"An Act relating to the Department of Environmental Conservation." AND PROVIDING FOR AN EFFECTIVE DATE

COMMITTEE REPORT

4/9/76

HOUSE

Mr. Speaker: Date 5-19-76

The Committee on FINANCE has had SSSB 267 am under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(X) recommends it BE REPLACED WITH CS FOR SSSB 267 am AND THAT

CS FOR SSSB 267 am DO PASS

( ) "and" recommends it BE REFERRED TO THE ______ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

[illegible]		
[illegible]	[illegible]	
[illegible]	[illegible]	
[illegible]		

Members NOT concurring in the Majority report:

[illegible] recommends: [illegible]

______ recommends:

______ recommends:

______ recommends:

______ recommends:

[illegible] Chairman

AMENDMENT

OFFERED IN THE HOUSE: BY: HOUSE FINANCE

TO: SECTION SEVEN HOUSE BILL NO. ____________

SENATE BILL NO. SS SB 267 am

PAGE: THREE (3) LINE: TWENTY-ONE (21)

Sec. 7, page 3, line 21, there will be a new subsection "d" reading: "Plans submitted under this section which are not rejected or conditionally approved by the department within 60 days of submission in final form shall be deemed approved.

(House Finance Committee Substitute for SS SB 267am)

Joel Bennett's addition:

Nothwithstanding the approval requirement in (a) and (b) of this section ...

The above wording begins "d"

the Gruening amendment to be incorporated into a C.S.

sent to Legislative Affairs
11 p.m.
May 19, 1976
mb

AMENDMENT

OFFERED IN THE HOUSE: BY: ____________________

TO: ____________________ HOUSE BILL NO. ________________

SENATE BILL NO. ________________

PAGE: ________________ LINE: ________________

AMENDMENT

OFFERED IN THE HOUSE: BY: HOUSE FINANCE

TO: SECTION SEVEN HOUSE BILL No. ____________

SENATE BILL No. SS SB 267 am

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(House Finance Committee Substitute for SS SB 267am)

the Gruening amendment to be incorporated into a C.S.

sent to Legislative Affairs
11 p.m.
May 13, 1976
[illegible]

Introduced: 2/6/76
Referred: Resources

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 267 am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Department of Environmental
7 Conservation."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 46.03.020(10)(C) is amended to read:

10 (C) protection of public water supplies by establish-
11 ing minimum drinking water standards, and [SETTING] standards for
12 the construction, improvement, and maintenance of public water
13 supply systems;

14 * Sec. 2. AS 46.03.030(b) is amended to read:

15 (b) The department may grant [PAY] to a municipality, as funds
16 are available, up to the lesser of 50 [25] per cent of the eligible
17 [ESTIMATED] cost or 50 per cent of the eligible [ESTIMATED] cost not
18 financed [BORNE] by the federal government, [IF THERE IS FEDERAL
19 ASSISTANCE,] for [OF] public water supply, treatment and distribution
20 systems and public sewage collection, treatment and discharge facilities
21 for which construction has not commenced on or before the effective date
22 of this Act [SYSTEMS, INCLUDING COLLECTION AND IMPOUNDING FACILITIES,
23 AND OF THOSE PORTIONS OF SEWERAGE SYSTEMS NOT COVERED BY (a) OF THIS
24 SECTION]. The eligible [ESTIMATED] cost of a project or portions of a
25 project [ANY PART OF A SYSTEM] will be as determined by the federal
26 agency granting [WHICH GIVES] the most monetary assistance [OR, IF
27 NONE, BY THE DEPARTMENT]. On projects or portions of projects, for which
28 federal participation is not available, eligible costs will be deter-
29 mined by the department. Projects [SYSTEMS] shall be constructed

in accordance with [ACCORDING TO] plans and specifications approved by [THE FEDERAL AGENCY WHICH GIVES THE MOST MONETARY ASSISTANCE OR, IF NONE, BY] the department.

* Sec. 3. AS 46.03.100(a) is amended to read:

(a) A person who conducts an [A COMMERCIAL OR INDUSTRIAL] operation which results in the disposal of solid or liquid waste material or heated process or cooling water into the waters or onto the land of the state must procure a permit from the department before disposing of the waste material or water. The permit must be obtained for direct disposal and for disposal into publicly operated sewerage systems.

* Sec. 4. AS 46.03.110(a) is amended to read:

(a) An application for a permit shall be made on forms prescribed by the department or on forms prescribed by the United States Environmental Protection Agency and shall contain the name and address of the applicant, a description of his operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other information considered necessary by the department. Application for permit shall be made at least 60 days before commencement of a proposed discharge.

* Sec. 5. AS 46.03.110 is amended by adding a new subsection to read:

(e) If the department has certified a National Pollutant Discharge Elimination System permit under sec. 401 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Sec. 1341), and the United States Environmental Protection Agency has issued that permit to a person, the department may waive the requirements of this section, and adopt the federal permit as the permit required under sec. 100 of this chapter.

* Sec. 6. AS 46.03.180 is amended to read:

Sec. 46.03.180. CONFIDENTIALITY OF RECORDS. Records and information other than emission data in the possession of the department which relate to production or sales figures or to processes or production techniques of the owner or operator of an air contaminant source are considered confidential records of the department after application by the party and certification that their public disclosure would tend to adversely affect his competitive position.

* Sec. 7. AS 46.03.720 is amended to read:

Sec. 46.03.720. CONSTRUCTION AND OPERATION OF CERTAIN FACILITIES PROHIBITED. (a) No person may construct, extend, install or operate a sewerage [SEWAGE] system or treatment works, or any part of a sewerage [SEWAGE] system or treatment works, until plans for it are submitted to the department for review[,] and the department approves them in writing and issues a written permit. [THE DEPARTMENT MAY WAIVE THE REQUIREMENT THAT PLANS BE SUBMITTED TO IT.]

(b) No person may construct, extend, install or operate a public water supply system, or any part of a public water supply system until plans for it are submitted to the department for review and the department approves them in writing.

(c) The department may waive the requirements of this section.

* Sec. 8. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.755. DISCHARGE REPORTING. (a) A person in charge of a facility, operation or vessel, as soon as he has knowledge of any discharge from the facility, operation or vessel in violation of secs. 740 or 750 of this chapter, shall immediately notify the department of the discharge.

(b) Notwithstanding (a) of this section, the department may enter into a written agreement with a person for the periodic reporting of minor discharges other than into the waters of the state.

* Sec. 9. AS 46.03.760 is repealed and re-enacted to read:

Sec. 46.03.760. CIVIL ACTION FOR POLLUTION; DAMAGES. (a) A person who violates or causes or permits to be violated a provision of this chapter or a regulation, a lawful order of the department, or a permit or term or condition of a permit issued under this chapter is liable, in a civil action, to the state for a sum to be assessed by the court of not less than $500, nor more than $100,000 for the initial violation, nor more than $5,000 for each day thereafter on which the violation continues, and which shall reflect, where applicable:

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, which shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation; and

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

(b) Actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature.

(c) The court, upon motion of the department or upon its own motion, may defer assessment of all or part of that portion of the sum imposed upon a person under (a)(3) of this section conditioned upon the person complying, within the shortest feasible time, with the requirement for which a violation is shown.

(d) As used in this section, "economic savings" means that sum which a person would be required to expend for the planning, acquisi-

tion, siting, construction, installation and operation of facilities necessary to effect compliance with the standard violated.

(e) In addition to liability under (a)--(d) of this section, a person who violates or causes or permits to be violated a provision of secs. 740--750 of this chapter is liable to the state, in a civil action, brought under sec. 822 of this chapter, for the full amount of actual damages caused to the state by the violation, including direct and indirect costs associated with the abatement, containment or removal of the pollutant, restoration of the environment to its former state, and all incidental administrative costs.

* Sec. 10. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation of this chapter, or of a regulation, lawful order of the department, or permit or term or condition of a permit issued under this chapter. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

* Sec. 11. AS 46.03.790 is repealed and re-enacted to read:

Sec. 46.03.790. CRIMINAL PENALTIES. (a) A person who violates or who causes or permits a violation of a provision of this chapter, or of a regulation, lawful order of the department, or permit or term or condition of a permit issued under this chapter is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than $25,000 and costs of prosecution.

(b) A person who wilfully violates a provision of this chapter, or

of a regulation, lawful order of the department, or permit or term or condition of a permit issued under this chapter is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than $25,000 and costs of prosecution, or by imprisonment for not more than one year, or by both fine, costs, and imprisonment.

(c) Each day on which a violation described in (a) or (b) of this section occurs is considered a separate violation.

(d) A person who fails to provide or falsely states information required under sec. 755 of this chapter is guilty of a misdemeanor, and, upon conviction, is punishable by a fine of not more than $25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

* Sec. 12. AS 46.03.810(a) is amended to read:

(a) A person is guilty of creating or maintaining a nuisance if he

(1) places or deposits upon a lot, street, beach, or premises, or upon[,] or anywhere within 200 feet of a public highway, [UNLESS THE HIGHWAY ABUTS UPON TIDAL WATER,] any garbage, offal, dead animals, or any other matter or thing, which would be obnoxious or cause the spread of disease or in any way endanger the health of the community;

(2) allows to be placed or deposited upon any premises owned by him or under his control garbage, offal, dead animals, or any other matter or thing which would be obnoxious or offensive to the public or which would produce, aggravate, or cause the spread of disease or in any way endanger the health of the community.

