

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

April 26, 2002

1:53 p.m.

MEMBERS PRESENT

Representative Beverly Masek, Co-Chair
Representative Drew Scalzi, Co-Chair
Representative Joe Green
Representative Mike Chenault
Representative Gary Stevens
Representative Mary Kapsner
Representative Beth Kerttula

MEMBERS ABSENT

Representative Hugh Fate, Vice Chair
Representative Lesil McGuire

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 140(FIN)

"An Act relating to regulation and licensing of certain water-power development projects; and providing for an effective date."

- MOVED CSSB 140(FIN) OUT OF COMMITTEE

SENATE BILL NO. 356 am

"An Act relating to the authority of the Department of Environmental Conservation to issue general and individual permits for waste disposal; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: SB 140

SHORT TITLE: SMALL WATER-POWER DEVELOPMENT PROJECTS

SPONSOR(S): SENATOR(S) TORGERSON

Jrn-Date	Jrn-Page		Action
03/13/01	0641	(S)	READ THE FIRST TIME - REFERRALS
03/13/01	0641	(S)	RES, FIN

03/21/01		(S)	RES AT 3:30 PM BUTROVICH 205
03/21/01		(S)	Heard & Held
03/21/01		(S)	MINUTE(RES)
04/06/01		(S)	RES AT 3:30 PM BUTROVICH 205
04/06/01		(S)	-- Meeting Canceled --
02/08/02		(S)	RES AT 3:30 PM BUTROVICH 205
02/08/02		(S)	Moved Out of Committee
02/08/02		(S)	MINUTE(RES)
02/11/02	2153	(S)	RES RPT 4DP 2NR
02/11/02	2153	(S)	DP: TORGERSON, STEVENS, HALFORD,
02/11/02	2153	(S)	WILKEN; NR: ELTON, LINCOLN
02/21/02		(S)	FIN AT 9:30 AM SENATE FINANCE 532
02/21/02		(S)	Heard & Held
02/21/02		(S)	MINUTE(FIN)
03/01/02	2336	(S)	FN1: (CED)
03/01/02	2336	(S)	FN2: (DNR)
03/01/02	2336	(S)	FN3: (DFG)
04/02/02		(S)	FIN AT 4:00 PM SENATE FINANCE 532
04/02/02		(S)	Heard & Held
04/03/02		(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/03/02		(S)	Heard & Held -- Recessed to 4:00 pm --
04/03/02		(S)	MINUTE(FIN)
04/04/02	2630	(S)	FIN RPT CS 1DP 4NR TECH TITLE CH
04/04/02	2630	(S)	NR: KELLY, HOFFMAN, WILKEN, OLSON;
04/04/02	2630	(S)	DP: GREEN
04/04/02	2630	(S)	FN1: (CED)
04/04/02	2630	(S)	FN2: (DNR)
04/04/02	2630	(S)	FN3: (DFG)
04/04/02		(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/04/02		(S)	Moved CS(FIN) Out of Committee
04/04/02		(S)	MINUTE(FIN)
04/08/02	2658	(S)	RULES TO CALENDAR 1OR 4/8/02
04/08/02	2659	(S)	READ THE SECOND TIME
04/08/02	2659	(S)	FIN CS ADOPTED UNAN CONSENT
04/08/02	2659	(S)	COSPONSOR(S): LEMAN
04/08/02	2660	(S)	ADVANCED TO 3RD READING FLD Y14 N5 E1
04/08/02	2660	(S)	ADVANCED TO THIRD READING 4/9

			CALENDAR
04/08/02		(S)	RLS AT 10:30 AM FAHRENKAMP 203
04/08/02		(S)	MINUTE(RLS)
04/09/02	2687	(S)	READ THE THIRD TIME CSSB 140(FIN)
04/09/02	2687	(S)	PASSED Y17 N2 E1
04/09/02	2688	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
04/09/02	2688	(S)	ELLIS NOTICE OF RECONSIDERATION
04/10/02	2716	(S)	RECON TAKEN UP - IN THIRD READING
04/10/02	2717	(S)	PASSED ON RECONSIDERATION Y15 N3 E1 A1
04/10/02	2717	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
04/10/02	2718	(S)	TRANSMITTED TO (H)
04/10/02	2718	(S)	VERSION: CSSB 140(FIN)
04/11/02	2877	(H)	READ THE FIRST TIME - REFERRALS
04/11/02	2877	(H)	RES, FIN
04/26/02		(H)	RES AT 1:30 PM CAPITOL 124

BILL: SB 356

SHORT TITLE: GENERAL PERMIT FOR WATER/WASTE DISPOSAL

SPONSOR(S): STATE AFFAIRS

Jrn-Date	Jrn-Page		Action
03/27/02	2542	(S)	READ THE FIRST TIME - REFERRALS
03/27/02	2542	(S)	RES
04/03/02		(S)	RES AT 3:30 PM BUTROVICH 205
04/03/02		(S)	Moved Out of Committee
04/03/02		(S)	MINUTE(RES)
04/03/02		(S)	MINUTE(RES)
04/04/02	2631	(S)	RES RPT 4DP
04/04/02	2631	(S)	DP: TORGERSON, HALFORD, STEVENS, WILKEN
04/04/02	2631	(S)	FN1: ZERO(DEC)
04/08/02		(S)	RLS AT 10:30 AM FAHRENKAMP 203
04/08/02		(S)	MINUTE(RLS)
04/09/02	2683	(S)	RULES TO CALENDAR 4/9/02
04/09/02	2686	(S)	READ THE SECOND TIME
04/09/02	2686	(S)	ADVANCED TO THIRD READING UNAN CONSENT

04/09/02	2686	(S)	READ THE THIRD TIME SB 356
04/09/02	2687	(S)	PASSED Y17 N2 E1
04/09/02	2687	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
04/09/02	2687	(S)	ELTON NOTICE OF RECONSIDERATION
04/10/02	2715	(S)	RECON TAKEN UP - IN THIRD READING
04/10/02	2715	(S)	RETURN TO SECOND FOR AM 1 UNAN CONSENT
04/10/02	2715	(S)	AM NO 1 ADOPTED UNAN CONSENT
04/10/02	2716	(S)	AUTOMATICALLY IN THIRD READING ON RECON
04/10/02	2716	(S)	PASSED ON RECONSIDERATION Y14 N3 E1 A2
04/10/02	2716	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
04/10/02	2718	(S)	TRANSMITTED TO (H)
04/10/02	2718	(S)	VERSION: SB 356 AM
04/11/02	2878	(H)	READ THE FIRST TIME - REFERRALS
04/11/02	2878	(H)	RES
04/26/02		(H)	RES AT 1:30 PM CAPITOL 124

WITNESS REGISTER

DARWIN PETERSON, Staff
to Senator John Torgerson
Alaska State Legislature
Capitol Building, Room 427
Juneau, Alaska 99801

POSITION STATEMENT: Presented SB 140 on behalf of Senator John Torgerson, sponsor.

