

USB

27

<TARGET><BILL>SB 27</BILL><SUBJECT>SB
27</SUBJECT><COMM>HF IN28</COMM></TARGET>

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 22, 2013

FURTHER REFERRALS:

Date of Committee Action: 4.12.13

The FINANCE Committee considered:

SB 27

SENATE BILL NO. 27

"An Act establishing authority for the state to evaluate and seek primacy for administering the regulatory program for dredge and fill activities allowed to individual states under federal law and relating to the authority; and providing for an effective date."

SB 27-REGULATION OF DREDGE AND FILL ACTIVITIES

Recommends it be replaced with HCS or CS for _____ (_____)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 DHS
 LWF
 LAW
 LEG
 MVA
 DNR
 DPS
 REV
 DOT
 UA

| <u>NEW FISCAL NOTES</u> | | | | |
|--|------------------|--------|--------|------|
| *FN# is assigned by Chief Clerk's Office | | | | |
| *FN# | List by Dept(s): | Fiscal | Indet. | Zero |
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| <u>PREVIOUS FISCAL NOTES</u> | | | | |
|------------------------------|------------------|--------|--------|------|
| FN# | List by Dept(s): | Fiscal | Indet. | Zero |
| 1 | DEC | ✓ | | |
| 2 | DNR | ✓ | | |
| 3 | LAW | | | ✓ |
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| <u>Signing with recommendations</u> | Printed Last Name | DP | DNP | NR | AM |
|-------------------------------------|-------------------|----|-----|----|--------------|
| | ... | | | | X |
| | Holmes | | | X | |
| | Nedert | | | X | |
| Jammie Wilson | T. Wilson | ✓ | | | |
| Veronica Munoz | Munoz | ✓ | | | |
| Steve Thompson | Thompson | | | X | |
| Ispe Edgmon | Edgmon | | | X | |
| | Costello | ✓ | | X | |
| Chair: | Staple | | | X | |
| Chair: | Austerman | | | X | |

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version SB 27
 Fiscal Note Number 3
 (S) Publish Date 1/18/13

Identifier (file name) 0750-LAW-CIV-01-14-13 Dept. Affected Law
 Title Section 404 Wetlands Program Appropriation Civil
 Allocation Environmental
 Sponsor Rules by Request of the Governor
 Requester Governor OMB Component Number 2092

Expenditures/Revenues (Thousands of Dollars)

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

| | FY14 Appropriation Requested | Included in Governor's FY14 Request | Out-Year Cost Estimates | | | | |
|-------------------------------|------------------------------------|--|-------------------------|-------------|-------------|-------------|-------------|
| | | | FY15 | FY16 | FY17 | FY18 | FY19 |
| OPERATING EXPENDITURES | FY14 | FY14 | FY15 | FY16 | FY17 | FY18 | FY19 |
| Personal Services | | | | | | | |
| Travel | | | | | | | |
| Services | | | | | | | |
| Commodities | | | | | | | |
| Capital Outlay | | | | | | | |
| Grants, Benefits | | | | | | | |
| Miscellaneous | | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| FUND SOURCE | | (Thousands of Dollars) | | | | | |
|--------------|------------------|------------------------|------------|------------|------------|------------|------------|
| 1002 | Federal Receipts | | | | | | |
| 1003 | GF Match | | | | | | |
| 1004 | GF | | | | | | |
| 1005 | GF/Prgm (DGF) | | | | | | |
| 1037 | GF/MH (UGF) | | | | | | |
| | #N/A | | | | | | |
| TOTAL | | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| POSITIONS | | | | | | | |
|-----------|--|--|--|--|--|--|--|
| Full-time | | | | | | | |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

| CHANGE IN REVENUES | | | | | | | |
|--------------------|--|--|--|--|--|--|--|
| | | | | | | | |

Estimated SUPPLEMENTAL (FY13) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY14) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

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

Not applicable, initial version

Prepared by Loretta Withington, Division Operations Manager
 Division Administrative Services
 Approved by Michael C. Geraghty, Attorney General
Department of Law

Phone 465-5427
 Date/Time 1/11/13 12:00 AM
 Date 1/11/2013

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 27

Analysis

RSA with Department of Environmental Conservation (DEC) to assist with the Department's and workgroup's legal questions; legal assistance with Department's preparation of a primacy application, including preparation of an Attorney General's statement; legal assistance with statutes and regulations; negotiations with EPA and the Corps of Engineers; and potential appeals and judicial challenges relating to federal approval of the state's primacy application.

Funding for the RSA is included in the DEC fiscal note. The Department of Law has sufficient interagency receipt authority for the proposed \$187.5 agreement. See DEC's fiscal note for more detailed information.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version SB 27
 Fiscal Note Number 2
 (S) Publish Date 1/18/13

Identifier (file name) LL0750-DNR-OPMP-1-14-13 Dept. Affected Natural Resources
 Title State Assumption of 404 Wetlands Permitting Appropriation Administration & Support
 Allocation Office of Project Management & Permitting
 Sponsor Rules by Request of the Governor
 Requester Governor OMB Component Number 2733

Expenditures/Revenues (Thousands of Dollars)

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

| | FY14 Appropriation Requested | Included in Governor's FY14 Request | Out-Year Cost Estimates | | | | | |
|-------------------------------|------------------------------------|--|-------------------------|--------------|--------------|--------------|--------------|--------------|
| | | | FY14 | FY15 | FY16 | FY17 | FY18 | FY19 |
| OPERATING EXPENDITURES | | | | | | | | |
| Personal Services | 231.4 | | 425.6 | 425.6 | 425.6 | 425.6 | 425.6 | 425.6 |
| Travel | 9.4 | | 14.1 | 14.1 | 14.1 | 14.1 | 14.1 | 14.1 |
| Services | 111.0 | | 122.0 | 122.0 | 122.0 | 122.0 | 122.0 | 122.0 |
| Commodities | 10.0 | | 5.0 | | | | | |
| Capital Outlay | | | | | | | | |
| Grants, Benefits | | | | | | | | |
| Miscellaneous | | | | | | | | |
| TOTAL OPERATING | 361.8 | 0.0 | 566.7 | 561.7 | 561.7 | 561.7 | 561.7 | 561.7 |

| FUND SOURCE | | (Thousands of Dollars) | | | | | | |
|-------------|-------------------|------------------------|------------|--------------|--------------|--------------|--------------|--------------|
| 1002 | Federal Receipts | | | | | | | |
| 1003 | GF Match | | | | | | | |
| 1004 | GF | | | | | | | |
| 1005 | GF/Prgm (DGF) | | | | | | | |
| 1037 | GF/MH (UGF) | | | | | | | |
| 1007 | I/A Rcpts (Other) | 361.8 | | 566.7 | 561.7 | 561.7 | 561.7 | 561.7 |
| | TOTAL | 361.8 | 0.0 | 566.7 | 561.7 | 561.7 | 561.7 | 561.7 |

| POSITIONS | | | | | | | | |
|-----------|--|---|--|---|---|---|---|---|
| Full-time | | 2 | | 4 | 4 | 4 | 4 | 4 |
| Part-time | | | | | | | | |
| Temporary | | | | | | | | |

| CHANGE IN REVENUES | | | | | | | |
|--------------------|--|--|--|--|--|--|--|
| | | | | | | | |

Estimated SUPPLEMENTAL (FY13) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY14) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
 If yes, by what date are the regulations to be adopted, amended, or repealed? N/A Discuss details in analysis section.

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

Initial version, not applicable

Prepared by Ed Fogels, Deputy Commissioner
 Division Commissioner's Office
 Approved by Daniel S. Sullivan, Commissioner
Department of Natural Resources

Phone 269-8423
 Date/Time 1/5/13 10:30 AM
 Date 1/14/2013

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 27

Analysis

This bill provides the Department of Natural Resources (DNR), in coordination with the Department of Environmental Conservation (DEC), the authority to take actions necessary to administer and enforce any dredge and fill permitting program allowed under 33 U.S.C. 1344 (sec. 404, Clean Water Act).

FY 14

Personal Services - DNR will receive interagency receipts from DEC to fund positions needed to assist DEC in its analysis of state assumption of the CWA Section 404 ("404 program"). The Office of Project Management and Permitting will require 2 new positions: one project coordinator to participate with DEC in the program development tasks, including the analysis of the division of duties between agencies under primacy and development of a mitigation program required of State programs; and one position for State program capacity development in wetlands jurisdictional determinations and permitting procedures. Capacity development will allow DNR to pursue development and administration of regional general permits for some classes of activities, resulting in more state control over 404 permitting during the interim period before the state obtains 404 primacy.

One Project Coordinator (Anchorage, XE, Range 23C) \$134,298

One Natural Resource Specialist III (Anchorage, GG, Range 18C) \$97,108

Travel - Travel costs will be incurred for attending DEC work group and stakeholder meetings, meetings with EPA Region 10 and US Army Corps of Engineers Headquarters staff, and for staff training opportunities.

Services - Contractual costs will be incurred for hiring consultants to assist the state in designing regional general permits and other capacity building. The intent of this capacity building will be to improve the efficiency of 404 permitting in Alaska even prior to the state obtaining 404 primacy.

Commodities - Position support costs, including furniture and computers (one-time costs for new positions); standard office supplies.

FY 15

Personal Services - DNR will receive interagency receipts from DEC to fund positions needed to assist DEC in state assumption of the CWA Section 404 ("404 program"). The Office of Project Management and Permitting will require two additional positions to assist in State program capacity development in permitting procedures. The Project Coordinator will continue to help in the program development tasks, including development of a mitigation program required of State programs.

Two positions established in FY2014

Two Natural Resource Specialist III (Anchorage, GG, Range 18C) \$97,108 each

Travel - Travel costs will be incurred for attending DEC work group and stakeholder meetings, meetings with EPA Region 10 and US Army Corps of Engineers Headquarters staff, and for staff training opportunities.

Services - Contractual costs will be incurred for hiring consultants to assist the state in designing regional general permits and other capacity building.

Commodities - Position support costs, including furniture and computers (one-time costs for new positions); standard office supplies.

