

Department of Environmental Conservation

FY23 - Summary of Significant Budget Issues

(\$ thousands)

Item	Appropriation / Allocation	Description	Amount / Fund Source	Comment
1	Administration / EVOS Trustee Council	Transfer Exxon Valdez Oil Spill Trustee Council from Department of Fish and Game	Total: \$2,400.7 \$456.9 Fed Rcpts (Fed) \$1,943.8 EVOS Civil (Other) 3 PFT Positions	The Exxon Valdez Oil Spill Trustee Council is tasked with oversight of the remediation of damages caused by the 1989 Exxon Valdez Oil Spill. The Council currently manages the \$109 million balance of the original \$900 million settlement against Exxon and distributes grants for ongoing clean-up and mitigation efforts. This function has resided under the Department of Fish and Game since 1993. The Council's three State Trustees are the Commissioner of Fish and Game, the Commissioner of Environmental Conservation, and the Attorney General. The decision to accept or reject this transfer will occur in the budget process for the Department of Environmental Conservation.
2	Environmental Health / Environmental Health	Assume Primacy of Hazardous Waste Management Under Resource Conservation and Recovery Act, Subtitle C	\$830.0 Gen Fund (UGF) 6 PFT Positions	<p>The Department proposes to assume primacy to operate a Resource Conservation and Recovery Act (RCRA) Subtitle C program within its Environmental Health division as a section of the Solid Waste Management program, which already manages RCRA Subtitle D. The RCRA is a federal law that covers the management of solid waste. RCRA Subtitle C covers the management of hazardous waste, while RCRA Subtitle D covers non-hazardous solid waste management. Currently, the Environmental Protection Agency (EPA) Region 10 oversees hazardous waste management in Alaska.</p> <p>Program implementation is proposed to be a two-year process, with year one involving discussions with the EPA on requirements for program primacy, development of regulations to implement Subtitle C in Alaska, and hiring and training staff. Year two involves continued staff training, making the application for state program authorization to the EPA, and full operation of Subtitle C. Once primacy is granted, federal funds of \$400.0 are available annually beginning in FY25 to offset general funds.</p> <p>Fiscal Analyst Comment: Currently, 48 states and two territories have primacy for management of Subtitle C in their state or territory. Alaska and Iowa are the only two states that do not have state hazardous waste programs.</p>
3	Environmental Health / Environmental Health	Replace Ocean Ranger Fees for Fish Tissue Testing	Net Zero \$324.6 Gen Fund (UGF) (\$324.6) Ocn Ranger (Other)	<p>The Department received an opinion from the Department of Law that the use of Commercial Passenger Vessel Environmental Compliance (CPVEC) fees to fund fish tissue testing violates the Tonnage Clause of the U.S. Constitution.</p> <p>Fiscal Analyst Comment: In SLA2021 the legislature changed the funding source for shellfish testing from CPVEC to UGF for these same legal reasons. In addition to the constitutional issues brought up by the Department of Law, the use of the CPVEC for fish tissue testing is not a</p>

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3	Environmental Health / Environmental Health	Replace Ocean Ranger Fees for Fish Tissue Testing	Net Zero \$324.6 Gen Fund (UGF) (\$324.6) Ocn Ranger (Other)	(continued) designated use of the fund under state law. Fish tissue testing would need to be done whether or not there was a cruise ship industry. Commercial Passenger Vessel Environmental Compliance fund contains both CPVEC and the Ocean Ranger fees that are the funding source for the Ocean Ranger program and are referred to as Ocean Ranger (1205). These fees are tracked separately while residing in the same fund.
4	Spill Prevention and Response / Spill Prevention and Response	Replace Authority Unavailable due to Alaska Constitution Article IX Section 17(d)	Net Zero \$1,275.2 Gen Fund (UGF) (\$1,275.2) Oil/Haz Fd (DGF)	The enactment of Article IX, Section 17(d) of the Alaska Constitution transferred available balances of funds used by this appropriation to the Constitutional Budget Reserve Fund (CBR); a process commonly referred to as the "CBR sweep." Budget authority that cannot be satisfied with projected FY23 revenue collections are replaced in the Governor's proposed budget with unrestricted general funds in order to ensure continuity of service.
5	Water / Water Quality, Infrastructure Support & Financing	Assumption of Primacy over Section 404 Permitting of the Discharge of Dredged or Fill Material into Waters and Wetlands	\$4,904.0 Gen Fund (UGF) 28 PFT Positions	Section 404 of the Clean Water Act (CWA) regulates the discharge of dredged or fill material into the waters and wetlands of the United States (WOTUS) and requires the U.S. Army Corps of Engineers (USACE) to issue a Section 404 permit before dredged and fill material may be discharged in WOTUS. Activities typically requiring a Section 404 permit include: <ul style="list-style-type: none"> - Site improvements for residential, commercial, or recreational development; - Construction of revetments, groins, breakwaters, levees, dams, dikes, and weirs; and - Placement of riprap and fill material for roads, airports, or buildings. Section 404(g)(1) of the CWA gives states the ability to assume partial authority over the Section 404 program. It states that the "Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into navigable waters ... within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law." This provision requires the USACE to retain permitting authority over certain categories of waters and allows the State to assume permitting authority over all other WOTUS (commonly known as "assumable waters"). The Department asserts that assumption of the Section 404 program would provide a streamlined permitting procedure, greater certainty to the regulated community, conservation of resources of both the applicant and regulator, and greater control over the development of its natural resources while complying with federal law.

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5	Water / Water Quality, Infrastructure Support & Financing	Assumption of Primacy over Section 404 Permitting of the Discharge of Dredged or Fill Material into Waters and Wetlands	\$4,904.0 Gen Fund (UGF) 28 PFT Positions	<p>(continued)</p> <p>The Department will apply for Environmental Protection Agency (EPA) approval in FY22 and FY23 with the expectation that state primacy will be assumed and fully implemented by FY24.</p> <p>Additionally, the Department anticipates needing four more positions in FY24 to fully implement the program.</p> <p>Fiscal Analyst Comment: To date, Michigan, New Jersey, and Florida have assumed administration of the Section 404 program. The U.S. Army Corps of Engineers retains permitting authority for the rest of the country. Alaska has 65% of the wetlands in the United States totaling 174 million acres, which is about 43% of Alaska's surface area. The last major move towards 404 assumption in Alaska was in SLA2013 with the passage of SB27 directing the Department to evaluate and seek primacy and report to the legislature. The legislature subsequently defunded the effort in the FY15 budget.</p>