

SB

50

FISCAL NOTE

No. 2

Bill Version: SB 50

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. (S) Publish Date: 1/15/97

Revision Date: _____
Title: Administrative Penalties for Violation of Public
Water Supply System Requirements
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Environmental
Conservation
BRU: _____
Component: _____

COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
OPERATING EXPENDITURES						
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS.CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Larry Jones
Division: Director, Division of Administrative Services

Phone: 465-5010
Date: 11/7/96

Approved by Commissioner: [Signature]
Agency: Department of Environmental Conservation

Date: 11/7/96

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FISCAL NOTE

No. 1

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Bill Version: SB 50
(S) Publish Date: 1/15/97

Revision Date: _____ Dept. Affected: Department of Law
 Title: An Act to administrative penalties for violation BRU: Civil Division
of public water supply system requirements; amends civil court rule 82 Component: Environmental Law
 Sponsor: Rules by Request
 Requester: Governor COMPONENT SERIAL NO. 2092

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF Program Receipts						
1006 GF.MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill is in response to a recent change to the federal Safe Water Drinking Act that requires that the state have minimum administrative penalty authority in order to maintain state primacy for enforcement of the federal drinking water program. Presently, the State of Alaska must initiate a lawsuit to collect civil assessments for violation of the requirements for public water supply systems. The 1996 amendments to the Safe Water Drinking Act condition receipt of federal money for drinking water system construction on a state's maintaining primacy under the federal program. Otherwise, the federal construction money allocated to this state is reallocated to the federal Environmental Protection Agency for its use in exercising primary enforcement authority in Alaska and the remainder of the federal money is reallocated to other states that do exercise primary enforcement authority.

Passage of this bill would have no fiscal impact on the Department of Law. Most administrative actions proposed by this legislation could be handled by Department of Environmental Conservation staff. The more complicated

Prepared by: Joan M. Kasson Phone: 465-3672
 Division: Administrative Services Division Date: 11/6/96
 Approved by Commissioner: Bruce M. Botelho Attorney General Date: 11/6/96
 Agency: Department of Law

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ANALYSIS CONTINUATION:

cases that the Department of Law would handle are expected to take about the same time that the department presently expends on compliance order and lawsuits that the present law require for drinking water enforcement.

To: The Honorable Jerry Mackie
Chairman, Senate Community and Regional Affairs

From: Janice Adair,
Department of Environmental Conservation

Subject: CSSB 50 (
0-GS0009\B Lauterbach

Date: March 10, 1997

MEMORANDUM

I understand the teleconference network is unable to provide another line into Anchorage today and I will therefore be unable to testify before the Committee on the proposed committee substitute prepared by Senators Wilken and Hoffman. I have however had a chance to review the above-referenced version, which is the one I believe will be before you today.

The department has no problems with what is being proposed in this version, and would ask for the committee's favorable action on it. We did run by EPA the proposed changes to the penalties for small communities who said they will satisfy the requirements of the Safe Drinking Water Act Amendments.

Thank you for your consideration of this legislation. I'd also like to thank the staff from both Senators Wilken and Hoffman's office for working with the department on the revisions.

Post-it® Fax Note	7671	Date	3-10-97	# of pages	1
To	DAVE	From	JANICE		
Co/Dept.		Co.			
Phone #		Phone #	262-7645		
Fax #	465-3517	Fax #	262-7654		

THANKS, DAVE.



ALASKA STATE LEGISLATURE

Senate Community & Regional Affairs Committee

State Capitol

Juneau, AK 99801-1182

(907) 465-4989

COMMITTEE PACKET

SB 50, Public Water Supply Violations

1. DEC Statement
2. Bill
3. Bill Sectional
4. Fiscal Note Analysis

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January 22, 1997

The Honorable Jerry Mackie
Chairman, Senate Community & Regional Affairs Committee
Capitol Building, Room 427
Juneau, AK 99801

Re: SB 50, An Act relating to administrative penalties for violation of public water supply system requirements; amendment Alaska Rule of Civil Procedure 82 regarding attorney's fees; and providing for an effective date

Dear Senator Mackie:

The above referenced bill was introduced by the Governor on behalf of the Department of Environmental Conservation on January 15. We would respectfully request that a hearing be scheduled on this legislation at your earliest convenience.

