

HB

51

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/17/97

FURTHER: SFC 4/16/98

DATE TURNED

IN TO OFFICE: 16 April 98

Finance Committee considered

CS FOR HOUSE BILL NO. 51(RLS) am

"An Act relating to the Department of Environmental Conservation; amending Rules 79 and 82, Alaska Rules of Civil Procedure; and providing for an effective date."

and recommends:

be replaced with S CS CS HB 51 (FIN)

adopt previous CS ()

attached amendment(s)

adopt Letter of Intent by Committee

further referral to the Committee

Senate Bill:

- same title
- new title
- House Bill:**
- same title
- technical change
- new: SCR#

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Roller</i>	<input checked="" type="checkbox"/>	<i>Paula Donley</i>	<input checked="" type="checkbox"/>		
<i>John Adams</i>	<input checked="" type="checkbox"/>	<i>Alan R. Farrell</i>	<input checked="" type="checkbox"/>		
<i>John Meyer</i>	<input checked="" type="checkbox"/>				
<i> </i>					
Co-Chair: <i> </i>	<input checked="" type="checkbox"/>	Co-Chair: <i> </i>			
Co-Chair: <i> </i>	<input checked="" type="checkbox"/>	Co-Chair: <i> </i>			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

DEC; Drinking Water	4/16/98	<input checked="" type="checkbox"/>	
ADF&G			
Habitat & Restoration			
Fiscal Note			
Forthcoming			
4/16/98			

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

RECEIVED COPY OF
SSC 4/16/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SCS CSHB51 (FIN)

Revisor: Date (Note if correction) <u>16-Apr-98</u>	Dept. Affected <u>Environmental Conservation</u>
Title <u>An Act relating to the Department of</u>	BRU <u>Environmental Health</u>
<u>Environmental Conservation; amending Rules 79 and 82,...</u>	Component <u>Drinking Water</u>
Sponsor <u>Rep. Rokeberg</u>	
Requester <u>Senate Finance</u>	Component Serial No. <u>2066</u>

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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 Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	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 (FY98) cost: 0.0

POSITIONS

POSITIONS	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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)

This bill now provides DEC with administrative penalty authority for drinking water violations as required by the Safe Drinking Water Act, 42 USC 300f - 300j-26.

Prepared by <u>Janice Adair, Director</u>	Phone <u>269-7644</u>
Division <u>Environmental Health</u>	Date <u>4/16/98</u>
Approved by Commissioner <u>[Signature]</u>	Date <u>4/16/98</u>
Agency <u>Department of Environmental Conservation</u>	

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

0-LS0091\AA
Lauterbach
4/14/98

*Sen Ingerson moved for
adopt
Sen Adams
obj. removed
no obj. - adopted*

SENATE CS FOR CS FOR HOUSE BILL NO. 51(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ROKEBERG AND KELLY, Foster, Hodgins, Vezey, Bunde, Cowdery, Mulder, Kohring

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Department of Environmental Conservation; amending
2 Rules 79 and 82, Alaska Rules of Civil Procedure; amending Rule 602(b), Alaska
3 Rules of Appellate Procedure; and providing for an effective date."

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

5 * Section 1. FINDINGS. The legislature finds that

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

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

12 (3) maintaining state primary enforcement authority for the federal program
13 is in the best interests of the state so as to provide maximum flexibility and local control of
14 this program and to ensure continued federal money for Alaska public water supply system

1 construction projects;

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

4 (5) sec. 3 of this Act advances the public interest by enacting administrative
5 penalty authority in order to meet the minimum federal requirements for maintaining state
6 primary enforcement authority for the federal drinking water program.

7 * Sec. 2. AS 46.03.020 is amended to read:

8 **Sec. 46.03.020. Powers of the department.** The department may

9 (1) enter into contracts and compliance agreements necessary or
10 convenient to carry out the functions, powers, and duties of the department;

11 (2) review and appraise programs and activities of state departments
12 and agencies in light of the policy set out in AS 46.03.010 for the purpose of
13 determining the extent to which the programs and activities are contributing to the
14 achievement of that policy and to make recommendations to the departments and
15 agencies, including but not limited to, environmental guidelines;

16 (3) consult with and cooperate with

17 (A) officials and representatives of any nonprofit corporation or
18 organization in the state;

19 (B) persons, organizations, and groups, public and private,
20 using, served by, interested in, or concerned with the environment of the state;

21 (4) appear and participate in proceedings before any state or federal
22 regulatory agency involving or affecting the purposes of the department;

23 (5) undertake studies, inquiries, surveys, or analyses it may consider
24 essential to the accomplishment of the purposes of the department; these activities may
25 be carried out by the personnel of the department or in cooperation with public or
26 private agencies, including educational, civic, and research organizations, colleges,
27 universities, institutes, and foundations;

28 (6) at reasonable times, enter and inspect with the consent of the owner
29 or occupier any property or premises to investigate either actual or suspected sources
30 of pollution or contamination or to ascertain compliance or noncompliance with a
31 regulation that may be adopted under AS 46.03.020 - 46.03.040; information relating

1 to secret processes or methods of manufacture discovered during investigation is
2 confidential;

3 (7) conduct investigations and hold hearings and compel the attendance
4 of witnesses and the production of accounts, books, and documents by the issuance of
5 a subpoena;

6 (8) advise and cooperate with municipal, regional, and other local
7 agencies and officials in the state, to carry out the purposes of this chapter;

8 (9) act as the official agency of the state in all matters affecting the
9 purposes of the department under federal laws now or hereafter enacted;

10 (10) adopt regulations necessary to effectuate the purposes of this
11 chapter, including, by way of example and not limitation, regulations providing for

12 (A) control, prevention, and abatement of air, water, or land or
13 subsurface land pollution;

14 (B) safeguard standards for petroleum and natural gas pipeline
15 construction, operation, modification, or alteration;

16 (C) protection of public water supplies by establishing minimum
17 drinking standards, and standards for the construction, improvement, and
18 maintenance of public water supply systems;

19 (D) collection and disposal of sewage and industrial waste;

20 (E) collection and disposal of garbage, refuse, and other
21 discarded solid materials from industrial, commercial, agricultural, and
22 community activities or operations;

23 (F) [REPEALED

24 (G)] control of pesticides;

25 (G) [(H)] other purposes as may be required for the
26 implementation of the policy declared in AS 46.03.010;

27 (H) [(D)] handling, transportation, treatment, storage, and
28 disposal of hazardous wastes;

29 (11) after consultation with other state agencies and local government
30 officials, identify and propose for addition or deletion, by regulation, other licenses,
31 permits, or authorizations for which the provisions of AS 46.35 are applicable;

1 (12) [REPEALED

2 (13)] inspect the premises of sellers and suppliers of paint, vessels, and
3 marine and boating supplies, and take other actions necessary to enforce AS 46.03.715.

4 * Sec. 3. AS 46.03 is amended by adding a new section to read:

5 **Sec. 46.03.761. Administrative penalties.** (a) The department may assess
6 an administrative penalty against an entity that violates or causes or permits to be
7 violated a provision of AS 46.03.720(b) or a term or condition of a regulation, order,
8 permit, approval, or certificate of the department issued or adopted under
9 AS 46.03.720(b).

