THE STATE of ALASKA
GOVERNOR MICHAEL J. DUNLEAVY

Department of Environmental Conservation
DIVISION OF WATER
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December 15, 2020

Charles R. Blumenfeld
Perkins Coie LLP
1201 Third Ave, Suite 4900
Seattle, WA 98101-3099

Re: Request for Informal Review of General Permit AKG528000

Dear Mr. Blumenfeld:

I have completed my evaluation of your October 20, 2020 request for informal review of the Division of Water (Division), Wastewater Discharge Authorization Program's decision to issue the subject permit. Previously I informed you of my decision to remand the decision back to program staff to address your concerns. The remand is complete, and I have made the following decisions based on your request and the remand outcome.

Regarding the effective date of the permit, the Division concurs there have been exceptional circumstances as the result of the COVID-19 global pandemic. The program will issue a minor modification to the permit and modify the effective date of the permit to June 1, 2021.

With respect to your concerns regarding the issued permit conditions addressing the treatment and discharge of catch transfer water, the Division will maintain its position with no modification of the permit on this topic. A detailed analysis is enclosed explaining the basis for our concern and our authority to regulate catch transfer water, but there are two reasons for our resolve on the issue. First, the process of loading fishing vessels with untreated seafood process water is the functional equivalent of discharging directly to the ocean. Second, an intermediary point source does not remove Clean Water Act jurisdiction for discharges that originate in one point source and pass through an intermediary point source before being discharged directly into waters of the United States.

The Division did not find the terms of the permit ambiguous with respect to treatment and monitoring of catch transfer water. The permit does not require the addition of treatment for any process water returned to vessels beyond that which is already installed and in use. Section 2.6.1 of the permit acknowledges that one processor eligible for coverage under the subject permit currently has the capacity to treat catch transfer water and will continue to do so under the terms of the permit. Section 2.6.1.1 specifically exempts processors without existing treatment capability from treating catch transfer water. Additionally, the permit terms only require permittees to sample catch transfer water prior to discharge to the vessel. There is no expectation of treatment or sampling of catch transfer water that is in the recirculation process. The Division

is mainly concerned with collecting a representative sample of the process water returned to the vessel. This letter may serve as amplification of the permit terms with respect to these concerns.

Lastly, the Division agrees with your assertion the issued General Permit does not cover other discharges from vessels while secured to the seafood processing facility. The primary concern of the permit is seafood process wastewater. Vessel discharges would be of immediate concern if they create a nuisance condition or threaten fish, wildlife, or human health. If the Division were to become aware of such a vessel discharge condition while secured to the seafood processing facility, the vessel discharge would be deemed an unauthorized discharge. On a case-by-case basis the Division would need to determine if the unauthorized discharge is the direct result of the permitted activity of seafood processing or if it is unrelated to the specific activity. The permit will not be modified to address this assertion. The Division strongly encourages industry to take a proactive stance with vessels secured to their processing facility to eliminate or minimize discharges while secured to seafood processing facilities to reduce the potential for a nuisance condition until such time the vessel is no longer subject to the exclusion in 18 AAC 83.015(b)(1)(B)(ii). In response to this concern, the Division will add an addendum to the Response to Comments document which explains the Division will not pre-determine enforcement outcomes in permit documents.

Consistent with 18 AAC 15.185(d)(3)(A), I am advising you of the right to seek an adjudicatory hearing under 18 AAC 15.200 or Alaska Statute 44.62 not later than 30 days after this decision letter.

Sincerely,

Randy Bates
Director

Enclosures: Catch Transfer Analysis
Permit Modification
Revised Response to Comments