

**SB**

**1 10**

**TESTIMONY OF ACTING COMMISSIONER KURT FREDRIKSSON**  
**SENATE RESOURCES COMMITTEE**  
**SENATE BILL 110 (NPDES ASSUMPTION)**  
**MARCH 2, 2005**

Mr. Chairman, members of the Committee, I am pleased to testify today in support of Senate Bill 110, National Pollutant Discharge Elimination System (NPDES) Assumption. My testimony will focus on why Governor Murkowski and I believe passage of SB 110 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. SB 110 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. 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.

**TESTIMONY OF DAN EASTON, DIRECTOR, DIVISION OF WATER  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
SENATE RESOURCES COMMITTEE  
SENATE BILL 110 (NPDES ASSUMPTION)  
MARCH 02, 2005**

Mr. Chairman, Senate Bill 110 is a result of years of effort starting with SB 326.

#### Senate Bill 326

Senate Bill 326, enacted in 2002 and effective January 1, 2003, directed the Department of Environmental Conservation (DEC) to evaluate the potential benefits and consequences of the state assuming primacy of the NPDES program. The Department released its report in January 2004. (This report is available on the department's web site.)

The report recommended that the State seek primacy and determined that the State would need a total of 43 positions and a budget of \$4.8 million to run the program based on workload models and comparisons with other states.

#### House Bill 546

Last year, the Legislature passed House Bill 546 directing the State to apply for partial NPDES primacy just for the timber sector. The fiscal note with the bill provided a full-time position and a combination of state and one-time federal grant funds for the effort.

In an unexpected twist, EPA notified DEC last October that partial primacy for just the timber sector would be "problematic." Reconciling ourselves to second-best, we executed a "work share agreement" with EPA. That agreement makes DEC the lead in the substantial effort of developing the next general permit for log transfer facilities, but it will remain an EPA-issued and enforced permit absent state primacy for the full NPDES program.

#### NPDES Primacy Work Group

In November 2004, DEC formed an advisory workgroup to examine the concerns, costs and benefits of state primacy specifically from the permittee perspective.

The work group met in six day-long meetings between November 2004 and January 2005. Members from each major NPDES permittee group participated: the Alaska Oil and Gas Association, the Alaska Forest Association, the Alaska Miners Association, the Associated General Contractors of Alaska, the Pacific Seafood Processors Association, the Alaska Water and Wastewater Management Association and the Alaska Native Tribal Health Consortium. Public notice of the meeting schedule was provided and the meetings were open to the public.

Workgroup proceedings, findings and recommendations were captured in a report completed last month. The report is available on the department's web site.

In the end, support for state assumption of the NPDES program varied between permittee sectors. Certain sectors saw substantial benefit and strongly supported moving ahead. Others saw less benefit, but would not object to state primacy. All sectors agreed that certain elements should be incorporated into a state program. Senate Bill 110 reflects the program elements recommended by the work group.

### Cost of Primacy

The department's budget currently includes about \$3.3 million and 30 staff devoted to activities that would contribute to the state NPDES permitting program. Those figures include the resources provided for the timber primacy effort. These positions currently are certifying the NPDES permits issued by EPA as required by the Clean Water Act and issuing state permits for small discharges that EPA has not made a priority.

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.

Costs would be divided between state general funds, federal grant funds and permitting fee receipts. Permit fees will be based on charging for "direct costs" according to the resource agency fee policy established by House Bill 361 in the year 2000.

## Senate Resources

March 2, 2005

### SB 110 Packet – materials

- Governor's Transmittal Letter – 2 pages
- DEC Sectional Analysis – 1 page
- Bill (6 pages)
- Fiscal Note #1 F&G (1 page)
- Fiscal Note #2 DNR (1 page)
- Fiscal Note #3 DEC (5 pages)
- Fiscal Note #4 DOT&PF (1 page)
- NPDES – Program Costs – 2 pages
- NPDES – Who is regulated? – 2 pages
- NPDES – Workgroup Process – 2 pages
- NPDES Workgroup findings – 2 pages
- NPDES Overview – 2 pages
- Support Letter from Alaska Miners Association, Inc. – 4 pages
- Support Letter for Alaska Forest Association – 2 pages

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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.

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.