10 (b) Before assessing an administrative penalty under this section, the
11 department shall

12 (1) communicate about the alleged noncompliance with the entity and
13 the governing body of the community or municipality whose residents are served by
14 the public water system; communication under this paragraph must be in language
15 designed to be easily understood by the entity and governing body and must clearly
16 describe the nature of the alleged noncompliance;

17 (2) offer technical assistance to aid in correcting the alleged
18 noncompliance when the department has reason to believe that the entity may lack the
19 resources or expertise to get technical assistance from other sources; and

20 (3) unless the alleged noncompliance poses an immediate threat to the
21 public health, give the entity a reasonable amount of time to correct the alleged
22 noncompliance after the department has complied with (1) and (2) of this subsection.

23 (c) If, after complying with (b) of this section, the department determines that
24 noncompliance still exists and the violation is subject to a penalty under this section,
25 the department may make a preliminary determination to assess the penalty. The
26 department shall provide notice to the entity of its preliminary determination. The
27 entity may, within 10 days after receiving the notice, request the department to
28 reconsider its decision. If a timely request for reconsideration is made, the department
29 shall reconsider its preliminary determination and may affirm or modify the
30 determination. The department shall notify the entity of the decision. If a timely
31 request for reconsideration is not received or if, after reconsideration, the department

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

10 (d) If an entity 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 must include notice that
15 the entity may appeal the order to the superior court and the address of the appropriate
16 superior court. The order is the final agency action on the penalty.

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

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

31 (g) An administrative penalty assessed under this section may not exceed (1)

1 \$1,000 a day for each violation if the affected public water supply system serves a
2 population of more than 10,000 persons; (2) \$250 a day for each violation if the
3 affected public water supply system serves a population of 10,000 or fewer persons but
4 more than 1,000 persons; and (3) \$100 a day for each violation if the public water
5 supply system serves 1,000 or fewer persons. Each provision, term, or condition
6 violated is a separate and distinct violation. If a violation of a provision, term, or
7 condition continues from day to day, each day is a separate violation.

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

- 10 (1) the effect of the violation on the public health or the environment;
- 11 (2) reasonable costs incurred by the state in the detection, investigation,
12 and attempted correction of the violation;
- 13 (3) the economic savings realized by the entity by not complying with
14 the requirement for which a violation is charged;
- 15 (4) any previous history of compliance or noncompliance by the entity
16 with this chapter, AS 46.04, AS 46.09, and AS 46.14;
- 17 (5) the need to deter future violations;
- 18 (6) the extent and seriousness of the violation, including the potential
19 for the violation to threaten public health or the environment;
- 20 (7) whether the entity achieved compliance with the requirement
21 violated within the shortest feasible time; and
- 22 (8) other factors considered relevant to the assessment that are adopted
23 by the department in regulation.

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

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

31 (k) Action under this section by the department does not limit or otherwise

1 affect the authority of the department to otherwise enforce this chapter, AS 46.04,
2 AS 46.08, AS 46.09, AS 46.14, or regulations adopted under those statutes, or to
3 recover damages, restoration expenses, investigation costs, court costs, attorney fees,
4 or other necessary expenses. The court shall set off against a judicial civil assessment
5 subsequently awarded under AS 46.03.760 an amount ordered to be paid under this
6 section by the same entity for the same violation.

7 (I) In this section, "entity" means the owner or operator of a public water
8 system.

9 * **Sec. 4.** AS 46.03.900 is amended by adding a new paragraph to read:

10 (36) "compliance agreement" means a mutual understanding and
11 voluntary, enforceable agreement on a course of action for a specific set of
12 circumstances entered into by the department and a person to control, prevent, or abate
13 air, water, land, or subsurface land pollution.

14 * **Sec. 5. COURT RULE CHANGES; ATTORNEY FEES AND COSTS.** (a)
15 AS 46.03.761(j), added by sec. 3 of this Act, has the effect of amending Rules 79 and 82,
16 Alaska Rules of Civil Procedure, by allowing the recovery of full reasonable attorney fees and
17 costs in certain actions.

18 (b) AS 46.03.761(j), added by sec. 3 of this Act, takes effect only if this section
19 receives the two-thirds majority vote of each house of the legislature required by art. IV, sec.
20 15, Constitution of the State of Alaska.

21 * **Sec. 6. COURT RULE CHANGE; FILING.** (a) AS 46.03.761(f), added by sec. 3 of
22 this Act, has the effect of amending Rule 602(b), Alaska Rules of Appellate Procedure, by
23 providing that delivery of a notice of appeal to a district court constitutes filing of the notice
24 of appeal with the associated superior court.

25 (b) AS 46.03.761(f), added by sec. 3 of this Act, takes effect only if this section
26 receives the two-thirds majority vote of each house of the legislature required by art. IV, sec.
27 15, Constitution of the State of Alaska.

28 * **Sec. 7. REGULATIONS FOR ADMINISTRATIVE PENALTIES.** The Department of
29 Environmental Conservation may immediately proceed to adopt regulations to implement
30 changes made by sec. 3 of this Act. The regulations take effect under AS 44.62
31 (Administrative Procedure Act), but not before the effective date of sec. 3 of this Act.

1 * **Sec. 8.** Except as provided in sec. 9 of this Act, this Act takes effect on the effective date
2 of regulations adopted by the United States Environmental Protection Agency implementing
3 the state administrative penalty requirement for state primary enforcement authority under 42
4 U.S.C. 300g-2 of the federal Safe Drinking Water Act or, if the Environmental Protection
5 Agency determines that regulations are not necessary, on the date the Environmental
6 Protection Agency requires under the authority of that statute that the state must have
7 administrative penalty authority to maintain its state primacy over the federal drinking water
8 program, whichever occurs first. The commissioner of environmental conservation shall notify
9 the lieutenant governor and the revisor of statutes of the effective date of the state
10 administrative penalty authority requirement.

11 * **Sec. 9.** Section 7 of this Act takes effect immediately under AS 01.10.070(c).

Sen. Pearce moved
into objection adopted

0-LS0091\0.2 ✓
Lauterbach
4/21/97

AMENDMENT #1

OFFERED IN THE SENATE

SEN. PEARCE
BY REPRESENTATIVES KELLY

TO: SCS CSHB 51() ("O" Version)

AND ROKEBERG

- 1 Page 3, line 2, following "purity.":
- 2 Insert "If the baseline data to determine the natural condition of the water is not
- 3 obtainable or if the baseline water quality has been altered by historical or upslope activity,
- 4 then the background condition, as defined in AS 46.03.088, will apply."

- 5 Page 3, lines 5 - 6:
- 6 Delete "If the baseline data is not obtainable or if the baseline water quality has been
- 7 altered by historical or upslope activity, then "natural condition" has the meaning given to
- 8 "background condition" in AS 46.03.088."

- 9 Page 3, line 12, following "background":
- 10 Insert "condition"

- 11 Page 3, line 18:
- 12 Before "background":
- 13 Insert "either"
- 14 Following "discharge":
- 15 Insert "whichever is determined by the department to be applicable"

- 16 Page 3, line 19:
- 17 Delete "permitting"
- 18 Insert "the location and authorization of"

- 19 Page 3, lines 24 - 25:
- 20 Delete "a larger mixing zone will adequately protect human health and the

1 environment outside the mixing zone"

2 Insert "these size limitations can be safely increased"

3 Page 6, lines 27 - 29:

4 Delete all material.

5 Renumber the following paragraph accordingly.

6 Page 9, following line 3:

7 Insert new bill sections to read:

8 "* Sec. 6. AS 46.03.900(28) is amended to read:

9 (28) "standard," with respect to air and land, means the measure of
10 purity or quality for air [, WATER,] and land in relation to their reasonable and
11 necessary use as established by the department; with respect to water, "standard"
12 means water quality standard;

13 * Sec. 7. AS 46.03.900 is amended by adding new paragraphs to read:

14 (36) "contamination," with respect to water, means the man-made or
15 man-induced chemical, physical, biological, and radiological compounds or
16 components that are deleterious in water;

17 (37) "water quality criterion" means a designated concentration of a
18 constituent that, when not exceeded, will protect an organism, an organism
19 community, or a prescribed water use or quality with an adequate degree of safety;

20 (38) "water quality standard" means a legally enforceable measure of
21 purity or quality for a particular reach of water or for an effluent that is reasonable
22 and necessary to protect uses of the water and that is based on a water quality
23 criterion in a way that takes into account local conditions, including actual or
24 proposed uses, presence or absence of important species, characteristics of the water
25 such as naturally occurring constituents, the importance of a particular waterway,
26 economic considerations, or the degree of safety to a particular ecosystem that may
27 be desired;

28 (39) "unit" means a quantity or measurement adopted as a standard of
29 measure."

