

SB

110

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 110
(S) Publish Date: 2/16/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
Title: Relating to Regulation of the RDU
Discharge of Pollutants Component: _____
Sponsor: Rules Committee
Requester: Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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						
1007 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson Phone: 465-6137
Division: Legislative Liaison Date/Time: 2/11/05 3:33 PM
Approved by: Commissioner Kevin Dully Date: 2/11/2005
Agency: Alaska Department of Fish & Game

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 110
(S) Publish Date: 2/16/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
Title NPDES Primacy RDU Resource Development
Sponsor Rules Component Commissioner's Office
Requester Governor Component No. 423

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
DNR does not expect any change to our reviews under the new program since the state is simply assuming responsibility for the existing federal program.

Prepared by: Janet Baxter Phone 465-4730
Division: Commissioner's Office Date/Time 12/8/2004
Approved by: Tom Irwin Date 12/8/2004
Agency: Natural Resources

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: SB 110
(S) Publish Date: 2/16/05

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title NPDES Primacy RDU Administration & Support
Component Commissioner's Office
Sponsor Rules Committee
Requester Governor Component No. 530

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

None

Prepared by: John Manly Phone 465-3904
Division Communications, DOT&PF Date/Time 12/7/04 10:34 AM
Approved by: Mike Barton Date 12/7/2004
Agency Commissioner, DOT&PF

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: CSSB 110(FIN)
(S) Publish Date: 4/25/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
Title DEC regulation of wastewater and RDU Division of Water
federal Clean Water Act NPDES primacy Component Water Quality
Sponsor Rules Committee
Requester Governor Component No. 2062

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	411.1	863.3	863.3	863.3	863.3	863.3
Travel	79.0	98.0	98.0	98.0	98.0	98.0
Contractual	281.4	554.1	554.1	554.1	554.1	554.1
Supplies	13.0	13.0	13.0	13.0	13.0	13.0
Equipment	89.7	19.5	19.5	19.5	19.5	19.5
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
TOTAL OPERATING	874.2	1,547.9	1,547.9	1,547.9	1,547.9	1,547.9

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	75.0	150.0	225.0	300.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	874.2	1,547.9	1,472.9	1,397.9	1,322.9	1,247.9
1005 GF/Program Receipts	0.0	0.0	75.0	150.0	225.0	300.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	874.2	1,547.9	1,547.9	1,547.9	1,547.9	1,547.9

Estimate of any current year (FY2005) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	13	13	13	13	13	13
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill directs the Department to seek authority from the U.S. Environmental Protection Agency (EPA) to fully implement the federal National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program. This fiscal note reflects a multi-year transition process during which program components are gradually transferred from EPA to the State and concluding with the State implementing all program functions at the end of FY 2012.

While the program relies on a significant GF component for revenues, fines levied under the program as a result of enforcement proceedings will be deposited in the general fund helping to offset the GF requirement. For example, between calendar years 2001 and 2004, EPA collected an average of \$442,000 per year in fines. (Continued on page 2)

Prepared by: Dan Easton Phone (907) 465-5135
Division: Water Division Date/Time 4/21/05 8:53 AM
Approved by: Kurt Fredriksson, Commissioner Date 4/21/2005
Agency: Department of Environmental Conservation

FISCAL NOTE 5

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSB 110(FIN)

ANALYSIS CONTINUATION

Over the transition period, DEC expects annual program receipts from routine fees (as opposed to fines associated with enforcement actions) to gradually increase to a total of \$300.0 per year. Fees will be assessed according to existing fee statutes to pay for the increased level of effort associated with NPDES permit and compliance services to owners/operators of facilities with wastewater discharges: municipal sewage treatment plants, utilities, mines, seafood processing plants, oil and gas operations, municipal stormwater, and construction projects with stormwater discharges.

FY 2006 Transition to NPDES Primacy

- **Personal Services** - Funds are for 13 permanent FT positions. They are budgeted at 6 months, recognizing staggered hiring and that not all 13 positions will be hired on the first day of the fiscal year. These positions will develop regulations, permitting procedures, standardized program forms, internet-based materials, compliance data entry forms and systems, and other items necessary to submit an NPDES primacy application to EPA.
- **Travel** - Support new staff for primacy application and program development; primarily allows for substantial training for existing and new staff in NPDES-specialized skills the state must acquire to assume primacy.
- **Contractual** - RSA to Dept. of Law for legal assistance with primacy application and regulations development (\$150.0), professional services contracts to support NPDES technical issues and regulations development (\$60.0), public notices, and position support costs (\$49.3).
- **Supplies** - Standard office supplies.
- **Equipment** - Office furniture and computers for all new permanent staff.

FY 2007 and ongoing - Implementation of NPDES Primacy

The Department anticipates attaining NPDES primacy during FY 2007. The fiscal note for FY 2007 and beyond reflects the remaining program development work and ongoing costs of implementing the program. Long-term fiscal stability is necessary to maintain NPDES program primacy.

- **Personal Services** - Ongoing costs for 13 positions, budgeted for 12 months, will perform NPDES program management, additional permitting and compliance work, specialized (scientific and technical) services, data entry, EPA reporting, ongoing program development & rulemaking, and clerical support.
- **Travel** - Staff permitting and facility inspections to meet NPDES mandated inspection schedules; ongoing specialized skills training; and occasional program development meetings.
- **Contractual** - Laboratory sample analysis (\$144.0); routine public notices of permits and occasional regulations revisions; staff technical training; professional services contracts for assistance with NPDES permitting and compliance-related issues (\$120.0); RSA to Dept. of Law for assistance in preparing legally defensible permits and taking enforcement actions for non-compliance with permits (\$150.0); public notices, and position support costs (103.6).
- **Supplies** - Standard office supplies and water quality sampling supplies.
- **Equipment** - Ongoing office equipment and computer replacement costs, environmental monitoring equipment purchase or replacement, and other facility inspection equipment (such as personal safety gear, field equipment, cameras).

Personal Services New Position Detail

Department of Environmental Conservation
NPDES Primacy

Scenario: A Scenario for FY2006 Fiscal Notes (4191)
Component: Water Quality (2062)
RDU: Water (210)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#004	Environmental Spec IV	FT	A	GG	Juneau	1A	20 C	6.0		28,224	545	0	13,243	42,012
Justification:						Funding Detail:								
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program.						1004	General Fund Receipts						100.00%	42,012
						Total Funding:						100.00%	42,012	
18-#005	Environmental Spec III	FT	A	GP	Anchorage	1A	18 A	6.0		23,040	445	0	11,748	35,233
Justification:						Funding Detail:								
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program.						1004	General Fund Receipts						100.00%	35,233
						Total Funding:						100.00%	35,233	
18-#006	Environmental Spec III	FT	A	GG	Juneau	1A	18 B	6.0		23,880	462	0	11,990	36,332
Justification:						Funding Detail:								
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program.						1004	General Fund Receipts						100.00%	36,332
						Total Funding:						100.00%	36,332	
18-#007	Environmental Spec II	FT	A	GG	Juneau	1A	16 B	6.0		20,754	401	0	11,088	32,243
Justification:						Funding Detail:								
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program.						1004	General Fund Receipts						100.00%	32,243
						Total Funding:						100.00%	32,243	
18-#008	Environmental Spec II	FT	A	GP	Anchorage	1A	16 A	6.0		19,998	386	0	10,870	31,254
Justification:						Funding Detail:								
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program.						1004	General Fund Receipts						100.00%	31,254
						Total Funding:						100.00%	31,254	

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

Personal Services New Position Detail

Department of Environmental Conservation
NPDES Primacy

Scenario: A Scenario for FY2006 Fiscal Notes (4191)
Component: Water Quality (2062)
RDU: Water (210)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#009	Environmental Specialist II	FT	A	GG	Fairbanks	1B	16 B	6.0		21,582	417	0	11,327	33,326
Justification:						Funding Detail:								
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program.						1004	General Fund Receipts						100.00%	33,326
												Total Funding:	100.00%	33,326
18-#010	Environmental Specialist II	FT	A	GG	Fairbanks	1B	16 B	6.0		21,582	417	0	11,327	33,326
Justification:						Funding Detail:								
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program.						1004	General Fund Receipts						100.00%	33,326
												Total Funding:	100.00%	33,326
18-#011	Environmental Spec II	FT	A	GG	Fairbanks	1B	16 B	6.0		21,582	417	0	11,327	33,326
Justification:						Funding Detail:								
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program.						1004	General Fund Receipts						100.00%	33,326
												Total Funding:	100.00%	33,326
18-#012	Environmental Spec I	FT	A	GG	Anchorage	1A	14 B	6.0		18,006	348	0	10,296	28,650
Justification:						Funding Detail:								
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program.						1004	General Fund Receipts						100.00%	28,650
												Total Funding:	100.00%	28,650
18-#013	Environmental Tech II	FT	A	GG	Juneau	1A	12 B	6.0		15,804	305	0	9,661	25,770
Justification:						Funding Detail:								
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program.						1004	General Fund Receipts						100.00%	25,770
												Total Funding:	100.00%	25,770

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

Personal Services New Position Detail

Department of Environmental Conservation
NPDES Primacy

Scenario: A Scenario for FY2006 Fiscal Notes (4191)
Component: Water Quality (2062)
RDU: Water (210)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#014	Environmental Spec I	FT	A	GG	Fairbanks	1B	14 B	6.0	18,726	362	0	10,504	29,592
Justification:						Funding Detail:							
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program.						1004 General Fund Receipts						100.00%	29,592
											Total Funding:	100.00%	29,592
18-#015	Environmental Spec I	FT	A	GG	Juneau	1A	14 B	6.0	18,006	348	0	10,296	28,650
Justification:						Funding Detail:							
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program.						1004 General Fund Receipts						100.00%	28,650
											Total Funding:	100.00%	28,650
18-#016	Administrative Clerk II	FT	A	GG	Juneau	1A	8B	6.0	12,414	240	0	8,683	21,337
Justification: No justification provided.						Funding Detail:							
						1004 General Fund Receipts						100.00%	21,337
											Total Funding:	100.00%	21,337

Component Summary:

Total New Positions: 13

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	411,051
Total Funding:	100.00%	411,051

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

5-5-05

24-GS1009\GA.2
Bullock
5/4/05

*adopted
as changed*

AMENDMENT)

OFFERED IN THE HOUSE

BY REPRESENTATIVE WEYHRAUCH

TO: CSSB 110(FIN)(efd fld)

Delete

- 1 Page 1, line 6:
- 2 Delete "AND INTENT. (a)"
- 3 Insert "."
- 4
- 5 Page 1, line 12, through page 2, line 7:
- 6 Delete all material.

*Delete
Replace
Section 1*

- 7
- 8 Page 6, following line 1:
- 9 Insert a new bill section to read:
- 10 "* Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
- 11 read:
- 12 DUTIES OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION. (a)
- 13 The Department of Environmental Conservation shall seek primacy under the National
- 14 Pollutant Discharge Elimination System by filing a complete application to the United States
- 15 Environmental Protection Agency before July 1, 2006.
- 16 (b) The Department of Environmental Conservation shall establish a workgroup that
- 17 includes representatives of permittees affected under the National Pollutant Discharge
- 18 Elimination System and the United States Environmental Protection Agency to meet and
- 19 confer as needed during the period that the Department of Environmental Conservation is
- 20 designing its permitting program and seeking approval of the program by the United States
- 21 Environmental Protection Agency."
- 22
- 23 Renumber the following bill section accordingly.

