

April 27, 2021

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BY EMAIL

Jackie Ebert
Department of Environmental Conservation
Division of Water
410 W. Willoughby Suite 303
Juneau, AK 99801

Re: Onshore Seafood Processors General APDES Permit (AKG521000)

Dear Ms. Ebert:

We are submitting the following comments on the Draft of the above-referenced permit (“Draft Permit”) on behalf of a number of seafood processors operating in Alaska.¹

I. General Comments

Extensive Additional Conditions and Requirements -- As you are aware, the current General Permit (AKG520000) was issued by EPA and expired in 2006 (and was administratively extended). ADEC issued a draft permit in 2016, but that permit was withdrawn on January 23, 2017 (“2016 Draft Permit”).

Given that the current General Permit has been in administrative extension for over fifteen years, and has been effective in protecting the waters of the State of Alaska (otherwise, a new permit would have been issued long before now), it is both surprising and disappointing to us that ADEC has added numerous additional conditions and requirements in this Draft Permit -- particularly at a time when seafood processors are struggling just to remain operational during Covid-19. This Draft Permit would impose significant additional costs on the processors at a time when they need to spend millions and millions of dollars just to remain open -- providing needed economic benefits to many coastal communities and jobs for thousands of processing workers and fishermen. We hope that ADEC will keep this in mind as it reviews our comments and will reassess whether all of these additional provisions are absolutely necessary to protect the waters of the State of Alaska.

¹ The companies include Alaska General Seafoods, Inc., Alyeska Seafoods, Inc., North Pacific Seafoods, Inc., OBI Seafoods LLC (formerly Icycle Seafoods, Inc. and Ocean Beauty Seafoods, Inc.), Peter Pan Seafood Company, LLC., Trident Seafoods Corporation, UniSea Inc., and Westward Seafoods, Inc. These companies and other companies may be submitting separate comments as well.

Effective Date -- The provisions of the Draft Permit will require facilities covered by this permit to make significant changes in their operations, complete construction projects, and submit complete NOIs (including modeling for certain authorizations) -- all by the effective date of the permit. With this in mind, we request that the effective date for this permit be set with enough lead time to allow all permittees to make those changes and to prepare a complete NOI.²

The companies submitting this comment letter take permit compliance very seriously and want to insure that when the permit is issued they are able to comply with its terms. Therefore, there is great concern as to the length of time it will take to complete facility modifications and to prepare complete NOIs. For example, the Draft Permit (Part 2.1.1.2) requires the installation of a flow meter and totalizer by the effective date of the permit. At certain facilities, this will require extensive construction activity requiring the hiring of an engineering firm and contractors and also requiring plan approval from ADEC. Because of Covid-19 protocols, bringing in outside engineers and contractors is a complicated process which will take longer than normal. ADEC plan review also can take months, particularly if a number of facilities are submitting plans at the same time. And it is important to recognize that in certain locations the construction window is very short, further complicating the ability to complete construction in a short time frame.

In addition to construction activities, the requirements for a complete NOI (Part 1.6 and Attachments A, A-1 and A-2) are extensive and require much more detailed information than the current permit's NOI requirements. For certain facilities, this will require modeling to accompany the NOI -- modeling that may only be able to be conducted when the facility is operating (which, in some cases, is only for two months during the summer). The scope of the information required for a complete NOI needs to revert back to that required under the current permit -- only essential information; rather additional information that, while interesting, is not necessary for ADEC's decision as to whether to authorize a facility to be covered by the permit.

A further consideration is the fact that a permittee cannot operate under the new permit until it receives authorization from ADEC. There are 72 "existing" facilities (listed in Appendix D) that will be submitting NOIs between the date that the permit is issued and the effective date of the permit. There needs to be sufficient time, not only for the preparation of complete NOIs, but for their review and approval by ADEC (which may require numerous communications between ADEC and the permittee and as well as modifications to the NOI).

Obviously, each permittee faces different circumstances and challenges unique to its particular situation and location -- some permittees may be able to complete these activities and its NOI sooner than others; however, to insure compliance by all permittees (including smaller facilities not operated by the companies submitting this comment letter), the effective date should be set to give sufficient time for completion.

