

**HB**

**185**

<TARGET><BILL>HB 185</BILL><SUBJECT>HB  
185</SUBJECT><COMM>SRES27</COMM></TARGET>

Alaska State Legislature  
House of Representatives

Representative Tammie Wilson

*Interim*  
301 Santa Clause Lane  
North Pole, AK 99705  
(907) 488.0857 - Phone  
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*Session*  
State Capitol  
Juneau, AK 99801  
Phone - (907) 465.4797  
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Rep.Tammie.Wilson@legis.state.ak.us

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**MEMORANDUM**

To: Senator Tom Wagoner, Co-Chairman, Senate Resources Committee  
Senator Joe Paskvan, Co-Chairman, Senate Resources Committee

From: Representative Tammie Wilson

Date: April 6, 2011

Re: Request for Hearing

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Enclosed is CSHB 185—"An Act relating to an exemption from authorizations that may be required by the Department of Environmental Conservation for the firing or other use of munitions on active ranges."

This bill is strongly recommended by the U.S. Department of Defense and a priority for Alaska DMVA.

Accompanying sponsor statement and general back-up documents are included.

I would appreciate a hearing in Senate Resources at your earliest convenience.

Thank you for your consideration. Please contact me if you have any questions

TW

**Alaska State Legislature  
House of Representatives  
Representative Tammie Wilson**

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**Sponsor Statement**

**CSHB 185 –27<sup>th</sup> Legislature**

CSHB 185(Res) amends Alaska's Waste Management and Disposal Authorization (AS 46.03.100(e)) such that the use of military ranges can occur in accordance with the Federal Water Pollution Control Act.

Additionally, CSHB 185 clarifies that all military services, such as the U.S. Coast Guard, conducting training activities on an active range, would be exempt from regulation unless otherwise regulated under the Federal Water Pollution Control Act.

This amendment is important because current state law could be interpreted to restrict the use of Alaska military ranges in a way not required by federal law.

This bill is supported by DMVA, DEC, and the Region 10 USAF Regional Environmental Coordinator Office.

I appreciate the committee's consideration for this bill and request your support.

# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number \_\_\_\_\_  
 Bill Version 27-LS05061B  
 () Publish Date \_\_\_\_\_

Identifier (file name) HB185-DEC-WQ-03-11-11 Dept. Affected Environmental Conserv  
 Title Exempt Discharges from Use of Munitions Appropriation Division of Water  
 Allocation Water Quality  
 Sponsor Representative T. Wilson  
 Requester House Resources Committee OMB Component Number 2062

**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
<b>OPERATING EXPENDITURES</b>								
Personal Services	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Services	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Commodities	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Capital Outlay	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Grants	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0		0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<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	0.0		0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0		0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0		0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0		0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Other (please identify)	0.0		0.0	0.0	0.0	0.0	0.0	0.0
<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>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2011) cost 0.0

**POSITIONS**

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

Not applicable, initial version.

Prepared by Lynn J. Tomich Kent, Director  
 Division Water  
 Approved by Dan Easton  
Deputy Commissioner

Phone (907) 269-7599  
 Date/Time 3/11/11 8:00 AM  
 Date 3/11/2011

**FISCAL NOTE**

**STATE OF ALASKA  
2011 LEGISLATIVE SESSION**

**BILL NO.** HB 185

**Analysis**

There are no fiscal impact on the Department of Environmental Conservation's Water programs from this proposed legislation.

# FISCAL NOTE

STATE OF ALASKA cost # codes  
 2012 LEGISLATIVE SESSION

Bill Version HB 185  
 Fiscal Note Number \_\_\_\_\_  
 Publish Date \_\_\_\_\_

Identifier (file name) HB185-DEC-WQ-12-03-11 Dept. Affected Environmental Conserv  
 Title Exempt Discharges from Use of Munitions Appropriation Water  
 Allocation Water Quality  
 Sponsor Representative T. Wilson  
 Requester Senate Resources Committee OMB Component Number 2062

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

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates					
			FY13	FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>								
Personal Services	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Services	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Commodities	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Capital Outlay	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Grants, Benefits	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0		0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>FUND SOURCE</b>		(Thousands of Dollars)						
1002	Federal Receipts	0.0		0.0	0.0	0.0	0.0	0.0
1003	GF Match	0.0		0.0	0.0	0.0	0.0	0.0
1004	GF	0.0		0.0	0.0	0.0	0.0	0.0
1007	I/A Rcpts (Other)	0.0		0.0	0.0	0.0	0.0	0.0
1037	GF/MH (UGF)	0.0		0.0	0.0	0.0	0.0	0.0
1178	temp code (UGF)	0.0		0.0	0.0	0.0	0.0	0.0
	<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>	<b>0.0</b>

<b>POSITIONS</b>							
Full-time		0.0		0.0	0.0	0.0	0.0
Part-time		0.0		0.0	0.0	0.0	0.0
Temporary		0.0		0.0	0.0	0.0	0.0

<b>CHANGE IN REVENUES</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>0.0</b>
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Estimated SUPPLEMENTAL (FY12) operating costs 0.0 (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY13) costs 0.0 (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

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

This fiscal note has been entered into the 2012 form with no changes from previous version.

Prepared by Michelle Bonnet, Director  
 Division Water  
 Approved by Lynn Kent  
 Deputy Commissioner

Phone (907) 269-6281  
 Date/Time 12/3/11 9:45 AM  
 Date 12/22/2011

**FISCAL NOTE**

**STATE OF ALASKA  
2012 LEGISLATIVE SESSION**

**BILL NO. HB 185**

**Analysis**

This bill has no fiscal impact on the Department of Environmental Conservation.

# FEDERAL WATER POLLUTION CONTROL ACT (CLEAN WATER ACT)

33 U.S.C. §§ 1251-1387, October 18, 1972, as amended 1973-1983, 1987, 1988, 1990-1992, 1994, 1995 and 1996.

**Overview.** The Federal Water Pollution Control Act, popularly known as the Clean Water Act, is a comprehensive statute aimed at restoring and maintaining the chemical, physical and biological integrity of the nation's waters. Enacted originally in 1948, the Act was amended numerous times until it was reorganized and expanded in 1972. It continues to be amended almost every year.

