

HB

153

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STATE OF ALASKA
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February 15, 2005

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Harris:

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.

The Honorable John Harris
February 15, 2005
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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.

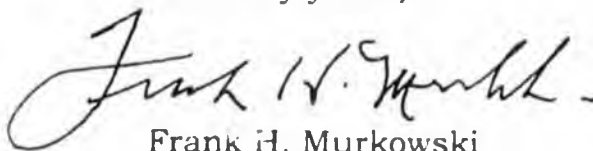
The bill also would amend existing fee provisions to allow for financing of a portion of the full state NPDES program through user fees. Specifically, sec. 2 of the bill would give the DEC the general authority to adopt user fee regulations covering the entire state-assumed NPDES primacy program, thereby 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,



Frank H. Murkowski
Governor

Enclosure

MEMORANDUM

State of Alaska
Department of Law

TO: Kurt Fredriksson
Acting Commissioner
Alaska Dept. of Environmental Conservation

DATE: March 8, 2005

FILE NO: 773-05-0009

TEL. NO.: 451-2811

FROM: Cameron Leonard
Fairbanks AGO

SUBJECT: Sectional Analysis for SB110/HB153

Sectional Analysis for SB 110/ HB 153

Section 1 sets out legislative findings and intent for this bill. Note that the finding is modeled on a similar finding contained in CSHB 540, 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

Sectional

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 of the bill provides for an immediate effective date.

TESTIMONY OF ACTING COMMISSIONER KURT FREDRIKSSON
HOUSE RESOURCES COMMITTEE
HOUSE BILL 153 (NPDES ASSUMPTION)
MARCH 14, 2005

Mr. Chairmen, members of the Committee, I am pleased to testify today in support of House Bill 153, for state assumption of the National Pollutant Discharge Elimination System, commonly referred to as the NPDES permit program. My testimony will focus on why Governor Murkowski and I believe passage of HB 153 will strengthen the ability of Alaskans to 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.

Since the creation of the Department of Environmental Conservation (DEC) in 1971, our duties have been clearly spelled out by the legislature to adopt and enforce regulations which set standards for the control of water, land and air pollution (AS 44.46.020). DEC fulfills these State obligations consistent with national pollution control programs authorized under the Clean Air and Clean Water Acts. These state and federal environmental laws are designed to accomplish uniform environmental quality goals nationwide using pollution controls tailored to each state's unique circumstances.

DEC currently exercises all the authorities granted by the Alaska legislature as well as the United States Congress to protect Alaska's air quality and drinking water. The same is not true for protecting the quality of Alaska's surface water. The federal Environmental Protection Agency (EPA) is the water authority in Alaska. Alaska, like four other states, has allowed wastewater permitting authority to remain with the federal government.

EPA makes the wastewater permitting rules in Alaska. EPA decides what's important and what's not. EPA decides the permit 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.

As you know, Governor Murkowski is committed to permit streamlining that eliminates duplicative, unnecessary procedures which invite litigation and add time and cost... without additional environmental protection. Governor Murkowski is committed to permit streamlining that aligns our regulatory requirements with real Alaska conditions and focuses on the real risks to Alaska's water quality.

DEC has made significant progress in streamlining its permit programs, but when it comes to wastewater permitting, we cannot fix what we don't control.

Alaska has never pursued the opportunity provided by the federal Clean Water Act to shape the NPDES water pollution control permit program to fit Alaska's unique circumstances. HB 153 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. Alaskans are capable of protecting our water resources

A state permit program will be based on Alaska's priorities – not national priorities that are "one-size-fits-all". 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.

A state run program will place permit decision makers closer to the Alaskan public and regulated permit holders. No longer will permits be written and enforced by federal staff unfamiliar with Alaska's unique environment.

The State run 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.

Federal programs do not adapt easily to Alaska. National goals do not always address our greatest needs. You, Alaska's elected representatives, have made clear our commitment to environmental protection and our responsibility to develop our resources for the wellbeing of all Alaskans. If we are to realize the promise of resource development, we must accept responsibility for managing our water resources. That means assuming primacy for the NPDES program.

With primacy there will be no rollback of environmental protection; anyone who supports primacy on that basis will be disappointed.