This bill will allow DEC to levy administrative penalties, as opposed to going through the court system, for violations of the state's drinking water regulations. This has been necessitated by changes made to the federal Safe Drinking Water Act (SDWA) by Congress in 1996.

As you know, the department has primacy for the drinking water program. That is, the state manages and enforces the terms of the SDWA in lieu of the federal government. Primacy affords us several benefits, including the ability to waive certain monitoring requirements for specific water systems. This has saved systems across the state millions of dollars in monitoring costs. Primacy also allows us to work one-on-one with systems on solving problems, and helping to ensure the delivery of safe water to the communities served.

Finally, the changes made by the 1996 Congress raised the stakes by requiring primacy for continued access to the millions of dollars it appropriates each year for construction of drinking water systems. Alaska's share of this appropriation is expected to be about \$27 million next fiscal year.

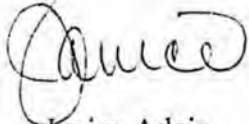
The Honorable Jerry Mackie

Page 2

January 22, 1997

A sectional analysis and the specific language from the changes made by Congress are enclosed. Please don't hesitate to call me if you have any questions or need further information. I look forward to your committee's favorable action on this legislation.

Sincerely,



Janice Adair
Director

Enclosures:

- HB 71/Sectional Analysis (w/attachments)
- SDWA Language re: primacy
- SDWA Amendments/Language re: administrative penalties
- SDWA Amendments/Language re: State Revolving Loan Fund

TONY KNOWLES
GOVERNOR

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

SB50

January 15, 1997

The Honorable Mike Miller
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Miller:

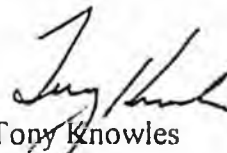
Safe drinking water is essential to the health and well-being of any community. As part of my ongoing effort to build healthy communities in Alaska, this administration is dedicated to ensuring our public water systems meet all health requirements. In order to meet that goal, it is important that the state retain control over enforcement of the federal drinking water program. Losing that control would lead to the loss of federal construction funds for drinking water systems -- something we cannot afford to see happen, particularly for rural Alaska.

This bill will guarantee the state maintains its control over drinking water programs by complying with a recent change to the federal Safe Drinking Water Act which mandates the state have administrative penalties for violations of public water supply system requirements. This bill appropriately places the administrative penalty authority with the Department of Environmental Conservation (DEC).

The authority to impose administrative penalties is a more efficient and cost-effective way to enforce important public health laws. Presently, the state must initiate a lawsuit in order to impose a civil assessment for a violation of requirements for public water supply systems. Legal costs for a court action potentially far exceed the costs involved in an administrative hearing and any related appeal.

Enacting administrative penalty authority is essential if the state is to receive this important federal funding for improvement of Alaska public drinking water systems. Maintaining Alaska's primary enforcement authority for the federal drinking water program provides maximum flexibility and local control over this program while at the same time working to ensure the safety of Alaska's public water supply systems.

Sincerely,


Tony Knowles
Governor

An Act relating to administrative penalties for violation of public water supply system requirements; amending Alaska Rule of Civil Procedure 82 regarding attorney's fees; and providing for an effective date.

Section 1. This section simply outlines the need for this legislation. Copies of the pertinent federal laws are attached.

Section 2. This section amends AS 46.03 by adding a new section giving the department authority to assess administrative penalties when drinking water system requirements are violated.

The section provides that the penalty may not exceed \$1,000 per day per violation if the public water system serves more than 10,000 people. In Alaska, those systems are:

- Municipality of Anchorage
- City of Juneau
- Fairbanks Municipal Utilities
- USAF Elmendorf
- US Army Ft. Richardson
- US Army Ft. Wainwright

For all other systems, the penalty may not exceed \$750 per day per violation.