Even prior to the enactment of the 1972 version of the Act, the Act authorized the Public Health Service to prepare comprehensive programs for eliminating or reducing the pollution of interstate waters and tributaries and improving the sanitary condition of surface and underground waters. Due regard was to be given to improvements necessary to conserve waters for public water supplies, propagation of fish and aquatic life, recreational purposes, and agricultural and industrial uses. A number of other provisions found in the current Act were adopted prior to 1972.

Primary authority for the implementation and enforcement of the Clean Water Act now rests with the U.S. Environmental Protection Agency (EPA). In addition to the measures authorized before 1972, the Act authorizes water quality programs, requires federal effluent limitations and state water quality standards, requires permits for the discharge of pollutants into navigable waters, provides enforcement mechanisms, and authorizes funding for wastewater treatment works construction grants and state revolving loan programs, as well as funding to states and tribes for their water quality programs. Provisions have also been added to address water quality problems in specific regions and specific waterways.

**Discharge Permits.** One of the most significant features of the 1972 Act is the creation of a national pollutant discharge elimination system (NPDES). Except as otherwise provided in the Act, industrial sources and publicly owned treatment works may not discharge pollutants into navigable waters without a permit. The Administrator may issue a permit for discharge upon condition that the discharge meets applicable requirements, which are outlined extensively in the Act and which reflect, among other things, the need to meet federal effluent limitations and state water quality standards. The Act also provides that, with EPA approval, a state may administer its own permit program in lieu of the federal program. There are special provisions on municipal and industrial stormwater discharges. § 1342.

EPA was required, by mid-1973, to promulgate guidelines for determining the degradation of the waters of the territorial seas, the contiguous zone and the oceans. These guidelines were to include, for example: the effect of disposal of pollutants on human health or welfare, including but not limited to plankton, fish, shellfish, wildlife, shorelines and beaches; the effect on marine life, changes in marine ecosystem diversity, productivity and stability, or species and community population changes; the effect of disposal of pollutants on aesthetic, recreation and economic values. Discharge permits may not be issued except in compliance with the guidelines. § 1343.

# STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

**DIVISION OF WATER  
DIRECTOR'S OFFICE**

SEAN PARNELL, GOVERNOR

555 Cordova Street  
Anchorage, AK 99501-2617  
PHONE: (907) 269-7599  
FAX: (907) 334-2415  
<http://www.state.ak.us/dec/>

March 21, 2011

The Honorable Paul Seaton  
House of Representatives  
Alaska State Capitol, Room 102  
Juneau, AK 99801-1182

The Honorable Eric Feige  
House of Representatives  
Alaska State Capitol, Room 126  
Juneau, AK 99801-1182

Dear Representatives Seaton and Feige:

At the March 18 House Resources Committee meeting on CSHB 185, this Department and the Department of Law were asked to provide additional information to the committee. The Department has conferred with the Department of Law on the following information.

## **What does the Federal Water Pollution Control Act regulate?**

The federal Clean Water Act (CWA) prohibits the discharge of pollutants, which includes munitions, into navigable waters without a permit. "Navigable waters" are defined as "waters of the United States, including the territorial seas." "Waters of the United States" are defined in EPA regulation as follows:

40 CFR 230.3(s) The term *waters of the United States* means:

- (1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) All interstate waters including interstate wetlands;
- (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
  - (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
  - (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - (iii) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (4) All impoundments of waters otherwise defined as waters of the United

States under this definition;

- (5) Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;
- (6) The territorial sea;
- (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (s)(1) through (6) of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

The types of waters that are included in "waters of the United States" have been the subject of much litigation nationwide and its interpretation is continually in a state of flux as courts around the country interpret it on a case-by-case basis.

### **What is the old state policy vs. the "new" state policy regarding permitting of munitions discharges?**

Alaska Statute (AS) 46.03.100 prohibits the discharge of solid or liquid waste to the lands and waters of the state. It has been longstanding state policy via AS 46.03.100(e)(7) to exempt firing ranges from these state permitting requirements.

The CWA, however, requires a permit for discharges of munitions to "waters of the United States" and in order for the Department to receive primacy to issue wastewater discharge permits under the CWA, we had to resolve the discrepancy between the CWA requirement and the longstanding state policy to exempt firing ranges from permit requirements. We did this in a change to AS 46.03.100(e)(7), passed in 2008 (sec. 4, ch. 17, SLA 2008), by adding a phrase to the existing state permitting exemption for firing ranges -- ". . . unless it results in a discharge into waters of the United States." While this change made Alaska's statutes consistent with the requirements of the CWA and was ultimately approved by the EPA in the state's request for primacy, it has the potential to cause the state to be more restrictive (i.e. more stringent) than the CWA or longstanding state policy. This is because the Department of Defense has been working with EPA on the federal requirement to obtain a permit for the discharge of munitions into waters of the United States. So, if that requirement changes, no CWA permit is required, and the state statute remains as is, then the state statute would still require a munitions range operator to obtain a permit, thus exceeding the requirements of the CWA. To avoid that scenario, the goal of CSHB 185 is to match the federal requirements by citing to the CWA.

CSHB 185 would only require the state to issue a permit if it is required to do so under the CWA. It is a subtle, but important change that will retain the state policy to exempt ranges from permitting requirements for munitions discharges to the

land and for discharges to waters that are not required to have a permit under the CWA.

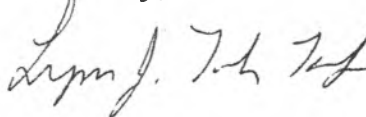
**Are non-military training ranges covered by the permit exemption of AS 46.03.100(e)(7)?**

Yes - all firing ranges used for training activities on active ranges are exempt from state permitting requirements unless use of the ranges results in a discharge into waters of the United States. CSHB 185 will also exempt all firing ranges used for training activities on active ranges unless the discharge requires a permit under the Clean Water Act.

**What is the definition of "active ranges?"**

A military representative described "active ranges" from their perspective during the hearing. There is no legal definition of "active range" in state statutes, however, from a permitting perspective an "active range" is one where there are discharges occurring - the range is in use, or will be in use during the 5-year life of a permit (if a permit is required).

