

If this item is pulled from the consent agenda the following motion would be in order:

## **POSSIBLE MOTION**

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**I MOVE TO** approve Resolution 2014-13 on first and final reading.

CITY AND BOROUGH OF SITKA

RESOLUTION 2014-13

A RESOLUTION OF THE CITY AND BOROUGH OF SITKA REQUESTING THAT THE REGULATIONS COVERING THE USE OF HERBICIDES ALONG ALASKA ROADWAYS BE AMENDED TO PROVIDE FOR PUBLIC COMMENT

WHEREAS, the City and Borough of Sitka has received concerns from residents with regard to the use of herbicides; and

WHEREAS, the use of herbicides by the Alaska Department of Transportation along Alaska's roads and highways is a subject of great concern amongst the residents of Southeast Alaska; and

WHEREAS, public and private lands and waterways adjacent to Alaska's roadways provide access to fish, wildlife, berries and many other naturally occurring resources that provide food, economic, lifestyle and cultural benefits to many Alaskans; and

WHEREAS, a public process could help eliminate fear of dangerous herbicides being used on resources; and

WHEREAS, regulations developed by the Alaska Department of Environmental Conservation and the Alaska Department of Transportation do not provide for public comment on the use of herbicides along Alaska's roadways and public lands.

BE IT THEREFORE RESOLVED, that the City and Borough of Sitka requests that the regulations covering the use of herbicides along Alaska roadways are amended to provide for public comment.

PASSED AND APPROVED on this 9th day of September, 2014 by the Assembly of the City and Borough of Sitka.

Signed: \_\_\_\_\_  
Mim McConnell, Mayor

Attest: \_\_\_\_\_  
Colleen Ingman, MMC  
Municipal Clerk



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

**Department of Environmental  
Conservation**

OFFICE OF THE COMMISSIONER

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14.018

June 4, 2014

The Honorable Dennis Egan  
State Senate  
Alaska State Capitol, Room 9  
Juneau, AK 99801-1182

The Honorable Jonathan Kreiss-Tomkins  
House of Representatives  
201 Katlian Street, Ste 103  
Sitka, AK 99835

Dear Senator Egan and Representative Kreiss-Tomkins:

Thank you for the letter following our meeting about the Department of Environmental Conservation's (DEC) pesticide program. For the reasons explained below, we believe the current pesticide regulations support DEC's mission to protect human health and the environment. The revised regulations bring Alaska more in-line with other states, none of which require a permit for state agencies to apply pesticides to land. The revised regulations do not affect existing federal and state requirements for a permit for applications of pesticides to water, nor do they affect the special public notice provisions in 18 AAC 90.625 (Schools) or 18 AAC 90.630 (Public Places). Alaska's requirements remain stricter for state agencies than for other pesticide users. An integrated pest management plan (IPMP) is required, and pesticide application can only be done by a certified applicator, and under public notification requirements. It is our expectation that this combination of requirements will cause agencies to carefully consider viable alternatives to pesticides, better manage their use and allow DEC to use its own resources more effectively in our oversight of pesticide use.

You specifically asked whether DEC intends to provide an opportunity for public involvement in the development of an IPMP. IPMPs are developed by the agency that may apply pesticides, not by DEC. However, all IPMPs are posted online, and DEC will always accept comments and concerns expressed by the public. Pesticide regulations at 18 AAC 90.640(b) require public notice by agencies of proposed pesticide applications. The information in the notice includes the pesticide that will be used, the pest being targeted, the method of application and how the public can receive more information, which should lead an interested reader to where they may review the IPMP and project in more detail, should they still have concerns.

You also asked that DEC require agencies that are applying pesticides to hold annual public hearings. DEC does not require other agencies to hold public meetings; however, anyone may request that of an agency. As I mentioned in our meeting in Juneau, DEC is currently engaged in developing a pesticide public outreach plan to help inform the public of the DEC's role in pesticide management. Examples of topics to be covered during this planned outreach are how the Pesticide Control Program operates and its responsibility for enforcement of pesticide regulations, what activities require a permit, how the public is being protected, and how the public can get more information or provide specific input on projects.