SALLY SADDLER, Legislative Liaison
Division of Community and Business Development
Department of Community & Economic Development
P.O. Box 110801
Juneau, Alaska 99811-0801

POSITION STATEMENT: Provided testimony and answered questions relating to SB 140.

SUSAN SCHRADER
Alaska Conservation Voters (ACV)
P.O. Box 22151
Juneau, Alaska 99802

POSITION STATEMENT: Expressed ACV's concerns relating to SB 140 and SB 356.

JAN KONIGSBERG
Trout Unlimited
1399 West 34th, Suite 205
Anchorage, Alaska 99503

POSITION STATEMENT: Provided testimony on SB 140; on behalf of the Alaska Public Waters Coalition he suggested that the current federal program works but acknowledged that a few problems exist; urged the committee to try to fix the current federal program rather than start a new state program.

WILL ABBOTT, Commissioner
Regulatory Commission of Alaska (RCA)
Department of Community & Economic Development
1016 West 6th Avenue
Anchorage, Alaska 99501

POSITION STATEMENT: Provided testimony and answered questions relating to SB 140.

CHIP DENNERLEIN, Director
Division of Habitat and Restoration
Alaska Department of Fish & Game
333 Raspberry Road
Anchorage, Alaska 99518-1579

POSITION STATEMENT: Testified on SB 140; expressed support for the concept of the bill but also expressed related concerns and he offered strong support for the adoption of the proposed amendment seeking direction from the legislature.

JOE BALASH, Staff
to Senator Gene Therriault
Alaska State Legislature
Capitol Building, Room 121
Juneau, Alaska 99801

POSITION STATEMENT: Presented SB 356 on behalf of the Senate State Affairs Standing Committee, sponsor, which Senator Gene Therriault chairs.

COLONEL FRED LEHMAN, U.S. Army Alaska Garrison Commander
(Address not provided)
Fort Richardson, Alaska 99488

POSITION STATEMENT: Testified on SB 356; urged the committee to include an amendment that would exempt training activities involving munitions conducted by the U.S. Department of Defense or a U.S. military agency.

JOHN McDONAGH, Environmental Counsel

U.S. Army Alaska

600 Richardson Drive, Number 5700

Fort Richardson, Alaska 99505-6700

POSITION STATEMENT: Testified on SB 356; urged the committee to include an amendment that would exempt training activities involving munitions conducted by the U.S. Department of Defense or a U.S. military agency.

TOM CHAPPLE, Director

Division of Air and Water Quality

Department of Environmental Conservation

555 Cordova Street.

Anchorage, Alaska 99501

POSITION STATEMENT: Provided testimony and answered questions relating to SB 356.

MATT GILL, Staff

to Representative Eldon Mulder

Alaska State Legislature

Capitol Building

Juneau, Alaska 99801

POSITION STATEMENT: Testified on SB 356 on behalf of Representative Eldon Mulder in support of any amendment that would clarify the U.S. Army's position regarding the use of the Eagle River Flats artillery training range.

ACTION NARRATIVE

TAPE 02-39, SIDE A

Number 0001

CO-CHAIR BEVERLY MASEK called the House Resources Standing Committee meeting to order at 1:53 p.m. Representatives Masek, Scalzi, Green, Chenault, and Stevens were present at the call to order. Representatives Kapsner and Kerttula arrived as the meeting was in progress.

SB 140-SMALL WATER-POWER DEVELOPMENT PROJECTS

CO-CHAIR MASEK announced that the first order of business would be CS FOR SENATE BILL NO. 140(FIN), "An Act relating to regulation and licensing of certain water-power development projects; and providing for an effective date."

Number 0075

DARWIN PETERSON, Staff to Senator John Torgerson, presented SB 140 on behalf of Senator Torgerson, sponsor. Mr. Peterson explained that U.S. Senator Frank Murkowski had sponsored a bill amending the Federal Power Act to provide state jurisdiction for Alaska over small hydroelectric projects. Consequently, this legislation transferred licensing and regulatory authority over hydroelectric projects of five thousand kilowatts or less to the State of Alaska.

MR. PETERSON suggested that bringing this regulatory authority to the state will reduce the great time and expense associated with federal licensing and the regulation of small hydro projects in Alaska. He noted that the time and money required for federal licensing is virtually prohibitive for some small utility and personal projects. Before Alaska can acquire jurisdiction from the Federal Energy Regulatory Commission (FERC), the legislature must approve this bill and the governor must submit a program satisfying FERC's regulatory requirements. As SB 140 is currently drafted, the Regulatory Commission of Alaska (RCA) would be the regulatory agency responsible. He said all of the current environmental protections required under federal law will still apply, and cannot be preempted by this legislation.

Number 0228

CO-CHAIR SCALZI noted that the Alaska Department of Fish & Game (ADF&G) had expressed concerns about the scope of review and the time allotment, and he said ADF&G suggested that there hadn't been adequate time to address issues that may occur in the approximately six hundred different sites throughout the state. He asked Mr. Peterson if there had been discussion with ADF&G on remedying those concerns.

MR. PETERSON in response, noted that Senator Torgerson is familiar with ADF&G's concerns. He offered his understanding that the program will go forth by enacting this legislation; subsequently, the RCA would establish a program very similar to FERC's current program and would work with FERC to develop a much better understanding of how this program is currently regulated. Mr. Peterson suggested that the [new program] can't be much different from FERC's current program or FERC would not approve of it, and that FERC has ultimate veto power as to whether the State of Alaska acquires jurisdiction over this program. He said the unknown variables could not be addressed

in this legislation, but rather would be addressed by the administration when developing the new program.

Number 0391

REPRESENTATIVE STEVENS referred to the sponsor statement and he asked for clarification about hydroelectric projects [located on Indian reservations, conservation units of [Alaska National Interest Lands Conservation Act (ANILCA)], or rivers designated for the Wild and Scenic Rivers System] that would not be eligible for state jurisdiction.

MR. PETERSON explained that the language was taken directly from federal legislation and that the only Indian reservation in Alaska is Metlakatla, which the state wouldn't acquire jurisdiction over. Mr. Peterson said he didn't know how many Wild and Scenic Rivers there are in Alaska, but that any small hydro projects on those rivers would not be applicable.

Number 0500

CO-CHAIR SCALZI moved to adopt CSSB 140(FIN). There being no objection, it was so ordered.

Number 0510

CO-CHAIR SCALZI turned attention to a proposed written amendment, which read [original punctuation provided]:

The Regulatory Commission of Alaska, in consultation [sic] with the Commissioners of DNR, DCED and DF&G, will report to the legislature by February 15th 2003 with their assessment of how the licensing of small hydro projects by the state of Alaska would be accomplished. This report will include the impact on the operating budget, funding mechanism, staff requirements, potential statutory changes, timelines and public participation for developing regulations and any other items deemed important by the administration.

CO-CHAIR SCALZI said he thought the proposed amendment essentially asks for direction from the legislature and won't have any effect on the bill. He asked if Senator Torgerson had any problem with the proposed amendment.