Sincerely,



Lynn J. Tomich Kent  
Director

cc: Lindsay Wolter, Department of Law



DEPARTMENT OF THE AIR FORCE  
REGIONAL ENVIRONMENTAL COORDINATOR  
SAN FRANCISCO, CALIFORNIA 94105-2230

9 March 2011

Clare R. Mendelsohn  
Department of Defense  
Regional Environmental Coordinator Region 10  
50 Fremont St Ste 2450  
San Francisco, CA 94105

The Honorable Tammie Wilson  
Alaska House of Representatives  
State Capitol, Room 415  
Juneau, AK 99801-1182

Dear Representative Wilson:

As the Department of Defense (DOD) Regional Environmental Coordinator (REC) for the states in U.S. Environmental Protection Agency (US EPA) Region X, including Alaska, and on behalf of all the military services, I am responsible for coordinating responses to various environmental policies or regulatory matters of interest. I appreciate the opportunity to provide comments on the proposed amendment to Alaska's Clean Water Act (AK CWA).

DoD and Alaska have a long and proud history of cooperation. Alaska's military installations and training range areas within the state are crucial to DoD's worldwide mission. In this spirit of cooperation, DoD has worked with the Alaska Department of Environmental Conservation (ADEC), Alaska Office of the Attorney General, US EPA, the Alaska Military Force Advocacy and Structure Team (AMFAST), and other interested stakeholders to develop this amendment.

As background, under AS §46.03.100, the disposal of solid or liquid waste material into waters or onto land of the state is prohibited without authorization from ADEC. Importantly, the statute was amended in 2008 when Alaska sought US EPA approval of its CWA program (Alaska Pollutant Discharge Elimination System). As a result, the statutory exclusion for military ranges under AS §46.03.100(e)(7) was modified so that it now excludes "the firing or other use of munitions in training activities conducted on active ranges, including active ranges operated by the United States Department of Defense or a United States military agency, *unless it results in a discharge into waters of the United States.*"

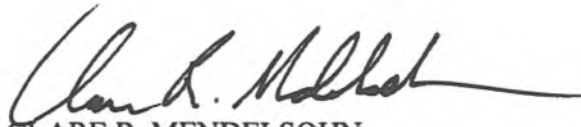
This existing language in Alaska's statute ("unless it results in a discharge into waters of the United States") might be interpreted to restrict the use of Alaska military ranges in a way that is not required under the federal Clean Water Act. To alleviate this concern, the proposed amendment would allow the use of military ranges "unless otherwise regulated by the Federal Water Pollution Control Act." Besides helping ensure military ranges can be used in accordance with federal law, federal and Alaska state agencies agree this amendment will not jeopardize continued US EPA approval of Alaska's CWA program.

The benefit of the proposed amendment to the military in Alaska will be to ensure questions regarding the application of the AK CWA to military ranges are determined in accordance with the federal Clean Water Act. Moreover, while there may be uncertainty as to how the federal Clean Water Act program might apply to military ranges, the proposed amendment will not preclude Alaska agencies, the military, USEPA, or a private plaintiff from making any appropriate arguments under the federal statute. Thus, unless amended, the application of the AK CWA to military ranges might be inconsistent with the application of clean water programs in other states. Finally, because ADEC plans to apply its CWA program to munitions starting on October 31, 2011, DoD strongly supports passing this amendment in the 2011 legislative session.

In closing, this amendment will help ensure Alaska's continued capacity to host sustainable military readiness training for our outstanding airmen, soldiers, and sailors. We welcome the opportunity to provide you with any additional information as you consider this important legislation that has the potential to impact DoD installations.

Thank you for the opportunity to provide comment on this proposed amendment.

Sincerely

A handwritten signature in black ink, appearing to read "Clare R. Mendelsohn", with a long horizontal flourish extending to the right.

CLARE R. MENDELSON

DoD Regional Environmental Coordinator, Region 10

# STATE OF ALASKA

**DEPARTMENT OF MILITARY AND VETERANS AFFAIRS**  
**OFFICE OF THE COMMISSIONER**

**Sean Parnell, GOVERNOR**

**P. O. BOX 5800**

**Ft Richardson, ALASKA 99505-5800**

**PHONE: (907) 428-6003**

March 10, 2011

The Honorable Tammie Wilson  
Alaska House of Representatives  
State Capitol, Room 415  
Juneau, Alaska 99801-1182

Representative Wilson,

I fully support the proposed amendment to the Alaska Clean Water Act. This amendment minimizes the opportunities for interruption to critical military training while maintaining a high level of environmental protection according to the Federal Water Pollution Control Act.

The United States Military presence in Alaska is vital to the state's safety, security, and economic stability. We must take every opportunity to empower the men and women of the military with the best training scenarios available. Alaska offers premier military training areas that are unmatched by any other location in the world. Although continued military training is critical, the protection of the natural environment on which the training is conducted is equally important. The amendment to the Alaska Clean Water Act both enhances military training capabilities and ensures the protection of Alaska's pristine environment.

Thank you for your efforts regarding this amendment. Your continued support of the United States Military in Alaska and your desire to protect Alaska's natural environment is very much appreciated.

Sincerely,



Thomas H. Katkus  
Major General, AKARNG  
The Adjutant General-Alaska

Alaska State Legislature  
House of Representatives  
Representative Tammie Wilson

*Interim*  
301 Santa Clause Lane  
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Rep.Tammie.Wilson@legis.state.ak.us

*Session*  
State Capitol  
Juneau, AK 99801  
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**Explanation of Changes in CSHB 185 (RES)**

House Resources adopted a CS with language vetted and approved by EPA/DEC:

- 1) Page 2, line 19: added the phrase “**or service,**” to clarify that the US Coast Guard should be included in the definition of military training activities.
- 2) Page 2, lines 19-20: “unless **otherwise regulated under 33 U.S.C. 1251 – 1376 (Federal Water Pollution Control Act), as amended**”

This, also, was not a substantive change to the original bill. It was the language approved by all parties (DoD, EPA) that ensured the Federal Clean Water Act would be the law used as the determining factor in exempting use of munitions for military training activities.