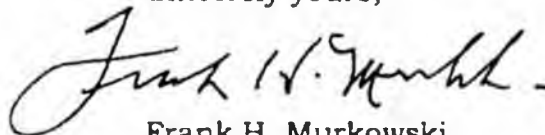
The bill also would amend existing fee provisions to allow for financing of a portion of the full state NPDES program through user fees. Specifically, sec. 2 of the bill would give the DEC the general authority to adopt user fee regulations covering the entire state-assumed NPDES primacy program, thereby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



Frank H. Murkowski  
Governor

Enclosure

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 of the bill provides for an immediate effective date.

//NOTE: Rcvd from B. Brown via email on 2/28/05 .... maj

# 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (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: SB 110  
 (S) 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (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: 3  
 Bill Version: SB 110  
 (S) 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						
<b>TOTAL OPERATING</b>	<b>874.2</b>	<b>1,547.9</b>	<b>1,547.9</b>	<b>1,547.9</b>	<b>1,547.9</b>	<b>1,547.9</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>			<b>75.0</b>	<b>150.0</b>	<b>225.0</b>	<b>300.0</b>
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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)						
<b>TOTAL</b>	<b>874.2</b>	<b>1,547.9</b>	<b>1,547.9</b>	<b>1,547.9</b>	<b>1,547.9</b>	<b>1,547.9</b>

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  
 Division: Water  
 Approved by: Kurt Fredrikson, Acting Commissioner  
 Agency: Department of Environmental Conservation

Phone: (907) 465-5312  
 Date/Time: 2/4/05 3:52 PM  
 Date: 2/4/2005

FISCAL NOTE # 3

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

BILL NO. SB 110

**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 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 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
<b>Justification:</b>						<b>Funding Detail:</b>							
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program						1004	General Fund Receipts					100.00%	42,012
						<b>Total Funding:</b>						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
<b>Justification:</b>						<b>Funding Detail:</b>							
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program						1004	General Fund Receipts					100.00%	35,233
						<b>Total Funding:</b>						100.00%	35,233
18-#006	Environmental Spec III	FT	A	GG	Juneau	1A	18 B	6.0	23,860	462	0	11,990	36,332
<b>Justification:</b>						<b>Funding Detail:</b>							
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program						1004	General Fund Receipts					100.00%	36,332
						<b>Total Funding:</b>						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
<b>Justification:</b>						<b>Funding Detail:</b>							
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program						1004	General Fund Receipts					100.00%	32,243
						<b>Total Funding:</b>						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
<b>Justification:</b>						<b>Funding Detail:</b>							
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program						1004	General Fund Receipts					100.00%	31,254
						<b>Total Funding:</b>						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**

SB 110

**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 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
<b>Justification:</b>						<b>Funding Detail:</b>							
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program						1004	General Fund Receipts					100.00%	33,326
						<b>Total Funding:</b>				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
<b>Justification:</b>						<b>Funding Detail:</b>							
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program						1004	General Fund Receipts					100.00%	33,326
						<b>Total Funding:</b>				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
<b>Justification:</b>						<b>Funding Detail:</b>							
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program						1004	General Fund Receipts					100.00%	33,326
						<b>Total Funding:</b>				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
<b>Justification:</b>						<b>Funding Detail:</b>							
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program						1004	General Fund Receipts					100.00%	28,650
						<b>Total Funding:</b>				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
<b>Justification:</b>						<b>Funding Detail:</b>							
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program						1004	General Fund Receipts					100.00%	25,770
						<b>Total Funding:</b>				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**

SB 110

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	14 B	6.0		18,726	362	0	10,504	29,592	
<b>Justification:</b>						<b>Funding Detail:</b>									
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program.						1004			General Fund Receipts			100.00%		29,592	
												<b>Total Funding:</b>		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	
<b>Justification:</b>						<b>Funding Detail:</b>									
Implement the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program.						1004			General Fund Receipts			100.00%		28,650	
												<b>Total Funding:</b>		100.00%	28,650
18-#016	Administrative Clerk II	FT	A	GG	Juneau	1A	8 B	6.0		12,414	240	0	8,693	21,337	
<b>Justification:</b> No justification provided						<b>Funding Detail:</b>									
						1004			General Fund Receipts			100.00%		21,337	
												<b>Total Funding:</b>		100.00%	21,337

**Component Summary:**

Total New Positions: 13

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	411,051
<b>Total Funding:</b>	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.

# 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (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

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

**Cost of a Primacy Program**

As directed by Senate Bill 326 enacted by the 22<sup>nd</sup> 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 <sup>^</sup>	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.