NPDES primacy means:

- A faster, more effective program for protecting our water resources.
- Alaskan industries and communities working with Alaskan permittees on permits that reflect our priorities and unique conditions – permits that make sense for Alaska.
- Less emphasis on cumbersome process and more emphasis on results.
- Less emphasis on one-size-fits-all permits and more emphasis on specific risks to Alaska's environment.
- Permitting accountability – accountability to Alaska's elected officials and the public.

It is time for Alaskans to take responsibility for protecting Alaska's environment. To do otherwise means continuing the status quo. The status quo is unacceptable.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 153
 (H) Publish Date: 2/18/05

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						
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)

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 Duffy Date 2/11/2005
 Agency: Alaska Department of Fish & Game

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 153
 (H) Publish Date: 2/16/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title: NPDES Primacy RDU: Resource Development
 Component: Commissioner's Office
 Sponsor: Rules
 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						
1 37 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: Jane 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: 3
 Bill Version: HB 153
 (H) Publish Date: 2/16/2005

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: 4
 Bill Version: HB 153
 (H) Publish Date: 2/16/05

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						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	874.2	1,547.9	1,547.9	1,547.9	1,547.9	1,547.9

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	874.2	1,547.9	1,472.9	1,397.9	1,322.9	1,247.9
1005 GF/Program Receipts			75.0	150.0	225.0	300.0
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
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. Building on FY05 efforts directed at primacy for the timber industry under HB 546, the Department projects a one-year (FY 2006) effort to complete development of the primacy application to EPA, with EPA review and approval during the following year. The funds identified in FY 2006 and FY 2007 and beyond are in addition to funds allocated in HB 546 (\$396.4 and \$132.5, respectively) for timber primacy, and reflect additional program development and implementation work necessary for full primacy; management of over 2,300 permits, specialized staff
 (Continued on page 2)

Prepared by: Lynn J. Tomich Kent Phone: (907) 465-5312
 Division: Water Date/Time: 2/4/05 3:52 PM
 Approved by: Kurt Fredrikson, Acting Commissioner Date: 2/4/2005
 Agency: Department of Environmental Conservation

FISCAL NOTE #4

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HB 153

ANALYSIS CONTINUATION

(Continued from page 1)

training, compliance data entry, and increased efforts in the stormwater program. One-time Federal grant funds were included in HB 546 and no additional federal funds are available.

- **Revenue** - The Department anticipates taking over permit issuance and compliance from EPA in a phased approach as staff gain experience in the program, with annual program receipts income gradually increasing up to a total of \$300.0. Fees will be assessed according to existing fee statutes to accommodate 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 8 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

HB 153 - FN#4

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	20C	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	18A	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	18B	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	16B	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	16A	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

HB 153 - FN#4

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 & Step	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#009	Environmental Specialist II	FT	A	GG	Fairbanks	1B	16B	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	16B	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	16B	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	14B	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	12B	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

HB 153 - FN#4

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-#014	Environmental Spec I	FT	A	GG	Fairbanks	1B	14B	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	14B	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.

**Department of Environmental Conservation
NPDES Primacy
Program Costs**

Cost of a Primacy Program

As directed by Senate Bill 326 enacted by the 22nd Alaska Legislature, DEC looked closely at what a state NPDES program would cost. Based on workload models and comparisons with other states, the report, *State of Alaska's Assumption of the National Pollutant Discharge Elimination System: A Report to the Alaska Legislature* (January 2004), concludes that a program would require an annual budget of \$4.8 million and a staff of 43.

Current Resources

The Department of Environmental Conservation budget currently includes about \$3.3 million and 30 staff devoted to activities that would contribute to the state NPDES permitting program. These positions currently are certifying the NPDES permits issued by EPA as required by the Clean Water Act and issuing state permits for very small discharges that EPA cannot get to.

New Resources

Bridging the gap between current resources (\$3.3 million and 30 positions) and what would be required to operate a state program (\$4.8 million and 43 positions) will require an additional \$1.5 million and 13 new positions.

The additional \$1.5 million will pay the salaries of the 13 new staff along with associated costs such as travel, office supplies, and equipment. These new funds will also cover the cost of legal assistance, professional service contracts, laboratory analyses, and data management.

Sources of Funding

Once the program is fully operating, costs will be divided between state general funds, federal grant funds and permitting fee receipts in these proportions.

