

HJR

17

<TARGET><BILL>HJR 17</BILL><SUBJECT>HJR
17</SUBJECT><COMM>HCRA27</COMM></TARGET>

ALASKA STATE LEGISLATURE
HOUSE COMMUNITY & REGIONAL AFFAIRS



Representative Cathy Muñoz, Chair

State Capitol Building, Room 403

Juneau, Alaska 99801-1182

Phone (907) 465-3744

Fax (907) 465-2273

Rep.Cathy.Muñoz@legis.state.ak.us

Rep. Alan Austerman, Rep. Sharon Cissna, Rep. Alan Dick, Rep. Neal Foster
Rep. Berta Gardner, Rep. Dan Saddler

MEMORANDUM

Date: Feb 8, 2011

From: Rep. Cathy Muñoz, Chair

Re: EPA email response to (H) CRA Committee

Below is a response from the EPA to (H) CRA regarding the City of Unalaska EPA NPDES secondary treatment requirements. Please review and send comments to (H) CRA aide Terry Harvey. We are currently considering a letter to ADEC on this issue, as well as a possible resolution that could be sent to the EPA and our congressional delegation encouraging a reasonable outcome for all. While the response(s) below may allow the smaller villages to rest a little easier, they do not address the concerns raised by Unalaska and Cordova.

We sent several questions to EPA but they would only respond to this; Who is in charge of enforcement under primacy, State of AK or EPA?

From: Lauris Davies/R10/USEPA/US
To: Terry Harvey
Cc: Mike Bussell/R10/USEPA/US@EPA
Date: 02/07/2011 04:33 PM
Subject: EPA/ADEC jurisdiction

The most important citation is to CWA § 402 (i), 33 U.S.C. § 1342(i), which states that nothing in the provisions governing approval of a state's NPDES permitting program "shall be construed to limit the authority of the Administrator to take action" under the CWA's enforcement

provisions. In other words, EPA retains the same enforcement authorities it had before Alaska's NPDES program was approved.

I would add that in addition to EPA retaining its own enforcement authorities, EPA is often actually active in compliance and enforcement work in authorized states, including federal inspections, compliance assistance, and enforcement cases. Finally, EPA also serves an important role in overseeing the State's program, including the State's compliance and enforcement programs. For compliance and enforcement, all States are subject to regular reviews under EPA's State Review Framework, in addition to other ongoing oversight tools. EPA uses data and file reviews to assess a State's inspection coverage, adequacy of documentation, accuracy of the state's compliance data system, and whether enforcement actions are timely and appropriate. In instances where a state program falls short, EPA and the State work to identify corrective measures to ensure the State is implementing an effective compliance and enforcement program.

I hope this information explains the respective roles of the State and EPA in enforcing the Clean Water Act. Let me know if you have any further questions. Thanks!

Lauris C. Davies
Associate Director
Office of Compliance and Enforcement
EPA Region 10
(206) 553-2857 phone

To build some on Lauris' response below:

In our discussions with ADEC on the applicability of secondary treatment requirements in small remote villages, we have agreed with their thinking that pushing those villages to build secondary capacity at this time is not appropriate given the other health and environmental issues that need to be addressed. We have, however, also discussed with ADEC our thinking that some communities like Unalaska no longer fit within that circumstance and do need to be planning for secondary treatment. The Clean Water Act State Revolving Fund does provide financial support for these kind of projects.

From: Mike Bussell/R10/USEPA/US
(Mike Bussell is the EPA Region 10 Office of Water Director. His phone number is (206) 553-4198.)

Terry Harvey 465-3882 for additional info.

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR

410 Willoughby Avenue, Suite 303
Post Office Box 111800
Juneau, Alaska 99811-1800
Phone: 907-465-5066
Fax: 907-465-5070
www.dec.state.ak.us

March 2, 2011

Dennis McLerran, Regional Administrator
U.S. Environmental Protection Agency, Region 10
Regional Administrator's Office, RA-140
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Re: Unalaska Sewage Treatment and Waivers

Dear Mr. McLerran:

I am writing about the permit for the City of Unalaska treated sewage discharge and the more general topic of sewage treatment waivers in Alaska. You and I have discussed these related topics a number of times. Although we have covered much of what follows in our conversations, I write to provide additional detail and to make the State's views as clear as possible. I also reiterate our offer for the Alaska Department of Environmental Conservation (DEC) to assume a lead role in addressing enforcement of all outstanding permit violations.

As you know, the National Pollutant Discharge Elimination System (NPDES) permit for the Unalaska sewage treatment plant discharge was effective in 2004. We certified the permit under Section 401 of the Clean Water Act at the time of issuance. Upon our certification, the permit also became a legally enforceable state permit under state law.