5-5-5
adopted

AMENDMENT 2

OFFERED IN THE HOUSE BY REPRESENTATIVE WEYHRAUCH
TO: CSSB 110(FIN)(efd fld)

1 Page 5, lines 5 - 6:

2 Delete "following:
3 (1) the"
4

5 Page 5, lines 6 - 7:

6 Delete "permits are"
7 Insert "permits."
8

9 Page 5, line 9:

10 Delete " ;"
11 Insert " ."
12

13 Page 5, lines 10 - 18:

14 Delete all material.
15 Insert new subsections to read:
16 "(i) A person who applies for a permit under the program may review and
17 provide comments and amendments to a draft permit, and discuss the draft permit with
18 the staff of the department before that draft permit undergoes public notice and
19 comment under AS 46.03.110.
20 (j) The department shall adopt regulations that establish a process for using
21 contractors to assist the department to draft and issue permits."
22

23 Page 5, line 19:

1 Delete "(5) a"

2 Insert "(k) A"

3

4 Page 5, following line 22:

5 Insert a new subsection to read:

6 "(l) Permits issued under this section shall be issued as expeditiously as
7 possible."

8

9 Page 6, line 19:

10 Delete "and"

11 Following "schedule":

12 Insert ", and identification of relevant statutory, regulatory, or financial
13 impediments to obtaining National Pollutant Discharge Elimination System primacy
14 as intended by the legislature"

5-5-05
adopted

AMENDMENT #1 to Amendment #2

OFFERED IN THE FINANCE COMMITTEE

BY: Rep. Weyhrauch

TO: SB 110

- 1
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insert new (j)

"(j) a person who applies for a permit under the program has the opportunity to review a proposed final permit and discuss it with staff of the department before the department issues the permit."

renumber accordingly

5-5-05

AMENDMENT

3 w/D

OFFERED IN THE HOUSE

BY REPRESENTATIVE WEYHRAUCH

TO: CSSB 110(FIN)(efd fld)

(inv 1)

- 1 Page 1, lines 6 - 11:
- 2 Delete all material.
- 3 Insert "LEGISLATIVE INTENT."
- 4
- 5 Page 1, line 12:
- 6 Delete "(b)"

5-5-5

Failed 4-5

AMENDMENT

4

OFFERED IN HOUSE FINANCE
TO CSSB 110(FIN)(eld fld)

Page 2, line 3

After "permittees"

Insert "the public"

Page 2, line 4

After "meet"

Insert "in a public forum following notice under rules of AS 44.62 (Administrative Procedure Act)"

5-5-5

-- withdrawn -- 1st time

AMENDMENT 5

Failed - 2nd time
1-8

OFFERED IN HOUSE FINANCE
TO CSSB 110(FIN)(old fld)

Page 5, line 13

After "program"

Insert "or comments on a draft permit"

TESTIMONY OF COMMISSIONER KURT FREDRIKSSON
HOUSE FINANCE COMMITTEE
SENATE BILL 110 (NPDES ASSUMPTION)
MAY 4, 2005

Mister Chairman, members of the Committee, I am pleased to testify today in support of this Bill authorizing the Department of Environmental Conservation (DEC) to assume primacy for the National Pollutant Discharge Elimination System (NPDES) permit program from the federal Environmental Protection Agency (EPA).

Governor Murkowski and I believe passage of this legislation will allow Alaskans to better protect the State's water resources and build a strong economy.

With me today is Dan Easton, Director of the Department's Division of Water to provide you with the details of how this bill was developed.

Under federal law all discharges to surface waters must be permitted under the NPDES permit program to protect water quality. Community sewage treatment facilities, construction of storm water drains on more than one acre, seafood processors, log transfer facilities, ballast water discharge facilities, mining operations, oil and gas operations, and fish hatcheries all must have NPDES permits to operate. There are currently over 2300 regulated permit holders in Alaska under the NPDES permit program.

The federal Clean Water Act is founded on the principle that the rights of states to manage water quality within their borders should be protected. The Clean Water Act includes provisions for a state to assume primacy from EPA for issuing NPDES permits for discharges to surface waters within the state's borders. In states that do not assume primacy, EPA runs the NPDES program.

Like four other states, Alaska has never pursued the opportunity provided by the federal Clean Water Act to shape the NPDES water pollution control permit program to fit our state's unique circumstances. The bill before you would allow DEC to develop a comprehensive water quality protection program where all program components, from legislative budgeting and oversight to fieldwork and enforcement, are conducted here in the state, where Alaskans can shape solutions to fit Alaska's challenges.

Without this legislation, EPA will continue to be Alaska's water quality permitters. EPA makes the permit rules and review timeframes. EPA decides what goes into the permits and who gets inspected. EPA decides how Alaska's water quality standards will be applied to specific discharges. EPA sets Alaska's water quality priorities. EPA decides what's important for Alaska and what's not.

As you know, Governor Murkowski has an ambitious agenda for the responsible development of Alaska's natural resources. The Governor has pledged to improve permit efficiency without a rollback of environmental protection. However, as

long as EPA runs the NPDES permit program in Alaska, DEC cannot fix what we don't control. We can't establish appropriate performance measures with the legislature for timely permit actions, we can't establish the state's annual permit and environmental protection priorities, and we can't offer a timely appeal process that allows conflicts to be judged by Alaskans in Alaska.

A state run NPDES permit program won't be free. When EPA issues permits in Alaska the costs are borne by the U.S. taxpayer. A state permit program will shift authority and responsibility to the state, but it will also shift some of the costs to permit holders and the state.

State primacy for the NPDES permit program is a critical investment in the stewardship of Alaska's environment and development of our natural resources. It will better align regulatory requirements with real Alaskan conditions and the real risks to Alaska's water quality. A faster, more effective state permit program will be based on Alaska's priorities – not national "one-size-fits-all" priorities. DEC's permit priorities, level of effort and performance measures would be subject to annual review and approval by Alaskans through their elected officials in the state Legislature.

If Alaska is to realize the promise of resource development, we must accept responsibility for managing Alaska's water quality by assuming primacy for the NPDES program.

It's time we invest in the development of Alaska's resources by transferring responsibility from the federal government to protect Alaska's environment. I respectfully ask that you vote to pass SB 110.

**TESTIMONY OF DAN EASTON, DIRECTOR, DIVISION OF WATER
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
HOUSE FINANCE COMMITTEE
SENATE BILL 110 (NPDES ASSUMPTION)
MAY 4, 2005**

Senate Bill 110 is a result of years of effort starting with Senate Bill 326.

Senate Bill 326 was enacted in 2002. It directed DEC to evaluate the potential benefits and consequences of the state assuming primacy for the NPDES program.

Last year, the Legislature passed House Bill 546 directing the State to apply for partial NPDES primacy just for the timber sector. As it turns out, DEC has assumed a more prominent role in permitting timber operations, but we have been notified by EPA that the "partial primacy" rules won't allow us to pursue primacy just for the timber sector.

In November 2004, DEC formed the NPDES Primacy Work Group, an advisory workgroup tasked with examining the concerns, costs and benefits of state primacy specifically from the permittee perspective. Public notice was provided and the meetings were open to the public. Workgroup proceedings, findings and recommendations were captured in a report completed in January of this year.

Senate Bill 110 is the product of the hard work of many Alaskans all focused on the effort that started with Senate Bill 326 over two years ago. The bill reflects the recommendation of the recent NPDES work group that the State pursue primacy. It also reflects the recommendations of the work group as to specific characteristics that should be incorporated into the program design.

I'd like to conclude with a few notes on the fiscal note . . . The fiscal impact of primacy raises the two basic fiscal questions of: "How much?" and "Who pays?"

Starting with the question of "How much?" . . . The department's budget currently includes about \$3.3 million and 30 staff devoted to activities that would contribute to, and would be considered a part of, a state NPDES permitting program.

The Senate Bill 326 report took a hard look at what additional resources the state would need to operate an NPDES program. Resource requirements were estimated using EPA "workload models" as well as information from other state programs. This analysis arrived at a final figure for total program resources of \$4.8 million and 43 positions.

Bridging the gap between current resources (\$3.3 million and 30 positions) and what is required to operate a state program (\$4.8 million and 43 positions) will

require an additional \$1.5 million and 13 new positions. Those are the new resources included in the fiscal note.

As for the question of "Who pays?" . . . The fiscal note reflects the current resource agency fee policy of charging permittees for "direct costs." This policy was established in statute by House Bill 361 in the year 2000. Permittees already pay substantial fees for the state portion of the shared EPA/DEC program. With primacy, our direct costs increase and the fees paid by permittees will increase on average by a factor of 1.8.

The result of adding the new resources provided by the fiscal note to the current state program will be a primacy program that is funded roughly half (44%) through a combination of permitting fees and federal grant funds, and half (56%) through general funds.

We have come a long ways over the last two years. The promise of State primacy is great. We would welcome the opportunity to create a truly all-Alaskan water permitting program as envisioned by Senate Bill 110. Thank you.

in STEW

5-5-05

TESTIMONY OF COMMISSIONER KURT FREDRIKSSON
HOUSE FINANCE COMMITTEE
SENATE BILL 110 (NPDES ASSUMPTION)
MAY 4, 2005

Mister Chairman, members of the Committee, I am pleased to testify today in support of this Bill authorizing the Department of Environmental Conservation (DEC) to assume primacy for the National Pollutant Discharge Elimination System (NPDES) permit program from the federal Environmental Protection Agency (EPA).

Governor Murkowski and I believe passage of this legislation will allow Alaskans to better protect the State's water resources and build a strong economy.

With me today is Dan Easton, Director of the Department's Division of Water to provide you with the details of how this bill was developed.

Under federal law all discharges to surface waters must be permitted under the NPDES permit program to protect water quality. Community sewage treatment facilities, construction of storm water drains on more than one acre, seafood processors, log transfer facilities, ballast water discharge facilities, mining operations, oil and gas operations, and fish hatcheries all must have NPDES permits to operate. There are currently over 2300 regulated permit holders in Alaska under the NPDES permit program.

The federal Clean Water Act is founded on the principle that the rights of states to manage water quality within their borders should be protected. The Clean Water Act includes provisions for a state to assume primacy from EPA for issuing NPDES permits for discharges to surface waters within the state's borders. In states that do not assume primacy, EPA runs the NPDES program.

Like four other states, Alaska has never pursued the opportunity provided by the federal Clean Water Act to shape the NPDES water pollution control permit program to fit our state's unique circumstances. The bill before you would allow DEC to develop a comprehensive water quality protection program where all program components, from legislative budgeting and oversight to fieldwork and enforcement, are conducted here in the state, where Alaskans can shape solutions to fit Alaska's challenges.

Without this legislation, EPA will continue to be Alaska's water quality permitter. EPA makes the permit rules and review timeframes. EPA decides what goes into the permits and who gets inspected. EPA decides how Alaska's water quality standards will be applied to specific discharges. EPA sets Alaska's water quality priorities. EPA decides what's important for Alaska and what's not.