MR. PETERSON, in response, said Senator Torgerson doesn't think the proposed amendment is necessary because this bill would go into effect January 1, 2003. He suggested the new administration should be able to coordinate with those departments and work together so the RCA can develop a program that closely resembles FERC's program and satisfies all of the agency's concerns. Mr. Peterson said it is the sponsors' opinion that this [amendment] would complicate the issue. He explained that the intent of the bill is to take the enabling federal legislation and authorize the administration to begin the process of discovering how the program will work and to work with FERC to establish a program. Mr. Peterson noted that the proposed amendment may have an unnecessary fiscal impact.

Number 0780

SALLY SADDLER, Legislative Liaison, Division of Community and Business Development, Department of Community & Economic Development, testified. She explained that when this bill was introduced, the administration convened an interagency team that consisted of DNR, ADF&G, [Alaska Coastal Management Program (ACMP)], RCA, and DCED to look over the bill to try to determine what the full effects and impacts would be. She said some of those common points that had emerged from the interagency team's review of the bill are that the RCA is an appropriate agency to assume these duties, and while it represents an expansion of what the RCA is currently doing, it is believed that the fiscal notes will reflect those additional duties; that the development of small hydro projects can support economic development and improve the availability and cost of hydropower in rural Alaska; and that a state program may have advantages by allowing the focus of the process to be on those issues that are pertinent to Alaska.

MS. SADDLER explained that when this federal legislation was pending in Washington, D.C., then-Governor Knowles wrote a letter that supported giving Alaska jurisdiction for the takeover of those "FERC-like" responsibilities. She said the governor also recognized that this is a complex undertaking and the [importance] of a state program that results in the proper protection of fish, wildlife, and the environment at least as well as, or as rigorously as, FERC currently does it. Ms. Saddler said the governor also acknowledged the importance of establishing an appropriate funding mechanism for the process that could either be a direct appropriation or based on a user-fee system. Currently, she said, the RCA operates under the regulatory cost-charge, which is a recovery system that passes

those fees on to different users. She offered her understanding that [the RCA] is coming up against the regulatory cost-charge cap.

MS. SADDLER noted that the packet contains three fiscal notes for the RCA, DNR, and ADF&G, and she suggested it will take up to two years to develop regulations that define the program operations. She said once those regulations have been recommended or are established, FERC would have up to one year to approve the program before ceding authority to the state, and that the interagency team believes it would be prudent to have the RCA and respective commissioners report the results of the scoping project back to the legislature. Ms. Saddler said agencies currently understand their roles and responsibilities under the FERC process, but it is not entirely clear whether all that FERC does and what the state will be assuming are fully understood.

MS. SADDLER said, for example, in the case of ADF&G, it is unknown whether the state would have the statutory authority to take on the FERC program. She explained that FERC has jurisdiction over entire watersheds, while ADF&G only has oversight over streambeds. She suggested that there may be a mismatch and that some statutory requirements may need to be implemented. Ms. Saddler said the thought is that with this amendment, items like the impact on the operating budget, the kind of funding mechanism that would be recommended, staffing requirements, and any sort of statutory changes that are needed for the smooth implementation of the provisions of this program would be included.

Number 1078

SUSAN SCHRADER, Alaska Conservation Voters (ACV), testified. Ms. Schrader explained that this bill does begin the process of authorizing state takeover of FERC authority for licensing of small hydro projects. She said ACV's main concern with this program is the expense that will be entailed to do this properly, and while it is realized that FERC will have ultimate authority to approve whatever program the state comes up with, it is pretty unrealistic to suggest that this is a place where the state should be putting its limited funds. Ms. Schrader acknowledged that there are some problems with the FERC process, and she said an appropriate response would be what the congressional delegation can do to address those problems with FERC. She suggested that there are no particular advantages to the state's taking over this costly process, and she expressed

concern as to whether RCA is the appropriate lead entity to be looking at this.

MS. SCHRADER noted that FERC regulations are particularly esoteric, and suggested that the RCA might find that it is quite a daunting task to design a program [and implement] all of the regulations within two years. She turned attention to the ongoing funding [that would be necessary] for the departments to implement this program, and she pointed out that DNR has had problems with its water-quantity program because it doesn't have enough funding or staff needed to process the applications, and yet the legislature is looking at adding more tasks and jobs to its [workload]. She suggested that one of two things is going to happen: With not enough money to support the state's doing this type of licensing, the small hydropower developers that want the licenses are going to find that they're not gaining time by the state having the authority and that it will be just as timely a process as having FERC do it; in the alternative, the process will be short-cut so that the developers don't have long time delays, and that will come at the expense of unavoidable environmental impacts, resulting in a lot of outraged public.

MS. SCHRADER expressed concern about the language of the bill and she said as it is currently written, there is no protection for state special lands - state parks, state game refuges, and critical habitat areas - leaving them all possibly open for consideration for hydropower development. Certainly, she said, any proposals to do projects in those areas are going to meet with a lot of public opposition and lead to a lot of delays, which, to her understanding, is one of the major points of the state's taking over, to avoid the delays that already exist with FERC. She said ACV is very interested in finding ways to bring cleaner, more economically affordable power generation to the rural communities and would like to see the reliance on diesel generation minimized as much as possible.

Number 1312

MS. SCHRADER suggested that hydropower is not necessarily a clean, environmentally friendly source; she said it can be under certain situations but does require careful oversight. She said ACV would like to see [rural communities] get away from diesel generation and move toward hydropower, which, she suggested, could still be done within the framework of the FERC process. Ms. Schrader said there is no need for the state to assume what she suspects will be a very costly program that the legislature

is going to have to deal with yearly to fund all those positions at the various departments involved. She pointed out that Alaska would be the very first state to which FERC would have delegated the authority for this oversight. Ms. Schrader suggested it may be a good thing, but she said she didn't know, and that she thought it was little risky for the state to be looking at that [because] it is the first time this has ever been done.

CO-CHAIR MASEK noted that Representative Stevens' research indicated that there are 27 rivers listed in the state designated under the Wild and Scenic River System that are exempt from this bill.

Number 1464

JAN KONIGSBERG, Trout Unlimited, noted that he was testifying on behalf of Alaska Public Waters Coalition ("Coalition"). He characterized the Coalition as an association that includes sport fishing groups, conservation organizations, former members of the "Alaska water board," and other individuals who are concerned about executive actions or legislative and regulatory initiatives that affect Alaska's water resources. Mr. Konigsberg explained that SB 140 will allow the State of Alaska to assume licensing authority for hydroelectric projects of five megawatts or less. He said the Coalition believes that regardless of the size, all proposed hydroelectric projects should be scrutinized thorough a rigorous licensing process to ensure that the project, once constructed and in operation, will have the least environmental impact possible over the life of the project. Mr. Konigsberg said the Coalition is not opposed to this legislation if the state can accomplish this licensing in a manner at least as stringent as FERC, but the Coalition does not believe that this will necessarily be the case.