Associated Regulations: DNR does not anticipate any regulation changes to our department's regulations at this time. However, as the evaluation of the 404 primacy program develops, we may identify changes to DNR regulations in future years.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version SB 27
Fiscal Note Number 1
(S) Publish Date 1/18/13

Identifier (file name) LL0750-DEC-WQ-01-17-13 Dept. Affected Environmental Conservation
Title Section 404 Wetlands Program Appropriation Water
Allocation Water Quality
Sponsor Rules by Request of the Governor
Requester Governor OMB Component Number 2062

Expenditures/Revenues (Thousands of Dollars)

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

| | FY14 Appropriation Requested | Included in Governor's FY14 Request | Out-Year Cost Estimates | | | | | |
|-------------------------------|------------------------------------|--|-------------------------|----------------|----------------|----------------|----------------|-------|
| | | | FY14 | FY15 | FY16 | FY17 | FY18 | FY19 |
| OPERATING EXPENDITURES | | | | | | | | |
| Personal Services | 495.4 | | 883.5 | 883.5 | 883.5 | 883.5 | 883.5 | 883.5 |
| Travel | 22.3 | | 37.6 | 35.2 | 35.2 | 35.2 | 35.2 | 35.2 |
| Services | 879.5 | | 908.2 | 902.2 | 902.2 | 902.2 | 902.2 | 902.2 |
| Commodities | 37.5 | | 25.0 | 4.0 | 4.0 | 10.5 | 7.9 | |
| Capital Outlay | | | | | | | | |
| Grants, Benefits | | | | | | | | |
| Miscellaneous | | | | | | | | |
| TOTAL OPERATING | 1,434.7 | 0.0 | 1,864.3 | 1,824.9 | 1,824.9 | 1,831.4 | 1,828.8 | |

| FUND SOURCE | | (Thousands of Dollars) | | | | | | |
|--------------|------------------|------------------------|------------|----------------|----------------|----------------|----------------|----------------|
| 1002 | Federal Receipts | 0.0 | | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1003 | GF Match | 0.0 | | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1004 | GF | 1,434.7 | | 1,854.3 | 1,824.9 | 1,824.9 | 1,831.4 | 1,828.8 |
| 1005 | GF/Prgm (DGF) | | | | | | | |
| 1037 | GF/MH (UGF) | | | | | | | |
| 1178 | temp code (UGF) | | | | | | | |
| TOTAL | | 1,434.7 | 0.0 | 1,864.3 | 1,824.9 | 1,824.9 | 1,831.4 | 1,828.8 |

| POSITIONS | | | | | | | |
|-----------|---|---|---|---|---|---|---|
| Full-time | 5 | 0 | 8 | 8 | 8 | 8 | 8 |
| Part-time | | | | | | | |
| Temporary | | | | | | | |

| CHANGE IN REVENUES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|--------------------|-----|-----|-----|-----|-----|-----|-----|
|--------------------|-----|-----|-----|-----|-----|-----|-----|

Estimated SUPPLEMENTAL (FY13) operating costs 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY14) costs 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
If yes, by what date are the regulations to be adopted, amended, or repealed? 6/30/2015 Discuss details in analysis section.

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

Not applicable, initial version.

Prepared by Michelle Bonnet Hale, Director
Division Water
Approved by Lynn Kent
Deputy Commissioner, Dept. of Environmental Conservation

Phone 907-269-7599
Date/Time 1/11/13 1:00 PM
Date 1/11/2013

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 27

Analysis

Analysis/Assumptions:

Assumption of the Federal Clean Water Act Section 404 dredge and fill permitting program would allow the state to create streamlined processes for more efficient permit issuance, and to reduce redundancy between federal and state programs. Amended and new regulations will be required to comport with federal regulations to implement the 404 program. By the FY 16 budget cycle, there will be a decision point regarding whether to advance with the primacy effort and, if so, the pace of that effort. FY16 and beyond costs assume continued progress leading to a successful application approved by the Environmental Protection Agency, followed by full implementation of the program; these costs may change depending upon progress in FY14 and FY15 and a full analysis of the costs to implement the program. After FY16 and program approval some costs will be offset by program receipts.

FY14

Personal Services:

Three permanent positions for "program development" and to manage a workgroup of permittees that will assist in the analysis of 404 primacy and provide the state with recommendations about primacy; evaluate benefits and consequences of state primacy; conduct a fiscal analysis of the resource needs for state primacy; establish agreements with the EPA and the Corps that include a workplan, timeline, responsibilities, and requirements for the process to obtain state primacy; establish and manage contractor assistance to conduct a gap analysis and draft initial statutes and regulations for program implementation; develop work plan; begin development of program description; apply for wetlands program development grant from EPA; and develop a communications plan. Two permanent positions for "capacity development" to build the State's knowledge and capability in the 404 permit program; to negotiate with the Corps one or more statewide programmatic general permits that allow the State to implement small, targeted portions of the 404 program; and to establish a workshare agreement with the Corps for sharing staff resources. New positions: Project Coordinator (Anchorage, XE, 23C); Environmental Program Specialist IV (Anchorage, GG, Range 20C); Two Environmental Program Specialists III (Anchorage, GG, Range 18C); One Engineer I (Anchorage, GG, Range 22C). Three positions for 10 months to ramp-up of program.

Travel:

Travel is for workgroup and stakeholder meetings; meetings with EPA Region 10 and Headquarters and the Corps Alaska District and Headquarters; and staff training.

Services:

Position support costs, indirect, and public notices for workgroup meetings.

-- \$300.0 professional services contractor assistance for statutory gap analysis, draft regulations, assistance with primacy analysis; workgroup report; and assistance with drafting primacy application.

-- \$187.50 RSA to Department of Law to assist with the Department's and workgroup's legal questions; legal assistance with Department's preparation of a primacy application, including preparation of an Attorney General's statement; legal assistance with statutes and regulations; negotiations with EPA and the Corps; and potential appeals and judicial challenges relating to federal approval of the state's primacy application.

-- \$361.8 RSA to Department of Natural Resources for positions to participate with DEC in the program development tasks, including the analysis of the division of duties between agencies under primacy and development of a mitigation program required of State programs; and two positions for State program capacity development in wetlands jurisdictional determinations and permitting procedures.

Commodities:

Position support costs, including furniture and computers (one-time costs for new positions); standard office supplies.

Analysis Continued**FY2015****Personal Services:**

Five positions established in FY2014 will continue with program development tasks including adopting regulations; negotiating primacy MOUs with the EPA, the Corps and the U.S. Fish and Wildlife Service; developing program forms and guidance; continuing to manage a workgroup of permittees that will assist in designing a State program; ongoing negotiations with the EPA and the Corps; managing contractor assistance with development of the program description; applying for wetlands program development grant from EPA; and revising and implementing the communications plan. Three new positions in FY2015 will continue to develop the State's program capacity to issue and manage permits and to ensure compliance with permit conditions; implement statewide programmatic general permits that allow the state to implement targeted portions of the 404 program; implement data systems that provide automation of permits; and participate in a workshare agreement with the Corps for sharing staff resources. Three new positions will be established in FY15: Analyst Programmer IV (Juneau, GG, Range 20C); Engineer Associate II (Anchorage, GG, Range 21C); EPS III (Anchorage, GG, Range 18C). All positions for 12 months.

Travel:

Travel for workgroup/stakeholder meetings; meetings with EPA Region 10 and Headquarters and the Corps Alaska District and Headquarters; staff training; and field work for wetlands jurisdictional determinations and permittee inspections.

Services:

Position support costs for existing new positions, indirect, and public notice for workgroup meetings and draft regulations.

- \$100.0 professional services contractor assistance for statutory gap analysis, draft regulations, assistance with primacy analysis; workgroup report; and assistance with drafting primacy application. New and amended regulations may be adopted by the end of FY2015. New regulations are required to be adopted to implement the federal program. Amended regulations may be necessary to align existing state regulations with program requirements.
- \$187.50 RSA to Department of Law to assist with the Department's and workgroup's legal questions; legal assistance with Department's preparation of a primacy application, including preparation of an Attorney General's statement; legal assistance with statutes and regulations; negotiations with EPA and the Corps; and potential appeals and judicial challenges relating to federal approval of the state's primacy application.
- \$566.7 RSA to Department of Natural Resources (DNR) for positions to participate with DEC in the program development tasks, including development of a mitigation program required of State programs and four positions for State program capacity development in permitting procedures.

Commodities:

Position support costs, including furniture and computers for three new positions (one-time costs for new positions); deletion of FY2014 one-time costs for furniture and computers; ongoing standard office supplies.

FY2016 and Beyond

By the FY16 budget cycle, there will be a decision point regarding whether to advance with the primacy effort and, if so, the pace of that effort. The fiscal note assumes a baseline budget to continue with primacy application efforts and some capacity development work; however, there will be a future determination about the pace of "ramping up" to the full program resources to implement the 404 program under primacy. Once the state assumes primacy, all but 2-3 of the program development positions will transition to program implementation (permitting, inspections, compliance, mitigation, recordkeeping, federal reporting).

Services:

RSA with DOL continues. Once primacy is approved, estimated to be in year 4 or 5, efforts by the DOL will shift to counseling the agencies on implementation of the primacy program, and the nature of Law's work will likely vary based upon the specific projects and dredge and fill permit applications that need state approval. RSA with DNR continues.

Commodities:

Reflects the reduction of FY15 one-time costs for furniture and computers for three positions, computer replacements in FY18 (five positions) and FY19 (three positions).

Withdrawn 4.12.13

28-GS1750A.5
Nauman
3/26/13

AMENDMENT #1

OFFERED IN THE HOUSE FINANCE COMMITTEE BY REPRESENTATIVE EDGMON
TO: SB 27

1 Page 1, line 8, following "FINDINGS":

2 Delete "."

3 Insert "AND INTENT. (a)"

4

5 Page 2, following line 10:

6 Insert new subsections to read:

7 "(b) It is the intent of the legislature that

8 (1) government to government coordination and consultations take
9 place if federal authorization is received for the administration and enforcement of a
10 state dredge and fill permitting program under 33 U.S.C. 1344 (sec. 404, Clean Water
11 Act);

12 (2) a federally recognized tribe be treated by the state as a government
13 for the purposes of government to government coordination and consultation.

14 (c) In this section, "federally recognized tribe" means a tribe that is recognized
15 by the United States Secretary of the Interior to exist as an Indian tribe under 25
16 U.S.C. 479a (Federally Recognized Indian Tribe List Act of 1994)."

Withdrawn 4.12.13

28-GS1750A.4
Nauman
3/21/13

AMENDMENT #2

OFFERED IN THE HOUSE

TO: SB 27

by Rep Vasa

1 Page 5, following line 9:

2 Insert a new subsection to read:

3 "(d) The Department of Environmental Conservation and the Department of Natural
4 Resources shall consider a reasonable fee structure for permit applications under this section
5 in order to mitigate the costs of administering a state permitting program."



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Environmental
Conservation

DIVISION OF WATER

555 Cordova Street
Anchorage, Alaska 99509
Main: 907.269.7599
Fax: 907.269.0291

April 1, 2013

Representative Bill Stoltze, Co-Chair
Representative Alan Austerman, Co-Chair
House Finance Committee
State Capitol, Room 510
Juneau, AK 99801

Dear Representative Stoltz and Representative Austerman:

This letter responds to questions that came up today in the House Finance Committee hearing on SB 27, a bill authorizing DEC and DNR to assess and pursue state primacy of the Clean Water Act Section 404 dredge and fill permitting program.

Representative Wilson asked whether under primacy the State of Alaska would lose any right it currently has to challenge EPA or the U.S. Army Corps of Engineers if the State disagrees with a federal agency's decision that certain permafrost areas in the state are to be considered "wetlands" that are "waters of the United States" for purposes of Section 404 jurisdiction?

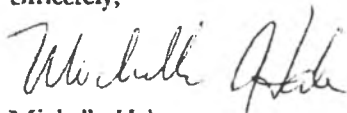
Response: No. The State would not lose any existing right it has to assert such a challenge. The regulatory definition of "wetlands" and the courts' interpretation of the federal definition have been evolving and could change again. The State will retain its ability to challenge evolving definitions of wetlands when we believe the federal agencies or lower courts have not followed the requirements of the Clean Water Act or other applicable federal law. In individual site determinations, EPA would still have an oversight role, and we anticipate when and how they would exercise their oversight would be set out in the Memorandum of Understanding between the state agencies and EPA. We also anticipate, with primacy, the State will be better positioned for these challenges, with State-developed guidance and with on-the-ground experience in implementing such changes to definitions.