As you know, Governor Murkowski has an ambitious agenda for the responsible development of Alaska's natural resources. The Governor has pledged to improve permit efficiency without a rollback of environmental protection. However, as

long as EPA runs the NPDES permit program in Alaska, DEC cannot fix what we don't control. We can't establish appropriate performance measures with the legislature for timely permit actions, we can't establish the state's annual permit and environmental protection priorities, and we can't offer a timely appeal process that allows conflicts to be judged by Alaskans in Alaska.

A state run NPDES permit program won't be free. When EPA issues permits in Alaska the costs are borne by the U.S. taxpayer. A state permit program will shift authority and responsibility to the state, but it will also shift some of the costs to permit holders and the state.

State primacy for the NPDES permit program is a critical investment in the stewardship of Alaska's environment and development of our natural resources. It will better align regulatory requirements with real Alaskan conditions and the real risks to Alaska's water quality. A faster, more effective state permit program will be based on Alaska's priorities – not national "one-size-fits-all" priorities. DEC's permit priorities, level of effort and performance measures would be subject to annual review and approval by Alaskans through their elected officials in the state Legislature.

If Alaska is to realize the promise of resource development, we must accept responsibility for managing Alaska's water quality by assuming primacy for the NPDES program.

It's time we invest in the development of Alaska's resources by taking responsibility from the federal government to protect Alaska's environment. I respectfully ask that you vote to pass SB 110.

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
OFFICE OF THE GOVERNOR
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SB110
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February 15, 2005

The Honorable Ben Stevens
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, and in the interest of reducing duplication in and otherwise improving regulatory processes, I am transmitting a bill relating to regulation of the discharge of pollutants that would authorize state assumption of primacy over the federal Clean Water Act National Pollutant Discharge Elimination System (NPDES) program.

Under existing state law, the Department of Environmental Conservation (DEC) regulates a broad universe of waste and wastewater disposal activities. These include the same activities (the discharge of pollutants to surface waters) that the United States Environmental Protection Agency (EPA) regulates under the NPDES program. This results in duplication of effort by the state and EPA, and in important decisions about the control of wastewater disposal being made by federal regulators with limited knowledge of Alaska-specific issues.

Through ch. 143, SLA 2004, DEC was authorized to take the actions necessary to assume primacy for the Clean Water Act NPDES program for the timber-industry sector. It was recognized through enactment of ch. 143, SLA 2004 that a timber-industry sector program would be a good first step on the road to broader assumption of primacy for the NPDES program. That step, however, brings home to Alaska only a relatively small portion of important wastewater permitting decisions. This limits our ability as a state to design a comprehensive, rational environmental protection program. Such a program would balance prevention of threats to state waters from industrial discharges and the more common wastewater discharges such as from municipal sewage treatment plants and stormwater against our constitutional charge to develop state land and resources, consistent with the public interest.

COMMITTEE COPY

The Honorable Ben Stevens
February 15, 2005
Page 2

This bill would remove the timber-sector limitation on the authority provided by ch. 143, SLA 2004, thereby allowing the DEC to take the actions necessary to assume primacy for all of the NPDES program delegable to the state. This would enable DEC to pursue the full benefit of the federal Clean Water Act for Alaska, by bringing home to the state this important permitting program in full, all at once or through phased implementation. This would not affect adoption or implementation of state water quality standards.

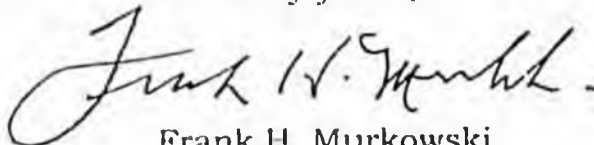
The bill also would amend existing fee provisions to allow for financing of a portion of the full state NPDES program through user fees. Specifically, sec. 2 of the bill would give the DEC the general authority to adopt user fee regulations covering the entire state-assumed NPDES primacy program, thereby removing the existing limitation of this authority to only the timber-industry sector. Under existing AS 37.10.050 - 37.10.058, state NPDES permits would be included in the designated regulatory services category for which flat fees are set, just as state-issued wastewater disposal permits and the state's certification of federal NPDES permits already are.

Section 4 of the bill contains several conditions to include in a state NPDES program. These conditions are the result of extensive consultation between the DEC, the EPA, and permittees who will be affected by the state's assumption of the NPDES program.

The enforcement and penalty provisions would apply to the full NPDES program in the same manner as approved by the Legislature last year for the timber-industry sector program authorized by ch. 143, SLA 2004.

I urge your prompt and favorable action on this measure.

Sincerely yours,

A handwritten signature in cursive script, reading "Frank H. Murkowski".

Frank H. Murkowski
Governor

Enclosure

MEMORANDUM

State of Alaska

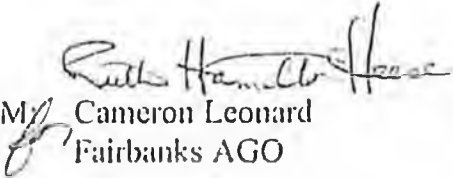
Department of Law

TO: Kurt Fredriksson
Commissioner
Alaska Dept. of Environmental Conservation

DATE: May 3, 2005

FILE NO: 773-05-0009

TEL. NO.: 451-2811

FROM:  Cameron Leonard
Fairbanks AGO

SUBJECT: Sectional Analysis for CSSB 110 (FIN) (efd fld)

Sectional Analysis for CSSB 110 (FIN) (efd fld)

Section 1 sets out legislative findings and intent for this bill. Note that the finding is modeled on a similar finding contained in CSHB 546, found at § 1, ch. 143 SLA 2004. The two statements of intent are to direct ADEC to: (1) file an application for NPDES primacy with EPA by June 30, 2006; and (2) to maintain and consult with the workgroup of affected permittees during the development and approval of ADEC's permitting program. These two items are among those to emerge from the deliberations of the workgroup over the last several months. See also the discussion of section 4 of the bill, below.

Sections 2 and 3 are similar: they both broaden ADEC's authority to assume NPDES permitting primacy from the timber industry sector only (as provided under current law) to all discharges subject to the NPDES program. The sections accomplish this by removing limiting language that accompanied the legislature's prior grant of authority to ADEC. Section 2 allows ADEC to adopt regulations prescribing fees for the permits that it will issue under the program, while section 3 gives ADEC authority to take any actions necessary to receive NPDES primacy from EPA.

Section 4 prescribes five elements that ADEC's NPDES program must contain. All five elements came out of the discussions of the workgroup, and represent a consensus view of affected permittees on what a state program should look like. The proposed new section 100(h)(1) reflects the concern that in the past, NPDES permits issued by EPA have sometimes contained monitoring and reporting requirements that went beyond what the law required, and exposed the permittees to EPA enforcement and to citizen suits if they did not comply. The proposed new section 100(h)(2) and (3) reflect permittees' desire to review the permit terms early in the drafting process and

before final issuance. Proposed section 100(h)(4) reflects the permittees' belief that ADEC's use of contractors could make the permitting process quicker and more efficient. Finally, the proposed section 100(h)(5) seeks to avoid the automatic stay of a permit by virtue of a request for a hearing on the permit, which currently occurs under the federal rules. See 40 CFR 124.16.

Section 5 of the bill is really a house-keeping measure, in that it clarifies some confusion introduced into AS 46.03.120 by the convergence of two bills last year. Both CSHB 546 and SCSHB 524 made changes to AS 46.03.120(b), and unfortunately the combined effect was to leave a few words out of the section 120(b)(3). This section of the current bill simply restores those words and makes the statute coherent again.

Finally, Section 6 requires annual reports to the Legislature and the Governor. This reporting applies during the transitional period while ADEC is preparing its primacy application, securing EPA's approval, and taking over the program (if primacy is approved) from EPA.

THE
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DOCUMENT(S)
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COPIES

FINDINGS AND RECOMMENDATIONS

PART A: ISSUES REQUIRING STATE ACTION

A1) REGULATORY REFORM

1a) NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PROGRAM PRIMACY

FINDING: NPDES permitting may be the greatest obstacle to timely development of mines in Alaska. The EPA currently conducts NPDES permitting, compliance, and enforcement for the State of Alaska. Alaska is one of only four states that does not have primacy over the NPDES program.

State control of this program will likely make the process more efficient by allowing for greater access to permit writers, allowing for better coordination with other State agencies during the permitting process, and by removing the duplication of effort of permitting through EPA while also working on State certification. State primacy may allow more efficient, timely administration of NPDES permitting while effectively addressing unique Alaska water issues and maintaining high environmental standards.

The state legislature funded a study to determine if the State of Alaska should assume NPDES program primacy, as it has in air quality. The study report included the pros and cons of program primacy, the funding requirements if adopted, and a preview of what the program and regulations will look like. This work product has prepared the State to assume a program that has been well-researched and planned with careful forethought.

The Alaska Department of Environmental Conservation (ADEC) formed a work group in late 2004 to advise the State on whether to seek primacy over the federal NPDES program. This work group, consisting of representatives from the NPDES-regulated community, including the mining industry, will provide recommendations to ADEC and the Administration about whether to go forward with seeking State primacy for NPDES. The work group has an aggressive schedule to complete recommendations for the 2005 legislative session.

The Minerals Commission supports the State of Alaska assuming NPDES primacy.

THE COMMISSION RECOMMENDS THAT:

- 1a) The Governor gives careful consideration to the ADEC NPDES primacy work group product. If the work group recommends going forward with state primacy, the Governor should seek legislation and funding for NPDES program primacy during the 2005 legislative session, so that the State will have full responsibility for regulating discharges to Alaska's waters.

1b) LITIGATION REFORM

Finding: The Minerals Commission supported the adoption of the Public Interest Litigant legislation passed in 2003. The new legislation placed mining companies (and other industries) on equal status with any party bringing a civil action seeking judicial review of Administrative Agency decisions. This legislation is very positive and will increase investor confidence immeasurably. Unfortunately, a legal



SB 110/HB 153 - NPDES Primacy

Background: SB 110/HB 153 authorizes the state to apply to U.S. Environmental Protection Agency (EPA) for the right to issue federal wastewater discharge permits under the National Pollutant Discharge Elimination System (NPDES). Currently, EPA issues these discharge permits in Alaska for free. The legislation is the outcome of a Department of Environmental Conservation (DEC) permittee-only workgroup process to determine the circumstances under which the industry would accept state primacy over NPDES permitting. As a result of its limited membership the workgroup did not adequately address several problems with state NPDES Primacy.

Problems with SB 110/HB 153

Inadequate Staffing Levels: The fiscal note estimates NPDES primacy will cost Alaska over \$1.5 million annually. Unfortunately, the proposed DEC staffing levels are inadequate- reducing the current permitting staff by 28% and compliance and enforcement staff by 16%. Given the size and scale of many Alaskan industrial operations – oil and gas-related, mining, timber, and seafood processing – the proposed staffing levels are far too low. As the January 2004 DEC report on NPDES Primacy shows, Alaska expects to spend only 52% of the resources that Washington state spends per permit. **Needed: Increase staff estimates.**

Harm from Inadequate Funding: If the legislature fails to appropriate the funds needed *each year*, the state's salmon streams and overall water quality will suffer, permits will be delayed, there may be technical deficiencies in permits, etc. Additionally, necessary annual appropriations for the NPDES program will increase as personnel costs and Alaska's economy expand. **Needed: Legislative intent to fund the NPDES program adequately over the long-term.**

Inappropriate Influence: Permitted industries will have excessive influence on the permitting process, reducing governmental accountability. Industry workgroup members wish to review draft and final permits before public issuance, again giving industry permittees excessive and unfair influence over permits. EPA may not approve such an unbalanced permit process. **Eliminate Sec. 4(h)(2) and 4(h)(3).**

Lack of Outside Consultations: Under state primacy there no longer will be Tribal government-to-government consultations with regulators who issue wastewater discharge permits. NPDES primacy also will eliminate various expert reviews and public input opportunities required in federal statutes which protect, among other things, essential fish habitat.

