

DEC Request for Adjudicatory Hearing Form Pursuant to 18 AAC 15.200

A request for adjudicatory hearing must be submitted using this form and timely served upon the Commissioner by hand delivery, electronic mail or U.S. mail (see 18 AAC 15.200(a), (c) and (e), as well as on the division that issued the decision.

Attn: Jason Brune, Commissioner -Alaska Department of Environmental Conservation

P.O. Box 111800

Juneau, AK 99811-1800 or DEC.Commissioner@alaska.gov

Air Quality

Alice Edwards, Director
Dept. of Env. Conservation
P.O. Box 111800
Juneau, AK 99811-1800
Fax: (907) 465-5129
Alice.Edwards@alaska.gov

Spill Prevention & Response

Denise Koch, Director
Dept. of Env. Conservation
P.O. Box 111800
Juneau, AK 99811-1800
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Environmental Health

Christina Carpenter, Director
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Anchorage, AK 99501
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Water

Randy Bates, Director
Dept. of Env. Conservation
P.O. Box 111800
Juneau, AK 99811-1800
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Requestor Contact Information

Name*	Tiffany Hanson	Telephone*	206.960.4140
Address*	Silver Bay Seafoods 4039 21st Avenue West Seattle, WA 98199	Fax	
		Email Address	tiffany.hanson@silverbayseafoods.com

Please provide the name(s), mailing address(es), electronic mail address(es) and telephone number(s) for the individual(s) or organization(s) bringing forward this request for adjudicatory hearing (see 18 AAC 15.200(c) and 18 AAC 15.920(13))

*Required

Identification of Represented Parties

For each requester named above that is a member organization, please provide the names and addresses of members who are adversely affected by the decision who are being represented by the organization in this matter (see 18 AAC 15.200(c)(3))

Silver Bay Seafoods
4039 21st Avenue West
Seattle, WA 98199

Please identify the permit or other decision you are seeking to have reviewed. Please include information such as **the date of the decision**, who made the decision, the title of the document within which the decision is contained or the permit number. **The requester bears the burden of presenting evidence in the hearing request. If the decision is not available on the department's web pages, please provide an electronic copy of the decision document.** If the department provided an opportunity for public comment on the permit, approval or decision, you must have provided comments during the public notice period or commented at a public hearing regarding the permit, approval or decision. Please also identify where you commented on the issues being appealed.

DEC's July 15, 2020 denial of Silver Bay Seafoods' ("SBS") request dated July 13, 2020 to exceed the 10-million-pound discharge limit under the AKG520000 General Permit (DEC File No. 2616.54.013).

Issues to be Decided

Please provide the following information for each question of material fact or law (collectively referred to as "contested issues" you are asking to be reviewed as part of the adjudicatory hearing request. Attach additional pages as needed if you are seeking to raise more than three issues or if you need more space for your response relating to an issue.

See attached: "Issues to be decided regarding DEC's July 15, 2020 decision denying SBS's waiver request, including supporting information and explanation."

Contested Issue and Location of the Issue

DEC improperly denied SBS's waiver request under Part V.C.1.a of the Alaska Seafood Processors ADPES General Permit #AKG521009 / NPDES General Permit #AKG520000

Explanation and reasons the contested issue is relevant to the decision

See attached: "Issues to be decided regarding DEC's July 15, 2020 decision denying SBS's waiver request, including supporting information and explanation."

How are requesters directly and substantively affected?

DEC's denial of the requested waiver places SBS at risk of non-compliance with the terms and conditions of the General Permit. Non-compliance may result in the agency's review of the facility's operation under the authority of its No Action Assurance Memorandum. DEC may also subject SBS to assorted sanctions for any non-compliance.

Any suggested terms or conditions?

DEC should grant the waiver for the reasons stated above and in the waiver request.

Why should your request be granted?

See attached: "Issues to be decided regarding DEC's July 15, 2020 decision denying SBS's waiver request, including supporting information and explanation."

Contested Issue 1

- a) A concise statement of the contested issue proposed for hearing (see 18 AAC 15.200(c)(4)(C))
- b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)
- c) An explanation of how the decision was in error with respect to the contested issue
- d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision)
- e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion or
 - 1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s):
 - 2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and
 - 3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above
- f) Identify when and where you raised this issue in testimony or comments you provided to DEC. If your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC 15.245)**
- (g) Suggested alternative terms and conditions that in your judgement are required for the Division's decision to be in accord with the facts or law applicable to the issue you are raising.
- (h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.
- (i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim. (see 18 AAC 15.200(a))

** this requirement does not apply to a person challenging an Air Quality Division Stationary Source Emission Control permit under AS 46.15.2200 either (1) on the basis of a private, substantive legally protective interest under state law that may be adversely affected by the permit action, or (2) as the owner or operator of the stationary air source.

NOTE: IF you did not raise your issue before the Division's issuance of the permit or contested decision, then 18 AAC 15.245 requires you to show "good cause" for the failure to raise the issue for it to be considered. You should include this information in your response to (h) above.

Contested Issue and location of the Issue

[Empty box for Contested Issue and location of the Issue]

Explanation and reasons the contested issue is relevant to the decision

[Empty box for Explanation and reasons the contested issue is relevant to the decision]

How are requesters directly and substantively affected?

