

HOUSE BILL NO. 51

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES ROKEBERG AND KELLY, Foster

Introduced: 1/13/97

Referred: House Special Committee on Oil and Gas, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Department of Environmental Conservation."

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** FINDINGS AND INTENT. The legislature confirms that it is the policy of
4 the state to implement water quality laws based on scientific and technical evidence. The
5 legislature specifically requests that state agencies possessing the necessary expertise to
6 implement AS 46.03.085 - 46.03.087, enacted by sec. 4 of this Act, coordinate their efforts
7 to enable cost efficiencies in adopting regulations that encourage the creation and retention
8 of jobs for Alaskans and the economic development of the state's natural resources consistent
9 with the public interest.

10 * **Sec. 2.** AS 46.03.020 is amended by adding a new subsection to read:

11 (b) The department may not adopt a regulation under (a)(10) of this section
12 unless

13 (1) compliance with the regulation is economically feasible for the
14 persons governed by the regulation; and

15 (2) the regulation is based on scientifically measurable criteria.

1 * **Sec. 3.** AS 46.03.050 is amended by adding a new subsection to read:

2 (b) The department shall seek and maintain federal approval under 33 U.S.C.
3 1342(b) of the state's permit program for discharges into navigable water so that the
4 department has authority to administer the national pollutant discharge elimination
5 system in the state in lieu of the federal permit program otherwise applicable to the
6 state under 33 U.S.C. 1342(a). If, at any time, the department determines that statutory
7 or budgetary changes are necessary to obtain or maintain federal approval of the state's
8 program under this subsection, the department shall notify the legislature through the
9 governor.

10 * **Sec. 4.** AS 46.03 is amended by adding new sections to read:

11 **Sec. 46.03.085. Water quality standards.** (a) In adopting and applying water
12 quality standards, the department, consistent with 33 U.S.C. 1251 - 1376 (Clean Water
13 Act),

14 (1) shall ensure that the standards are sufficient to protect human health
15 and propagation of fish and wildlife;

16 (2) shall consider the natural condition of bodies of water, including
17 the presence of naturally occurring pollutants, such as arsenic;

18 (3) shall use scientific justification and water quality criteria that can
19 be reliably measured;

20 (4) may not require water discharged by a user to be of a higher quality
21 than the natural condition of the water received by the user; in the case of water
22 discharged into an area previously given a permit as a mixing zone, the condition
23 allowed under the permit is considered the natural condition of the water received by
24 the user for purposes of this paragraph; and

25 (5) shall provide for mixing zones in state bodies of water under
26 regulation adopted by the department.

27 (b) Except when setting standards under AS 03.05.011(a) for shellfish growing
28 areas, as defined in the national shellfish sanitation program manual of operations
29 published by the Food and Drug Administration, the department may adopt a water
30 quality standard or other regulation related to water quality that is more restrictive than
31 applicable federal water quality criteria or regulations only after following the

1 procedures in AS 46.03.087(b).

2 (c) Within 90 days after receiving a written request to amend the state's water
 3 quality standards to incorporate a reduction in, or elimination of, federal water quality
 4 criteria, or by another date mutually agreed on by the applicant and the department,
 5 the department shall either propose regulations that amend the state's water quality
 6 standards to incorporate the reduction or elimination or follow the procedure required
 7 under AS 46.03.087(b). If, following the procedure under AS 46.03.087(b), the
 8 department is unable to make the written findings required under AS 46.03.087(b)(3),
 9 the department shall propose regulations that amend the state's water quality standards
 10 to incorporate the reduction in or elimination of the federal water quality criteria or
 11 regulations.

12 (d) Except as otherwise provided in AS 46.03.087, the measurement of
 13 constituents other than sediment to determine whether a permittee is in compliance
 14 with permit limitations based on water quality shall be by methods approved in writing
 15 by the United States Environmental Protection Agency or by substantially equivalent
 16 methods approved by the department.

17 (e) The measurement of sediment to determine whether a permittee is in
 18 compliance with permit limitations based on water quality shall be by the volumetric
 19 Imhoff cone method for settleable solids. However, this subsection may not be
 20 construed to limit the department's authority to adopt water quality criteria for total
 21 suspended solids to meet United States Environmental Protection Agency requirements.

22 **Sec. 46.03.087. Special procedures for certain water quality regulations.**

23 (a) The department may, after following the procedures in this section, adopt a

24 (1) water quality standard or discharge standard that is more restrictive
 25 than applicable federal water quality criteria or discharge standards;

26 (2) water quality standard or discharge standard for which there is no
 27 corresponding federal water quality criteria or discharge standard; or

28 (3) regulation that allows the use of a method that is not substantially
 29 equivalent to methods approved by the United States Environmental Protection Agency
 30 for the measurement of constituents to determine whether a permittee is in compliance
 31 with permit limitations related to water quality.

1 (b) Before adopting a standard or regulation governed by (a) of this section,
2 the department shall

3 (1) make available to the public, at convenient locations, copies of the
4 proposal and the findings of the department that describe the basis for the proposal;

5 (2) consider the economic and technological feasibility of the proposal
6 and prepare written findings; and

7 (3) find in writing, as applicable, that

8 (A) hydrologic conditions or discharge characteristics in the area
9 of the state or at the particular site where the standard or regulation applies
10 reasonably require the water quality standard, discharge standard, or method of
11 measurement to protect human health and welfare or propagation of fish and
12 wildlife; and

13 (B) hydrologic conditions or discharge characteristics are
14 significantly different in that area of the state or at that particular site from
15 those upon which the corresponding federal criteria or regulations are based.

16 * **Sec. 5. TRANSITIONAL REVIEW OF REGULATIONS.** (a) The Department of
17 Environmental Conservation shall, during the triennial review process of regulations that is
18 required under 33 U.S.C. 1313(c) (Clean Water Act), review its water quality regulations that
19 are in effect on the effective date of this Act in order to determine if they comply with federal
20 requirements and are not more stringent than applicable federal regulations. If the review
21 indicates that there are state regulations that are more stringent than applicable federal
22 regulations, the department shall determine whether it could justify those regulations under the
23 requirements of AS 46.03.087(b)(3), enacted by sec. 4 of this Act. If the department
24 determines that it cannot meet the requirements of AS 46.03.087(b)(3), the department shall
25 adopt the necessary revisions to the regulations. It is the legislature's intent that the
26 department complete its review of all regulations governed by this subsection and its adoption
27 of all necessary revisions required under this subsection within four years after the effective
28 date of this section.

29 (b) The Department of Environmental Conservation shall, by January 31, 1999, and
30 annually thereafter until all of the state water quality regulations in effect on the effective date
31 of this Act are reviewed, prepare a written report on the status of the department's review and

- 1 revisions required under (a) of this section. The department shall submit the report to the
- 2 governor and notify the legislature that the report is available.