MR. KONIGSBERG said the Coalition is puzzled by the legislatures' "seeming eagerness" to mandate that the state assume a federal program for which there is no accompanying appropriation, especially given the magnitude of the state's current fiscal problems. He suggested that the fiscal note, of approximately \$300,000 after the three-year period, is probably too conservative of an estimate. Mr. Konigsberg talked about the legislature's rationale for embracing an unfunded federal mandate, and he suggested that the proponents of this legislation are convinced that a state licensing program will provide regulatory relief from what they believe to be an onerous federal process, but that these same proponents

acknowledge that the state process must be as rigorous as that of the federal government. "How can both be true, we would like to know," he asked.

MR. KONIGSBERG asked, if the program was to be funded at \$300,000 per year, how the general public would take that appropriation that may come from a general fund, when other dire needs exist within human service agencies. He pointed out that some of these projects will be built by out-of-state hydropower developers, some of whom will receive federal grants. Mr. Konigsberg said not only will the state be incurring significant administrative costs pursuant to hydropower licensing, it will assume, "we believe," significant liability, particularly in the area of dam safety. Currently, he explained, the state has no liability for FERC-licensed projects; once the state undertakes licensing, it will also be responsible for dam inspection. Therefore, he said, in the case of a dam failure, should that result in damage to life and private property or result in natural resource damage, it may not be the dam owner alone that is responsible or held accountable.

Number 1678

MR. KONIGSBERG suggested that if the state were sued, the cost of litigation and actual damages could dwarf the annual cost of the licensing program. He said it is wishful thinking to presume that a state regulatory program will be any speedier than the current federal program. First, he said, this will be new terrain for the RCA, so startup missteps and delays can be expected, and he pointed out that DNR has not been able to keep up with a relatively simple and straightforward water rights program. So, realistically, how would DNR deal with an increase in workload in its water and dam safety programs as required by state hydropower programs, he asked. Mr. Konigsberg suggested if the real intent of this legislation is to achieve hydropower licensing efficiency at the expense of stringent environmental enforcement by skimping on environmental review and permitting, then these projects will face lengthy delays due to legal challenges. He suggested that the FERC process works but needs improvement, and he said it would behoove the state to join with others to improve the federal program rather than take on a new program in this period of fiscal uncertainty.

Number 1753

WILL ABBOTT, Commissioner, Regulatory Commission of Alaska (RCA), Department of Community and Economic Development,

testified briefly. Mr. Abbott concurred with Ms. Saddler's testimony.

Number 1783

REPRESENTATIVE STEVENS turned attention to the fiscal notes and he asked Mr. Abbott if he had an idea of what the costs to the state would be and if licensing fees would cover the cost of inspections.

MR. ABBOTT, in response, said federal legislation is silent on whether the state will receive the funding that now goes to FERC for those projects. Currently, he explained, each operating project pays FERC a charge based on the kilowatts that it generates. He indicated that FERC puts that money back into its program to assist with staffing costs and to keep costs low for future licensees. He questioned how the state would do that without tapping into the general fund "a whole bunch." He also questioned how the state would get [the program] started and whether it would assume responsibility for existing hydro projects of five megawatts or less. He indicated he did not know whether the state would be receiving those funds and that was one of the reasons the [department] wanted time to communicate with FERC to try and resolve those issues.

Number 1878

REPRESENTATIVE KERTTULA asked, if the legislature gives the department state authority to have licensing fees, whether that will that resolve it or whether federal authority will also be required.

MR. ABBOTT remarked, "Because it doesn't say on there, I would assume that we'll get that; maybe that's optimistically assuming on my part, but I'm assuming because it is silent, that we will."

REPRESENTATIVE KERTTULA asked for clarification on whether he was referring to the state bill or the federal law.

MR. ABBOTT, in response, said they are both silent.

Number 1929

REPRESENTATIVE STEVENS asked if giving [management] of the licensing process to the state rather than the federal government would be less rigorous and less demanding.

MR. ABBOTT suggested FERC was not going to let the [state] "get away with a whole lot," and that the [objective of a state-operated program] is not only to try to make it an easier process, but also to get the process back to the state where [residents] deal with the problems, rather than somebody in Washington [D.C.]. He mentioned that many of the permitting functions and the tasks done by the state agencies will require sending the data back to the FERC for its decision.

Number 2003

CHIP DENNERLEIN, Director, Division of Habitat and Restoration Alaska Department of Fish & Game (ADF&G), testified. Mr. Dennerlein noted he had prior involvement with FERC in some of his former capacities. He said the position of ADF&G is supportive and consistent with the administration's position and has been expressed throughout the development of the congressional enabling legislation. Mr. Dennerlein speculated that [restructuring the program] could be a positive contribution to energy needs, particularly, in rural Alaska. He suggested that the state program can provide at least the [same] level of fish and wildlife resource protection as the current FERC process. Mr. Dennerlein advised the committee that that qualifier is very important because most of these projects will be in or adjacent to rural Alaskan communities, in stream and river valleys that are close to these communities, and that local and state residents utilize fish and wildlife resources in these areas.

MR. DENNERLEIN said the FERC process allows ADF&G to work effectively with these issues on a watershed basis to get the information needed to make good decisions and in defining what information will be needed, both in helping to define the scope of information needed from applicants and other sources and in getting FERC as an agent in helping obtain that information. Mr. Dennerlein said this is not unlike, in some ways, the state coastal management process for coastal projects, where the [department] works on a broader scale with other resource agencies and puts a package of standards together for a project. He remarked, "ACMP is the way we step out of the streambed where Title 16 gives us clear authority bank to bank."

Number 2169

MR. DENNERLEIN mentioned that a mechanism that would allow this to be done beyond an ACMP process in the Interior, outside of

the coastal zone, was unknown or could not be foreseen at this time. He talked about an example involving a major interchange that the Department of Transportation and Public Facilities (DOT&PF) is building along the Parks Highway and Glenn Highway and the permitting that is going forward the following summer. He mentioned that an anadromous fish stream exists in the area and it is very clear the [department] has Title 16 authority, but the real issue is beyond the defined stream banks and the flooded wetlands; [the issue is] that the area in between is a host to 6,000 juvenile coho salmon per acre that go to five streams.

MR. DENNERLEIN said this is one of the highest producing coho-rearing areas in Upper Cook Inlet and is a major resource-protection interest and major public interest. He said the department works on that issue through the ACMP; in the FERC process, the department is also able to work on a watershed basis without a statutory basis. He noted that the department is unsure how to do that in this legislation and that it is one of the things that needs to be investigated. Mr. Dennerlein mentioned an example of a project that was built in Kodiak in which the major wildlife concern was brown bears. He said the project is operational but did require some creative solutions.

Number 2291

MR. DENNERLEIN cited False Creek as an example because it fits in this range as a 3.5 megawatt [project] and is unique because it is a project that is proposed in Glacier Bay National Park and Preserve, in congressionally designated wilderness. He said it may well receive a license because of some creative solutions, including a land exchange. He noted that False Creek is similar and that it involved locals, property owners, spawning fish, subsistence, and so forth. Mr. Dennerlein offered support for the concept but expressed concern about statutory authority, the front-end ability of funding, and the follow-through and re-licensing of these projects. He said this is why there is such strong support for the report back to the legislature so the legislature has a clear chance to see what exactly this takes for the job to be done right, because if it goes wrong, it will go wrong for a lot of people.