Conflicts of Interest: The presumed lack of sufficient technical and other experts at DEC means that the legislation anticipates the use of consultants to develop permits. Problems with using consultants include potential conflicts of interest and the lack of long-term DEC staff experience with particular industries, which can result in technical deficiencies and costly staff inefficiencies. **Needed: Amend Sec. 4(h)(4) so it addresses potential conflicts of interest and increase DEC staff estimates.**

The legislation extends the mandate of the undemocratic and unrepresentative NPDES primacy workgroup. **Needed: Amend Sec. 1(b)(2) so the workgroup is representative of all stakeholders.**

Conclusion: SB 110/HB 153 need to be amended to ensure that the state has the resources, the expertise, and the necessary Tribal and public involvement process in place to implement NPDES Primacy without harming Alaska's natural resources, communities, and businesses.

Large Alaska treatment plant operators currently oppose state NPDES Primacy
<http://www.state.ak.us/dec/water/npdes/pdfs/AWWU.pdf>



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My Turn: Alaska not ready to run wastewater permitting

Before she left government service for the private sector, former Alaska Department of Environmental Conservation head Ernesta Ballard set in motion a process for the state, rather than the U.S. EPA, to issue wastewater discharge permits.

In contrast with most Murkowski administration water quality initiatives, the conservation community could support this proposal as long as the state has the resources and the necessary tribal and public involvement processes in place to ensure it can do the job well. So far, however, the state has shown every intention of doing the job poorly.

This past fall, DEC established a work group to examine the issues associated with the state managing the wastewater discharge permit program. The work group included only industry and wastewater treatment plant representatives, however, denying tribes and public-interest representatives seats at the table.

This Moscow-on-Cook Inlet work group, which did not want to hear or address dissident views, issued its report on Clean Water Act state "primacy," with accompanying state legislation, this week. Missing from the work group's report are solutions to the following key concerns:

- 1.) The Legislature will need to appropriate at least \$1.5 million each year to support the bigger state government required to manage this complex program. Because work group members insisted on a strict limit to permit fees, the increased costs will come from other state initiatives such as education or road maintenance. If the Legislature fails to provide adequate appropriations, Alaska's waters, including our salmon streams, will suffer.
- 2.) Proposed DEC staffing levels are inadequate to implement the program. Currently, a total of 51 full-time equivalent employees (FTE) from U.S. EPA and DEC carry out this program in Alaska. DEC would reduce this number to 43 FTE, an overall reduction of 16 percent that includes a 38 percent reduction in program development staff (e.g., water quality standards staff), a 28 percent reduction in permitting staff, and a 16 percent reduction in compliance and enforcement staff. The state has produced virtually no evidence on how it can maintain an adequate discharge permitting program

with these severe staff reductions.

3.) There no longer will be formal tribal government-to-government consultations with regulators who issue wastewater discharge permits. Such consultations have numerous benefits, including allowing tribes to raise their concerns early in the permitting process; helping tribes learn about the implications of toxic and other discharges on subsistence resources and users; and enabling tribes to impact discharge permit conditions using traditional ecological knowledge.

4.) Public participation and expert involvement will be greatly reduced, resulting in inadequate environmental protection. State primacy will eliminate various reviews required by federal statutes that protect, among other things, essential fish habitat. The work group concluded that by eliminating these requirements, "a more efficient process under primacy should actually improve the environmental result," though, in Alice in Wonderland fashion, it provided no evidence to support such a statement.

5.) Alaska's resource agencies historically have been cozier with industry than their federal counterparts, so a state-managed discharge-permit program likely will result in less scrutiny for toxic and other discharges in Alaska's waters. For example, in the past two years, EPA initiated three significant Clean Water Act enforcement actions against oil and gas companies that violated water-quality protections for Cook Inlet. During the first year of the Murkowski administration, in contrast, the state did not penalize those responsible for any of the top 10 oil and hazardous-substance spills; five of these spills were from oil production and three were from mining.

The next step in the state primacy process is for the Legislature to scrutinize the work group's analysis. If they look carefully, legislators will see increased costs to the state and to municipalities through new permit fees, fewer opportunities for tribes and other Alaskans to participate in governmental decisions, and less protection for Alaska's magnificent waters.

Though the Moscow-on-Cook Inlet work group refused to address these concerns, the Legislature can do so. If not, the U.S. EPA can reject DEC's application for primacy, which is what it should do if the state does not resolve these important concerns.

• Lois Epstein is an Alaska-licensed engineer and an oil and gas industry specialist with Cook Inlet Keeper, a watershed protection organization with offices in Homer and Anchorage.

Click here to return to story:

http://juneauempire.com/stories/022505/opi_20050225015.shtml



NPDES Primacy: Good for Alaska?

*Kris Warren,
Treatment Division Manager,
Anchorage Water & Wastewater
Utility (AWWU)*

Your answer to this question will likely depend on your experience(s) with the Environmental Protection Agency (EPA) in acquiring or renewing your discharge permit. If your permit application languished for years or you had difficulty dealing with a regulatory agency based in faraway Seattle you will likely believe that the State of Alaska should start issuing its own National Pollutant Discharge Elimination System (NPDES) permits, just like 45 other states do. On the other hand, if you have gotten timely action from EPA on your permit applications and have been able to negotiate reasonable limits and monitoring requirements you may wonder why we would consider trying to fix what's not broken.

Since November, I have been representing AWWMA (presumed to be in the larger municipal permittee category) on a workgroup formed by the Alaska Department of Environmental Conservation (ADEC), tasked with determining the costs and benefits of ADEC assuming NPDES primacy. During our last meeting, now scheduled for Tuesday, January 18, we have been asked to make our individual recommendations to ADEC as to whether or not the state should proceed towards assumption of the program. Presumably, if the task force members indicate general support, the State Administration will submit enabling legislation to the legislature for their consideration during the upcoming congressional session.

Following is a list of potential pros and cons:

Pros

- The State could develop an on-line system for the purpose of submitting Discharge Monitoring Reports (DMR), payment of fees, and permit tracking.
- The State should be able to more rapidly issue new and expiring permits
- Alaskan permit writers should be more familiar with Alaskan conditions and Alaska's Water Quality Standards and should be better able than EPA to take local conditions into account when writing permits.
- ADEC could write Alaska-specific guidance documents which meet the specific needs of Alaskan operators and

- facilities. Posting of these and other related documents on the state website will increase access by both permittees and the general public to the permitting process.
- The State could provide greater outreach in the public participation and public notice process. Alaska's Online Public Notice System will be utilized for these functions. The State would be in a better position than EPA to hold public meetings and informal workshops regarding permitting issues.
- The state can build specific, timely and predictable steps into an enforcement program while maintaining a commitment to compliance assistance.
- The state could be more effective at resolving appeals while allowing permittees to continue their operations. The DEC Commissioner, rather than the EPA Region 10 Administrator, would be the final arbiter leading to more timely resolution of conflicts. Any judicial review of state permitting decisions would be heard in the Alaska Superior Court instead of the Federal 9th Circuit Court of Appeals in San Francisco.

Cons

- The program will no longer be free of charge. ADEC will need to charge permittees for the direct costs of the program. ADEC is initially proposing a flat annual fee for permits. Facilities larger than 0.25 MGD would be assessed \$2,808 per year. Smaller facilities would be charged proportionally less. There is no guarantee that these fees would not increase over time.
- ADEC will be under more pressure than EPA from environmental groups to ratchet down on permittees. Other states, like California for example, have tended to issue more stringent permits than federal regulations require. It is unknown if an ADEC run program would follow suit but that potential exists.

There are likely other pros and cons not listed here, but these are the ones that come to mind. Based on comments received to date and my own experience with permitting, I will be making the recommendation that EPA continue issuing NPDES Permits

Additional information can be found at: http://www.state.ak.us/dec/water/npdes/work_group.htm

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Table 6. Comparison of Alaska's Proposed NPDES Program with Selected States

	Alaska Proposed (NPDES Primacy Program)	Arizona* (NPDES Primacy State)	Washington (NPDES Primacy State)
Program Staffing			
FTE (Full Program)	43	N/A	117
FTE (Permitting & Compliance)	24	9.5	47
Permit Caseload			
No. of Individual Permits (IPs)	343	170	839
No. of Major (Individual) Permits	45	50	80
No. of General Permits (GPs)	21	3	11
No. of GP Authorizations	2680	6665	5680
No. of IPs and GPs / FTE (Full program)	8	N/A	7
No. of Major (Individual) Permits / FTE (Full Program)	1	N/A	0.7
No. of IPs & GPs / FTE (Permitting / Compliance)	15	18	18
No. of Major (Individual) Permits / FTE (Permitting / Compliance)	2	5	2
Program Budget			
Annual Program Budget (millions)	\$4.8	\$2.1	\$17.8
Budget \$ per permit (dollars)	\$13,187	\$12,139	\$20,940
Adjusted for Alaska COLA (120%)	\$10,989		

FTE = full time equivalent GP = General Permit IP = Individual Permit.

* Arizona includes only permitting staff. Compliance and enforcement staff not included. The effect is to overstate the per staff permit caseload.

Fiscal Resources

Table 7 presents annual program costs to run the State's current waste disposal program (FY04), complete transition work to achieve NPDES primacy (FY05), and implement a primacy program (FY06 and beyond). The current state FY04 permitting program costs approximately \$3.1 million. A funding increase of \$1.6 million would be necessary for the FY05 transition. An additional \$1.7 million in FY06 would be necessary to implement the NPDES primacy program.

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907)272-1481 Fax: (907)279-8114
Email: crockett@aoga.org
Marilyn Crockett, Deputy Director

March 4, 2005

Position of the Alaska Oil and Gas Association On State Assumption of the NPDES Program from EPA

The Alaska Oil and Gas Association (AOGA) is a private, nonprofit trade association whose 18 member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska.

As one of the major industries regulated under the NPDES permit program, AOGA participated in the DEC work group established to examine the concerns, costs and benefits of state primacy and to develop a recommendation on whether to proceed with primacy. After careful consideration of all factors, AOGA does not object to state assumption of this program if the following 11 elements are incorporated into the program. These elements are contained within the Executive Summary of the final Work Group report dated February 24, 2005.

1. Permit fees based on the structure established in House Bill 361.
2. Continued permittee participation during primacy application and program development.
3. Sufficient funding to develop and assume the program and consistent sufficient state general funds in the long-term.
4. Opportunity for permittee review of both draft and proposed final permits.
5. Permits contain only legally required monitoring and reporting necessary to comply with effluent limits and water quality standards.
6. Formal training plan and implementation of the plan for DEC permit and compliance staff.
7. Ensure permit consistency between areas under state and federal jurisdiction.
8. The ability for the department to use contractors to assist with peak workloads and technical permitting issues.
9. Use of the current state permit appeals process where permit provisions are not automatically stayed upon appeal.
10. Senior DEC management review of permits and conditions that set precedents or are controversial.
11. Primacy application submitted to EPA by June 2006.