Representative Austerman asked whether, under state primacy, the state agencies will conduct any environmental impact analysis for a project needing a 404 permit if there isn't a federal requirement to do an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA).

Response: A NEPA review is triggered by a federal decision – a federal permit, a project on federal land, or federal funding for a project. If the State has primacy for the 404 permitting program and there is no other federal decision involved in a proposed project, the State's issuance of a 404 permit would not trigger NEPA. However, when considering whether to issue a 404 permit, the State must comply with the guidelines adopted by the Corps and approved by EPA under section 404(b)(1) of the Clean Water Act. These Section 404(b)(1) guidelines are used to determine whether a proposed site for the disposal of dredged or fill material would be appropriate. The guidelines require that practicable alternatives to the proposed discharge site or activities be examined, and that no discharge of dredged or fill material shall be permitted if there is a practicable alternative. Practicable alternatives include activities which do not involve dredged or fill materials, and discharges of dredged or fill material at other locations with potentially less damaging consequences. The guidelines specify that for federal decisions subject to NEPA, the NEPA analysis will in most cases satisfy this 404(b)(1) alternatives analysis. Conversely, where NEPA is

not required (for example, on an action or project where the state has 404 primacy and there are no federal decisions involved), the practicable alternatives analysis and determination under Section 404(b)(1) will largely serve the purpose of the NEPA alternatives analysis.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Hale". The signature is written in a cursive style with a large initial "M".

Michelle Hale
Director



Committee folders

Cheesh'na Tribal Council
P.O. Box 241
Chistochina, AK 99586
(907) 822-3503
822-5179 Fax

March 26, 2013

Governor Sean Parnell
Alaska Capitol Building
Third Floor
Juneau, AK 99811

The Honorable Charlie Huggins
Senate President
State Capitol Room 111
Juneau, Alaska 99801

The Honorable Mike Chenault
Speaker of the House
State Capitol room 218
Juneau, Alaska 99801

Governor Parnell,
Senate President Huggins,
House Speaker Chenault:

The Cheesh'na Tribal Council opposes SB 59 / HB 129, SB 27 and HB 77.

These currently proposed batch of bills would eliminate substantive and meaningful opportunities for tribes to engage in land use and natural resource decision-making. Tribal participation is necessary to ensure that the State of Alaska's Department of Natural Resources (DNR) fully evaluates impacts to subsistence and cultural resources in natural resource decisions directly impacting tribes.

SB 59 and HB 129 make radical changes to the oil and gas approval structure by sacrificing meaningful opportunities for Tribal governments and local communities to provide local knowledge and input. Holding a public notice and comment period only once every ten years for exploration or development in a multi-million acre area; would eliminate the opportunity for tribes and communities to evaluate specific plans of operation, and the associated site-specific and cumulative impacts of development activities. We can best understand the impact of proposed activities on our community and provide the most meaningful information to DNR on how to address those impacts by evaluating a specific proposed plan. Not providing local stakeholders an opportunity to review specific plans and instead requiring that Tribes participate long before any specific project is proposed, when our community can only consider a potential project and its impacts in the abstract, will lead to an uninformed and unengaged public and harmful, poor decision making by DNR.

House Bill 77, Senate Bill 26 offer a number of ways to take away the public's control of water resources, to stop public participation, and to deny access to courts on natural resource decisions. Current law allows Alaskans to secure "in-stream flow" rights to ensure there is enough water in streams for fish to survive, especially salmon. Governor Parnell's proposal will strip this right from Alaskans. Governor Parnell's proposal will give corporations unlimited access to water through "temporary" water-use permits, and make it harder for Alaskan's to challenge harmful permits.

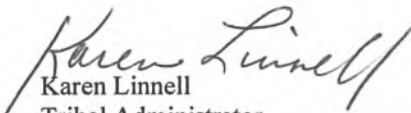
Alaska State House of Representatives bill 77 (HB77) raises more concerns when its impact is considered with other legislation currently being considered by the legislature.

HB 77, as it is currently written, allows DNR to repeatedly issue temporary water use permits for industrial operations. A notice and comment period is not required when issuing a temporary water use permit and the permits are often issued in a few days. If passed, industrial operators could continually apply to re-issue a temporary water use permit without any opportunity for area residents to share knowledge and concerns about potential impacts from the oil and gas operations' use of water on subsistence and cultural resources.

SB 27 could be seen as an attempt to preclude formal government to-government consultation for the majority of wetlands permits issued under the Clean Water Act.

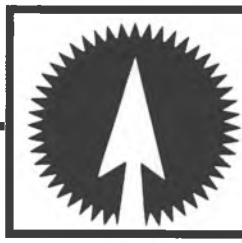
Unlike the Army Corps of Engineers, the Federal agency that currently administers the wetlands permitting program, the state has no obligation to engage in formal consultation with tribes. Without formal consultation, sovereign tribes will be left to use the processes eroded by SB 59 and HB 77 to have a voice in oil and gas development decisions. Taken together, these bills radically change the permitting process by eroding the ability of Alaskan communities and governments to participate in natural resource decision making; and insulating DNR's decision making from public involvement and scrutiny when it makes critical decisions that impact customary and traditional life ways, and subsistence and cultural resources. For these reasons the Cheesh'na Tribal Council opposes HB 129 / SB 59, HB 77, and SB 27.

Sincerely,


Karen Linnell
Tribal Administrator

Cc: Sen. John Coghill, Senate Majority Leader
Sen. Johnny Ellis, Senate Minority Leader
Sen. Kevin Meyer, Senate Finance Co-chair
Sen. Pete Kelly, Senate Finance Co-chair
Sen. Donald Olson
Rep. Lance Pruitt, House Majority Leader
Rep. Beth Kerttula, House Minority Leader
Rep. Alan Austerman, House Finance Co-chair
Rep. Bill Stoltze, House Finance Co-chair
Rep. Neal Foster

Alaska Forest Association



111 Stedman Street
Ketchikan, AK 99901
Phone: 907-225-6114
Fax: 907-225-5920

March 26, 2013

Representative Bill Stoltze
State Capitol
Room 515
Juneau, AK 99801-1182

email representative.bill.stoltze@akleg.gov

Dear Representative Stoltze,

The Alaska Forest Association is writing to let you know we support of SB27 - An Act establishing authority for the state to evaluate and seek Primacy for administering the regulatory program for dredge and fill activities allowed to individual states under federal law and relating to the authority; and providing for an effective date.

Like many other industries, we have experienced unnecessary permitting delays and unnecessary permit stipulations when applying for some of our fill permits.

We believe it is better to have the State of Alaska manage the dredge and fill activities in waters and wetlands in Alaska. Alaska's State agencies are more familiar with the unique issues regarding development in Alaska and Alaska's State agencies are less prone to pressure to political pressures than federal bureaucrats who answer to federal administrators outside our state.

We believe the State will manage the 404 Program more efficiently than the federal government and we believe State management will provide faster, more predictable and less bureaucratic permitting and enforcement that the current federal management.

Thank you,

Owen Graham
Executive Director
Alaska Forest Association

Alaska Trucking Association, Inc.

3443 Minnesota Drive · Anchorage, Alaska 99503 · Phone (907) 276-1149 · Fax (907) 274-1946

www.aktrucks.org

The authoritative voice of the trucking industry in Alaska

March 26, 2013

Representative Bill Stoltz, Co-Chair
House Finance Committee
State Capitol
Juneau, AK 99801

Sent via e-mail: representative.bill.stoltze@akleg.gov

Dear Co-Chair Stoltz,

The Alaska Trucking Association wants to be on record supporting SB27, An act establishing authority for the state to evaluate and seek primacy for administering the regulatory program for dredge and fill activities allowed to individual stte under federal law and relating to the authority.

We believe that Alaskan are more capable and better prepared to manage the dredge and fill activities in the waters and wetlands in Alaska. We also believe that state management of the 404 program will result in better and more expeditious handling of permit requests.

We urge your favorable consideration.

Sincerely,



Aves Thompson
Executive Director



If you got it, a truck brought it...



ASSOCIATED GENERAL CONTRACTORS of ALASKA

8005 Schoon Street • Anchorage, Alaska 99518
Telephone (907) 561-5354 • Fax (907) 562-6118

3750 Bonita Street • Fairbanks, Alaska 99706
Telephone (907) 452-1809 • Fax (907) 456-8599

Representative Bill Stoltze
State Capitol Building, Room 515
Juneau, AK 99801

April 2, 2013

RE: SB27

Dear Representative ~~Stoltze~~ *Bill*

On behalf of the Associated General Contractors of Alaska, a construction industry trade association of 660 construction industry business members, we heartily support SB27.

As an advocate for our members and the Alaska construction industry, we look for ways to help the construction industry either directly or indirectly by raising the opportunities for everyone. SB27 can result in faster and better regulatory decisions. It may result in key decisions for development to no longer be in federal hands, but in the hands of the state.

State primacy for NPDES was approved a couple years ago. The fears of rubber stamp permitting that were expressed in the legislative approval then have been completely unfounded. The NPDES primacy to the state and away from the EPA has proven to be an improvement and benefit to all involved. I believe that this effort to get 404 primacy will result in an even greater benefit to Alaska.

In my father's days in Alaska, the biggest obstacle they faced in trying to do something was getting the money. Today, the biggest obstacle is getting permission. SB27 has the potential to help important projects get that permission. Who knows better what is best for Alaska, but Alaskans.

This is good legislation and needs to move forward. Thank you in advance for your support of SB27.

Sincerely,

John MacKinnon
Executive Director
Associated General Contractors of Alaska

STATEWIDE PERMITTING REFORM

House Finance Committee

March 26, 2013

Department of Natural Resources

- Dan Sullivan, Commissioner



IMPORTANCE *of* PERMITTING REFORM *for* ALASKA'S COMPETITIVENESS

Permitting reform has bipartisan, national and local recognition and support

- Permitting reform is a bipartisan effort as policymakers realize the economic benefits of allowing large-scale development projects to proceed in a responsible, timely manner
- States as politically diverse as California, Massachusetts, Indiana, and Kansas are fully engaged in modernizing their permitting processes
- The Federal government also recognizes the issues and has undertaken initiatives to reduce costs, simplify the system, and eliminate redundancy and inconsistency
- Last year (February 2012), *The Economist* ran a cover story called “Over-regulated America” in which it concluded that “America needs a smarter approach to regulation” that will “mitigate a real danger: that regulation may crush the life out of America’s economy”
- In *Newsweek* (June 2011), President Bill Clinton lamented that it can take three years or more to permit major economic development projects. One of his top recommendations to put Americans back to work was to speed up the regulatory approval process and grant state waivers on environmental rules to hasten start times on construction projects



IMPORTANCE *of* PERMITTING REFORM *for* ALASKA'S COMPETITIVENESS

Permitting reform is a national issue affecting U.S. competitiveness

- Potential investors sometimes express reluctance to pursue projects in the U.S. and Alaska because of the ever-present risk of permitting delays and litigation
- In 2012, the investment firm Behre Dolbear Group, which undertakes an annual global survey of mineral sector investment, ranked the United States last (tied with Papua New Guinea) out of 25 countries in the category of “permitting delays”
 - “Permitting delays are the most significant risk to mining projects in the United States”
 - States are negatively impacted by federal rules that they are bound to enforce resulting in a 7- to 10-year waiting period before mine development can begin
 - Australia is one of the countries with the fewest permitting delays
- Contrast Alcan Highway construction