Number 2394

CO-CHAIR MASEK, upon determining no one else wished to testify, closed public testimony.

CO-CHAIR SCALZI noted his belief that this is a good bill and should be moved forward. He said after listening to testimony, he felt the amendment would be unnecessary.

Number 2453

REPRESENTATIVE KERTTULA asked if the commission has the authority to charge a fee for licensing.

MR. PETERSON, in response, said it is his understanding that the intent of the federal enabling legislation is that the RCA would charge user fees in the same manner it does currently. He said there will be some startup costs to get the program under the state's jurisdiction, but eventually the program will be paid for by the fees from the hydro projects.

REPRESENTATIVE KERTTULA asked if the bill has to contain specific language that allows the agency to receive funds.

MR. PETERSON said he didn't believe so and that it is going to be part of the discussion between the RCA and FERC when this program is established. He suggested that the bill only needs to [contain language] giving the administration authority to develop the regulations for this project because FERC is going to have the ultimate veto on whether [the state] is able to do it. Mr. Peterson suggested that the RCA would ask for the authority to charge those fees and use those fees to pay for the project, which is what FERC currently does. He said hopefully, [it would be approved] as long as it's not in direct conflict with the way FERC currently manages the program in the state.

Number 2572

CO-CHAIR SCALZI moved to report CSSB 140(FIN) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSSB 140(FIN) was reported from the House Resources Standing Committee.

SB 356-GENERAL PERMIT FOR WATER/WASTE DISPOSAL

CO-CHAIR MASEK announced that the next order of business would be SENATE BILL NO. 356 am, "An Act relating to the authority of the Department of Environmental Conservation to issue general and individual permits for waste disposal; and providing for an effective date."

Number 2634

JOE BALASH, Staff to Senator Gene Therriault, Alaska State Legislature, presented SB 356 on behalf of the Senate State Affairs Standing Committee, sponsor, which Senator Therriault chairs. Mr. Balash characterized SB 356 as a bill that establishes procedures for developing and issuing general permits in the Department of Environmental Conservation's (DEC), Division of Air & Water Quality. He explained that a general permit is used to regulate a class of operation that is fairly standard and similar throughout (indisc.) achieved across the industry. He remarked:

A very handy example ... is the washing down of a cement truck. If you own a cement truck, there's no way you're going to let the cement harden inside the container. It needs to be washed out on a daily basis.

However, in order to wash that truck out, you don't want the dirty water ... to go into a stream or any other environmentally sensitive area, and so there would be some general considerations given to how that is done.

A general permit would be issued by the department that would say anybody washing out their cement truck would have to avoid doing it next to a stream. That's a fairly simplistic example but useful for illustration purposes.

MR. BALASH turned attention to page 2, line 26, and he said the word "cumulatively" replaced the original proposed language. He explained that the change was made at the request of the Alaska Conservation Voters (ACV), but was done with a little bit of concern because the word "cumulative" is a somewhat "loaded" term in the regulatory community. He said in connection with NEPA [National Environmental Policy Act of 1969], there is a cumulative impact analysis statement in which a given action calls for the determination of the cumulative impacts. He said that's not at all what this [language] is intended to imply, and in no way is the sponsor asking that a cumulative impact analysis be done.

MR. BALASH said the word is only speaking to discharges, including discharges that are currently ongoing, in addition to the discharges proposed to be added by this general permit. He said Senator Therriault asked him to inform the committee of a

number of amendments that have come to light in the last 48 hours, including one to be brought [forward] by the Army. Mr. Balash said while Senator Therriault is not unsympathetic to the concerns of the Army or its interests, the balance in this bill has been struck by a working group of industry, the regulating community, and the regulating bodies in state government. The balance is a fine one, he said, and it is preferred that it not be upset by any amendments at this time.

Number 2876

COLONEL FRED LEHMAN, U.S. Army Alaska Garrison Commander, testified. Colonel Lehman reported that on 04/12/02 a group of national and local environmental organizations sued the U.S. Army and the U.S. Department of Defense in an attempt to close down Fort Richardson's only artillery training range in the Eagle River Flats. The Eagle River Flats, he explained, is the only location south of the Alaska Range where soldiers conduct live-fire heavy-artillery training, and that the military has used this range as an artillery range for the last 50 years. Colonel Lehman said proper training is essential to the success of military operation and is a matter of troop readiness. He remarked about the young men and women who risk their lives to uphold the values that [U.S. citizens] so strongly cherish and how before sending soldiers into life-and-death situations [the military has] a legal and moral obligation to provide them with full training required to achieve the military's objectives and also minimize the risk of [harm] to themselves and innocent civilians.

COLONEL LEHMAN talked about having half a dozen soldiers in Afghanistan in harm's way and how they trained on those ranges at Fort Richardson in regular training exercises that included the use of live ammunition, artillery explosives, high-caliber weaponry, et cetera. He said it also means that large land areas such as Eagle River Flats must remain available for such exercises and that the Army's ability to continue live-fire training is critical to Fort Richardson's national defense mission. Colonel Lehman explained that because [Fort Richardson] is the only location south of the Alaska Range where soldiers conduct live-fire training, its reason for existence is to train soldiers for wartime operations. He said Fort Richardson's future is at risk and that the Army is engaging a new round of BRAC [Base Realignment and Closure] closures starting in 2005.

TAPE 02-39, SIDE B

Number 2995

COLONEL LEHMAN explained that the plaintiffs in the lawsuit argue that the federal courts should force the Army to close the Eagle River Flats range because the Army has not obtained a DEC solid waste disposal permit under AS 46.03.100 for the firing of artillery munitions on the Eagle River Flats. He explained that DEC has never required a permit under AS 46.03.100 for munitions fired on active military ranges. He said the artillery that the Army is firing are explosive rounds, not solid waste. He suggested this has been done in the U.S. for about 240 years. and he talked about activities that meet AS 46.03.100 permit requirements, such as wastewater discharge or the construction of solid waste landfills.

COLONEL LEHMAN suggested that the plaintiff's attempt to force DEC to regulate live-fire military training activities on active military ranges sets an unacceptable precedent. If the effort succeeds, he said, DEC may well be pressured into attempting to regulate other critical aspects of training exercises, such as the type of munitions fired, firing locations, firing times, and other parameters. He suggested that DEC is not equipped to do so and that the Army has no reason to believe that DEC wishes to assume this role. It's a bad idea all around, he commented. He noted that this bill deals with DEC's authority to issue disposal permits under AS 46.03.100 and that the bill already contains a list of exceptions.

Number 2919

COLONEL LEHMAN brought attention to a written amendment that read [original punctuation provided]:

SB 356 am shall be amended to add a new section that reads as follows:

Sec._. AS 46.03.100(d) is amended to read:

- (d) This section does not apply to
- (1) disposals subject to regulation under AS 31.05.030(e)(2);[OR]
 - (2) injection projects permitted under AS 31.05.030(h)[.]; or
 - (3) discharges resulting from the firing or other use of munitions in training activities conducted on active ranges operated by the United States Department of Defense or a United States military agency.