[Empty box for How are requesters directly and substantively affected?]

Any suggested terms or conditions

[Empty box for Any suggested terms or conditions]

Why should your request be granted?

[Empty box for Why should your request be granted?]

Contested Issue 2

a) A concise statement of the contested issue proposed for hearing (see 18 AAC 15.200(c)(4)(C))

b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)

c) An explanation of how the decision was in error with respect to the contested issue

d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision)

e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion or

1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s):

2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and

3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above

(f) Identify when and where you raised this issue in testimony or comments you provided to DEC, if your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC15.245)**

(g) Suggested alternative terms and conditions that in your judgement are required for the Division's decision to be in accord with the facts or law applicable to the issue you are raising.

(h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.

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Contested issue and location of the issue

Explanation and reasons the contested issue is relevant to the decision

How are requesters directly and substantively affected?

Any suggested terms or conditions?

Why should your request be granted?

Contested Issue 3

a) A concise statement of the contested issue proposed for hearing (see 18 AAC 15.200(c)(4)(C))
b) The location(s) in the permit, or other decision where the specific terms or conditions appear, that you are contesting (e.g. page, paragraph or other identifying description)

c) An explanation of how the decision was in error with respect to the contested issue

d) The reason(s) you believe the contested issue you are raising is relevant to the Division's decision (why you believe resolving the contested issue in your favor will materially change the Division's decision)

e) How each requester (including represented parties if the requester is a member organization representing them in this matter) is directly and substantively affected by the contested decision to justify review; more specifically, please include a discussion or

1) the nature of the interest of the requester or represented party who is impacted by the contested decision(s):

2) whether that interest is one that the department's applicable statutes and regulations intend to protect; and

3) the extent to which the Division's decision relating to this contested issue directly and substantively impairs the interest described in (2) above

(f) Identify when and where you raised this issue in testimony or comments you provided to DEC. If your comments or testimony were submitted to DEC in writing, please provide a reference to the page and paragraph where they appear. (see 18 AAC 15.200(a) and 18 AAC 15.245)**

(g) Suggested alternative terms and conditions that in your judgement are required for the Division's decision to be in accord with the facts or law applicable to the issue you are raising.

(h) A discussion of any other reasons you believe your request for an adjudicatory hearing should be granted. Please include a concise summary of the facts and laws that you believe support your request.

(i) If you believe a provision of the final decision or permit you are challenging was not in the draft decision or permit that was subject to the public notice or comment process, please explain the basis of your claim. (see 18 AAC 15.200(a))

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Request for Evidentiary Hearing

With reference to the number of issues listed in your response to "Issues to be Decided" above, please list the number of the issues for which you are requesting an evidentiary hearing that may involve the testimony of factual witnesses, expert witnesses or the offering of additional documents or other evidence not already in the existing agency record.

SBS is requesting an evidentiary hearing regarding:

- DEC's policy and practice of denying waivers under Part V.C.1.a of the Alaska Seafood Processors ADPES General Permit #AKG521009 / NPDES General Permit #AKG520000
- the substantive reasons for DEC's denial of SBS's waiver request dated July 13, 2020
- how (or if) DEC determined whether the additional proposed discharge violated State water quality standards
- DEC's proposed alternatives for SBS to comply with the General Permit's requirements, and how these alternatives align (or fail to align) with DEC's denial of the requested waiver
- the scope or existence of any alleged violation of State water quality standards caused by the discharges at issue

Description of Question of Fact to be Raised at an Evidentiary Hearing

With reference to the number of issues listed in your response to "Request for Evidentiary Hearing" above, please describe each of the factual issues you want considered in an evidentiary hearing. You may reference you answers in you response above if they describe all the questions of fact that you want considered at an evidentiary hearing

See attached: "Issues to be decided regarding DEC's July 15, 2020 decision denying SBS's waiver request, including supporting information and explanation."

Estimated Time for an Evidentiary Hearing

Please provide your estimate of the time you think will be needed to conduct the evidentiary hearing you are requesting.

1.5 days

IF YOU HAVE QUESTIONS

If you have questions regarding what information needs to be included in this form or questions about the process for requesting an adjudicatory hearing, you may find help by:

1. Reviewing the department's regulations, many of which are referenced in this form. The Administrative Procedures regulations at 18 AAC 15 are available on the Internet at <http://dec.alaska.gov/commish/regulations/index.htm>. The definitions of key terms may be found at 18 AAC 15.920.
2. Reviewing the guidance documents posted by the department at <http://dec.alaska.gov/commish/ReviewGuidance.htm>; or
3. Contacting the department's adjudicatory hearing liaison, Gary Mendivil, in the Commissioner's Office at (907) 465-5061 or at Gary.Mendivil@alaska.gov

Please be aware that failing to comply with the requirements for filing and serving a request for adjudicatory hearing could result in all or a portion of your request being denied.

APPLICABLE DEADLINES

Requests for an adjudicatory hearing must be made not later than 30 days after the issuance of the department's decision or permit, or not later than 30 days after the issuance of a decision on a request for informal review under 18 AAC 15.185, whichever is later. (see 18 AAC 15.200(a))