* Sec. 13. AS 46.03.822 is amended to read:

Sec. 46.03.822. STRICT LIABILITY FOR THE DISCHARGE OF HAZARDOUS SUBSTANCES. To the extent not otherwise preempted by federal law, a

person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state is strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by the entry. [IF AN ACTION IS BROUGHT BY THE STATE TO RECOVER DAMAGES FOR OIL POLLUTION, LIABILITY IS LIMITED AS SPECIFIED IN SEC. 760(b) OF THIS CHAPTER.] In an action to recover damages, the person is relieved from strict liability, without regard to fault, if he can prove

(1) that the hazardous substance to which the damages relate entered in or upon the waters, surface or subsurface lands of the state solely as a result of

(A) an act of war,

(B) an intentional act or a negligent act of a third party, other than a party (or its employees) in privity of contract with, or employed by, the person,

(C) negligence on the part of the United States government or the State of Alaska, or

(D) an act of God; and

(2) in relation to (1)(B), (C) or (D) of this section, that he discovered the entry of the hazardous substance in or upon the waters, surface or subsurface lands of the state and began operations to contain and clean up the hazardous substance within a reasonable period of time.

* Sec. 14. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.850. COMPLIANCE ORDER. (a) When, in the opinion of the department, a person is violating or is about to violate a provision of this chapter or a regulation or lawful order of the department, or a permit or a term of a permit issued by the department, the department may notify the person of its determination by personal service or

1 certified mail. The determination and notice do not constitute an
2 order under sec. 820 of this chapter.
3 (b) The recipient of the determination must file with the depart-
4 ment, within the time period specified in the notice, a report stating
5 what measures have been and are being taken, or are proposed to be
6 taken, to correct or control the conditions outlined in the notice.
7 (c) After the report is filed under (b) of this section or the
8 time period specified for it has elapsed, the department may issue a
9 compliance order in conformity with the authority of the department
10 and the public policy declared in sec. 10 of this chapter. A copy of
11 the compliance order shall be served personally or sent by certified
12 mail to the person affected. A compliance order is effective upon
13 receipt.
14 (d) Within 30 days after receipt, the recipient may request a
15 hearing to review the compliance order. Failure to request a hearing
16 within 30 days after the receipt of a compliance order constitutes a
17 waiver of the recipient's right of review.
18 (e) The department shall hold a hearing within 20 days after
19 receipt of a request for one under (d) of this section. After the
20 hearing, the department may rescind, modify or affirm the compliance
21 order.
22 (f) The attorney general shall seek enforcement of a compliance
23 order.
24 * Sec. 15. AS 46.03 is amended by adding a new section to read:
25 Sec. 46.03.875. REMEDIES CUMULATIVE. All remedies provided by
26 this chapter are cumulative, and the securing of relief, whether in-
27 junctive, civil or criminal, under a section of this chapter does not
28 estop the state from obtaining relief under any other section of this
29 chapter.

* Sec. 16. AS 46.03.900(12) is amended to read:

(12) "other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, trimmings from logging operations, sand, lime cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, heat from cooling or other operations, and other substances not sewage or industrial waste which may cause or tend to cause pollution of the waters of the state;

* Sec. 17. AS 46.03.900(20) is amended to read:

(20) "standard" means the measure of purity or quality for air, water, and land [WATERS] in relation to their reasonable and necessary use as established by the department;

* Sec. 18. AS 44.62.330 is amended by adding a new paragraph to read:

(43) Department of Environmental Conservation, except to the extent that secs. 360--400 of this chapter are inconsistent with the manner in which proceedings are initiated under the provisions of AS 46.03.

* Sec. 19. AS 46.03.030(a), 46.03.130, 46.03.230(a), 46.03.240 and 46.03.750(d) are repealed.

Introduced: 2/6/76
Referred: Resources

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 267

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Department of Environmental Conservation."

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

* Section 1. AS 46.03.020(10)(C) is amended to read:

(C) protection of public water supplies by establishing minimum drinking water standards, and [SETTING] standards for the construction, improvement, and maintenance of public water supply systems;

* Sec. 2. AS 46.03.030(b) is amended to read:

(b) The department may grant [PAY] to a municipality, as funds are available, up to the lesser of 50 [25] per cent of the eligible [ESTIMATED] cost or 50 per cent of the eligible [ESTIMATED] cost not financed [BORNE] by the federal government, [IF THERE IS FEDERAL ASSISTANCE,] for [OF] public water supply, treatment and distribution systems and public sewage collection, treatment and discharge facilities for which construction has not commenced on or before the effective date of this Act [SYSTEMS, INCLUDING COLLECTION AND IMPOUNDING FACILITIES, AND OF THOSE PORTIONS OF SEWERAGE SYSTEMS NOT COVERED BY (a) OF THIS SECTION]. The eligible [ESTIMATED] cost of a project or portions of a project [ANY PART OF A SYSTEM] will be as determined by the federal agency granting [WHICH GIVES] the most monetary assistance [OR, IF NONE, BY THE DEPARTMENT]. On projects or portions of projects, for which federal participation is not available, eligible costs will be determined by the department. Projects [SYSTEMS] shall be constructed

in accordance with [ACCORDING TO] plans and specifications approved by [THE FEDERAL AGENCY WHICH GIVES THE MOST MONETARY ASSISTANCE OR, IF NONE, BY] the department.

* Sec. 3. AS 46.03.100(a) is amended to read:

(a) A person who conducts an [A COMMERCIAL OR INDUSTRIAL] operation which results in the disposal of solid or liquid waste material or heated process or cooling water into the waters or onto the land of the state must procure a permit from the department before disposing of the waste material or water. The permit must be obtained for direct disposal and for disposal into publicly operated sewerage systems.

* Sec. 4. AS 46.03.110(a) is amended to read:

(a) An application for a permit shall be made on forms prescribed by the department or on forms prescribed by the United States Environmental Protection Agency and shall contain the name and address of the applicant, a description of his operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other information considered necessary by the department. Application for permit shall be made at least 60 days before commencement of a proposed discharge.

* Sec. 5. AS 46.03.110 is amended by adding a new subsection to read:

(e) If the department has certified a National Pollutant Discharge Elimination System permit under sec. 401 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Sec. 1341), and the United States Environmental Protection Agency has issued that permit to a person, the department may waive the requirements of this section, and adopt the federal permit as the permit required under sec. 100 of this chapter.

* Sec. 6. AS 46.03.180 is amended to read:

1 Sec. 46.03.180. CONFIDENTIALITY OF RECORDS. Records and information other than emission data in the possession of the department which relate to production or sales figures or to processes or production techniques of the owner or operator of an air contaminant source are considered confidential records of the department after application by the party and certification that their public disclosure would tend to adversely affect his competitive position.

8 * Sec. 7. AS 46.03.720 is amended to read:

9 Sec. 46.03.720. CONSTRUCTION AND OPERATION OF CERTAIN FACILITIES PROHIBITED. (a) No person may construct, extend, install or operate a sewerage [SEWAGE] system or treatment works, or any part of a sewerage [SEWAGE] system or treatment works, until plans for it are submitted to the department for review[,] and the department approves them in writing and issues a written permit. [THE DEPARTMENT MAY WAIVE THE REQUIREMENT THAT PLANS BE SUBMITTED TO IT.]

16 (b) No person may construct, extend, install or operate a public water supply system, or any part of a public water supply system, if the system has at least 15 service connections or regularly serves at least 25 individuals, until plans for it are submitted to the department for review and the department approves them in writing.

21 (c) The department may waive the requirements of this section.

22 * Sec. 8. AS 46.03 is amended by adding a new section to read:

23 Sec. 46.03.755. DISCHARGE REPORTING. (a) A person in charge of a facility, operation or vessel, as soon as he has knowledge of any discharge from the facility, operation or vessel in violation of secs. 740 or 750 of this chapter, shall immediately notify the department of the discharge.

28 (b) Notwithstanding (a) of this section, the department may enter into a written agreement with a person for the periodic reporting

of minor discharges other than into the waters of the state.

* Sec. 9. AS 46.03.760 is repealed and re-enacted to read:

Sec. 46.03.760. CIVIL ACTION FOR POLLUTION; DAMAGES. (a) A person who violates or causes or permits to be violated a provision of this chapter or a regulation, a lawful order of the department, or a permit or term or condition of a permit issued under this chapter is liable, in a civil action, to the state for a sum to be assessed by the court of not less than $500, nor more than $100,000 for the initial violation, nor more than $5,000 for each day thereafter on which the violation continues, and which shall reflect, where applicable:

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, which shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation; and

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

(b) Actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature.

(c) The court, upon motion of the department or upon its own motion, may defer assessment of all or part of that portion of the sum imposed upon a person under (a)(3) of this section conditioned upon the person complying, within the shortest feasible time, with the requirement for which a violation is shown.

(d) As used in this section, "economic savings" means that sum

which a person would be required to expend for the planning, acquisition, siting, construction, installation and operation of facilities necessary to effect compliance with the standard violated.

(e) In addition to liability under (a)--(d) of this section, a person who violates or causes or permits to be violated a provision of secs. 740--750 of this chapter is liable to the state, in a civil action, brought under sec. 822 of this chapter, for the full amount of actual damages caused to the state by the violation, including direct and indirect costs associated with the abatement, containment or removal of the pollutant, restoration of the environment to its former state, and all incidental administrative costs.

* Sec. 10. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation of this chapter, or of a regulation, lawful order of the department, or permit or term or condition of a permit issued under this chapter. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

* Sec. 11. AS 46.03.790 is repealed and re-enacted to read:

Sec. 46.03.790. CRIMINAL PENALTIES. (a) A person who violates or who causes or permits a violation of a provision of this chapter, or of a regulation, lawful order of the department, or permit or term or condition of a permit issued under this chapter is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than $25,000 and costs of prosecution.

(b) A person who wilfully violates a provision of this chapter, or of a regulation, lawful order of the department, or permit or term or condition of a permit issued under this chapter is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than $25,000 and costs of prosecution, or by imprisonment for not more than one year, or by both fine, costs, and imprisonment.

(c) Each day on which a violation described in (a) or (b) of this section occurs is considered a separate violation.

