

The following questions were provided in writing to the department by the Southeast Conservation Council on during the 2024-2026 triennial review public comment period. DEC's responses are noted in blue. Please note that these responses do not necessarily represent the department's final position on potential future rulemaking efforts.

DEC has identified six issues as High Priority Issues for Rulemaking, seven issues as Issues for Information Gathering and Analysis, and nine issues as Issues for Tracking and Monitoring. How did DEC identify those issues and projects in the high priority tier as being "of particular interest to the department"?

RESPONSE: The purpose of the triennial review (TR) is to ensure pollution limits for Alaska's surface waters integrate new science, policy, technology, and federal requirements. DEC staff are constantly tracking a myriad of water quality-related issues including federal efforts to develop updated recommendations pertaining to the toxicity of certain pollutants, new publications in the scientific literature, and litigation that may influence the water quality regulatory process. DEC prioritizes the list of potential issues based on best professional judgement and shares that information with the general public for further consideration. In some cases, prioritization is based on prior commitments or rulemaking efforts that have occurred during previous TR cycles while other issues may be prioritized based on perceived threat to Alaska's environment and protected uses. This list is by no means comprehensive and DEC welcomes suggestions from the public regarding the priorities and subjects identified.

What supporting analyses has DEC done in determining which issues to prioritize as high priority?

RESPONSE: The TR is essentially a planning process that allows DEC to prioritize its resources. DEC engages with other state programs and agencies to assist in the development of its priorities. If a proposed subject is selected for future rule-making, an in-depth analysis of certain pollutants or water quality standards regulations occurs during the rule-making process.

Why has DEC chosen to put each of the issues in each of the three tiers? Does public comment on the prioritization tiers make a difference in DEC's prioritization for rule making?

RESPONSE: The TR prioritization process is simply a way to expressing to the public DEC's proposed work plan for the upcoming 3 years. The purpose of having a public process associated with the TR process is to provide an opportunity for the public to weigh in on the list of potential issues. The list of published issues is by no means exclusive and recommendations on other issues or degree of prioritization is welcomed.

What analysis has DEC undertaken to determine that Natural Conditions should be a high priority issue for rulemaking? What concerns does DEC have with the current Natural Conditions Guidance?

RESPONSE: DEC has tracked technical and legal issues associated with the term “natural conditions” for multiple TR cycles. The current regulations and Natural Conditions Guidance at 18 AAC 70.010(d) and 18 AAC 70.235(a) were disapproved of by the U.S. Environmental Protection Agency in 2009. This has resulted in a disparity in authority for state versus federally regulated waters.

Are there any waterbodies or waterbody segments that DEC intends to review? Please provide a list

RESPONSE: DEC is required to review all water quality standards including those modified per 18 AAC 70.230(e) (procedure for reclassification; reclassified waters) and 18 AAC 70.236 (waterbodies subject to site-specific criteria). DEC reviews data associated with these locations via the DEC Integrated Report process, Alaska Wastewater Pollutant Discharge Elimination System permitting process, or through engagement with other state agencies (e.g., Alaska Department of Fish and Game). DEC would also review data specific to these waters should such information be provided the public during the TR public notice period.

In the general issues summary under “General Water Quality Standards Update,” when DEC says it “is considering amendments that clarify applicable units for certain toxic pollutants, convert all latitude and longitude references to decimal degrees, and include waterbody assessment units in all references to waterbodies that have modified uses and/or criteria.” What specific “toxic pollutants is it referring to and what does it mean by “modified uses and criteria”?

RESPONSE: DEC inadvertently used the term “toxic” when referencing clarification of applicable units. DEC is considering whether to align the terms Most Probable Number (MPN), fecal coliform (FC) and colony forming units (CFU) that are referenced in its bacteria criteria at 18 AAC 70.020(b)(2) and 18 AAC 70.020(b)(14) which are not considered to be “toxic” but rather a conventional pollutant. DEC is working to digitize much of its assessment and reporting process and including decimal degrees and waterbody assessment unit information in WQS to ensure alignment between different programmatic efforts. To this effort, DEC is considering revising the tables at 18 AAC 70.230(e) and 18 AAC 70.236(b) that address waters that have been reclassified or assigned site-specific criteria into decimal degrees and waterbody assessment units.