The section provides that each violation of a term, condition or provision of the drinking water requirements would be a separate violation, and each day is a separate violation. This makes clear that violation of more than one requirement relating to a drinking water system subjects a persons to more than one civil penalty. Like other public health laws, separate violations are provided for each day a violation continues in order to ensure timely and consistent compliance with the health requirement.

The conditions to be considered when establishing the amount of the penalty are set out on page 2, lines 20-31, continuing on page 3, lines 1-4. The section also allows the department to work with the public through the regulatory process on any other factors that should be considered.

The process the department must follow in assessing a penalty and how a person can contest a proposed penalty is specified on page 3, lines 5 -31, continuing on page 4, lines 1-6. These are standard procedures, and assures that if a party feels the penalty has been unfairly or unduly assessed, there is an opportunity for both administrative and judicial review.

Section 3. This allows the department to start drafting regulations to implement this legislation after its passage but prior to its effective date that it outlined in Section 7. We plan to work with the public in developing consensus regulations. That will add time to completing the project, but we feel it is an important and necessary approach.

Section 4. This amends the Court Rule on attorney's fees. Under the existing Court Rules, the

prevailing party in a court action is entitled to a partial award of reasonable attorney's fees. Section 4 amends this provision to allow the court to award full reasonable attorney's fees to the department if a person does not pay the penalty after all administrative and court appeals are completed and the department is forced to go to court to collect the penalty and then succeeds in that collection action. An analagous provision exists in AS 46.03.763. The section also includes standard language regarding the need for two-thirds vote to amend the court rules.

Section 6. This is the effective date for Section 3. It will allow the department to immediately begin the process of regulatory development upon the signing of the legislation.

Section 7. This is the effective date for the remainder of the bill. Typically, primacy requirements come with an effective date from EPA giving the states some specific period of time by which it must have the necessary changes to its regulations or statutes completed. The effect of this section is to delay the actual effective date of the penalty authority until such time that EPA tells the state it must have administrative penalty authority to retain primacy for the drinking water program.

Public Water Systems
42 USC 300f to 300j-26
(Safe Drinking Water Act)

Primacy provision

(3) will keep such records and make such reports with respect to its activities under paragraphs (1) and (2) as the Administrator may require by regulation;

(4) if it permits variances or exemptions, or both, from the requirements of its drinking water regulations which meet the requirements of paragraph (1), permits such variances and exemptions under conditions and in a manner which is not less stringent than the conditions under, and the manner in which variances and exemptions may be granted under sections 300g-4 and 300g-5 of this title;

(5) has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances; *and* →

(SEE SDWA Amendm)

(b)(1) The Administrator shall, by regulation (proposed within 180 days of December 16, 1974), prescribe the manner in which a State may apply to the Administrator for a determination that the requirements of paragraphs (1), (2), (3), and (4) of subsection (a) of this section are satisfied with respect to the State, the manner in which the determination is made, the period for which the determination will be effective, and the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are met or are no longer met with respect to a State may become effective, the Administrator shall notify such State of the determination and the reasons therefor and shall provide an opportunity for public hearing on the determination. Such regulations shall be promulgated (with such modifications as the Administrator deems appropriate) within 90 days of the publication of the proposed regulations in the Federal Register. The Administrator shall promptly notify in writing the chief executive officer of each State of the promulgation of regulations under this paragraph. Such notice shall contain a copy of the regulations and shall specify a State's authority under this subchapter when it is determined to have primary enforcement responsibility for public water systems.

§ 300g-2. State primary enforcement responsibility; regulations; notice and hearing; publication in Federal Register; applications [PHSA § 1413]

(a) For purposes of this subchapter, a State has primary enforcement responsibility for public water systems during any period for which the Administrator determines (pursuant to regulations prescribed under subsection (b) of this section) that such State—

(1) has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations in effect under sections 300g-1(a) and 300g-1(b) of this title;

(2) has adopted and is implementing adequate procedures for the enforcement of such State regulations, including conducting such monitoring and making such inspections as the Administrator may require by regulation;

(2) When an application is submitted in accordance with the Administrator's regulations under paragraph (1), the Administrator shall within 90 days of the date on which such application is submitted (A) make the determination applied for, or (B) deny the application and notify the applicant in writing of the reasons for his denial.

