

HB

518

"An Act relating to the Department of Environmental Conservation:
and providing for an effective date."

COMMITTEE REPORT

5/21/75

HOUSE

Mr. Speaker:

Date May 22, 1975

The Committee on RESOURCES has had HB 518

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)

recommends it BE REPLACED WITH CS FOR HB 518 AND THAT

CS FOR HB 518 DO PASS

"and" recommends it BE REFERRED TO THE _____

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

<u>Hels A. Andersson</u>	<u>Alvin C. Strohach</u>	_____
<u>Frank G. ...</u>	<u>THUR Hershberger</u>	_____
<u>...</u>		_____
<u>Quincy Huntington</u>		_____

Members NOT concurring in the Majority report:

_____ recommends:
_____ recommends:
_____ recommends:
_____ recommends:
_____ recommends:

Hels A. Andersson Chairman

Nels Anderson

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, Governor

POUCH K - STATE CAPITOL
JUNEAU 99801

May 23, 1975

Honorable Willard Bowman
Chairman
House Rules Committee
Pouch V
State Capitol Building
Juneau, Alaska 99811

Re: CS HB No. 518

Dear Representative Bowman:

I have reviewed CS HB 518 with Commissioner Mueller and the bill, in our view, has the following problems:

1. There should be added on page 2, line 17, after the word "inspection", the following additional language:

"and the 30 day period for public comment under subsection (b) has expired"

This language makes it clear that the Commissioner may not waive the balance of the 60 day period, unless the public has had the full 30 day time period to comment.

2. Section 3, adding a new subsection (e) should be deleted in full. The provision allows waiver of the public notice provisions of subsection (b) where there is not a substantial alteration in the waste disposal system "which materially changes the general character of the system". Biologically it is the character and flow of the discharge which is important, not the change in the "system" which is the hardware. But even using a change in the flow and character of the discharge as the criteria would create problems. For example, an increase in flow or discharge which is small in volume may be substantial if the receiving waters are small (like a small stream). On the other hand, a large increase in discharge may be insubstantial if the receiving waters are a large body of water.

Honorable Willard Bowman
Chairman

May 23, 1975

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The ambiguity of the term "substantial" and our inability to come up with a single definition which would cover all biologically safe expansions leads to the conclusion that the suggested amendment would be impossible to apply in any uniform way.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By:
Sanford Sagalkin
Assistant Attorney General

SS:jeh

cc: Commissioner Mueller
Guy Van Doren

H13 518

3:00 p.m.

An act relating to the Department of Env. Cons.
and providing for an effective date.

Alyeska has currently filed applications for permits to expand the sewage treatment facilities at four temporary construction camps, namely, Atigun, Chandalar, Delta and Isobel. These temporary construction camps consist of communities of several hundred men which provide a residence center for these men while working on various phases of construction of the pipeline project within the general geographic area of each camp. These are temporary residence camps and are not intended to be a permanent and continuing part of the ultimate pipeline project. These temporary camps do not discharge any chemicals or other industrial wastes. The sewage discharge from the camps consists of water carried human, kitchen or animal wastes from residences and buildings.

Under the provisions of AS 46.03.100 (a), a waste water disposal permit from the Department of Environmental Conservation is required to be obtained by a commercial or industrial enterprise that will discharge waste materials into the waters of the State. Under the provisions of AS 46.03.100 (b) a waste disposal permit does not have to be procured from the Department of Environmental Conservation before disposing of the waste material if the person is discharging only domestic sewage into a sewerage system. However, Sec. 46.03.720 provides that no person may construct, extend, install or operate a sewage system or treatment works or any part thereof until its plans have been reviewed by the Department and the Department issues a written permit. Under Sec. 46.03.720 the Department may waive the requirement that plans be submitted to it. Sec. 46.03.100 sets forth the procedure for the issuance of waste disposal permits. This statute specifically states that the application for the permit must be made at least 60 days before commencement of any proposed discharge of waste material into the waters of the State. In addition, that statute provides a minimum of 30 days public notice which should be published in a newspaper of general circulation within the general area in which the disposal of waste material is proposed. Also, a copy of the application must be sent to the Commissioners of Fish & Game, Natural Resources, Economic Development and Health & Social Services.

The current applications pending before the Department of Environmental Conservation request the approval of plans for the installation in parallel of treatment facilities which have already been approved by the Department in other applications. The field inspection and review of the plans have been completed. There is no question that the facilities under discussion meet the definitions contained in the statute for treatment works and sewage systems.

Applications for these expanded treatment facilities were filed on April 22, 1975. The Department of Environmental Conservation did not start the public notice period until this week. Under the statutes, a minimum of 30 days must pass prior to the termination of the public notice period. In addition, under AS 46.03.110, the earliest date of discharge for these expanded facilities will be June 22, 1975. This is because the provisions of that section of the statutes state that the application for the permit must be made at least 60 days before commencement of any proposed discharge of waste material into the waters of the State. The Commissioner of Environmental Conservation has no authority to waive or modify this statutorily mandated time frame. Alyeska is unable to increase the camp population at Atigun specifically and at the other camps because of its inability to use these installed expanded treatment facilities which have already been reviewed and approved by the Department. It must bus workers 20 miles each way to the camp site for purposes of commencing the jobs designated for them at an additional labor cost of \$4,000.00 per day. This will add approximately \$240,000.00 to the cost of the pipeline project.