Under the terms of our 2008 NPDES Memorandum of Agreement (MOA), authority for the permit transferred to DEC on October 31, 2008 (recognizing that EPA retains authority to enforce Clean Water Act violations upon satisfying certain procedural obligations). The permit was subsequently administratively extended.

While the permit was still under EPA jurisdiction between 2004 and 2008, the City reported apparent violations of the permit effluent limits and EPA has a pending enforcement action to address the apparent violations.

As part of settlement discussions, EPA has indicated that the City could seek to reduce monetary aspects of the settlement by proposing to upgrade its sewage treatment level from primary treatment to enhanced primary or secondary

treatment. At the same time, EPA has advised us generally that it envisions a change in its policy of waiving secondary treatment requirements for Unalaska and certain other Alaskan communities.

In our view, there are two issues. There is the specific issue of addressing the apparent Unalaska permit violations and the much broader issue of whether to change the EPA policy that allows Unalaska and other Alaskan communities to provide less than secondary treatment of their domestic wastewater.

As for the narrower issue of the permit violations, I reiterate my proposal that EPA suspend its pending enforcement action and allow DEC to assume responsibility for enforcing violations of the state permit prior to October 31, 2008 and for subsequent violations of the NPDES permit under state jurisdiction. We see several advantages to this approach.

First, DEC will be able to achieve our shared goal of full compliance with the permit faster than EPA. EPA has yet to contend with apparent violations that occurred seven years ago and we are very concerned that the current enforcement efforts may not lead to an efficient and timely result.

Second, we can address all permit violations between 2004 and the present in a single enforcement action whereas the EPA can only address violations occurring before October 31, 2008 when the permit was under federal jurisdiction without invoking procedural requirements for enforcing the terms of a state NPDES permit.

Third, we have years of experience and a deep understanding of the situation in Unalaska. As you know, the facilities program in our Division of Water has been funding and overseeing construction of hundreds of water and sewer projects throughout rural Alaska for the last thirty years. That knowledge will enable us to fashion a response to the violations that is timely, effective and reasonable.

Fourth, facility improvements stemming from our enforcement action will almost certainly be financed in part through DEC programs. We can work with our state Legislature and others on needed funding priorities. DEC's role will not begin and end with an enforcement action. We will be engaged every step of the way until improvements have been completed and are operating.

Fifth, we assume EPA would prefer to avoid the expense and uncertainty of potential litigation if a responsible settlement can be reached. For the reasons already stated, we believe DEC is in a better position to negotiate such a resolution.

Given an opportunity, we are prepared to develop and offer to the City within the next three weeks a state Compliance Order by Consent (COBC) that would settle

all past and ongoing permit violations and require sewage treatment facility upgrades to allow the City to reliably comply with the terms of the 2004 permit.

The terms we would propose include:

- A proposed monetary penalty calculated in accordance with procedures specified in the 2008 MOA.
- A requirement that the community complete, in accordance with a reasonable yet aggressive schedule, specified planning, design and construction steps to upgrade the wastewater treatment facility so that it can reliably meet the 2004 effluent limits.
- Any interim measures we might identify that the City could take to improve the quality of the discharge pending completion of upgrades or to monitor impacts on the receiving environment.

In our view, EPA has nothing to lose in allowing the State an opportunity to address the permit violations. Should EPA find DEC's actions inadequate in the end, EPA retains the ability to pursue a separate enforcement action.

As we have discussed, the larger question of whether to continue to provide waivers of secondary treatment requirements for the City of Unalaska and other Alaskan communities involves many fiscal, environmental, health and policy questions that warrant an open, deliberative process with the state and its communities. We also expect EPA would wish to consult with Alaska tribes.

As made clear in the 1979 Federal Register notice, establishing the current EPA policy for wastewater treatment in rural Alaska communities, Congress had acknowledged that the communities have more immediate needs for providing human health protection than providing secondary treatment of wastewater. Today these communities still face immense challenges stemming from energy costs that are unheard of elsewhere in the U.S., tremendous diseconomies of scale, unparalleled construction costs due to short construction seasons and the cost of transporting materials to truly remote locations, and declining financial aid. At the same time, these communities are contending with mounting requirements to upgrade not just wastewater treatment facilities but all forms of environmental infrastructure including drinking water and solid waste management systems. In many respects, the situation has not changed. The communities are still forced to choose among competing health and environmental priorities in light of limited financial resources. EPA still needs to be able to exercise discretion to assure that highest priority needs are met first.

Certainly, a broader discussion is indicated before EPA starts moving in a new direction on allowing secondary treatment waivers. We are prepared to work with you and all stakeholders on developing an inclusive and informed process for such

Dennis McLerran,
Regional Administrator

4

March 2, 2011

a discussion. We also need to recognize the possibility of policymaking through federal legislation.