(July 1, 1944, c. 373, Title XIV, § 1413, as added Dec. 16, 1974, Pub.L. 93-523, § 2(a), 88 Stat. 1665, as amended June 19, 1986, Pub.L. 99-339, Title I, § 101(c)(2), 100 Stat. 646.)

Administrative Penalty Language

F: MPB 1996 SDW SAFEDW.CNF

24

(iii) in subparagraph (C), by striking "paragraph exceeds \$5,000" and inserting "subsection for a violation of an applicable requirement exceeds \$25,000".

(4) By adding at the end the following:

"h) CONSOLIDATION INCENTIVE —

"(1) IN GENERAL.—An owner or operator of a public water system may submit to the State in which the system is located if the State has primary enforcement responsibility under section 1413, or to the Administrator if the State does not have primary enforcement responsibility, a plan including specific measures and schedules for—

"(A) the physical consolidation of the system with 1 or more other systems;

"(B) the consolidation of significant management and administrative functions of the system with 1 or more other systems; or

"(C) the transfer of ownership of the system that may reasonably be expected to improve drinking water quality.

"(2) CONSEQUENCES OF APPROVAL.—If the State or the Administrator approves a plan pursuant to paragraph (1), no enforcement action shall be taken pursuant to this part with respect to a specific violation identified in the approved plan prior to the date that is the earlier of the date on which consolidation is completed according to the plan or the date that is 2 years after the plan is approved.

"(i) DEFINITION OF APPLICABLE REQUIREMENT.—In this section, the term 'applicable requirement' means—

"(1) a requirement of section 1412, 1414, 1415, 1416, 1417, 1441, or 1445;

"(2) a regulation promulgated pursuant to a section referred to in paragraph (1);

"(3) a schedule or requirement imposed pursuant to a section referred to in paragraph (1); and

"(4) a requirement of, or permit issued under, an applicable State program for which the Administrator has made a determination that the requirements of section 1413 have been satisfied, or an applicable State program approved pursuant to this part."

(b) STATE AUTHORITY FOR ADMINISTRATIVE PENALTIES.—Section 1413(a) (42 U.S.C. 300g-2(a)) is amended—

(1) by striking "and" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting "; and", and

(3) by adding at the end the following:

"(6) has adopted authority for administrative penalties (unless the constitution of the State prohibits the adoption of the authority) in a maximum amount—

"(A) in the case of a system serving a population of more than 10,000, that is not less than \$1,000 per day per violation; and

"(B) in the case of any other system, that is adequate to ensure compliance (as determined by the State);

except that a State may establish a maximum limitation on the total amount of administrative penalties that may be imposed on a public water system per violation."

August 1, 1996 (5:17 p.m.)

State Revolving Loan Funds (See § F)

F:\MPB 1996 SDW SAFEDW.CNF

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"A) in paragraph (1), by striking ", or" and inserting a semicolon;

"B) in paragraph (2), by striking the period at the end and inserting ", or"; and

"C) by adding at the end the following:

"(3) for the collection of a penalty by the United States Government and associated costs and interest against any Federal agency that fails, by the date that is 18 months after the effective date of a final order to pay a penalty assessed by the Administrator under section 1429(b), to pay the penalty."

"(2) Subsection (b) of section 1449 (42 U.S.C. 300j-8(b)) is amended by striking the period at the end of paragraph (2) and inserting ", or" and by adding the following new paragraph after paragraph (2):

"(3) under subsection (a)(3) prior to 60 days after the plaintiff has given notice of such action to the Attorney General and to the Federal agency."

