

CS FOR HOUSE BILL NO. 51(O&G)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS

Offered: 1/31/97

Referred: Finance

Sponsor(s): REPRESENTATIVES ROKEBERG AND KELLY, Foster, Hodgins, Vezey, Bunde, Cowdery, Mulder, Kohring, Williams

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 new subsections to read:

11 (b) The department may not adopt a regulation under (a)(10) of this section
12 unless the regulation is based on science.

13 (c) In regulations of the department, "background condition" means the
14 biological, chemical, and physical conditions of a body of water outside the area of
15 influence of the discharge under consideration. When the department performs

1 background sampling to determine a background condition during an enforcement
2 action, the department shall measure conditions that are upslope or outside the area of
3 influence of the discharge. If several discharges to a body of water exist and an
4 enforcement action is being taken, the department's background sampling shall
5 measure conditions immediately upslope from each discharge.

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

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

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

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

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

21 (2) shall consider reasonably available information on the background
22 condition of bodies of water, including the presence of naturally occurring pollutants,
23 such as arsenic;

24 (3) shall use scientific justification to develop water quality standards
25 that can be reliably measured;

26 (4) may not require water discharged by a user to be of a higher quality
27 than the natural condition of the water receiving the discharge; if the available
28 evidence reasonably demonstrates that the natural condition of a body of water does
29 not meet the standards contained in the water quality criterion applicable to that water
30 under regulations of the department and the natural condition maintains and protects
31 the existing uses of the water, then the natural condition of that body of water

1 constitutes the criterion that must be met by a discharge into that body of water; and
2 (5) shall provide procedures for permitting mixing zones in state bodies
3 of water under regulations adopted by the department.

4 (b) Except when setting standards under AS 03.05.011(a) for shellfish growing
5 areas, as defined in the national shellfish sanitation program manual of operations
6 published by the Food and Drug Administration, the department may adopt a water
7 quality standard or other regulation related to water quality that is more restrictive than
8 applicable federal water quality criteria or regulations only after following the
9 procedures in AS 46.03.087(b).

10 (c) Within 90 days after receiving a written request to amend the state's water
11 quality standards to incorporate a reduction in, or elimination of, federal water quality
12 criteria, or by another date mutually agreed on by the applicant and the department,
13 the department shall either propose regulations that amend the state's water quality
14 standards to incorporate the reduction or elimination or initiate the procedure required
15 under AS 46.03.087(b). If, following the procedure under AS 46.03.087(b), the
16 department is unable to make the written findings required under AS 46.03.087(b)(3),
17 the department shall propose regulations that amend the state's water quality standards
18 to incorporate the reduction in or elimination of the federal water quality criteria or
19 regulations.

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

25 (e) Except as otherwise provided in AS 46.03.087, the measurement of
26 sediment to determine whether a permittee is in compliance with permit limitations
27 based on water quality shall be by the volumetric Imhoff cone method for settleable
28 solids. However, this subsection may not be construed to limit the department's
29 authority to adopt water quality criteria for total suspended solids to meet United States
30 Environmental Protection Agency requirements.

31 (f) In this section, "background condition" has the meaning given in

1 AS 46.03.020(c).

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

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

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

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

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

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

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

16 (2) consider and prepare a written finding assessing the economic and
17 technological feasibility of the proposal; and

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

19 (A) hydrologic conditions or discharge characteristics in the area
20 of the state or at the particular site where the standard or regulation applies
21 reasonably require the water quality standard, discharge standard, or method of
22 measurement to protect human health and welfare or propagation of fish and
23 wildlife; and

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

27 * **Sec. 5. TRANSITIONAL REVIEW OF REGULATIONS.** (a) The Department of
28 Environmental Conservation shall, during the triennial review process of regulations that is
29 required under 33 U.S.C. 1313(c) (Clean Water Act), review its water quality regulations that
30 are in effect on the effective date of this Act in order to determine if they comply with federal
31 requirements and are not more stringent than applicable federal regulations. If the review

1 indicates that there are state regulations that are more stringent than applicable federal
2 regulations, the department shall determine whether it could justify those regulations under the
3 requirements of AS 46.03.087(b)(3), enacted by sec. 4 of this Act. If the department
4 determines that it cannot meet the requirements of AS 46.03.087(b)(3), the department shall
5 adopt the necessary revisions to the regulations. It is the legislature's intent that the
6 department complete its review of all regulations governed by this subsection and its adoption
7 of all necessary revisions required under this subsection within four years after the effective
8 date of this section.

9 (b) The Department of Environmental Conservation shall, by January 31, 1999, and
10 annually thereafter until all of the state water quality regulations in effect on the effective date
11 of this Act are reviewed, prepare a written report on the status of the department's review and
12 revisions required under (a) of this section. The department shall submit the report to the
13 governor and notify the legislature that the report is available.