<sup>^</sup>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 22<sup>nd</sup> 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](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 the 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. *Stormwater 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 MINERS ASSOCIATION, INC.

3305 Arctic Blvd., #105, Anchorage, Alaska 99503 • (907) 563 9229 • FAX: (907) 563 9225 • [www.alaska-miners.org](http://www.alaska-miners.org)

March 1, 2005

Honorable Tom Wagner  
Chairman, Senate Resources Committee  
Capitol Building  
Juneau, AK 99801

RE: Senate Bill 110, State Assumption of NPDES Program

Dear Senator Wagner,

Thank you for the opportunity to comment on Senate Bill 110. 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. Boell, P.F.  
Executive Director

enclosure

cc Resource Committee Members



## Should the State of Alaska Assume the NPDES Permit Program?

By Larry Hartig

The Alaska Department of Environmental Conservation (ADEC) convened a work group to review and provide a recommendation on whether the state of Alaska should assume primacy of EPA's NPDES program. That program regulates the discharge of pollutants to surface waters. If the state assumes primacy, then ADEC rather than EPA would issue NPDES permits. Several AMA members have been participating in the work group. This article provides a perspective on this important issue.

A key question is "What will it cost?" ADEC anticipates the program will be supported in large part by fees collected from regulated facilities. ADEC plans to provide estimates, at a work group meeting later this month, of what it might cost to permit a smaller placer mine and to permit a large mine that has acid rock drainage or other complex issues. EPA does not charge fees for NPDES permits. Thus, the burden of new state fees will have to be weighed against the benefits of primacy. The remainder of this article discusses potential benefits of state primacy.

Pre-Application Access to Permitting Staff - It is important to have discussions with the agency permitting staff in developing the application for a permit. For larger mining projects, it is usually necessary to collect data on baseline conditions. Data are expensive to collect and it is important to limit the collection of data to the data that will actually be used. Usually there is a limited time frame within which to collect the data. Having easy access to agency staff and the ability to get them into the field to help identify the needed baseline information can greatly reduce the risk of unnecessary costs and delays. EPA only has one permit writer in Alaska. Although she is helpful, she cannot handle all of the permit applications in the state. EPA also has more limitations on travel than does ADEC.

Coordination Among Permitting Agencies - The construction and operation of large mines requires permits from numerous agencies. The State has made great strides in the use of large mine permit teams to coordinate the application and permit drafting processes. With State primacy, the State would be in a better position to continue this effort. It has been the mining industry's experience that federal agencies are sometimes less inclined to be involved with such a team approach, particularly with state agencies.

Staff/Funding Agreements - The availability of an EPA permit writer for a particular project is always uncertain. ADEC could provide more certainty to applicants because ADEC and the applicant could enter into a funding agreement that commits ADEC to provide a permit writer's time in exchange for the applicant's payment of agreed-to costs.

Understanding of Local Conditions - Again, EPA only has one permit writer located in Alaska. The remaining permit writers rarely, if ever, visit the state and have no first hand knowledge of conditions that are unique to the northern environment. Permit writers fall back on interpretations of EPA guidance that don't contemplate or adequately address the Alaska

situation, rather than come up with more appropriate Alaska-specific permit provisions. Having permit writers who are Alaska-based would better assure permit provisions match project-specific conditions.

More Accountability for Setting Permit Requirements - EPA permit writers must make a number of technical and legal decisions in crafting permit requirements. It is the mining industry's experience that EPA permit writers tend to err more on the side of caution, perhaps attempting to avoid controversy and minimize the risk of an appeal. When overly cautious, the permit writer may include requirements that are unnecessary and not legally mandated. By having a permit writer who is more familiar with local industry, traditions and state water quality standards, and who is more accessible to the regulated community, there is less risk of unwarranted requirements in permits.

Matching State Water Quality Criteria to the Appropriate Analytical Method - Most effluent limits are based on state water quality standards. Unfortunately, permits sometimes require the use of analytical methods that are not able to reliably measure the concentration of a substance at the low level called for in the permit. EPA has been unsympathetic to complaints that the analytical methods they put in permits are not reliable. (Although EPA will insert a "compliance evaluation level" in a permit, stating that compliance with the quantification level of the method as set in the permit will be deemed compliance with the permit, this reading of the permit has been challenged in citizens suits.) ADEC would be able to set the water quality standards and put monitoring requirements in permits to resolve these situations.

