

**S B**

**3 5 6**

# ALASKA STATE LEGISLATURE

SENATOR  
**Gene Therriault**  
Cushman Suite 101  
Fairbanks, Alaska 99701  
(907) 488-0857  
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While in Juneau  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4797  
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119 N.

Senate  
Senate District Q

## WHAT ARE GENERAL PERMITS?

- General permits (GPs) apply to a class or group of operations that are similar—from an operational and waste discharge perspective. GPs contain specific performance or operational requirements, and can be applied statewide or limited to a specific geographic or environmental setting. Some GPs incorporate site-specific requirements relevant to a location or receiving environment.
- GPs go through public review at the time they are proposed. In most cases, operators who wish to discharge or dispose of waste under the terms of a GP are required to receive written authorization from DEC in order to proceed.
- GPs are widely used by both federal and state agencies. DEC, like most other states, has used GPs for years, however state law regarding discharges of wastewater and solid waste does not specify procedures for general permits.

## WHAT TYPE OF OPERATION USES A GENERAL PERMIT?

- Remote camps and lodges
- Fish hatcheries
- Sewage treatment for communities with fewer than 1,000 people
- Oil well drilling operations

## WHY ARE GENERAL PERMITS VALUABLE?

- GPs allow DEC to avoid duplication by creating one permit instead of multiple identical permits for activities where the risk and impact to the environment is either low or can be easily mitigated with common treatment practices.
- GPs save DEC and the regulated community time and money while accomplishing the goal of environmental protection. GPs go hand in hand with the permit fees structure created by the Legislature in 1999 with HB361 by allowing the resource agencies to establish fixed fees for GPs.
- GPs allow DEC to allocate more resources to field site visits and inspections — the agency's best opportunity to make sure the permits are working as designed and that the public health and environment are being protected.

## WHAT DOES SB356 ACCOMPLISH?

- The bill establishes procedures for developing and issuing GPs in DEC's water and solid waste divisions.
- The bill requires clear public access to information about which facilities and activities are operating under the terms of a GP.

# STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF AIR AND WATER QUALITY  
DIRECTOR'S OFFICE

TONY KNOWLES, GOVERNOR

555 Cordova Street  
Anchorage, AK 99501-2617  
PHONE: (907) 269-7634  
FAX: (907) 269-3098  
<http://www.state.ak.us/dec/>

April 2, 2002

The Honorable John Torgerson  
Chairman, Senate Resources Committee  
State Capitol  
Room 427  
Juneau, AK 99801-1182

Re: Senate Bill 356

Dear Senator Torgerson:

At the request of the Senate State Affairs Committee, Department of Environmental Conservation is providing the following information to the Senate Resources Committee regarding SB 356, an act clarifying DEC's authority to issue general permits for certain solid waste disposal and wastewater discharges.

General permits are widely used by the Environmental Protection Agency and U.S. Army Corp of Engineers in implementing the federal Clean Water Act and other federal laws. They are also commonly used by most, if not all, states, including Alaska. However, existing state law does not specify the procedures for issuing general permits. Our understanding is that SB 356 seeks to clarify that issue, following on the passage of HB 361 two years ago which sets permit fees for individual and general permits.

General permits are used for similar operations where the discharge effluent or solid waste can and should be managed in the same way at each location. They avoid duplication of work by creating one permit instead of multiple identical permits. This allows the department to use the time saved in permit review to enhance our field presence. Field site visits and inspections are the best opportunity to make sure permits are working as designed. In short, general permits save money and time while still accomplishing the environmental and public health protection goals.

In 1999, the department sponsored a work group to provide recommendations on how to rebuild DEC's wastewater permitting functions following budget cuts. A majority of the work group members recommended that general permits should be used where feasible and practical. A few members expressed reservations, preferring individual permits.

If the legislature is interested in clarifying the procedures for the issuance of general permits, it is important that two key points be addressed. First, general permits, in our view, are appropriate only when the risk and impact to the environment is either low or can be readily and fully mitigated with common treatment practices. General permit use should not be expanded to activities that pose a potential for serious impact or require rigorous treatment.

*Clean Air, Clean Water*

The Honorable John Torgerson

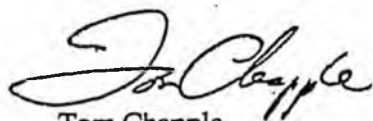
-2-

April 2, 2002

Second, the procedures for developing and issuing general permits set out in statute, must describe how the public can comment on a proposed general permit and must provide for a reasonable dissemination of information on which facilities or activities are operating under a general permit.

We thank you for considering our comments and would be pleased to answer any questions from the Committee.

Sincerely,



Tom Chapple  
Director, Air & Water Quality



Janice Adair  
Director, Environmental Health

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# Resource Development Council for Alaska, Inc.

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

Founded 1975

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April 2, 2002

Senator John Torgerson  
Chair, Senate Resources Committee  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801

Re: SB356 — General Permit for Water/Waste Disposal

Dear Senator Torgerson:

On behalf of the Resource Development Council for Alaska, Inc. (RDC), I am writing to express our strong support for SB356 — General Permit for Water/Waste Disposal. This legislation affirms the Department of Environmental Conservation's (DEC) authority to issue general permits for water and solid waste disposal. Essentially a housekeeping measure, this bill demonstrates the Legislature's commitment to permit streamlining and strikes a balance between environmental protection and economic and community development.

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.

