, or in a manner that is likely to pollute the air, soil, or water of the state." Additionally, AS 46.03.320 establishes that "[i]t is the policy of the state to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution, in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being." DEC must adhere to these provisions of law in its pesticide rulemaking.

DEC has misinterpreted these statutory directives. First, with regards to notice, "reasonable" notification should require that the public have an opportunity to comment on proposed application sites on state lands. Notice alone, without the opportunity to potentially alter the decisionmaking process, cannot be deemed reasonable. Second, because DEC does not retain the authority to review permit applications and to strike down a permit after a violation occurs, there is likely a violation of AS 46.03.730, a violation which could have devastating effects on human health and the environment. Lastly, under AS 46.03.320, DEC's regulations should *protect* health, safety, and welfare, not threaten it. Because of all of the reduced

²⁹ *State, Dept. of Natural Resources v. Greenpeace, Inc.*, 96 P.3d 1056 (Alaska 2004); *Kachemak Bay Conservation Soc'y. v. State, Dept. of Natural Resources*, 6 P.3d 270 (Alaska 2000); *Trustees for Alaska v. State, Dept. of Natural Resources*, 865 P.2d 745 (Alaska 1994); *Kuitsarak v. Swope*, 870 P.2d 387 (Alaska 1994); *Alaska Center for the Environment v. Rue*, 95 P.3d 924 (Alaska 2004); *Southeast Alaska Conservation Council, Inc. v. State*, 665 P.2d 544 (Alaska 1983). 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)).

³⁰ See *O'Callaghan v. Rue*, 996 P.2d 88, 94 (Alaska 2000).

protections outlined above by removing the permitting process under the Proposed Regulations, it is highly unlikely that public health, safety, and welfare would be protected.

E. The Proposed Regulations Would Allow for Restricted Use Pesticides to be Applied without a Permit or Public Comment Period.

DEC has classified 119 pesticides as “restricted use” pesticides because they 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: a 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).³¹

Under the current regulations, a permit would be required for applying restricted use pesticides on state lands, the same as with applying any other type of pesticide.³² However, the Proposed Regulations would remove this permit requirement not just for any pesticide but for restricted use pesticides, which have been deemed even more toxic and dangerous to human health.

There is an unacceptable risk to human health and the environment in the Proposed Regulations’ lack of protections that the permit process provides. For example, a restricted use pesticide called diazanon, a chemical originally developed as a nerve gas during World War II, has been proven to cause numerous deaths in ravens in Alaska and has also impacted salmon. It is astonishing that applicators would be able to use this chemical without obtaining a permit, identifying the concentrations of the chemical used, specifying a time for spraying, or accepting public comments on its use. All pesticide applications on state lands should have the protection of going through the permit process, but DEC should especially require applicators to obtain a permit before spraying restricted use pesticides.

F. The Reasons DEC Provided for Issuing the Proposed Regulations have No Merit.

DEC provided two reasons for revising the current regulatory regime. First, Senator Wes Keller’s office

was told that the primary reason for the proposed changes is that the current 6-8 week permitting process is not particularly flexible and takes up time and resources that the department could be devoting to other pressing issues. For the pesticides being discussed, the existing permitting process is overly stringent and one that Lower 48 states apparently no longer use. It is also not generally required for federal or private land owners.³³

³¹ Alaska DEC, *Alaska Restricted Use Pesticide Dealer Manual*, Category 14, at 3 (Dec. 2010).

³² 18 AAC 90.500.

³³ Email from Ernest Prax, Staff of Representative Keller (July 24, 2012), attached.

Second, Karin Hendrickson, Program Manager of DEC's Pesticide Program was cited in the Anchorage Press, saying that the Proposed Regulations are

a way to level the playing field for state agencies that intend to spray pesticides, putting them in the same category as other landowners. . . Other landowners—from backyard gardeners, to Alaska Native corporations to Alyeska Pipeline or the federal government—are already free to spray approved pesticides without informing DEC of individual applications.³⁴

These reasons for issuing the Proposed Regulations are without merit. The fact that the permitting process takes agency time and resources shows that it is doing exactly what it is designed to do: scrutinizing each application for pesticide application so that the public is better protected from the risks of these chemicals. DEC has a duty to protect public health and the environment. Although it might expend more resources in requiring a robust permitting process for pesticide application on state lands than having an IPM plan with no oversight, this is an essential to fulfilling DEC's duties to the public under the law.

The fact that other landowners, including private individuals and Native corporations, are not required to go through a permit process for pesticide applications on their lands does not compel the conclusion that the state should forego the permit process for spraying on public lands. Public lands are fundamentally different from privately held lands. Privately held lands do not see a wide variety of visitors, nor do they contain thoroughfares that the public must access to get from one point to another. The public has a fundamental interest in how public lands are used and managed, and not simply because of their recreational use of this area, but rather because much of the state's economy is based on access to public lands. To deny the public the ability to comment on permit applications, reduce or eliminate public notice, and dispense with DEC oversight over pesticide applications is an abrogation of a duty owed to the public.

The answer to a discrepancy between permitting requirements for private and public landholders is not to dispense with permitting requirements altogether. Rather, both private and public applicators should equally be required to go through a permitting process before applying pesticides. A more robust permitting process would better protect the public from the impacts of toxic pesticide use.

³⁴ Scott Christiansen, *Pesticide Permits Spark Spraying Debate*, ALASKA DISPATCH, (July 19, 2012).

IV. CONCLUSION

Thank you for the opportunity to comment on the Proposed Regulations. We respectfully request that DEC not adopt the Proposed Regulations because they would reduce vital protections that the permit process currently require, deny the public a due process right to comment, are outside of DEC's statutory authority, would allow for restricted-use pesticide application without a permit, and because the reasons that DEC supplied for revising the pesticide regulations have no merit. Please contact me if you have any questions at (907) 276-4244, ext. 110 or vclark@trustees.org.

Sincerely,

Victoria Clark
Legal Director

Jeff Aslan
Legal Intern

cc: Alaska Community Action on Toxics
Alaska Center for the Environment
Alaska Survival
Cook Inletkeeper
Denali Citizens Council
Resurrection Bay Conservation Alliance