AKDEC can only support the HRES CS as it took months to approve the current proposal through EPA. The letter from the Division of Water, included in the packet, is very helpful in understanding the context for this legislation.

tw

# SENATE COMMITTEE REPORT

DATE: 4/4/11

FURTHER:

DATE TURNED  
IN TO OFFICE: 3/6/12

Resources Committee considered CS FOR HOUSE BILL NO. 185(RES)

## HB 185-EXEMPT DISCHARGES FROM USE OF MUNITIONS

"An Act relating to an exemption from authorizations that may be required by the Department of Environmental Conservation for the firing or other use of munitions on active ranges."

and recommends:

- be replaced with SCS \_\_\_\_\_ (\_\_\_\_\_)  Same Title  Technical Title Change  
 New Title/SCR No. \_\_\_\_\_
- adopt previous SCS \_\_\_\_\_ (\_\_\_\_\_)  Same Title  Technical Title Change  
 New Title/SCR No. \_\_\_\_\_
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

Dept Abbr.	
ADM	LEG
CED	LAW
COR	LWF
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DEC			✓	

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	No REC	AMEND
	Fryc			✓	
	wielechowski			✓	
	French			x	
	McIver	✓			
CO-CHAIR:				x	
CO-CHAIR:	WAGONER	✓			

## HB185

A problem was created when the AK Clean Water Act (CWA) was amended in 2008 to its current form: The State's long-standing comprehensive military munitions exemption, AS sec.46.03.100(e)(7). The current language ("unless it results in a discharge into waters of the United States") potentially allows for a more expansive, unintended application of the AK CWA than the federal CWA, due to the many and varying interpretations of "waters of the US." The proposed amendment in 185 ("unless otherwise regulated by the Federal Water Pollution Control Act") will maintain the State's primacy and, at the same time, allow AK military ranges to comply with State law by operating in accordance with federal law. If not passed, there exists the possibility that military ranges would need to curtail operations because of unique interpretations of AK law, even if the ranges are in compliance with federal law.

And so, the bottom line is: with 185, we are maintaining Primacy, protecting the environment, and allowing military exercises to continue without potential legal issues.

from Rep. Wilson,  
delivered to us earlier today

*Discharge into US water*

**Jeff Stepp**

**From:** Carlson-Van Dort, Marit K (DEC) <marit.carlson-van.dort@alaska.gov>  
**Sent:** Monday, March 05, 2012 12:04 PM  
**To:** Jeff Stepp  
**Cc:** Kent, Lynn J T (DEC); Bonnet, Michelle M (DEC)  
**Subject:** RE: HB 185 Question

*Why pushed back*

Jeff,

No, the timeline for ADEC taking on primacy for munitions discharges was pushed back to October 2012. We will be assuming primacy for oil and gas, munitions and all other remaining facilities in October 2012. See the attached link for additional information.

<http://dec.alaska.gov/water/APDES/phaseIVextension.html>

*Is ADEC procedurally handling only hearing of day w/ Fed law only v applying substantive law*

Marit Carlson-Van Dort  
Legislative Liaison/Special Assistant to the Commissioner  
Alaska Department of Environmental Conservation  
(907) 465-5871 phone  
(907) 465-5070 fax

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**From:** Jeff Stepp [mailto:Jeff\_Stepp@legis.state.ak.us]  
**Sent:** Monday, March 05, 2012 11:58 AM  
**To:** Carlson-Van Dort, Marit K (DEC)  
**Cc:** Kent, Lynn J T (DEC)  
**Subject:** HB 185 Question

Hello Marit and Lynn,

Last year, on April 13, Lynn testified about HB 185. According to the minutes, she "explained that DEC is taking on the permitting authority in phases and taking on munitions permitting is scheduled for October 2011."

Senator Paskvan would like to know if DEC "took on" munitions permitting last October. Please let me know the answer before today's 3:30pm Senate Resources Committee hearing on HB 185.

Thanks,  
Jeff

**Jeff Stepp, Legislative Staff**  
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**Senate District E representing Fairbanks and Fort Wainwright**

# Testimony of Kevin Ward: Counsel, US Army, Northern Regional Environmental Office

## Overview

**KEVIN WARD, Counsel, U.S. Army, Northern Regional Environmental**

**Office**, stated support for HB 185 and advised that the legislation was a collaborative effort between DEC, DMVA, the Alaska Military Force Advocacy and Structure Team (AMFAST), and the Office of the Attorney General. He said the bottom line is that the proposed amendment provides that the Alaska Clean Water Act would apply to military ranges only if otherwise required by the federal Clean Water Act. The military believes this is necessary. He explained that when DEC sought U.S. EPA approval of its Clean Water Act program, EPA said the blanket exemption needed to be changed and in 2008 the Legislature changed the statute to its current form.

As previously noted, he said, the current statute provides an exemption for military and other ranges unless there is a discharge into waters of the U.S. The difficulty for the military is that the phrase "waters of the United States" is the subject of numerous ongoing debates and discussions as to its meaning and scope, including a recent U.S. Supreme Court decision. In addition, there may be an inconsistency between the state Act and the federal Act if the federal law changes and the state law continue to use the phrase "discharge into waters of the United States" for purposes of determining whether a permit is required for a military range.

**MR. WARD** stated that the question of whether or not a permit would be required of a military or other range is not determined by HB 185. What the bill does is provide comfort to the Department of Defense that the issue will be decided pursuant to and in accordance with the federal Clean Water Act. This will give the military consistency in Alaska and other states as to whether or not it needs to have permits for its ranges. He emphasized that the bill does not affect primacy or EPA approval of the state program, it does not decide whether a permit is or is not required and if a permit is required it will not affect what standards Alaska could impose pursuant to its Clean Water Act program. The only thing the bill does is to say that whether a permit is or is not required will be determined in accordance with the federal Clean Water Act.

*discharge into U.S. waters*

## Higher State Permit Standards

**CO-CHAIR PASKVAN** asked if the State of Alaska could require a permit for a higher standard than under the current federal process.

**MR. WARD** answered the state could ask the military to ask for such a permit under existing law or pursuant to HB 185. Whether or not that permit would be required under current statute would be whether waters were discharged into U.S. waters.

What difference is there  
Fed + State  
class

## Primacy

**CO-CHAIR PASKVAN** asked if Alaska's laws will be primary if there is inconsistency between the state and federal acts.

**MR. WARD** replied, under HB 185, the question of whether or not a permit is required would be determined in accordance with an interpretation of the federal act.

**CO-CHAIR PASKVAN** asked what the interpretation of the federal law would be if there was an inconsistency and the state wanted to require a permit.