*“Permitting delays
are a global issue.”*
– Behre Dolbear, 2012 Ranking of
Countries for Mining Investment:
Where “Not to Invest”

IMPORTANCE *of* PERMITTING REFORM *for* ALASKA'S COMPETITIVENESS

Jobs and the Environment are Undermined by Permitting Delays and Overregulation

- While an overly burdensome regulatory system can discourage investments and job creation, it can also undermine, not enhance, environmental protection
- When companies forgo investing in places like Alaska and the U.S.—places with very high environmental standards—because of regulatory delays, it can result in passing energy and mineral investment to nations with substandard environmental regulations and little capacity or desire to protect the environment
 - Last year the Associated Press estimated that 5 to 20 million tons of oil leaked a year in Russia. At even the lower end, that would be the equivalent of a Deepwater Horizon blowout about every two months
 - Russia experienced approximately 18,000 oil pipeline ruptures in 2010 – the figure in the U.S. for the same year was 341
- The global environment would be much better off if hydrocarbons and other natural resources were produced in countries with the highest environmental standards rather than some of the lowest



IMPORTANCE *of* PERMITTING REFORM *for* ALASKA'S COMPETITIVENESS

Timely, predictable, and efficient permitting is critical to other statewide strategies

Secure Alaska's Future: Oil

- I. Increase production by making Alaska more competitive
- II. Ensure the permitting process is structured and efficient**
- III. Facilitate and incentivize the next phase of North Slope development
- IV. Promote Alaska's resources and positive investment climate to world markets

Secure Alaska's Future: Strategic & Critical Minerals

- I. Undertake a statewide assessment of Alaska's strategic mineral potential—millions budgeted for this project
- II. Provide support for the development of known or highly prospective strategic mineral occurrences throughout Alaska through infrastructure partnerships and incentives
- III. Improve the structure and efficiency of permitting processes in order to expedite mineral development, including strategic minerals
- IV. Deepen partnership and cooperation with the federal government, local governments, Native corporations, and other potential new entrants to encourage domestic exploration, development, and processing of REEs and other strategic minerals
- V. Attract new investment and markets for Alaska's abundant mineral resources

STATEWIDE PERMITTING REFORM

- STRATEGY -

Objective:

Improve the State of Alaska's permitting processes in order to advance the public interest by ensuring projects are permitted in a timely, predictable and efficient manner while safeguarding the environment.

DNR has been working with a team from DEC, ADF&G, and LAW to develop and advance strategies that aim to:

- I. Improve agencies' internal permitting structure to create a more efficient, timely, and certain process
- II. Enhance coordination within different state departments and with different entities and stakeholders throughout the state
- III. Seek input from the public about the permitting process including input from municipalities, industry and non-governmental organizations
- IV. Improve coordination between the state and the federal government—federal permitting issues have a strong influence on state projects
- V. Anticipate and plan for permitting the next phases of resource development, e.g. the Shale Oil Task Force



STATEWIDE PERMITTING REFORM

- SIGNIFICANT PROGRESS MADE -

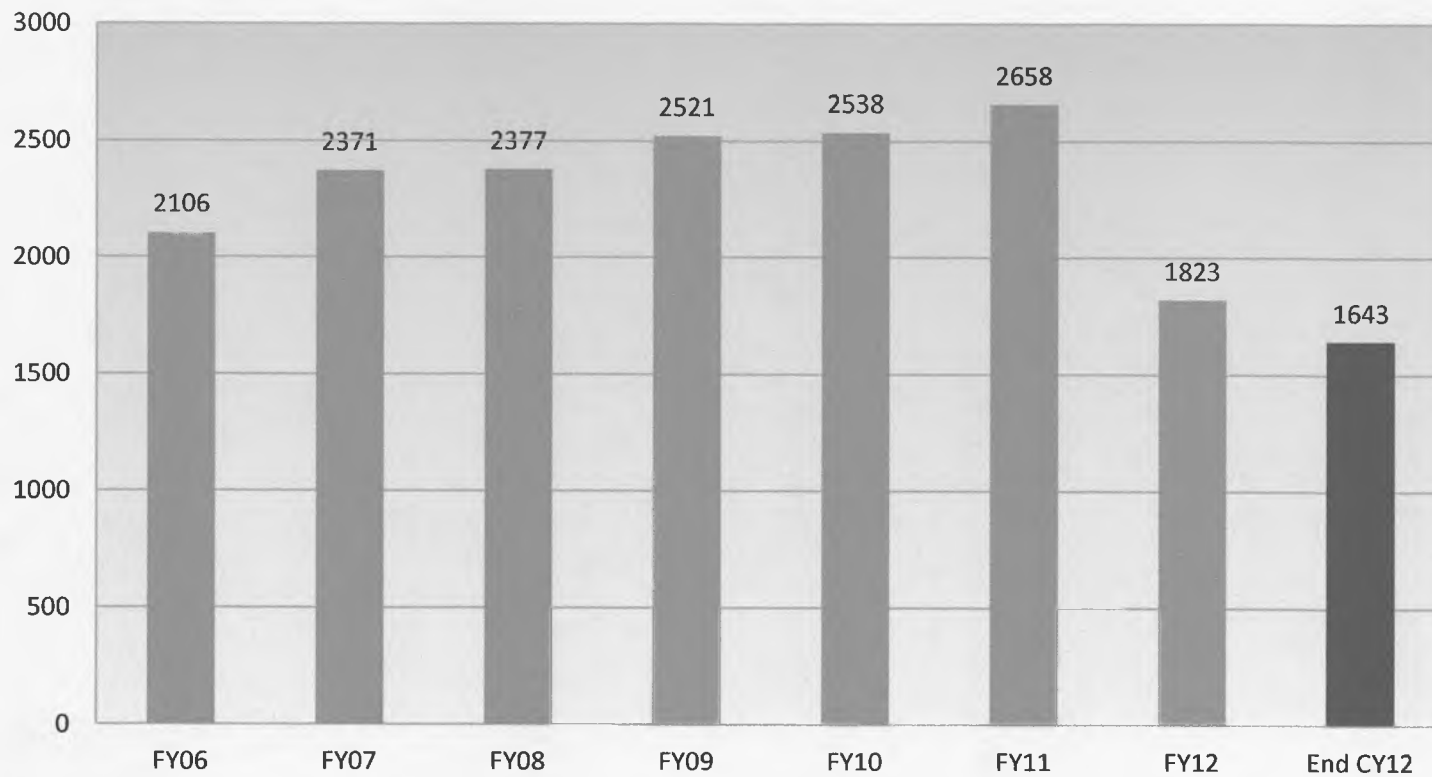
- In FY12, the Legislature provided approximately \$2.7 million in operating funds for the Division of Mining, Land & Water to create efficiency, timeliness and certainty in the permitting process
- We utilized capital funding from FY12 (\$2.5M for the Unified Permit Project and Document Management) to focus on business management software and services
- In FY13, the Legislature approved the continuation of FY12 operating funds as part of the ongoing base for permitting and an additional \$950.0 to cover increased personnel costs and fill vacant positions focused on permitting
 - FY13 capital budget included \$3.3M to continue work on the Unified Permit Project, including the continuation of IT strategies and Business Process Management
- We reclassified and updated over 50 position descriptions
- Since the beginning of FY12, the backlog has been reduced by 38.2% (1,015 authorizations)
- We have conducted public meetings statewide for input on state permitting processes
- We are evaluating internal processes to identify and fix inefficiencies



STATEWIDE PERMITTING REFORM

- SIGNIFICANT PROGRESS MADE -

DMLW Backlog Authorizations



STATEWIDE PERMITTING REFORM

- SIGNIFICANT PROGRESS MADE -

2012 Statutory Changes – HB361

- The Division of Mining, Land and Water identified over 30 statutory changes that would help reduce applicant costs, create efficiencies, reduce redundancies, and reduce opportunities for legal challenges
- During the 2012 Legislative session, the Governor introduced HB 361, which included the highest priority changes related to leasing and disposal programs that would help reduce the permitting burden on the applicant and free more time for staff to work on processing applications
- The Legislature passed HB 361 and it has been signed by the Governor



STATEWIDE PERMITTING REFORM

- 2013 LEGISLATURE -

2013 Statutory Changes

- The purpose of **HB78/SB27** is to provide the State authority to evaluate and, potentially, assume primacy for permitting of dredge and fill activities in waters and wetlands in the State, as provided for in Section 404 of the Clean Water Act (CWA), which requires a permit from the Corps of Engineers for discharge of dredged or fill material into waters of the U.S.
- **HB 129/SB 59** enables the Division of Oil and Gas to implement efficiencies and streamline its project approval processes by allowing DO&G to provide a public notice for the oil and gas exploration or development phase across a geographical area, without regard to lease boundaries, while continuing to provide environmental safeguards through special stipulations and agency reviews.



State of Alaska
Departments of Environmental Conservation and Natural Resources
Clean Water Act Section 404 Dredge and Fill Permitting and Compliance
State Primacy

Primacy Benefits – Why Should Alaska Invest in 404 Program Primacy?

February 22, 2013

Fifty years ago the delegates for statehood promised that the State of Alaska would act like a state and not continue to expect federal assistance to run programs that the state can and should run. The State has recently completed taking over primacy for the wastewater discharge permitting program (Clean Water Act Section 402) from the Environmental Protection Agency (EPA), and assuming primacy for the Clean Water Act (CWA) Section 404 dredge and fill permitting and compliance program (the “404 program”) will further advance the State in upholding that promise.

The 404 program requires a permit from the U.S. Army Corps of Engineers (the Corps) for all dredge or fill activities that affect “waters of the United States.” Because of Alaska’s vast wetlands, most construction projects for facilities and infrastructure require a 404 permit. This permitting program has far-reaching effects on development in Alaska.

BENEFITS of a State-managed 404 Program

- **Accountability.** State primacy means that the 404 program is accountable to Alaskans and to the Alaska legislature for implementation of the permit and compliance program (EPA and the Corps are not directly accountable to Alaskans).
- **State, instead of federal, management of water and land use priorities.** A State-run 404 program would help to insulate 404 permitting in Alaska from the uncertainties resulting from shifting national priorities and policies which necessarily must be nationwide in scope, but which are often difficult to apply in Alaska.
- **Reduced bureaucracy.** Currently the Corps is the permitting agency with input from the EPA and certification by DEC that the Corps’ permits meet Alaska’s water quality standards. DNR is involved in coordinating permitting for large projects. Under primacy, 404 permitting activities will be administered by DEC and DNR. Two state agencies, rather than four state and federal agencies, will result in a faster permitting process and a more streamlined program.
- **Time and cost savings in permitting major new facilities and infrastructure.** While permit fees will likely increase under primacy, the cost to the permit applicant to permit some major new facilities may decrease substantially. This decrease in costs will result from increased communication throughout the permitting and public notice phases of a project, the efficiencies of working with two State agencies rather than four federal and state agencies, reduced travel costs for meetings with multiple agencies, and working with permit writers familiar with Alaska conditions.
- **Greater state role in project planning.** A State-issued 404 permit would not trigger the NEPA review process, as does the Corps’ issuance of the permit. However, some projects with other federal actions or federal funding would trigger the NEPA process (for example, a Federal Energy

Regulatory Commission (FERC) license for a hydroelectric dam). Even within a NEPA process, there is benefit in the state playing a greater role as the 404 permitting authority. There is also potential benefit in replacing the formal ESA and EFH consultation processes required of the Corps and EPA with the less formal and faster processes under state primacy while still achieving the objectives of those programs.