General permits (GPs) are widely used by both federal and state agencies. DEC currently issues GPs for fish hatcheries, remote camps and lodges, sewage treatment facilities in small communities and oil and gas drilling operations among other activities. GPs allow DEC to avoid duplication by creating one permit, instead of multiple identical permits, for activities where the risk and impact to the environment is either low or can be easily mitigated with common treatment practices. GPs save DEC and the regulated community time and money while accomplishing the goal of environmental protection.

In addition, GPs go hand in hand with the extremely successful permit fees structure created by the Legislature in 1999 with HB361— Fees for State Services. An important aspect of HB361 was the support it provided the state's resource agencies in establishing fixed fees for GPs. Both the resources agencies and the regulated community have fared well under the new permit fees structure and SB356 is an important step toward ensuring its continued success.

RDC appreciates your consideration of this issue and we urge the Senate Resources Committee to move SB356 forward. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Tadd Owens".

Tadd Owens  
Executive Director



# ALASKA MINERS ASSOCIATION, INC.

3705 Arctic #202 Anchorage Alaska 99503 • (907) 563-9279 • FAX (907) 563-9225 • www.alaskaminers.org

April 2, 2002

Honorable Gene Therriault  
Alaska State Senate  
State Capitol  
Juneau, AK 99801

RE: Senate Bill 356, General Permits

Dear Senator Therriault,

Thank you for the opportunity to comment on Senate Bill 356 regarding General Permits issued by the Department of Environmental Conservation. We support this bill and urge its passage at the earliest possible date.

SB-356 will establish authority in statute regarding the promulgation of General Permits for solid and water discharges. This bill will ensure that there is no question that DEC has the proper legal basis for issuing General Permits.

General Permits are important for both the mining industry and the DEC. GPs allow industry, the public and the agency to establish a permit that can be used by many different operations without the time and cost of individual permits. If the miner or explorationist can accept the terms of the GP, he can obtain the permit in short order. GPs reduce uncertainty because the miner knows from the start exactly what the terms will be and can utilize these during planning and mine design. GPs also ensure equal treatment for all operators.

GPs are also important for controlling costs while the DEC works to meet its regulatory requirements. It is much more cost effective to establish a GP that can then be used for several years, versus issuing individual permits to each operator.

Thank you again for the opportunity to comment on this bill and we urge its passage at the earliest possible date.

Sincerely,

Steven C. Borell, P.E.  
Executive Director

cc: Commissioner Michelle Brown

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: SB 356  
(S) Publish Date: 4/4/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Environmental Conservation  
Title: "An Act relating to the authority of the Dept. of BRU: Multiple  
Env. Conservation to issue general and individual permits. . ." Component: Multiple  
Sponsor: Senate State affairs Committee  
Requester: Resources Component No.: 633

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Mary Siroky  
Division: Statewide Public Services  
Approved by: Kurt Fredriksson, Deputy Commissioner  
Agency: Department of Environmental Conservation

Phone 465-5312  
Date/Time 3/29/02 12:00 AM  
Date 3/29/2002

## U.S. Army, Alaska Proposed Amendment to SB 356 am Background Summary

**Background:** On 12 April 2002, a group of national and local environmental organizations sued the United States Army and the Department of Defense in an attempt to close down Ft. Richardson's only artillery training range, Eagle River Flats (ERF).

- The Army's ability to continue live fire artillery training at ERF is critical to Ft. Richardson's national defense mission. It's a matter of troop readiness: "We must train like we fight." In practice, this means that our soldiers must engage in regular training exercises that include the use of live munitions--e.g., artillery, explosives, high-caliber weaponry, etc.
- ERF is the only location south of the Alaska Range where soldiers can conduct live fire heavy artillery training. Without the ERF range, Ft. Richardson's future could be at risk. And it won't stop there. If the environmental plaintiffs are successful in stopping training at FRA, other military training ranges in Alaska are likely to come under similar attack.

**Request for Assistance:** The U.S. Army, Alaska needs your help.

- The plaintiffs argue, among other things, that the Federal court should force the Army to close the ERF range because the Army has not obtained an ADEC water and solid waste discharge permit (i.e., an "AS 46.03.100 permit") for the firing of artillery munitions into ERF.
- ADEC has never required a state discharge permit for munitions firing on active military ranges. Traditionally, the AS 46.03.100 permit requirement has applied to activities such as discharges of wastewater from an industrial facility or construction of solid waste landfills.
- Expanding the ADEC permit requirement to cover live-fire military training activities on active military ranges sets an unacceptable precedent. If the effort succeeds, ADEC may well be pressured into attempting to regulate critical aspects of training exercises, such as the type of munitions used, firing locations, firing times and parameters, etc. ADEC is not equipped to do this, and we have no reason to believe that ADEC wishes to assume this role. It's a bad idea all around.

**What we seek:** A bill, SB 356 am, is pending in the House Resources Committee and is scheduled for hearing this Friday afternoon. SB 356 deals with ADEC's authority to issue disposal permits under AS 46.03.100. AS 46.03.100 already contains a list of exceptions to the permit requirement (*see* AS 46.03.100(d)). The U.S. Army, Alaska seeks a short, simple amendment to AS 356 am to that would add *discharges resulting from the firing of munitions in training activities conducted on active military ranges* to the list of activities exempted from the AS 46.03.100 permit requirement. A proposed version of the amendment is attached.

**Proposed Amendment to SB 356 am**

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.

Jennifer

House Resources Comm

From Will Abbott

263-2110

Will\_Abbott@RCFF.Ste.AK.US

From our conversation this morning.