In the general issues summary under “Groundwater Standards,” when DEC says “Many states have developed groundwater-specific WQS that better characterize protected uses and desired level of protection.” What specifically is meant by “better characterize” and what is a “desired level of protection” and by whom is it desired?

RESPONSE: Per 18 AAC 70.050(2) groundwater is protected for the same use classes and criteria as surficial freshwater. There is ample evidence that groundwater often has marked differences in quality from surface water in its “natural” state. Higher concentrations of certain metals or total dissolved solids or lower dissolved oxygen are examples of instances where the level of protection may differ from actual results. Simply put – one set of criteria may not be representative of both surface and groundwater conditions.

In the general issues summary under “Groundwater Standards,” when DEC says it “will consider state and federal policies pertaining to groundwater and relevance to the protection of Alaska’s aquatic resources”, specifically which policies is DEC referring to?

RESPONSE: The Federal Water Pollution Control Act (a.k.a., the Clean Water Act (Act)) specifically references the term “Waters of the U.S. (WOTUS)” when determining the scope of the Act including application of water quality standards. Groundwater is not explicitly included in the protections afforded under WOTUS. Rather groundwater is protected through Alaska Water Quality Standards.

In the general issues summary under “Temperature,” when DEC says it “is considering how to apply the 2015 EPA published “framework” to be used by states when developing site-specific criteria for temperature, dissolved oxygen, and pH, related to Aquatic Life Criteria, why is water quantity in terms of instream flow, etc. not included in this list?

RESPONSE: The regulation of instream flow is outside of the authority of DEC unless it was determined that protected uses at 18 AAC 70.020(b) were impacted via the Antidegradation process outlined at 18 AAC 70.015 and 18 AAC 70.016. Flow regimes are referenced in the EPA 2015 Natural Conditions Framework as an input of interest, so are groundwater inputs, channel gradient, local climate/precipitation regimes, and topography and their respective influence on natural conditions in regard to water quality.

In the general issues summary under “Wetland Standards,” when DEC says “ Many states have developed wetland-specific WQS that better characterize protected uses and desired level of protection.” What specifically is meant by “better characterize” what is a “desired level of protection” and by whom is it desired?

In the general issues summary under “Wetland Standards,” when DEC says it “will consider state and federal policies pertaining to wetlands and relevance to the protection of Alaska’s aquatic resources”, specifically which policies is DEC referring to?

RESPONSE: DEC is considering wetland-specific water quality standards in the same context as that of groundwater-specific water quality standards. A more comprehensive explanation is listed above.

Re: The Triennial Review and Water Quality Standards Rulemaking Process Factsheet: Why is there no mention of intentional outreach efforts from DEC to Tribes? Is there, or will there be a specific process in place to consult with Tribes?

RESPONSE: DEC has provided the same information to Tribes as it has the general public. All WQS rulemaking efforts are subject to EPA approval, which includes Tribal consultation. The Triennial Review is not a rulemaking process, therefore all entities are encouraged to participate equally through this public notice.

For identified high-priority issues, will DEC accept and review relevant reports submitted by the public?

RESPONSE: DEC will accept and review all information provided to the department during the triennial review public engagement period. DEC will provide a summary response in its published Response to Comments following the close of the public comment period.

Will DEC be hosting public workshops on any of the identified high-priority issues? If “yes”, when and where?

RESPONSE: DEC will determine whether public workshops are warranted during rulemaking-specific efforts and make that information will be made available via its website and Listserv services.

For identified high-priority issues, will DEC publicly solicit recommendations for recognized experts for potential technical workgroups? If yes, what does this process look like, and when will it happen?

RESPONSE: DEC will determine whether technical workgroups are warranted during rulemaking-specific efforts and make that information will be made available via its website and Listserv services.

