



# Department of Environmental Conservation

## House Finance Committee

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# DEC Primacy Programs

- ▶ Primacy refers to the state assuming authority to implement a federal program
- ▶ Federal laws for which DEC assumed primacy:
  - ▶ Clean Air Act: Alaska assumed in 1972
  - ▶ Safe Drinking Water Act: Alaska assumed in 1978
  - ▶ Clean Water Act National Pollutant Discharge Elimination System: Alaska assumed in 2012
- ▶ Federal laws for which DEC has statutory authority, granted by the legislature, to assume primacy but has not yet done so:
  - ▶ Resource Conservation and Recovery Act (RCRA): Legislature authorized in 1981
  - ▶ Clean Water Act Section 404: Legislature authorized in 2013



# Resource Conservation & Recovery Act (RCRA)

- Management of Solid Waste
- DEC has approval for oversight of non-hazardous waste under Subtitle D
- Subtitle C covers management of hazardous waste
- DEC is one of two states that does not have primacy over Subtitle C



# Regulated Activities Under RCRA Subtitle C

- Generators
  - Military
  - AK DOT
  - Seafood Facilities
  - Mining
  - Oil and Gas Facilities
- Transporters
  - Trucking
  - Barge Lines
- Treatment, Storage, and Disposal Facilities (TSDF)



# Statutory Authority

*The department shall take all actions necessary to receive authorization from the administrator of the Environmental Protection Agency to administer and enforce a hazardous waste program in accordance with 42 U.S.C. 6901 — 6987 (Resource Conservation and Recovery Act of 1976). - AS46.03.299 (c)*



# Benefits of RCRA Primacy

	EPA	DEC
Focus	Enforcement	Technical and compliance assistance
Location	Seattle	Alaska
Regulatory flexibility	Little to none	Much greater under a state-managed program



# Recent RCRA Activity in Alaska by EPA

	Inspections	# of Fines	\$ of Fines
2021	20	3	\$45,532
2020	6	3	\$97,983
2019	9	3	\$219,019
2018	10	1	\$42,000



# RCRA Primacy Costs

(in thousands)

- Increment Request
  - \$830.0 UGF
  - 6 FT Positions
  - Training, equipment, and travel
  - Develop regulations and documentation
- Two-year application process
- Federal funds are available after primacy assumed which would replace \$400.0 of GF



# Clean Water Act Section 404

- ▶ Regulates the discharge of dredged or fill material into waters and wetlands
- ▶ Alaska's wetlands cover approximately 174 million acres, or about 43% of Alaska's surface area
  - ▶ May include tundra, permafrost, marshes, and bogs
  - ▶ Most construction and resource and community development projects require Section 404 permits



# Examples of Activities Requiring 404 Permits

- ▶ Site improvement fill for residential, commercial, or recreational development
- ▶ Construction of revetments, breakwaters, levees, dams, dikes, and weirs
- ▶ Placement of riprap and fill material for roads, airports, or buildings
- ▶ Resource development projects



# Statutory Authority

*Notwithstanding any other provision of law, take all actions necessary to receive federal authorization of a state program for the department and the Department of Natural Resources to administer and enforce a dredge and fill permitting program allowed under 33 U.S.C. 1344 (sec. 404, Clean Water Act) and to implement the program, if authorized*  
- AS 46.03.020 (14)



# Benefits of 404 Primacy

- ▶ A State-run program is accountable to Alaskans and the legislature, and will assure that Alaska will have control of its permitting priorities
- ▶ Enables the State to integrate the dredge and fill program with other related land and water management programs
- ▶ Timely, less costly, more coordinated permitting process
- ▶ State implementation of mitigation requirements
- ▶ Stable, risk-based, and predictable enforcement
- ▶ Permits issued will reflect Alaska's unique conditions with Alaska-specific program guidance
- ▶ A State-run Section 404 program would reduce the uncertainty resulting from shifting national policies