Finally, you asked for a clear explanation of when the Department considers a pesticide applied to water. Under 18 AAC 90.505, a person or government entity "may not, without first obtaining a permit issued by the department, direct, conduct, participate in, or allow the use of pesticide to waters of the state..." Waters of the state are broadly defined in AS 46.03.900(37) to include "lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals...and all

other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state.” DEC thus has very broad authority to protect waters in the state from harmful or unauthorized releases of pesticides. Given this broad jurisdiction, it isn’t possible to describe in detail every instance when a permit is required or not required. This determination must necessarily be made on a case-by-case basis.

There are also federal requirements under the Clean Water Act (CWA) that apply to the application of pesticides to “waters of the United States.” With primacy of the wastewater discharge permitting program from the U.S. Environmental Protection Agency (EPA), DEC administers EPA’s general permit and other CWA permitting requirements through the Alaska Pollutant Discharge Elimination System program in our Water Division. More on this may be found on DEC’s website at: <http://dec.alaska.gov/water/wnpssc/stormwater/PesticideGP.html>.

Additional measures that are in place to protect waters in the state from potentially harmful pesticides include:

- Before manufacturers can sell pesticides in the United States, the EPA evaluates the pesticides thoroughly to make sure they can be used without posing harm or “unreasonable adverse effects” to human health or the environment. Pesticide products must undergo rigorous testing and evaluation prior to federal registration approval. If risks or concerns are identified, appropriate risk mitigation measures are required.
- Pesticide label instructions are the law, and are both state and federally enforceable.
- Regulations at 18 AAC 90.610 prohibit application of pesticides in a manner that results in pesticides drifting off of the target site. This restriction ensures that pesticides will not be blown into water bodies when applied near water sources.
- In order to increase efficacy, pesticides are specifically designed to stay in place where applied. Additives, sometimes called ‘stickers’, are often added to ensure the pesticide remains where applied.
- For products that have greater mobility or are more likely to leach into water, product labels include specific instructions regarding precautions to take, such as not applying to intertidal areas below the high water mark, or requiring buffer zones to water bodies.

In summary, the revised DEC pesticide regulations are intended to direct state resources towards wiser management and use of the pesticides on state lands and waters, including more emphasis on consideration of alternatives to pesticides and greater oversight of their application. We believe this approach is all the more important as the state faces greater challenges from invasive species that may disrupt natural ecosystems and displace native species in the state. This could lead to land managers considering use of pesticides in areas where they haven’t been used before. We will continue to evaluate how the revised regulations, along with other requirements relating to pesticides, are working to protect human health and the environment. This will include consideration whether the public is still getting the information they want and the opportunity for discussion.

Thank you for your interest.

Sincerely,



Larry Hartig  
Commissioner

# ALASKA STATE LEGISLATURE

REPRESENTATIVE JONATHAN KREISS-TOMKINS

SENATOR DENNIS EGAN

Rep.Jonathan.Kreiss-Tomkins@akleg.gov  
State Capitol 426  
Juneau, Alaska 99801-1182  
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Sen.Dennis.Egan@akleg.gov  
State Capitol Room 9  
Juneau, Alaska 99801  
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January 30, 2014

Larry Hartig  
Office of the Commissioner  
P.O. Box 111800  
410 Willoughby Ave., Ste. 303, Juneau, AK 99811-1800

Commissioner Hartig,

DEC's revised regulations regarding pesticide application on state lands concern us. Our office has been approached by multiple communities worried about the possible environmental and health effects from pesticide application. The removal of the permitting process, and therefore public review, has left these communities without recourse when they feel that application of a specific pesticide in a specific area is unsafe. We would like to request that DEC revisit this decision and reinstate, at the very least, a public review process that allows local input.