I would appreciate your further consideration of the two courses of action I outline above. Please do not underestimate the importance of EPA's actions in Unalaska to the State of Alaska and its communities. We remain concerned that EPA's actions to date are not the most effective means to achieve clean water goals. We stand ready to work with you but we need some indication that EPA is willing to consider our input and alternative paths.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Hartig", with a long horizontal flourish extending to the right.

Larry Hartig
Commissioner

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Rep. Berta Gardner, Rep. Dan Saddler

HJR 17 Water & Wastewater Regulation
Sponsor Statement

This resolution urges Congress to bring forth legislation that would direct the Environmental Protection Agency (EPA) to provide consistent and reasonable standards in their regulation of drinking water and wastewater discharge in Alaska.

Communities across Alaska have historically struggled with Federal policy that fails to recognize geographical, economic, and environmental challenges unique to our state. The Alaska State Legislature, through this resolution, identifies the Alaska Department of Environmental Conservation (ADEC) as best suited to remain the primary regulatory agency in Alaska to administer State & Federal drinking water and wastewater guidelines. HJR 17 encourages policy that will continue to allow 76 coastal communities to work with the ADEC to maintain reasonable & preferential management of water and wastewater systems.

Current changes in EPA policy are creating an uncertain future for many Alaskan communities. The House Community & Regional Affairs Committee feels strongly it is time for intervention from our Congress directing the EPA to identify practical standards for different regions in the country and to work with individual states through a consistent and sensible manner.

HJR 17 sends a strong message of concern from the Alaska State Legislature to Congress, the President, and other state legislatures in our country. Our Alaskan communities depend on federal regulatory agencies such as the EPA to understand and recognize the challenges we face in Alaska to survive. HJR 17 urges Congress to take appropriate measures to assure communities in Alaska may participate and create common sense solutions for a healthy environment.

Terry Harvey 465-3882 for additional info.

"Incredibly expensive"
Cordova = \$10,000,000 needed to upgrade
Anchorage = \$52,000,000
By 2014

Deadline for waiver has expired 301 H Waiver
EPA no longer recognizing waiver
R

27-LS0578

HOUSE JOINT RESOLUTION NO. 17

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Introduced: 3/7/11

Referred: Community and Regional Affairs, Resources

A RESOLUTION

1 **Urging the United States Congress to pass legislation concerning regulation of drinking**
2 **water and wastewater treatment by the United States Environmental Protection Agency.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **WHEREAS** the Alaska Department of Environmental Conservation has had the
5 primary enforcement responsibility for regulating public drinking water systems since 1978;
6 and

7 **WHEREAS** the United States Environmental Protection Agency approved the
8 Department of Environmental Conservation's program for primacy on regulating wastewater
9 discharge and drinking water; and

10 **WHEREAS** it is the policy of the state to conserve, improve, and protect its natural
11 resources and environment and to control water, land, and air pollution to enhance the health,
12 safety, and welfare of the people of the state and their overall economic and social well-being;
13 and

14 **WHEREAS**, on January 18, 2011, President Barack Obama signed Executive Order
15 13563 to improve regulation and regulatory review in government, which directs federal
16 agencies to identify the best, most innovative, and least burdensome tools for achieving

1 regulatory ends while taking into account the benefits and costs; and

2 **WHEREAS**, in 33 U.S.C. 1251 - 1387 (Federal Water Pollution Control Act) (Clean
3 Water Act), as amended, the United States Congress declared that it is the policy of the
4 United States Congress to recognize, preserve, and protect the primary responsibilities and
5 rights of states to prevent, reduce, and eliminate pollution and to plan the development and
6 use of land and water resources; and

7 **WHEREAS** over-regulating and using unnecessary standards by the United States
8 Environmental Protection Agency in the state will create an increased cost of living for the
9 residents of small communities in the state, where the cost of living is already burdensome;
10 and

11 **WHEREAS** the United States Environmental Protection Agency has adopted
12 regulations and established policies relating to the treatment of drinking water and wastewater
13 that will have a major effect on the economies of and jobs in small communities in the state
14 and will limit the ability of small communities to address other priorities; and

15 **WHEREAS** federal funding for state village sanitation projects declined by more than
16 ^{42,500,000} \$49,000,000 between 2004 and 2011; and

17 **WHEREAS** the President's proposed budget for the federal fiscal year starting
18 ^{FY 2012} ~~October 1, 2011~~, reduces nationwide funding for the Clean Water State Revolving Fund and
19 the Drinking Water State Revolving Fund by nearly \$950,000,000; and

20 **WHEREAS** the Republican caucus in the United States House of Representatives has
21 proposed to cut an additional \$950,000,000 in funding for the Clean Water State Revolving
22 Fund and the Drinking Water State Revolving Fund;