COLONEL LEHMAN explained that the Army is requesting the legislature to adopt a short, simple amendment that would add solid waste disposal activities resulting from the firing of munitions in training activities conducted on active military ranges to the list of activities exempted from this permit requirement. He said by enacting a straightforward amendment, the legislature will help ensure that the Army Alaska remains able to properly train those people in the armed forces and that Fort Richardson retains an important role in the nation's defense strategy.

Number 2879

REPRESENTATIVE STEVENS said he was surprised to learn that Army bases have to comply with state regulations. He asked if that is the case throughout the country.

COLONEL LEHMAN said no; this is the first lawsuit of this type. He explained that on [04/25/02] the Army filed a Clean Water Act permit with the EPA [Environmental Protection Agency]. He reported that he had been in consultation with the EPA region's head environment chief for the past six months, and he indicated that the EPA is uncertain about both it and the state's involvement in the issue. However, he said, this issue has to be addressed because a lawsuit has been filed against the military.

Number 2836

REPRESENTATIVE KERTTULA asked whether permits are normally required under these kinds of circumstances or if this is an unusual situation. She asked for more information on the court case.

Number 2817

JOHN McDONAGH, Environmental Counsel, U.S. Army Alaska, testified. Mr. McDonagh explained that the lawsuit against the U.S. Army, the Department of Defense, and Secretary Donald Rumsfeld in his official capacity was filed in the U.S. District Court, District of Alaska, on April 12, 2002. He said the plaintiffs in the lawsuit are the Alaska Community Action on Toxics (ACAT), Cook Inlet Keeper; the Chickaloon Village Traditional Council; two individual plaintiffs, Janet Daniels and Richard Martin; and the Military Toxics Project, which is a national environmental group that has filed other lawsuits

against the military's use of ranges at other places throughout the country. He explained that the lawsuit has three separate primary claims: The first deals with the Army's alleged failure to have a Clean Water Act permit. The second deals with the failure to have a AS 46.03.100 solid waste disposal permit for the firing of munitions into the Eagle River Flats. The third is a claim under CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act], commonly known as Superfund, alleging that the Army needs to have a remedial investigation or feasibility study (RI/FS) done for Fort Richardson on the Eagle River Flats.

MR. McDONAGH said this is very interesting because a CERCLA RI/FS was conducted on Eagle River Flats and found only one contaminant of concern - white phosphorus, which affects waterfowl. That was addressed through a record of decision signed by the EPA and DEC, and that remedy for white phosphorus was implemented beginning a couple of years ago, he explained. Mr. McDonagh reported that the record on decision also concluded that no other contaminants of concern exist with respect to Eagle River Flats. He said that's not the Army's conclusion; that's EPA and DEC's conclusion as set forth in CERCLA. Needless to say, the Army is very concerned about the ability to continue to train for the reasons that Colonel Lehman stated, he said. Mr. McDonagh said this is one of the highest profile lawsuits that the Army has, and that the military has nationwide implications on an issue it refers to as encroachment. He explained that this is a major issue that impacts the ability to train; impacts the future viability of Fort Richardson as a training facility; it does potentially impact training facilities at Fort Greely and Fort Wainwright, which is why the Army is asking for the legislature's help.

Number 2669

REPRESENTATIVE KERTTULA asked Mr. McDonagh if the Army had any type of restraining order in place or if training is allowed to continue until the lawsuit is decided.

MR. McDONAGH, in response, explained that the complaint, as filed, requests an injunctive relief prohibiting the Army from continuing to conduct the activities at the Eagle River Flats. However, he said, there has been no preliminary injunction motion filed, so currently there is no injunction in place. Mr. McDonagh clarified that because of concerns over wildlife and the environment, the Army never fires at the Eagle River Flats

over the summer months, so there would be no need to seek an injunction at the present period of time.

COLONEL LEHMAN said correct; the Army's SOPs [standard operating procedures] require that there must be six inches of ice before firing commences.

Number 2617

REPRESENTATIVE GREEN asked how long the arsenal had been used in that area.

MR. McDONAGH, in response, said the Army has used the Eagle River Flats since the 1940s and it was a major range in World War II; it was also used throughout the Korean War and right up to the present. Mr. McDonagh said the Army discovered white phosphorus in the early 1980s, and when it was discovered to be a problem, the Army ceased using it in 1990, but has continued to use artillery at the range for practice.

CO-CHAIR MASEK asked if the Army has ever applied for a solid waste permit.

MR. McDONAGH, in response, said no, the position taken by [DEC] is that it has never requested the Army to [apply for a permit], and the Army's position has always been that this is not solid waste and is not subject to the permitting requirement. He said he was informed that consistent with past practice, DEC has no desire to regulate in this area and the Army has no desire to have DEC regulate in this area. Mr. McDonagh remarked, "So, all we're asking for is the status quo (indisc.)." The only reason this is an issue before this committee is not because of anything anyone in the Army is doing differently or anything that the agency is doing differently; it is because it has been raised as a claim by the plaintiffs in this lawsuit in an attempt to shut [the Army's use of the Eagle River Flats for training] down, he said.

Number 2544

REPRESENTATIVE STEVENS remarked, "I think of World War II and when the Japanese had taken Attu and Kiska and we attacked them to take them back, if these people had been around, you would have been required to have ... permission before you could have launched the attack; ... the whole thing is just bizarre." He said it seems to him that Alaska's currently at the front on this issue, and he suggested that there are a lot more bases

around the United States that use a lot more artillery than is used in Alaska. He speculated that there must be a lot more sites that are in worse condition than Alaska.

COLONEL LEHMAN, in response, said this will be a test case.

MR. McDONAGH said correct; this is an issue around the country in many different ways. He mentioned a briefing he had attended in the previous week in which some Marines from Camp Pendleton explained what it's like to have 23 miles of beach and only be able to use about a half mile of that beach. He said the Marines can't even do a beach-to-beach diversion anymore and that when they do hit the beach, instead of digging foxholes, they have to lay out tape to mark where the foxhole would be because they're not allowed to dig on that beach; then they go back to the barracks and practice digging. He said if the issue is called encroachment, it's one of the largest issues that the U.S. military has facing it now. Mr. McDonagh remarked, "It's come home to rest here in our little case in our military base here in Alaska, and that's why we're here."

Number 2467

REPRESENTATIVE KERTTULA asked what the problem is with white phosphorus.

COLONEL LEHMAN, in response, said it is used for a burning and smoke agent and requires air for it to oxidize and go off. If it stays under the water, it will stay in pellet form, but it will oxidize and kill waterfowl if ingested. He explained that the Army recognized the issue and subsequently spent millions of dollars remediating it in a very public way such as inviting groups out and asking for participation for quarterly restoration advisory boards, et cetera.

REPRESENTATIVE KERTTULA asked whether local shooting ranges are required to obtain permits to be able to use munitions for shooting.

MR. McDONAGH said to his knowledge, solid waste disposal permits are not required in Alaska for any other municipal ranges.

