

Department of Environmental Conservation
SB 27 and HB 78: “Regulation of Dredge and Fill Activities”
Primacy for the Clean Water Act Section 404 Permitting (“404 Program”)
January 24, 2013

Background

Section 404 of the Clean Water Act (CWA) established the “404 Program” requiring that all dredge or fill activities in waters of the U.S., including wetlands, be permitted by the Corps of Engineers. Examples of regulated activities include filling in wetlands for any purpose such as roads or residential and commercial building pads, and construction of breakwaters, dams, and levees. The CWA directs states to manage and implement the permitting program.

With over 174 million acres of wetlands (65% of all wetlands in the nation), Alaska’s stake in administering the 404 program is unlike that of any other state.

Proposed Legislation

- Gives DEC and DNR, working together, authority to evaluate, seek approval, and implement a State-managed 404 permitting program from the EPA and the Corps of Engineers.
- Primacy does not apply to tidally influenced areas and navigable waters that are or could be used to transport interstate or foreign commerce and wetlands adjacent to those areas.
- Under primacy, the state gains authority to exercise discretion whenever possible while EPA and the Corps retain oversight authority.

Benefits of State Primacy

- Reduced bureaucracy. Two State permitting agencies involved, rather than four.
- State, instead of federal management of water, land use, and permitting priorities.
- A faster permitting process and a stable, risk-based, and predictable enforcement regime.
- Cost savings in permitting major new projects.
- Permits that reflect Alaska’s unique conditions with Alaska-specific program guidance.
- Less emphasis on cumbersome process and more emphasis on results.
- A vastly improved appeals process that is timelier, conducted by Alaskans, and less apt to stall projects needlessly and indefinitely.
- Judicial proceedings generally decided by Alaska courts instead of outside federal courts.
- Accountability to Alaska’s elected officials and the Alaskan public.
- Use of 404 permitting guidelines for environmental review, eliminating lengthy NEPA process for many projects, while still protecting the environment.
- Robust public notification and participation.
- Federal laws, such as the Endangered Species Act, would be addressed through EPA’s oversight of the state program.