(d) A person who fails to provide or falsely states information required under sec. 755 of this chapter is guilty of a misdemeanor, and, upon conviction, is punishable by a fine of not more than $25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

* Sec. 12. AS 46.03.810(a) is amended to read:

(a) A person is guilty of creating or maintaining a nuisance if he

(1) places or deposits upon a lot, street, beach, <u>or</u> premises<u>,</u> or upon[,] or <u>anywhere</u> within 200 feet of a public highway, [UNLESS THE HIGHWAY ABUTS UPON TIDAL WATER,] any garbage, offal, dead animals, or any other matter or thing, which would be obnoxious or cause the spread of disease or in any way endanger the health of the community;

(2) allows to be placed or deposited upon any premises owned by him or under his control garbage, offal, dead animals, or any other matter or thing which would be obnoxious or offensive to the public or which would produce, aggravate, or cause the spread of disease or in any way endanger the health of the community.

* Sec. 13. AS 46.03.822 is amended to read:

Sec. 46.03.822. STRICT LIABILITY FOR THE DISCHARGE OF HAZARDOUS

1 SUBSTANCES. To the extent not otherwise preempted by federal law, a
2 person owning or having control over a hazardous substance which
3 enters in or upon the waters, surface or subsurface lands of the state
4 is strictly liable, without regard to fault, for the damages to persons
5 or property, public or private, caused by the entry. [IF AN ACTION IS
6 BROUGHT BY THE STATE TO RECOVER DAMAGES FOR OIL POLLUTION, LIABILITY
7 IS LIMITED AS SPECIFIED IN SEC. 760(b) OF THIS CHAPTER.] In an action
8 to recover damages, the person is relieved from strict liability,
9 without regard to fault, if he can prove
10 (1) that the hazardous substance to which the damages
11 relate entered in or upon the waters, surface or subsurface lands of
12 the state solely as a result of
13 (A) an act of war,
14 (B) an intentional act or a negligent act of a third
15 party, other than a party (or its employees) in privity of contract
16 with, or employed by, the person,
17 (C) negligence on the part of the United States govern-
18 ment or the State of Alaska, or
19 (D) an act of God; and
20 (2) in relation to (1)(B), (C) or (D) of this section, that
21 he discovered the entry of the hazardous substance in or upon the
22 waters, surface or subsurface lands of the state and began operations
23 to contain and clean up the hazardous substance within a reasonable
24 period of time.
25 * Sec. 14. AS 46.03 is amended by adding a new section to read:
26 Sec. 46.03.850. COMPLIANCE ORDER. (a) When, in the opinion of
27 the department, a person is violating or is about to violate a pro-
28 vision of this chapter or a regulation or lawful order of the department,
29 or a permit or a term of a permit issued by the department, the depart-

1 ment may notify the person of its determination by personal service or
2 certified mail. The determination and notice do not constitute an
3 order under sec. 820 of this chapter.

4 (b) The recipient of the determination must file with the depart-
5 ment, within the time period specified in the notice, a report stating
6 what measures have been and are being taken, or are proposed to be
7 taken, to correct or control the conditions outlined in the notice.

8 (c) After the report is filed under (b) of this section or the
9 time period specified for it has elapsed, the department may issue a
10 compliance order in conformity with the authority of the department
11 and the public policy declared in sec. 10 of this chapter. A copy of
12 the compliance order shall be served personally or sent by certified
13 mail to the person affected. A compliance order is effective upon
14 receipt.

15 (d) Within 30 days after receipt, the recipient may request a
16 hearing to review the compliance order. Failure to request a hearing
17 within 30 days after the receipt of a compliance order constitutes a
18 waiver of the recipient's right of review.

19 (e) The department shall hold a hearing within 20 days after
20 receipt of a request for one under (d) of this section. After the
21 hearing, the department may rescind, modify or affirm the compliance
22 order.

23 (f) The attorney general shall seek enforcement of a compliance
24 order.

25 * Sec. 15. AS 46.03 is amended by adding a new section to read:

26 Sec. 46.03.875. REMEDIES CUMULATIVE. All remedies provided by
27 this chapter are cumulative, and the securing of relief, whether in-
28 junctive, civil or criminal, under a section of this chapter does not
29 estop the state from obtaining relief under any other section of this

chapter.

* Sec. 16. AS 46.03.900(12) is amended to read:

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* Sec. 17. AS 46.03.900(20) is amended to read:

(20) "standard" means a [THE] measure of environmental [PURITY OR] quality [FOR WATERS IN RELATION TO THEIR REASONABLE AND NECESSARY USE] as established by the department;

* Sec. 18. AS 44.62.330 is amended by adding a new paragraph to read:

(43) Department of Environmental Conservation, except to the extent that secs. 360--400 of this chapter are inconsistent with the manner in which proceedings are initiated under the provisions of AS 46.03.

* Sec. 19. AS 46.03.030(a), 46.03.130, 46.03.230(a), 46.03.240 and 46.03.750(d) are repealed.

ANALYSIS OF IMPORTANT SECTIONS OF

SPONSOR SUBSTITUTE FOR SB 267

Distributed to all Senators.

Section 2 and Section 19. Grants and loans for water supply and sewerage systems.

Section 2 substantially revises current law relating to local grants for water supply and sewerage system purposes. Current federal law precludes the possibility of a state's advancing to local governments the anticipated federal share for projects on which construction commenced after July 1, 1972. Section 19 of this bill thus repeals Section 30(a).

The important part of the proposed revision to AS 46.03.030 is the increase in state participation to 50 per cent of the total project cost or 50 per cent of the non-federal share, whichever is the lesser. This program involves state funding of projects which often are not eligible for federal funds, particularly in public water systems, which are often neglected, and projects which can receive federal funding are undertaken instead. In much of Alaska, public water supply systems are badly in need of upgrading, especially as they will have to meet new standards promulgated under the Safe Drinking Water Act of 1974. By increasing the state's share in these projects from the present maximum of 25 per cent to 50 per cent, we feel that more communities will be able to acquire badly needed facilities.

Section 3. Waste Disposal Permits.

This section expands the waste disposal permit jurisdiction of the department to any operation which results in the disposal of waste material into the water.

This amendment is necessary if the state is to assume jurisdiction over the National Pollutant Discharge Elimination System permit process, currently being administered in the state by the U. S. Environmental Protection Agency under Section 402 of the Federal Water Pollution Control Act amendments of 1972 (FWPCA). Under that section, it is currently necessary for a person to obtain a federal permit from EPA for any discharge from any point source into the water of the state, whether or not the receiving waterbody is navigable. See United States v. Holland, 378 F. Supp. 665 (DCMD Fla. 1974).

Under Section 402(b) of the Act, states may assume control of the NPDES permit program if the state possesses water quality authority at least equal to that possessed by EPA. A majority of states have acquired this delegation, precluding the need for continuing extensive federal involvement in state water quality management. However, the State of Alaska cannot assume this authority at the present time, because our water quality permit jurisdiction is limited to commercial or industrial operations.

Section 7. Plan Review.

The department is currently in the process of developing regulations to implement state responsibilities under the Safe Drinking Water Act of 1974 (P.L. 92-523). In order to assume authority for implementation of the Safe Drinking Water Act within the State of Alaska, it is necessary that the state possess "adequate procedures for the enforcement of . . . state regulations" (Section 1413(a)(2)). This section, by way of a new subsection (b) to AS 46.03.720, provides for the review of plans for larger public water supply systems in order to adequately insure that these systems will be constructed and operated in conformity with the state's substantive regulations.

Section 9, Section 11, Section 13. Pollution Enforcement.

1. The department currently possesses no civil "option" for enforcement of anything but oil spills (unless the department sues for costs of restoration under Section 780--a provision which often is not relevant). Thus, particularly in air pollution or sewerage disposal matters, the department must either proceed criminally, or simply drop the matter. It should be noted that a civil remedy is necessary to assume federal permit authority. Environmental enforcement is, to a large degree, either compensatory or remedial in nature--that is, the punishing of a culpable individual is often only tangential to the main purposes of an environmental enforcement agency. The main concern is preventing or remedying damage.

Revised AS 46.03.760 establishes a civil option for the full range of violations currently covered only by the criminal provisions of AS 46.03.790. We believe the existence of this civil option will at once greatly increase both the fairness and effectiveness of the department's enforcement functions.

The "normal" response to the need for a civil option in environmental enforcement has been the creation of civil penalties. The problem with this approach is that some courts may view this as an attempt to penalize or punish a defendant without affording him the normal range of rights given to a criminal defendant, i.e., privilege against self-incrimination, jury trial, etc. See Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963). As a matter of both policy and law, the argument has some merit.

Accordingly, the proposed revision of Section 760 has been written in a manner which frames the civil assessment to recognize the two primary goals of environmental enforcement--that is, compensation and correction.

2. Current oil spill liability provisions are deficient in many respects. Under current AS 46.03.822, a private party or a governmental agency other than the state is entitled the full compensation, based on strict liability for all actual damages caused by an oil spill. However, the availability of strict liability compensation to the state is limited by the provisions of current 760(b), which places an upper limit on state compensation of $100,000.

Requiring the state (and the state alone) to prove negligence to obtain full recovery for actual damages flies in the face of judicial and legislative opinion that the handling of oil is a hazardous undertaking, for which the handlers should be strictly liable in the event of injury. The Alaska Legislature has recognized this in Section 822 and has accordingly granted unlimited recovery for actual damages based on strict liability to any person, except the state. In Section 13 of this bill, revisions to Section 822 remove this distinction, and permit the state to recover for all actual damages caused to it by an oil pollution incident.

Section 10. Injunctions.

Currently Title 46 does not confer upon the department the power to seek an injunction for violations of its standards. This power is necessary to assume federal permit jurisdiction. Absent a specific statutory provision authorizing such suits, the courts will not enjoin the violation of a statute or regulation as such. Thus, except in cases where an actual "public nuisance" can be demonstrated, the department's authority to seek immediate effective remedial action may be extremely limited.