Thanks

Will

The licensing of small hydro projects in Alaska by Alaskans could be an important step in building economical renewable energy sources in many parts of state. SB 140 can give us the vehicle to improve the regulatory process for licensing such projects. With this bill and the Federal legislation in hand we must scope the regulatory process and insure the State can perform the responsibilities delegated to us in a responsible, efficient manner that is more responsive to the needs of Alaskans and achieves the goals set for us by the Governor and SB 140.

Therefor the Regulatory Commission of Alaska in consultation with the Commissioners of DNR, DCED and DF&G will report to the legislature in 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.



# Alaska State Legislature

Please enter into the record my testimony to the H RESOURCE  
Committee name

Committee on SB 356, dated 4-26-02  
Bill/Subject

4 PAGES  
↑  
TOTAL

Signed: DANA L. OLSON  
Testifier

Representing (Optional)  
HC-30 BOX 5438 WASILLA, AK 99654  
Address  
373-4612  
Phone number

DANA L. OLSON  
 HC-30 Box 5438  
 WASILLA, AK 99654  
 26 April 2002

TO House Resources Committee  
 SB No 356 AM

I cite Article 1 Sec 2 of AK Constitution  
 to object to AS 46.03.100 (F) (1) AND (3)

"All political power is inherent in the  
 people. It is founded upon their  
 will only, AND INSTITUTED FOR THE  
 GOOD AS THE PEOPLE AS A WHOLE.

1. Where (1) AND (3) do not undergo consideration  
 in A LAND-use PLAN previously
2. HAVE not been considered in a ~~law~~ ENVIRONMENTAL  
 PLAN under AS 46.03.040
- (3) ~~2~~ No review in CM2 AS NO permit <sup>or permit</sup> <sup>state</sup>  
 IN A FFective AS WATER ARE NOT  
 MANAGED BY LOCAL COASTAL DISTRICTS.

AS 46.03.100 Line 2.3, the COMMISSIONER  
 OF DEC LACK expertise... both educationally,  
 AND this has NO consideration of SOCIAL &  
 economic impacts to communities AND  
 those activities related to sustained yield.  
 Under public trust I object to a general permit /  
 or consideration by DEC Commissioner.  
 NO credible, documentary evidence  
 to provide reliance on this AS section.

I will oppose (AS 46.03.100(h) or dept  
may on its own initiative propose the  
applicant be issued a general permit.

With streamlining of permits this is not  
necessary. See Olson EPA petition ~~for~~  
ON streamlining of permits.  
(sufficiency of notice)

I state no requirement exists for  
public notice (under due process) to only  
be on a computer unless electricity is  
provided to all persons AND computers.

~~proposed~~ I allege federal equivalents  
will be negated by this legislation.  
I will oppose your permittees?

The CMZ allows for public participation  
at all aspects of planning. Giving notices  
to agencies with no current <sup>updated</sup> LAND-USE <sup>or comprehensive</sup> PLANS  
Plans is meaningless as they act in  
ignorance!

AS 46.03110(d) is too vague  
AND NOT enforceable under CLEAN water  
Act. The federal Act requires  
enforceable standards, as citizen  
suit provision applies.

P 4, Line 9; Sec 8

Where no criteria has been set by the  
LegisLature, regulations themselves  
CAN be challenged, AND ALSO permittee  
USE.

60pg; Sent to EPA. (Bad Faith by LegisLature)

Sincerely  
Anna J Olson

P.S The LegisLature CAN <sup>not Act</sup>  
<sub>(Not done)</sub>  
LegisLative AS46.03.040 AND concurrently Qui-judical  
defining my dec process rights;

- ① Without Adequate, AND Sufficient  
notice (OF Location) OF Activities proposed.
- ② <sup>AND</sup> deny (First public participation)  
requirement under federal LAWS.  
There ARE MANY!



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P.O. Box 22151, Juneau Alaska 99802 / Ph. 907.463.3366 / Fax 907.463.3312 / www.aevoters.org

## SB 356 am ~ General Permit for Water / Waste Disposal

TO: House Resources Committee Members

DATE: April 26, 2002

Alaska Conservation Voters (ACV) is a nonprofit organization dedicated to protecting Alaska's environment through public education and advocacy. Our 32 member organizations represent over 35,000 registered Alaskan voters. Our members, as most Alaskans, support strong laws that safeguard the quality of Alaska's waters. In an attempt to address industry's desire for permit streamlining and "regulatory efficiency," SB 356 goes too far. Because it is so broadly written as to invite abuse, we oppose SB 356.

Senate Bill 356 would allow the Department of Environmental Conservation (DEC) to exempt the disposal of any non-hazardous waste from the individual permit requirements in AS 46.03.100, by allowing use of a non-site specific general permit. Although DEC currently authorizes certain activities under a variety of existing general permits, this bill allows DEC to broaden the range of activities covered by general permits, thereby getting around what the law otherwise requires them to do: review the proposals on an individual basis and make sure the proposals are consistent with state water quality and solid waste law. Waste disposal via general permits is bad public policy because the disposal of waste under a general permit will not receive full site-specific attention of either the regulatory agencies or the public. The major problems with this legislation include:

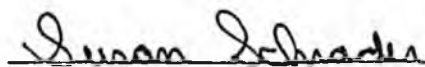
- **General permits force a "one-size fits all" on projects** – Section 3 of SB 356 allows DEC to issue a general permit "on a statewide, regional, or other geographical basis." In an effort to streamline the permitting process, DEC would not have to consider, for example, that solid waste disposal at a mine in the dry Interior is a different concern than disposal at a mine in Southeast Alaska. Unique attributes of a site could be easily disregarded.
- **Opportunity for public review is markedly limited** – All Alaskans, including adjacent property owners, Native Alaskans using an area for subsistence, or commercial fishermen concerned with protection of salmon habitat, would have very limited opportunities to find out about and comment upon projects seeking a general permit. While Section 5 of SB 356 does provide for public notice and comment *when a new general permit is being proposed*, Section 7 of the bill requires that public notice, via a posting on the Internet, be given *only* when DEC specifically authorizes a discharge under an existing general permit. For discharges that DEC chooses not to require authorizations, neither the public nor DEC will have a reliable method to find out about the discharges or their impacts.