30 Renumber the following bill sections accordingly.

SENATE FINANCE
COMMITTEE

Amendment Number: #2
Bill Number: HB 51
Sponsor: Torgerson Date: 4/16/98
Logged In By: Mindy

0-LS0091VAA.3
Lauterbach
4/15/98

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR TORGERSON - *MOVED*

TO: SCS CSHB 51(FIN), Draft Version "AA"

adopt no object

1 Page 6, lines 28 - 30:

2 Delete all material and insert:

3 "(j) In a collection action under (i) of this section, the court shall award the
4 prevailing party full reasonable attorney fees and costs incurred in the collection
5 action."

6 Page 8, line 11:

7 Delete "Section 7 of this Act takes"

8 Insert "Sections 2, 4, and 7 of this Act take"

SENATE FINANCE
COMMITTEE

Amendment Number: #3
Bill Number: HB 51
Sponsor: Torgerson Date: 4/16/98
Logged In By: Mindy

0-LS0091VAA.1
Lauterbach
4/15/98

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR TORGERSON-*marked*

TO: SCS CSHB 51(FIN), Draft Version "AA"

adopt res. ~~not~~ object

- 1 Page 1, lines 2 - 3:
- 2 Delete "amending Rule 602(b), Alaska Rules of Appellate Procedure;"

- 3 Page 5, lines 26 - 28:
- 4 Delete all material.
- 5 Insert "fee to the appropriate superior court."

- 6 Page 7, lines 21 - 27:
- 7 Delete all material.

- 8 Renumber the following bill sections accordingly.

- 9 Renumber internal references to bill sections in accordance with this amendment. Below are
- 10 all internal bill section references in this bill:

- 11 Page 2, line 4
- 12 Page 7, line 15
- 13 Page 7, line 18
- 14 Page 7, line 21
- 15 Page 7, line 25
- 16 Page 7, line 30
- 17 Page 7, line 31
- 18 Page 8, line 1
- 19 Page 8, line 11

04/21/97

18:31:30

TCN: 70689

DATE & TIME: 04/21/97 18:00 TO 21:00 STATUS:5 IN PROG

**** ORDER SUMMARY ****

SPONSOR: SFIN SENATE FINANCE CHAIRS: PEARCE
 PURPOSE: PUB PUBLIC HEARING LEGISLATIVE SHARP
 CONTACT: LARRY TEL#: (907)465-3004
 CHAIRING SITE: JUNEAU CAPITOL CAP532
 TOLL FREE: (800)478-7612 DIAL-UP: LIO:(800)478-9908

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 2 MINUTE LIMIT
 TESTIMONY WILL BE TAKEN WITH A 2 MINUTE LIMIT.
 SEE COMMITTEE SCHEDULE IN BASIS

SPONSOR REMARKS(LIO): BACKUP MATERIAL:N MEETING IN PROGRESS:N MAX. SITES.10
 OTHER SITES MAY ADD THRU THE JNU LIO.
 TCN REQUESTED ON 04/21/97 AND HAS 7 UPDATES

**** AGENDA ****

1 HB 51 DEPT OF ENV. CONSERV./WATER/PENALTIES

**** PARTICIPATING LIOS ****

ANC ANCHORAGE	716 W 4TH, #200	LOCATION STAFF
COR CORDOVA	705 2ND STREET	LOCATION STAFF
FBX FAIRBANKS	119 N CUSHMAN ST	LOCATION STAFF
HOM HOMER	126 W PIONEER #4	LOCATION STAFF
* JNU JUNEAU	CAPITOL CAP532	LOCATION STAFF
KEN KENAI LIO	145 MAIN ST LOOP	LOCATION STAFF
VAL VALDEZ	STATE BLDG. #13	LOCATION STAFF

**** VOLUNTEER & OFFNET SITES ****

SIT HNS HAINES	CITY HALL	ALETA ADKINS	(907)766-2294
----------------	-----------	--------------	---------------

PARTICIPANTS IN: ANCHORAGE ANC

1	JEFF PARKER	AK. SPORTS FISH	TSFY. HB 51
		AK	(907)000-0000
2	MARTHA LEVENSALER	NAT.WJLDLIFE FED	TSFY. HB 51
		AK	(907)000-0000
3	DORTHY CHILDERS		TSFY. HB 51
		AK	(907)000-0000
4	CLIFF EAMES	AK.CENTER/ENVIR	TSFY. HB 51
		AK	(907)000-0000

Becky Gay

PARTICIPANTS IN: CORDOVA COR

1 MS.	CHERI SHAW	CDFU	TSFY. HB 51
	PO BOX 939	CORDOVA	AK 90574 (907)424-3447

PARTICIPANTS IN: FAIRBANKS FBX

1 MR.	RON YARNELL		TSFY. HB 51
		AK	(907)000-0000
2 MR.	DALE ANDERSON		TSFY. HB 51
		AK	(907)000-0000
3 MR.	KARL HANWEMAN	AK MINERS ASSOC	TSFY. HB 51
		AK	(907)000-0000
4 MS.	MARLA MCPHERSON		TSFY. HB 51
		AK	(907)000-0000
5 MR.	MIKE MCDOUGALL		TSFY. HB 51

04/21/97

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

18:04:44

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:KEN

TCN:70689

SCHEDULED FOR:04/21/97 18:00 TO 21:00

FOR:KEN

PUBLIC HEARING

SENATE FINANCE

LOCATION: ~~XXXXXXXXXX~~

HB 51	MR.	DENNIS	RANDA	TROUT UNLMTD.	TESTIFY
HB 51	MS.	LINDA	WRIGHT	SELF	TESTIFY
HB 51	MS.	CHERI	EDWARDS	SELF	TESTIFY
HB 51	MR.	DALE	BONDDURANT	SELF	TESTIFY

04/21/97

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

17:51:40

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:ANC

TCN:70689

SCHEDULED FOR:04/21/97 18:00 TO 21:00

FOR:ANC

PUBLIC HEARING

SENATE FINANCE

LOCATION:ANCHORAGE

HB 51

JEFF

PARKER

AK. SPORTS FISH TESTIFY

Vc

04/21/97

18:12:19

TCN: 70689

DATE & TIME: 04/21/97 18:00 TO 21:00 STATUS:5 IN PROG.