At common law, in order to obtain a preliminary injunction, it was necessary for the plaintiff to demonstrate that physical irreparable harm would be caused to him by a failure to grant the preliminary relief. There has emerged a judicial response toward this problem. Particularly in federal courts, it is often not necessary to demonstrate physical irreparable harm when seeking an injunction against a violation of a public welfare statute--such as environmental legislation. See Jones v. District of Columbia Redevelopment Agency, 499 F.2d 502, 512 (CADC 1974); Environmental Defense Fund v. TVA, 468 F.2d 1164, 1184 (CA6 1972); Lathan v. Volpe, 455 F.2d 111 (CA9 1971). Section 765 mirrors this judicial philosophy.

Moreover, Section 765 mirrors current judicial attitudes toward the balancing of equities in environmental actions, as articulated in United States v. Reserve Mining Co., 514 F. 2d 492. The court in that case held that the balancing of equities in environmental enforcement actions would be relevant in determining the timing of compliance, but not in the ultimate necessity of complying within a reasonable time.

Section 14. Compliance Order.

The compliance order is often the most effective single means of enforcing environmental quality standards. It is effective and expeditious, and does not necessarily require expensive and time-consuming litigation on the part of either the department or the person on whom the compliance order is served. Its very informality makes it a useful tool to the department and an important alternative to formal judicial action. Section 14 expands the order procedure beyond water quality matters.

Section 19. Repealers.

AS 46.03.230(a) is repealed. This was not included in original SB 267. Presently, the state funds local air pollution control authorities under two statutes--AS 43.18-.010(a)(3), state aid to local governments, and AS 46.03.230(a), state and federal aid. The Title 43 provision provides for $2.00 per capita to cities and boroughs for both air and water pollution control facilities. The Title 46 provision currently provides that localities are entitled to a block grant The amount of money appropriated by the legislature for AS 46.03.230(a) purposes has represented only a token contribution (total $25,000) compared with the total budgets of the

three boroughs that presently have air pollution control authority. The costs of administering these two funding programs are also duplicative, as essentially the same information must be regenerated for each application.

Because the legislature is currently undertaking a comprehensive review of the state's revenue-sharing laws, the administration believes that the establishing of adequate levels of air and water pollution control funding should be analyzed in the context of that debate. However, SSSB 267 does take the matter halfway, by removing the unnecessary duplication of programs by repealing current subsection (a) of Section 230, and making subsection (b) the full text of that section. The related AS 46.03.240 is likewise repealed.

Introduced: 3/13/75
Referred: Resources

1 IN THE SENATE — BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 267

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Department of Environmental
7 Conservation."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 46.03.100 is amended to read:

10 Sec. 46.03.100. WASTE DISCHARGE [DISPOSAL] PERMIT. (a) A
11 person who conducts an [A COMMERCIAL OR INDUSTRIAL] operation which
12 results in the discharge [DISPOSAL] of solid or liquid waste material
13 or heated process or cooling water into the waters or onto the land
14 of the state must procure a permit from the department before discharging
15 [DISPOSING OF] the waste material or water. The permit must be obtained
16 for direct discharge [DISPOSAL] and for discharge [DISPOSAL] into
17 publicly operated sewerage systems. The department may waive the
18 requirements of this section that a permit be obtained.

19 (b) This section does not apply to a person discharging only
20 domestic sewage into a sewerage system.

21 * Sec. 2. AS 46.03.110(a) is amended to read:

22 Sec. 46.03.110(a). WASTE DISCHARGE [DISPOSAL] PERMIT PROCEDURE.
23 (a) An application for a permit shall be made on forms prescribed by
24 the department or on forms prescribed by the federal Environmental
25 Protection Agency and shall contain the name and address of the applicant,
26 a description of his operations, the quantity and type of waste material
27 sought to be discharged [DISPOSED OF], the proposed method of treatment
28 and discharge [DISPOSAL], and any other information considered necessary
29 by the department. Application for a permit shall be made at least 60

days before commencement of a proposed discharge.

* Sec. 3. AS 46.03.120 is amended to read:

Sec. 46.03.120. TERMINATION OR MODIFICATION OF WASTE DISCHARGE [DISPOSAL] PERMIT. (a) The department may terminate a permit upon 30 days written notice if the department finds

(1) that the permit was procured by misrepresentation of material fact or by failure of the applicant to disclose fully the facts relating to its issuance;

(2) that there has been a violation of the conditions of the permit;

(3) that there has been a material change in the quantity or type of waste discharged [DISPOSED OF].

(b) The department may modify a permit if the department finds that a material change in the quality or classification of the waters of the state has occurred.

* Sec. 4. AS 46.03.180 is amended to read:

Sec. 46.03.180. CONFIDENTIALITY OF RECORDS. Records and information other than emission data in the possession of the department which relate to production or sales figures or to processes or production techniques of the owner or operator of an air contaminant source are considered confidential records of the department after application by the party and certification that their public disclosure would tend to adversely affect his competitive position.

* Sec. 5. AS 46.03.720 is amended to read:

Sec. 46.03.720. CONSTRUCTION AND OPERATION OF CERTAIN FACILITIES PROHIBITED. No person may construct, extend, install, alter, or operate a sewage system or treatment works, or any part of a sewage system or treatment works, or a public water supply system, until plans for it are submitted to the department for review[,] and the

department approves them in writing and issues a written permit. The department may waive the requirements of this section [THAT PLANS BE SUBMITTED TO IT].

* Sec. 6. AS 46.03.760 is repealed and re-enacted to read:

Sec. 46.03.760. POLLUTION PENALTIES. (a) A person who violates or causes or permits to be violated a provision of this chapter, or a regulation, written order or directive of the department, or a permit or term or condition of a permit, is liable, in a civil action, to the state for a civil penalty to be assessed by the court for an amount not less than $500 nor more than $100,000, depending on the severity of the violation. Each day upon which the violation continues is considered a separate violation.

(b) In addition to the penalties provided in (a) of this section, a person who violates or causes or permits to be violated a provision of secs. 740 - 750 of this chapter is liable to the state, in a civil action, brought under sec. 822 of this chapter, for the full amount of damages caused by the violation, including direct and indirect costs associated with the abatement, containment or removal of a pollutant, restoration of the environment to its former state, and all incidental administrative costs.

(c) A person who fails to provide or falsely certifies information required under sec. 750 of this chapter is, upon conviction, punishable by a fine of not more than $25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

(d) Nothing in this section affects a person's or the state's right to recover damages under other applicable statutes or the common law.

* Sec. 7. AS 46.03.790(a) is amended to read:

1 (a) A person found guilty of wilfully violating a provision of
2 this chapter, or a regulation, written order or directive of the de-
3 partment, or of a court, or of a permit or term or condition of a
4 permit, made or issued under this chapter is guilty of a misdemeanor,
5 and upon conviction shall be punished by a fine of not more than
6 $25,000 [$1,000] and costs of prosecution, or by imprisonment for not
7 more than one year, or by both such fine, cost, and imprisonment at
8 the discretion of the court.
9 * Sec. 8. AS 46.03 is amended by adding a new section to read:
10 Sec. 46.03.797. INJUNCTION. The superior courts have jurisdiction
11 to enjoin a violation of this chapter, or of a regulation, written
12 order or directive of the department, or a permit or term or condition
13 of a permit. In actions brought under this section, temporary or
14 preliminary relief may be obtained upon a showing of an imminent
15 threat of violation, and probable success on the merits, without the
16 necessity of demonstrating irreparable harm, or a favorable balance of
17 equities.
18 * Sec. 9. AS 46.03.800(b) is amended to read:
19 (b) A person who neglects or refuses to abate the nuisance upon
20 order of the department is guilty of a misdemeanor and is punishable
21 as provided in sec. 760 [790] of this chapter. In addition to this
22 punishment, the court shall assess damages against the defendant for
23 the expenses of abating the nuisance.
24 * Sec. 10. AS 46.03.810 is amended to read:
25 Sec. 46.03.810. AIR AND LAND NUISANCES. (a) A person is guilty
26 of creating or maintaining a nuisance if he
27 (1) places or deposits upon a lot, street, beach, or premises,
28 or upon[,] or within 200 feet of a public highway, [UNLESS THE HIGHWAY
29 ABUTS UPON TIDAL WATER,] any garbage, offal, dead animals, or any

other matter or thing, which would be obnoxious or cause the spread of disease or in any way endanger the health of the community;

(2) allows to be placed or deposited upon any premises owned by him or under his control garbage, offal, dead animals, or any other matter or thing which would be obnoxious or offensive to the public or which would produce, aggravate, or cause the spread of disease or in any way endanger the health of the community.

(b) A person who neglects or refuses to abate the nuisance upon order of an officer of the Department of Environmental Conservation is guilty of a misdemeanor and is punishable as provided in sec. 760 [790] of this chapter. In addition to this punishment, the court shall assess damages against the defendant for the expenses of abating the nuisance.

* Sec. 11. AS 46.03.820(a) is amended to read:

(a) When the department finds, after investigation, that a person is causing, engaging in or maintaining a condition or activity which, in the judgment of its commissioner presents an imminent or present danger to the health or welfare of the people of the state or would result in or be likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interests of the people of the state to delay action until an opportunity for a hearing can be provided, the department may, without prior hearing, order that person by notice to discontinue, abate or alleviate the condition or activity. If the [THE] proscribed condition or activity is not [SHALL BE] immediately discontinued, abated or alleviated the attorney general may seek enforcement of the order by injunction or by other appropriate summary proceedings.

* Sec. 12. AS 46.03.822 is amended to read:

Sec. 46.03.822. STRICT LIABILITY FOR THE DISCHARGE OF HAZARDOUS

SUBSTANCES. To the extent not otherwise preempted by federal law, a person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state is strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by the entry. [IF AN ACTION IS BROUGHT BY THE STATE TO RECOVER DAMAGES FOR OIL POLLUTION, LIABILITY IS LIMITED AS SPECIFIED IN SEC. 760(b) OF THIS CHAPTER.] In an action to recover damages, the person is relieved from strict liability, without regard to fault, if he can prove

(1) that the hazardous substance to which the damages relate entered in or upon the waters, surface or subsurface lands of the state solely as a result of

(A) an act of war;

(B) an intentional act or a negligent act of a third party, other than a party (or its employees) in privity of contract with, or employed by, the person;

(C) negligence on the part of the United States government or the State of Alaska; or

(D) an act of God; and

(2) in relation to (1)(B), (C) or (D) of this section, that he discovered the entry of the hazardous substance in or upon the waters, surface or subsurface lands of the state and began operations to contain and clean up the hazardous substance within a reasonable period of time.