COLONEL LEHMAN clarified that this [lawsuit] has a community impact that affects others that use or train on this range, including: the U.S. National Guard, the Alaska State Troopers, the Anchorage Police Department, the Federal Bureau of Investigation, and private citizens.

REPRESENTATIVE KERTTULA said the court case should decide this issue, and she talked about the possibility of an injunction. She asked how onerous it is to go through a DEC permitting process to get a permit.

MR. McDONAGH said the Army may be facing an injunction, but is not facing one at this particular moment in time. He said the notion that AS 46.03.100 would be expanded to cover these activities and therefore potentially subject very detailed military issues to the purview of an agency that admittedly has no background or interest in this particular area is both dangerous and unwise, in the Army's view.

COLONEL LEHMAN said when the military starts unexpected training with high artillery ammunition, there is a reason for it, and [the military] doesn't normally want to disclose why it's being done, who is being trained, or what the purposes are.

Number 2298

REPRESENTATIVE STEVENS asked whether it would be in the purview of Congress to exempt national defense exercises from state management and control.

COLONEL LEHMAN said the issue is currently being addressed at the executive level. He said this is a three-part [issue], and one part is at the state level.

MR. McDONAGH said the Army is here [before the legislature] because it has a specific state issue before it and a specific lawsuit brought against a facility within the state. He said this broader issue of encroachment is receiving very significant attention at the national level. Unfortunately, he said, none of that attention will come in time to help the Army at the Eagle River Flats.

Number 2254

REPRESENTATIVE GREEN suggested that it is ironic that this activity has been done for over 60 years and it seems incredible that millions of dollars are being spent on national defense, but there is a concern that maybe our troops shouldn't be training to utilize arsenal. He said it doesn't make sense to him.

Number 2186

SUSAN SCHRADER, Alaska Conservation Voters (ACV), testified. Ms. Schrader said ACV does appreciate and agree with DEC that there are certain activities that are very appropriately managed with a general permit, and ACV does not have a problem with most of the general permits that the department currently has. She said ACV's understanding is that the bill will put some clarifying language into statute that addresses DEC's authority to issue general permits. She expressed concern that the bill is ambiguous and overly broad, and because of that, is open to abuse.

MS. SCHRADER said this bill goes far beyond what the department needs to address for the washing out of cement trucks or high school carwashes, which are not activities that are necessarily of concern. She suggested having a bill that puts some sidebars, structure, and limits on what can be covered by a general permit.

MS. SCHRADER indicated that ACV is opposed to the bill because of previously expressed concerns. Ms. Schrader said she was just made aware of the military situation and is not prepared to speak on the lawsuit, but that it is her observation that [Colonel Lehman and Mr. McDonagh] are asking the legislature to try this case right now in the form of this amendment and that she thought that is totally unfair and truly the antithesis of the government process. Ms. Schrader suggested that perhaps members of the committee would like the opportunity to hear from those other parties involved in this litigation and the reasons this litigation was brought forward and some of the efforts that the environmental groups have gone through to work with the military to address the issues before they were forced to bring litigation forward. She remarked, "I truly think it is inappropriate for the committee to sit here as the judge of the merits of litigation that I doubt any of us have had a chance to look at"

CO-CHAIR MASEK reminded Ms. Schrader that the committee is deliberating a bill, not acting as judges.

MS. SCHRADER suggested it is much more appropriate to address the concerns through litigation and let the legal process determine the merits of the plaintiff's case. She said in 1994, Fort Richardson was listed as a Superfund site and that because of military activities, there are 27,000 toxic "hot spots" around the country. Ms. Schrader noted the Chickaloon tribe as having concerns for their health and well-being, and she

suggested she herself would be concerned if she owned property near one of these sites. She suggested the committee take a look at the sincere concerns of folks who don't want their ground water contaminated and don't want to have to depend on living in an area that has potentially been polluted by military activities.

Number 1915

MS. SCHRADER mentioned her sincere concerns about what has gone on in the country and around the world and about military issues, but she suggested that giving the military an exemption from all environmental laws that are here to protect public health is not in anybody's best interest. She said she finds it a little ironic that the military is doing these exercises to train its personnel to protect the resources and at the same time, through its very activities - the request through federal legislation and this amendment - [wishes to] be exempted from those very laws that protect the water quality.

CO-CHAIR SCALZI talked about his experience at the local shooting range and he said he wondered why the U.S. military is targeted as the environmental "test spot" of such activity when it is occurring in local communities throughout the U.S. He suggested if the environmental community had real concerns about pollutants, the issue would initially be addressed at a local level.

Number 1780

MS. SCHRADER brought attention to the fact that there are hundreds of environmental groups, from local groups to international groups, that do their work at all levels, and she said she cannot speak to the plaintiffs in this case or whether they have worked on other local issues. Ms. Schrader noted that she personally had the experience of working on an issue surrounding the local gun range at Montana Creek, and she suggested the potential contamination of that soil and ground water with lead and other heavy metals from years of use is quite high. She also mentioned that DEC had indicated it would be ideal to regulate those sites "in the perfect world." She suggested that in that scenario, DEC would have the ability to regulate those sites and work to ensure that those toxic areas are cleaned up. Ms. Schrader suggested housing developments are encroaching on the gun range at Montana Creek and that the ground water may be contaminated.

CO-CHAIR SCALZI suggested that large targets such as the military or factory trawlers are "picked on," rather than local targets, and have the potential to impact national security or have large economic impacts to Alaska. He said he was amazed at what the Cook Inlet Keeper was involved in with regard to the lawsuit. He spoke to Ms. Schrader's suggestion that the Army is asking the legislature to try the case, and he asked why the environmental community didn't come to the legislature first to get help. Going right to the courts is the "first line of attack" rather than settling the [issue] through local legislation, he suggested. He asked Ms. Schrader if she thought that would have been a better method rather than going right to the military and filing a lawsuit.

Number 1617

MS. SCHRADER said it is her understanding that the groups involved in [the lawsuit] have worked with the military for several years to try to cooperatively come to some alternative arrangements.

CO-CHAIR SCALZI pointed out that this is the first that the legislature has heard of this issue.

MS. SCHRADER noted that she had brought many environmental issues and concerns forward to the legislature over the years, and that it is a very frustrating proposition. She mentioned the six amendments that had she brought forward to the sponsor of this bill with the intention of helping to clarify the bill, and the fact that every one of those amendments had been turned down. She suggested that ACV has tried in sincere honesty to work through the legislative process and that this is not an "easy game" for an environmentalist to play with the legislature. She maintained that there are two sides to every story that and only one side of the story is being heard.

Number 1517

TOM CHAPPLE, Director, Division of Air and Water Quality, Department of Environmental Conservation, testified. Mr. Chapple said for about the last three and a half years, DEC has been working to rebuild its wastewater permitting program and had done so after assembling a stakeholder group composed of the resource development community, local government, environmental organizations, citizens' organizations such as the RCA, and federal and other state agencies. He said that work resulted in 10 basic recommendations from the group and that this bill is an

outgrowth of a recommendation that the department should use more general permits in overseeing certain activities and in mitigating the impacts of discharges.