**** ORDER SUMMARY ****

SPONSOR: SFIN SENATE FINANCE CHAIRS: PEARCE
 PURPOSE: PUB PUBLIC HEARING LEGISLATIVE SHARP
 CONTACT: LARRY TEL#: (907)465-3004
 CHAIRING SITE: JUNEAU CAPITOL CAP532
 TOLL FREE: (800)478-7612 DIAL-UP: LIO: (800)478-9908

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 2 MINUTE LIMIT
 TESTIMONY WILL BE TAKEN WITH A 2 MINUTE LIMIT.
 SEE COMMITTEE SCHEDULE IN BASIS

SPONSOR REMARKS(LIO): BACKUP MATERIAL:N MEETING IN PROGRESS:N MAX. SITES:10
 OTHER SITES MAY ADD THRU THE JNU LIO.
 TCN REQUESTED ON 04/21/97 AND HAS 7 UPDATES

**** AGENDA ****

1 HB 51 DEPT OF ENV. CONSERV./WATER/PENALTIES

**** PARTICIPATING LIOS ****

ANC ANCHORAGE	716 W 4TH, #200	LOCATION STAFF
COR CORDOVA	705 2ND STREET	LOCATION STAFF
FBX FAIRBANKS	119 N CUSHMAN ST	LOCATION STAFF
HOM HOMER	126 W PIONEER #4	LOCATION STAFF
* JNU JUNEAU	CAPITOL CAP532	LOCATION STAFF
KEN KENAI LIO	145 MAIN ST LOOP	LOCATION STAFF
VAL VALDEZ	STATE BLDG. #13	LOCATION STAFF

**** VOLUNTEER & OFFNET SITES ****

SIT HNS HAINES CITY HALL ALETA ADKINS (907)766-2294

PARTICIPANTS IN: ANCHORAGE ANC

1	JEFF PARKER	AK. SPORTS FISH	TSFY. HB 51
		AK	(907)000-0000
2	MARTHA LEVENSALER	NAT. WILDLIFE FED	TSFY. HB 51
		AK	(907)000-0000
3	DORTHY CHILDERS		TSFY. HB 51
		AK	(907)000-0000

PARTICIPANTS IN: CORDOVA COR

1 MS.	CHERI SHAW	CDFU	TSFY. HB 51
	PO BOX 939	CORDOVA	AK 99574 (907)424-3447

PARTICIPANTS IN: FAIRBANKS FBX

1 MR.	RON YARNELL		TSFY. HB 51
		AK	(907)000-0000
2 MR.	DALE ANDERSON		TSFY. HB 51
		AK	(907)000-0000
3 MR.	KARL HANNEMAN	AK MINERS ASSOC	TSFY. HB 51
		AK	(907)000-0000
4 MS.	MARLA MCPHERSON		TSFY. HB 51
		AK	(907)000-0000
5 MR.	MIKE MCDUGALL		TSFY. HB 51
		AK	(907)000-0000
6 MR.	CHRIS MILLER		TSFY. HB 51

04/21/97

18:31:30

TCN: 70689

DATE & TIME: 04/21/97 18:00 TO 21:00

STATUS:5 IN PROG.

PARTICIPANTS IN:FAIRBANKS

FBX

6 MR.	CHRIS	MILLER		AK	(907)000-0000
					TSFY. HB 51
7 MS.	SUZANNE	MILLS		AK	(907)000-0000
					TSFY. HB 51
9 MS.	KERYNN	FISHER		AK	(907)000-0000
					TSFY. HB 51
10 MR.	KEITH	NYITRAY		AK	(907)000-0000
					TSFY. HB 51
11 MR.	NEIL	PLATED		AK	(907)000-0000
					TSFY. HB 51
12 MS.	SYLVIA	WARD	NAEC	AK	(907)000-0000
					TSFY. HB 51
13 MS.	SARA	CALLAGHAN		AK	(907)000-0000
					TSFY. HB 51
14 MR.	CAMERON	LEONARD-IF REQUESAG'S		AK	(907)000-0000
					TSFY. HB 51

PARTICIPANTS IN:HOMER

HOM

1 MR.	JOEL	COOPER			TSFY. HB 51
	PO BOX 3585		HOMER	AK 99603	(907)235-6109
2 MR.	BOB	SHAVELSON	COOK INLET KEEP		TSFY. HB 51
	PO BOX 3269		HOMER	AK 99603	(907)235-4068

PARTICIPANTS IN:KENAI LIO

KEN

1 MR.	DENNIS	RANDA	TROUT UNLMTD.		TSFY. HB 51
				AK	(907)000-0000
2 MS.	LINDA	WRIGHT	SELF		TSFY. HB 51
				AK	(907)000-0000
3 MS.	CHERI	EDWARDS	SELF		TSFY. HB 51
				AK	(907)000-0000
4 MR.	DALE	BONDURANT	SELF		TSFY. HB 51
				AK	(907)000-0000
5 MS.	PEGGY	MULLEN	SELF		TSFY. HB 51
				AK	(907)000-0000

PARTICIPANTS IN:VALDEZ

VAL

1 MR.	JOE	BRIDGMAN	RCAC		TSFY. HB 51
				AK	(907)000-0000
2 MS.	NANCY	LETICOE			TSFY. HB 51
				AK	(907)000-0000

**** SCHEDULING NOTES ****

FBX ADDED PER MEL 4-18 JPS

**** UPDATES ****

01	04/18/97	14:12:22	ANNOUNCING TELECONFERENCE	
02	04/18/97	14:43:04	KENAI LIO	ADDED ON
02	04/18/97	14:43:05	HAINES	ADDED ON
03	04/18/97	15:06:18	HOMER	ADDED ON
04	04/18/97	15:37:46	ANCHORAGE	ADDED ON
05	04/18/97	17:22:07	FAIRBANKS	ADDED ON
06	04/21/97	10:23:50	CORDOVA	ADDED ON

TCN: 70689 DATE & TIME: 04/21/97 18:00 TO 21:00 STATUS:5 IN PROG.

PARTICIPANTS IN:FAIRBANKS

FBX

	1811 SALTWATER DR	HOMER	AK 99603 (907)457-2286
5 MR.	MIKE MCDUGALL		TSFY. HB 51
	PO BOX 751024	FAIRBANKS	AK 99775 (907)474-6666
6 MR.	CHRIS MILLER		TSFY. HB 51
	PO BOX 750160	FAIRBANKS	AK 99775 (907)455-4151
7 MS.	SUZANNE MILLS		TSFY. HB 51
	1640 MOOSE TRAIL	FAIRBANKS	AK 99709 (907)451-7475
8 MR.	CAMERON LEONARD	AG'S OFFICE	TSFY. HB 51
	100 CUSHMAN ST, STE 400	FAIRBANKS	AK 99701 (907)451-2811
9 MS.	KERYNN FISHER		TSFY. HB 51
	PO BOX 84053	FAIRBANKS	AK 99708 (907)452-3443
10 MR.	KEITH NYITRAY		TSFY. HB 51
	PO BOX 84	TALKEETNA	AK 99676 (907)733-1727
11 MR.	NEIL PLESTED		TSFY. HB 51
			AK (907)000-0000
12 MS.	SYLVIA WARD	NAEC	TSFY. HB 51
			AK (907)000-0000
13 MS.	SARA CALLAGHAN		TSFY. HB 51
			AK (907)000-0000

PARTICIPANTS IN:HOMER

HOM

1 MR.	JOEL COOPER		TSFY. HB 51
	PO BOX 3585	HOMER	AK 99603 (907)235-6109
3 MR.	BOB SHAVELSON	COOK INLET KEEP	TSFY. HB 51
	PO BOX 3269	HOMER	AK 99603 (907)235-4068

