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## **Sponsor Statement for HB503**

# **Wastewater Discharge Program**

***An Act relating to evaluating state assumption of the wastewater discharge program under the federal Clean Water Act; and providing for an effective date.***

**Contact:** Representative Beverly Masek State Capitol Rm 124 (907) 465-2679

Passage of House Bill 503 will direct the Department of Environmental Conservation (DEC) to evaluate the potential benefits and consequences of assuming primacy for the National Pollutant Discharge Elimination System (NPDES) program and develop an implementation plan.

In 1972 the federal government enacted the Clean Water Act (CWA) to protect and restore the quality of the nations water. The CWA provided that states can be authorized to operate their own NPDES program as long as it complies with federal requirements. Currently 44 states and the U.S. Virgin Islands administer their own NPDES program and Idaho is currently considering assuming NPDES primacy. The main reason that states have adopted primacy is to allow them to tailor the water discharge program to regional concerns and environmental features rather than follow federal guidelines designed to cover all states.

House Bill 503 would direct the DEC to study and describe:

- EPA's existing program in Alaska,
- Required and recommended primacy program components,
- Advantages, disadvantages, and experiences from similarly situated states along with their program costs,
- Draft rules and regulations needed for primacy,
- Guidance and implementation recommendations for executing the permit review, issuing permits and performing field compliance assistance,
- Necessary resources including number of staff, use of contractors and specific technical expertise of staff for an Alaskan program,
- legal issues and propose solutions necessary to acquire primacy, and
- A proposed action plan to secure federal funding as an ongoing contributor to offset operational costs of an Alaska NPDES permit Program.

This proposal is supported by the Waste Water Permit Work Group which was formed by the Department of Environmental Conservation. This group is comprised of external stakeholders who were asked to make recommendations to guide the rebuilding of the wastewater discharge program. I envision this group being involved throughout this proposed process helping to evaluate the pros and cons of state assumption of the NPDES program. This review would involve public comment and a final report to be submitted to the First Regular Session of the Twenty-Fourth Alaska State Legislature. The Legislature could then take action if it believed assumption would be in the state's best interest.

**DRAFT**  
**Division Air and Water Quality**  
**NPDES PRIMACY: Is this Appropriate for Alaska?**

**Synopsis:** Permitting decisions for wastewater discharges from Alaska businesses, industries and municipalities are currently made by the Environmental Protection Agency (EPA) in Seattle. It is in the best interest of Alaskans to make these resource decisions locally. Alaska stakeholders have expressed a desire for local decision making. Yet, stakeholders are guarded about endorsing Alaska primacy unless the details of the program are fully described so they can decide if a state program will have more benefits than the one executed by EPA.

\$ 315.0 is required (218.2 in FY 03 and 96.8 in FY 04) to develop an implementation plan for state assumption of the federal wastewater permitting that affects seafood processing, mining, municipal sewage treatment, oil and gas waste water discharges and other operations across Alaska. The main products of this work will be draft statutes, draft regulations, program guidelines and an implementation schedule.

The products will be based upon meeting legal requirements and will apply the knowledge gained from programs executed in other states to create an environmentally protective program for Alaska that is cost-efficient and friendly to users and the public. The implementation study will provide full program disclosure to the Legislature, affected stakeholders and interested members of the general public to seek a policy decision by the Legislature about whether the Department should move forward to seek delegation from EPA.

Stakeholder interest on this issue is expected to be strong. Resource development leaders will likely play a key role in Legislative discussion of this proposal.

**Background:** In 1999, the Department formed a Waste Water Permit Work Group of external stakeholders to aid in guiding the rebuild of the wastewater discharge program. The state's current "certification" program is a review and certification of federal permits that protects Alaska water quality and affords unique site specific permit features that benefit Alaska operators.

Of the work group's 10 recommendations aimed at making the program more efficient and sustainable, one is the pursuit of state decision making – state primacy for federal National Pollutant Discharge Elimination System (NPDES) permits – a permit required for discharge to surface waters. This recommendation, however, came with the caveat of "not at any cost" since the work group and the Department understood that other aspects of the wastewater discharge program needed attention and resources first before launching a full effort to pursue primacy.

During FY 02 and much of FY 03, the Department will be accomplishing the rebuild of the certification/existing state permit program in response to the 10 recommendations. The stakeholder group is still active in guiding this work and is keenly interested in any efforts to more fully examine NPDES primacy for Alaska. Funding an NPDES implementation study in FY03 is a logical next step especially while the stakeholder work group is still well intact and able to provide guidance.

Alaska is one of only six states in the nation that does NOT make NPDES permit decisions at the state level. EPA issues approximately 80 NPDES permits in Alaska each year - permits that are valid for 5 years. Several hundred more Alaska operations are approved to operate under the terms of various general permits issued by EPA. In the last couple of years, two other states have sought and attained state primacy and Idaho is currently assessing whether to seek delegation. Alaska could acquire many lessons learned from these states in crafting a program best suited to our needs.

The implementation study is to be viewed as a Phase III effort - an initial scoping study was performed by Easton Environmental in 1998 (Phase I), followed by the Department's more detailed scoping discussions with the Waste Water Permit Work Group in 1999 and 2000 (Phase II).

