

SB

393

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

1/10/78

Date: ~~1/10/78~~ 1/11/78

Mr. President:

The Committee on RESOURCES has had SB 393 relating to state assumption of the national pollutant discharge elimination system

under consideration and (a majority of the committee) (the committee reports it back as follows)

- recommends it do pass recommends it do not pass
- recommends it do pass with attached amendment(s)
- recommends it be replaced with CS for _____

and _____ new title same title

- AND attaches a Letter of Intent New Fiscal Note
- reports it back without recommendation
- and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Other Environment "Make"

D. C. - Pass unless amended

C. Tillion No Rec

R. Polanski

Chairman

AMENDMENT

OFFERED IN THE SENATE:

By: Richard

To: _____ SENATE BILL No. 313

HOUSE BILL No. _____

PAGE: 9
10

LINE: 24
1

Delete [...]

Substitute the following language in
its place [...]

January 10, 1978

The Honorable John L. Rader
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill to provide the Department of Environmental Conservation with sufficient statutory authority to assume responsibility for implementing the National Pollutant Discharge Elimination System ("NPDES") within Alaska.

The NPDES is established under sec. 402 of the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.). It requires that any person discharging a pollutant into water obtain a permit from the United States Environmental Protection Agency ("EPA"). The section also provides, however, that state environmental departments with sufficient authority may implement the NPDES program within their jurisdictions. So far, twenty-seven states and the Virgin Islands have assumed the program.

In 1976, the legislature urged me to direct the Department of Environmental Conservation to assume the NPDES program "as quickly as possible." HCR 122, 9th Leg., 2nd Sess. I share the legislature's belief that water pollution control is a state responsibility, and that our citizens should be able to deal with their own state officials, rather than distant federal bureaucrats, in obtaining water pollution control permits. The primary constraint, until now, has been a lack of funding to properly administer the program. However, under amendments to the federal Act now in Congressional Conference Committee, it is likely that sufficient

federal funds will be available to remove this fiscal stumbling block. Given the probable availability of sufficient federal program grants, the time is ripe for equipping the department with the statutory tools necessary to obtain EPA approval.

The bill will not take effect until EPA has actually delegated the NPDES program to the state, and the department will petition for delegation only when sufficient program funds are secured. By meeting statutory deficiencies in advance, I am confident that the department will be able to assume the program at a far earlier date than if legislation were deferred pending sufficient funding.

The transmitted bill borrows heavily from the model state NPDES bill prepared by the Council of State Governments in 1973. The bill confers upon the department the authority to establish discharge standards according to the criteria established in the federal Act, and provides for permit procedures, and the imposition of permit terms consistent with federal requirements. The bill was also drafted to provide for delegation to the department of the federal dredge and fill permit program contained in sec. 404 of the federal Act. Under pending amendments to the federal Act, this program, as well as the NPDES program, can be delegated to the states, and, certainly, the same considerations warranting a delegation of the NPDES program apply to delegation of the dredge and fill program as well. The bill also allows the department to issue general permits for minor discharges, obviating the need for small operations to become enmeshed in regulatory details when their activities pose no real environmental consequences.

Passage of this legislation will not bring with it a weakening of water pollution control efforts. Under the federal Act, standards established by the department must be as stringent as federal requirements. The bill will, however, make the drafting and monitoring of permits a state function, and will provide for state establishment of standards for those operations for which no federal standard has been adopted.

The bill does pose a legal uncertainty. To gain EPA approval, state programs must provide that permittees consent to inspections of the discharging facilities. 40 C.F.R. § 124.45(c). In Woods and Rhode, Inc. v. Department of Labor (No. 1433, June 2, 1977), the Alaska Supreme Court ruled that the

Occupational Safety and Health Administration could not constitutionally conduct routine warrantless searches of regulated premises. The same reasoning may or may not limit the breadth of inspection authority in the water pollution control field. The bill meets the current federal requirement. If it is subsequently determined that the department cannot impose such an inspection requirement in permits, I am confident that EPA will not revoke its delegation simply on the basis of unavoidable constitutional constraints.

Sincerely,

S/ JSH

Jay S. Hammond
Governor

FISCAL ANALYSIS

ASSUMPTION OF NPDES PERMITS

The subject bill modifies existing statutes to allow the State's adoption of the Federal National Pollution Discharge Elimination System (NPDES) Permit Program. There are about 800 Federal NPDES permits issued in Alaska. The U. S. Environmental Protection Agency (EPA) currently has about four employees assigned to operate this program in Alaska.

The difficulty in preparing a fiscal analysis of this bill stems from the unspecified level of service which this program requires and the amount of man hours that EPA devotes to its operation which aren't charged directly to the NPDES Program. Currently, the Federal government appears to be devoting a minimum amount of effort to this program with uncertain benefit to the environment of the State.

This Fiscal Note assumes a level of service above that currently maintained by the Federal government but much less than maximum/optimum effort. It is anticipated that a short term contract will be developed in the near future to better define costs involved. This contract and eventual funding to support this program is to come from the Federal government. Without full Federal funding, Alaska should probably not adopt the program.

- 1. AS 46.03.095 permits the department to adopt by regulation effluent limitations previously promulgated by EPA, modify effluent limitations and/or adopt new limitations. This may require up to one year of effort to develop a complete set of Alaskan modifications. However, the initial preliminary adoption could be achieved almost immediately.