Timely Issuance of Permits - Most projects are time-sensitive. Any unnecessary delays in permitting can be expensive. State permit writers are more likely to be sensitive to this and in a better position to keep the process moving forward. The decision-making process at EPA is far more cumbersome and takes longer to resolve questions than with state agencies. This may be due to a number of factors, including EPA's unfamiliarity with conditions in Alaska, the difficulty of communicating between Seattle and Alaska, a shortage of permit writers, competing priorities, and a need for multiple in-house consultations and consultations with other federal agencies. Although some consultations with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service should be built into the state process to identify potential Endangered Species Act concerns, the process could be greatly shortened and simplified. State primacy may also mean that simpler projects that do not involve "federal actions" would not have to go through the NEPA process.

More Flexibility in the Modification of Permits - NPDES permits are issued for five year terms. EPA is reluctant, primarily because of a shortage of staff, to modify permits on an "as needed" basis. It is not uncommon for EPA to administratively extend expired permits, sometimes for a number of years, rather than reissue the permit at the end of its initial five year term. EPA does not modify administratively-extended permits. As a consequence, the permittee may be stuck with the same permit conditions for five or more years. ADEC could remedy this problem by writing more flexibility into its permits and by having a simple process for modifying permits.

Review of Permit Provisions by Permittee - EPA does not let the permittee see the draft permit until it goes out for public comment, nor does EPA show the final permit to the permittee until it

is issued. As a result, it is not uncommon to find mistakes in permits that could have easily been corrected had the permittee been allowed to review the draft or final permit in advance. ADEC could allow more access to the draft and final permit before they are issued.

Automatic Stays of Permits - Under EPA regulations, the appeal of any permit for a new facility is automatically stayed in its entirety until the resolution of the appeal and the permit is "finalized", e.g. Pogo Mine. Thus, with the cost of a postage stamp, anyone can hold up an entire project by appealing a small piece of the permit. ADEC can remedy this situation by having the ADEC Commissioner decide which permit conditions are stayed by an appeal.

Information in Discharge Monitoring Reports (DMRs) - EPA requires permittees to report the analytical results from compliance monitoring in monthly Discharge Monitoring Reports (DMRs) filed with EPA. EPA transports the analytical data into its Permit Compliance System (PCS). This database is accessible by the public and used by them to track compliance of a facility with its NPDES permits. This system does not work very well. There are occasions when a permittee reports an analytical result to EPA that, although it appears to be above a permit limit, is suspect because of analytical problems in the laboratory, deficiencies in the analytical method itself, or other reasons that have nothing to do with the permittee's compliance. EPA takes the qualified or suspect result from the DMR and automatically puts it without explanation into the PCS database. To the public reviewing the PCS database, it appears that the permittee is not in compliance and this invites citizen concern and possibly citizen suits. The State could develop a better system.

Penalty Policies - EPA has very prescriptive policies and procedures for imposing penalties on facilities which EPA has found are not in compliance. These policies favor large penalties over spending money to improve the facility's environmental performance. ADEC could develop penalty policies that are better aimed at improving environmental performance.

Compliance and Consent Orders - Often compliance issues can best be resolved by an agreement between the permittee and EPA that identifies steps to be taken for the permittee to come into compliance and deadlines for these tasks. Unfortunately under the citizen suit provision of the Clean Water Act, as interpreted by appellate courts, these Consent Orders do not protect permittees from citizens suits. Although this is by no means certain, ADEC may be able to work with the Attorney General's office to develop procedures that would avoid the risk of citizen suits in this situation.

Appeal Process - The current EPA appeal process usually involves an administrative appeal to the Environmental Appeals Board in Washington, D.C., and from there to the 9<sup>th</sup> Circuit Court of Appeals. This process could be shortened and simplified. To do this will take careful thought. Regardless of what appeals process ADEC comes up with, some believe it would be advantageous not to have Alaska issues resolved by the Ninth Circuit.

Larry Hartig is a shareholder in the law firm of Hartig Rhodes Hoge & Lekisch. He has represented mining clients in Alaska for 21 years in a variety of legal matters, including on many NPDES and other permitting issues.