* Sec. 13. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.850. COMPLIANCE ORDER. (a) When, in the opinion of the department, a person is violating or is about to violate a provision of this chapter or a regulation or lawful order of the department, the department may notify the person of its determination by personal

1 service or certified mail. The determination and notice do not consti-
2 tute an order under sec. 820 of this chapter.
3 (b) The recipient of the determination must file with the depart-
4 ment, within the time period specified in the notice, a report stating
5 what measures have been and are being taken, or proposed to be taken,
6 to correct or control the conditions outlined in the notice from the
7 department.
8 (c) Thereafter, the department may issue a compliance order in
9 conformity with the authority of the department and the public policy
10 declared in sec. 10 of this chapter. A copy of the compliance order
11 shall be served personally or sent by certified mail to the person
12 affected. A compliance order is effective upon receipt.
13 (d) Within 30 days of receipt, a person affected may request a
14 hearing to review the compliance order. Failure to request a hearing
15 within 30 days of the receipt of a compliance order constitutes a
16 waiver of the recipient's right of review.
17 (e) The department shall hold a hearing within 20 days after
18 receipt of the application. After hearing, the department may rescind,
19 modify or affirm the compliance order.
20 (f) The attorney general shall seek enforcement of a compliance
21 order.
22 * Sec. 14. AS 46.03.900(12) is amended to read:
23 (12) "other wastes" means garbage, refuse, decayed wood,
24 sawdust, shavings, bark, trimmings from logging operations, sand, lime
25 cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, heat
26 from cooling or other operations, and other substances not sewage or
27 industrial waste which may cause or tend to cause pollution of the
28 waters of the state;
29 * Sec. 15. AS 46.03.900(20) is amended to read:

(20) "standard" means a [THE] measure of environmental [PURITY OR] quality [FOR WATERS IN RELATION TO THEIR REASONABLE AND NECESSARY USE] as established by the department;

* Sec. 16. AS 46.03.030 and 46.03.130 are repealed.

SB 267

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

POUCH O, JUNEAU 99811

May 17, 1976

The Honorable Hugh Malone
State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Malone:

Pursuant to your request, we have prepared the enclosed fiscal note for SS for SB 267, particularly Section 2, which relates to grants to communities for the construction of water and sewer works.

It must be understood that prediction of exact expenditures for the construction grant program is virtually impossible. The amounts expended depend exclusively upon the readiness and ability of local municipalities to construct or extend water and sewer facilities. This dependency is based, of necessity, on factors over which the State has no control. Such factors include: passage of general obligation bond issue referenda by local government voters; establishment, in some cases, of local revenue bond issues; rates of design and construction by local governments; availability, in some instances, of Federal moneys; and general local government interest in proposing projects. While we encourage local municipalities to inform us as soon as possible of projects they envision, they also have constraints upon them which do not always make for completely accurate predictions.

The source of the additional construction grant funds would be from past and future bond issues. Some moneys do exist from the 1970 and 1972 sewer and water construction grant bond issues. In addition, as you know, we have proposed a $30 million bond issue for the 1976 State bond referendum.

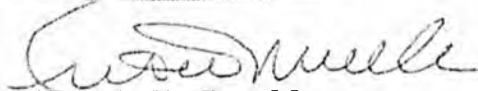
The enclosed figures represent our analysis of those community projects which will be ready for design and/or construction in the next two fiscal years. There will, of course, be some variation from this schedule because of local factors.

"1776-A TRIBUTE FROM OUR STATE TO OUR NATION-1976"

In conclusion, this Department feels that the State/Federal construction grant program in Alaska has been extremely successful in assisting communities in providing much-needed sewerage systems and treatment works, and is in many ways a cornerstone of our water pollution control program. By increasing the amount of State grant funding available to local communities, we feel that some success could be generated in the public water supply program.

I would be pleased to discuss this matter further with you or the House Finance Committee.

Sincerely,



Ernst W. Mueller
Commissioner

Enclosure

cc: Legislative Finance
Budget and Management
Ms. Fran Ulmer, Office of the Governor
Representative Clark Gruening

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. SS for SB 267
Title:
Requested by: Governor Date: February 11, 1976
Return Date Requested: May 17, 1976
Agency: Environmental Conservation Program: NRM and EC

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Water Programs
A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL				10.0	10.0	
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL				10.0	10.0	

B. FUNDING: (Thousands of dollars)

	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Bond Funds)		5000.0	5000.0			

C. POSITIONS:

	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Increasing the State share from 25 percent to 50 percent would impact primarily on public water supply improvements, since there would be no change in the funding formula for federal EPA grant eligible projects (sewage treatment plants, outfall sewers and interceptor sewers). It is estimated that an $10 .0 million would be required to meet projected needs during the next two years. Operating budget would be increased by 20.0 to conduct audits for these capital expenditures.

IV. ATTACHMENTS

V. DATE: May 17, 1976 PREPARED BY: [signature]

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

LSB 267

APR 16 1976

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

JAY S. HAMMOND, GOVERNOR

Pouch O
Juneau, Alaska 99811

April 15, 1976

The Honorable Hugh Malone, Chairman
Finance Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Malone:

On Wednesday, April 7, the Alaska State Senate passed and transmitted to the House of Representatives SSSB 267 am, "An Act Relating to the Department of Environmental Conservation." Although generally regarded as a "housekeeping" measure, this bill is a piece of legislation which we feel is critical to State management of an effective environmental program. Because the bill is quite complex, last spring, the Senate Resources Committee requested that we prepare a detailed section-by-section analysis. Enclosed for your use in the Committee's deliberations on the bill are two copies of that analysis, as prepared by the Department of Law. Two minor amendments were made in the State Senate, those amendments are not addressed in the analysis. If additional copies of the analysis are needed, we would be pleased to provide them.

While the bill contains numerous housekeeping measures, there are three main objectives which were utilized in its preparation:

1) As you know, in the past ten years many environmental programs have been developed within the Federal Government.

   While these programs particularly those under the Clean Air Act, the Federal Water Pollution Control Act, and the Safe Drinking Water Act,provide for various levels of Federal participation the main emphasis is on State Control. Alaska has not assumed all relevent authorities for these programs essentially for two reasons: lack of statutory authority in conformance with Federal law, and inadequate funding. It is our intention to assume maximum authority under these programs as rapidly as possible, particularly in those areas, such as the Safe Drinking Water program, where significant new Federal funding mechanisms are available. As you may be aware HCR 122 addresses the

"1776-A TRIBUTE FROM OUR STATE TO OUR NATION-1976"

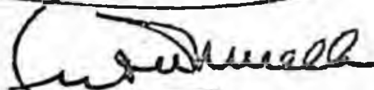
problem of federal control over the National Pollutant Discharge Elimination System, and requests the Governor to assume administration of the program. Until the State's statutory authority is revised for conformance with Federal law, this cannot be done. SSSB 267 am would largely accomplish this objective.

2) Currently, the State funds municipal water and sewer projects to a maximum of 50 percent of the non-federal share or 25 percent, whichever is lesser. This program was instituted before passage of the Federal Water Pollution Control Act of 1972, and has not been revised since. Under FWPCA, the Federal government pays 75 percent of the cost of sewage treatment plants and certain portions of sewerage systems. The amount of Federal money available for the program, while not sufficient to fulfill all of Alaska's needs, has been large. There is, however, no equivalent Federal program to assist communities in constructing water supply systems, although some federal funding is occasionally available. Many Alaskan communities are in great need of improved water supply systems, but are severely constrained by the lack of available funding. We are, therefore, proposing to increase the amount of State participation to 50 percent of the non-federal share up to a maximum of 50 percent of the total costs of the project.

3) Over the last several years, some confusion has resulted from the redundant penalty provisions in AS 46.03. While the Alaska Supreme Court upheld the statute as constitutional, it was evident that amendments are needed. SSSB 267 am would clarify this problem, and make the penalty provisions more equitable.

I and my staff would be pleased to discuss this matter with the House Finance Committee, and look forward to meeting with you at the committee's convenience.

Sincerely,



Ernst W. Mueller
Commissioner

Enclosure

cc: Ms. Fran Ulmer

SECTION-BY-SECTION ANALYSIS OF SPONSOR

SUBSTITUTE FOR SB 267

Section 1. Drinking Water Standards.
This section makes a clarification in existing department authority to make it clear that jurisdiction over public water supplies extends to the establishing of drinking water standards, as well as construction standards themselves.

Section 2 and Section 19. Grants and loans for water supply and sewerage systems.
Section 2 substantially revises current law relating to local grants for water supply and sewerage system purposes. AS 46.03.030 is presently closely allied with provisions of the Federal Water Quality Act of 1965. That Act was repealed with the passage of the Federal Water Pollution Control Act amendments of 1972 (P.L. 92-500). P.L. 92-500 precludes the possibility of a state's advancing to local governments the anticipated federal share for projects on which construction commenced after July 1, 1972. As a result, the state program of providing loans in anticipation of federal grants no longer applies. Section 19 of this bill thus repeals Section 30(a).

However, the important part of the proposed revision to AS 46.03.030 is the increase in state participation to 50% of the total project cost or 50% of the non-federal share, whichever is the lesser. Because this program involves state funding of projects which often are not eligible for federal funds, particularly in public water systems and some of the sewer lines for public sewerage systems, these latter programs are often neglected, and projects which can receive federal funding are undertaken instead. In much of Alaska, public water supply systems are badly in need of up-grading, especially as they will have to meet new standards promulgated under the Safe Drinking Water Act of 1974. Many communities, however, do not have the capital resources to upgrade these systems. Many of our communities have insufficient water supplies, or water supplies of poor quality, thus presenting a potential hazard to the health of the community residents. By increasing the state's share in these projects from the present maximum of 25% to 50%, we feel that more communities will be able to acquire badly needed facilities.