One Environmental Engineer First Year only:

<u>Object Code</u>	<u>Cost</u>
100	32.0
200	4.0
300	3.0
400	.5
500	.5
<u>TOTAL</u>	<u>40.0</u>

- 2. AS 46.03.100 adopts Federal permits as State permits, specifies Federal violations as State violations, establishes application schedules and allows general permits. No specific costs are incurred by this section.
- 3. AS 46.03.105 establishes guidelines by which to issue or deny permits. No costs are incurred through the provisions of this section.
- 4. AS 46.03.110 permits the Department to adopt permit regulations. Because the Department is already adopting similar regulations, no additional costs are incurred by its provisions.

5. AS 46.03.120 provides guidelines for permit termination, specifies permit conditions and additionally requires a departmental response to permit applications within 60 days. Other than the staffing level necessary to attain this level of service (addressed later) no specific costs are incurred by the provisions of this section.
6. AS 46.03.107 defines monitoring and inspection requirements. This section may be construed to generate a cost to the permittee. However, in that the Federal government requires self monitoring now, no additional cost to the permittee is foreseen.
7. AS 46.03.715 discusses Solid Waste permits. However because the substance of this section has already been adopted into law, this section has no effect.

AS 46.03.865 discusses confidentiality of industrial processes and generates no costs to the State.

AS 46.03.900 establishes definitions.

8. Should the Department adopt the NPDES program. We would be required to service between 800 to 1,000 permits. Most of the permits expire every five years. Additionally, general permits may be issued. For the major permittees (50) annual inspections are required. For the remainder, inspections would probably be scheduled every three to five years. Additionally, general permits may be issued. For the major permittees (50) annual inspections are required. For the remainder, inspections would probably be scheduled every three to five years. Work load which this entails includes:

- a. Receive and route about 200-250 permit applications per year through the permit function in Program Coordination.

One Administrative Assistant:

<u>Object Code</u>	<u>Cost</u>
100	22.2
200	1.0
300	4.0
400	1.0
<u>500</u>	<u>1.0</u>
TOTAL	29.2

- b. Review and approve or reject about 200-250 permits/year in Water Programs Division.

One Engineer/Ecologist:

<u>Object Code</u>	<u>Cost</u>
100	32.0
200	4.0
300	3.0
400	.5
<u>500</u>	<u>.5</u>
TOTAL	40.0

- c. Mail responses, handle inquires, perform logging, tracking and filing activities, mail permits to applicants and Regional Offices;

One Clerk Typist III

<u>Object Code</u>	<u>Cost</u>
100	15.1
200	.5
300	4.0
400	1.0
<u>500</u>	<u>1.0</u>
TOTAL	21.6

- d. Perform about 50 inspections per year at major facilities assuming each inspection requires 3 days + office, travel, and onsite inspection time.

About 1/2 Environmental Field Officer (Fairbanks schedule)

<u>Object Code</u>	<u>Cost</u>
100	16.0
200	4.0
300	6.0
400	1.0
<u>500</u>	<u>1.0</u>
TOTAL	28.0

- e. Perform about 750 to 950 field inspections each 5-year period. Annual rate becomes 150-200 + inspections per year. Assume each inspection requires about 3 days office travel and on-site inspection time. Each man year results in about 250 man days available. Therefore, 200 inspections X 3 days + 250 = 2 1/2 man days per year.

2 1/2 Environmental Field Officers

<u>Object Code</u>	<u>Cost</u>
100	140.0
200	20.0
300	30.0
400	5.0
<u>500</u>	<u>5.0</u>
TOTAL	200.0

- f. Laboratory Analysis of an estimated three to five parameters/sample 100 X 4 parameters average = 4,000 analyses.

Chemist/Biologist

<u>Object Code</u>	<u>Cost</u>
100	23.8
200	1.0
300	6.0
400	5.0
500	1.0
<u>TOTAL</u>	<u>36.8</u>

- g. Additionally, a minimum of one additional lawyer will be required to the Attorney General's staff.

One lawyer on A.G.'s staff

<u>Object Code</u>	<u>Cost</u>
100	46.3
200	6.0
300	6.0
400	1.0
500	1.0
<u>TOTAL</u>	<u>60.3</u>

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. _____
 Title Assumption of NPDES Permit System
 Requested by Governor Date 12/8/77

II. FISCAL DETAIL

Agency Affected Environmental Conservation, Law
 Program Category Affected NRM & EC, Justice
 Budget Request Unit(s) Affected Water Programs, Program Coordination, Field, Law

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES			327.4	304.6	322.9	342.2
200 TRAVEL			40.5	38.7	41.0	43.4
300 CONTRACTUAL			62.0	62.5	66.2	70.2
400 COMMODITIES			15.0	15.3	16.2	17.3
500 EQUIPMENT			11.0	11.1	11.8	12.5
600 LAND & STRUCTURES						
700 GRANTS, C. AIMS, ETC.						
TOTAL			455.9	432.2	458.1	485.6

FUNDING (Thousands of Dollars)

GENERAL FUND			-0-	-0-	-0-	-0-
FEDERAL FUNDS			455.9	432.2	458.1	485.6
OTHER (Specify)						

POSITIONS

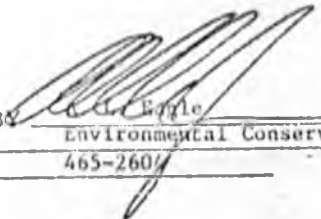
FULL TIME			9	8	8	8
PART TIME						
TEMPORARY						

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

See attached detailed analysis.

Inflation taken at 6%

IV. DATE 12/8/77

PREPARED BY 
 AGENCY Environmental Conservation
 PHONE 465-2604

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