**MR. WARD** replied that issue has been discussed and remains unresolved with regard to military ranges.

**CO-CHAIR PASKVAN** asked if the ultimate conclusion could be that the state's voice in that process could potentially be eliminated.

**MR. WARD** said no; Alaska's voice cannot be eliminated because it retains primacy and would still be the permitting authority. He offered the opinion that Alaska could assert whatever position it deemed appropriate under the circumstances and seek to require a permit.

*St. permit this process*

**CO-CHAIR PASKVAN** asked if he was using the word "primacy" in the sense of the issuing agency being a state agency as opposed to a federal agency.

**MR. WARD** replied he was using the term in the manner the Chair summarized.

## Interpretation of "discharge into waters of the United States"

**SENATOR WIELECHOWSKI** asked how current Alaska law and the federal Clean Water Act differ with respect to "discharge into waters of the United States".

**MR. WARD** explained that the phrase "waters of the United States" is used in the federal Clean Water Act and the interpretations of that phrase are not always consistent. The U.S. Supreme Court examined the issue and came up with three different opinions.

The debate often involves whether or not a particular water body is a water of the United States. The fact that there's an ongoing debate as to what the phrase means is one reason the military supports removing the phrase from the statute and replacing it with the "Federal Water Pollution Control Act."

SENATE RESOURCES

Apr 13, 2011

**HB 185-EXEMPT DISCHARGES FROM USE OF MUNITIONS**

3:38:10 PM

CO-CHAIR PASKVAN announced HB 185 to be up for consideration. [CSHB 185(RES) 27-LS0506\X was before the committee.]

REPRESENTATIVE TAMMIE WILSON, sponsor of HB 185, highlighted the important technical changes that House Resources committee substitute made to the original bill. On page 2, lines 19-20, the phrase "or service" was added to clarify that the U.S. Coast Guard is to be included in the provision. Also, the Federal Water Pollution Control Act was referenced differently, but the content was unchanged.

REPRESENTATIVE T. WILSON explained that in 2008, the State of Alaska sought Environmental Protection Agency (EPA) approval of its Clean Water Act program. The exclusion for active military ranges under Title 46 was amended so as to exclude the firing or other use of munitions in training activities conducted on active ranges, including those operated by the Department of Defense or military agencies unless it results in a discharge into U.S. waters. She pointed out that HB 185 was vetted by the EPA, the Alaska Department of Environmental Conservation (DEC), the Department of Defense, and the Alaska Department of Military & Veterans Affairs (DMVA). AS 46.03.100(e)(7) clarifies that military exercises on ranges are not restricted other than instances where the Federal Water Pollution Control Act ("Clean Water Act") would apply. This, she stated, reduces potential litigation in trying to interpret waters within the U.S.

3:41:16 PM

SENATOR FRENCH asked if the list in AS 46.03.100(e)(1)-(7) describes instances for which a state water discharge permit is not needed.

REPRESENTATIVE T. WILSON said that is correct.

SENATOR FRENCH asked if getting a state permit for firing munitions only became an issue once the state assumed primacy for water permits.

REPRESENTATIVE T. WILSON said that is correct.

CO-CHAIR PASKVAN clarified that version X was before the committee.

MAJOR GENERAL THOMAS H. KATKUS, Commissioner, Department of Military & Veterans Affairs (DMVA) and Adjutant General for the State of Alaska, stated that HB 185 is another step to show support for the presence of the military in Alaska. The bill attempts to clarify and offset potential challenges and double permitting related to the development of ranges in Alaska. It is not an effort to reduce constraints or lessen standards that would in any way adversely affect the Alaska environment. HB 185 would not in any way reduce Alaska's primacy in how it determines quality.

MCHUGH PIERRE, Deputy Commissioner, Department of Military & Veterans Affairs (DMVA) added that HB 185 is part of the overall effort and intent to enhance the open working relationship with the military and to keep the current military industrial complex here in Alaska. He offered his understanding that the 2008 legislation changed that intent and potentially added to bureaucracy associated with growing every sector of the business world.

CO-CHAIR PASKVAN thanked Commissioner Katkus for meeting earlier to discuss the issue of state primacy. He noted that according to the House Journal, the intent of the 2008 amendment was "an essential component of the state's effort to receive primacy from the Environmental Protection Agency." He said he wanted to make sure that HB 185 didn't have unintended consequences that would lessen the state's ability to regulate as necessary.

3:46:22 PM

SENATOR WIELECHOWSKI observed that the debate in 2008 was that the state really wanted primacy and this legislation appears to back away from that and say, in this case, the state really didn't want primacy. He asked Commissioner Katkus to talk about levels of munitions and types of chemicals that would be used in

the ordnances.

COMMISSIONER KATKUS replied he couldn't talk to the types of chemical compounds or the components, but the rounds would be the current technology employed on the battlefield. This includes everything from small arms munitions to artillery rounds for aerial gunnery ranges to bombing ranges.

SENATOR WIELECHOWSKI noted that over the years there have been situations at Fort Richardson and Eagle River Flats in particular where thousands of waterfowl died, and the probable cause was chemicals from explosive ordnances. He said he therefore wanted to make sure that this legislation in no way lowers standards and increases the ability to put dangerous substances into the water or air.

COMMISSIONER KATKUS replied the military has become a better steward of the environment every year and is now almost a renowned gold standard for environmental protection. He offered his understanding that the white phosphorus issue on the Eagle River Flats was a long-term problem that was not recognized until waterfowl numbers began to drop. But once the problem was identified, the military was quick to address and fix the problem. He reiterated that HB 185 is not an effort to reduce [water or air quality] standards. It's in everyone's best interest to maintain and continue to meet those high standards. He suggested that the DEC representative could specifically address the white phosphorus issue on the impact area for Fort Richardson.

3:49:15 PM

LYNN KENT, Director, Water Division, Department of Environmental Conservation (DEC), said she couldn't speak to the remediation efforts at Eagle River Flats, but she could say that the bill does not represent DEC backing off on primacy for its Clean Water Act permitting program. What the bill does is ensure that the state program implemented under the Clean Water Act remains consistent with the Act over time.

SENATOR WIELECHOWSKI asked if Alaska law was similar to the federal Clean Water Act and if she could describe any differences.