"(c) WASHINGTON AQUEDUCT.—Section 1447 (42 U.S.C. 300j-6) is amended by adding at the end the following:

"(e) WASHINGTON AQUEDUCT.—The Secretary of the Army shall not pass the cost of any penalty assessed under this title on to any customer, user, or other purchaser of drinking water from the Washington Aqueduct system, including finished water from the Dalecarlia or McMillan treatment plant."

SEC. 130. STATE REVOLVING LOAN FUNDS.

Part E (42 U.S.C. 300j et seq.) is amended by adding the following new section after section 1451:

STATE REVOLVING LOAN FUNDS

"SEC. 1452. (a) GENERAL AUTHORITY.—

"(1) GRANTS TO STATES TO ESTABLISH STATE LOAN FUNDS.—

"(A) IN GENERAL.—The Administrator shall offer to enter into agreements with eligible States to make capitalization grants, including letters of credit, to the States under this subsection to further the health protection objectives of this title, promote the efficient use of fund resources, and for other purposes as are specified in this title.

"(B) ESTABLISHMENT OF FUND.—To be eligible to receive a capitalization grant under this section, a State shall establish a drinking water treatment revolving loan fund (referred to in this section as a 'State loan fund') and comply with the other requirements of this section. Each grant to a State under this section shall be deposited in the State loan fund established by the State, except as otherwise provided in this section and in other provisions of this title. No funds authorized by other provisions of this title to be used for other purposes specified in this title shall be deposited in any State loan fund.

"(C) EXTENDED PERIOD.—The grant to a State shall be available to the State for obligation during the fiscal year for which the funds are authorized and during the following fiscal year, except that grants made available from

funds provided prior to fiscal year 1997 shall be available for obligation during each of the fiscal years 1997 and 1998.

"D. ALLOTMENT FORMULA.—Except as otherwise provided in this section, funds made available to carry out this section shall be allotted to States that have entered into an agreement pursuant to this section (other than the District of Columbia) in accordance with—

"(i) for each of fiscal years 1995 through 1997, a formula that is the same as the formula used to distribute public water system supervision grant funds under section 1443 in fiscal year 1995, except that the minimum proportionate share established in the formula shall be 1 percent of available funds and the formula shall be adjusted to include a minimum proportionate share for the State of Wyoming and the District of Columbia; and

"(ii) for fiscal year 1998 and each subsequent fiscal year, a formula that allocates to each State the proportional share of the State needs identified in the most recent survey conducted pursuant to subsection (h), except that the minimum proportionate share provided to each State shall be the same as the minimum proportionate share provided under clause (i).

"E. REALLOTMENT.—The grants not obligated by the last day of the period for which the grants are available shall be reallocated according to the appropriate criteria set forth in subparagraph (D) except that the Administrator may reserve and allocate 10 percent of the remaining amount for financial assistance to Indian Tribes in addition to the amount allotted under subsection (i) and none of the funds reallocated by the Administrator shall be reallocated to any State that has not obligated all sums allotted to the State pursuant to this section during the period in which the sums were available for obligation.

→ "F. NONPRIMACY STATES.—The State allotment for a State not exercising primary enforcement responsibility for public water systems shall not be deposited in any such fund but shall be allotted by the Administrator under this subparagraph. Pursuant to section 1443(a)(9)(A) such sums allotted under this subparagraph shall be reserved as needed by the Administrator to exercise primary enforcement responsibility under this title in such State and the remainder shall be reallocated to States exercising primary enforcement responsibility for public water systems for deposit in such funds. Whenever the Administrator makes a final determination pursuant to section 1413(b) that the requirements of section 1413(a) are no longer being met by a State, additional grants for such State under this title shall be immediately terminated by the Administrator. This subparagraph shall not apply to any State not exercising primary enforcement responsibility for public water systems as of the date of enactment of the Safe Drinking Water Act Amendments of 1996.