MR. CHAPPLE said the bill reflects a delicate balance among the varied groups and that not all parties agreed that general permits should be aggressively pursued. There was some reluctance, but a majority of the members of the work group did agree, he noted. He explained that it is the department's belief that general permits are useful and appropriate when the risk to the environment is low or when there is a common treatment practice that will mitigate that risk. It is important when general permits are developed, he explained, that the public has an opportunity to comment on the development of that [permit], as well as to know what activities are permitted under a general permit; a general permit could apply to a number of operations, so knowing where those operations are is important. Mr. Chapple noted that this bill accomplishes those two primary objectives for the department. He said the department supports the bill and believes it is a positive bill that it would like to see move forward.

Number 1377

MR. CHAPPLE called attention to the subject of the Eagle River Flats, and he said the department has never requested that a permit be required for solid waste or wastewater discharge and has no intention or desire to impede the training activities. Obviously, he said, that's an important function. He noted that the bill is the result of an ongoing lawsuit and, paraphrasing from AS 46.03.900, he explained that the definition of solid waste basically means all unwanted, abandoned, or discarded material. He said in regard to rifle ranges or munitions ranges, the department's position is that it is not abandoned waste until the site is no longer active. When the site is no longer active and is intended to be closed, it could be handled as solid waste if that's appropriate, he said. If there is contamination of the ground water or [other] water, then it would be handled as a contaminated site cleanup. He said the department has never implemented [such permitting] or suggested that a permit would be required. It is the department's belief that the operative language the department has used, which is part of the state's precedent for making those decisions, would be beneficial to the court when this case is heard, as well as the definition that the department is using, he explained.

MR. CHAPPLE said the department doesn't view that a change in the law is necessary to accomplish what the Army might be looking for and that the court will hear how the state has made decisions in the past and what it rests [its decisions on]. He suggested to the committee that the issue being heard is really a different issue than the substance of the bill that is before them, even though the title change would allow this change. Mr. Chapple said the bill is structured to talk about general permits and has been brought together by a number of people of very diverse interests to strike a balance. He said if the bill is amended to include the Eagle River Flats issue, it will bring with it the other parties that are a part of that lawsuit and the anxiety and the issues associated with that suit. Mr. Chapple said the department is concerned and would prefer that the bill stay simple and be completed the way it is.

Number 1171

REPRESENTATIVE GREEN asked whether an environmental review would be required if a new rifle range were being established.

MR. CHAPPLE noted that he doesn't manage the solid waste program, and he said he believes the answer is no, the department does not permit and would not require a permit for any rifle range, but local zoning requirements might come into play.

Number 1098

REPRESENTATIVE KERTTULA asked if the Army is currently required to live by federal and environmental laws.

MR. CHAPPLE said he had been doing environmental work for over 20 years and had seen a change in the laws when sovereign immunity was asserted by the U.S. Department of Defense a number of years ago and exempted from environmental laws. Those laws have changed over the last 15 years, and the Department of Defense is generally obligated to meet state and national environmental laws. He said there is currently a discussion on a national scale about the issue of sovereign immunity and whether certain actions should be exempted. In fact, he said, the commissioner of DEC is currently at a meeting with the commissioners of all environmental agencies of the state, and some of the discussion is focusing on the various aspects of the sovereign immunity tasks, what would be exempted, and certain proposals that are out. Mr. Chapple said this issue has come forth as an adjustment in state law, but is that adjustment

going to be needed in every other state law? Mr. Chapple suggested that the issue needs to be addressed on a national scale and that national environmental laws need to be looked at to try to strike the right balance.

Number 0945

MATT GILL, Staff to Representative Eldon Mulder, Alaska State Legislature, testified. Mr. Gill said Representative Mulder currently represents Fort Richardson Army base and supports any amendments that would clarify the Army's position regarding the use of the Eagle River Flats artillery training range.

Number 0875

CO-CHAIR MASEK, upon determining no one else wished to testify, closed public testimony.

MR. BALASH said he didn't think the sponsor's position would change and that there are a number of issues surrounding the lawsuit. He indicated one of the main issues is whether this is the only place in statute that needs to be changed, and he said in the idea of good government and evenhandedness, Ms. Schrader pointed out that there are a number of other individuals that would be more than happy to provide testimony and information on this issue if they were given the opportunity. Mr. Balash said Senator Therriault has expressed to him that he would be happy to support the introduction and passage of a separate piece of legislation that would allow this issue to be addressed by the legislature, would afford the public an opportunity to look at the issue comprehensively, and also would allow the department to perhaps take a more complete look at the position of the state and where these types of issues should be addressed in state statute.

Number 0700

COLONEL LEHMAN said he thought it was a paramount issue. He talked about the BRAC closures and the need for the artillery range to train. He said the Army is poised to put a brand new formation called a IBCT [Interim Brigade Combat Team] that is going to bring over \$1 billion in new construction into the state. He said he didn't think the Army is poised to invest that much money if it will not be allowed to train here and that it will probably move that element to somewhere else.

COLONEL LEHMAN said it would help the [Army's] cause to get a piece of legislation pushed through. He said he was uncertain about the success of the proposed amendment, but he wanted to ensure that the legislature had the opportunity to express what it would like the military's function and performance to be in the state of Alaska. He remarked, "If the lawsuit says we file, we will file; it just puts more burdens on the military to perform their mission." He said he can understand the position of Senator Therriault and his staff.

COLONEL LEHMAN said he never thought it was a requirement to have special permits to fire normally assigned weapons that Congress bought the military to train and use to defend this land or that the [Army] would have to ask to fire those weapons on lands that were set aside for that purpose. He said he is willing to work with the legislature and the sponsor of the bill, and he closed by saying that the Army just wanted the opportunity for the legislature to hear its story.

MR. McDONAGH said the Army is not asking the legislature to try the case; it is asking the legislature to confirm the present, past, and intended future practices of DEC so as not to engage itself in regulating military training exercises and allowing those exercises to be precluded at a facility that's essential for training its soldiers.

REPRESENTATIVE GREEN expressed concern about time constraints that would hinder passage of new legislation, and the urgency of the military to address this issue. He mentioned DEC's disinterest in permitting rifle ranges and the artillery that the military uses for training, and the fact that [the artillery] explode and don't leave the same residue found at a rifle range. He talked about including the proposed amendment so that the military can continue training. He indicated he doesn't foresee it upsetting the delicate balance of the bill.

The committee took an at-ease from 3:25 p.m. to 3:28 p.m.

Number 0361

CO-CHAIR MASEK noted that the committee would hold SB 356 am for further review and the opportunity to work with the sponsor to try to create a workable amendment.

Number 0268

REPRESENTATIVE STEVENS mentioned other types of military artillery use and questioned whether it is related and should also be looked at.

CO-CHAIR MASEK suggested that the subject be discussed with the bill's sponsor and the drafter of the proposed amendment.
[SB 356 am was held over.]

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:29 p.m.