² It is important to point out that the Kodiak processors have had difficulty completing all the necessary capital improvements and modeling in order to submit a complete NOI under the new Kodiak General Permit prior to the Effective Date of that permit; and one company's NOI was over 50 pages.

We would suggest that to insure that all permittees have sufficient time to comply by the effective date, that the effective date of the permit should be nine months from permit issuance or June 1, 2022, whichever is later.

We would further suggest that if ADEC wants to set an effective date sooner than this, there are alternative approaches that ADEC could take, including, for example: (1) require facilities not covered by AKG520000 (e.g. those facilities currently operating under “No Action Assurances”) to submit NOIs by the effective date; but to require NOIs from facilities covered by the current permit by a later date;³ (2) extend the date by which flow meters must be installed; and (3) delete some of the new NOI data requirements.⁴

II. Specific Comments

Part 1.3.8 -- Part 1.3.8 indicates that discharges from “vessels” are not covered by this Draft Permit; however, this provision is inconsistent with Part 1.1.2 which indicates that discharges from Moored Craft and Barges are permitted. “Moored Craft and Barges” are defined in Appendix C as “vessels.” Part 1.3.8 should be clarified to indicate that the prohibition does not include Moored Craft and Barges.

Part 1.7.1.7 -- We believe that the intent of this provision is to indicate that only permittees that do not have a current Zone of Deposit need to complete ZOD analysis under 18 AAC 70.210(b); however, the reference to “new Project Area Zone of Deposit” is confusing since, technically, no current permittee has a Project Area Zone of Deposit. Section 4.4.4 of the Draft Fact Sheet states that “The permit authorizes a project area ZOD to each facility granted a ZOD in the previous AKG520000 permit....” We suggest that to make this provision clearer, this language should be included in Part 1.7.1.7 and that Part 1.6.7.1 be similarly clarified to only require public notice if the permittee does not have a current ZOD.

Part 1.10.3 -- This part requires the filing of a notice of non-compliance when a pipe has moved or is broken irrespective of whether there has been a discharge from the outfall. Such a report should only be required if there has been an unauthorized discharge.

Part 2.1.3.1.3 -- This provision requires a pre-discharge survey at an existing facility if it has not operated for 12 consecutive months. This is an unnecessary and extremely expensive requirement given the fact that bottom conditions will not have changed materially in one year.⁵ The high cost of mobilization for such a survey would serve as a disincentive to reopen

³ This would also have the benefit of spreading out ADEC’s workload so it would not have to review 72 NOIs at the same time.

⁴ It is important to recognize that the Draft Permit’s NOI requirements are so extensive that there is little difference between applying for coverage under this permit and filing an application for an individual permit.

⁵ The rationale for this new provision is set forth in the Draft Fact Sheet (in Section 3.2.2). However, this discussion ignores the language of Section 4.4.5 of the Draft Fact Sheet (at p.69) which recognizes that the living substrate would not be expected to change for 5-10 years after operations cease.

a closed facility or to operate a facility in certain areas where the fish runs may dictate intermittent operations.

Part 2.1.5.3 -- This part provides for exceptions to the -60 foot MLLW discharge depth requirement. Recognizing the provisions in Part 1.5.4, we request that an additional basis for such an exception be added for water bodies with greater than 0.33kt average currents.

Part 2.1.5.3.1 -- This is a new provision that prohibits any discharges during periods when the outfall terminus is not submerged. This provision would require many facilities located in areas that experience extreme low tides to cease processing for many hours per day. Such an interruption in operations would create a severe and unacceptable economic impact on processors and fishermen.⁶ The Draft Permit recognizes that there are many areas of extreme low tides and Part 2.1.5.3 allows permittees to apply for a waiver from the depth requirements in the Draft Permit. This new provision, however, would not allow permittees to request a waiver to discharge when the extreme low tide is beyond the outfall terminus. The basis for this new provision is not discussed in the Draft Fact Sheet and no rationale is provided to support this prohibition. In fact, in the areas of extreme low tide (Bristol Bay, Naknek River and Yukon River), there has never been any buildup of seafood waste and any waste deposited at extreme low tides is temporal and is completely disbursed by each incoming tide; thus, there is no documented impact on water quality. This provision should be removed from the Draft Permit.

