



Department of Environmental Conservation

Senate 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 - AS46.03.299 (c)
 - ▶ Clean Water Act Section 404: Legislature authorized in 2013 - AS 46.03.020 (14)



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



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



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)



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

- ▶ Education and compliance support from DEC will prevent violations, proactively protecting Alaska's environment instead of just levying punitive fines



DEC's Regulatory Approach

- ▶ EPA's rules were drafted to meet the needs of all states. DEC will be able to draft regulations that meet the needs of Alaska.
- ▶ Opportunity to develop a “universal waste” classification.
- ▶ Small and Very Small Generators overlooked by EPA.
 - ▶ 41 large, 1028 small/very small generators in Alaska
 - ▶ Pre pandemic example of 2018 & 2019 – a combined total of only 6 inspections were conducted
 - ▶ DEC focus on outreach, education, and technical assistance



Overseeing and protecting Alaska's wetlands

- ▶ Alaska's wetlands cover approximately 174 million acres, or about 43% of Alaska's surface area
 - ▶ May include tundra, permafrost, marshes, and bogs
- ▶ Contiguous U.S. used to have 200 million acres of wetlands, less than half remain



Clean Water Act Section 404

- ▶ Regulates the discharge of dredged or fill material into waters and wetlands
- ▶ Activities that require 404 permits include fill for resource and community development projects, construction in waters, and placement of riprap and fill material for roads, airports, or buildings
- ▶ Three states currently have State 404 Programs – Michigan (1984), New Jersey (1994), and Florida (2020).



404 Primacy Costs

(in thousands)

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

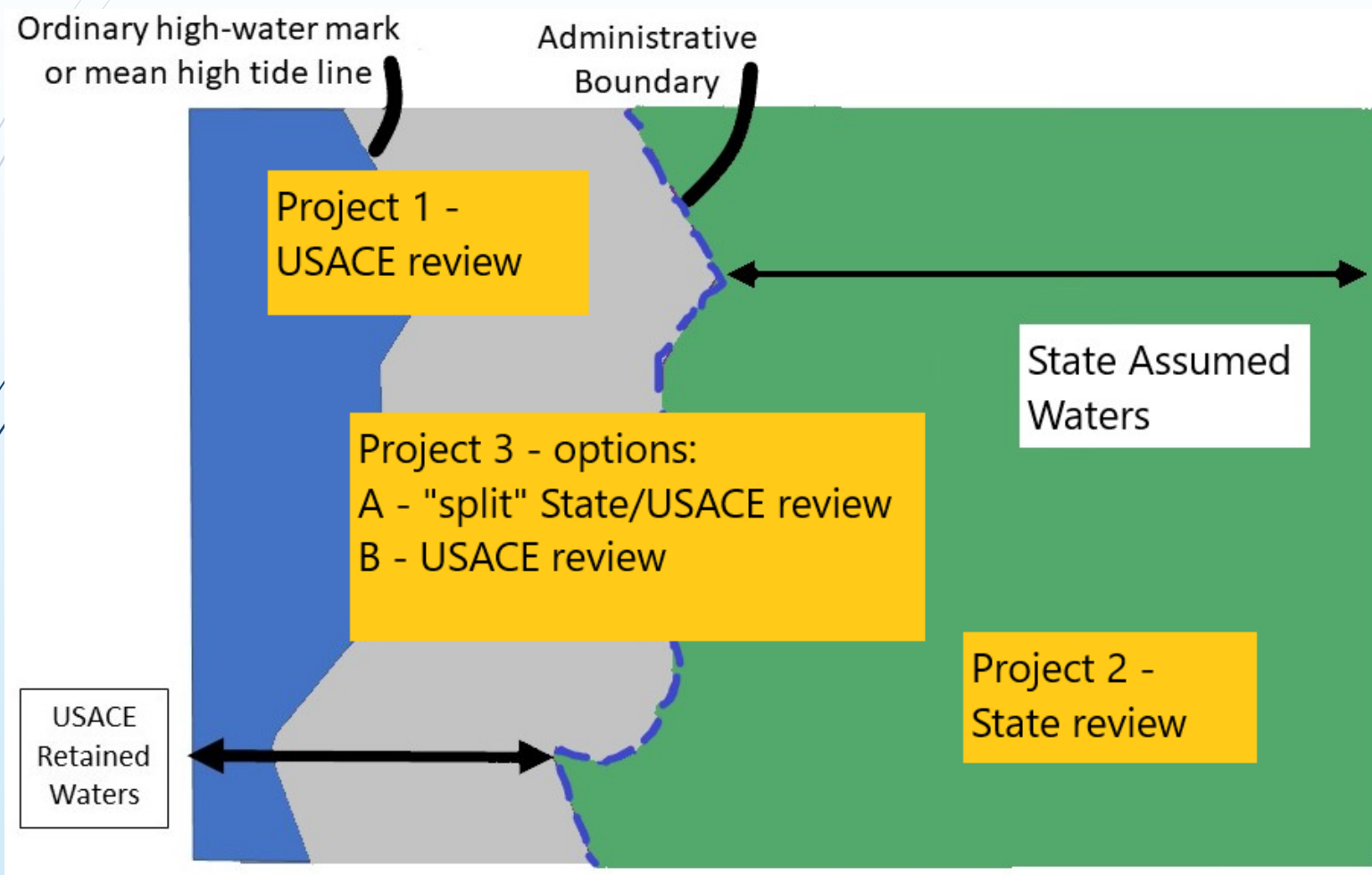


Section 404 Assumable Waters

- 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 Clean Water Act and its implementing regulations
 - Have sufficient authority to regulate all waters of the U.S. that may be assumed
 - Regulate at least the same activities as listed in the Clean Water Act and its implementing regulations
 - Provide for sufficient public participation and tribal consultation
 - Ensure compliance with the Section 404(b)(1) guidelines which provide criteria for permit decisions
 - Have adequate enforcement authority



Benefits of a 404 Primacy Part 1

- ▶ Accountable to Alaskans and the legislature – 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
- ▶ Increases permitting efficiency by reducing duplicative State and federal reviews, requirements, and permit conditions
- ▶ State implementation and flexibility for compensatory mitigation requirements



Benefits of a 404 Primacy

Part 2

- Significant time and cost savings for large projects in state assumed waters – no costly and time intensive federal National Environmental Policy Act provisions and processes
- Permits issued will reflect Alaska's unique conditions with Alaska-specific program guidance
- State 404 Program would reduce the uncertainty resulting from shifting national policies (i.e., waters of the U.S.)



Questions?