When considering issues such as General Water Quality Standards, copper, alternative method-Aquatic Life Criteria, and intake credits, will DEC coordinate with ADF&G to update the anadromous waters catalog and set standards with the latest map?

RESPONSE: The process of “setting” standards/criteria is entirely independent of efforts conducted by the Alaska Department of Fish and Game to update the Anadromous Waters Catalog as WQS are applied to all state waters and are not dependent of the presence/absence of certain species.

How will DEC consider the Biden Administration’s recent National Drinking Water

Standard for PFAS for the Triennial Review?

RESPONSE: The recently published National Drinking Water Standard for PFAS is enforceable under the Safe Drinking Water Act rather than the Clean Water Act. For more information see EH Drinking water website or the [ADEC PFAS webpage](#).

Is DEC considering what happens to the tons of air pollutants known to our serious PM_{2.5} nonattainment area (EPA designation) as they fall to the ground and waters and/or end up in the waters? Is this measured? If so, how? If not, why not?

RESPONSE: The regulation of air pollutants occurs through the DEC Division of Air. DEC, federal agencies, and local entities regularly monitor for pollutants in Alaska's waters which may/may not be derived from discrete (i.e., point) sources or be considered non-point sources and/or ubiquitous in nature. For additional information on specific nonattainment area(s) – DEC suggests contact with the DEC Division of Air as additional information on this subject is outside of the scope of the TR process.

How is the DEC protecting waterways from mining/increased mining projects that are inadequately or improperly permitted?

Of particular concern is the acid-leaching ore from the Manh Choh mine being milled at Ft. Knox where the ore isn't acid-leaching. Stockpiling is not allowed, but the mining company and our primary sourcing indicates it is being stockpiled. Both Manh Choh and Ft. Knox, as well as other large-scale mining projects (Lucky Shot, etc.), are known to be located where their operations place Alaskan waterways, and their fish and wildlife in serious danger.

RESPONSE: Water quality standards are designed to protect all state waters and serve as the basis for developing wastewater effluent permit limits. The Alaska Pollutant Discharge Elimination System (APDES) is modeled after the national program authorized under the federal Clean Water Act. The permit limits the types and amounts of substances that can be discharged and sets monitoring and reporting requirements and other provisions to ensure that the discharge does not harm water quality or human health. All proposed permits are made available for public comment prior to final authorization by the department. For additional information regarding the process for applying, receiving approval, and compliance monitoring and enforcement of APDES permits, please refer to the [Alaska Pollutant Discharge Elimination System Program website](#).

The Alaska legislature has not passed any legislation to limit or stop the use of PFAS. Governor Dunleavy vetoed the legislation that was passed in a mostly bipartisan way. Why? How is the State of Alaska protecting surface waters, groundwaters, wells, public drinking water sources, as well as the fish and aquatic life in those waters from current and future PFAS contamination if they haven't even acknowledged the problem in the legislature?

RESPONSE: DEC is currently reviewing the EPA 2022 Draft Aquatic Life Ambient Water Quality Criteria for Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS) published in accordance with section 304(a) of the CWA. Once these criteria have been finalized and published by EPA, DEC will determine a particular course of action. This is an issue the public is welcome to comment on during TR cycles and any PFAS rulemaking specific efforts.

How are the known illnesses related to PFAS contamination being documented? How is it that the terrible damage wrought by all the hundreds of types of PFOX has been politicized while nothing substantial is being done to stop its use and address the harms from past contamination?

RESPONSE: Efforts to track “illnesses related to PFAS contamination” is outside of the scope of the TR. DEC suggests contacting the Alaska Division of Public Health for questions about Epidemiology and Environmental Public Health.

How is the state measuring contamination from tires (microplastics and 6PPD-quinone), especially in light of the very large increase in trucking along the Parks, Richardson, Alaska, Steese, and Dalton highways?

RESPONSE: DEC is currently tracking published science and science policy pertaining to the pollutant 6 PPD-quinone which has been associated with tire particles. This area of research is relatively new and evolving. While adoption of water quality criteria associated with this pollutant may occur as a future rulemaking effort, EPA has yet to publish draft water quality criteria for state consideration.