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

March 1, 2005

Senator Tom Wagoner, Chair  
Senate Resources Committee  
Alaska State Senate  
State Capitol  
Juneau, AK 99801

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

Dear Senator Wagoner:

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

# CITY OF UNALASKA

P.O. BOX 610  
UNALASKA, ALASKA 99685-0610  
(907) 581-1251 FAX (907) 581-1417



March 1, 2005

Senator Wagoner  
State of Alaska Legislature  
State Capitol Building  
Juneau, AK

RE: SB 110 and HB 153 State of Alaska Assume primacy for NPEDS wastewater discharge permitting program

Dear Senator Wagoner:

This letter is written in support of SB 110 and HB 153 directing the State of Alaska to assume primacy for the NPEDS wastewater discharge permitting program currently administered through EPA in Seattle at the Region X offices. The City of Unalaska strongly supports the Alaska Department of Environmental Conservation's efforts to take over this program. It is my understanding that by doing so the ADEC will reduce the amount of time required for processing permits. Currently, the process takes some 18 months if everything goes smoothly.

The NPEDS program should be run by the State in which the EPA regulations are being applied. It only makes sense that people who are familiar with the uniqueness of Alaska administer the process to ensure that all the issues are addressed. How many times have the regulations been erroneously applied by well intentioned federal employees in the Lower 48 who have never been to Alaska much less been on the ground in our communities? There is also a question of access. How many communities can afford to send representatives to Seattle for a face to face meeting?

I think the State needs to take a serious look at taking over the program to meet the needs of industry and communities in Alaska. If we are going to promote resource development in our State then we need to also put in place the processes to support that development. This is a step to that end. Additionally, the Alaska Legislature needs to be committed to funding the program at a necessary level to accomplish the intended goal. Without adequate funding the process will be doomed from the start.

I appreciate the opportunity to provide positive input on these bills. In advance, thanks for your time. If you have any questions please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Hladick". The signature is fluid and cursive.

Chris Hladick  
City Manager

cc: The Honorable Carl Moses, Representative  
The Honorable Lyman Hoffman, Senator


**TRIDENT SEAFOODS CORPORATION**

5303 Shiloh Ave NW, Seattle, WA 98107-4000 • (206) 783-3618 • Fax: (206) 782-7195

Domestic Sales: (206) 783-3474 • Fax: (206) 782-7248

Export Sales: (206) 783-3618 • Fax: (206) 782-7195

Senator Tom Wagner  
 Co-Chair, Senate Resources  
 Alaska State Senate  
 State Capitol  
 Juneau, Alaska 99801

 March 1<sup>st</sup>, 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

The American Canoe Club

Washington

 Akutan • Anchorage • Clark Point • Dillingham • Dutch Harbor • Ketchikan • Kodiak  
 Naknek • Sand Point • South Naknek • St. Paul

 Anacortes • Bellingham • Fire  
 Tacoma • Seattle

TOTAL P. 02

# ALASKA STATE LEGISLATURE



Official Business

## SENATE RESOURCES COMMITTEE

Senator Tom Wagoner, Chair

State Capitol, Room 427

Juneau, AK 99801-1182

Phone: (907) 465-4907 Fax: (907) 465-4779

Senator Ralph Seekins, Vice-Chair

Senator Ben Stevens

Senator Kim Elton

Senator Fred Dyson

Senator Bert Stedman

Senator Gretchen Guess

---

DATE: March 4, 2005

RE: SB 110 – Work Group Member Position

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At the March 2 meeting when this bill was heard, there were questions about the three work group members who had not yet commented on the bill. The members represented Oil & Gas, Commercial Fishing, and Construction.

Attached is the A.O.G.A. position paper on the bill.

We contacted one fishing group – United Cook Inlet Drifters Association – and they indicated they had no objection to the bill.

I expect to have something from the A.G.C. by the meeting on Monday.

There was also a request for information from Sen. Guess about the municipalities that would be affected by this proposed primacy transfer and that list will be provided at the meeting on Monday.

Mary Jackson

## 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.

# STATE OF ALASKA

DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF WATER  
DIRECTOR'S OFFICE

**FRANK H. MURKOWSKI, GOVERNOR**  
410 Willoughby Avenue, Suite 303  
Juneau, Alaska 99801-1795  
PHONE: (907) 465-5300  
FAX: (907) 465-5274  
<http://www.state.ak.us/DEC/>

March 4, 2005

The Honorable Tom Wagoner, Chair  
Senate Resources Committee  
Alaska State Senate  
State Capitol  
Juneau, Alaska 99801-1182

Dear Senator Wagoner:

Thank you for hearing Senate Bill 110 on Wednesday, March 2. You asked us to respond to several questions that arose during the hearing. Our responses follow.