ADOT&PF's Integrated Vegetation Management Plan, submitted June 2013, states "ADOT&PF intends to begin using herbicide as a maintenance tool, along with non-chemical maintenance and vegetation control measures." Pesticide runoff to waterways and non-state land has the potential to impact many of our natural resources, which are important both economically and for our way of life. In rural southeast, subsistence hunting and gathering are vital, commercial fishing is an important economic driver, and residents take pride in the untainted beauty of our region. We put this at risk when using pesticides that could be linked to detrimental environmental and health effects.

We appreciate ADOT&PF's intent to apply pesticides in an environmentally conscious manner. However, we are still concerned about possible impacts, as are many of the communities we represent. We believe providing opportunities for public review and comment before pesticide application would both lessen the worries of our constituents and help ADOT&PF use pesticides in a more regionally sensitive and responsive manner.

As you may know, some municipalities are considering ordinances to regain control over pesticide usage within their community. We would much prefer to work with DEC and DOT on this issue to find a mutually agreeable solution.

Please let us know when we might be able to sit down for a meeting to find solutions agreeable to all.

Sincerely,

Handwritten signature of Representative Jonathan Kreiss-Tomkins.

Representative Jonathan Kreiss-Tomkins

Handwritten signature of Senator Dennis Egan.

Senator Dennis Egan

**Pesticide Application on State Land or Rights-of-Way (Non-Aerial)**

Step	Prior to March 7, 2013
1	<p>Individual or agency wishing to apply pesticide submits application for pesticide permit. Application must include:</p> <ul style="list-style-type: none"> <li>• Common or brand name of each pesticide to be used, distributor from which it is obtained, and EPA registration number</li> <li>• Targeted pests to be controlled</li> <li>• Each type of formulation to be used</li> <li>• Each type of adjuvant to be used</li> <li>• Percentage of each active ingredient in each formulation</li> <li>• Rate of application for each active ingredient to be applied</li> <li>• Description of treatment area where pesticide will be applied, including:               <ul style="list-style-type: none"> <li>○ Depiction on a government-issued map</li> <li>○ Size of treatment area</li> <li>○ Vegetation in treatment area</li> <li>○ Each potentially affected surface water or marine water body or public or private water system, within 200 feet of treatment area</li> <li>○ Soil type, including drainage characteristics, in treatment area</li> <li>○ Average annual precipitation</li> </ul> </li> <li>• Proposed date and time of each application</li> <li>• Method of application</li> <li>• Method of disposal of excess pesticides and empty containers</li> <li>• Special precautions planned to protect human health, safety, and welfare; animals, and the environment</li> <li>• Evidence that someone involved has working knowledge of pesticides involved, safety precautions, and potential environmental impact</li> <li>• Information demonstrating to DEC's satisfaction that the pesticide does not cause an unreasonable adverse effect</li> <li>• Other information requested by DEC pertinent to the application</li> </ul> <p>(18 AAC 90.515)</p>
2a	<p>Immediately after service of a complete application, DEC publishes two consecutive notices in a newspaper of general circulation in the area to be affected. The notice must include:</p> <ol style="list-style-type: none"> <li>1. Information on nature and location of planned activity</li> <li>2. Info on how people can get more information</li> <li>3. Notice that people can supply written comments before a provided deadline</li> </ol> <p>(18 AAC 90.520; 18 AAC 15.050)</p>
2b	<p>If requested by the governing body of the local municipality or 50 residents of the affected area, or if DEC finds that good cause exists, DEC holds a public hearing on the application. The hearing must be held at the closest practicable location to the site of the operation. The department must take and record public testimony (18 AAC 90.520; 18 AAC 15.060)</p>
2c	<p>Upon receiving the permit application, DEC MAY send a copy of the application and public notices to appropriate local, state, and federal agencies and request written comments submitted within 21 days (18 AAC 90.520)</p>
3	<p>DEC issues or denies permit after reviewing the application, the public record resulting from notice and hearing, and comments received from government entities. Denials must be issued in writing, and may be given if</p>

