

02/06/2017

Overview:

Alaska's

Primary

Program for

Water and Air

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Alaska's Primary Program for Water and
Air</SUBJECT><COMM>SRES30</COMM></TARGET>



Department of Environmental Conservation

Senate Resources Committee
Commissioner Larry Hartig

February 6, 2017



Agenda



- Overview of DEC Primacy Programs
- Regulations Overview
- New Federal Administration/Congress
- Status Report on Specific Topics



Overview of DEC Primacy Programs



- Air Permits
- Wastewater Permits (APDES)
- Public Drinking Water Systems
- Pesticide Applications



DEC Primacy Programs – Air Quality and Wastewater Permits



- How long has Alaska had primacy?
 - Air - early 1970s
 - Wastewater - 2008
- What is the benefit to Alaska?
 - Improved level of service over EPA
 - Added discretion/flexibility
 - Program experts reside and work in state
- Primacy programs include permitting as well as other activities
 - Compliance, monitoring, standards, plans
 - Overall program funding is a mix of permit fees, federal grant/GF match, and GF.



DEC Primacy Programs – Air Quality and Wastewater Permits

- Permit Performance Update
 - Air permit program received 70 new permit applications and issued 83 major and minor permits (reduced backlog) in 2016
 - In FY2016, 85% of wastewater dischargers had current permits.
 - Program efficiencies – Lean exercises
 - Air minor permit process reduced the median time for permits to go from application to public notice by 35% (from 63 days to 40 days)
 - Water permit program is preparing for a Lean exercise on general permit process



Regulations Overview

- Regulations need periodic review and update to remain current
 - Changes in state statutes and federal requirements (to maintain primacy, e.g.)
 - Fee updates per statute
 - Clarifications and streamlining processes
 - Latest science, standards, and practices
- DEC follows a lengthy, standardized process when developing regulation proposals that includes:
 - Consideration of options and alternatives
 - Evaluation for sound science
 - Evaluation of cost impacts
 - Sound public review process and consideration of public comments
 - Legal review



New Federal Administration/Congress

- Cooperative Federalism
- Recent federal rules may be revisited by Congress or the Administration
 - Waters of the U.S.
 - Clean Power Plan
 - Stream Protection Rule
 - Oil & Gas Methane Rules for New and Modified Oil and Gas Operations
 - BLM Methane and Waste Prevention Rule
 - CERCLA 108(b) Financial Assurances for Mines



New Federal Administration/Congress

- Wetlands
 - Status of Alaska 404 (dredge and fill permits) primacy effort
 - National efforts to look at “Assumable Waters”
 - Continue discussions on mitigation and offsets



New Federal Administration/Congress: Vessel Incidental Discharge Act

- Federal legislation (S. 168)
- National approach to regulating ballast water and incidental discharges
- Key considerations:
 - Risk of Invasive species/ballast water exchange
 - Risk of pollutants being introduced into state waters
 - Adequacy of BMPs and federal oversight
 - Preempting state programs





Status Report on Specific Topics





Coal-related Issues

- Federal environmental regulations
 - Clean Power Plan
 - Fairbanks PM_{2.5} – Best Available Control Technology
- DEC permits coal projects and infrastructure
 - Healy Mine
 - Wishbone Hill Project
 - Chuitna Project
 - Jumbo Dome Project
 - Seward Coal Terminal
 - Interior Coal-fired Power Plants



Tier 3 Waters

- Alaska is currently developing the process for the nomination and designation of Tier 3 Waters
- SB163 and HB283 were introduced during the 2016 legislative session and, based on public feedback, Governor Walker requested more time to dialogue with Tribes and stakeholders
- Legislative Lunch & Learn planned for March
- Public workshops planned for March



Questions?



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Potential Commercial Vessel Incidental Discharge Act (VIDA) Update

What is the Commercial Vessel Incidental Discharge Act (VIDA)

The Commercial Vessel Incidental Discharge Act (VIDA) is proposed legislation that would regulate ballast water and incidental discharges from vessels. All regulatory and enforcement authority would fall to the US Coast Guard (USCG) as opposed to State programs and/or the Environmental Protection Agency (EPA). This effort is an attempt to modify and standardize national ballast water regulation in lieu of state-by-state regulations. The bill also addresses the implementation of international ballast water requirements. Finally, VIDA would expand upon vessel exemptions within the Clean Water Act that would eliminate the need for EPA's Vessel General Permit (VGP).