Section 3. Waste Disposal Permits.

This section makes three changes in existing law. Most fundamentally, the amendment expands the waste disposal permit jurisdiction of the department to any operation which results in the disposal of waste material into the water. Existing law requires a permit only for commercial or industrial operations.

This amendment is necessary if the state is to assume jurisdiction over the National Pollutant Discharge Elimination System permit process, currently being administered in the state by the U. S. Environmental Protection Agency under Section 402 of the Federal Water Pollution Control Act amendments of 1972 (FWPCA). Under that section, it is currently necessary for a person to obtain a federal permit from EPA for any discharge from any point source into the water of the state. This permit requirement applies whether or not the receiving waterbody is navigable. See U.S. v. Holland, 378 F. Supp. 665 (DCMD Fla. 1974; United States v. Ashland Oil, 364 F. Supp. 349 (DCMD Ky. 1973), affd. 504 F2nd 1317 (CA 6 1974).

Under Section 402(b) of the Act, states may assume control of the NPDES permit program if the state possesses water quality authority at least equal to that possessed by EPA. A majority of states have acquired this delegation, precluding the need for continuing extensive federal imvolvement in state water quality managment. However, the State of Alaska cannot assume this authority at the present time, because our water quality permit jurisdiction is limited to commercial or industrial operations.

The state recognizes that burdens may result from a permit requirement which extends to operations not of a commercial or industrial nature. However, these burdens are even greater at the present time, since such a permit is required under federal law by a federal agency. Thus, the amendment offered to AS 46.03.100 will not increase existing burdens, and may well lessen the impositions of the permit requirement, by allowing it to be administered at the state level.

Second, the proposed amendment expands the permit requirement to thermal pollution. Again, this change is necessary to give the state coterminous authority with the discharge jurisdiction of the federal act. (FWPCA, Section 502(6)). Moreover,

thermal pollution can and does have as significant an affect on the marine environment as the discharge of contaminants.

Finally, this section of the bill would require a waste disposal permit for the discharge of wastes into the surface of the land. The discharge of contaminants onto the surface of the land often causes direct health hazards greater than discharges into the waters. Discharges onto the land surface are few, but hwere they do occur, their affects tend to be severe. This amendment would not require a waste disposal permit for systems such as a properly functioning septic tank, since these facilities do not contemplate the disposal of waste onto either the surface of the land or into the waters.

Section 4 and Section 5. Permit Procedures.

If SSSB 267 is enacted into law, the department intends to seek delegation of the NPDES permit program from EPA; and EPA has indicated to the state, that if the changes contained in this bill are made, such a delegation can be made. However, lead time will be necessary before final delegation can be effectuated. In the interim, an applicant must obtain both a state permit under Title 46, and a federal permit under Section 402 fo the FWPCA. During that time, it seems desirable to take whatever steps are possible to mitigate against the time delays inherent in having to obtain two permits.

Thus, section 5 provides that, if the applicant has received a federal permit from EPA, the state may waive the independent state permit procedures and essentially "adopt" the EPA permit as the state permit. Of course, it will be the responsibility of the department to insure that the state's interest is adequately protected in the permit issued by EPA, and, thus, this "adoption" procedure is discretionary. The department desires to streamline administrative procedures; however, it does not feel it advisable to abrogate its jurisdiction totally where a federal permit is issued.

Section 6. Confidentiality of Records.

AS 46.03.180 was originally intended to protect the applicant who must disclose confidential information, such as manufacturing processes, to the department in order to facilitate full review of the permit. It was not intended to shield from the public the actual air pollution data from the operating source. However, without the specific qualifier

contained in the proposed amendment, there exists an ambiguity suggesting that, perhaps, the public is not entitled to know how much and what types of pollutants are being discharged by the source. This clearly does not appear to be the intent of the statute; nor is it acceptable to the U.S. Environmental Protection Agency, which must review the state's air quality control plans, of which these statutes are part.

Section 7. Plan Review.

The department is currently in the process of developing regulations to implement state responsibilities under the Safe Drinking Water Act of 1974 (P.L. 92-523). In order to assume responsibility for implementation of the Safe Drinking Water Act within the State of Alaska, it is necessary that the state possess "adequate procedures for the enforcement of . . . state regulations" (Section 1413(a)(2)). Currently, state authority over public water supplies is limited to the adoption of substantive regulations under AS 46.03.020(10)(c). This section, by way of a new subsection (b) to AS 46.03.720, provides for the review of plans for public water suppy systems in order to adequately insure that these systems will be constructed and operated in conformity with the state's substantive regulations.

The department recognizes it is both unnecessary and unwise to impose a plan review requirement on the smallest of public water supply systems. Therefore, the plan review requirement has been extended only to those public water supply systems to which the federal act specifically applies. Thus, the limitations contained in new section 720(b) mirror the definition of public water supply systems found in Section 1401(4) of the federal Act.

Section 8. Oil Discharge Reporting.

Current law (AS 46.03.750(d)) requires the immediate reporting of any violation of this chapter. The "chapter" is, of course, chapter 3 of Title 46 -- which encompases all the prohibitions and standards within the jurisdiction of the department. However, because this requirement currently exists merely as a subsection to the ballast water discharge statute, it has been suggested by some that the reporting requirement applies only to illegal ballast water or tank-cleaning waste discharges. Of course, such an argument ignores the word "chapter," and we feel that it is without merit. However, to avoid the argument, and avoid the expense of perhaps litigating this bothersome

matter, we have proposed that the reporting requirement be excised from Section 750 (see sec. 19 of the bill) and given the status of an independent section.

Moreover, the discharge reporting requirement has been specifically confined to the discharge of petroleum products in violations of Sections 740 or 750 of the chapter.

<u>Section 9, Section 11, Section 13.</u> Pollution Enforcement.

Several volumes could be written on the logical and legal problems existent in Title 46's current enforcement sections. Yet another lengthy treatise could be devoted to the problems inherent in the structuring of any rational and coherent method of environmental enforcement. For purposes of brevity, the major problems will be noted, and the corrective measures proposed described.

1. The department currently possesses no civil "option" for enforcement of anything but oil spills (unless the department sues for costs of restoration under Section 780 -- a provision which often is not relevant). Thus, particularly in air pollution or sewerage disposal matters, the department must either proceed criminally, or simply drop the matter. Scholars have complained for years about the over-criminalization of the law, and in many respects, we agree. Environmental enforcement is, to a large degree, either compensatory or remedial in nature -- that is, the punishing of a culpable individual is often only tangential to the main purposes of an environmental enforcement agency. The main concern is preventing or remedying damage.

Revised AS 46.03.760 establishes a civil option for the full range of violations currently covered only by the criminal provisions of AS 46.-03.790. We believe the existence of this civil option will at once greatly increase both the fairness and effectiveness of the department's enforcement functions.

Many pollution violations involve something less than what one might call traditional criminal guilt. Persons will often recognize their non-compliance with environmental quality standards, yet may often prolong and complicate enforcement action simply because they do not feel that the violation makes them a criminal in the common meaning of the word.

The criminal sanction is often a clumsy tool to accomplish the main purpose of enforcement -- that

is, to encourage, and on occasion to coerce, the individual into bringing his facility into compliance with applicable standards. Most sentences in the past for criminal violations have in fact been of a civil nature -- i.e., the suspension of a majority of the fine on condition that the defendant undertake a variety of corrective actions. This type of arrangement can better be effectuated in the context of the more flexible proceedings of a civil action.

Finally, as with most fields of law, environmental enforcement is a specialized legal art. Environmental litigation requires a background of technological knowledge, as well as a grasp of this rapidly expanding area of law. It is rare indeed that a person who has acquired these skills is also well qualified in the equally specialized and vastly different area of criminal law. It is the Department of Law's position that enforcement effectiveness can be significantly increased if its environmental unit can handle more matters in the context of civil litigation.

The "normal" response to the need for a civil option in environmental enforcement has been the creation of civil penalties. The problem with this approach is that some courts may view this as an attempt to penalize or punish a defendant without affording him the normal range of rights given to a criminal defendant, i.e., privilege against self-incrimination, jury trial, etc. See Kennedy v. Mendoza - Martinez, 372 U.S. 144 (1963). As a matter of both policy and law, the argument has some merit.

Accordingly, the proposed revision of Section 760 has been written in a matter which frames the civil assessment to recognize the two primary goals of environmental enforcement -- that is, compensation and correction. Subsection (a)(1) recognizes that violations of environmental standards or requirements can cause or contribute to environmental harm which is incapable of precise quantification. The state does suffer losses with each incidence of violation. Subsection (a)(1) recognizes the existence of those losses and establishes a means for which they may be at least partially compensated.

Subsection (a)(2) recognizes that significant administrative costs may be involved in both the detection of violations, and in what are often prolonged attempts to correct the matter informally. This provision also recognizes that these costs should be borne by the violator, rather than the public, and courts

have held that this is a proper basis for a civil assessment for regulatory violations. People v. Griggs, F2nd 23 (CA9 1960).

Subsection (a)(3) provides perhaps the most important measure by which the size of the assessment may be gauged. By denying the defendant the "economic savings" for a continuation of the violation, the incentive for the violation is removed. To the degree the civil assessment reflects the economic savings realized by the person in not complying with the standard charged, the assessment of that sum may be deferred by the court pending correction of the violation within the minimum feasible time. (Section 760(c)).

As proposed section 760(b) makes clear, the purposes of this element of the assessment are corrective and remedial, rather than punitive. Therefore, such matters as the intent of the defendant, or previous violations by him will be irrelevant in gauging the level of the assessment.