- A program tailored to Alaskan needs, to the greatest extent allowed by federal law. Permit requirements tailored to Alaska conditions, resulting in a more flexible approach to wetlands permitting and compensatory mitigation.
- Less emphasis on cumbersome process and more emphasis on results. More timely permitting. The Corps and EPA are both experiencing significant budget reductions. A State-run 404 program will result in more certain funding and staffing, and more timely permitting of projects important to the State. The State will be setting the priorities.
- More predictable enforcement. The state can build specific, timely, and predictable steps into a risk-based enforcement program while maintaining a commitment to compliance assistance.
- Robust public notification and participation opportunities.
- State judicial review. Judicial review of state permitting decisions under primacy would generally be handled in the Alaska courts instead of the federal courts. State judicial review of permitting decisions means better consideration of local issues and the potential for more timely resolution to permit challenges.
- Alaska-specific guidance documents. The state can develop guidance documents that are prepared for the specific needs of Alaska's waters and projects, replacing and/or enhancing Corps and EPA developed guidance which is based on those agencies' national perspectives.
- Availability of efficiency tools. Streamlining the administrative permitting process is a potential advantage of a state 404 permitting program. The State already has tools such as on-line permit applications, on-line permit fee payments, and electronic permit tracking that can be amended to accommodate 404 permitting.
- Predictability and stability in funding. The Army Corps in Alaska has recently taken about a 20% reduction in staff and is facing additional cuts and reductions, at the same time it is facing the need to prepare very large Environmental Impact Statements under NEPA and permit many state projects from large capital budgets in the last few years, which will draw a lot of Corps' staff time. Not taking primacy has consequences that need to be considered as the State tries to build up its infrastructure and put citizens to work.

State of Alaska
Departments of Environmental Conservation and Natural Resources
Clean Water Act Section 404 Dredge and Fill Permitting and Compliance
State Primacy

404 Program Assumption Methods

January 31, 2013

404 Program Assumption Methods

There are two basic ways the state could administer Section 404 dredge and fill permits. They are not mutually exclusive; that is, they can be pursued and implemented simultaneously or separately.

- (1) **State Primacy.** Under CWA Section 404, a state may administer a program to issue and enforce Section 404 permits, subject to certain geographic exceptions. A state program would require federal approval, be subject to the oversight by the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency, and permits that the state may issue will be subject to EPA's veto authority. Proposed legislation (HB 78 and SB 27) expressly authorizes the state to pursue and administer the program if it is reasonable to do so.
- (2) **State Programmatic General Permits (State PGP's).** The Corps of Engineers has authority to issue general permits for dredge and fill actions that are similar in nature with minimal cumulative effects. These permits can be implemented by the state under agreement with the Corps of Engineers and are not subject to the geographic limitations associated with state primacy. The State of Alaska likely already has statutory authority to administer State PGP's, but the proposed legislation (HB 78 and SB 27) provides funding for the state to explore and pursue both this option and the primacy option.

State Primacy

Under Option 1, to assume state primacy, Alaska must submit an application to EPA. That application includes:

- A *letter from the Governor* requesting approval of the State's application;
- An *Attorney General statement* of legal authority that confirms that the State's laws and regulations are sufficient to implement the 404 program and that will ensure consistency with the federal program;
- The State's applicable *statutes and regulations*;
- A detailed *program narrative* that describes how the state will issue permits, ensure permit compliance and perform enforcement, track issued permits and enforcement actions, and submit an annual report to EPA;
- A description of the State's *resources* (staff, job classes, duties, stable funding sources) sufficient to implement and enforce the program;

- *Memoranda of Agreement* with EPA and the Secretary of the Army that describe the relationships and duties between the agencies under 404 program assumption.

EPA is the approval authority for State 404 programs and must consult with the Secretary of the Army and the Secretary of the Interior, acting through the U.S. Fish and Wildlife Service. The Clean Water Act sets specific timeframes for the federal agencies to review a State's application for 404 program primacy.

- Program Assumption should be expected to take a minimum of 4-5 years.

State PGPs

Option 2 provides states the ability to cooperatively issue and administer programmatic general permits with the Corps.

- State PGPs are general permits issued by the Corps of Engineers and managed by the state that authorize and identify the terms, limitations, and conditions under which classes of projects and activities may be authorized under Section 404, with a much more efficient and abbreviated review by the Corps of Engineers; the Corps retains oversight of the state's administration of the PGPs.
- State PGPs may be issued on a local, regional, or statewide basis. The state could pursue administration of Corps-issued PGPs under an MOU regardless of whether it seeks primacy of Section 404 permitting.
- Authorizations to conduct dredge or fill activities under State PGPs are issued to applicants with small projects and minimal adverse environmental impacts, individually or cumulatively.
- A PGP is designed to: simplify the evaluation process; provide equivalent environmental protection; reduce unnecessary duplicative project evaluation; and promote more efficient use of resources.
- PGPs offer more flexibility and can apply to areas subject to the federal navigational servitude.

Senate Finance Committee
Testimony of
Alaska Department of Environmental Conservation
Senate Bill 27
“404 Primacy”
February 26, 2013

What is a 404 program?

Section 404 of the Clean Water Act requires that all dredge and fill activities in surface waters (the ocean, lakes, rivers, streams) and wetlands be permitted. This permitting is done by the U.S. Army Corps of Engineers under what is known as the “404 program.” Per the Clean Water Act, EPA retains oversight over the Corps’ 404 program.

Wetlands provide valuable functions that include habitat for plants and animals, wildlife corridors, improvements to water quality, and flood and storm attenuation. Wetlands in Alaska range from North Slope tundra to forested wetlands in the mountains of Southeast. With over 174 million acres of wetlands (65% of all wetlands in the nation), Alaska’s stake in administering the 404 program is unlike that of any other state.

Examples of activities requiring 404 permits include filling in wetlands for any purpose such as roads, or residential or commercial building pads; and construction of breakwaters, dams, and levees. The 404 permitting process itself involves an evaluation of the dredge and/or fill activity to identify the “least environmentally damaging practicable alternative” (LEDPA) for a project. An authorization for a dredge or fill activity must be accompanied by what is known as 404(b)(1) findings on potential short-term or long-term effects of a proposed discharge of dredged or fill material on the physical, chemical, and biological components of the aquatic environment. This also includes an evaluation of cumulative impacts.

The goal of 404 permitting is to avoid or minimize impacts to aquatic resources, including wetlands. Where impacts are unavoidable, actions are taken or required to mitigate those impacts.

The Clean Water Act intends for states to implement (to assume primacy for) the 404 program with the Corps of Engineers and the Environmental Protection Agency (EPA) acting in an oversight role. States seeking primacy for the 404 program require EPA’s approval.

SB 27 gives the authority to DEC and DNR to evaluate the costs and benefits of a state run program; begin the application development process and to seek approval to implement the program if it makes sense to do so.

How do states assume the 404 program, and what can states gain authority over?

The Clean Water Act spells out the requirements for a state's application for 404 primacy. These include a formal request by the governor; a description of the program as the state will run it; the state Attorney General's declaration that the state program is consistent with the federal program; memoranda of agreement with EPA and the Corps; a description of staffing and funding; and copies of all applicable state statutes, regulations, and administrative procedures. EPA will not approve a program that is less stringent than the federal program.

States may assume primacy for the permitting and compliance program for all waters and wetlands except tidally influenced waters and waters that are or could be used for interstate and foreign commerce and wetlands adjacent to those waters. The Corps will retain authority for permitting dredge and fill activities in these waters in Alaska even after Alaska formally assumes the 404 program.

Two other states already have primacy for the program, New Jersey and Michigan, while other states are considering it. The Department of Environmental Conservation (DEC) currently plays a secondary role in the 404 program in Alaska, reviewing permit applications, in some cases applying Alaska-specific conditions, and "certifying" that the Corps' permits meet State water quality standards.

While I have described the formal process for 404 assumption from the Corps, there is a second mechanism where states can administer Section 404 dredge and fill permits. This is done by partnering with the Corps in the issuance and administration of what are known as State programmatic general permits, or State PGPs. These permits are general permits for dredge and fill actions that are similar in nature and have minimal individual or cumulative effects. The Department likely already has statutory authority to administer State PGPs, but the proposed legislation and fiscal note provide for the state to explore and pursue both this option and the formal primacy option.

Multiple Alaska administrations over many years have considered primacy for the 404 program with the most serious consideration about 10 years ago. The decision at that time was to first pursue State primacy from EPA to implement the federal Clean Water Act (Section 402), National Pollutant Discharge Elimination System Program – the wastewater discharge permitting program. DEC has completed that process with EPA approval of the program in 2008 and the State's final step to have full authority in 2012, when we accepted responsibility for the final industrial sector's permits.

With that recent experience, now is a good time for the Alaska to expand control over its waters, recognizing state priorities for prompt permitting for economic development while protecting water quality. The application process for 404 primacy will be similar, as will program development and implementation. The lessons learned from that experience will apply directly to 404 assumption.

One lesson, however, is that we know that it will take time. There are multiple opportunities along the way for the public to weigh in on program development as well as opportunities for the legislature to have a say in whether the state proceeds with primacy – when we may seek additional statutory changes to ensure the program will be consistent with the federal program and when we seek the budget necessary to implement the program.

Why is assumption of the 404 program important?

Almost half of Alaska is considered wetlands – 65 % of the nation’s wetlands are in Alaska. With wetlands so omnipresent in Alaska, most major projects – and a very large number of minor projects, like housing pads – require 404 permitting. Yet the Corps is experiencing budget cuts and staff reductions. In a state like Alaska with a very narrow window for construction, such delays can and do result in project delays of a year or more. A state-run program that is accountable to Alaskans and the legislature will assure that it is the State that decides the level of resources to devote to a program that is so essential to the state’s economy. The state will have control of its permitting priorities.

Both DEC and DNR have placed significant emphasis in recent years on permit reform. From automated permit application to improved business processes, the State is well-poised to apply these streamlining improvements to the 404 program. These faster, streamlined practices place more emphasis on results – protection of wetlands and water resources – and less on cumbersome processes.

With a state-run program, two agencies – DEC and DNR – that have a long history of successful interaction – will run the program, rather than the four currently involved: The Corps, EPA, DEC, and DNR. Two vs. four simply means less bureaucracy. ADF&G will, of course, retain its Title 16 permitting authorities and DEC and DNR will coordinate and consult with ADF&G as part of the 404 process.

Other benefits of a State-administered program:

- Cost savings for applicants in permitting major new projects.
- Greater certainty of adequate funding and staffing for the program.
- Permits and mitigation solutions that truly reflect Alaska’s priorities and unique conditions with Alaska specific program guidance.
- An improved appeals process that is timelier and less apt to stall projects needlessly and indefinitely.
- Judicial proceedings generally decided by Alaska courts instead of outside federal courts.
- A stable, risk-based, and predictable enforcement regime.
- Replacement of formal federal ESA and EFH consultation processes with less formal, faster processes while still achieving the objectives of those programs.

What does the legislation do?