OVER

- **This legislation introduces new, undefined, vague terms and phrases** –Section 3 uses the following that are undefined: “waste disposal,” “water disposal,” “similar in nature, and “minimal adverse environmental effects.” “Waste disposal” could refer to both solid and liquid waste; “water disposal” could refer to disposal of water generally, or to disposal of heated process or cooling water, or more generally to disposal *into* water. Does “similar in nature” mean similar in chemical composition, or a disposal of waste from similar sources, or a disposal from members of a similar industry? How minimal is “minimal”? Are “environmental effects” the same as “environmental impacts”? The overly-broad, imprecise language of this bill contributes to the bad public policy presented by SB 356.

Supporters defend this legislation by stating the bill only clarifies in statute DEC’s existing authority to write general permits. **However, SB 356 goes far beyond what is needed to achieve that goal.** With vague language and overly-broad provisions, this bill opens the door for abuse of the permitting process, an important safeguard of Alaska’s water quality.

We urge you to oppose SB 356.

  
Susan Schrader

TONY KNOWLES  
OCYBINGA



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
WASHINGTON, DC

Chairman Joe Barton  
Energy and Power Subcommittee  
United States House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515-6115

Re: S. 422 Hearing on March 30, 2000

Mr. Chairman:

The State of Alaska supports legislation that would offer the State the opportunity to assume jurisdiction over licensing of hydroelectric projects of five megawatts or less. Development of small hydroelectric projects is critical to the economic development of our state. Of the 29 hydropower projects supplying power to public utilities in Alaska, 17 are five megawatts or less in size.

Small hydro is especially important in rural Alaska where the cost of other energy sources is high and the resulting availability of power can be limited. The only practical alternative in many rural villages is small-scale diesel generation, which can also create undesirable environmental impacts. Where hydropower generation is feasible, it offers reliability unmatched by other, currently available, alternatives. Unfortunately, the financial feasibility of many small hydroelectric projects is impeded by the relatively high cost and lengthy process it takes to license these plants under the existing Federal Energy Regulatory Commission (FERC) regulatory regime.

Alaska's rural electrical production is unique. Over 150 villages in Alaska are isolated from any larger electrical grid, and each village is supplied with power almost exclusively from its own diesel generators. The cost of power in these communities is very high. Median residential rates are between 40 and 45 cents per kilowatt-hour, which is four to five times the average elsewhere in the United States.

Small hydro projects can help reduce these rates if the projects can be built economically. For example, at King Cove, Alaska, which is a remote community of 900 people in the Aleutian Islands, an 800 kilowatt hydro project completed in 1995 not only reduced costs but provides cost stability over the long-term by displacing most of the utility's diesel

generation. Similar long-term benefits are expected from the new 825-kilowatt Tazimina hydro project, which serves a remote population of 450 people who live about 200 miles from Anchorage.

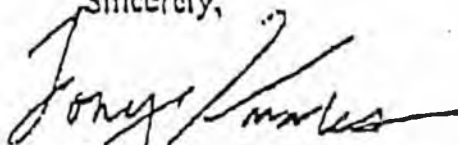
One of the important themes of my administration is that development must be done right. We apply this theme equally to hydroelectric development. For example, this includes ensuring that every hydroelectric project protects fish and wildlife. In the past, we have worked closely - and successfully - with the FERC to protect fish and wildlife populations and to consider the cumulative impacts of development. It is critical that this cooperation continues under this legislation as well.

The State of Alaska is not presently able to assume exclusive authority to authorize small hydroelectric projects, because state law does not provide a regulatory regime for project review, monitoring, or licensing of these projects. We feel such a framework must be in place at the state level before the State of Alaska could apply to the Secretary of Energy to take jurisdiction. The regulatory framework needs to include regulations to ensure proper project design and construction, and to protect fish and wildlife populations at least as well as under existing federal law. Present FERC authority is broader than that held by the State, in that FERC may assert jurisdiction over watersheds, while the regulatory authority of the Alaska Department of Fish and Game is confined to the area between stream banks.

In addition to the lack of a State regulatory regime, the State has established no appropriate funding mechanism to support small hydro licensing and monitoring. Such a funding mechanism could be either a direct appropriation or be based on a user fee system.

Again, the State appreciates the opportunity to express its support of S. 422. Although we desire the benefits that this legislation offers, it is important to state clearly we are not currently in a position to implement the option that this legislation would present to Alaska.

Sincerely,



Terry Knowles  
Governor



# Alaska State Legislature

Please enter into the record my testimony to the H RESOURCE  
Committee name

Committee on SB 356, dated 4-26-02  
Bill/Subject

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Signed: DANA L. OLSON  
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26 April 2002

TO House Resources Committee  
SB No 356 Am

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in A Ffective AS WATER <sup>state</sup> ARE not  
MANAGED by LOCAL COASTAL districts.

AS 46.03.100 Line 23, the Commissioner  
OF DEC LACK expertise both educationally,  
AND this has no consideration of social +  
economic impacts to communities AND  
those activities related to sustained yield.