PARTICIPANTS IN:KENAI LIO

KEN

1 MR.	DENNIS RANDA	TROUT UNLMTD.	TSFY. HB 51
	BOX 3055	SOLDOTNA	AK 99669 (907)262-9494
2 MS.	LINDA WRIGHT	SELF	TSFY. HB 51
	BOX 108	KASILOF	AK 99610 (907)262-9694
3 MS.	CHERI EDWARDS	SELF	TSFY. HB 51
	363 ASPEN	SOLDOTNA	AK 99669 (907)272-7199
4 MR.	LALE BONDURANT	SELF	TSFY. HB 51
	HC1 BOX 1197	SOLDOTNA	AK 99669 (907)262-0818
5 MS.	PEGGY MULLEN	SELF	TSFY. HB 51
	355 LIGONBERRY	SOLDOTNA	AK 99669 (907)262-9225
6 MR.	ROBERT BONDURANT	SELF	OBSV. HB 51
	HC1 BOX 1197	SOLDOTNA	AK 99669 (907)262-0818
7 MR.	GARY FANDREI	CIAA	OBSV. HB 51
	HC2 BOX 549	SOLDOTNA	AK 99669 (907)283-5761

PARTICIPANTS IN:VALDEZ

VAL

1 MR.	JOE BRIDGMAN	RCAC	TSFY. HB 51
	PO BOX 1366	VALDEZ	AK 99686 (907)835-5208
2 MS.	NANCY LETHCOE		TSFY. HB 51
	PO BOX 1313	VALDEZ	AK 99686 (907)835-5175
3 MR.	JIM LETHCOE		OBSV. HB 51
	PO BOX 1313	VALDEZ	AK 99686 (907)835-5175
4 MR.	BOB BENDA		TSFY. HB 51
			AK (907)000-0000

**** SCHEDULING NOTES ****

04/21/97

19:15:32

TCN: 70689

DATE & TIME: 04/21/97 18:00 TO 21:00 STATUS:5 IN PROG.

**** ORDER SUMMARY ****

SPONSOR: SFIN SENATE FINANCE CHAIRS: PEARCE
 PURPOSE: PUB PUBLIC HEARING LEGISLATIVE SHARP
 CONTACT: LARRY TEL#: (907)475-3004
 CHAIRING SITE: JUNEAU CAPITOL CAP532
 TOLL FREE: (800)478-7612 DIAL-UP: LIO: (800)478-9908

SPONSOR REMARKS(PUB): TESTIMONY:Y ALLOWED 2 MINUTE LIMIT
 TESTIMONY WILL BE TAKEN WITH A 2 MINUTE LIMIT.
 SEE COMMITTEE SCHEDULE IN BASIS

SPONSOR REMARKS(LIO): BACKUP MATERIAL:N MEETING IN PROGRESS:N MAX. SITES:10
 OTHER SITES MAY ADD THRU THE JNU LIO.
 TCN REQUESTED ON 04/21/97 AND HAS 7 UPDATES

**** AGENDA ****

1 HB 51 DEPT OF ENV. CONSERV./WATER/PENALTIES

**** PARTICIPATING LIOS ****

ANC ANCHORAGE	716 W 4TH, #200	LOCATION STAFF
COR CORDOVA	705 2ND STREET	LOCATION STAFF
FBX FAIRBANKS	119 N CUSHMAN ST	LOCATICN STAFF
HOM HOMER	126 W PIONEER #4	LOCATION STAFF
* JNU JUNEAU	CAPITOL CAP532	LOCATION STAFF
KEN KENAI LIO	145 MAIN ST LOOP	LOCATION STAFF
VAL VALDEZ	STATE B'DG. #13	LOCATION STAFF

**** VOLUNTEER & OFFNET SITES ****

SIT HNS HAINES CITY HALL ALETA ADKINS (907)766-2294

PARTICIPANTS IN:ANCHORAGE ANC

1	JEFF PARKER	AK. SPORTS FISH	TSFY. HB 51
		AK	(907)000-0000
2	MARTHA LEVENSAER	NAT.WILDLIFE FED	TSFY. HB 51
		AK	(907)000-0000
3	DORTHY CHILDERS		TSFY. HB 51
		AK	(907)000-0000
4	CLIFF EAMES	AK.CENTER/ENVIR	TSFY. HB 51
		AK	(907)000-0000
5	BECKY GAY	RESOUR.DEV.COUN	TSFY. HB 51
		AK	(907)000-0000

PARTICIPANTS IN:CORDOVA COR

1 MS.	CHERI SHAW	CDFU	TSFY. HB 51
	PO BOX 939	CORDOVA	AK 99574 (907)424-3447

PARTICIPANTS IN:FAIRBANKS FBX

1 MR.	RON YARNELL		TSFY. HB 51
	1231 SUNDANCE LP	FAIRBANKS	AK 99709 (907)479-8203
2 MR.	DALE ANDERSON		TSFY. HB 51
	541 ROBERTS ROOST	FAIRBANKS	AK 99712 (907)488-7807
3 MR.	KARL HANNEMAN	AK MINERS ASSOC	TSFY. HB 51
	626 2ND ST	FAIRBANKS	AK 99701 (907)452-8685
4 MS.	MARLA MCPHERSON		TSFY. HB 51

TCN: 70689 DATE & TIME: 04/21/97 18:00 TO 21:00 STATUS:5 IN PROG.

PARTICIPANTS IN:FAIRBANKS

FFX

				AK	(907)000-0000
7 MS.	SUZANNE	MILLS			TSFY. HB 51
				AK	(907)000-0000
8 MR.	CAMERON	LEONARD-IF REQUESAG'S OFFICE			TSFY. HB 51
				AK	(907)000-0000
9 MS.	KERYNN	FISHER			TSFY. HB 51
				AK	(907)000-0000
10 MR.	KEITH	NYITRAY			TSFY. HB 51
				AK	(907)000-0000
11 MR.	NEIL	PLESTED			TSFY. HB 51
				AK	(907)000-0000
12 MS.	SYLVIA	WARD	NAEC		TSFY. HB 51
				AK	(907)000-0000

PARTICIPANTS IN:HOMER

HOM

1 MR.	JOEL	COOPER			TSFY. HB 51
	PO BOX 3585		HOMER	AK 99603	(907)235-6109
2 MR.	BOB	SHAVELSON	COOK INLET KEEP		TSFY. HB 51
	PO BOX 3269		HOMER	AK 99603	(907)235-4068

PARTICIPANTS IN:KENAI LIO

KEN

1 MR.	DENNIS	RANDA	TROUT UNLMTD.		TSFY. HB 51
				AK	(907)000-0000
2 MS.	LINDA	WRIGHT	SELF		TSFY. HB 51
				AK	(907)000-0000
3 MS.	CHERI	EDWARDS	SELF		TSFY. HB 51
				AK	(907)000-0000
4 MR.	DALE	BONDURANT	SELF		TSFY. HB 51
				AK	(907)000-0000
5 MS.	PEGGY	MULLEN	SELF		TSFY. HB 51
				AK	(907)000-0000

PARTICIPANTS IN:VALDEZ

VAL

1 MR.	JOE	BRIDGMAN	RCAC		TSFY. HB 51
				AK	(907)000-0000
2 MS.	NANCY	LETHCOE			TSFY. HB 51
				AK	(907)000-0000

**** SCHEDULING NOTES ****

FBX ADDED PER MEL 4-18 JPS

**** UPDATES ****

01	04/18/97	14:12:22	ANNOUNCING TELECONFERENCE	
02	04/18/97	14:43:04	KENAI LIO	ADDED ON
02	04/18/97	14:43:05	HAINES	ADDED ON
03	04/18/97	15:06:18	HOMER	ADDED ON
04	04/18/97	15:37:46	ANCHORAGE	ADDED ON
05	04/18/97	17:22:07	FAIRBANKS	ADDED ON
06	04/21/97	10:23:50	CORDOVA	ADDED ON
07	04/21/97	16:33:02	BARROW	DROPPED