- 41% State general funds
- 43% Federal funds
- 16% Permit fee receipts

Since no additional federal grant funds are available under primacy, the incremental \$1.5 million will need to largely come from state general funds. Once the program is operating, DEC expects to collect an additional \$300 thousand each year in permitting fees offsetting some of the general fund demand.

Department of Environmental Conservation
NPDES Primacy
Program Costs

Fee Policy

House Bill 361 was passed by the legislature in 2000. It establishes the state policy for fees charged by resource agencies. In essence, the law provides for charging permitting fees based on direct agency costs. Indirect costs are not included in permitting fees. DEC projects the following distribution of direct and indirect costs associated with the primary functions involved in running the NPDES program at primacy.

Program Administration (10%)

(such as management, policy development, budgeting, work plans, agreements)

- Direct Costs (fees) 0%
- Indirect Costs (GF/Federal) 10%

Program Development (13%)

(such as developing procedures, revising water quality standards, training)

- Direct Costs (fees) 0%
- Indirect Costs (GF/Federal) 13%

Program Implementation (5%)

(such as public education, data quality control, developing guidance)

- Direct Costs (fees) 0%
- Indirect Costs (GF/Federal) 5%

Permitting (30%)

(includes direct costs such as permit development, modification and renewal as well as indirect costs such as providing technical assistance to permittees, responding to third-party appeals, responding to public inquiries)

- Direct Costs (fees) 11%
- Indirect Costs (GF/Federal) 19%

Compliance/Enforcement (25%)

(includes direct costs such as inspections and review of discharge monitoring reports as well as indirect costs such as responding to citizen complaints and compliance assistance)

- Direct Costs (fees) 5%
- Indirect Costs (GF/Federal) 20%

Information Management (17%)

(such as maintaining the permit data system, EPA reporting, developing on-line permit application and reporting systems)

- Direct Costs (fees) 0%
- Indirect Costs (GF/Federal) 17%

Total (100%)

- Direct Costs (fees) 16%
- Indirect Costs (GF/Federal) 84%

**Department of Environmental Conservation
NPDES Primacy
Who is regulated by the NPDES program?**

Background

The Clean Water Act (CWA) requires that all point source discharges to surface waters be permitted under the National Pollutant Discharge Elimination System (NPDES) permit program.

A point source is defined as any confined and discrete conveyance including but not limited to a pipe, ditch, channel, tunnel, or conduit that discharges pollutants.

Number of NPDES Permits

NPDES Permit Statistics for Alaska

	Major Facilities [^]	Minor Facilities	Total Number of Facilities
Authorizations under 13 General Permits*	27	2,105	2,132
Individual Permits	44	111	155
Total	71	2,216	2,287
Unpermitted Facilities**	0	64	64

*A general permit covers a category of similar discharges within a geographical area. Applicants are granted authorization to discharge under the general permit.

**Mostly rural small domestic sewage discharges.

[^]A municipal system that discharges more than 1 million gallons per day, a discharge from an industry on the EPA Industry Ranking Sheet, or a facility that has a pretreatment program

Examples of Major Facilities with NPDES Wastewater Permits

- Pogo Mine
- Trident Seafoods Corp.
- Healy Power Plant
- Conoco Philips Kuparuk Seawater Treatment Plant
- Alyeska Pipeline Valdez Marine Terminal ballast water treatment plant
- Anchorage Asplund Wastewater Treatment Facility (Pt. Woronzof)
- Unisea Inc.

**Department of Environmental Conservation
NPDES Primacy
Who is regulated by the NPDES program?**

Examples of Minor Facilities with NPDES Wastewater Permits

- small suction dredge miners
- stormwater runoff from general construction activities
- Ketchikan Pulp Company landfill leachate
- East Port Frederick log transfer facility
- North Pole Wastewater Treatment Plant
- BP North Slope Oil & Gas Exploration (Liberty 1, Deadhorse)
- Snettisham Salmon Hatchery
- Port of Anchorage Marine Terminal Facility

Department of Environmental Conservation
NPDES Primacy
Workgroup Process

Background

Senate Bill 326 enacted by the 22nd Alaska Legislature directed the Alaska Department of Environmental Conservation (DEC) to evaluate the potential benefits and consequences of the state assuming primacy of the NPDES program. The Department released "*State of Alaska's Assumption of the National Pollutant Discharge Elimination System - A Report to the Alaska Legislature*" in January 2004.