Proposed Section 760 does not alter the present law's maximum permissible amount of the this civil assessment; rather, it merely redirects the emphasis of the section to insure that it will only be used to compensate the state, and as a vehicle to encourage the defendant to invest the necessary funds to bring his facility into compliance.

Where the primary purpose of the enforcement proceeding is punishment or general deterrence, the criminal remedies of Section 790 (as amended in sec. 11 of the bill) will be utilized. Section 790(a) establishes strict liability for environmental offenses in a manner similar to existing 760(a), and likewise similar to many existing "civil penalty" sections of other statutes. Where punishment is sought, the rights of the criminal defendant should obtain, and thus the penalty is set in the context of criminal rather than civil proceedings. However, because no showing of intent is required to sustain a conviction under 790(a), no prison term is provided for sentencing. There are serious due process problems involved with the imposition of a prison sentence for a strict liability offense. Constitutional problems aside, it is doubtful that any court would imprison a person for a non-willful violation.

Where, however, an environmental standard has been intentionally violated, a prison term is provided under Section 790(b). We feel that it is important that this distinction be delineated and applied. Under existing law, non-wilful violations are punishable by a higher fine, and by the same prison terms as are wilful violations under Section 790. This caused the State Supreme Court not a small amount of concern in the case of Stock v. State, 526 P.2d 3 (1974). This statutory scheme barely withstood constitutional attack on these grounds. However, simply because this rather curious distinction withstood constitutional attack does not mean it is the best means of structuring environmental enforcement. Penalties should be more severe for wilful than for non-wilful violations.

In sum, the amendments contained in SSSB 267 will provide a civil action where the primary purpose of enforcement is compensatory and remedial. Where the facts of a particular case dictate either punishment or general deterrence, a criminal fine is provided on a strict liability basis, and a fine and imprisonment are available for intentional violations. Such a structuring not only makes more sense with regard to the overall purposes of these various forms of action, but also provides a sufficient range of enforcement options to allow enforcement to be tailored to the particular facts of the situation.

2. Current oil spill liability provisions are deficient in many respects. Under current AS 46.03.822, a private party or a governmental agency other than the state is entitled the full compensation, based on strict liability for all actual damages caused by an oil spill. However, the availability of strict liability compensation to the state is limited by the provisions of current 760(b), which places an upper limit on state compensation of $100,000.

It is impossible to catalog the infinite series of circumstances under which the state might itself be damaged by an oil spill. If a Santa Barbara type oil spill impacts upon a major state owned capital facility, or state beach or park, it could cause actual damages well into the millions. Yet, under the current reading of Section 822 and Section 760(b), the state would be limited in its recovery to $100,000.

An additional compensatory provision to the state is currently provided by Section 760(c). This section provides for recovery of actual damages to a specified amount (based on the size or evaluation of the facility) for violations of Section 750. Section 750, of course, applies only to discharges resulting from "ballast water, tank-cleaning waste or other waste containing petroleum." A major well blowout would not violate Section 750 -- rather, it would be in violation of Section 740, for which the 760(c) liability provision does not apply. Thus, in a major blowout situation (or a major tanker accident) the state would be limited in its recovery to $100,000, unless negligence could be proved under common law principles. Proving negligence in an oil discharge case miles out to sea, or an isolated area of the North Slope, is extremely difficult, and in many cases impossible. More fundamentally, requiring the state (and the state alone) to prove negligence to obtain full recovery flies in the face of judicial and legislative opinion that the handling of oil is a hazardous undertaking, for which the handlers should be strictly liable in the event of injury. The Alaska Legislature has recognized this in Section 822 and has accordingly granted unlimited recovery for actual damages based on strict liability to any person, except the state. In Section 13 of this bill, revisions to Section 822 remove this distinction, and permit the state to recover for all actual damages caused to it by an oil pollution incident. Without this provision, one must be extremely pessimistic on the state's ability to recoup actual losses in the event of catastrophic oil spill.

Section 10. Injunctions.

Currently Title 46 does not confer upon the department the power to seek an injunction for violations of its standards. There is a substantial body of judicial opinion to the effect that, absent a specific statutory provision authorizing such suits, the courts will not enjoin the violation of a statute or regulation as such. Thus, except in cases where an actual "public nuisance" can be domonstrated, the department's authority to seek immediate effective remedial action may be extrememly limited. Since environmental enforcement mechanisms are often needed to prevent future harm rather than to merely redress past violations, it is important that this ambiguity be removed, and a specific injunction provision inserted.

At common law, in order to obtain a preliminary injunction, it was necessary for the plaintiff to demonstrate that physical irreparable harm would be caused to him by a failure to grant the preliminary relief. In environmental litigation, this is often an exceedingly difficult task. It involves the assemblage of experts by the state to discuss the probable harm of a specific polluting activity on the receiving environment. The affidavits, exhibits, etc., are then thrown into a "battle of experts" which is both time consuming and usually inconclusive. All the while, of course, the polluting activity is allowed to be continued. There has emerged a judicial philosophy toward this problem. Particularly in federal courts, it is often not necessary to demonstrate physical irreparable harm when seeking an injunction against a violation of a public welfare statute -- such as environmental legislation. See Jones v. District of Columbia Redevelopment Agency, 499 F2nd 502, 512 (CADC 1974); Environmental Defense Fund v. TVA, 468 F2nd 1164, 1184 (CA6 1972); Lathan v. Volpe, 455 F2nd 111 (CA9 1971). The basic reason for this rule is that sufficient irreparable harm to the public occurs upon a showing of the violation of the public welfare standard itself. Section 765 mirrors this judicial philosophy.

Moreover, Section 765 mirrors current judicial attitudes toward the balancing of equities in environmental actions. It is generally stated that:

> "'The state, by entering the union, did not sink to the position of private owners subject to one system of private law. The court has not quite the same freedom to balance the harm that will be done by an injunction against that of which (the state) complains.
>
> "It is a fair and reasonable demand over the part of a sovereign that the air over its territory should not be polluted . . .. If any such demand is to be enforced this must notwithstanding the hesitation that we might feel if the suit were between private par-
> that these costs should be borne by the
> ties, and the doubt whether, for the injuries which they might be suffering to their property, they should not be left to an action of law." Georgia v. Tennessee Copper Company, 206 US 230, 238 (1906)."

The question of the extent to which the court should balance the equities in environmental enforcement litigation has received extensive treatment in the Reserve Mining litigation, and Section 765 mirrors the resolution of that issue given by the Court of Appeals for the Eighth Circuit. In their decision (U.S. v. Reserve Mining Co., 514 F2nd 492), the court held that the balancing of equities in environmental enforcement actions would be relevant in determining the timing of compliance, but not in the ultimate necessity of complying within a reasonable time. Thus, the Eighth Circuit recognized that environmental violations may not be so severe as to require immediate compliance (which, in some cases, may mean a closing of the facility), and that it would not be equitable to so order. We concur with this formulation, and thus Section 765 allows the balancing of the equities to determine whether the violation should be immediately corrected.

Section 12. Land Nuisances.

Under current AS 46.03.810, the depositing of foul substances otherwise in the nature of nuisance will not be considered a nuisance if they are deposited adjacent to a highway abutting tidal water. The justification for this exception is elusive. Depositing of garbage and dead animals is particularly offensive when done adjacent to a highway which traverses a beach or tidal area from which scenic enjoyment is derived. Perhaps the exception was originally intended to countenance the dumping of carcasses and other vile substances where the tide would wash it away. Whatever the rationale, we believe it needs to be changed.

Section 14. Compliance Order.

The compliance order is the most effective single means of enforcing environmental quality standards. It is effective and expeditious, and does not necessarily require expensive and time consuming litigation on the part of either the department or the person on whom the compliance order is served. Its very informality makes it a useful tool to the department and an important alternative to formal judicial action.

Unfortunately, the current compliance-orders section (AS 46.03.130) may be utilized only for water quality violations. This sort of provision can be just

as effective, and indeed, is just as necessary, for air and land pollution cases. Proposed AS 46.03.850 extends the reach of the compliance order to those other activities.

The current compliance-order section requires service by certified mail -- creating an unnecessary time delay which can be easily obviated by personal service upon the individual involved. Proposed Section 850 specifically permits personal service.

Finally, the current compliance-order section allows the individual 15 days to file with the department a report stating what corrective measures he will take. Often, a full 15 days is not necessary, and, particularly during critical times of the year (such as spawning season) a 15-day wait before issuance of a compliance order can have disastrous implication. Thus, proposed Section 850 leaves the department the discretion to determine the time period necessary to forward corrective action. Of course, judicial review of the reasonableness of the department's action in this regard would be available.

Section 16 and Section 17. Definitions.

The amendment of AS 46.03.900(12) is expanded to bring thermal pollution within the definition of "other wastes." It is in line with the policy of SSSB 267 expressed elsewhere, to make clear that thermal pollution is within the ambit of the department's jurisdiction.

The amendment of AS 46.03.900(20) makes clear what Title 46 implies -- that it is the purpose of the title to protect water quality, and not to establish a water use authority. The existing term "in relation to this reasonable and necessary use" is ambiguous, and is out of context with the remainder of the chapter.

Section 18. Administrative Procedure Act.

Current AS 46.03.880 provides that "the activities and proceedings" of the department are subject to the provisions of the Administrative Procedure Act (AS 44.62). However, existing AS 44.62.330 does not specifically list the Department of Environmental Conservation as one of the agencies to which the administrative adjudication provisions of that chapter applies. Given Section 880, and the fact that proceedings before the department may have a profound affect upon individual rights and obligations, it seems necessary to make clear that the conduct of contested cases within the department's jurisdiction is subject to APA.

contested cases within the department's jurisdiction is subject to APA.

Section 19. Repealers.

This section repeals the existing compliance-order section (AS 46.03.130), which would be re-enacted as AS 46.03.850. Also, the existing reporting requirement found in AS 46.03.750(d) is repealed and would be re-enacted as AS 46.03.755.