**UCIDA****UNITED COOK INLET DRIFT ASSOCIATION**

P.O. Box 389 • Kenai, Alaska 99611 - 0389

(907) 283-3600 • FAX (907) 283-3306 e-mail: ucida@kenai.net

April 21, 1997
Sent via fax

**To: Senators Pearce and Sharp
Co-Chairs, Senate Finance Committee
State Capitol, Room 520
Juneau, AK 99801**

Subject: UCIDA opposition to CS For House Bill No. 51 (BLS) am

Dear Senators Pearce and Sharp,

United Cook Inlet Drift Association (UCIDA) represents the 585 salmon drift permit holders in Upper Cook Inlet. Some 350 permit holders are current members of our association. UCIDA is also active at the state and federal levels as a member of the Executive Committee of United Fisherman of Alaska (UFA).

UCIDA would like to express its unequivocal opposition to HB51 - the Dirty Water Bill. We are opposed to the current version OR any amended version that would lessen in any way Alaska's current water quality standards.

UCIDA urges your committee to support the often abused sentiment of promoting "environmentally sound" economic development by rejecting HB51.

HB51 poses an unacceptable risk to our renewable resource industries reliant on water and water quality - commercial and sport fisheries, tourism, etc.

Having reviewed the current version of HB 51, UCIDA finds that the concerns expressed by EPA in a letter dated February 14, 1997 (Enclosure #1) are still valid. UCIDA will strenuously oppose any effort by the state to assume NPDES permitting authority should any version of this legislation pass.

By requiring DEC to adopt minimal federal standard - EXCEPT in shellfish growing areas - and permitting any "person" to force DEC to respond to a request to reduce or eliminate any federal water quality standards, HB51 adds insult to injury to an already overburdened state agency.

Finally, UCIDA has reviewed and concurs with the comments of DEC Commissioner Michele Brown in her April 17, 1997, Letter to Rep. Rokeberg. (Enclosure #2).

**Senators Pearce and Sharp
Co-Chairs, Senate Finance Committee
April 21, 1997
Page 2**

In conclusion, UCIDA urges your committee to support environmentally sound economic development and all user groups reliant on water and water quality standards - REJECT HB51.

We appreciate this opportunity to comment and request that you share our comments with the rest of your committee members.

Sincerely,



**Theo Matthews
Executive Director
UNITED COOK INLET DRIFT ASSOCIATION**

/TM:kmt

Enclosures

**cc: Governor Tony Knowles
Senator Miller, Senator President
Representative Phillips, House Speaker
Senator John Torgerson
Senator Jerry Ward
Representative Gary Davis
Representative Mark Hodgins
Michele Brown, ADEC Commissioner
Frank Rue, ADF&G Commissioner
John Shivley, ADNR Commissioner
United Fishermen of Alaska**

ENCLOSURE #1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

FEB 14 1997

REPLY TO
ATTN OF: OW-134

Michele Brown, Commissioner
Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Dear Commissioner Brown:

EPA has completed its review of the CS(L) for House Bill 51 (CSHB 51) in response to your request for comments. CSHB 51 would establish a procedure to change State water quality standards that are more stringent than Federal water quality criteria. We have several concerns about how this legislation could affect the Alaska's water quality standards (WQS) program and the likelihood of authorizing the State of Alaska to operate the Federal National Pollutant Discharge Elimination System (NPDES) permitting program. EPA's concerns fall into three categories: inconsistencies/interpretation problems, WQS program problems, and NPDES program problems.

Inconsistencies/Interpretation

The bill contains ambiguous language and inconsistencies with portions of the Clean Water Act (CWA) dealing with WQS and NPDES permitting. Examples of inconsistencies and interpretation problems that are of concern to EPA are highlighted below.

- " CSHB 51 § 46.03.087(a) (1) and (2) refer to the adoption of "water quality standards and discharge standards." We are not certain what is meant by the term "discharge standard." Discharge standards could be interpreted to mean effluent limits or effluent guidelines. National NPDES regulations do not allow permit limits that are less restrictive than technology-based effluent guidelines.
- " § 46.03.085(b) refers to "other regulation related to water quality." We are concerned about what this phrase may include. Since there are no Federal criteria or regulations for mixing zones and zones of deposit, these NPDES tools could be affected by this legislation.

- § 46.085(c) provides a timeframe during which DEC must amend the WQS to incorporate a reduction or elimination in the federal water quality criteria or follow the procedure in § 46.087(b). There is no explanation of how the reduction or elimination of the criterion is to be justified and how it will be consistent with the CWA or the Federal water quality standards regulations (40 CFR Part 131).
- § 46.03.085(a) states that DEC, in adopting and applying WQS, "shall ensure that the standards are sufficient to protect human health and propagation of fish and wildlife." This provision is not consistent with the CWA. Section 101(a)(2) of the CWA provides for the protection of propagation of fish, shellfish, wildlife, and recreation in and on the water. Section 303(c)(2)(A) of the CWA includes additional uses that WQS should protect: domestic water supply, agricultural, industrial, and navigational uses. Any changes to WQS that are made in accordance with this legislation may not protect all designated uses in the Alaska WQS and the CWA.

Overall, these types of interpretation problems will likely result in some confusion about how CSMB S1 should be implemented and mixed expectations in the regulated community and the public. These kinds of problems will likely contribute to a more resource-intensive water management program.

WQS Program

As you know, any change in a state WQS requires review and approval by EPA. EPA has serious concerns regarding both the process for WQS revision, and the basis for such revisions in §§ 46.03.085(c) and 46.03.087(b). Based on these concerns, it is possible that WQS that Alaska revises under these provisions will not be approvable.

First, we are concerned whether 90 days [see § 46.03.085(c)] provides adequate time for DEC to make scientifically sound decisions, as required by Federal WQS regulations, about whether a WQS change is warranted. Our concerns are heightened by the fact that HB S1 contains no provisions that require those who are requesting the amendment to supply any data or justification to support the need for the change. Since the burden of proof for determining whether a standards change is needed rests with DEC, these decisions may be based on little or no information. Ninety days may not allow DEC to collect adequate supporting data. Additionally, this section of CSMB S1 appears to overlap with existing portions of the Alaska WQS regulations [18 AAC 70.025(d)]. This section in the Alaska WQS regulations already contains a provision that allows the use of "natural conditions" as the basis for WQS changes [18 AAC 70.025(b)] that are less restrictive than Federal criteria and it requires the applicant:

seeking the WQS change to provide DEC with the data and information needed to make the determination.

Second, we are concerned that the technical basis in CSMS 51 for any proposed WQS changes is tied to "hydrologic conditions or discharge conditions" [5 46.03.007(b)]. EPA Federal criteria are based on laboratory toxicity tests and do not necessarily consider hydraulic conditions or discharge characteristics. It is doubtful that a change in a criterion that is based strictly on "hydrologic conditions and discharge characteristics" will be scientifically defensible for protection of all designated uses. Therefore, such changes to WQS may not result in approvable WQS regulations. Where the change is to adopt criteria that are less stringent than the existing criteria, there needs to be a justification that the criteria are adequate to fully protect the use.