Part 2.1.6.2 -- This part eliminates the waiver from the 10 million pound limit on the discharge of waste provided in the current permit (Section V.C.1.a). The current permit provides the ability to seek such a waiver if certain conditions can be met. (Two current permittees were granted such waivers⁷). Section 3.2.3 of the Draft Fact Sheet makes clear that the 10 million pound limit is based entirely on conceptual modeling conducted in 1993. Yet, ADEC completely ignores actual seafloor monitoring that has been conducted in the last 30 years that refutes the modelling results in the locations where the waivers were granted. Neither of the facilities that was granted a waiver under the current permit has ever exceeded the one-acre ZOD. The Fact Sheet does not explain why ADEC failed to consider 30 years of actual data and instead merely “defaults” to an outdated conceptual model. It is completely arbitrary and capricious for ADEC to rely on a 1993 conceptual model rather than on actual data.⁸ ADEC also fails to recognize that arbitrarily eliminating the waiver could force processors to curtail operations, severely adversely affecting fishermen and the economies of

⁶ A February, 2021 study, “Economic Benefits of the Bristol Bay Fishery” concludes that in 2019 the Bristol Bay fishery was responsible for over 8500 harvester jobs and driving over \$990 million in economic activity in Alaska, including over \$375 million in labor income.

⁷ It is important to point out that ADEC’s 2016 Draft General Permit “grandfathered” those two facilities’ waivers.

⁸ ADEC also fails to acknowledge that one of the facilities that currently has a waiver is on the Tongass Narrows and that the Draft Fact Sheet (at p. 69) cites a study which “concluded that the strong tidal currents of the Tongass Narrows prevents any significant accumulation of fine-grained depositions and that there was little chance of organic material from seafood waste accumulating....”

the communities in which they are located. The waiver provision should be included in this Draft Permit.

Parts 2.1.8.9, 2.2.6.4 and Table 5 -- These provisions address Catch Transfer Water. The processors object to ADEC's requirement to treat this water for a number of reasons;

-- Catch Transfer Water "discharged to a vessel" is not a discharge to "waters of the United States;" therefore, pursuant to 18 AAC 83.015(a), it is not a discharge that comes within the purview of the APDES program.

-- Even though Part 2.1.8.9.1 provides an exemption from the treatment requirement, this provision still requires permittees to monitor this water and to prepare a detailed report to ADEC. These requirements impose an unreasonable burden on permittees and are beyond ADEC's regulatory authority.

-- As more fully discussed below, many of the facilities covered by the General Permit are in remote areas of Alaska and there are inherent difficulties in attempting to meet these monitoring requirements for the parameters listed on Table 5 (including transportation to certified laboratories, holding times, etc.).

Parts 2.2.2 and 2.6.5.5 -- These provisions require that the information in monthly DMRs be summarized in the Annual Report. This is a duplication of effort and imposes an unnecessary paperwork burden on the permittees. Certainly, ADEC staff can review 12 or fewer DMRs without the need for the permittees to summarize the data already submitted.

Tables 3, 4, 5 -- ADEC has added a number of effluent parameters to be monitored, which have never been required in this General Permit. The added parameters do not have any nexus to the effluent limitation in the permit and there is no explanation in the Fact Sheet to support the addition of these parameters.⁹ This is "monitoring for monitoring's sake," and does not provide information needed to determine whether the effluent limits in the permit are being met.¹⁰ To the extent that the additional parameters are related to receiving water quality, it is important to point out that ADEC has added extensive receiving water monitoring in this Draft Permit. We would suggest that the additional effluent monitoring be deleted from this Draft

⁹ In fact, Section 3.3.1 of the Fact Sheet merely states that effluent monitoring has been included. It does not explain the rationale for the particular parameters included in Tables 3, 4, and 5 and fails to recognize the burden it is imposing on permittees. For example, for a facility running only two months (typical for a salmon processing facility), this could require 60 tests if the facility has one by-product line (Table 4), catch transfer water (Table 5) and all other waste routed to the main outfall line (Table 3). (Additional outfall lines will require 20 tests per line).