GARY WILKEN

SENATOR
Districts 29 & 30
West Fairbanks

Senate Standing Committees

Chairman: Health, Education,
and Social Services (HESS)
Vice Chairman: Transportation
Vice Chairman: Community and
Regional Affairs

Special Committee

Member: Administrative Regulation Review



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Side-by-side Comparison of SB 50 [O-GS0009.A] and Blank CSSB 50 [O-GS0009B]

Headers: same

Titles: Blank CS adds a reference to the court rule change that relates to filing requirements for appeals so that district court can be used.

S. tion 1 same

Section 2

[amends AS 46.03 by adding 46.03.761. Administrative Penalties]

PENALTIES

OLD Section 2. provided for fines of up to \$1,000/day in communities over 10,000 and up to \$750/day for those under 10,000.

NEW Section 2. lowers the penalties possible for small communities [up to \$500/day for communities 1,000-10,000 and up to \$100 per day for communities under 1,000]. Penalty for communities over 10,000 are at the minimum allowed by the federal statute.

PLACE TO FILE APPEALS

OLD Section 2. limited filing of an appeal to Superior Court.

NEW Section 2. permits filing in District Court and requires such filings to be forwarded by District Court to Superior Court. {See subsection (f).}

NOTICE OF ALLEGED VIOLATION(S) AND APPELLATE PROCEDURES

OLD Section 2. provided for standard notice requirements.

NEW Section 2. provides for standard notice requirements and additional steps to be followed by the department to insure appropriate and timely notice before and administrative penalty is levied. {See subsection (b).}

TIME FOR FILING APPEALS

OLD Section 2. allows 30 days.

NEW Section 2. allows 45 days. {See subsection (c).}

Section 3

OLD Section 3. allows department to adopt regulations to implement this Act and provides for an effective date.

NEW Section 5. allows department to adopt regulations to implement this Act the same as OLD Section 3.

Additionally, NEW Section 5. requires the department to circulate copies of such regulations to all legislators at least 30 days prior to such regulations going into effect.

NEW Section 3. denotes the change required in Rule 602(b) of Alaska Rules of Appellate Procedure to permit filing an administrative appeal in District -- rather than Superior -- Court.

Section 4

No change

Section 5

OLD Section 5. same as NEW Section 8. Reference to AS 46.03.761(i) in OLD Section 5 is now AS 46.03.761(j) in NEW Section 7.

Section 6

OLD Section 6. is the same as NEW Section 9. except that the OLD Section 3 referred to in OLD Section 6 is NEW Section 5 in NEW Section 9.

Section 7

OLD Section 7 is the same as NEW Section 6.

NEW SECTIONS

PLEASE NOTE: The side-by-side correspondence has originated with the OLD version. The OLD version has 7 sections; the NEW version has 9 sections. NEW Sections 8 & 9 correspond to OLD Sections 5 & 6, respectively.

The two new sections in the NEW version are NEW Section 3 which changes the rules for filing an appeal, and NEW Section 7 having to do with the need for a two-thirds vote to change the rules of appellate procedure to implement section 3.

NEW Section 8 is the same as OLD Section 5 except that (i) in AS 46.03.761(i) is now (j)

0-GS0009B
Lauterbach
2/19/97

Sen Wilke

CS FOR SENATE BILL NO. 50()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative penalties for violation of public water supply
2 system requirements; amending Rule 602(b), Alaska Rules of Appellate Procedure;
3 amending Rule 82, Alaska Rules of Civil Procedure; and providing for an
4 effective date."

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

6 * Section 1. FINDINGS. The legislature finds that

7 (1) the federal government has required, in the federal Safe Drinking Water
8 Act amendments of 1996 (P.L. 104-182), that states have administrative penalty authority in
9 order to maintain primary enforcement authority for the federal drinking water program (42
10 U.S.C. 300f - 300j-26);

11 (2) the state cannot receive federal money for construction of public drinking
12 water systems unless it maintains primacy under the federal program (sec. 130, P.L. 104-182);

13 (3) maintaining state primary enforcement authority for the federal program
14 is in the best interests of the state so as to provide maximum flexibility and local control of

1 this program and to ensure continued federal money for Alaska public water supply system
2 construction projects;

3 (4) ensuring public health through protection of public water supplies is of
4 fundamental importance to the people of the state;

5 (5) this Act is in the public interest by enacting administrative penalty authority
6 in order to meet the federal requirements for maintaining state primary enforcement authority
7 for the federal drinking water program.