EPA is also concerned about how the requirements in Sections 4 and 5 will be implemented. Section 5 of this bill requires DEC to conduct a triennial review and identify State regulations that are more stringent than Federal regulations. The Federal WQS regulations direct States to, "at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards, and, as appropriate, modifying and adopting standards". Section 4 of CSMS 51 contains provisions that require a 90-day review of individual portions of the Alaska WQS regulations. The 90-day review is triggered by a request to change a state WQS because it may be more stringent than a Federal criterion. It is conceivable that DEC would be responsible for numerous 90-day reviews and standard changes required in Section 4 at the same time that it is required to conduct the triennial review that is contained in Section 5. This would result in a confusing, time-consuming, piecemeal approach to WQS and management of the water quality program.

NPDES Program

EPA Region 10 continues to be interested in authorizing the State of Alaska to operate the National Pollutant Discharge Elimination System (NPDES) program throughout the State. As you know, we have provided DEC a grant for the purpose of conducting an analysis that details both the costs and options for assuming the NPDES program. The results of the analysis should be available in late spring. To obtain NPDES program authorization, the State must demonstrate that adequate resources are available to successfully manage an NPDES program.

In addition, the Alaska Attorney General would need to examine existing state statutes and regulations to determine whether the state has all the necessary legal authorities to operate an NPDES permitting and compliance program. Any missing legal provisions would need to be enacted before the state applies for authorization. Also, EPA would have to be assured

that the state does not have statutes or regulations that are incompatible with authorization.

Sec. 46.03.085(a)(3) of CSHB 51 states that the Department "shall use scientific justification and water quality criteria that can be reliably measured." Some Federal water quality criteria are established at levels below detection (e.g. dioxin). It is not clear if these criteria would be considered to not "be reliably measured." While compliance determinations are based on the minimum level of quantification, permit limits must be established using the water quality criterion value and may be below the detection level. This language could be construed to disallow issuance of permits with appropriate limits and therefore could jeopardize attempts by Alaska to pursue authorization of the NPDES program.

In addition, § 46.03.085(a)(4) states that DEC "may not require discharged water to be of higher quality than the natural conditions of the receiving water." On occasion, technology-based limitations (established either through national guidelines or best professional judgment of the permitting authority) require a discharge to be higher in quality (i.e., meet a higher standard) than the receiving water. This language would contradict the NPDES regulations which require achievement of technology-based limitations without regard for receiving water conditions. Again, this will jeopardize any future state attempts to assume the NPDES program.

Conclusions

We believe that the problems discussed above would create added confusion and inefficiencies in the implementation of Alaska WQS program rather than improved responsiveness and effectiveness. To implement CSHB 51 would require additional time and effort on the part of DEC staff. Yet, the resource-intensive nature of CSHB 51 would not contribute to the development of the capacity needed to assume the NPDES program. Furthermore, certain provisions of CSHB 51 may create legal problems that will jeopardize both approval of State WQS revisions and authorization of the NPDES program.

We appreciate the opportunity to review and provide comments on CSHB 51. If you have any questions about these comments contact me at (206) 551-0422 or Marcia Lagerloef, at (206) 551-0176.

Sincerely,

Chuck Clarke
Chuck Clarke
Regional Administrator

ENCLOSURE #2 P.B.

TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

410 Willoughby Ave., Ste 103
Juneau, AK 99801-1795
PHONE: (907) 465-5063
FAX: (907) 465-5070
<http://www.state.ak.us/dec/home.htm>

OFFICE OF THE COMMISSIONER

April 17, 1997

The Honorable Norm Rokeberg
Alaska House of Representatives
Capitol Building, Room 24
Juneau, AK 99801

Dear Representative Rokeberg:

You asked for the department's comments on HB 51 Senate CS for CS for House Bill 51 () version "0". We remain strongly opposed to this legislation. Our concerns with the bill are outlined below.

This bill, as written, eliminates drinking water as a beneficial use of state waters, allows for cumulative degradation of water bodies, provides for mixing zones of unlimited size, and through confusing use or misuse of terminology, makes the intent of the bill unintelligible. I will illustrate each of these points with the general and specific comments that follow.

As a starting point, I think it would be useful to try to explain the difference between "criteria" and "standards", and the respective roles of EPA and the states in establishing water quality standards. Generally speaking, EPA does not adopt standards and the states do not develop criteria. "Water quality criteria" are scientific information regarding the concentrations of specific chemicals or other pollutants in water which adequately protect aquatic life or human health. In other words, a water quality criterion is the amount of pollution a water body can stand before a use is impacted. Criteria must be used in establishing a water quality standard. EPA's criteria are guidance for states to use when they establish their water quality standards unless a state, through a rigorous scientific process, develops its own criteria.

"Standards" are legally enforceable, state-established requirements that consist of two things: the uses a water body should be protected for and the criteria which are necessary to protect those uses. So to have a water quality program based on criteria only completely eliminates the critical step of modifying those criteria to make them applicable to the uses of a particular body of water. In addition, the term "water quality standards" is also used more generally to refer to all of 18 AAC 70 regulations. These include several important tools for applying the "use & criteria" standards, such as mixing zones, variances, and site-specific criteria.

I hope with this explanation you will understand that when you ask the department to compare state standards with federal requirements, you are asking us to compare apples to oranges. As explained above, federal criteria are a subset of state water quality standards.

The Honorable Norm Rokeberg

2

April 7, 1997

The department is sensitive to the fact that certain federal water quality criteria have made it difficult for some industrial users of state waters to obtain workable permits. An excellent example of such a situation is the stringent arsenic limit that EPA has placed in the placer mining permits it issued last fall. When such situations arise, ADEC has worked closely with industry to ensure that all water quality criteria and permit limits are based on sound science and a reasonable evaluation of health and ecological risk. In response to coordinated pressure from industry and the state, EPA recently announced that it would withdraw the arsenic criteria it had imposed on Alaska.

The presumption that the state's water quality standards have led to such permitting problems is wrong. As in the example of arsenic, most recent instances of restrictive standards result from EPA's promulgation of criteria for toxic pollutants, which it imposed on the state. Our state standards generally allow more flexibility in permitting, such as through mixing zones and site-specific criteria, than do the federal criteria. Recent permitting problems illustrate that permittees are better served when the state is implementing its own standards than when the federal government takes on that role.

Before discussing specific provisions of the bill, I must make one more general observation. The grafting of what was HB 71, dealing with administrative penalty authority in the safe drinking water program, onto HB 51, is ill-advised. There is essentially no legal or factual overlap between the two subjects, other than that both concern water in one way or another. The public would be better served if these two very different issues were considered on their own merits, rather than confused through politics.

Our sectional analysis follows:

Section 1(a). This Administration is clearly supportive of economic growth and development, but that development must be done right. Doing it right means setting standards based upon sound science, prudent resource management, and full public involvement. For water quality standards, public health and multiple use compatibility must also be compelling policies.

Section 1(h). As mentioned earlier, the administrative penalty authority in the safe drinking water program should be dealt with in a separate bill.

Section 2. HB 51 encourages the state to continue to work toward assumption of the NPDES permitting program from EPA. But the serious confusion created by the bill makes it less likely that we can ever take over that program. EPA has made it clear that HB 51, if made law, could jeopardize state assumption of NPDES permitting. This is another way in which the bill could defeat the very purpose that it is reportedly intended to advance — to make permitting easier.

Section 3. The proposed new AS 46.03.080(b) addresses waters that, in their natural condition, do not meet water quality standards. The approach of this subsection might make sense if the definition of natural condition were clear. Unfortunately, the definitions offered in this bill are far from clear. First of all, there are two quite different definitions of the term "natural condition".