Under public trust I object to a general permit /  
or consideration by DEC Commissioner.

No credible, documentary evidence  
to provide reliance on this Assertion.

I will oppose AS 46.03.100(h) or dept may on its own initiative propose the applicant be issued a general permit.

With streamlining of permits this is not necessary. See Olson EPA petition ~~on~~ ON streamlining of permits.  
(sufficiency of notice)

I state no requirement exists for public notice (under due process) to only be on a computer unless electricity is provided to all persons AND computers.

~~Allege~~ I allege federal equivalents will be negated by this legislation.  
I will oppose your permittees?

The CMZ allows for public participation at all aspects of planning. Giving notices to agencies with no current <sup>updated</sup> land-use, <sup>or comprehensive</sup> plans is meaningless as they act in ignorance!

AS 46.03110(d) is too vague AND NOT enforceable under CLEAN WATER Act. The Federal Act requires enforceable standards; AS citizen suit provision applies.

P 4, Line 9; Sec 8  
Where no criteria has been set by the  
LegisLature, regulations themselves  
CAN be challenged, AND ALSO permitter  
USE.

GOpy Sent to EPA. (Bad Faith by LegisLature)

Sincerely  
Donna J Olson

P.S The LegisLature CAN <sup>not act</sup> ~~act~~  
<sub>Not done</sub>  
LegisLative AS46-03-040 AND concurrently Qui-judical  
defining my due process rights;

- ① With out Adequate, AND Sufficient  
notice (of Location) of Activities proposed.
- ② deny <sup>AND</sup> (First public participation)  
requirement under Federal LAWS.  
There are many!

Proposed Amendment to SB 356 am

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.

Please draft this language

twice -

① as an amend to the bill

② as its own separate bill  
to be introduced on the  
Floor.

J.Y.  
X3715

Col Lehman's Testimony - see printed side

Rep Stevens Q: ~~was this~~ <sup>really</sup> ~~was~~ <sup>was</sup> he being

also John McDonough - ENJ. counsel to the Army

Kittula Q - tell us about the

April 12<sup>th</sup> 2002 by. US district Ct. AK

AK



**U.S. Army, Alaska Proposed Amendment to SB 356 am  
Background Summary**

**Background:** On 12 April 2002, a group of national and local environmental organizations sued the United States Army and the Department of Defense in an attempt to close down Ft. Richardson's only artillery training range, Eagle River Flats (ERF).

- The Army's ability to continue live fire artillery training at ERF is critical to Ft. Richardson's national defense mission. It's a matter of troop readiness: "We must train like we fight." In practice, this means that our soldiers must engage in regular training exercises that include the use of live munitions- e.g., artillery, explosives, high-caliber weaponry, etc.
- ERF is the only location south of the Alaska Range where soldiers can conduct live fire heavy artillery training. Without the ERF range, Ft. Richardson's future could be at risk. And it won't stop there. If the environmental plaintiffs are successful in stopping training at FRA, other military training ranges in Alaska are likely to come under similar attack.

**Request for Assistance:** The U.S. Army, Alaska needs your help.

- The plaintiffs argue, among other things, that the Federal court should force the Army to close the ERF range because the Army has not obtained an ADEC water and solid waste discharge permit (i.e., an "AS 46.03.100 permit") for the firing of artillery munitions into ERF.
- ADEC has never required a state discharge permit for munitions firing on active military ranges. Traditionally, the AS 46.03.100 permit requirement has applied to activities such as discharges of wastewater from an industrial facility or construction of solid waste landfills.
- Expanding the ADEC permit requirement to cover live-fire military training activities on active military ranges sets an unacceptable precedent. If the effort succeeds, ADEC may well be pressured into attempting to regulate critical aspects of training exercises, such as the type of munitions used, firing locations, firing times and parameters, etc. ADEC is not equipped to do this, and we have no reason to believe that ADEC wishes to assume this role. It's a bad idea all around.

**What we seek:** A bill, SB 356 am, is pending in the House Resources Committee and is scheduled for hearing this Friday afternoon. SB 356 deals with ADEC's authority to issue disposal permits under AS 46.03.100. AS 46.03.100 already contains a list of exceptions to the permit requirement (*see AS 46.03.100(d)*). The U.S. Army, Alaska seeks a short, simple amendment to AS 356 am to that would add *discharges resulting from the firing of munitions in training activities conducted on active military ranges* to the list of activities exempted from the AS 46.03.100 permit requirement. A proposed version of the amendment is attached.

**FILED**  
U.S. DISTRICT COURT  
DISTRICT OF ALASKA

RECEIVED  
ATTORNEY OFF

COX & MOYER

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TRUSTEES FOR ALASKA

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Tel: (907) 276-2422 ext. 107  
Fax: (907) 276-7110

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA AT ANCHORAGE**

ALASKA COMMUNITY ACTION ON )  
TOXICS, COOK INLET KEEPER, THE )  
CHICKALOON VILLAGE TRADITIONAL )  
COUNCIL, JANET DANIELS, RICHARD )  
MARTIN, and THE MILITARY TOXICS )  
PROJECT )

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF THE )  
ARMY, UNITED STATES DEPARTMENT OF )  
DEFENSE, and DONALD RUMSFELD IN HIS )  
OFFICIAL CAPACITY AS UNITED STATES )  
SECRETARY OF DEFENSE, )

Defendants.