As currently drafted, SB110 incorporates these elements. The accompanying fiscal note accurately reflects the additional commitment of GF funding required to develop the program in the short-term and to manage the program in the long term. It also recognizes the additional commitment of private sector funding for permit fees for direct services to be collected, once program assumption is complete, under the policy and structure unanimously adopted by the Legislature in 2000.

From The Desk Of



Charlie Boddy

May 3rd, 2005

Rep. Kevin Meyer
Co-Chair, House Finance Committee
Room 515 - Capitol Bldg.
Juneau, Alaska

Subject: SB110 State assumption of the NPDES program from EPA

Dear Rep. Meyer,

Thank you for giving attention to various issues which are important to the Alaska coal mining industry. SB110 is a piece of legislation that we have followed closely this session, as we did during the task force proceedings.

I have attached a copy of the AOGA comments regarding state assumption of the NPDES program. UCM supports legislation that includes the 11 elements listed in the final Work Group Report dated 24 February, 2005. Should any of these elements not be ultimately approved in legislation, we would withdraw our support of the state taking primacy of the water/wastewater program from the EPA.

Please let me know if I can be of assistance to you or staff on any pending legislation. With my best regards, I remain,
Sincerely,

100 Cushman St. - Suite 210 ☒ Fairbanks, Alaska 99701
Telephone (907) 452-2625 or (907) 322-0493



COOK INLET KEEPER

Protecting Alaska's Cook Inlet watershed and the life it sustains

Testimony of Lois N. Epstein, P.E. before the House Finance Committee

Senior Engineer

Cook Inlet Keeper

On SB 110, a bill that will give the state of Alaska the authority to issue all wastewater discharge permits

May 4, 2005

Good afternoon. My name is Lois Epstein and I am an Alaska-licensed engineer with Cook Inlet Keeper in Anchorage. Cook Inlet Keeper is a nonprofit, membership organization dedicated to protecting the Cook Inlet watershed's clean water and the life it sustains. I have worked on safety and environmental issues for over 20 years for two private consultants, the U.S. EPA, Environmental Defense in Washington, DC, and Cook Inlet Keeper. Additionally, I have served on several multi-stakeholder federal advisory committees, and currently serve on an advisory committee appointed by U.S. DOT Secretary Mineta that includes former Alaska House and Senate member Drue Pearce.

SB 110 accurately reflects the wish-list from the industry members of the Department of Environmental Conservation (DEC) workgroup studying "National Pollutant Discharge Elimination System (NPDES) Primacy," commonly understood as EPA giving the state of Alaska the authority to issue wastewater discharge permits under the federal Clean Water Act. Although DEC may not emphasize this fact to the legislature, the workgroup member representing the association of municipal wastewater treatment plants, who works for Anchorage, opposed the state's bid for NPDES primacy partly for financial reasons.¹

Additionally, because public interest organizations were excluded from the workgroup, our concerns were never seriously addressed. The Resources Committee Substitute to HB 153,

¹ Kris Warren, Anchorage Water and Wastewater Utility, workgroup meeting on January 18, 2005. Additionally, Mr. Warren wrote to Senator Wagoner on March 4, 2005 that he is "concerned that an ADEC run program will clearly generate new fees to be passed on to permittees...I see no benefits to municipal governments from the state assuming primacy which is why I did not sign on as a supporter of the initiative."

however, ensures reasonable inclusion of the public in future NPDES permitting deliberations, so the committee should make similar changes to SB 110 in sections 1(b)(2) and 4(h)(3).

With this background – and bearing in mind that EPA might have similar concerns and may not approve the state's application for primacy unless the legislature amends the bill and the state amends the Fiscal Note – Cook Inlet Keeper urges the committee to reject the state's costly plan to assume wastewater permitting authority from EPA or, failing that, to amend SB 110 so it contains the language in the Committee Substitute for HB 153. Our primary concerns are:

1. The high governmental cost of the permitting program, which only will grow as the state's industrial growth increases.
2. Ensuring a high-quality permitting program to protect Alaska's salmon and other fish.
3. Ensuring governmental accountability to the public and Tribes.

I will discuss only the first two concerns in my oral testimony, however my written testimony contains more details on the governmental accountability issue. Our concerns about governmental accountability can be addressed by adopting the language in the Committee Substitute to HB 153.

High Cost of the Permitting Program

According to SB 110's Fiscal Note, the legislature will need to appropriate, at a minimum (see next section), \$1.5 million each year to DEC to support the bigger state government required to manage this complex program. These costs are for a service – wastewater discharge permit issuance – that the state now gets for free. This is a major change to DEC operations. Because workgroup members insisted on a limit to permit fees to 16% of program costs (compared to the 57% of program costs paid by permittees in Oregon and the 75-80% paid in Washington),² the increased costs will come from other state initiatives such as education or road maintenance. If industrial growth occur in Alaska, the legislature will need to increase the annual appropriation beyond \$1.5 million to cover the approximately 84% of the program not funded by permit fees. If the growth occurs among businesses with less than 20 employees, annual appropriation needs will be even higher given cost recovery constraints for the program, i.e., governmental travel will not be recovered from small businesses.

The Fiscal Note DEC prepared on April 25 does not show how these new costs will be meaningfully reduced by fines. The Fiscal Note does not estimate the NPDES fines likely to be received, only total fines historically received for all DEC programs.

DEC will not get any more federal funding for the program than currently since the state receives the maximum amount allowed for administering its Clean Water Act programs. While federal funding is projected to continue at the current level, the federal budget process in future years may decrease this amount, resulting in additional costs to the state.

² *State of Alaska's Assumption of the National Pollutant Discharge Elimination System: A Report to the Alaska Legislature*, January 2004, p. 32. Percentages are from FY03.

If the legislature fails to fund the program adequately in the future, it is likely that permit issuance would be slowed and permit errors may occur. Since there is virtually no chance that EPA will take back the permitting program once it has been given to the state, permittees will suffer due to insufficient general fund resources.

The workgroup's report states that permit fees "are expected to increase by a factor of 1.8...a substantial increase,"³ including increases to municipal permit fees. Thus, both state and local costs will increase significantly should the state obtain NPDES primacy.

Keeping Fish Healthy

Fiscal Note cost estimates arguably are low because proposed DEC staffing levels are insufficient to implement the program adequately. If the program is not carried out with sufficient technical and enforcement staff, water quality and fish habitat will decline. Currently, a total of 51 full-time equivalent (FTE) employees from EPA and DEC carry out the permitting program. DEC estimates reduce this number to 43 FTE, including a 38% reduction in program development staff (e.g., water quality standards staff), a 28% reduction in permitting staff, and a 16% reduction in compliance and enforcement staff.

Though DEC may state that its proposed staff numbers are in-line with that of other states, its own information shows that to be untrue. For example, the state of Alaska expects to spend only 52% of the resources that Washington state spends per permit.⁴

Since DEC has produced essentially no evidence to date on how it can maintain an adequate permitting program with severe staff reductions – and this is an important point – we request that the legislature obtain additional, detailed information from DEC on the adequacy of its staffing estimates, especially for technical and enforcement staff, and on the likelihood of EPA approving the permitting program with serious staff reductions in a state with numerous, large industrial operations.

Additionally, Cook Inlet Keeper and industry members of the workgroup share a concern about the limited technical expertise at DEC and the likely use of consultants to develop permits. Problems with the use of consultants include potential conflicts of interest and the lack of long-term DEC staff experience with particular industries, which can result in technical deficiencies and possibly staff inefficiencies. Though conflicts of interest were discussed in the workgroup, Section 4(h)(4) needs to be amended to specifically prevent conflicts of interest for DEC consultants.

³ *National Pollutant Discharge Elimination System Primacy Workgroup Report*, February 24, 2005, p. 11.

⁴ *State of Alaska's Assumption of the National Pollutant Discharge Elimination System: A Report to the Alaska Legislature*, January 2004, p. 27.

Governmental Accountability

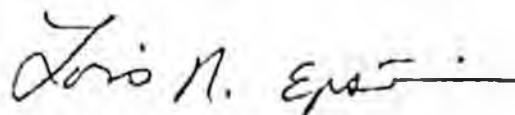
NPDES primacy will eliminate federal government-to-government consultations with Tribes and various analyses that the public currently participates in which are required by federal statutes to ensure clean water and healthy wildlife populations. Tribal government-to-government consultations have numerous benefits which can be better described by tribal members than by me. Cook Inlet Keeper urges the legislature to include Tribes in its primacy deliberations (unlike the DEC workgroup).

Sections 4(h)(2) and 4(h)(3) of SB 110 enable industry permittees to review draft and final permits before public issuance, giving industry permittees excessive and unfair influence over permits. EPA may disallow such unbalanced treatment. The legislature needs to remove these sections from the bill or, less desirably, amend Section 4(h)(3) as the House Resources Committee has done.

Finally, legislators need to amend Section 1(b)(2) so DEC's NPDES workgroup is representative of all stakeholders. This section currently extends the mandate of the undemocratic and unrepresentative workgroup which crafted this bill's contents. HB 153's amendment to this section includes the public in NPDES workgroup deliberations, and the Senate needs to do likewise. Tribes, however, still are excluded from NPDES primacy policy decisions.

Conclusion

Thank you very much for your attention to these concerns. NPDES primacy is a major undertaking for DEC, with serious fiscal, fish, and governmental accountability implications. Cook Inlet Keeper urges the legislature not to make this costly programmatic change of questionable value to permittees and troubling for the public and Tribes. This is a case where an important engineering saying applies - If it works, don't fix it.



Lois N. Epstein, P.E.
Senior Engineer
Oil and Gas Industry Specialist



Cover Sheet

Anchorage Legislative Information Office
Office - (907) 269-0111 Fax - (907) 269-0229

To: HOUSE FINANCE COMMITTEE

Atten: _____ Fax: 465-6813 Phone: _____

From: ANCHORAGE LIO Phone: 269-0111

Instructions: WRITTEN TESTIMONY FROM LOIS EASTMAN TO HOUSE FINANCE COMMITTEE

Memorial

Sent: _____ Date: 5-1-05 Time: 6:45 P.M.

Disp of Original: _____ Pouch: _____ Discard: _____

Number of Pages: 5 (counting cover sheet)



Council of Alaska Producers

P.O. Box 22653 Juneau, Alaska 99802

May 4, 2005

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
House Finance Committee

The Council of Alaska Producers (CAP) supports State assumption of the NPDES program.

The CAP is a consortium of mining organizations involved in the responsible development of natural resources in the State of Alaska. We represent a group of companies that are either currently operating mines, exploring for minerals, or associated with the development of mining operations that utilize or intend to utilize chemical extraction of ores as their primary mineral processing method.

State control over the complex NPDES permitting process will provide the benefits of effective environmental protection while recognizing site-specific Alaskan conditions, shortened permitting timelines, greater certainty of permitting outcomes, and reduced risk of permit appeals.

