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Attorney for Appellants

**IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER**

ALASKA COMMUNITY ACTION ON
TOXICS, ALASKA SURVIVAL, and)
COOK INLETKEEPER,)

Appellants,)

v.)

LAWRENCE HARTIG,)
COMMISSIONER OF THE ALASKA)
DEPARTMENT OF ENVIRONMENTAL)
CONSERVATION (in his official)
capacity); and ALASKA DEPARTMENT)
OF ENVIRONMENTAL)
CONSERVATION, DIVISION OF)
ENVIRONMENTAL HEALTH; and)
ALASKA RAILROAD CORPORATION,)

Appellees.)

_____)
_____)

) JOINT NOTICE OF
) ADMINISTRATIVE APPEAL
) AND STATEMENT OF POINTS

**In Re: Commissioner 4/27/2011
Decision Upholding Alaska Railroad
Corp. Pesticide Permit, # 10-SOL--01**

Pursuant to Rule of Appellate Procedure 602(a)(2), Alaska Community Action on
Toxics, Alaska Survival, Cook Inletkeeper, (hereinafter, "ACAT") here give notice of
their appeal of the final decision and order issued by Commissioner Lawrence Hartig on

ACAT, et al. v. Alaska Dept. of Environmental Conservation
Joint Notice of Administrative Appeal: In re Alaska Railroad Pesticide Permit

April 27th, 2011 upholding the department's issuance of public pesticide permit # 10-SOL-01 to the Alaska Railroad Corporation.

Parties Taking the Appeal

Alaska Community Action on Toxics
505 West Northern Lights Blvd, Suite 205
Anchorage, AK

Alaska Survival
P.O. Box 320
Talkeetna, AK 99676

Cook Inletkeeper
P.O. Box 3269
Homer, AK 99603

Statement of Points on Appeal

- The Commissioner of the Department of Environmental Conservation's ("Commissioner") decision to affirm the Department of Environmental Conservation's ("Department") issuance of Pesticides Permit #10-SOL-01 to the Alaska Railroad illegally interferes with Alaskans' access to, and common use of, fish, wildlife and waters in violation of Article VIII, § 3 and Article VIII, § 14 of the Alaska Constitution.

- The Commissioner's decision to affirm the Department's issuance of Pesticides Permit #10-SOL-01 to the Alaska Railroad denied Appellants' right to due process in violation of Article I, § 7 and to prior notice and safeguards of the public interest in violation of Article VIII, § 10 of the Alaska Constitution because

the application did not disclose the proximity of the treatment area to surface waters, marine water bodies, and public or private water systems, or the drainage characteristics of the soil type.

- The Department violated due process and equal protection when he arbitrarily compiled the administrative record, culled correspondence, and unequally applied the Public Records Act to the administrative appeal in violation of Article I, § 1 and Article I, § 7 of the Alaska Constitution.

- The Department's decision – upheld on administrative appeal – to require Appellants to pay the man/hour costs of sifting through all the emails and other correspondence that five separate agency personnel and/or consultants received over the course of nine months because the department neglected to establish and maintain any sort of orderly master filing system impermissibly burdens Appellants' ability to challenge the Department's decision in violation of Article I, § 1 and Article I, § 7 of the Alaska Constitution.

- The Commissioner denied Appellants the fundamental right to petition for review of adverse government actions in violation of Article I, § 1, Article I, § 6, and Article I, § 7 of the Alaska Constitution by denying standing to groups with a long and demonstrated interest in maintaining healthy ecosystems, including keeping toxic pollutants out of Alaska watersheds.

- The Commissioner abused his discretion in affirming the Department's issuance of Pesticides Permit #10-SOL-01 to the Alaska Railroad

despite the Department's failure to disclose all surface water, marine water bodies, and public or private water systems that are located within distances specified in Department regulations to treatment areas.

- The Commissioner abused his discretion in affirming the Department's issuance of Pesticides Permit #10-SOL-01 to the Alaska Railroad despite the Department's failure to adequately describe the vegetation and the soil type and drainage characteristics in the treatment area.

- The Commissioner abused his discretion in affirming the Department's issuance of Pesticides Permit #10-SOL-01 to the Alaska Railroad, which failed to require the mandatory statutory safeguard of posting written notice of time and place at public places within and adjacent to the treatment areas.

DATED this 25th day of May, 2011.

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CERTIFICATE OF SERVICE

On this 25th day of May, 2011, a true and correct copy of this Notice/Statement of Points, Notice Transmitting Final Decision, and Cash Deposit on Appeal was sent via certified mail to the following:

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