AS 46.03.230(a) is also repealed. This was not included in original SB 267. Presently, the state funds local air pollution control authorities under two statutes -- AS 43.18.010(a)(3), state aid to local governments, and AS 46.03.230(a), state and federal aid. The Title 43 provision provides for $2.00 per capita to cities and boroughs for both air and water pollution control facilities. The Title 46 provision currently provides that localities are entitled to a budget. The amount of money appropriated by the legislature for AS 46.03.230(a) purposes has represented only a token contribution (total $25,000) compared with the total budgets of the three boroughs that presently have air pollution control authority. The costs of administering these two funding programs are also duplicative, as essentially the same information must be regenerated for each application.

Because the legislature is currently undertaking a comprehensive review of the state's revenue-sharing laws, the administration believes that the establishing of adequate levels of air and water pollution control funding should be analyzed in the context of that debate. However, SSSB 267 does take the matter halfway, by removing the unnecessary duplication of programs by repealing current subsection (a) of Section 230, and making subsection (b) the full text of that section. The related AS 46.03.240 is likewise repealed.

The repeal of AS 46.03.030(a) is discussed above in connection with section 2.

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION X
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

RECEIVED
J... 21 1976
Department of
Environmental Conservation

JAN 12 1976

RECEIVED
JAN 14 1976
GOVERNOR'S OFFICE

REPLY TO ATTN OF: Mail Stop 613

Honorable Jay S. Hammond
Governor of Alaska
Statehouse, Pouch A
Juneau, Alaska 99811

Dear Governor Hammond:

As in past years, my staff has reviewed the existing legislation of the State of Alaska in order to determine whether statutory amendments will be necessary for the State to carry out or qualify for the various programs administered by EPA. This effort has identified a number of issues which I believe warrant your attention and which should be presented to the State Legislature in 1976. The purpose of this letter is to briefly outline for your consideration the legislation which we believe should be enacted in order to carry out Federal programs. In addition, we are recommending the enactment of other legislation which we believe will enhance Alaska's existing environmental programs.

Many of these issues have been previously discussed with representatives of the Department of Environmental Conservation and the Office of the State Attorney General. We have developed a close working relationship with these offices in the past and are ready to provide any assistance that we can in the future. It is my belief that the maintenance of a cooperative approach is essential to the success of State and Federal programs. It is for this reason that we have prepared the attached review of Alaska's legislative needs.

I realize that environmental programs are under attack in many parts of the country and that proposals for new environmental legislation may not be popular. On the other hand, I am convinced that the natural environment is perhaps the greatest asset possessed by the Western States. In my judgment, the legislative proposals stated here are well justified, and each of the issues identified in the attachments should be resolved in the present legislative session in order to avoid problems in the future which might jeopardize the preservation of this asset.

Sincerely,

Clifford V. Smith, Jr., Ph.D., P.E.
Regional Administrator

Attachments

WATER

NPDES Program

During my tenure as Administrator, I have become increasingly convinced that the effective implementation of the National Pollutant Discharge Elimination System (NPDES) depends upon the active participation of each State. As you know, it has been the goal of EPA since the inception of the NPDES permit program to encourage States to enact legislation which will permit them to administer the NPDES program. To date, more than half of the States have assumed this responsibility. Implementation of the NPDES permit program in those States has been very satisfactory on the whole to EPA, and has given those States control over decisions affecting them.

It is my understanding that a bill was introduced in the Alaska State Senate during the last session of the legislature which would amend the current authority of the Department of Environmental Conservation to issue waste disposal permits. Enactment of this legislation would generally be adequate to permit Alaska to assume responsibility for administering the NPDES permit program. The provision authorizing the Department of Environmental Conservation to waive the permit requirements, however, does not comply with the requirements of Section 402 of the FWPCA and could prevent Alaska from assuming this responsibility. EPA is prepared to assist you and your staff in securing the enactment of this legislation in any way that we can. It is my hope that by working together, the necessary legislation will be enacted this year which will enable the State of Alaska to assume responsibility for this important program.

Nonpoint Sources

Section 208(b) of the Federal Water Pollution Control Act requires States to develop a regulatory program to control discharges from nonpoint sources such as agricultural, silvicultural, or mine-related discharges. The adoption of a State Forest Practices Act is an important element in a regulatory program for the control of nonpoint source pollution. State Forest Practices Acts have been adopted by Oregon, Washington, and Idaho. We encourage the State of Alaska to enact similar legislation for the control of nonpoint source pollution on forest land. Such legislation should be designed to implement best management practices and otherwise achieve the objectives of Section 208.

Additional appropriations will be necessary this year in order to receive grant funds from EPA in connection with the development of areawide waste treatment management plans under Section 208. States will not be eligible to receive 208 grant funds unless State matching funds equal to 25% of the total are appropriated by the State Legislature in the early part of 1976. This limitation is imposed by 40 C.F.R. §35.204 which provides that on June 1, 1976, all unobligated funds will be reallocated. It is, thus, extremely important that the Alaska State Legislature appropriate matching funds as soon as possible so that Alaska will be eligible to receive 208 grant funds from EPA.

Construction Grants

EPA recommends the enactment of legislation which will require the certification of wastewater treatment plant operators. It is my understanding that a bill is presently before the Alaska State Legislature which would institute a voluntary certification program. We do not believe that voluntary certification would be satisfactory and encourage you to introduce an amendment which would require mandatory certification of treatment plant operators.

In addition, it is recommended that the State enact legislation which would require municipalities operating publicly-owned treatment works to:

a. control the use of combined sewers in existing publicly-owned treatment systems and to limit the use of such sewers in new systems;

b. enact "sewer user ordinances" which establish criteria for users connecting to the system; and

c. provide users outside their jurisdiction with reasonable alternatives for obtaining sewerage service.

DRINKING WATER

Under Section 1413 of the Safe Drinking Water Act, States may assume primary responsibility for the enforcement of national drinking water regulations promulgated by EPA. It is the policy of EPA to encourage each State to assume this authority and to assist each State in meeting the requirements imposed by Section 1413. Members of my staff have discussed these requirements with representatives of the Department of Environmental Conservation. In this process, we have identified those subject areas needing legislation before Alaska will qualify to assume primary enforcement.

Alaska will need legislative amendments authorizing the DEC to adopt and enforce minimum drinking water standards. Legislation is also needed authorizing the DEC to review construction plans for new and modified public drinking water systems. In addition, we recommend that the State enact legislation authorizing the assessment of civil penalties of up to $5,000 per day for violation of the drinking water standards. We suggest that Alaska adopt amendments authorizing the issuance of variances and exemptions. The terms of this legislation, however, must be as strict as those contained in Sections 1415 and 1416 of the Safe Drinking Water Act.

NOISE

As an important step in developing an active and viable noise control program, we encourage the State of Alaska to adopt legislation which would enable the State to promulgate and enforce motor vehicle, equipment, and environmental noise standards.

THE LEGISLATURE OF THE STATE OF ALASKA
FISCAL NOTE
Second Session - Ninth Legislature

I. REQUEST
Bill No. SS for SB 267
Title:
Requested by: Governor Date: February 11, 1976
Return Date Requested: May 17, 1976
Agency: Environmental Conservation Program: NRM and EC

II. FISCAL DETAIL
Budget Request Unit(s) Affected: Water Programs
A. EXPENDITURES: (Thousands of dollars)

OBJECT		FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL				10.0	10.0	
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL				10.0	10.0	

B. FUNDING: (Thousands of dollars)

	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Bond Funds)		5000.0	5000.0			

C. POSITIONS:

	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Increasing the State share from 25 percent to 50 percent would impact primarily on public water supply improvements, since there would be no change in the funding formula for federal EPA grant eligible projects (sewage treatment plants, outfall sewers and interceptor sewers). It is estimated that an $10 .0 million would be required to meet projected needs during the next two years. Operating budget would be increased by 20.0 to conduct audits for these capital expenditures.

IV. ATTACHMENTS

V. DATE: May 17, 1976 PREPARED BY:

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

H/S 50

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

POUCH O, JUNEAU 99811

May 17, 1976

The Honorable Hugh Malone
State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Malone:

Pursuant to your request, we have prepared the enclosed fiscal note for SS for SB 267, particularly Section 2, which relates to grants to communities for the construction of water and sewer works.

It must be understood that prediction of exact expenditures for the construction grant program is virtually impossible. The amounts expended depend exclusively upon the readiness and ability of local municipalities to construct or extend water and sewer facilities. This dependency is based, of necessity, on factors over which the State has no control. Such factors include: passage of general obligation bond issue referenda by local government voters; establishment, in some cases, of local revenue bond issues; rates of design and construction by local governments; availability, in some instances, of Federal moneys; and general local government interest in proposing projects. While we encourage local municipalities to inform us as soon as possible of projects they envision, they also have constraints upon them which do not always make for completely accurate predictions.

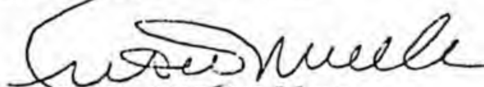
The source of the additional construction grant funds would be from past and future bond issues. Some moneys do exist from the 1970 and 1972 sewer and water construction grant bond issues. In addition, as you know, we have proposed a $30 million bond issue for the 1976 State bond referendum.

The enclosed figures represent our analysis of those community projects which will be ready for design and/or construction in the next two fiscal years. There will, of course, be some variation from this schedule because of local factors.

In conclusion, this Department feels that the State/Federal construction grant program in Alaska has been extremely successful in assisting communities in providing much-needed sewerage systems and treatment works, and is in many ways a cornerstone of our water pollution control program. By increasing the amount of State grant funding available to local communities, we feel that some success could be generated in the public water supply program.

I would be pleased to discuss this matter further with you or the House Finance Committee.

Sincerely,



Ernst W. Mueller
Commissioner

Enclosure

cc: Legislative Finance
Budget and Management
Ms. Fran Ulmer, Office of the Governor
Representative Clark Gruening