NPDES permits regulate collection, treatment, and disposal of site precipitation and process water. State assumption of this program would allow administrators to shape permit conditions around regional geologic and climatic conditions. Of all 50 states, Alaska certainly has the greatest divergence in regional conditions from the rest of the nation, including the challenges of permafrost, naturally mineralized streams and limited summer seasons. State assumption of the NPDES program will allow for an informed evaluation of site-specific conditions and determine how to best, and most reasonably, achieve protection of Alaska's waters.

Shortened permitting timelines will result from closer cooperation among state agencies during permit review. Closer cooperation among the agencies, the permittees, and the general public will also result from improved accessibility to the regulators. State agencies are more flexible in their ability to travel and they are not burdened by some federal procedural requirements. Thus state regulators are able to more quickly respond to issues during permit review and to keep the process on a timeline.

Improved certainty in the permitting process will result from having a more integrated approach to permitting. Since the State of Alaska currently develops the water quality criteria that are implemented through the existing NPDES program, State control of the permit process will ensure consistent interpretation and application of these standards within NPDES permits.

Under EPA regulations, any appeal of an NPDES permit for a new facility automatically puts the entire permit on hold until resolution of the appeal, e.g. Pogo Mine. Thus, with the cost of a postage stamp, anyone can hold up an entire project by appealing any provision of the permit. State control over the NPDES program can remedy this situation by having the Alaska Department of Environmental Conservation (ADEC) Commissioner establish guidelines that limit which permit conditions are stayed by an appeal.

When taken together, these and other benefits of State assumption will provide an improved permitting process and a much improved business climate in Alaska.

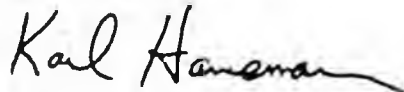
These benefits will come at a cash cost, but the long-term opportunity cost of not assuming this program will be much greater. The State must be able to permit major mining projects in a timely manner in order to continue to attract the capital that will provide private sector jobs and economic activity throughout Alaska. Forty-six of fifty states have assumed the NPDES program. How long will Alaska remain a ward of the federal government with respect to responsible permitting and development of its resources?

The benefits of State assumption will extend to specific permittees, both industrial and municipal, and to the overall economy of Alaska. Thus this program should be funded by both permittees and general funds. A proper balance must be struck between an appropriate cost to the permittee and an onerous burden that will discourage investment. Over the past few years, many leaders, both republican and democrat, have worked hard to develop consensus on how the water permitting programs should be funded. The funding proposal before you now is based on working group discussion, represents a continuation of this hard work, and should be approved with the program.

Assumption of the NPDES program will send a powerful message that Alaska intends to provide a reasonable investment climate in Alaska.

The Council of Alaska Producers recommends passage of SB110.

Respectfully,



Karl Hanneman
President
Council of Alaska Producers



ALASKA MINERS' ASSOCIATION, INC.

3305 Arctic Blvd., #105, Anchorage, Alaska 99503 • (907) 563-9229 • FAX: (907) 563-9225 • www.alaskaminers.org

January 11, 2005

Mr. Dan Easton, Director
Division of Water
Alaska Dept. of Environmental Conservation
410 Willoughby Ave., Suite 303
Juneau, AK 99801-1795

RE: NPDES Primacy/Mining Industry Support

Dear Mr. Easton,

This letter provides the Alaska mining industry's list of elements that would need to be included in a state NPDES program for the industry to support the state of Alaska obtaining NPDES permit primacy from the EPA. As you know, the mining industry has had representatives at each of the workshops convened by ADEC on this subject. A meeting of Alaska mining industry representatives was held earlier this week to discuss primacy and produce the following list.

"Must Have" Elements of State NPDES Program

1. **Permittee review of both draft and final permits and have opportunity to discuss with the permit writer, prior to the issuance of the permit:** The mining industry believes that the state could and should develop a process that would allow a review of the draft and final permits by the permittee, and an opportunity to comment, before the draft or final permit is issued. Without the review, there is the risk of permits being issued with errors, omissions or inappropriate conditions, which if left uncorrected could put the permittee at risk of non-compliance and enforcement. The current EPA process does not allow such reviews.
2. **Nothing in permits that is not legally required:** The mining industry recognizes the need for permittees to obtain bio-monitoring and water quality data for ambient stations and parameters for which there are no effluent limits in the permit. It is willing to agree to collect this information where it is reasonably necessary for the development of future permits or to verify that existing permit requirements are sufficiently protective. However, where this monitoring is not required to determine compliance with any legally mandated effluent limits or permit conditions, it should not be included as a permit requirement that could subject the permittee to the risks of non-compliance and enforcement. Rather, this supplemental monitoring could be spelled out in a separate agreement between the permittee and the state. The state NPDES permitting program could provide such a process.
3. **Appeal process that does not mandate an automatic stay of permit conditions:** EPA regulations provide for the automatic stay of all provisions in an NPDES permit for a new discharger or a new facility. EPA's regulations also provide for an automatic stay of any contested provisions in a renewed or modified permit. A stay should not be automatic, but, rather, determined on a case-by-case basis by the commissioner of ADEC. This

will avoid unnecessary disruption and expense to the permittee without prejudicing the appellant's right to have the contested provisions adjudicated.

4. Senior Internal ADEC review process of proposed permit provisions that either create a precedent or maybe controversial: Any time a permit condition could either create a precedent or is considered highly objectionable by the permittee or the public, this issue must be elevated for consideration by ADEC senior management. To better assure that appropriate permit provisions are developed, it will be necessary that senior internal review by the program manager and other senior management occur prior to draft or final permits being issued where the permit contains provisions that may set a precedent for the state or engender controversy.

5. Maximum flexibility to use private contractors and minimize bureaucracy: A key benefit of primacy will be the timely issuance of permits, including modified and renewed permits. This can best be achieved through optimization of the permitting program and use of private contractors where allowed by law. Use of private contractors will also better assure that ADEC can keep up with permitting needs during periods of high demand without having to maintain a large staff that would not be needed during the periods of low demand.

6. Maximize use of general permits: A major concern of smaller and "routine" dischargers is the possible increase in the cost and length of time for them to obtain permits if the program is not efficient. To the extent ADEC can group permits together under a general permit, this will result in efficiency and cost savings.

7. Continued reliance on ³⁶¹HB 351 for the setting of permit fees: Substantial work and compromise went into the crafting of HB 351, which industry continues to support as the only appropriate structure for the assessment of permitting fees. For many, the mining industry any additional costs and fees beyond those allowed under HB 351 would outweigh any anticipated benefits of primacy, and, therefore, maintenance of HB 351 is an important, if not the most important, condition for their support for primacy.

The Alaska Miners Association wishes to express appreciation to ADEC for convening the workshops and providing this opportunity for industry to make its recommendations to ADEC on whether to pursue primacy. We hope that this list of "must have" elements will be beneficial in drafting any proposed legislation, regulations or memorandum of agreement between ADEC and EPA. We believe that adherence to HB 351 is important enough that it should be incorporated in the legislation authorizing ADEC to pursue primacy.

It is also important to the mining industry that the good communication that we have enjoyed through the workshops continue in the public process that would be used in considering passage of any legislation, development of regulations and the memorandum of agreement. If this process goes forward, we intend to be an active participant along with other interested parties in the public process.

Sincerely,



Steven C. Borell, P.E.
Executive Director

ALASKA FOREST ASSOCIATION
111 STEDMAN #200
KETCHIKAN, AK 99901
907-225-6114

March 1, 2005

Senator Bert Stedman
Alaska State Senate
State Capitol
Juneau, AK 99801

RE: Alaska Forest Association NPDES Primacy Testimony for 3-2-05 Hearing

Dear Senator Stedman:

The Alaska Forest Association supports the DEC proposal to manage the NPDES permitting program for Alaska. State Primacy for this permitting program will be beneficial in many ways, for instance:

1. Simplify the permitting process for our timber industry. We will be able to go to a single agency for both State and Federal permits. Further, we have much easier access to State DEC permitting staff than the EPA staff in Seattle or Alaska. For instance, it often takes several days to get a response to a phone call to the EPA, whereas the DEC normally responds immediately.
2. Replacing proscriptive time-consuming formal consultations with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service with a faster less formal process will decrease the time it takes to issue permits.
3. The DEC staff is more familiar with Alaska sites and conditions. This greatly reduces the amount of time needed to describe a project and the need for that project.
4. Applicants will be able to review draft permits and proposed final permits before they are issued. This will reduce the incidence of errors in permits.
5. The EPA makes some decisions based upon national policy, rather than local needs and conditions. For example, the use of Ward Cove for temporary storage of log rafts and the use of the Ward Cove ship mooring buoys was permitted by the State DEC two years ago, but the EPA, by policy, will not permit that activity until after a TMDL limit has been established for the cove. The EPA proposed limits are too severe to allow any reasonable activity; hence the TMDL is stalled as is the use of the cove.

6. The appeals process for permits is expected to be more efficient under State Primacy. For instance, under State Primacy there would be no automatic stay of a permit that is appealed; whereas, the EPA does allow an automatic stay. The automatic stay provision encourages antidevelopment groups to file appeals simply as a delaying tactic.

There is a cost to both the State and the industry for permits under State Primacy, but the added cost is not unreasonable because in return we get a more reliable and efficient permitting process.

Thank you for the opportunity to comment..

Sincerely,

/s/

Owen J. Graham
Executive Director



TRIDENT SEAFOODS CORPORATION

5303 Shilshole Ave NW, Seattle, WA 98107-4000 • (206) 783-3818 • Fax: (206) 782-7195
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Senator Tom Wagner
Co-Chair, Senate Resources
Alaska State Senate
State Capitol
Juneau, Alaska 99801

March 1st, 2005

Re: State Assumption of the National Pollution Discharge Elimination System (NPDES) program; (SB 110).

Dear Sir,

Trident Seafoods Corporation is involved in all stages of catching, processing and marketing a wide variety of seafood products from Alaska. We appreciate the opportunity to submit the following brief comments in support of state primacy.

Primacy of the NPDES program offers Alaskan's greater control and responsibility for actions necessary to protect state waters and dependent aquatic life.

Primacy transfers more authority, and therefore accountability, to the state for interpretation and administration of the federal Clean Water Act as well as the state's own Water Quality Standards.

Primacy offers regulatory efficiency, and therefore economy, to government services necessary to assure proper evaluation of new discharge applications in a timely manner.

Primacy is an opportunity... a valuable opportunity for Alaska to take the cooperative lead in partnership, and in balance, with the Environmental Protection Agency.

Sustainable Alaskan sport, commercial and subsistence fisheries each depend on high environmental quality. Commercial sales actually rely on the *image* of high environmental quality. Possibly no Alaskan industry has a greater vested interest in the protection of state waters than does our own. We believe primacy is good for both water quality and our business interests in Alaska.

I thank you for considering our thoughts.

Sincerely,

Earl R. Hubbard
Vice President, Regulatory Affairs

Alaska

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Regional Office:
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Anchorage, Alaska 99501
(907) 278-2722 FAX 278-6643

April 12, 2005

Senator Lyda Green, Co-Chair
Senator Gary Wilkens, Co-Chair
Senate Finance Committee
State Capitol, Room 532
Juneau, AK 99801-1182

The Honorable Co-Chairs and Members of the Senate Finance Committee,

The Alaska State Chamber of Commerce supports the efforts of the State of Alaska to assume primacy in administering the National Pollutant Discharge Elimination System (NPDES) wastewater permitting program as outlined in SB 110. The State of Alaska, through the Department of Environmental Conservation, is seeking to assume primacy in response to a directive of the Alaska Legislature to investigate the costs and benefits of primacy.