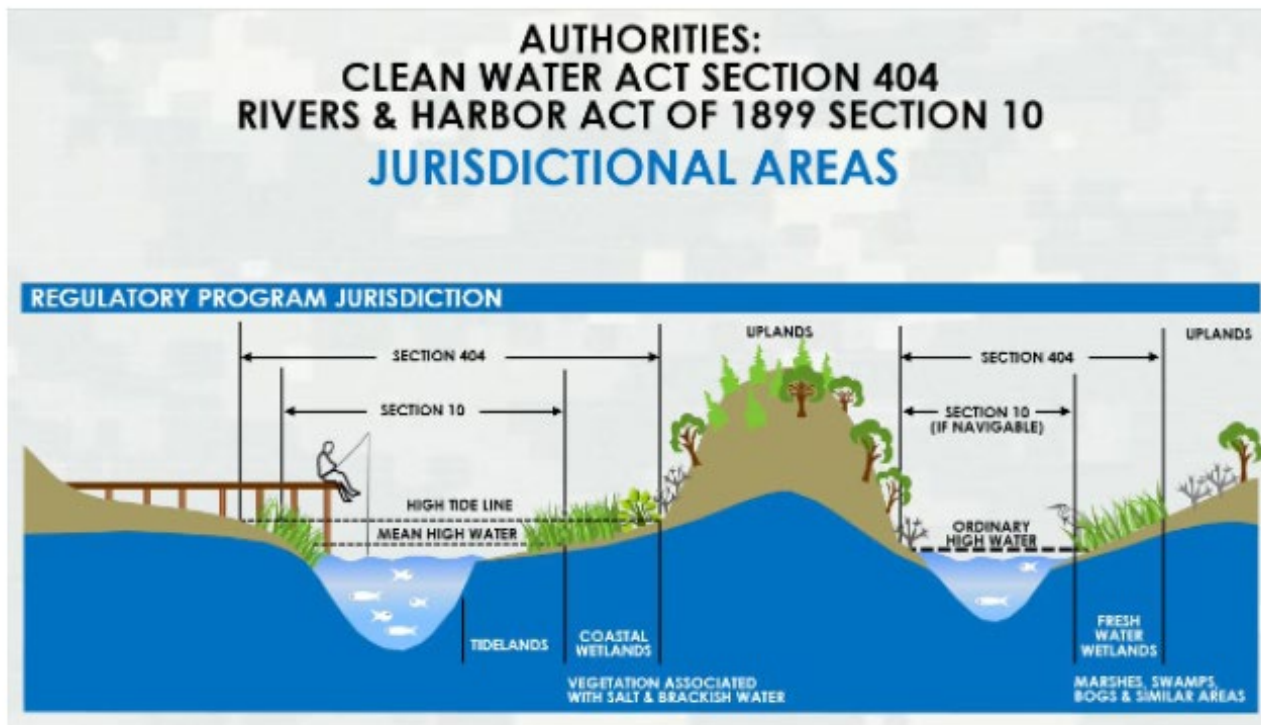


# Section 404 Assumable Waters

- US Army Corps of Engineers (USACE) will retain permitting authority over the following Waters of the US (WOTUS)
  - Waters which are presently used for interstate or foreign commerce
  - Waters which are susceptible to use for interstate or foreign commerce
  - Waters which are subject to the ebb and flow of the tide (i.e., coastal waters)
  - Wetlands adjacent to the above waters
- Alaska would assume permitting authority over the remaining WOTUS



# Example of Jurisdictional Waters





# 404 Primacy Requirements

- ▶ Alaska's Section 404 program will:
  - ▶ Be consistent with and no less stringent than the CWA and its implementing regulations
  - ▶ Have equivalent scope of jurisdiction
  - ▶ Regulate at least the same activities
  - ▶ Provide for sufficient public notice
  - ▶ Ensure compliance with the Section 404(b)(1) Guidelines
  - ▶ Have adequate enforcement authority



# 404 Primacy Costs

(in thousands)

- Increment Request
  - \$4,904.0 UGF
  - 28 FT Positions
  - Training, equipment, and travel
  - Legal consultation
  - Coordination with DFG and DNR
- Anticipate four additional positions in FY2024
- Two-year application process



# Questions?