MS. KENT explained that in order for a state to have primacy to

implement a permitting program under the federal Clean Water Act, the state program has to be as stringent as the federal program. Thus, the Alaska program virtually mirrors the federal Clean Water Act program, she said.

SENATOR WIELECHOWSKI noted that when the debate on primacy took place several years ago, one big concern was that the federal government wasn't hearing cases quick enough. He asked if DEC continued to have that concern.

MS. KENT replied there certainly has been delay in EPA review and approval of water quality standards upon which DEC bases permits, but that problem is nationwide and not specific to Alaska.

SENATOR FRENCH asked who will be issuing permits to the U.S. military for firing ranges under the bill.

MS. KENT replied the permitting authority has been delegated to DEC if the use of the firing range requires a permit under the Clean Water Act.

SENATOR FRENCH asked if the federal Clean Water Act will require a permit for the ranges that are under consideration here. He understands the range outside of Fairbanks is the primary consideration.

MS. KENT explained that DEC is taking on the permitting authority in phases and taking on munitions permitting is scheduled for October 2011. She wasn't familiar with the range he referenced, but DEC will be responsible for issuing a permit for any facility that requires one under the Clean Water Act.



CO-CHAIR PASKVAN asked if DEC will be enforcing federal law, which set the minimum standards.

MS. KENT answered yes.

CO-CHAIR PASKVAN asked what process the state will follow if this law passes and the state's interests weren't parallel with the federal minimum standards.

MS. KENT replied this law, as proposed, will not interfere with DEC meeting the minimum requirements under the Clean Water Act.

The bill will make sure that the state is consistent with the Clean Water Act.

CO-CHAIR PASKVAN asked how DEC would engage in the process under the proposed law if the State of Alaska were to advance standards that were higher than the federal minimum.

3:54:58 PM

MS. KENT said the Clean Water Act requires state programs to be at least as stringent as the federal program and the provision under consideration in HB 185 is neither more nor less stringent than the Clean Water Act requires.

CO-CHAIR PASKVAN asked if the State of Alaska can determine that its interests are such that greater protection would be warranted.

MS. KENT replied the state can have a more stringent program than is required by the federal Clean Water Act, but the bill doesn't propose that at present.

CO-CHAIR PASKVAN asked if the state could impose more stringent requirements than the federal requirements if this bill were to pass.

MS. KENT replied HB 185 would not prevent the Legislature from imposing more stringent requirements in the future.

CO-CHAIR PASKVAN asked if DEC could issue a permit if it wasn't allowed under the federal government system.

MS. KENT answered no and added that the state already regulates discharges that are not covered by the Clean Water Act. For example, DEC has a program that regulates discharges to the land surface and to ground water, neither of which is required by the Clean Water Act.

CO-CHAIR PASKVAN asked if she was comfortable that the state would remain primary with respect to the standards that will be applied in the state.

MS. KENT answered yes.

SENATOR WIELECHOWSKI expressed confusion; his understanding of

the reason for the bill was so the military could bypass DEC and instead go directly to the federal government for these permits. He asked if this was incorrect.

MS. KENT replied she could understand the confusion if the bill is considered by itself, but other statutes give DEC the authority (and it has received approval) to implement the federal program. HB 185 does not change the fact that the military will have to both seek the application and get the permit from DEC.

SENATOR WIELECHOWSKI questioned the need for the bill.

MS. KENT responded DEC's perspective is that the proposed language change makes the state's program consistent with the Clean Water Act right now and as it may change in the future.

SENATOR FRENCH asked if she had learned anything that might cause her to change her statement since she wrote to Representative Paul Seaton and Representative Eric Feige on March 21, 2011 stating:

CSHB 185 would only require the state to issue a permit if it is required to do so under the CWA. It is a subtle, but important change that will retain the state policy to exempt ranges from permitting requirements for munitions discharges to the land and for discharges to waters that are not required to have a permit under the CWA.

MS. KENT replied that's still accurate; the language in subsection (e) has exemptions for a number of operations that do not need a state permit. In 2008 DEC asked for an amendment to AS 46.03.100 to make the statute consistent with the Clean Water Act, which requires a permit for certain munitions discharges. It was necessary for DEC to have the authority to issue those permits under the terms of the Clean Water Act in order to have primacy for the state program. It's been long-standing state policy that munitions use and a few other things are exempt from state permitting requirements and it was necessary to rectify that in order to receive primacy to implement the permitting program. HB 185 basically clarifies the language.

4:01:22 PM

SENATOR FRENCH said he too labored under a misconception, but he

now understands that the purpose of the bill is to retain primacy and maintain the long-standing exemption for munitions ranges. He added that it is his belief that if the bill were to pass the military would not need a permit in order to conduct training exercises in many areas of Alaska ranges.

MS. KENT reiterated that DEC has the permitting authority even though the Clean Water Act is referenced.

CO-CHAIR PASKVAN asked what DEC's original concerns were with the law that was passed in 2008.

MS. KENT replied the changes were proposed by the Department of Defense to clarify that when a permit is required under the federal Clean Water Act, one will also be required under the state permitting program.

4:03:25 PM

ALPHEUS BULLARD, Attorney, Legislative Legal Services, Legislative Affairs Agency, speaking via teleconference, introduced himself and said he was available to answer questions.

CO-CHAIR PASKVAN asked if he followed the discussion on state primacy and the state's ability to issue a standard that is different than the federal minimum standard.

MR. BULLARD said yes.

CO-CHAIR PASKVAN asked him to offer his thoughts.

MR. BULLARD said he didn't have thoughts on the primacy issue, but was available to answer specific questions.

SENATOR FRENCH reviewed the proposed new language and asked if he had reviewed 33 U.S.C. 1251-1376 of the Clean Water Act.

MR. BULLARD answered yes.

SENATOR FRENCH asked if anything in those federal statutes will require issuance of a permit before firing or use of munitions in training activities conducted on active ranges.

MR. BULLARD said the definition of "waters of the U.S." found in

regulation in 18 AAC 83.990(77) is the same as the definition under the Clean Water Act. He offered his belief that changing the language to read, "the discharge into waters regulated under 33 U.S.C." would clarify that the waters and the discharge into the waters is the concern, not the firing or other use of munitions. As the law stands now, his understanding is that what would be regulated would be the same.

SENATOR FRENCH asked if he means without the passage of HB 185.