Per VIDA, "incidental discharges" include all discharges other than ballast water, sewage, garbage, oil and hazardous substances, and air pollution. Incidental discharges include graywater, bilgewater, anti-fouling hull coating leachate, oil water separator effluent, and numerous other wastewater types. The bill has been introduced in various forms since 2012. A new bill (S 168) was introduced in Congress January 17th.

Provisions of VIDA to consider

- VIDA would require the USCG to develop and implement a certification program for treatment of ballast water (*Sec. 4*) as well as establish regulations pertaining to the discharge of ballast water (*Sec. 4 and 5*). VIDA would also establish national standards and criteria for the certification of ballast water treatment equipment (*Sec. 4*).
- VIDA transfers authority of incidental discharges (*Sec. 8*) from States and EPA to the USCG. VIDA defines discharges incidental to the normal operation of a vessel (*Sec. 2 and 8*) to include approximately 35 types of discharges. VIDA would establish the use of Best Management Practices Plans published by the USCG to replace the EPA Vessel General Permit for incidental discharges (*Sec. 8*).
- VIDA would exempt small vessels (under 79 feet), fishing vessels (including fish processors and tenders) (*Sec. 8*), and recreational vessels (*Sec. 2(6) and (14)*) from federal or state ballast water and incidental discharge regulations.
- VIDA would not allow States to develop, implement, or enforce regulations or statutes pertaining to ballast water or incidental discharges (*Sec. 10*). VIDA as written would require a state to work with the Secretary of Homeland Security (USCG's parent organization) to address aquatic nuisance (invasive) species.
- VIDA would establish the USCG as the authority on enforcement unless a state reaches an agreement with the USCG (*Sec. 10*). In the past, the EPA Administrator has been willing to accept input from the states on the Vessel General Permit, and has allowed Alaska to enforce state wastewater requirements.

Broad concerns with VIDA

- VIDA supersedes the EPA Vessel General Permit (VGP) which most states have signed onto and to which many states have added state specific requirements (Section 6 of the VGP). VIDA attempts to "federalize" the management of ballast water and incidental discharges, and does not consider unique state or regional concerns and issues.
- VIDA establishes a process for certification of ballast water treatment equipment similar to the process used for marine sanitation devices (MSD). Devices are tested and certified in the laboratory, however performance of the MSD systems in the field has not been consistent.

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- VIDA attempts to establish a national regulation for aquatic nuisance species (invasive species). This may present challenges as managing invasive species on a national level may fail to address issues on regional, state, and local levels.
- VIDA does not provide for additional resources to be provided to the USCG for implementation and enforcement. Historically, there have been limited resources provided to either the USCG for marine sanitation devices compliance assistance, or to the EPA for Vessel General Permit compliance. The federal agencies have relied on states to assist in enforcement, and this ability is removed in VIDA.

Alaska-specific concerns with VIDA

- VIDA would preempt the wastewater portion of a citizens initiative that lead to AS 46.03.463 and DEC regulation of discharges of graywater (and possibly blackwater mixed with graywater) from commercial passenger vessels (cruise ships). There is no assurance the USCG would require large commercial passenger vessels to treat to the levels achieved by “Advanced Wastewater Treatment Systems (AS 46.03.462(e)) or include the same limits on the timing and location of discharges to avoid concerns with interference with fishing and other marine activities. It is also uncertain the “continuous improvement” policies incorporated into Alaska’s statutes and DEC’s authorizations would be incorporated into the USCG’s regulations and authorizations. There are a number of “grandfather” provisions and exemptions in VIDA that could make this difficult in some instances.
- VIDA would also preempt any future action by the State of Alaska to regulate these discharges to our marine environment. At this time the State does not have regulations in place for addressing exhaust gas scrubber effluent, ballast water, car deck wash down, hull cleaning, boiler water, and other discharges, but there could be a need to in the future. For example, as some vessels are adding exhaust gas scrubbers to improve the quality of their air exhaust emissions, this has created new wastewater streams that need to be monitored and possibly treated before discharge. VIDA could also remove the authority to regulate chemicals or metals added to kill marine fouling organisms, preempting existing state statutes and regulations in this area.
- VIDA as written may limit Best Management Practices coverage to three nautical miles from shore, which has the potential to open “donut holes” that were addressed in federal and state law in Southeast Alaska.
- VIDA would remove the authority for the State of Alaska to regulate incidental discharges, ballast water, and other invasive species sources from fishing vessels, including fish processors, as well as recreation vessels. VIDA would also remove state authority of existing regulations addressing toxic hull coatings and oily water separator effluent.
- VIDA does not contain a “citizens suit” provision, such as was included in the citizens initiative and is now codified at AS 46.03.481.