Senator Elton asked about Section 4 of the Bill. In particular, Section 4 reflects recommendations of the National Pollutant Discharge Elimination System (NPDES) Primacy Workgroup dealing with public notice and permittee review of draft permits during the permit development process. Paragraph (h)(2) provides that:

... a person who applies for a permit under the program has the opportunity to review a draft permit, and to discuss it with the staff of the department, before that draft permit undergoes public notice and comment under AS 46.03.110 . . .

Paragraph (h)(3) provides that

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

Senator Elton asked us to confirm the sequence of the public and permittee review of draft and proposed final permits during the permit development process. A description of the envisioned process is enclosed.

Senator Elton also asked whether the expected reduction in state permit processing time derives from the state public notice and comment process envisioned by the Bill. The answer is no. Federal regulations specifying minimum timeframes for public notice and comment apply whether the U.S. Environmental Protection Agency (EPA) or a state runs the program.

March 4, 2005

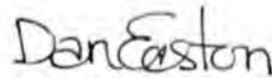
Senator Guess asked us to provide a list of the members of the NPDES Primacy Workgroup. A list is enclosed.

Senator Guess asked which other states do not have primacy for the NPDES program. They are Idaho, New Mexico, New Hampshire, and Massachusetts.

Senator Guess also inquired about which agency, EPA or the Department of Environmental Conservation (DEC), would be the permitting authority for publicly owned treatment works if the State had NPDES primacy. A list of those communities with publicly owned treatment works that would continue to be permitted by EPA, instead of DEC, is enclosed. Permitting authority for all others would be transferred to DEC.

Please let me know if you have additional questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Dan Easton". The signature is written in a cursive, slightly slanted style.

Dan Easton, Director

Enclosures

## **Public and Permittee Review of NPDES Individual Permits Issued by DEC**

The following steps are envisioned for a state NPDES permit application, notice, and review process:

1. Permittee May Request Pre-application Meeting (Optional)
2. Permit Application Filed
3. DEC Drafts Permit
4. DEC Provides Draft Permit to Applicant for Review
5. Public Notice of Draft Permit with Copy to EPA (minimum 30-day comment period)
6. Public Hearing[s] (discretionary, require 30 days notice if held)
7. Close of Public Comment Period
8. DEC Prepares Proposed Final Permit (based upon comments received during public comment period)
9. DEC Distributes Proposed Final Permit (posts on web; copies to applicant, EPA and others that commented on the draft)
10. DEC Issues Final Permit and Response to Comments
11. Potential Informal Review by Director (an applicant or party adversely affected by the permit decision may request informal review by the director.)
12. Potential Request for Adjudicatory Hearing (to be conducted by DEC Commissioner or a designated hearing officer)

### NPDES Primacy Workgroup Members and Contact Information

<b>Member</b>	<b>Representing</b>	<b>Phone number</b>	<b>E-mail</b>
Marilyn Crockett Deputy Director	Alaska Oil and Gas Association	(907) 272-9497	crockett@aoga.org
Steve Borell Executive Director	Alaska Miners Association	(907) 563-9229	sborell@alaska.net
Stephanie Madsen Vice President	Pacific Seafood Processors Association	(907) 586-6366	smadsen@pspafish.net
Owen Graham Executive Director	Alaska Forest Association	(907) 225-6114	OJGraham@aol.com
Dick Cattanach Executive Director	Associated General Contractors of Alaska	(907) 561-5354	dick@agcak.org
Kris Warren	Alaska Water and Wastewater Management Association	(907) 564-2799	Kris.Warren@awwu.biz
Art Ronimus	Alaska Native Tribal Health Consortium	(907) 729-3716	aronimus@anthc.org

**Permit Issuing Authority for Publicly Owned Treatment Works under NPDES  
Primacy Program**

EPA Will Retain Permitting Authority for Nine Publicly Owned Treatment Works

EPA will remain the permitting authority for the following facilities with waivers from the secondary treatment requirement granted by EPA under Section 301(h) of the Clean Water Act:

- Anchorage (Pt. Woronzof only)
- Ketchikan
- Haines
- Petersburg
- Sitka
- Wrangell
- Skagway
- Whittier
- Pelican