

CS FOR HOUSE BILL NO. 51(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 3/5/97

Referred: Rules

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 water quality and the procedures required to implement
2 certain federal regulatory changes."

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

4 * **Section 1.** FINDINGS AND INTENT. The legislature confirms that it is the policy of
5 the state to adopt laws and implement water quality standards based on scientific and technical
6 evidence. The legislature specifically requests the Department of Environmental Conservation,
7 when implementing AS 46.03.085 - 46.03.088, enacted by sec. 4 of this Act, to coordinate its
8 efforts with other state agencies to achieve cost efficiencies and, when adopting regulations,
9 to consider measures that encourage the creation and retention of jobs for Alaskans and the
10 economic development of the state's natural resources consistent with the public interest. It
11 is the legislature's intent that Alaska's water quality regulations be adopted and implemented
12 in a credible manner, be based on scientific criteria, and be economically feasible to comply
13 with. The people of Alaska express their will through the legislature, and regulations
14 implement legislative action.

1 * **Sec. 2.** AS 46.03.050 is amended by adding a new subsection to read:

2 (b) The department may continue to investigate the feasibility of securing
3 federal approval under 33 U.S.C. 1342(b) of the state's permit program for discharges
4 into navigable water so that the department has authority to administer the national
5 pollutant discharge elimination system in the state in lieu of the federal permit program
6 otherwise applicable to the state under 33 U.S.C. 1342(a). Nothing in AS 46.03.085 -
7 46.03.088 may be interpreted to prevent the department from continuing its effort to
8 secure approval under 33 U.S.C. 1342(b).

9 * **Sec. 3.** AS 46.03.080 is amended by adding a new subsection to read:

10 (b) If the available evidence reasonably demonstrates that the natural condition
11 of a body of water does not meet the requirements of the quality or purity standards
12 that would otherwise be applicable to the classification of the water adopted under (a)
13 of this section, the natural condition of the water shall constitute the applicable
14 standard of quality or purity.

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 background condition of the water receiving the discharge; and

28 (5) shall provide procedures for permitting mixing zones in state bodies
29 of water under regulations adopted by the department.

30 (b) Except when setting standards under AS 03.05.011(a) for shellfish growing
31 areas, as defined in the national shellfish sanitation program manual of operations

1 published by the Food and Drug Administration, the department may adopt a water
2 quality standard or other regulation related to water quality that is more restrictive than
3 applicable federal water quality criteria or regulations only after following the
4 procedures in AS 46.03.087(b).

5 (c) Notwithstanding AS 44.62.230, a person may submit a written request to
6 the department to amend the state's water quality standards, criteria, or other
7 regulations to incorporate a reduction in or elimination of a federal water quality
8 standard, criteria, or other regulation. The request must state clearly and concisely the
9 state and federal standard, criteria, or regulation in question and provide the department
10 with the reasons and basis for the requested amendment. Within 90 days after
11 receiving the request, or by another date mutually agreed on by the applicant and the
12 department, the department shall either propose regulations to incorporate the reduction
13 or elimination of the federal provision or initiate the procedure required under
14 AS 46.03.087(b). If, following the procedure under AS 46.03.087(b), the department
15 is unable to make the written findings required under AS 46.03.087(b)(3), the
16 department shall propose regulations that amend the state's water quality standards to
17 incorporate the reduction in or elimination of the federal water quality criteria or
18 regulations.

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

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

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

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

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

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

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

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

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

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

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

16 (A) biological, chemical, or physical conditions in the area of the
17 state or at the particular site where the standard or regulation applies reasonably
18 require the water quality standard, permit limits, or method of measurement to
19 protect human health and welfare or propagation of fish and wildlife; and

20 (B) biological, chemical, physical, or economic conditions are
21 significantly different in that area of the state or at that particular site from
22 those upon which the corresponding federal criteria or regulations are based.

23 **Sec. 46.03.088. Definition of "background condition."** In AS 46.03.085 -
24 46.03.087, and in regulations of the department that relate to water quality,
25 "background condition" means the biological, chemical, and physical conditions of a
26 body of water outside the area of influence of the discharge under consideration.
27 When the department performs background sampling to determine a background
28 condition during an enforcement action, the department shall measure conditions that
29 are upslope or outside the area of influence of the discharge. If several discharges to
30 a body of water exist and an enforcement action is being taken, the department's
31 background sampling shall measure conditions immediately upslope from each

1 discharge.

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

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