MR. BULLARD explained that the definition of the term "waters of the U.S." is the same right now under both the Clean Water Act and state regulations. However, it's very possible that the two definitions will differ in the future.

4:07:06 PM

SENATOR WIELECHOWSKI asked, when he refers to the Clean Water Act, if he is referring to the federal Water Pollution Control Act.

MR. BULLARD answered yes.

SENATOR WIELECHOWSKI asked Mr. Bullard to explain what the bill does.

MR. BULLARD replied the effects and purpose of the legislation were not clear to him.

4:08:31 PM

KEVIN WARD, Counsel, U.S. Army, Northern Regional Environmental Office, stated support for HB 185 and advised that the legislation was a collaborative effort between DEC, DMVA, the Alaska Military Force Advocacy and Structure Team (AMFAST), and the Office of the Attorney General. He said the bottom line is that the proposed amendment provides that the Alaska Clean Water Act would apply to military ranges only if otherwise required by the federal Clean Water Act. The military believes this is necessary. He explained that when DEC sought U.S. EPA approval of its Clean Water Act program, EPA said the blanket exemption needed to be changed and in 2008 the Legislature changed the statute to its current form.

As previously noted, he said, the current statute provides an exemption for military and other ranges unless there is a

discharge into waters of the U.S. The difficulty for the military is that the phrase "waters of the United States" is the subject of numerous ongoing debates and discussions as to its meaning and scope, including a recent U.S. Supreme Court decision. In addition, there may be an inconsistency between the state Act and the federal Act if the federal law changes and the state law continues to use the phrase "discharge into waters of the United States" for purposes of determining whether a permit is required for a military range.

MR. WARD stated that the question of whether or not a permit would be required of a military or other range is not determined by HB 185. What the bill does is provide comfort to the Department of Defense that the issue will be decided pursuant to and in accordance with the federal Clean Water Act. This will give the military consistency in Alaska and other states as to whether or not it needs to have permits for its ranges. He emphasized that the bill does not affect primacy or EPA approval of the state program, it does not decide whether a permit is or is not required and if a permit is required it will not affect what standards Alaska could impose pursuant to its Clean Water Act program. The only thing the bill does is to say that whether a permit is or is not required will be determined in accordance with the federal Clean Water Act.

CO-CHAIR PASKVAN asked if the State of Alaska could require a permit for a higher standard than under the current federal process.

MR. WARD answered the state could ask the military to ask for such a permit under existing law or pursuant to HB 185. Whether or not that permit would be required under current statute would be whether waters were discharged into U.S. waters.

4:14:22 PM

CO-CHAIR PASKVAN asked if Alaska's laws will be primary if there is inconsistency between the state and federal acts.

MR. WARD replied, under HB 185, the question of whether or not a permit is required would be determined in accordance with an interpretation of the federal act. }

CO-CHAIR PASKVAN asked what the interpretation of the federal law would be if there was an inconsistency and the state wanted

to require a permit.

MR. WARD replied that issue has been discussed and remains unresolved with regard to military ranges.

4:16:03 PM

CO-CHAIR PASKVAN asked if the ultimate conclusion could be that the state's voice in that process could potentially be eliminated.

MR. WARD said no; Alaska's voice cannot be eliminated because it retains primacy and would still be the permitting authority. He offered the opinion that Alaska could assert whatever position it deemed appropriate under the circumstances and seek to require a permit.

CO-CHAIR PASKVAN asked if he was using the word "primacy" in the sense of the issuing agency being a state agency as opposed to a federal agency.

MR. WARD replied he was using the term in the manner the Chair summarized.

SENATOR WIELECHOWSKI asked how current Alaska law and the federal Clean Water Act differ with respect to "discharge into waters of the United States.

MR. WARD explained that the phrase "waters of the United States" is used in the federal Clean Water Act and the interpretations of that phrase are not always consistent. The U.S. Supreme Court examined the issue and came up with three different opinions. The debate often involves whether or not a particular water body is a water of the United States. The fact that there's an ongoing debate as to what the phrase means is one reason the military supports removing the phrase from the statute and replacing it with the "Federal Water Pollution Control Act."

CO-CHAIR PASKVAN announced he would hold HB 185 in committee.

## Jeff Stepp

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**From:** Karla Hart <alaskabirder@gmail.com>  
**Sent:** Thursday, February 23, 2012 1:45 PM  
**To:** Mary Jackson  
**Cc:** Michelle Sydeman; Jeff Stepp  
**Subject:** Re: HB 185 and Alaska water quality

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Thanks for your reply Mary. I have read all of the committee minutes and attended the Senate Resources Committee hearing last year (I was staff to Senator Wielechowski then) and returned to listen and testify on Tuesday. The bill sponsor and presenters (AK DEC and DNR on Tuesday) were not able to answer Senator Paskvan's questions as to what the bill actually does (at the hearing last year, and again Tuesday).

Today I've had conversations with quite a few people, including Rep. T. Wilson, Clare Mendelsohn (Department of Defence Regional Environmental Coordinator and author of the letter from DOD in the bill packet Tuesday), and Dianne Soderlund (Director of the Alaska Operations Office for EPA).

From Clare Mendelsohn (who is on detail at EPA now) I understand that Alaska is the only state that covers waters in our state standards relating to munitions and ranges so this legislation is precedent setting and that is why the DOD is so interested in getting it past.

From Dianne Soderlund at EPA I understand that because federal agencies don't issue opinions or comments on state legislation and because nobody has asked her any questions about the bill, she hasn't taken much of a look. I explained that the language that this bill seeks to change is language that was added in HB 149 (passed in 2008 -See highlighted section below.) Ms. Soderlund said this was interesting and that she would need to look into this to see how HB 185 would impact Alaska's authority to administer Clean Water Section 402, but she didn't know that she would have an answer by this afternoon.

MAYBE the bill is just fine and doesn't harm Alaska and Alaskans ability to protect water quality, but I am not yet convinced nor have I found anyone who can/will positively say what the bill does. Until the Senators know, it seems hasty to pass the legislation.