The legislation before you provides two parallel tracks: Study 404 primacy and prepare an application for the program, and begin capacity building from the start. First, it directs DEC and DNR to evaluate costs, benefits, and consequences of the state assuming primacy for the 404 program, providing resources to the departments to do so. At the same time as the agencies are performing this evaluation, State staff can partner with Corps staff in the issuance of state Programmatic General Permits and authorizations under these general permits, assist the Corps with priority permit issuance, and work alongside the Corps in implementing mitigation projects associated with permitted projects in a way that works for Alaska's unique situation. This capacity building provides tremendous benefit to the state agencies when the state does gain primacy for the program, providing trained staff and tested processes for running the actual program. Additionally, it provides benefits to Alaska's permit applicants who will gain from the state staffing addition: shorter turnaround times for 404 permits, while continuing to protect water quality.

In addition, this legislation provides the authority for DNR and DEC to administer the program and provides the authority for DEC to apply to EPA for authorization for the state-run program, as well as providing both agencies the authority to issue regulations needed for the program.

Because the state is still early in the process of fully understanding the ramifications of 404 assumption, this bill will likely not be the last 404 legislation that comes before you. As we research statutory requirements, it is likely that we will back with needed changes: Statutory change has been required of other states seeking authority for the program. In addition, DEC and DNR will be evaluating the resources necessary to implement and run a state 404 program. The estimates in the fiscal notes that accompany this bill are for the application process and to begin the initial capacity building I've mentioned. By the FY16 budget cycle, however, we expect a decision point regarding whether to advance the primacy effort. At that point, DEC and DNR will have a much better understanding of the resources that will be required for the full program. We expect that additional resources, likely significant because it is a significant program, will be required at that time.

Fiscal Impacts

There are three fiscal notes for SB 27. The dollar amounts from the DNR and Law fiscal notes are included in the services line of the DEC fiscal note – DEC's fiscal note represents the full funding request for the early stages of evaluating and beginning preparation for a potential primacy application; and to increase the State's understanding of the program through capacity development. The fiscal note does not include the full costs to implement a State 404 program.

During the Senate Resources committee meeting, Senator Fairclough asked for a comparison between the steps the State took to evaluate and assume primacy for the Clean Water Act Section 402 National Pollutant Discharge Elimination System wastewater discharge permitting program and

the steps we would take relating to the CWA Section 404 program if SB 27 passes. The federal procedures and the requirements for a state's application for primacy are very similar for the two programs.

One difference in the two paths to primacy is that DEC was already operating a robust wastewater permitting program and the existing 29 positions transitioned to the 402 program. While DEC and DNR have significant experience on large projects with the 404 program, the current DEC investment is about 3-4 FTE spread over approximately 7 employees.

The fiscal note for SB 27 represents a faster pace than DEC's pace with the similar effort for Section 402 primacy. The first several years of Alaska's 402 primacy effort were spent learning about the application process for primacy; working with EPA to help them understand that the State was serious in its desire and plan to seek primacy; and helping Alaskan stakeholders understand costs, benefits, and consequences of primacy. This effort and preparation of the primacy application was accomplished with 2-4 full-time positions and existing staff over a period of about 6 years.

The State has learned from this process, as has EPA, and much of the early work done for 402 primacy can be compressed during the 404 primacy application process. The fiscal note for SB 27 represents the most efficient way to timely analyze the costs, benefits, and consequences of 404 primacy; to work with the EPA and the Army Corps of Engineers to resolve the complex questions that 404 assumption raises; begin to increase program capacity; and to apply for the program.

Once we have evaluated the overall costs for operating a state 404 program, the legislature will have one or more opportunities to weigh in on whether to proceed with primacy when it considers any additional statutory authority needs, and when it evaluates whether and how fast the state adds sufficient resources to implement the 404 program.



LEGISLATIVE RESEARCH SERVICES

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State Capitol, Juneau, AK 99801

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Research Brief

TO: Representative Scott Kawasaki
FROM: Susan Haymes, Legislative Analyst
DATE: March 25, 2013
RE: Clean Water Act Section 404 Permits
LRS Report 13.328

You asked about Section 404 permits issued under the Clean Water Act by the U.S. Army of Corps of Engineers. Specifically, you wished to know how many Section 404 permit applications are pending in Alaska. Additionally, you wanted to know how Alaska's average permit processing time compares with the nationwide average.

Section 404 of the Clean Water Act (CWA) requires that, unless exempted, anyone discharging dredged or fill material in navigable waters of the United States must obtain a permit from the U.S. Army Corps of Engineers (Corps).¹ Under the Section 404 program, the Corps issues three types of permits—*general*, *individual (standard)*, and *letters of permission*. Briefly, *general* permits cover projects that will have a minimal impact on the environment, *individual* permits are issued for projects that are likely to have more than a minimal impact, and *letters of permission* are a type of individual permit that can be granted on an expedited timeline under certain conditions.

According to Corps Field Office Manager Dave Casey, the Alaska District Corps office processed 1,100 Section 404 permits in Fiscal Year (FY) 2012. Of those applications, 62 percent were for general permits and 37 percent were for individual permits. Only two permits were denied in FY 2012. The Alaska District Corps processed 84 percent of the general applications in less than 60 days, which meets the national standard for processing general permits. For individual applications received, the Corps processed 67 percent in less than 120 days, which exceeds the national standard of 50 percent.

Currently, 44 applications, including 37 individual permit applications and seven letters of permission are pending before the Alaska District Corps. Thirty of the 44 applications (24 individual applications and six letters of permission) were submitted to the Alaska District Corp office during the last six months, with 16 submitted during the last three months.² More complex projects that require multiple permits from federal, state, and local agencies often require longer processing times. For example, processing individual applications that require Environmental Impact Statements (EIS) under the National Environmental Policy Act (NEPA) can take up to three years.

Types of Section 404 Permits

Generally, Section 404 permit applicants must demonstrate that the discharge of dredged or fill material will not significantly degrade the affected waters and that there are no practicable alternatives less damaging to the environment. If wetlands are impacted, the applicant must describe how the project will mitigate any adverse impacts on wetlands by first avoiding and

¹ The Clean Water Act prohibits the discharge of "any pollutant" into waters of the United States unless it is authorized by a permit. The Section 404 program issues permits for the discharge of dredged and fill materials; other sections address the discharge of other pollutants and water quality certification. Under Section 404(b)(1), the Environmental Protection Agency and the Corps have developed guidelines the Corps uses in the Section 404 permit process. "Waters of the U.S." includes essentially all surface waters such as all navigable waters and their tributaries, all interstate waters and their tributaries, all wetlands adjacent to these waters, and all impoundments of these waters (Public Law 95-217; 33 U.S.C. 1344 et seq.).

² A list of pending permits can be accessed at http://geo.usace.army.mil/egis/f?p=340:6:549017154732601:pg_R_55421424929599712:NO&pg_min_row=1&pg_max_rows=30&pg_rows_fetchd=14.

then minimizing such impacts. In the event that adverse impacts are unavoidable, the applicant must include a statement explaining the mechanism that will be used to compensate for the impact.

General Permits

The Corps may issue *general* permits to authorize categories of very similar activities that are minor in scope with minimal projected impacts (Section 404[e]). General permits are meant to reduce the paperwork and time required to start projects that will have minimal adverse impacts on the environment. The Corps issues three types of general permits: *regional*, *nationwide*, and *programmatic*. The Alaska District Corps issues only *regional* and *nationwide* permits.³

The Alaska District Corps has authorized approximately 16 *regional general permits* that allow specific activities either statewide or for certain regions in Alaska.⁴ For example, one regional permit authorizes the placement of dredged and/or fill material into a total of 7.55 acres of wetlands associated with wetland development in the Wrangell Industrial Park Subdivision, while another permit authorizes the placement of dredged or fill materials by placer mining operators throughout the state, when the disturbance area is ten acres or less and the stream diversion is less than 2,000 feet. Each regional permit has certain terms and conditions that must be followed and most require written verification from the Corps before work can begin on the project. Regional general permits are issued for five years but can be reissued by the Alaska District office.

Through the federal rulemaking process, the U.S. Corps has adopted 50 types of *nationwide permits*, authorizing such activities as bank stabilization, residential development, commercial and industrial developments, utility lines, mining, boat ramps, and aids to navigation.⁵ Each permit has specific requirements and impact limits. In addition, each Corps district may attach special conditions to the nationwide permit. Thus, work performed under a nationwide permit must meet all applicable terms and conditions, including the regional conditions specific to Alaska.⁶ Of the 50 permits, 21 require the applicant to submit a pre-construction notification (PCN) to the District Corps Office, which provides the Corps with an opportunity to confirm whether or not the proposed activities qualify for a nationwide permit. If the proposed project qualifies, the District Engineer issues a verification letter that may contain special conditions. Seventeen of the 50 nationwide permit types do not require a PCN, while 12 require a PCN under certain conditions. The nationwide permits that do not require a PCN may be used to authorize a project without notifying the Corps.⁷

According to Mr. Casey, of the 1,100 applications received in FY 2012, 62 percent or 682 applications were general permits.⁸ The Corps processed 84 percent of these applications in fewer than 60 days from receipt of the completed application. Mr. Casey notes that this percentage meets the national standard for processing general permits.

³ Programmatic general permits can be issued to avoid duplication of permits for state, local, or other federal agency programs. For example, if a state or local government has a requirement that is at least as stringent as the Corps requirement, the applicant does not need to obtain a general permit from the Corps. The state or local standard must regulate the same activity in the same way as the federal requirement to qualify as a programmatic general permit. Currently, Alaska does not have any standards that meet these criteria.

⁴ A list of current Alaska District Regional General Permits can be accessed at www.poa.usace.army.mil/Missions/Regulatory/Permits/RegionalGeneralPermits.aspx.

⁵ The CWA requires the Corps to reissue nationwide permits every five years. The current list of nationwide permits became effective on March 19, 2012. The 50 nationwide permit types can be viewed at www.poa.usace.army.mil/Portals/34/docs/regulatory/Summary_Table_2012%20NWPs_14%20Feb%202012.pdf.

⁶ Alaska's regional conditions can be accessed at www.poa.usace.army.mil/Portals/34/docs/regulatory/Final%202012%20NWP%20Regional%20Conditions.pdf

⁷ In this situation, the individual may still request conformation from the Corps that the activity complies with the terms and conditions of the permit. The Corps recommends that even if confirmation is not sought, the individual should document the reasons why the project is authorized under the nationwide permit.

⁸ Dave Casey, Kenal Field Office Manager for the Alaska District Corps can be reached at 907.283.3519.

Individual (Standard) Permits

If a project does not meet the requirements of a general permit, an *individual* permit is needed. *Individual* permits require public review of the proposed project. The application process for an individual permit typically includes

- optional pre-application consultation that provides the applicant the opportunity to address concerns prior to submission of the application;
- submission of the application;
- issuance of the public notice to all known interested persons, as well as to Federal, state and local agencies;
- public comment period, usually lasting 30 days;
- review of the public comments, during which the Corps may request additional information from the applicant;
- Corps application evaluation and decision; and the
- appeals process.