Subsequent to release of the report, an advisory workgroup was formed to examine further the concerns, costs and benefits of state primacy from the permittee perspective and to recommend whether to proceed toward primacy.

Six meetings were held during the period November 2004 through January 2005 with representatives from NPDES permittee groups as well as the EPA. The meetings were held in Anchorage and were open to the public. Public notice of the schedule of meetings was provided. Meetings were informal and attendees who were not official members of the workgroup freely participated. Information, handouts, attendance lists and agendas were posted on an NPDES Primacy web site at http://www.state.ak.us/dec/water/npdes/work_group.htm.

Representation

The workgroup included one representative from each of the following major categories of NPDES-regulated dischargers:

- Oil and gas industry sector
- Mining industry sector
- Seafood industry sector
- Timber industry sector
- Construction industry sector
- Large community wastewater permitting
- Small community/tribal wastewater permitting

The EPA, as the current NPDES authority, had a special role and attended meetings to provide perspective and guidance on federal requirements and constraints.

**Department of Environmental Conservation
NPDES Primacy
Workgroup Process**

Workgroup Report

Workgroup proceedings, findings and recommendations were captured in a report: *National Pollutant Discharge Elimination System Primacy Workgroup Report* (2005). That report is available on the Department's web site.

Workgroup Recommendations

The majority of the workgroup recommended or did not object to Alaska's assuming primacy for the NPDES permit program. The workgroup's findings included the following recommendations for a state-run NPDES program.

1. Opportunity for permittee review of the draft and proposed final permits prior to issuance.
2. Only legally required monitoring and reporting requirements included in a permit.
3. Continued use of the fee structure established in HB 361; fees based on direct permitting and compliance costs only.
4. Continued use of contractors for technical expertise and during workload surges.
5. Sufficient and consistent funding to ensure a financially stable NPDES program.
6. Use of the existing state appeals process where permit terms and conditions are not automatically stayed upon appeal.
7. Submit a primacy application to EPA by June 2006.
8. Continued permittee participation to help develop the program and the primacy application.
9. Ensure permit consistency where facilities fall under both state and federal jurisdiction.
10. Senior DEC management review of permits conditions that could set precedents.
11. Develop formal training plans for DEC permit and compliance staff.

Department of Environmental Conservation
NPDES Primacy
Workgroup Findings

Background

A workgroup including representatives from each of the major categories of NPDES-regulated dischargers in Alaska met in a series of six day-long meetings between November 2004 and January 2005. Workgroup proceedings, findings and recommendations were captured in a report: *National Pollutant Discharge Elimination System Primacy Workgroup Report (2005)*. That report is available on the DEC web site.

A key part of the group's work was to identify the benefits, costs and concerns associated with the State of Alaska assuming primacy for the NPDES permitting program.

Identified Benefits

The workgroup identified potential benefits of a state NPDES Program:

1. Time and cost savings to permit major new facilities due to working with one, instead of two regulatory agencies and predictable compliance and enforcement programs.
2. Permit requirements tailored to Alaskan conditions by permit writers familiar with Alaska's environment.
3. An appeals process where filing of an appeal on a new permit does not automatically stay the entire permit.
4. Replacing time-consuming, formal consultation processes with faster, less formal processes.
5. Alaska-specific guidance documents.
6. The use of on-line permit applications, electronic data submittal and other efficiency measures.

Identified Concerns

The workgroup identified potential concerns of a state NPDES Program:

1. Permit fees are expected to increase on average by a factor of 1.8.
2. The state might not direct appropriate resources and funding to adequately implement the Program.

**Department of Environmental Conservation
NPDES Primacy
Workgroup Findings**

3. NPDES primacy could be temporary if future administrations or legislatures do not support a state program.
4. The state may not be able to hire and retain staff with the expertise to permit complex projects.
5. Responsibility to implement the NPDES program may come at the cost of other programs and priorities.
6. A state program may not provide the degree of certainty currently in place at EPA.

Department of Environmental Conservation
NPDES Primacy
Overview

Background

Section 402 of the Clean Water Act (CWA) requires that all discharges to surface waters be permitted under the National Pollutant Discharge Elimination System (NPDES) permit program.

