

AP/AL: Appropriation **Project Type:** Health and Safety
Category: Law and Justice
Location: Statewide **Contact:** Tom Chapple
House District: Statewide (HD 1-40) **Contact Phone:** (907)269-7686
Estimated Project Dates: 07/01/2003 - 06/30/2008

Brief Summary and Statement of Need:

Funding for the cost of preparing and defending the State of Alaska's appeal before the US Supreme Court to overturn the 9th Circuit Court of Appeals court decision in the matter of the Red Dog mine air permit and supporting primacy of the State's air permit program.

| Funding: | <u>FY2004</u> | <u>FY2005</u> | <u>FY2006</u> | <u>FY2007</u> | <u>FY2008</u> | <u>FY2009</u> | <u>Total</u> |
|-----------------|---------------|---------------|---------------|---------------|---------------|---------------|--------------|
| Gen Fund | \$150,000 | | | | | | \$150,000 |
| Total: | \$150,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$150,000 |

| | | | | |
|---|--|---------------------------------------|---|-----------------------------------|
| <input type="checkbox"/> State Match Required | <input checked="" type="checkbox"/> One-Time Project | <input type="checkbox"/> Phased - new | <input type="checkbox"/> Phased - underway | <input type="checkbox"/> On-Going |
| 0% = Minimum State Match % Required | | <input type="checkbox"/> Amendment | <input type="checkbox"/> Mental Health Bill | |

Operating & Maintenance Costs:

| | <u>Amount</u> | <u>Staff</u> |
|----------------------|---------------|--------------|
| Project Development: | 0 | 0 |
| Ongoing Operating: | 0 | 0 |
| One-Time Startup: | 0 | 0 |
| Totals: | 0 | 0 |

Additional Information / Prior Funding History:

No prior funding.

Project Description/Justification:

This funding request is to cover the contractual costs to the state for the preparation and defense of the case supporting state primacy of the air permit for the Red Dog mine before the U.S. Supreme Court.

On February 21, 2003 the U.S. Supreme Court granted Alaska's petition for a writ of certiorari in DEC's case against EPA over primacy of air permitting in Alaska. The Supreme Court will now hear Alaska's arguments in the case.

The state's brief before the Court is due on April 10, 2003 and we expect that the preparation of a reply brief and oral argument of the case will occur in FY2004. Cameron Leonard has been the lead Assistant Attorney General for Alaska working this case through the initial 9th Circuit Court of Appeals decision and then in preparing the petition to the U.S. Supreme Court. The Attorney General's office has contracted with John Roberts of Hogan and Hartson LLP of Washington D.C. to prepare the cert petition and intend to continue to use the unique expertise of Mr. Roberts and his firm in developing our case for presentation on the merits to the Supreme Court.

The State of Alaska's appeal to the U.S. Supreme Court is to overturn a lower court decision that threatens the autonomy of the state's approved air permit program. The case concerns a new diesel generator installed to provide additional power at the Red Dog mine near Kotzebue, Alaska. The air permits section which issues air permits under the Clean Air Act, devoted considerable time and research developing an air quality permit which allowed for more power generation at the mine without causing a significant increase in emissions.

It required that emission controls be installed on the mine's new diesel generator, as well as on the existing six generators. Under the state's permit, nitrogen oxide emissions would not exceed local or national health or prevention standards even with the new power being generated. The federal Environmental Protection Agency (EPA) objected, filing

an order to block the permit and threatened fines if Teck Cominco powered up the new generator. EPA mandated that a new technology - selective catalytic reduction - be used on the new generator. This new technology is unproven in arctic conditions, and under EPA's plan, the six older generators would be allowed to emit more than under the state permit.

In addition the EPA's technology would cost up to \$1.5 million more a year in operating costs and up to \$10 million more in construction costs than the state's solution.

The state originally sued the federal EPA over this issue in 2000 after a series of meetings with EPA and Teck Cominco failed to resolve the issue. On July 30, 2002, the 9th Circuit Court of Appeals ruled that EPA had acted correctly in requiring Teck Cominco to install the new technology.