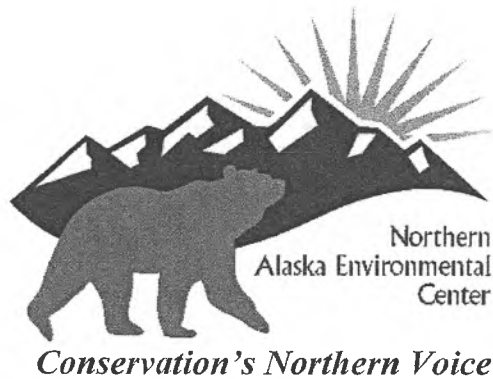
Some projects may require permits from other federal or state agencies, which must be secured during this time as well. The Corps will issue a permit if the proposed project is not contrary to the public interest and satisfies Section 404(b)(1) guideline requirements. Mr. Casey reports that in FY 2012, of the 407 individual applications received, 67 percent were processed in less than 120 days, which exceeds the national standard of 50 percent.

Letters of Permission (LOPs)

A *letter of permission* (LOP) is an expedited process for an individual permit that includes coordination with federal and state fish and wildlife agencies and a public interest evaluation, but does not require public notice.⁹ Letters of permission can only be issued in situations where the District Engineer has previously approved similar activities in coordination with state and federal agencies, and the project's proposed work is minor and does not have significant impacts on the environment. A decision on an LOP is usually made within 45 days. Letters of permission are issued in letter form and identify the permittee, project location, work authorized, time limits, and any project-specific limitations or special conditions.

We hope this is helpful. If you have questions or need additional information, please let us know.

⁹ Typically, adjacent property owners who might be affected are also notified.



*Conserving and protecting habitats in Interior and Arctic Alaska
for wildlife, culture, environmental health and future generations since 1971.*

March 14, 2013
Alaska Legislature
State Capitol
Juneau, Alaska 99801

The Northern Alaska Environmental Center (NAEC) is opposed to HB 78 and SB 27 which authorizes the state to evaluate and seek primacy over dredge and fill activities under Section 404 of the Clean Water Act. These bills attempt to take unprecedented actions to strip away the role of public participation in addressing oil, gas, mining, and other industrial projects in Alaska's rivers, streams, wetlands and coasts and prime fish and wildlife habitats.

This legislation proposes to eliminate the Army Corps of Engineers' role in permitting in Alaska-for dredging, draining, filling, rerouting, or development in wetlands. This would eliminate the requirement for an Environmental Impact Statement and NEPA review which provides a robust public process and evaluates alternatives and impacts to clean water, fish, and wildlife. HB 78 and SB 27 will allow the state to roll back regulations, making it easier for corporations to develop wetlands without a thorough review of alternatives and potential cumulative impacts to clean water, fish, wildlife and migratory birds-all of which are used as local food sources for many Alaskans

HB 78 and SB 27 take direct aim at citizen involvement and create significant barriers for Alaskans to participate in resource development decisions. The state cannot manage or develop Alaska's resources for the maximum benefit of its people without a legitimate level of participation by the public so we ask that you vote no on HB 78 and SB 27.

Sincerely,

David L. Arnold, Ph.D.
Executive Director

//

Public locked out

David L. Arnold | Posted: Saturday, March 16, 2013 12:00 am

The Parnell administration is working to diminish your rights as an Alaska resident. With the help of the Legislature, the governor is taking unprecedented actions to strip away the role of public participation in addressing oil, gas and other industrial projects in Alaska's rivers, streams, wetlands, coasts and prime fish and wildlife habitats. Several bills that will lock out the public from having a say on the future of Alaska's resources are being fast-tracked through legislative committees, providing only the bare minimum of 24-hour notice for public testimony before being immediately voted on.

House Bill 77, which just passed the House, and its companion, Senate Bill 26, make several changes to statutes that govern the Department of Natural Resources. This legislation would revoke the right of any and all Alaska residents, tribes and organizations to reserve enough water in streams for salmon to continue to spawn, as well as to maintain adequate hydrologic flow for protecting other fish and wildlife habitat, maintain water quality and recreational uses.

There are more than 400 pending applications for in-stream water reservations; this bill would immediately cancel all 400. There are 35 reservation permits held by individuals, tribes and organizations; this bill would revoke all of them.

This legislation also would change the law by removing the public right to notice and comment for Preliminary Best Interest Findings and severely limit who can participate in the administrative process before DNR. Under current law, Alaskans have a voice early in the process to provide information on potential effects to fish, wildlife, water and human health.

It is critical for Alaskans' voices to be heard before DNR selling, leasing or otherwise disposing of state lands, resources property or other interests in them to ensure these are in the state's best interests with respect to effects on wildlife, historic and cultural resources, and local communities.

Ironically, public testimony for SB 26 was scheduled for 5:15 p.m. on Feb. 6 and Feb. 8 in the Senate Resources Committee, while the doors to the Capitol building were locked at 5 p.m. How does the public access a public meeting in a locked public building?

HB 78 and its companion SB 27 would give Alaska control of the federal Clean Water Act (wetlands) permits under Section 404, currently under the authority of the U.S. Army Corps of Engineers. This would remove any Environmental Protection Agency oversight of the process despite their expertise or the application of our nation's bedrock environmental law, the National Environmental Policy Act, which requires an environmental impact statement for projects with significant impacts. This legislation will allow the state to roll back regulations, making it easier for corporations to develop wetlands without a thorough review of alternatives and potential cumulative impacts to clean water, fish, wildlife and migratory birds — all of which are used as local food sources by many Alaskans.

Public testimony was scheduled in the Senate Finance Committee on Feb. 26 with only the minimum notice required. After hearing from one citizen, Sen. Kevin Meyer, R-Anchorage, closed public testimony. Sen. Olson, D-Nome, requested that public testimony remain open because of the high number of contacts his office has received about the bill. Sen. Meyer's response was that "Public testimony is closed. If people want to comment on the bill, they can send us an email." Since when has public participation been limited to only those who can use and access email?

The Parnell administration and the Legislature must be called out for their blatant disregard for the public's role in the development of Alaska's natural resources. Article VIII, Section 3 of Alaska's Constitution states, "Wherever occurring in their natural state, fish, wildlife and waters are reserved to the people for common use." HB 77/SB 26 and HB 78 and SB 27 take direct aim at Alaska citizen involvement. The state can't possibly manage or develop Alaska's resources for the maximum benefit of its people without a legitimate level of public participation.

David L. Arnold, Ph.D., has served as executive director of the Northern Alaska Environmental Center in Fairbanks since June 2012. Previously, he was city administrator in Nuiqsut for three years. He spent 25 years in academia as an atmospheric sciences and hydrology professor at universities in the Lower 48 and worked on climate data reconstruction in the Colville Delta region.

State of Alaska
Departments of Environmental Conservation and Natural Resources
Clean Water Act Section 404 Dredge and Fill Permitting and Compliance
State Primacy

Public Process

February 22, 2013

The public process will be informed by and similar to the process followed leading up to and after delegation of the Alaska Pollutant Discharge Elimination System (APDES) program from EPA to DEC.

As DEC and DNR study assumption of the program, the agencies will seek input on issues, and costs and benefits from affected industries, agencies, tribal and local governments, and the public.

Public Notice Processes

Public notice processes provide transparency of DEC and DNR actions to the public, provide an opportunity for the public to comment upon and inform agency actions, and provide the agencies input to views and ideas to incorporate into agency action.

- Statutory changes that may be required will go through legislative process, including hearings
- Public notice and comment on regulation changes, including public meetings/hearings
- The application submitted to the Environmental Protection Agency (EPA) will go through EPA's public notice and comment process
- The State will provide notice of EPA's public notice of the state's application as part of their program approval process

Public Process after Program Assumption

- After assumption, the State will have a robust public notification and participation similar to that used by the APDES program
- The State will have a public, and tribal and local government notification and communication process similar to that developed and used by the APDES program

Department of Environmental Conservation
SB 27 and HB 78: "Regulation of Dredge and Fill Activities"
Primacy for the Clean Water Act Section 404 Permitting ("404 Program")
January 24, 2013

Background

Section 404 of the Clean Water Act (CWA) established the "404 Program" requiring that all dredge or fill activities in waters of the U.S., including wetlands, be permitted by the Corps of Engineers. Examples of regulated activities include filling in wetlands for any purpose such as roads or residential and commercial building pads, and construction of breakwaters, dams, and levees. The CWA directs states to manage and implement the permitting program.

With over 174 million acres of wetlands (65% of all wetlands in the nation), Alaska's stake in administering the 404 program is unlike that of any other state.

Proposed Legislation

- Gives DEC and DNR, working together, authority to evaluate, seek approval, and implement a State-managed 404 permitting program from the EPA and the Corps of Engineers.
- Primacy does not apply to tidally influenced areas and navigable waters that are or could be used to transport interstate or foreign commerce and wetlands adjacent to those areas.
- Under primacy, the state gains authority to exercise discretion whenever possible while EPA and the Corps retain oversight authority.

Benefits of State Primacy

- Reduced bureaucracy. Two State permitting agencies involved, rather than four.
- State, instead of federal management of water, land use, and permitting priorities.
- A faster permitting process and a stable, risk-based, and predictable enforcement regime.
- Cost savings in permitting major new projects.
- Permits that reflect Alaska's unique conditions with Alaska-specific program guidance.
- Less emphasis on cumbersome process and more emphasis on results.
- A vastly improved appeals process that is timelier, conducted by Alaskans, and less apt to stall projects needlessly and indefinitely.
- Judicial proceedings generally decided by Alaska courts instead of outside federal courts.
- Accountability to Alaska's elected officials and the Alaskan public.
- Use of 404 permitting guidelines for environmental review, eliminating lengthy NEPA process for many projects, while still protecting the environment.
- Robust public notification and participation.
- Federal laws, such as the Endangered Species Act, would be addressed through EPA's oversight of the state program.

SB 27 – Regulation of Dredge and Fill Activities

Sectional Analysis

January 22, 2013

“An Act establishing authority for the state to evaluate and seek primacy for administering the regulatory program for dredge and fill activities allowed to individual states under federal law and relating to the authority; and providing for an effective date.”

The purpose of this legislation is to provide authority for the state to evaluate and seek to develop a program for the regulation of dredge and fill activities in waters and wetlands located within the state, in accordance with the regulating program allowed states under 33 U.S.C. 1344 (sec. 404, Clean Water Act).

Section 1: provides legislative findings for the bill, including recognition that there are thousands of waterbodies and millions of acres of wetlands within the state. The findings further state that individual states are allowed to assume primacy to regulate dredge and fill activities under 33 U.S.C. 1344 and that this is consistent with congressional intent in 33 U.S.C. 1251 that the states to have the primary responsibilities and rights in regulating activities involving lands and waters within their respective states. The findings note that other states have assumed or continue to evaluate obtaining primacy for regulating dredge and fill activities under 33 U.S.C. 1344 and that the Department of Environmental Conservation and the Department of Natural Resources have substantial expertise such that they could ably regulate these types of activities. The findings also recognize that there are benefits to the state for the Department of Environmental Conservation and the Department of Natural Resources to assume the dredge and fill permitting responsibilities.

Section 2: amends AS 44.37.020 to provide that the Department of Natural Resources, in coordination with the Department of Environmental Conservation, may take action necessary to administer and enforce any authorized dredge and fill permitting program allowed under 33 U.S.C. 1344, including the adoption of regulations under AS 44.62 (Administrative Procedure Act).

Section 3: amends AS 46.03.020 to provide that, notwithstanding any other provision of law, the Department of Environmental Conservation may take all actions necessary to receive federal authorization of a state program for the Department of Environmental Conservation and the Department of Natural Resources to administer and enforce a dredge and fill permitting program allowed under 33 U.S.C. 1344.