Civil Action No:

**A 0 2 - 0 0 8 3 CV**

COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

## COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs allege as follows:

### NATURE OF THE CASE

1. This is a citizens' suit brought pursuant to the provisions of Clean Water Act 33 U.S.C. §1251, *et seq.*, the Solid Waste Disposal Act, 42 U.S.C. §6901, *et seq.*, and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, *et seq.*

### JURISDICTION

2. This Court has jurisdiction over the subject matter of the First Count herein pursuant to 33 U.S.C. §1365(a)(1). Defendants have waived sovereign immunity to the First Count pursuant to 33 U.S.C. §§1323(a) and 1365(a)(1).

3. This Court has jurisdiction over the subject matter of the Second Count pursuant to 42 U.S.C. §6972(a)(1)(A). The Defendants have waived sovereign immunity to the Second Count pursuant to 42 U.S.C. §§6961(a) and 6972(a)(1)(A).

4. This Court has jurisdiction over the subject matter of the Third Count pursuant to 42 U.S.C. §9659(a)(1). The Defendants have waived sovereign immunity to the Third Count pursuant to 42 U.S.C. § 9659(a)(1).

5. By letter dated June 15, 2001, the Plaintiffs gave notice of their intent to commence this action as required by 33 U.S.C. § 1365(b)(1) and 42 U.S.C. §§ 6972(b)(1) and 9659(d)(1). Shortly following the Defendants' receipt of said letter, the Plaintiffs and Defendants commenced negotiations aimed at reaching a settlement of the claims asserted herein. At the request of the Defendants, Plaintiffs agreed that they would not commence this action

until such time as the Plaintiffs and Defendants ceased their negotiations. By letter dated about April 10, 2002, the Defendants terminated said negotiations. Plaintiffs commenced this action as soon as possible thereafter.

### FIRST COUNT

#### VIOLATIONS OF CLEAN WATER ACT

6. Each of the Plaintiffs is a "citizen" as said term is defined in 33 U.S.C. § 1365(g), in that they are persons having an interest which is or may be adversely affected by the actions of the Defendants described in this First Count. Each of the Plaintiffs likewise has one or more interests that are or may be adversely affected by the actions or inactions of the Defendants described in the Second and Third Counts below.

7. This First Count is brought against Defendants, United States Department of the Army and the United States Department of Defense only.

8. Defendants, United States Department of the Army and United States Department of Defense, maintain jurisdiction and/or control over an installation consisting of approximately 60,000 acres known as Fort Richardson, located north of Anchorage, Alaska. Fort Richardson lies within this district.

9. Beginning at a time currently unknown to the Plaintiffs and continuing to the present, the Army has and/or continues to and/or plans to discharge munitions, and the constituents and/or by-products and/or residues of munitions, in to and on various lands and waters on and/or in the vicinity of Fort Richardson.

10. The Army has and/or continues to and/or plans to discharge munitions, and the constituents and/or by-products and/or residues of munitions, into waters and/or on to lands on or

in the vicinity of Fort Richardson, using cannons, rifles, artillery and/or other sources.

11. The waters into which the Army has and continues to discharge munitions include the waters of the Eagle River, Eagle River Flats and/or Knik Arm.

12. The Army has not applied for, nor has it been issued, a permit from the United States Environmental Protection Agency ("EPA") authorizing the discharge of munitions into waters as described in this First Count.

13. The Army therefore has violated, continues to violate and/or threatens to violate 33 U.S.C. §§1311(a) and 1323(a), as well as 40 C.F.R. §122.21.

14. The waters of the Eagle River on and in the vicinity of Fort Richardson violate the water quality standards established by 18 Alaska Administrative Code 070.20(b). The Army's actions described in this First Count have caused and/or contributed, and continue to cause and/or contribute, to this violation of water quality standards in the Eagle River. The Army's actions therefore have violated and continue to violate 18 Alaska Administrative Code 070.10 and 33 U.S.C. §1323(a).

15. The Army's actions described in this First Count have polluted and/or added to the pollution of the land and/or waters on and/or in the vicinity of Fort Richardson. Said lands and/or waters include lands and/or waters in, on and/or under the Eagle River, Eagle River Flats, and/or the Knik Arm. The Army's actions therefore have violated and continue to violate Alaska Statutes 46.03.710 and 33 U.S.C. §1323(a).

16. The Army's actions described in this First Count have resulted in the disposal of solid and/or liquid waste material into the waters and/or on to land on or in the vicinity of Fort Richardson. The Army does not have, nor has it applied for, a permit, from the Alaska

Department of Environmental Quality authorizing said discharge into waters and/or on to land. The Army's actions therefore have violated and continue to violate Alaska Statutes 46.03.100(a) and 33 U.S.C. §1323(a).

## SECOND COUNT

### VIOLATIONS OF SOLID WASTE DISPOSAL ACT

17. This Second Count is brought against Defendants, United States Department of the Army and the United States Department of Defense only.

18. As described in the First Count above, the Army has violated and continues to violate Alaska Statutes §§46.03.710 and 46.03.100(a).

19. The Army's violations of Alaska Statutes §§46.03.710 and 46.03.100(a) constitute a violation of 42 U.S.C. §6961(a).

## THIRD COUNT

### VIOLATIONS OF CERCLA

20. This Third Count is brought against all of the Defendants named above.

21. In 1994, due to a high level of pollution, the Environmental Protection Agency placed Fort Richardson on the National Priorities List, a list of the nation's most polluted facilities that are to be given priority for cleanup.

22. Shortly thereafter, the EPA, the State of Alaska, and the Army entered into an "interagency agreement" (as that term is used in 42 U.S.C. §9620(e)) entitled "Federal Facility Agreement Under CERCLA Section 120 Administrative Docket Number 1092-05-02-120" (hereinafter the "FFA") regarding Fort Richardson.