The Federal Clean Water act recognizes the rights of individual states to assume primacy and enforcement of NPDES permits. Currently forty five states exercise primacy in their respective jurisdictions over the NPDES program. If the State of Alaska assumes primacy, then the Alaska Department of Environmental Conservation (ADEC) rather than the Environmental Protection Agency (EPA) would issue NPDES permits. The State of Alaska is in the best position to administer the NPDES program. Employees of the State of Alaska have superior knowledge of the local circumstances and are ready willing and able to protect and preserve the quality of Alaska's water.

The State Chamber acknowledges that there will be additional costs to the State of Alaska by assuming responsibility for this program. The costs of the program will more than offset by the benefits of local control. Business will only have to work with one regulatory agency, and thus be able to save significant costs and time. NPDES permit

requirements will be tailored to Alaskan conditions by permit writers familiar with Alaska's unique environment. Most importantly, with your support of SB 110, we will indeed be able foster and encourage business investment in Alaska.

Your careful attention and thoughtful consideration of this request for support is genuinely appreciated.

Yours in economic prosperity,

A handwritten signature in cursive script, appearing to read "Wayne A. Stevens". The signature is written in dark ink and is positioned above the typed name.

Wayne A. Stevens
President/CEO

SOUTHEAST CONFERENCE 2005

A RESOLUTION SUPPORTING
HOUSE BILL 153 AND SENATE BILL 110 DIRECTING STATE PRIMACY FOR
THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
PERMITTING PROGRAM

(Resolution 05-26)

WHEREAS The National Pollutant Discharge Elimination System (NPDES) program is the wastewater discharge permitting program established by Section 402 of the Clean Water Act; and

WHEREAS The U.S. Environmental Protection Agency (EPA) is currently the NPDES authority in Alaska unlike forty-five other states where the state is the NPDES authority (referred to as the state having "primacy" for the program); and

WHEREAS The NPDES program is important to the communities of Southeast Alaska because the discharge of treated municipal sewage requires an NPDES permit, and because many of our local businesses are regulated under the NPDES program; and

WHEREAS State primacy for the NPDES program promises a faster, less duplicative, and ultimately more effective program for protecting our water resources; and

WHEREAS State primacy for the NPDES program would mean our businesses, industries and communities working with Alaskan permittees on permits that truly reflect local priorities and unique conditions; and

WHEREAS State primacy for the NPDES program would mean a permitting program that is accountable to our elected officials and our residents; and



WHEREAS State primacy for the NPDES program will require adding about \$1.5 million to the Department of Environmental Conservation's budget so that they can run an effective program that all Alaskans can have confidence in.

NOW, THEREFORE, BE IT RESOLVED THAT The Southeast Conference supports state primacy for the NPDES permitting program; and

NOW, THEREFORE, BE IT FURTHER RESOLVED THAT The Southeast Conference urges the first session of the 24th Alaska Legislature to pass, and the Governor to enact, SB 110 and HB 153 along with the fiscal note provided by the Department of Environmental Conservation; and

NOW, THEREFORE, BE IT FURTHER RESOLVED THAT Copies of this resolution be provided to the Governor, the Co-Chairs of the House and Senate Finance Committees, the Senate President, and the Speaker of the House.

Approved by the Southeast Conference Board on April 5, 2005.

Witness: 
Murray Walsh - President Southeast Conference
Attest: 
Rollo Pool, Executive Director



NTL ALASKA, INC.

3330 INDUSTRIAL AVENUE, SUITE 200, FAIRBANKS, AK 99701
(907) 452-6852 fax (907) 452-6853
www.ntlalaska.com

March 15, 2005

The Honorable Gary Wilken, Co-Chair,
Senate Finance Committee
Alaska State Senate
State Capitol -
Juneau, Alaska 99801-1182

Re: Senate Bill No. 110

Dear Senator Wilken:

I am writing to express my support for the passage of SB 110. My interest in SB 110 derives from over 33 years as a professional environmental science consultant and commercial laboratory owner in the water and wastewater field in Alaska. Throughout my career, I have had a history of interaction with the EPA NPDES permit program for both public and private utilities. I strongly believe that it is time for the State of Alaska to adopt primacy for NPDES and assume full responsibility for its implementation. Following are some specific examples of why I support passage of SB 110:

1. In the early 1980's our testing laboratory in Fairbanks provided monitoring services for a number of placer mines operating in Interior Alaska. I was dismayed that EPA failed to implement a general NPDES permit for this industry in a timely manner, causing many of these businesses to either risk continuing their operations without a permit, or close down. Many miners opted to cease operations, creating a significant economic impact.
2. Throughout the 1980's and early 1990's, a number of our clients at Prudhoe Bay for whom we provided water and wastewater monitoring and consulting services applied for NPDES permits. EPA simply failed to respond to over a dozen NPDES permit applications from these oil field support service companies. When I contacted the EPA Region 10 office in Seattle, they complained that due to a backlog of hundreds of NPDES permits they didn't have the resources to deal with them. Although each of those companies obtained permits through the Alaska Department of Environmental Conservation (ADEC), they remained at risk without an NPDES permit until EPA finally issued a general permit for wastewater discharges in the North Slope Development area in 2003. The potential economic impact that could have resulted from disrupting the operation of those vital support service companies in Prudhoe Bay far exceeds the cost of an Alaskan-administered NPDES program.
3. The time that EPA takes to complete a major NPDES facility permit is an impediment to economic development in Alaska. The remoteness of their oversight can lead to improper decisions on permit issues that can have negative economic impacts. One example of this

Senator Gary Wilken
Comments Re: SB 110
March 15, 2005
Page 2 of 2

was the NPDES permit for the Pogo gold mine this past year. The NPDES permit was the last permit to be issued for that project, and it did not adequately address arsenic-related water quality issues. As you are well aware, the Northern Alaska Environmental Center (NAEC) called attention to that oversight and mine construction activity was subsequently disrupted until the Governor and a number of Fairbanks area legislators including yourself directly intervened to resolve the problem. Unfortunately, public attention was directed at the NAEC as being a disruptive force in this incident. It is my opinion that the EPA permit writers were at fault for a significant oversight that NAEC simply called to public attention.

In summary, I believe that Alaskans should take responsibility for this critical environmental permitting program. It makes economic sense and it brings sound science to the permitting program by having local expertise involved in all aspects of permit review, issuance, and compliance. Furthermore, by decreasing the geographical distance between the regulatory agency and the dischargers, environmental protection will be enhanced.

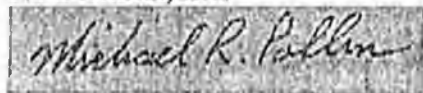
I believe that ADEC provides effective oversight of Alaska's State wastewater disposal permit program. Furthermore, ADEC currently performs most of the administrative functions for the new statewide NPDES General Permit (AKG-57-0000) for small discharges that EPA issued in 2004, such as plan review, mixing zone certifications, and monitoring criteria. ADEC will have to add some staff and develop additional skills to fully administer this program, but in my experience, ADEC already does a better job of this than their EPA counterparts.

Taking responsibility for primacy means that we will have to pay our own way for the added costs of running the NPDES program in Alaska. I believe that an efficient local administration of the NPDES program will yield economic benefits that will translate to a stronger economy, offsetting the additional cost to the State of Alaska many times over.

I encourage you to support this important piece of legislation. Thank you for your consideration of my comments.

Sincerely,

NTL Alaska, Inc.



Michael R. Pollen, President

ALEUTIANS WEST
COASTAL RESOURCE SERVICE AREA

EB, KF, DE

October 14, 2004

Department of Environmental Conservation
Ms. Ernesta Ballard, Commissioner
410 Willoughby Avenue, Suite 105
Juneau, AK 99801-1795

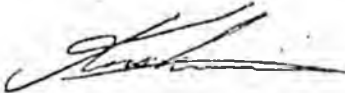
RECEIVED
OCT 22 2004
OCT 21 2004
ADEC COMMISSIONER'S OFFICE

Dear Ms. Ballard,

The Aleutians West Coastal Resource Service Area Board of Directors held a regular meeting September 25, 2004 and passed the attached resolution regarding state of Alaska primacy for NPDES permitting.

Thank you for the discussion material your office provided. Please feel free to contact me if you have any questions.

Sincerely,



Karol Kolehmainen
Program Director

Atch: As referenced
Cc: AWCRSA Board of Directors

A LEUTIANS WEST **T**
COASTAL RESOURCE SERVICE AREA

RESOLUTION NO. 2004-03

A RESOLUTION OF THE ALEUTIANS WEST COASTAL RESOURCE SERVICE AREA (AWCRSA) BOARD OF DIRECTORS SUPPORTING STATE OF ALASKA PRIMACY ON NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND ACTIVITIES.

WHEREAS, the Federal Clean Water Act recognizes the rights of individual states to assume Primacy on NPDES permits and activities; and

WHEREAS, forty-five States currently exercise Primacy on NPDES permits and activities; and

WHEREAS, the State of Alaska, through its Department of Environmental Conservation, is currently seeking approval for Primacy on NPDES permits and activities; and

WHEREAS, the State of Alaska believes that it is the most knowledgeable body regarding water quality protection and wastewater permitting conditions and circumstances within the state; and

WHEREAS, the people of Alaska are best served when decisions are made in the interests of the State of Alaska rather than in the interests of federal agency; and


WHEREAS, the AWCRSA was established in 1987 by a vote of the people of the unorganized western Aleutian area to provide representation of local interest in state and federal permitting conditions including NPDES permitting; and

WHEREAS, representation of local interests is strengthened when Primacy on NPDES resides within State of Alaska authority rather than the Environmental Protection Agency, and

NOW, THEREFORE BE IT RESOLVED that the AWCSRA Board supports State of Alaska Primacy on NPDES permitting activities.

PASSED AND APPROVED BY THE AWCRSA Board of Directors on this 24th day of September, 2004.

IN WITNESS THERETO:



Frank Kelty, Board Chair

ATTEST:

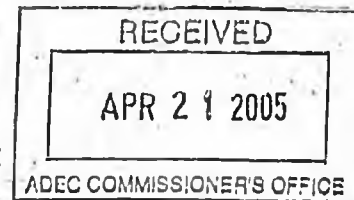

Julie Dirks, Secretary



KF, DE, BB

April 18, 2005

Representative Mike Chenault
Co-Chair
House Finance Committee
Room 505, Alaska Capitol
Juneau, Alaska 99801-1182



Re: Assumption of State Primacy for NPDES
Program

Dear Representative Chenault:

Sealaska Corporation strongly supports SB 110, a bill that would authorize the Department of Environmental Conservation to assume primacy for the issuance of wastewater discharge permits in Alaska. SB 110 is currently pending in the Senate Rules Committee and, if acted upon favorably by the Senate, will be reaching the House Finance Committee in the near future.