¹⁰ An additional consideration is the fact that some of the added parameters can only be analyzed at an off-site certified laboratory. The location of some of the facilities covered by this permit are not close to a certified laboratory and, because of this, it may be impossible to meet the holding times required for valid samples. ADEC is aware of this problem with regard to the Offshore General Permit.

Permit and that, depending on the results of the water quality monitoring, ADEC evaluate whether any additional effluent monitoring should be included in the next permit cycle.

Part 2.3.3 -- We appreciate ADEC providing the opportunity for a joint monitoring program.

Part 2.3.5.1 -- This part requires seafloor survey monitoring. This section should include a waiver provisions for areas with low tide (similar to Part 2.1.5.3). Photographs should provide a reasonable alternative to seafloor surveys. As pointed out in our comments to Part 2.1.5.3.1, there has never been any evidence of build-ups of waste at these locations.

Parts 2.3.6.5 and 2.3.6.8 -- These provisions reference discharges from fishing boats tied up to permittees' docks. As ADEC did in the Kodiak General Permit (AKG28000), the Draft Permit and/or the Draft Fact Sheet should make clear that these are merely reporting requirements and that discharges from fishing vessels while secured to a seafood processing facility are not covered by the Draft Permit.¹¹

Part 2.5.6.7.17 -- This part addresses BMP requirements for ammonia. This provision is too broad and should be redrafted to make clear that the BMPs only have to address "activities which may result in discharges to the waters of the United States." Other releases are not within the purview of the Draft Permit and are duplicative of other requirements in State and Federal law.

Part 2.6.4 -- This part requires permittees to submit daily, monthly and annual production and discharge information. This requirement imposes a significant paperwork burden on permittees, particularly the daily requirement. We request that ADEC reevaluate this requirement for daily information (which is, by definition, included in the monthly data) particularly when weighing the cost/benefit of receiving this information.

Appendix E -- The Seafloor Survey and Outfall Inspection Protocol adds a number of onerous and unnecessary requirements to the survey and inspection protocols. It is clear from the discussion of Seafloor Surveys in the Draft Fact Sheet (Section 4.4.5) that ADEC staff did not evaluate the practicability and the costs of the new survey requirements. In addition, many of the new requirements have no relevance to determining whether a permittee is in compliance with its Project Area Zone of Deposit. This appears to be another example of data gathering merely for the sake of data gathering with little relationship to determining compliance. While the comments submitted by individual companies will address Appendix E in greater detail, some examples of the unnecessary provisions of Appendix E are as follows:

¹¹ ADEC provided that clarification in its December 15, 2020 Response to a Request for Informal Review of the Kodiak General Permit and in the December 15, 2020 Revision to the Response to Comments on that permit (Comment 14).

-- hydrology reporting (Part I, Section 3(e)) is duplicative of the receiving water sampling that is required in the Draft Permit.

-- plume size reporting (Part 1, Section 3(h)) does not make any sense, since surveys will occur following the end of processing and there will be no plume.

-- measuring waste deposits using a "marked stick" (Part II, Section 4(j)) is not an accurate method for measuring thickness of a deposit; nor is coring. It is unclear why the thickness of the waste pile (other than to determine whether the deposit is continuous or discontinuous) is required since the ZOD is related to areal coverage, not volume.

Finally, Appendix E erroneously assumes that Beggiatoa and other types of bacterial mats (Part I, Section 3(c)) are solely related deposition of seafood waste on the seafloor. The discussion in the Draft Fact Sheet completely ignores the fact that Beggiatoa mats are naturally occurring in sediments and are found in areas where no seafood deposits are found. Therefore, it is unreasonable to include these mats in the calculation of "continuous coverage."

Please let us know if you have any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read "CR Blumenfeld".

Charles R. Blumenfeld