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Dear Interested Party:

You are receiving this letter because we are interested in hearing from Alaskans as we work to establish a statewide process for nominating and designating Outstanding National Resource Waters, or Tier 3 waters. A Tier 3 designation requires that a waterbody be maintained and protected in its current state, with no new discharges of pollution allowed.

Over the past few years, Alaska's Department of Environmental Conservation (DEC) has drafted regulations and legislation related to Tier 3 and antidegradation, resulting in a considerable amount of public interest. Governor Bill Walker asked us to reach out across the state to provide additional information to the public, municipalities, tribes, industry, and others who might be interested in this topic, and have more discussion before any further action is taken.

First, a little background. The federal Clean Water Act uses the term "antidegradation" to describe the process and requirements a state will follow before it issues a permit allowing the discharge of wastewater into waters of the state, including rivers, lakes, streams, bays, harbors, and oceans. One element of antidegradation is the requirement that a state have a method for creating a special class of waters known as Tier 3 waters. Once a water is designated as a Tier 3 water, the only additional pollutants that are allowed to be added to the water would be temporary or limited in nature, such as those that would result from a construction project. In other words, the quality of the water must be maintained and protected.

The Clean Water Act requires that states have a process for designating Tier 3 waters, but does not require that states actually designate any waters. Once the process is established, the designation of waters is driven by state, not federal, law.

Outreach on Tier 3

We'd like to hear from you about what kind of process Alaska should use for nominating and designating Tier 3 waters. The process needs to work well for all Alaskans and for all waters of the state, now and in the future. The process should be transparent and allow any Alaskan to submit a nomination. The process should provide opportunity for local input, and for the thorough evaluation and vetting of a nomination using defined criteria.

To start the conversation, we have developed a website with background information, including three possible alternative nomination and designation processes, at

<http://dec.alaska.gov/water/wqsar/Antidegradation/Tiers123.html>. Please note that in providing these three alternative processes we are in no way trying to limit the discussion. We expect the public will propose more alternatives, perhaps taking pieces from these three options they like. For hard copies of this information, please contact KJ Hillgren at kristen.hillgren@alaska.gov or 907-465-4728.

We welcome written comments and suggestions on the Tier 3 process. We also plan to conduct four public workshops. These will be “roll-up-the-sleeves” workshops rather than formal hearings – we’re hoping to achieve a full sharing of ideas across different interest groups.

- Monday, March 20th in Juneau: 1-4pm
- Tuesday, March 21st in Anchorage: 1-4pm
- Wednesday, March 22nd in Fairbanks: 9am-12pm
- Thursday, March 23rd by teleconference: 4-7pm

You may register for the workshops through our web site at:

<http://dec.alaska.gov/water/wqsar/Antidegradation/Tiers123.html>. While we encourage pre-registration, you are welcome to attend even if you haven’t registered.

Antidegradation Regulations

Finally, DEC initially described a proposed Tier 3 process as part of a broader set of draft regulations that were released for public notice in 2014. Those draft regulations generally addressed how DEC would implement the State’s antidegradation policy as a whole, and included many other aspects besides those relating to Tier 3 waters. Because there has been so much public interest in developing a Tier 3 nomination and designation process, we decided to separate Tier 3 from the discussion of other aspects of antidegradation that had less public interest. We feel this will allow for a focused discussion solely on the issue of Tier 3 waters. We do still plan to go out for a subsequent public comment period on the remainder of the antidegradation draft regulations after the public workshops on Tier 3 have concluded. We want to focus our efforts on getting the Tier 3 discussion off to a good start first.

Thank you for your interest. We very much look forward to working with you on this matter of great importance to Alaska.

Sincerely,



Michelle Hale
Director