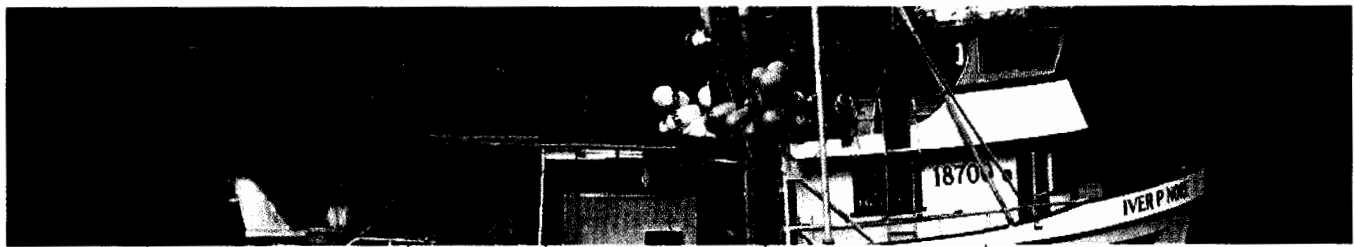
	<ul style="list-style-type: none"> <li>• the application does not supply the necessary information</li> <li>• DEC determines that the special precautions taken are inadequate to prevent unreasonable adverse effects</li> <li>• Applicant has failed to abide by a previous permit</li> <li>• Proposed action is unlawful</li> <li>• DEC finds application of the pesticide will result in unreasonable adverse effect</li> </ul> <p>DEC can attach conditions to the permit to protect health, safety, welfare, animals, or the environment. Permits cannot be valid more than five years (18 AAC 90.525)</p>
4	Permit takes effect no sooner than 40 days after issuance (18 AAC 90.530)
5	Pesticide is applied
6	<p>Within 90 days of permit expiration, permittee submits a summary of treatment results including:</p> <ul style="list-style-type: none"> <li>• Dates of treatment</li> <li>• Total amount of each pesticide used</li> <li>• Assessment of treatment's success or failure</li> <li>• Any observed effect on human health, safety, or welfare, animals, or the environment</li> <li>• Monitoring results, if they were required (18 AAC 90.535)</li> </ul>

**Pesticide Application on State Land or Rights-of-Way (Non-Aerial)**

Step	After March 7, 2013
1	<p>Agency to apply the pesticide adopts an integrated pest management plan (IPMP). The plan must establish a procedure for pesticide use that</p> <ul style="list-style-type: none"> <li>• Poses least possible hazard to people, property and the environment</li> <li>• Uses pesticides only after nonchemical practices, sanitation, or other preventative measures have failed or are impractical</li> </ul> <p>The plan must describe</p> <ul style="list-style-type: none"> <li>• Preventative methods used to keep pest problems from occurring</li> <li>• Activities to monitor for the presence of pests</li> <li>• Thresholds for allowable pest presence</li> <li>• The use of mechanical and physical controls to reduce pest presence, when appropriate</li> <li>• Complete name and EPA registration number of each pesticide product to be used</li> <li>• Identity of person in charge, who shall develop the IPMP, ensure compliance with the plan, act as the point of contact, review and update the plan every two years, and approve the use of pesticides consistent with regulation (18 AAC 90.645)</li> </ul> <p>DEC must be allowed access to property being sprayed, without prior approval (18 AAC 90.640)</p>
2	IPMP is posted on DEC's website
3	<p>At least 30 days before application, agency applying pesticide publishes two consecutive notices of the pesticide application in a newspaper of general circulation in the affected area, including:</p> <ul style="list-style-type: none"> <li>• Location of the proposed activity</li> <li>• Name and EPA registration number of each pesticide to be used</li> <li>• Target pest</li> <li>• Method of applying each pesticide</li> <li>• How public can receive more information</li> </ul> <p>NOTE: If pesticide is being applied to schools or to those public places listed in step 5, the above notification requirements do not apply. Those in step 5 are followed instead</p> <p>NOTE 2: For multiple application spraying programs within the same calendar year, this notification need only be provided prior to the first application. (18 AAC 90.640(c) and (d))</p>
3a	At least 30 days before application, if the pesticide will be applied within 200 feet of a public water system source, the agency provides notification by mail to the owner (18 AAC 90.640)
4	At least 15 days before each application of pesticide, the agency applying it notifies DEC
5	<p>If the pesticide is being applied to</p> <ul style="list-style-type: none"> <li>• Common areas of an apartment building or multi-family dwelling</li> <li>• Portions of government facilities open to the public</li> <li>• Plazas, parks, or public sports fields</li> </ul> <p>Then the agency must post a written notice at the application site that remains legible for 24 hours or until the site is safe. Requirements for notice provided in regulation (18 AAC 90.630)</p> <p>Slightly different notification guidelines apply to application on school grounds (18 AAC 90.625)</p>
6	Pesticide is applied
7	Person in charge keeps a written record of each application of each pesticide for at least two years, which is available to DEC upon request. He/she must also keep records of all public notifications issued (18 AAC 90.640 (a)(7))
8	For each pesticide applied to more than a total of 20 acres, person in charge shall post a report on the agency's website describing product name, EPA registration number, quantity of pesticide applied, and location of each application (18 AAC 90.640 (a)(8))