23. Live, unexploded ordnance exists in, on, and/or under the lands and/or water on or

in the vicinity of Fort Richardson, including without limitation the lands and/or waters of the Eagle River, Eagle River Flats and/or the Knik Arm, as well as the land and/or waters in an area referred to by the Army as the OB/OD pad. Unexploded ordnance may also exist in, on, and/or under other lands and/or waters on or in the vicinity of Fort Richardson.

24. This unexploded ordnance constitutes and contains "hazardous substances" and/or "pollutants or contaminants" as those terms are defined in 42 U.S.C. §§9601(17) and 9601(33). The Army, however, has taken, and continues to take, the position that this unexploded ordnance neither constitutes nor contains "hazardous substances" and/or "pollutants or contaminants" as those terms are defined in 42 U.S.C. §§9601(17) and 9601(33).

25. The Army has never commenced, nor has it performed, a remedial investigation or feasibility study (RI/FS) regarding unexploded ordnance or the constituents of such ordnance on Fort Richardson.

26. The Army's failure to commence or perform such an RI/FS violates and continues to violate 42 U.S.C. §9620(e)(i) as well as paragraphs 8.8 and 8.9 and Attachment 1 of the FFA (including without limitation section 3.1 of Attachment 1).

27. The Army has never adopted a plan for remediation of the unexploded ordnance described above; nor has the Army commenced or performed remediation of such ordnance. The Army therefore has violated and continues to violate 42 U.S.C. §§9620(e)(2)-(e)(4) as well as ¶8.10 and Attachment 1 to the FFA.

#### REQUEST FOR RELIEF

Plaintiffs respectfully request the following relief:

28. Declare that the Army's discharge of munitions into waters as described in the

First Count herein has violated and continues to violate 33 U.S.C. §§1311(a) and/or 1323(a).

29. Order the Army to stop discharging munitions into the waters of the Eagle River, Eagle River Flats and/or the Knik Arm until such time as the Army obtains a permit authorizing the discharge from the EPA.

30. Declare that the Army's actions described in the First and Second Counts herein have violated and/or continue to violate 18 A.A.C. §070.10, Alaska Statutes §§46.03.710 and 46.03.100(a), and/or 33 U.S.C. §1323(a) and/or 42 U.S.C. §6961(a).

31. Issue appropriate injunctive relief prohibiting the Army from continuing to conduct the activities described in the First and Second Counts herein in violation of 18 A.A.C. §070.10, AS §§46.03.710 and 46.03.100(a) and/or 33 U.S.C. §1323(a) and/or 42 U.S.C. §6961(a).

32. Declare that the unexploded ordnance in, on, and/or under the lands and waters on Fort Richardson constitutes and contains "hazardous substances" and "pollutants or contaminants" as those terms are defined in CERCLA, 42 U.S.C. §§9601(17) and 9601(33).

33. Order the Army to commence and fully perform an RI/FS regarding unexploded ordnance on Fort Richardson.

34. Order the Army to pay the Plaintiffs' costs and attorneys fees as provided by statute, including 33 U.S.C. §1365(d) and 42 U.S. §§ 6972(e) and 9659(f).

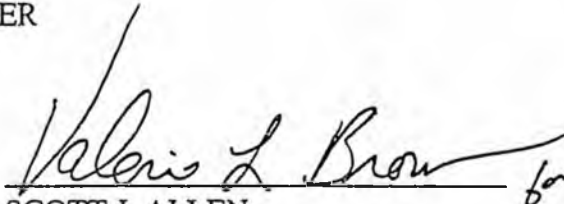
35. Order the Army to pay appropriate civil penalties as provided by 33 U.S.C. § 1319(d), 42 U.S. C. § 6928(g), 42 U.S.C. §§ 9609(a)(1)(E), 9609(b)(5), 9622(l), and/or 9659(c).

36. Issue other and further relief as the court deems just and proper.

Dated: April 12, 2002

COX & MOYER

By:

  
SCOTT J. ALLEN  
Attorneys for Plaintiffs

For Rich Complaint.wpd



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Alaska Community Action On Toxics,  
Cook Inlet Keeper, The Chickaloon  
Village Traditional Council, Janet  
Daniels, Richard Martin, and The  
Military Toxics Project,

SUMMONS IN A CIVIL ACTION

v.

United States Department Of The Army,  
United States Department Of Defense,  
and Donald Rumsfeld In His Official  
Capacity As United States Secretary  
Of Defense.

CASE NUMBER:

A 0 2 - 0 0 8 3 CV

TO: (Name & Address of Defendant)

Timothy M. Connelly, Trial Attorney  
United States Department of Justice  
Environment & Natural Resources Division  
Environmental Defense Section  
P.O. Box 23986, L'Enfant Plaza Station  
Washington, DC 20026

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Valerie L. Brown  
Trustees For Alaska  
1026 W. 4th Ave., Ste. 201  
Anchorage, AK 99501

Scott J. Allen  
Cox & Moyer  
703 Market St., Ste. 1800  
San Francisco, CA 94103-2128

an answer to the complaint which is herewith served upon you, within 60 days after service of this  
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken  
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court  
within a reasonable period of time after service.

MICHAEL HALL

APR 12 2002

CLERK

DATE

(M) SEAL  
(B:) DEPUTY CLERK

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SUMMONS IN A CIVIL ACTION

Alaska Community Action On Toxics,  
Cook Inlet Keeper, The Chickaloon  
Village Traditional Council, Janet  
Daniels, Richard Martin, and The  
Military Toxics Project,

v.