[http://www.legis.state.ak.us/basis/get\\_single\\_minute.asp?ch=H&beg\\_line=00430&end\\_line=01059&session=25&comm=RES&date=20070312&time=1303](http://www.legis.state.ak.us/basis/get_single_minute.asp?ch=H&beg_line=00430&end_line=01059&session=25&comm=RES&date=20070312&time=1303)  
1:42:18 PM

LYNN TOMICH KENT, Director, Division of Water, Department of Environmental Conservation (DEC), presented background for HB 149. She explained that the federal Clean Water Act (CWA) requires that all wastewater discharges to surface waters be permitted under the National Pollutant Discharge Elimination System (NPDES) Permitting Program. The CWA intends for states to implement or to have primacy for this program, with the Environmental Protection Agency (EPA) serving in an oversight role over the states that implement the program. There are presently 45 states that have primacy for the NPDES program. In Alaska, the EPA is currently the NPDES permitting authority and DEC plays a secondary role whereby DEC certifies that all of

EPA's permits will comply with Alaska's water quality standards. The DEC also issues permits for those smaller discharges that EPA does not "get around" to issuing permits for.

MS. KENT informed the committee that in 2005 the Alaska State Legislature, through Senate Bill 110, directed DEC to take all actions necessary to assume authority for the NPDES discharge permitting authority, including responsibility for issuing the permits and for ensuring compliance with the permits. As part of DEC's work with EPA to transfer primacy to the state, EPA has identified several areas where changes to the state statutes are required in order for DEC to have the full complement of statutory authorities that are needed for DEC to assume primacy. Those state authorities are adjusted by HB 149 to match the federal authorities. Each change addresses a specific concern that is raised by EPA as something that must be fixed.

On Thu, Feb 23, 2012 at 1:18 PM, Mary Jackson <[Mary\\_Jackson@legis.state.ak.us](mailto:Mary_Jackson@legis.state.ak.us)> wrote:

Karla,

I appreciate your concern with Alaskan matters.

This legislation was introduced a year ago, has had two hearings in the House, one hearing in the Senate last year and another just a week ago.

It was approved on the floor of the house on a 36 year to 2 nay vote (2 excused).

I don't know if you have perused the minutes for this legislation, but I am pasting the link here for your info (senate resources):

[http://www.legis.state.ak.us/basis/get\\_single\\_minute.asp?session=27&beg\\_line=00208&end\\_line=00634&time=1536&date=20110413&comm=RES &house=S\](http://www.legis.state.ak.us/basis/get_single_minute.asp?session=27&beg_line=00208&end_line=00634&time=1536&date=20110413&comm=RES&house=S)

Thanks and I'll make sure Senator Wagoner is apprised of your concerns.

Mary j

*Mary Jackson,*

*Chief of Staff*

*Senator Tom Wagoner*

907-465-3872

**From:** Karla Hart [mailto:[alaskabirder@gmail.com](mailto:alaskabirder@gmail.com)]  
**Sent:** Thursday, February 23, 2012 11:01 AM  
**To:** Mary Jackson  
**Subject:** HB 185 and Alaska water quality

Mary,

The Department of Defense has a long-standing effort to gain exemption from many important federal environmental laws including Marine Mammal Protection Act, Endangered Species Act, Clean Air Act, Clean Water Act... They have had some successes to date. I believe that the reason they are seeking to move from state to federal jurisdiction for water quality regulation now is that they are positioning for securing federal Clean Water Act exemptions (which may already be in place - I couldn't find/figure this out).

If HB 185 does not pass, they will be subject to Alaska Clean Water standards and permitting, even if they gain an exemption from Congress.

If HB 185 passes Alaskans will have less or no recourse if/when military munitions/firing range activities threaten water quality, fisheries, etc.

I do not believe that the bill sponsor and proponents have been forthright with this bill. Despite repeated efforts by Senator Paskvan to get a clear answer on how the federal law compares with the state law, there has been no answer. I now believe that is because passing HB 185 will seriously jeopardize Alaska's ability to protect water quality.\* I did not know about this situation when I was before Senate Resources on Tuesday. It took hours of digging online to uncover the motivation for this bill.

\*I have not yet had the time to look into the aspect of all of the contaminated sites in Alaska (as of 2004, in Alaska, 79 installations and 264 MRSs have been identified for remediation that have impacted between 1 and 3 million acres) to see if the military has the option to keep old ranges "active" to sidestep cleanup requirements but suspect that could be another motivation.

This link to the Federation of American Scientists has a whitepaper that provides some background from 2007 on the DOD effort for exemptions:

<http://www.fas.org/sgp/crs/natsec/RS22149.pdf>

I appreciate any help you and Senator Wagoner can provide in seeing that, at least, if this bill MUST be passed it is done so after a hearing the brings forth the complete and honest story. Ideally though, I hope that Senator Wagoner will help to kill this effort to degrade Alaska's right to protect our waters.

Regards,

Karla Hart

523-6996

**MEETING DATE: February 21, 2012**

*Jeff*

1. Switch gavel from Paskvan
  
2. Under bills previously heard, take up SB 176.
  - a. Joanna Bales online comment
  - b. Remove objection – ask for motion out of committee with individual recommendations – fiscal notes.
  
3. HB 144 Report on Fishing Stream Access
  - a. This is the initial presentation of the bill in Senate Resources – it has no other committee referrals.
  - b. Ask for motion on the bill – object for discussion
  - c. Ask sponsor to present
    - i. Rep. Les Gara – he should be on offnet
  
  - d. **Go to public hearing**
    - i. Go to Offnet
    - ii. Go to LIO's
    - iii. Go to Juneau
  
  - e. **CLOSE PUBLIC HEARING**
  
  - f. Remove objection – ask for motion out of committee with individual recommendations – fiscal notes.

**TAKE AT EASE – SIGN BILL – CHANGE TESTIFIERS**

**MEETING DATE: February 21, 2012**

4. HB 185 Exempt Discharges from use of Munitions
  - a. This is the second presentation of the bill in Senate Resources – heard last session - it has no other committee referrals.
  - b. Ask for motion on the bill – object for discussion
  - c. Ask sponsor to present
    - i. Rep. Tammy Wilson – Brandon Brefczynski
  - d. Go to public hearing**
    - i. Go to Offnet
    - ii. Go to LIO's
    - iii. Go to Juneau
  - e. CLOSE PUBLIC HEARING**
  - f. Remove objection – ask for motion out of committee with individual recommendations – fiscal notes.
  
5. Gavel out – announce time.