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LOCAL NEWS

## DOT to start herbicide spraying in Southeast

by Elizabeth Jenkins

August 27, 2014 12:15 pm

The Alaska Department of Transportation plans to spray herbicides on Prince of Wales Island. It will be the first time the DOT has applied herbicides in southeast Alaska since the state eliminated public review requirements in 2013. This has some community members and environmental groups worried about chemicals leaching into nearby habitat.

◀ Track #1

0:00 ▶

Mike Coffey, the DOT Maintenance and Operations Chief, says they're spraying on Thorne Bay Road to combat miles and miles of invasive species, such as canary grass. The DOT plans to spray a single application of herbicides along 17 miles of the highway on the eastern side of Prince of Wales Island. "Vegetation in general blocks signs it causes sight distance on the inside of curves. You can't see animals."

He says there are a lot of reasons why the DOT does vegetation management. Most of the time, it's done with tractors and brush cutters. "But in terms of invasive species a lot of times the mechanical methods just spread it." The state drafts a plan to assess roadside conditions. For Thorne Bay Road, the DOT says they may use chemicals, like Garlon 4, Habitat, and

Roundup. “The one thing I think a lot of people don’t understand is that many of the herbicides that we have approved are things that you could buy in Home Depot and Lowe’s.”

Pamela Miller, the Executive Director of the Alaska Community Action on Toxics, says she knows the herbicides are EPA approved for certain household uses, but that doesn’t mean she agrees with its application in the area. “The DOT would be using much stronger formulations than would be found on a hardware shelf.” She says herbicides, such as Roundup, have been scientifically linked to birth defects, certain forms of cancer and neurological problems. “Particularly it is not safe to be used in a place where people are subsistence harvesting fish in around wetlands and streams.”

Kasaan resident Rob Leighton agrees. He’s trying to organize community members against the DOT’s use of chemicals. “There’s a large percentage of people that pick berries, hunt and fish.” He says spraying herbicides could also be harmful to the Native community who harvest plants along Thorne Bay Road for medicinals. “I don’t exactly know about the public comment. I think they have to come through the various communities that have concerns.”

Actually, that’s no longer the case. In 2013, the Alaska Department of Environmental Conservation eliminated the permitting and public review requirements for most applications on state land. Agencies can spray after giving the public a 30 day notice which, on Prince of Wales Island, they did by notifying residents via the local newspaper on August 2 and 4.

Karin Hendrickson, the Department of Environmental Conservation’s Coordinator for the state’s Pesticide Control Program, says the state is doing everything lawfully. “You know people do have strong opinions about

pesticides, but we make our decisions on risk analysis not just necessarily if people are uncomfortable or unhappy with the idea.”

Changes in regulations by the DEC last year sparked concern in other southeast communities like Petersburg and Skagway. On the Thorne Bay Road, The DOT says their environmental analysis still needs to be conducted, and they don't know exactly when the spraying will happen. Alaska Community Action on Toxics says groups like theirs are examining legal options.