United States Department Of The Army,  
United States Department Of Defense,  
and Donald Rumsfeld In His Official  
Capacity As United States Secretary  
Of Defense.

CASE NUMBER:

A 0 2 - 0 0 8 3 CV

T.O: (Name & Address of Delendant)

United States Dept. of the Army  
Office of the Chief of Public Affairs  
1500 Army Pentagon  
Washington, DC 20310-1500

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Valerie L. Brown  
Trustees For Alaska  
1026 W. 4th Ave., Ste. 201  
Anchorage, AK 99501

Scott J. Allen  
Cox & Moyer  
703 Market St., Ste. 1800  
San Francisco, CA 94103-2128

an answer to the complaint which is herewith served upon you, within 60 days after service of this  
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken  
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court  
within a reasonable period of time after service.

MICHAEL HALL

APR 12 2002

CLERK

DATE

(BY) DEPUTY CLERK

*CPM* *SEARCHED*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Alaska Community Action On Toxics,  
Cook Inlet Keeper, The Chickaloon  
Village Traditional Council, Janet  
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United States Department Of The Army,  
United States Department Of Defense,  
and Donald Rumsfeld In His Official  
Capacity As United States Secretary  
Of Defense.

SUMMONS IN A CIVIL ACTION

CASE NUMBER:

A 0 2 - 0 0 8 3 CV

TO: (Name & Address of Defendant)

United States Department of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)  
Valerie L. Brown  
Trustees For Alaska  
1026 W. 4th Ave., Ste. 201  
Anchorage, AK 99501  
Scott J. Allen  
Cox & Moyer  
703 Market St., Ste. 1800  
San Francisco, CA 94103-2128

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summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken  
against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court  
within a reasonable period of time after service.

MICHAEL HALL

APR 12 2002

CLERK

DATE

*CMI* *SEAL*  
(BY) DEPUTY CLERK



750 West Second Ave., Suite 109, Anchorage Alaska 99501 / Ph. 907.258.6171 / Fax 907.258.6177  
P.O. Box 22151, Juneau Alaska 99802 / Ph. 907.463.3366 / Fax 907.463.3312 / [www.acvoters.org](http://www.acvoters.org)

## SB 356 am ~ General Permit for Water / Waste Disposal

TO: House Resources Committee Members

DATE: April 26, 2002

Alaska Conservation Voters (ACV) is a nonprofit organization dedicated to protecting Alaska's environment through public education and advocacy. Our 32 member organizations represent over 35,000 registered Alaskan voters. Our members, as most Alaskans, support strong laws that safeguard the quality of Alaska's waters. In an attempt to address industry's desire for permit streamlining and "regulatory efficiency," SB 356 goes too far. Because it is so broadly written as to invite abuse, we oppose SB 356.

Senate Bill 356 would allow the Department of Environmental Conservation (DEC) to exempt the disposal of any non-hazardous waste from the individual permit requirements in AS 46.03.100, by allowing use of a non-site specific general permit. Although DEC currently authorizes certain activities under a variety of existing general permits, this bill allows DEC to broaden the range of activities covered by general permits, thereby getting around what the law otherwise requires them to do: review the proposals on an individual basis and make sure the proposals are consistent with state water quality and solid waste law. Waste disposal via general permits is bad public policy because the disposal of waste under a general permit will not receive full site-specific attention of either the regulatory agencies or the public. The major problems with this legislation include:

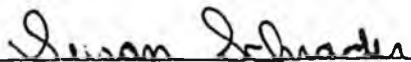
- **General permits force a "one-size fits all" on projects** – Section 3 of SB 356 allows DEC to issue a general permit "on a statewide, regional, or other geographical basis." In an effort to streamline the permitting process, DEC would not have to consider, for example, that solid waste disposal at a mine in the dry Interior is a different concern than disposal at a mine in Southeast Alaska. Unique attributes of a site could be easily disregarded.
- **Opportunity for public review is markedly limited** – All Alaskans, including adjacent property owners, Native Alaskans using an area for subsistence, or commercial fishermen concerned with protection of salmon habitat, would have very limited opportunities to find out about and comment upon projects seeking a general permit. While Section 5 of SB 356 does provide for public notice and comment *when a new general permit is being proposed*, Section 7 of the bill requires that public notice, via a posting on the Internet, be given *only* when DEC specifically authorizes a discharge under an existing general permit. For discharges that DEC chooses not to require authorizations, neither the public nor DEC will have a reliable method to find out about the discharges or their impacts.

OVER

- **This legislation introduces new, undefined, vague terms and phrases** –Section 3 uses the following that are undefined: “waste disposal,” “water disposal,” “similar in nature, and “minimal adverse environmental effects.” “Waste disposal” could refer to both solid and liquid waste; “water disposal” could refer to disposal of water generally, or to disposal of heated process or cooling water, or more generally to disposal *into* water. Does “similar in nature” mean similar in chemical composition, or a disposal of waste from similar sources, or a disposal from members of a similar industry? How minimal is “minimal”? Are “environmental effects” the same as “environmental impacts”? The overly-broad, imprecise language of this bill contributes to the bad public policy presented by SB 356.

Supporters defend this legislation by stating the bill only clarifies in statute DEC’s existing authority to write general permits. **However, SB 356 goes far beyond what is needed to achieve that goal.** With vague language and overly-broad provisions, this bill opens the door for abuse of the permitting process, an important safeguard of Alaska’s water quality.

We urge you to oppose SB 356.

  
Susan Schrader