

**State of Alaska**  
**Departments of Environmental Conservation and Natural Resources**  
**Clean Water Act Section 404 Dredge and Fill Permitting and Compliance**  
**State Primacy**

## Primacy Benefits – Why Should Alaska Invest in 404 Program Primacy?

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Fifty years ago the delegates for statehood promised that the State of Alaska would act like a state and not continue to expect federal assistance to run programs that the state can and should run. The State has recently completed taking over primacy for the wastewater discharge permitting program (Clean Water Act Section 402) from the Environmental Protection Agency (EPA), and assuming primacy for the Clean Water Act (CWA) Section 404 dredge and fill permitting and compliance program (the “404 program”) will further advance the State in upholding that promise.

The 404 program requires a permit from the U.S. Army Corps of Engineers (the Corps) for all dredge or fill activities that affect “waters of the United States.” Because of Alaska’s vast wetlands, most construction projects for facilities and infrastructure require a 404 permit. This permitting program has far-reaching effects on development in Alaska.

### **BENEFITS of a State-managed 404 Program**

- Accountability. State primacy means that the 404 program is accountable to Alaskans and to the Alaska legislature for implementation of the permit and compliance program (EPA and the Corps are not directly accountable to Alaskans).
- State, instead of federal, management of water and land use priorities. A State-run 404 program would help to insulate 404 permitting in Alaska from the uncertainties resulting from shifting national priorities and policies which necessarily must be nationwide in scope, but which are often difficult to apply in Alaska.
- Reduced bureaucracy. Currently the Corps is the permitting agency with input from the EPA and certification by DEC that the Corps’ permits meet Alaska’s water quality standards. DNR is involved in coordinating permitting for large projects. Under primacy, 404 permitting activities will be administered by DEC and DNR. Two state agencies, rather than four state and federal agencies, will result in a faster permitting process and a more streamlined program.
- Time and cost savings in permitting major new facilities and infrastructure. While permit fees will likely increase under primacy, the cost to the permit applicant to permit some major new facilities may decrease substantially. This decrease in costs will result from increased communication throughout the permitting and public notice phases of a project, the efficiencies of working with two State agencies rather than four federal and state agencies, reduced travel costs for meetings with multiple agencies, and working with permit writers familiar with Alaska conditions.
- Greater state role in project planning. A State-issued 404 permit would not trigger the NEPA review process, as does the Corps’ issuance of the permit. However, some projects with other federal actions or federal funding would trigger the NEPA process (for example, a Federal Energy

Regulatory Commission (FERC) license for a hydroelectric dam). Even within a NEPA process, there is benefit in the state playing a greater role as the 404 permitting authority. There is also potential benefit in replacing the formal ESA and EFH consultation processes required of the Corps and EPA with the less formal and faster processes under state primacy while still achieving the objectives of those programs.

- A program tailored to Alaskan needs, to the greatest extent allowed by federal law. Permit requirements tailored to Alaska conditions, resulting in a more flexible approach to wetlands permitting and compensatory mitigation.
- Less emphasis on cumbersome process and more emphasis on results. More timely permitting. The Corps and EPA are both experiencing significant budget reductions. A State-run 404 program will result in more certain funding and staffing, and more timely permitting of projects important to the State. The State will be setting the priorities.
- More predictable enforcement. The state can build specific, timely, and predictable steps into a risk-based enforcement program while maintaining a commitment to compliance assistance.
- Robust public notification and participation opportunities.
- State judicial review. Judicial review of state permitting decisions under primacy would generally be handled in the Alaska courts instead of the federal courts. State judicial review of permitting decisions means better consideration of local issues and the potential for more timely resolution to permit challenges.
- Alaska-specific guidance documents. The state can develop guidance documents that are prepared for the specific needs of Alaska's waters and projects, replacing and/or enhancing Corps and EPA developed guidance which is based on those agencies' national perspectives.
- Availability of efficiency tools. Streamlining the administrative permitting process is a potential advantage of a state 404 permitting program. The State already has tools such as on-line permit applications, on-line permit fee payments, and electronic permit tracking that can be amended to accommodate 404 permitting.
- Predictability and stability in funding. The Army Corps in Alaska has recently taken about a 20% reduction in staff and is facing additional cuts and reductions, at the same time it is facing the need to prepare very large Environmental Impact Statements under NEPA and permit many state projects from large capital budgets in the last few years, which will draw a lot of Corps' staff time. Not taking primacy has consequences that need to be considered as the State tries to build up its infrastructure and put citizens to work.