8 * Sec. 2. AS 46.03 is amended by adding a new section to read:

9 Sec. 46.03.721. Administrative penalties. (a) After following the procedures
10 in this section, the department may assess an administrative penalty against a person
11 who violates or causes or permits to be violated a provision of AS 46.03.720(b) or a
12 term or condition of a regulation, order, permit, approval, or certificate of the
13 department issued or adopted under AS 46.03.720(b).

14 (b) Before assessing an administrative penalty under this section, the
15 department shall

16 (1) communicate about the alleged noncompliance with the owner or
17 operator of the public water system and the governing body of the community or
18 municipality whose residents are served by the system; communication under this
19 paragraph must be in language designed to be easily understood by the owner,
20 operator, and governing body and must clearly describe the nature of the alleged
21 noncompliance;

22 (2) offer technical assistance to aid in correcting the alleged
23 noncompliance when the department has reason to believe that the system owner and
24 operator may lack the resources or expertise to get technical assistance from other
25 sources; and

26 (3) unless the alleged noncompliance poses an immediate threat to the
27 public health, give the system's owner and operator a reasonable amount of time to
28 correct the alleged noncompliance after the department has complied with (1) and (2)
29 of this subsection.

30 (c) If, after complying with (b) of this section, the department determines that
31 noncompliance still exists and the violation is subject to a penalty under this section,

1 the department may assess the penalty. The department shall provide notice of the
2 assessment and instructions for contesting and appealing the assessment to the person
3 assessed by personal service or by certified mail, return receipt requested. The notice
4 must inform the person of the amount of the proposed penalty and that the person has
5 45 days within which to file a notice with the department contesting the proposed
6 penalty. If, within 45 days after the receipt of the notification issued by the
7 department, the person fails to file a notice contesting the proposed penalty, the
8 proposed penalty is considered a final order. The department may extend the time
9 periods specified in this subsection for good cause.

10 (d) If a person sends notice to the department contesting a proposed penalty
11 under (c) of this section, the department shall afford an opportunity for a hearing in
12 accordance with its adjudicatory hearing procedures. After an opportunity for a
13 hearing, the department shall issue an order, based upon findings of fact, affirming,
14 modifying, or rescinding the administrative penalty. The order is the final agency
15 action on the penalty.

16 (e) A person against whom an administrative penalty is assessed under this
17 section may obtain judicial review of the administrative penalty by filing a notice of
18 appeal in the superior court as provided by the Alaska Rules of Appellate Procedure.
19 An order of the department under (d) of this section becomes final and is not subject
20 to review by a court if a notice of appeal is not filed with the superior court within the
21 period provided for by the Alaska Rules of Appellate Procedure.

22 (f) Unless the notice of appeal is incomplete or otherwise not in conformance
23 with court rules, a notice of appeal under (e) of this section is considered to be filed
24 with the superior court on the day the person delivers the appropriate documents and
25 fee to either the appropriate superior court or to a district court within the area served
26 by the appropriate superior court. If a notice of appeal is delivered to a district court
27 under this subsection, the district court shall promptly forward it to the superior court.
28 The responsibility for determining whether the notice of appeal is complete and
29 otherwise in conformance with court rules is the responsibility of the superior court.

30 (g) An administrative penalty assessed under this section may not exceed (1)
31 \$1,000 a day for each violation if the affected public water supply system serves a

1 population of more than 10,000 persons; (2) \$500 a day for each violation if the
2 affected public water supply system serves a population of 10,000 or fewer persons but
3 more than 1,000 persons; and (3) \$100 a day for each violation if the public water
4 supply system serves 1,000 or fewer persons. Each provision, term, or condition
5 violated is a separate and distinct violation. If a violation of a provision, term, or
6 condition continues from day to day, each day is a separate violation.

