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Protecting Alaska's Cook Inlet watershed and the life it sustains

Testimony of Lois N. Epstein, P.E. before the House Resources Committee

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On HB 153, a bill that will give the state of Alaska the authority to issue all wastewater discharge permits

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Good afternoon. My name is Lois Epstein and I am an Alaska-licensed engineer with Cook Inlet Keeper in Anchorage. Cook Inlet Keeper is a nonprofit, membership organization dedicated to protecting the Cook Inlet watershed and the life it sustains. I have worked on safety and environmental issues for over 20 years for two private consultants, the U.S. EPA, Environmental Defense in Washington, DC, and Cook Inlet Keeper. Additionally, I have served on several multi-stakeholder federal advisory committees, and currently serve on an advisory committee appointed by U.S. DOT Secretary Mineta that includes former Alaska House and Senate member Drue Pearce.

HB 153 accurately reflects the wish-list from the industry members of the Department of Environmental Conservation (DEC) workgroup studying "National Pollutant Discharge Elimination System (NPDES) Primacy," commonly understood as EPA giving the state of Alaska the authority to issue wastewater discharge permits under the federal Clean Water Act. Because Tribes and public interest organizations were excluded from the workgroup, our concerns were never seriously addressed and their solutions were not included in HB 153. Additionally, though DEC may not emphasize this fact to the legislature, the workgroup member representing municipal wastewater treatment plants opposes the state's bid for NPDES primacy.¹

With this background – and bearing in mind that EPA might have similar concerns and may not approve the state's application for primacy unless the legislature amends the bill and the state amends the Fiscal Note – Cook Inlet Keeper offers the following substantive issues requiring amendments and further information-gathering. Our primary concerns are:

¹ Kris Warren, Anchorage Water and Wastewater Utility, workgroup meeting on January 18, 2005.

1. The high governmental cost of the permitting program, which only will grow as the state's industrial growth increases.
2. Ensuring a high-quality permitting program to protect Alaska's salmon and other fish.
3. Ensuring governmental accountability to Tribes and the public.

High Cost of the Permitting Program

According to HB 153's Fiscal Note, the legislature will need to appropriate, at a minimum (see next section), \$1.5 million each year to DEC to support the bigger state government required to manage this complex program. Because workgroup members insisted on a limit to permit fees of slightly more than 15% of program costs (compared to the 57% of program costs paid by permittees in Oregon and the 75-80% paid in Washington),² the increased costs will come from other state initiatives such as education or road maintenance. Should industrial growth occur in Alaska, the legislature will need to increase the annual appropriation beyond \$1.5 million to cover the approximately 85% of the program not funded by permit fees. If the growth occurs among businesses with less than 20 employees, annual appropriation needs will be even higher given cost recovery constraints for the program, i.e., governmental travel will not be recovered from small businesses.

In the future, DEC will not get any more federal funding for the program than currently since the state receives the maximum amount allowed for administering its Clean Water Act programs. While federal funding is projected to continue at the current level, the federal budget process in future years may decrease this amount, resulting in additional costs to the state.

If the legislature fails to fund the program adequately in the future, it is likely that permit issuance would be slowed and permit errors may occur. Since there is virtually no chance that EPA will take back the permitting program once it has been given to the state, permittees will suffer due to insufficient general fund resources.

The workgroup's report states that permit fees "are expected to increase by a factor of 1.8...a substantial increase,"³ including increases to municipal permit fees. Thus, both state and local costs will increase significantly should the state obtain NPDES primacy.

Keeping Fish Healthy

Fiscal Note cost estimates arguably are low because proposed DEC staffing levels are insufficient to implement the program adequately. If the program is not carried out with sufficient technical and enforcement staff, water quality and fish habitat will decline. Currently, a total of 51 full-time equivalent (FTE) employees from EPA and DEC carry out the permitting

² *State of Alaska's Assumption of the National Pollutant Discharge Elimination System: A Report to the Alaska Legislature*, January 2004, p. 32. Percentages are from FY03.

³ *National Pollutant Discharge Elimination System Primacy Workgroup Report*, February 24, 2005, p. 11.

program. DEC estimates reduce this number to 43 FTE, an overall reduction of 16% that includes a 38% reduction in program development staff (e.g., water quality standards staff), a 28% reduction in permitting staff, and a 16% reduction in compliance and enforcement staff.

Though DEC may state that its proposed staff numbers are in-line with that of other states, its own information shows that to be untrue. For example, the state of Alaska expects to spend only 52% of the resources that Washington state spends per permit.⁴

Since DEC has produced essentially no evidence to date on how it can maintain an adequate permitting program with severe staff reductions, we request that the legislature obtain additional, detailed information from DEC on the adequacy of its staffing estimates – especially for technical and enforcement staff – and the likelihood of EPA approving the permitting program with serious staff reductions in a state with numerous, large industrial operations.

Additionally, Cook Inlet Keeper and industry members of the workgroup share a concern about the limited technical expertise at DEC and the likely use of consultants to develop permits. Problems with the use of consultants include potential conflicts of interest and the lack of long-term DEC staff experience with particular industries, which can result in technical deficiencies and costly staff inefficiencies. Though conflicts of interest were discussed in the workgroup, Section 4(h)(4) needs to be amended to specifically prevent conflicts of interest for DEC consultants.

Cook Inlet Keeper also is concerned that required federal reviews, such as with expert federal biologists on essential fish habitat, will be eliminated by the state assuming NPDES primacy.

Governmental Accountability

NPDES primacy will eliminate federal government-to-government consultations with Tribes and various analyses that the public currently participates in which are required by federal statutes to ensure a healthy environment. Tribal government-to-government consultations have numerous benefits which can be better described by tribal members than by me, and I urge the legislature to include Tribes in its primacy deliberations (unlike the DEC workgroup).

Sections 4(h)(2) and 4(h)(3) of HB 153 enable industry permittees to review draft and final permits before public issuance, giving industry permittees excessive and unfair influence over permits. EPA may disallow such unbalanced treatment. The legislature needs to remove these sections from the bill.

Finally, legislators need to amend Section 1(b)(2) so DEC's NPDES workgroup is representative of all stakeholders. This section currently extends the mandate of the undemocratic and unrepresentative workgroup which crafted this bill's contents.

⁴ *State of Alaska's Assumption of the National Pollutant Discharge Elimination System: A Report to the Alaska Legislature*, January 2004, p. 27.

Thank you very much for your attention to these concerns. NPDES primacy is a major undertaking for DEC, with serious fiscal, fish, and governmental accountability implications. Cook Inlet Keeper urges the legislature not to make costly programmatic changes that are of questionable value to permittees and troubling for Tribes and the public. This is a case where an important engineering saying applies – if it works, don't fix it.

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