23 **BE IT RESOLVED** that the Alaska State Legislature urges the United States
24 Congress to pass legislation that provides reasonable standards for the treatment of drinking
25 water and wastewater treatment for communities in different regions of the country and with
26 different population sizes; and be it

27 **FURTHER RESOLVED** that the Alaska State Legislature urges the United States
28 Congress to pass legislation imposing a moratorium that prohibits the United States
29 Environmental Protection Agency from adopting a new policy or adopting new regulations
30 concerning drinking water and wastewater treatment for a period of at least two years except
31 to directly address an imminent health or environmental emergency; and be it

*or to make
the regulations.*

1 **FURTHER RESOLVED** that the Alaska State Legislature urges the United States
2 Congress to pass legislation requiring the United States Environmental Protection Agency to
3 identify all regulatory activity concerning drinking water or wastewater treatment that the
4 United States Environmental Protection Agency plans to undertake during the next 10 years
5 and, using multiagency expertise and objective cost-benefit analyses, to describe the
6 cumulative effect that the planned United States Environmental Protection Agency regulation
7 will have on state and local governments.

8 **COPIES** of this resolution shall be sent to the Honorable Barack Obama, President of
9 the United States; the Honorable Joseph R. Biden, Jr., Vice-President of the United States and
10 President of the U.S. Senate; the Honorable John Boehner, Speaker of the U.S. House of
11 Representatives; the Honorable Lisa P. Jackson, Administrator of the U.S. Environmental
12 Protection Agency; the Honorable Lisa Murkowski and the Honorable Mark Begich, U.S.
13 Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska
14 delegation in Congress; and the presiding officers of the legislatures of each of the other 49
15 states.

**CS FOR HOUSE JOINT RESOLUTION NO. 17(CRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION**

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

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11 Representatives; the Honorable Lisa P. Jackson, Administrator of the U.S. Environmental
12 Protection Agency; the Honorable Lisa Murkowski and the Honorable Mark Begich, U.S.
13 Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska
14 delegation in Congress; and the presiding officers of the legislatures of each of the other 49
15 states.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version CS HJR 17
 () Publish Date _____

CSHJR 17 3-15-11
 Title Water & Wastewater Regulation Dept. Affected _____
 Appropriation _____
 Allocation _____
 Sponsor House Community & Regional Affairs Committee
 Requester Chair Munoz OMB Component Number _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0							
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CHANGE IN REVENUES	0.0							
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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 (please identify)								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Termy Harvey - Comm Aide
 Division _____
 Approved by Rep. M. Chair Munoz

Phone 3744
 Date/Time _____
 Date _____

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. _____

Analysis

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City of Unalaska is currently out of compliance with a NPEDS permit issued by EPA in 2004. The City built a new plant that came on line in the year 2000 under a primary treatment permit. Both EPA and ADEC signed the permit in 2000.

The NPEDS permit issued in 2004 was interpreted by EPA as requiring the City to plan, design and build an entirely new treatment plant to go from standards for primary treatment to standards above primary treatment (so-called "enhanced primary" treatment) in less than ninety days! The 2004 permit will require the city to spend approximately \$12 to \$15 million dollars to build a new plant to meet the current permit and will create sludge that must be handled properly. The new plant will result in a dramatic increase to operating costs and in turn result in rate shock to consumers. Residents of Unalaska already pay \$54 per month.

The EPA has told ADEC the City's next permit will require construction of a secondary treatment plant by 2014. Secondary treatment will produce more sludge than primary treatment. Preliminary costs for construction could easily exceed \$20 million. Sludge would need to be disposed of at the city's landfill.

The City owns and operates the landfill facility which includes lined cells by EPA regulation. The cost of landfilling the sludge will be in excess of \$500K per year

Even without a new sewage treatment plant, a new landfill cell must be constructed by 2013. Project involves moving a road and providing for leachate holding tank at an estimated cost of \$8.5 million. The addition of sludge will result in reducing the life of the landfill by a third.

In addition to the two projects listed above a new water plant must be constructed by 2014 due to EPA's LT2 rule concerning elimination of cryptosporidium. Estimated cost \$9.5 million must be on line by 2014.

A complete retrofit of our plant built in 2000 will be required for either advanced primary and/or secondary treatment. Secondary treatment will cost \$20 million. This does not include operational costs. A facilities plan is currently being developed by consultants to meet the 2014 deadline.

City of Unalaska had been operating under rules made in 1979 which exempted 76 coastal communities from asking for a waiver from a secondary treatment requirement under the clean water act.

ADEC has primacy for issuing sewage discharge permits now but is being told by EPA they cannot issue any permit for any of the 76 coastal communities given a waiver in 1979 unless the ADEC permit requires secondary treatment, this could have a huge negative impact on the communities on this list requiring large sums of money.