### Work Products

Department staff (1.0 PFT, 1.0 PPT) with assistance by private contractors and the Department of Law will prepare a complete analysis that describes the NPDES program opportunity for Alaska. The implementation study will draw upon Idaho's work, previous studies conducted by the Department, nationwide studies of NPDES programs, and stakeholder recommendations and concerns. The study will describe

- EPA's existing program in Alaska,
- required and recommended primacy program components,
- advantages, pitfalls, and experiences from similarly-situated states, including their program costs and staff/contractual resources,
- draft rules and regulations needed for primacy,
- guidance and implementation recommendations for executing the permit review, issuing permits and performing field compliance assistance,
- necessary resources including number of staff, use of contractors and specific technical expertise of staff for an Alaskan program,
- identification of legal issues with proposed resolutions and proposed statutory language necessary to acquire primacy, and
- a proposed action plan to secure federal funding as an ongoing contributor to offset operational costs of an Alaska NPDES permit program.

The study will provide a full background of all information necessary for the Alaska Legislature in consultation with Alaska stakeholders and the Department to decide whether to pursue NPDES primacy.

OPERATING EXPENDITURES	FY 2003	FY 2004
Personal Services	95.7	47.8
Travel	12	6
Contractual	101.6	41
Supplies	2	1
Equipment	6.9	1
<b>TOTAL OPERATING</b>	<b>218.2</b>	<b>96.8</b>



## Council of Alaska Producers

P.O. Box 22653 Juneau, Alaska 99802

January 31, 2002

Honorable Senator Therriault:

The Council of Alaska Producers has a strong interest in the State of Alaska assuming the NPDES permit program. We believe there is significant potential to benefit from having the program administered by people familiar with the unique conditions of Alaska, as well as the potential for expediting the permitting process through more accessible permitting staff. Resource development in Alaska may become more economic and attractive to mining and other industries, and the protection of the State waters may be improved as locally knowledgeable persons make water use determinations.

However, we also have some reservations. We are concerned whether or not the State will have permitting flexibility equal to that provided through the State permit certification process. We are also concerned whether the State can best resolve water permitting conflicts with the EPA, if and when they should arise, as a program administrator or if they have greater power as a separate entity.

It is our hope that with further evaluation of the NPDES assumption, and with an implementation plan that would provide us with a preview of the State NPDES program, that it will be evident that State assumption of the program will benefit Alaska citizens and Alaskan waters.

State assumption of the NPDES program will be costly. It would be unwise to request appropriation of funds for this program without first providing an implementation plan and an evaluation of the consequences. The legislation proposed in the attached document requests the funds and authority to take this first step.

The Council of Alaska Producers respectfully requests your assistance in drafting and sponsoring this bill.

If you have any questions, please contact Charlotte MacCay at (907) 272-2117, or (907) 266-4552, or on my cell phone at (907) 529-4332. My fax number is (907) 266-4568 and my email is [cmaccay@aol.com](mailto:cmaccay@aol.com). Kent Dawson is also available to assist you and can be reached at (907) 463-2533.

With sincere appreciation,

Charlotte L. MacCay  
Vice President, Council of Alaska Producers

SUPPORT



# Resource Development Council for Alaska, Inc.

121 West Firwood Lane, Suite 250, Anchorage, Alaska 99503-2035  
(907) 276-0700 Fax: (907) 276-3887 e-mail: Resources@alrdc.org

Founded 1975

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March 15, 2002

Representative Beverly Masek  
Chair, House Resources Committee  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801

RE: HB 503 — Wastewater Discharge Program

Dear Representative Masek:

On behalf of the Resource Development Council for Alaska, Inc. (RDC), I am writing to express our support for HB 503 — Wastewater Discharge Program. This legislation directs the Department of Environmental Conservation (DEC) to assess the costs and benefits of assuming primacy over the National Pollutant Discharge Elimination System (NPDES) program and to develop a plan for implementation. At present Alaska is one of only six states which does not administer its own NPDES program.

As you know, RDC is a private, membership-funded, non-profit trade association. Our members include companies from the mining, timber, oil and gas, tourism and fishing industries. Also within our ranks are local communities, Native corporations, organized labor and industry support firms. Our mission is to expand Alaska's economic base through the responsible development of the state's natural resources.

As a matter of philosophy, RDC's members support opportunities for state primacy over federal regulatory programs. Local control allows broad federal guidelines to be tailored to the unique circumstances and characteristics of Alaska. The regulated community would prefer to deal with government officials based in Fairbanks, Anchorage or Juneau, as opposed to Seattle or Washington, D.C.

DEC has demonstrated a willingness to engage a variety of stakeholders in developing creative solutions to complicated regulatory issues. In this case, the Wastewater Permit Work Group will play an active role in evaluating the program. The review will also be subject to public comment prior to being submitted to the Legislature for final action.

Thank you for your consideration of this matter. Please feel free to contact me with any questions, or if I may be of further assistance.

Sincerely,

Tadd Owens

## Preamble

State assumption of the NPDES permit program presents the *potential* for direct responsibility over water quality in Alaska, a better informed decision - making process, a faster permitting process, and greater accessibility to the program regulators. It is less clear how assumption of the program, as opposed to the current permit certification process, will affect the State's ability to resolve conflicts in regulatory interpretation that may arise between the State and US Environmental Protection Agency. Assumption of the NPDES program is costly. A thoughtful and informed decision regarding the overall welfare of Alaskans and their waters requires a thorough review of the benefits and consequences, and an implementation plan that would provide a preview of the proposed State NPDES program.