Section 4: directs the Department of Environmental Conservation, in coordination with the Department of Natural Resources, to continue to evaluate the potential benefits, costs, and consequences to the state of assuming primacy of regulating dredge and fill activities under 33 U.S.C. 1344, and to take reasonable steps to assume primacy. The Department of Environmental Conservation would also have the authority under Section 4 of the bill to file an application seeking federal approval of a state program administered by the Department of Environmental Conservation and the Department of Natural Resources that regulates dredge and fill activities under 33 U.S.C. 1344. Section 4 of the bill also provides that the Department of Environmental Conservation and the Department of Natural Resources may adopt regulations under AS 44.62 that are necessary to obtain federal approval of and to implement a state program for the regulations of dredge and fill activities under 33 U.S.C. 1344.

Section 5: provides for an immediate effective date.



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Transportation and
Public Facilities

OFFICE OF THE COMMISSIONER
Patrick J. Kemp, P.E., Commissioner

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March 25, 2013

The Honorable Alan Austerman, co-Chair
The Honorable Bill Stoltze, co-Chair
House Finance Committee
Alaska State Capitol, Room 519
Juneau, Alaska 99801-1182

Dear Representative Austerman and Representative Stoltze:

Senate Bill 27 will allow the state of Alaska to evaluate the costs and benefits of assuming primacy for dredge and fill permitting within Alaska from the United States Army Corps of Engineers (ACOE) and take action to receive federal authorization for permitting authority by the Department of Environmental Conservation (DEC) and the Department of Natural Resources (DNR) from the ACOE.

The Department of Transportation and Public Facilities (DOT&PF) is one of the largest permittees for the ACOE and will be the department most affected by implementation of the transfer of permitting responsibilities from the federal agencies to state agencies. DOT&PF supports any effort to streamline and simplify permitting activities, and is confident that under state control, permitting activities will be streamlined with a risk-based approach applied to these activities. DOT&PF has valuable expertise in the Clean Water Act permitting process and is available to assist DEC and DNR in the analysis of assuming state primacy over dredge and fill activities.

DOT&PF believes that Alaska control over the limited scope of wetlands permitting authority that the federal government may relinquish to the state will have positive benefit for the state. DOT&PF would encourage a further evaluation of assuming primacy for permitting of all waters and wetlands within Alaska, regardless of marine or navigability classifications to clearly define federal versus state jurisdiction in final permitting.

In summary, DOT&PF supports Senate Bill 27 and the positive impact it will have on building critical transportation infrastructure for Alaskans.

Sincerely,

A handwritten signature in black ink, appearing to be "P. Kemp".

Patrick J. Kemp, P.E.
Commissioner

"Get Alaska Moving through service and infrastructure."

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Governor Sean Parnell
STATE OF ALASKA

January 17, 2013

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

Dear President Huggins,

Alaskans have the right to have a say over regulation of our own resources including land and water. To that end, I am transmitting a bill under the authority of Article III, Section 18 of the Alaska Constitution, authorizing the State of Alaska to assume primacy for administering permitting under the Clean Water Act for dredge and fill activities allowed to individual states under federal law. The current federal process has resulted in a large number of projects in Alaska being subject to an expensive and bureaucratic federal permitting system and litigation, delaying and restricting opportunities for Alaskans.

The purpose of this legislation is to provide State authority to develop and implement State primacy of dredge and fill activities in waters and wetlands located within the state, in accordance with the regulating program allowed states under 33 U.S.C. 1344 (Section 404, Clean Water Act). This change will limit federal overreach in Alaska by giving the State authority to make jurisdictional determinations, timely process permits, and allow responsible resource development. Removing a significant amount of wetlands from federal authority also reduces the number of projects requiring an expensive and time-consuming federal National Environmental Policy Act (NEPA) process, since there would be fewer "major federal actions" associated with these projects.

There are millions of water bodies and tens of millions of acres of wetlands in Alaska. State primacy of dredge and fill activities under 33 U.S.C. 1344 is consistent with congressional intent under 33 U.S.C. 1251 that the states have the primary responsibilities and rights in regulating activities involving lands and waters within their boundaries.

The legislation provides that the Department of Natural Resources, in coordination with the Department of Environmental Conservation, will take the reasonable steps to assume the authority to administer and enforce any authorized dredge and fill permitting allowed under 33 U.S.C. 1344 (Section 404, Clean Water Act).

The Honorable Charlie Huggins
January 17, 2013
Page 2

Alaska should assume primacy for permitting projects in the state. I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink that reads "Sean Parnell". The signature is written in a cursive, flowing style.

Sean Parnell
Governor

Enclosure



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Environmental Conservation

DIVISION OF WATER
Director's Office

555 Cordova Street
Anchorage, Alaska 99501
Main: 907.269.7599
Fax: 907.334.2145

March 19, 2013

The Honorable Eric Feige, Co-Chair
The Honorable Dan Saddler, Co-Chair
House Resources Committee
State Capitol Room 124
Juneau, AK 99801

Dear Representative Saddler and Representative Feige:

Following are answers to questions raised by Representative Hawker regarding fiscal notes in the House Resources hearing for SB 27 on March 18, 2013.

DEC's fiscal note, Fiscal Note Number 1: Comparing the FY14 amount of \$879.5 in the Services line with the cost detail in the fiscal note analysis, \$30.2 of the FY14 services costs are not accounted for.

The \$30.2 in FY14 includes department-wide allocated common cost such as leases, personnel, information technology, and telecommunications, at \$29.7; and \$0.5 for public noticing costs. Similarly, in FY15, \$53.0 is included for allocated common costs and \$1.0 is included for public noticing costs. For FY16 through FY19, \$53.0 is included for allocated common costs. These costs are not detailed in the body of the fiscal note analysis.

What is the estimate for costs at full primacy?

A primary purpose of SB 27 is to determine costs at full primacy. The unknowns about this effort are significant, and until the State performs the detailed evaluation of assumption of the program as provided for in SB 27, it is impossible to forecast the cost or size of a State program.

Can the agencies provide an "escalator clause," estimating personal services costs in future years in the fiscal notes that reflect inflation?

It is the Administration's policy to develop fiscal notes without taking into account inflation. From page 10 of the *Memorandum from Karen Rehfeld and Heather Brakes to All Departments dated November 5, 2012*: "The Administration's policy is to develop fiscal notes without taking into account inflation, because most state programs do not receive automatic increases in funding for inflation."

Why is the Department of Law's fiscal note a zero fiscal note when Law will be getting \$187.5 from DEC?

To support DEC's 404 wetlands primacy evaluation pursuant to SB27, the Department of Law will reallocate legal staff from other projects, which may result in reductions to billings of other unidentified agencies or appropriations. This reallocation of staff does not require the Department to seek additional intra-agency receipt authority, but it still requires DEC to have the necessary resources to pay the Department of Law's billable costs, which is reflected in that agency's fiscal note.

Sincerely,

A handwritten signature in cursive script that reads "Michelle Bonnet Hale".

Michelle Bonnet Hale
Director



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

**Department of Environmental
Conservation**

OFFICE OF THE COMMISSIONER

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February 26, 2013

The Honorable Pete Kelly, Co-Chair
Senate Finance Committee
State Capitol Room 532
Juneau, AK 99801

The Honorable Kevin Meyer, Co-Chair
Senate Finance Committee
State Capitol Room 532
Juneau, AK 99801

Dear Senator Meyer and Senator Kelly:

Thank you for the opportunity to provide testimony to the Senate Finance Committee today regarding SB 27. This letter provides additional information to address questions asked by committee members at the hearing.

Senator Hoffman asked about the federal budget for the current program run by the U.S. Army Corps of Engineers (the Corps), and how many positions are in the federal program. In providing these numbers, it is important to note that the uncertainties of the actual balance between State and federal responsibility at primacy make an attempt to estimate State costs at primacy rough.

Currently, the Corps' regulatory program in Alaska has 49 full-time positions and an annual budget of \$7.9 million. However until the State performs the detailed evaluation of assumption of the program as provided for in SB 27, it is impossible to forecast the cost or size of a State program.

Senator Meyer asked if the federal funding for dredging at the Port of Anchorage would be affected by the State assuming primacy for the 404 program. The answer is no. The federal funding for dredging is through the Corps' Civil Works Program while the 404 program is managed through the Corps' Regulatory Program. In addition, because the Port of Anchorage is located in, tidally influenced by, and adjacent to a navigable water used for commerce, the Corps would retain permitting jurisdiction for this area if the State assumes primacy.

Sincerely,


Larry Hartig
Commissioner

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
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Phone: (907) 272-1481 Fax: (907) 279-8114
Email: moriarty@aoga.org
Kara Moriarty, Executive Director

ALASKA OIL AND GAS ASSOCIATION STATEMENT ON SENATE BILL NO. 27, AUTHORIZING STATE REGULATION OF DREDGE & FILL ACTIVITIES

February 4, 2013

Good Evening. For the record, my name is Kara Moriarty and I am the Executive Director of the Alaska Oil and Gas Association, commonly referred to as "AOGA". On behalf of the 16 members of AOGA, who account for the majority of oil and gas exploration, development, production, transportation and refining of oil and gas onshore and offshore in Alaska, I appreciate the opportunity to testify on Senate Bill No. 27 which authorizes the State to evaluate and seek primacy for the permitting of dredge and fill activities under Section 404 of the Clean Water Act.

AOGA applauds the Governor's efforts to streamline permitting processes this session with the introduction of bills like this and SB 26, authorizing general permitting and reforming procedures relating to the disposal and exchange of state land. We appreciate the Administration's intent to encourage responsible development of Alaska's resources by simplifying the process. As we go through this process of assuming primacy, we will want to be careful to ensure that the assumption of Section 404 primacy tangibly streamlines the permitting process in Alaska and does not instead result in a duplicative or more cumbersome process, which we know is not the Administration's intent.

To date, only two states, Michigan and New Jersey, have assumed Section 404 primacy. This is in contrast to the forty-five states that have assumed primacy of the point source discharge program under Section 402, including Alaska which finished its phased implementation of the Alaska Pollutant Discharge Elimination System this past year. AOGA was proud to participate in that process which has resulted in a more efficient permitting process under Section 402. State primacy of dredge and fill permitting, however, may pose administrative and financial barriers unique to Section 404 assumption.

Some of the initial differences may include a lack of federal funding and the uncertainty surrounding development and projects near waters and wetlands that may or may not be subject to state assumption, which we will not know until the State is allowed to start this process.

The requirement that states assume the entire dredge and fill program all at once can result in a complex, lengthy and expensive process with no certainty that EPA will approve the request. And while a majority of the nation's wetlands are in Alaska, many of these may be non-assumable by the State under the Clean Water Act's geographical limitations and would remain subject to federal jurisdiction and duplicative Corps permitting. For this reason, we applaud the administration's spoken objective to also pursue shared general permitting responsibility with the Corps in these non-assumable waters by development of a State Programmatic General Permit.

AOGA is cognizant that many of these concerns will be examined more thoroughly by the administration after passage of this bill. If the bill is passed, we look forward to working in tandem with the administration and other stakeholders to ensure that Section 404 assumption will be effective both for the state and industry, and is achievable in Alaska without unduly burdening state resources.