Sealaska, which is the largest private landowner in Southeast Alaska and a dynamic participant in developing Alaska's natural resources, is confident that SB 110, if enacted, would benefit the Alaska public as a whole by facilitating environmentally-responsible development in each of the following ways:

- o The bill is consistent with the principal of federalism, granting primary responsibility for water pollution control with the states
- o The bill achieves regulatory efficiency. Today, industry must deal both with ADEC (on water quality issues) and EPA (on technological issues) over the same permit. This creates two separate administrative processes, either of which can be delayed or complicated by components of the project;
- o The bill allows Alaskans to deal locally with fellow Alaskans on water quality issues, rather than having to make expensive contacts with Seattle personnel who are unfamiliar with Alaska issues;
- o The bill "defederalizes" water quality decisions. This means that:
 1. challenges to agency permit decisions must be brought in state court, rather than the hostile Court of Appeals for the 9th Circuit;

Representative Mike Chenault

April 18, 2005

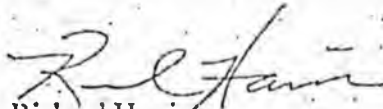
Page 2

2. expensive, litigation-provoking federal laws will no longer apply to individual wastewater permits, including the Endangered Species Act, NEPA and the "Essential Fish Habitat Program" of the National Marine Fisheries Service;
- o The bill retains the carefully-crafted permit fee cost-sharing compromise reached between all industries and the legislature in 2000. Industry pays the direct cost of processing its permit, while the public pays for overhead and program issues (i.e. writing statewide standards and procedures) that primarily benefit the public as a whole; and
 - o The bill allows more flexibility in permit-processing rules than EPA currently allows, in areas such as permissible contact with permit applicants during permit application review and the possibility of allowing projects to proceed pending administrative appeals.

Thank you for your consideration of our comments, and Sealaska hopes that, if and when SB 100 reaches the House Finance Committee, that your Committee is able to take timely and favorable action on this legislation.

Sincerely,

SEALASKA CORPORATION



Richard Harris
Executive Vice President

cc: Commissioner-designate Kurt Fredericksson
Southeast Alaska Legislative Delegation



United States
Department of
Agriculture

Forest
Service

Alaska Region

P.O. Box 21628
Juneau, AK 99802-1628

JAN 18 2005

File Code: 7400

Date: JAN 14 2005

Ms. Denise Koch
Alaska Department of Environmental Conservation
Division of Water; NPDES Primacy Project
410 Willoughby Ave., Suite 303
Juneau, AK 99801-1795

Mr. Ron Kreizenbeck
Acting Regional Administrator
Environmental Protection Agency, Region 10
Regional Administrator's Office, RA-140
1200 Sixth Avenue
Seattle, WA 98101

The USDA Forest Service has many programs involved with aspects of the National Pollution Discharge Elimination System (NPDES). The programs include timber sales, access to national forest lands, vegetative management activities, and administrative site operations. Many of these programs rely on both the State of Alaska and the Environmental Protection Agency (EPA) permits to authorize activities. Many projects require NPDES permitting; including log transfer facilities, sort yards, land disturbance projects (stormwater permits) and administrative sites developments (wastewater permits). Frequently, the Forest Service requires permittees and/or contractors to acquire these associated permits with specific activities authorized.

The Forest Service has examined the proposals developed by the State of Alaska Department of Environmental Conservation (ADEC) to exercise primacy and take the lead role in managing the EPA NPDES permits. Our conclusion is that it will be advantageous to National Forest programs in Alaska to have the State of Alaska take the lead role. The Forest Service sees several advantages that should provide for more efficient administration of the NPDES permitting activities:

1. State of Alaska primacy will eliminate the current duplicative permit applications and approval processes.
2. The ADEC staff is more experienced in Alaska water quality issues, and best management practice effectiveness.
3. While EPA will continue to exercise oversight and quality assurance, we expect the process logistics and timing to be favorable for more rapid permit processing.
4. The estimated costs of the permits and permit processing (fees) under the proposed ADEC primacy appear reasonable.
5. The communications opportunities appear to be positive, both from permit issuance and permit administration perspectives.



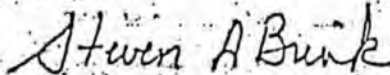
Ms. Denise Koch
Mr. Ron Kreizenbeck

2

The Forest Service also understands that a single General Permit for remote camps, that would include log transfer and storage, stormwater and wastewater, is being considered. Such a consolidated permit has the potential to save considerable time and expense for the Forest Service, its contractors, and/or its permittees.

Let me know if the Forest Service can help in any way with either the move to State of Alaska primacy or with the preparation of the proposed new remote camp General Permit.

Sincerely,



STEVEN A. BRINK
Deputy Regional Forester for Natural Resources

cc:

Forest Supervisor, Chugach National Forest
Forest Supervisor, Tongass National Forest
Director, Engineering and Aviation Management
Engineering Staff Officers, Chugach National Forest
Engineering Staff Officers, Tongass National Forest



CITY OF PETERSBURG
P.O. BOX 329 • PETERSBURG, ALASKA 99833
TELEPHONE (907) 772-4519
FAX (907) 772-3759

April 5, 2005

Senate Finance Committee
Alaska State Legislature
Sen. Lyda Green, Gary Wilken
Juneau, Alaska

Testimony: Support for SB110

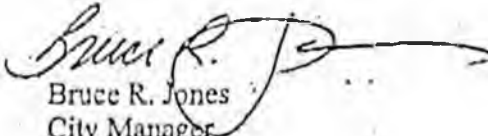
Dear Co-Chairs Green and Wilken,

I am writing today in support of Senate Bill 110 which would authorize the Department of Environmental Conservation to make application to obtain state primacy of the National Pollutant Discharge Elimination System.

In my twenty-five years as an employee of the City of Petersburg a majority of my time has been spent obtaining permits from Federal and State agencies, including numerous NPDES municipal discharge permits. It is my opinion that having the NPDES program under the authority of the State of Alaska would make the program more effective and efficient. I could cite more than a few instances where, during NPDES permit renewals, we have had to call representatives of the department in intercede on our behalf in an attempt to explain our unique challenges to federal regulators.

State primacy makes a lot of sense. My only request is for the legislature to give the department the resources they need to do the job correctly. I recognize the need to raise fees to cover costs of obtaining primacy. Unfortunately, the limited number of permits could not possibly fund the program.

Thank you for your consideration.


Bruce R. Jones
City Manager



Alaska Native Tribal Health Consortium
Division of Environmental Health & Engineering

1901 South Bragaw, Suite 200 Anchorage, Alaska 99508-3440
Phone: 907-729-3600 Fax: 907-729-4090
www.anthc.org

March 4, 2005

The Honorable Tom Wagoner
Chair, Senate Resources Committee
Alaska State Capitol
Juneau, Alaska 99811

Dear Senator Wagoner:

On March 2, 2005 I understand that a question was raised as to the position of the Alaska Native Tribal Health Consortium, (ANTHC) Division of Environmental Health and Engineering (DEHE) on Senate Bill #110

The primary mission of DEHE is to provide critically needed sanitation facilities for Alaska Native communities. In the current regulatory environment it typically takes longer to permit a facility than it takes to construct it. We are supportive of changes in the system that increases its responsiveness. We assume by moving the permit process closer to Alaska that State primacy of the National Pollutant Discharge Elimination System (NPDES) permit process would result in a streamlining of that process.

That being said, ANTHC is a tribal health organization and participates as part of the Alaska Tribal Health System. We are aware of concerns being expressed by Tribal governments regarding potential impact to the government to government relationship that currently exists between the U.S. Environmental Protection Agency and Tribes as part of the existing NPDES process. We recommend that the Committee explore this issue and provide an opportunity for Tribes to participate in the process so as to ensure their concerns are addressed.

Sincerely,

Steven M. Wenver, P.E. DEE
Senior Director

What Alaskans are Saying About NPDES Primacy

April 25, 2005

Alaska Minerals Commission

"NPDES permitting may be the greatest obstacle to timely development of mines in Alaska."

"State control of this program will likely make the process more efficient by allowing for greater access to permit writers, allowing for better coordination with other State agencies during the permitting process, and by removing the duplication of effort of permitting through EPA while also working on State certification. State primacy may allow more efficient, time administration of NPDES permitting while effectively addressing unique Alaska water issues and maintaining high environmental standards."

Report of the Alaska Minerals Commission, 2005

Alaska Miners Association

". . . [H]aving permit writers who are Alaska-based would better assure that permit provisions match project-specific conditions."

"State permit writers are more likely to keep the [permitting] process moving forward."

Larry Hartig

Journal of the Alaska Miners Association, December 2004

Alaska Forest Association

"State Primacy for this permitting program will be beneficial in many ways . . ."

"There is a cost to both the State and the industry for permits under State Primacy, but the added cost is not unreasonable because in return we get a more reliable and efficient permitting process."

Owen J. Graham

Executive Director

Trident Seafoods Corporation

"Primacy of the NPDES program offers Alaskan's greater control and responsibility for actions necessary to protect state waters and dependent aquatic life."

"Primacy offers regulatory efficiency, and therefore economy, to government services . . ."

"We believe primacy is good for both water quality and our business interests in Alaska."

Earl R. Hubbard

Vice President, Regulatory Affairs

Alaska Oil and Gas Association

"After careful consideration of all factors, AOGA does not object to state assumption of this program if the following 11 elements are incorporated into the program."

"As currently drafted, SB110 incorporates these elements."

*Alaska Oil and Gas Association on
State Assumption of the NPDES Program from EPA*

What Alaskans are Saying About NPDES Primacy

April 25, 2005

Southeast Conference

"WHEREAS State primacy for the NPDES program promises a faster, less duplicative, and ultimately more effective program for protecting our water resources . . ."

"WHEREAS State primacy for the NPDES program would mean our businesses, industries and communities working with Alaskan permittees on permits that truly reflect local priorities and unique conditions . . ."

"WHEREAS State primacy for the NPDES primacy would mean a permitting program that is accountable to our elected officials and our residents . . ."

Resolution 05-26

NTL Alaska, Inc.

"I strongly believe that it is time for the State of Alaska to adopt primacy for NPDES and assume full responsibility for its implementation."

"It makes economic sense and it brings sound science to the permitting program by having local expertise involved in all aspects of permit review, issuance, and compliance. Furthermore, by decreasing the geographical distance between the regulatory agency and the dischargers, environmental protection will be enhanced."

Michael R. Pollen, President

Aleutians West Coastal Resource Service Area

"WHEREAS, the people of Alaska are best served when decisions are made in the interests of the State of Alaska rather than in the interests of federal agency . . ."

"WHEREAS, representation of local interests is strengthened when Primacy on NPDES resides within State of Alaska authority rather than the Environmental Protection Agency . . ."

Resolution No. 2004-03

Sealaska Corporation

"Sealaska Corporation strongly supports SB 110 . . ."

"Sealaska, which is the largest private landowner in Southeast Alaska and a dynamic participant in developing Alaska's natural resources, is confident that SB 110, if enacted, would benefit the Alaska public as a whole . . ."

*Richard Harris
Executive Vice President*

U.S. Department of Agriculture, Forest Service

"Our conclusion is that it will be advantageous to National Forest programs in Alaska to have the State of Alaska take the lead role. The Forest Service sees several advantages that should provide for more efficient administration of the NPDES permitting activities . . ."

*Steven A. Brink,
Deputy Regional Forester for Natural Resources*