7 (h) In determining the amount of a penalty assessed under this section, the
8 department shall consider

9 (1) the effect of the violation on the public health or the environment;

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

12 (3) the economic savings realized by the person by not complying with
13 the requirement for which a violation is charged;

14 (4) any previous history of compliance or noncompliance with this
15 chapter, AS 46.04, AS 46.09, and AS 46.14;

16 (5) the need to deter future violations;

17 (6) the extent and seriousness of the violation, including the potential
18 for the violation to threaten public health or the environment;

19 (7) whether the person achieved compliance with the requirement
20 violated within the shortest feasible time; and

21 (8) other factors considered relevant to the assessment that are adopted
22 by the department in regulation.

23 (i) If a person fails to pay an administrative penalty assessed under this section
24 after the penalty becomes final, the department may bring an action to collect the
25 penalty. The amount of the penalty is not subject to review by the court in such an
26 action.

27 (j) If the department prevails in a collection action brought under (i) of this
28 section, the court shall order the person to pay full reasonable attorney fees and costs
29 incurred by the department in the collection action.

30 (k) Action under this section by the department does not limit or otherwise
31 affect the authority of the department to otherwise enforce this chapter, AS 46.04,

1 AS 46.08, AS 46.09, AS 46.14, or regulations adopted under those statutes, or to
2 recover damages, restoration expenses, investigation costs, court costs, attorney fees,
3 or other necessary expenses. The court shall set off against a judicial civil assessment
4 subsequently awarded under AS 46.03.760 an amount ordered to be paid under this
5 section by the same person for the same violation.

6 * Sec. 3. The provisions of AS 46.03.721(f), added by sec. 2 of this Act, have the effect
7 of amending Rule 602(b), Alaska Rules of Appellate Procedure, by providing that delivery of
8 a notice of appeal to a district court constitutes filing of the notice of appeal with the
9 associated superior court.

10 * Sec. 4. The provisions of AS 46.03.721(j), added by sec. 2 of this Act, have the effect
11 of amending Rule 82, Alaska Rules of Civil Procedure, by allowing the recovery of full
12 reasonable attorney fees and costs in certain actions.

13 * Sec. 5. TRANSITION: REGULATIONS. The Department of Environmental
14 Conservation may proceed to adopt regulations to implement changes made by this Act. The
15 department shall notify each legislator about its proposed regulations at least 30 days before
16 adopting the regulations. The regulations take effect under AS 44.62 (Administrative
17 Procedure Act), but not before the effective date of sec. 1 of this Act.

18 * Sec. 6. Except as provided in sec. 9 of this Act, this Act takes effect on the effective date
19 of regulations adopted by the United States Environmental Protection Agency implementing
20 the state administrative penalty requirement for state primary enforcement authority under 42
21 U.S.C. 300g-2 of the federal Safe Drinking Water Act or, if the Environmental Protection
22 Agency determines that regulations are not necessary, on the date the Environmental
23 Protection Agency requires under the authority of that statute that the state must have
24 administrative penalty authority to maintain its state primacy over the federal drinking water
25 program, whichever occurs first. The commissioner of environmental conservation shall notify
26 the lieutenant governor and the revisor of statutes of the effective date of the state
27 administrative penalty authority requirement.

28 * Sec. 7. AS 46.03.721(f), added by sec. 2 of this Act, takes effect only if sec. 3 of this
29 Act receives the two-thirds majority vote of each house of the legislature required by art. IV,
30 sec. 15, Constitution of the State of Alaska.

31 * Sec. 8. AS 46.03.721(j), added by sec. 2 of this Act, takes effect only if sec. 4 of this

- 1 Act receives the two-thirds majority vote of each house of the legislature required by art. IV,
- 2 sec. 15, Constitution of the State of Alaska.
- 3 * Sec. 9. Section 5 of this Act takes effect immediately under AS 01.10.070(c).