The CWA intends for states to implement (to have "primacy" for) the NPDES program with the Environmental Protection Agency (EPA) acting in an oversight role.

Forty-five states have primacy for the NPDES program. The four other states, aside from Alaska, that do not have NPDES primacy are Idaho, New Mexico, New Hampshire and Massachusetts.

EPA is the NPDES authority in Alaska. DEC plays a secondary role "certifying" that EPA permits meet state water quality standards and issuing state permits for very small discharges that EPA cannot get to.

If Alaska had NPDES primacy, DEC would take over discharge permitting authority including responsibility for issuing and monitoring compliance with CWA permits.

NPDES Program Components

There are six components to the NPDES permit program. It is proposed that the State assume responsibility for the first five.

1. *NPDES Permitting* which amounts to developing, issuing, modifying and renewing the permits.
2. *Storm water program* which consists of permitting stormwater discharges from construction and industrial activities as well as permitting the stormwater collected and discharged by large municipal storm sewer systems.
3. *Compliance and Enforcement* which includes monitoring compliance with permit terms and conditions and taking enforcement action when necessary.
4. *Federal Facilities* which involves permitting of discharges from federally-owned facilities, such as Department of Defense installations.
5. *Pre-treatment Program* which consists of regulating highly toxic discharges into sewerage systems.
6. *Biosolids Management Program* which regulates the disposal of sewage treatment byproducts, or "sludge."

Department of Environmental Conservation
NPDES Primacy
Overview

The Biosolids component is a small component of the NPDES program in Alaska. States have the option whether to assume primacy for this part of the program.

NPDES Primacy Application

Alaska must submit an application to EPA to assume NPDES primacy. That application includes:

1. A *letter from the Governor* requesting approval of the state's application;
2. A *program narrative* that describes how the state will issue permits, ensure permit compliance, perform enforcement, fund the program, track issued permits and enforcement actions, and submit periodic reports to EPA;
3. An *Attorney General statement* of legal authority that confirms the state's laws and regulations are sufficient to implement the NPDES program;
4. A signed *Memorandum of Agreement (MOA)* between the state and EPA that establishes timeframes for the state to assume authority for the program components over a five-year period; and
5. A *compliance assurance agreement* developed between the State and EPA that describes the methods the State will employ to assure that permittees comply with the terms and conditions of their permits.

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

March 1, 2005

Representative Jay Ramras, Co-Chair
House Resources Committee
Alaska State House of Representatives
State Capitol
Juneau, AK 99801

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

Dear Representative Ramras:

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.

Alaska Forest Assoc Support

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



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>.



ALASKA MINERS ASSOCIATION, INC.

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March 2, 2005

Honorable Ralph Samuels
Honorable Jay Ramras
Co-Chairmen, House Resources Committee
Capitol Building
Juneau, AK 99801

RE: House Bill 153, State Assumption of NPDES Program

Dear Representatives Samuels and Ramras,

Thank you for the opportunity to comment on House Bill 153. This bill would give the Department of Environmental Conservation the authority to assume primacy for the National Pollution Discharge Elimination System (NPDES) program currently managed by the Environmental Protection Agency (EPA). Alaska is one of only five states that has not taken primacy for NPDES.

The mining industry has considered this option of the State taking primacy for the NPDES program for many years but until recently had not concluded that State primacy was best for Alaska. We also had concerns that DEC may not have personnel with the expertise and ability to take over the program and to manage it effectively. Over the past year, and more specifically over the past few months, we have become convinced that State Primacy for NPDES is in the State's best interest and that the DEC staff is definitely up to the task.

From late last fall through January 2005 we participated in a work group composed of regulated industries and municipalities. This work group evaluated what an NPDES program run by the State would include and the pros and cons for State assumption. We concluded that there are many reasons that justify State primacy. Alaska Attorney Larry Hartig wrote an article for the December 2004 edition of *the Alaska Miner*, our monthly publication, in which he discussed many reasons why it would be better if the State took primacy. Mr. Hartig has worked on water quality permitting issues in Alaska for more than two decades. That article is enclosed.

Thank you for the opportunity to comment on this important issue. We encourage you to move the bill as soon as possible so DEC can begin the process of applying to EPA to obtain primacy

Sincerely,

Steven C. Borell, P.E.
Executive Director

enclosure

cc: Resource Committee Members