The following points should be emphasized:

1. This bill does not compel the Department of Environmental Conservation to waive these procedural requirements. The bill clearly states that the Department may waive these procedural requirements in the public interest.
2. This bill does not eliminate any requirements for Alyeska to obtain permits and satisfy the substantive criteria designated by Department personnel.
3. This bill does not compel the Department to waive its review of any plans for such sewage treatment facilities. The Department still has the authority to review the plans to compel modifications which it deems necessary to protect the environment and to attach appropriate stipulations to any permits granted under the waste disposal permit sections of the statute.
4. This bill does permit the Department to carefully consider and balance the additional costs of the pipeline project against the procedural delays built into the statutes and regulations it administers.
5. The Department does not oppose the bill, nor does it specifically endorse the bill. The Commissioner will abide by the will of the legislature in this matter.
6. The legislature can review the situations in which these waivers are granted, if indeed they will be granted by the Department, to determine whether or not the Department is acting in an appropriate manner in protecting the public interest and, if the legislature does not believe it is doing so, it can either repeal this legislation or set specific criteria next year.
7. This bill has a specific statutory cut-off date of January 1, 1978. Therefore, this bill is not a

grant of this authority in perpetuity, but only during the duration of the construction of the trans-Alaska pipeline.

Under current construction scheduling procedures, it is very difficult for Alyeska to predict its manpower needs at these various camps and its construction requirements for a period much beyond 60 days. The reason for this is because of changes dictated through factors not necessarily within Alyeska's control, such as, the late delivery of materials, the need for field engineering redesign of various aspects of the project, and the results of current testing programs of various components of the pipeline which may dictate further engineering changes, as well as other similar factors which are always present in major construction projects.

In discussing this bill with the Department, the Department has indicated quite clearly that it will not readily grant such waivers, but the granting of any waivers will depend upon its satisfaction that Alyeska has exhausted other alternatives and finds itself in a situation which compels the need for this waiver in order to prevent the incurring of unnecessary or unpredicted costs.

Examples of situations in which such a waiver might be granted are as follows:

1. Assume that Alyeska, because of a delay in the receipt of materials ordered in advance, is unable to start or complete a particular phase of pipeline construction in one of the pipeline areas. Therefore, in order not to delay the project and waste labor costs, it will shift camp populations to other areas on the project in order to undertake other aspects of the project which can now be undertaken without the need for the particular materials. To do anything else would be negligent and would vastly increase the cost of the pipeline. However, because such circumstances beyond its control, it cannot shift the camp populations without causing great additional expense as a result of the specific time frames mandated. Under these circumstances, a waiver may be considered by the Department.
2. Assume that an existing sewage treatment plant, which has already been appropriately permitted, suddenly breaks down, and Alyeska can install a substitute unit or a supplemental unit in parallel to take over the sewage treatment operation in a shorter time than it will take to repair the broken unit. Nevertheless, that particular unit in substitution or parallel would still be required to wait 60 days until it could begin processing sewage. Again, it seems unreasonable to penalize Alyeska for such mechanical breakdowns if they cannot be fixed within the appropriate time frame.

Again, Alyeska would be faced with this busing situation at greatly increased labor costs.

3. Assume that the Department of Environmental Conservation, through bureaucratic mistakes, does not promptly start public notice publication. Should Alyeska be penalized for this inaction or delay which was not caused by its own negligence or its own lack of advance planning? This again would seem to be a situation which would compel the Commissioner to seriously consider granting a waiver from the procedural requirements.

Alyeska anticipates similar problems such as those described being experienced with air quality and solid waste disposal site permits. Some flexibility must be built into the procedural process specified in the permit issuance procedures to facilitate pipeline construction. This flexibility quite properly belongs in the Commissioner or the Department responsible for regulating this phase of pipeline environmental protection activities. That is all this bill does. If the legislature wishes, it can closely follow the situations in which these waivers are granted and take appropriate action at the next session if it believes this discretion being delegated to the Commissioner by the legislature has been abused.

It should be remembered that any unnecessary costs incurred in the construction of this project, particularly those caused by the need to comply with State procedural requirements, will inevitably be capitalized into the rate base for tariff making purposes. These unnecessary costs will be reflected in the wellhead price of North Slope oil. Therefore, the people of this State have a stake in minimizing unnecessary pipeline construction expense. This bill serves that interest also.

TO NELS A. ANDERSON
CHAIRMAN, HOUSE RESOURCES COMMITTEE

FROM: GUY A. VAN DOREN ^(GAD)
STAFF ASSISTANT, HOUSE RESOURCES COMMITTEE

SUBJECT: HB 518

THE DEPARTMENT OF ENVIORMENTAL CONSERVATION, THROUGH JERRY RIENWAND,
HAS INDICATED THAT THEIR POSITION ON HB 518 IS ^{NEUTRAL} ~~NE~~TURAL AT THIS TIME.
WHILE THEY SUPPORT THE IDEA OF MORE FLEXIBILITY, THEY HAVE TO ANSWER TO
THE ENVIORMENTALISTS REGARDING THIS MATTER. THERE IS SOME DISTRESS
WITHIN THE DEPARTMENT THAT THIS LEGISLATION FAVORS ONE PARTICULAR
INDUSTRY AND NOT OTHERS, BUT SEE THE ^{NECESSITY} ~~NECISITY~~ FOR THE LEGISLATION.

THEY HAVE INDICATED THAT THEY ARE NOT GOING TO TESTIFY AT THIS
HEARING AND THAT THEY HAVE ALREADY MADE THEIR STAND CLEAR TO WILLARD
BOWMAN.