The Honorable Norm Rokeberg

3

April 17, 1997

(compare p.3, ll.3-7, with p.6, l.30- p.7, l.3.) The first definition in the proposed AS 46.03.080(e) substitutes "background condition" for natural condition whenever baseline water quality is either not obtainable or has been altered by historical or "upslope" activity. The definition of background condition is the water quality outside the influence of a particular discharge. To have the natural condition default to the background condition is to sanction progressive degradation of water quality. In other words, pollution from historical or upslope activities will become the standard for downstream waters. This destroys the very notion of natural condition.

The bill's second definition of natural condition in the proposed AS 46.03.083(4) just compounds the confusion. It is not clear when this definition would even apply given the prior definition of the same term. If and when this one did apply, it refers to the condition of a water in 1972 when the Clean Water Act was enacted. That provision suggests that the department cannot consider competent evidence of the water's natural condition over the last 25 years! Surely such an approach belies the bill's stated commitment to standards based on good science. Arguably, if no baseline data were available from before 1972 then we could not establish a natural condition and would end up using background condition to set the standards. These confusing and contradictory provisions are a major flaw in this bill.

Section 4. As this section of the bill contains several provisions that require comment, I organize my discussion by reference to the proposed new subsections of AS 46.03.085, .087, and .088.

.085(b). The subject of mixing zones has long been controversial and our soon to be finalized regulation is the result of considerable public debate. While it may be appropriate for the Legislature to establish general policy about when and how mixing zones should be used, to address the detail of mixing zone size, I believe, is a mistake. One major flaw in the current bill illustrates the risk of legislative micro management. The proposed AS 46.03.085(b) would allow mixing zones to exceed the normal size limit whenever it is demonstrated that "a larger mixing zone will adequately protect human health and the environment outside the mixing zone." Yet that will be all the time, since water quality standards, designed to protect all uses, must be met at the edge of any mixing zone. That one provision in HB 51 negates all other size restrictions and would allow a mixing zone of infinite size, since any discharger can show that water outside its mixing zone, however big, will adequately protect human health and the environment.

Even aside from that basic flaw, the size limit for streams and rivers (proposed sec. 85(b)(3)) offers no protection for sensitive fish-spawning habitat. While ADEC's current mixing zone regulation ensures adequate protection of both anadromous and resident fish, this bill does not even acknowledge that as a consideration.

Given these problems, I recommend that the Legislature allow this department to continue to address mixing zones through regulations. We have balanced the interests of various stakeholders in a responsible and protective way.

The Honorable Norm Rokeberg

4

April 17, 1997

.085(d). This provision duplicates the petition procedure already available under the APA, AS 44.62.220. But it shifts the burden to ADEC to demonstrate why it should keep a standard, rather than leaving the burden on the petitioner to show why the standard should be lowered. The department's objection to this provision is that the procedure mandated by the proposed AS 46.03.087 is both burdensome and ill-advised, as discussed further below.

.087(a). The heart of this section is to establish special procedures for adopting or retaining water quality standards that are more stringent than federal criteria. Testimony on the bill indicates that this idea was taken from Alaska's air statute. There is a critical difference, however, between the federal Clean Air Act and the Clean Water Act that makes this concept difficult, if not impossible, to apply to water quality standards. The Clean Air Act gives EPA the responsibility to set ambient air quality standards; the Clean Water Act gives that responsibility to states. As a result, this "special" procedure would come into play nearly every time the state proposed any water quality standard because there are no equivalent federal standards.

.087(b). Aside from my fundamental objection to the idea that our water quality standards should be reduced to the bare minimum, I have three problems with this subsection. First, it will be difficult at best, not to mention inappropriate, to assess the economic feasibility of a water quality standard, and that consideration is more appropriate in the context of specific permitting decisions. Second, this subsection does not acknowledge the need to protect all the uses that we are required to protect under the federal Clean Water Act. Third, since our water quality standards apply to the whole state, it does not make sense to focus on biological, chemical and physical conditions in particular areas or sites in the state when setting standards.

.088(1). This definition of background condition is different than the definition at .085(a)3 and introduces additional confusion. The term "upslope" is not defined and its usage is confusing in this context.

.088(2). The term "drinking water" is not used in the proposed AS 46.03.085-.087. It is not clear why there should even be a definition of the term in section .088. However, the definition in .088 could be construed to exclude virtually all waters of the state thus eliminating drinking water as a use for Alaska's surface waters.

.088(3). There is a significant problem with including fish processing and food processing in an industrial use category. Water used for fish and food processing is currently under the same use standard as drinking water in order to protect public health. Using an industrial use standard is likely to pose significant threats to both the public health and quality of Alaska food and fish products.

.088(4). The definition of "natural condition" is not workable. Little, if any water quality data existed for Alaska's water bodies in 1972.

Sections 5-7, and 9-11. All provisions regarding administrative penalty authority under the Safe Drinking Water Act should be removed from this bill and considered in a separate bill.

The Honorable Norm Rolfsberg

5

April 17, 1997

Section 8. This section requires ADEC to go through the entire body of both federal and state water quality regulations, to identify all instances where the state requirement is more stringent than the federal one. As I pointed out earlier, this is an exercise in comparing apples to oranges. I think that our limited agency resources are more efficiently spent on the handful of standards that permittees are actually having trouble meeting, such as the arsenic criterion discussed at the beginning of this letter. We simply don't have sufficient staff to do itemized comparisons of state and federal law, while still addressing and resolving the problems that are actually affecting permittees. If this bill forces us to do the itemized comparison, it can only be at the expense of solving real problems in the field. I urge you to let us invest our efforts where they make a difference.

In conclusion, I hope that you will seriously evaluate the principle underlying HB 51. Will it truly benefit the state to deliberately lower our level of water quality protection to the minimum allowed by federal law, eliminate important competing uses like drinking water and provide for mixing zones of unlimited size? I don't think so!

Sincerely,



Michele Brown,
Commissioner

cc: The Honorable Rick Halford
The Honorable Lyda Green
The Honorable Loren Leman
The Honorable Georgiana Lincoln
The Honorable Robin Taylor
The Honorable Bert Sharp
The Honorable John Torgerson
The Honorable Dru Pearce
The Honorable Dave Donley
The Honorable Sean Farnell
The Honorable Randy Phillips
The Honorable Al Adams

OF/AE/sl H:\HOME\MILLER\NEWS\GHELS\SEN.WFD

P. 06/08

FAX NO. 8074655070

DEC COMMISSIONER OFF

APR-18-97 FRI 12:33

BEAR CREEK OUTFITTERS
FLY FISHING & LIGHT TACKLE
GUIDE SERVICE



3718 El Camino Juneau, Alaska 99801
(907) 789-3914 phone/fax akskiff@alaska.net

April 21, 1997

Senate Finance Committee
Alaska State Capitol
Juneau, AK 99801

Dear Senate Finance Committee:

We are writing in opposition of HB 51, the water bill sponsored by Representative Rokeberg. This bill not only jeopardizes Alaska public health it also has potential to harm our fly fishing business which relies upon clean waters.

Our customers perceive Alaskan waters to be pristine and unpolluted. This perception could easily be damaged if HB51 is passed and Alaska's water quality standards are lowered. Although only a few of our customers keep their catch, it is important that the fish kept are safe for human consumption. We personally rely on an annual harvest of salmon to feed our family throughout the year.

We encourage you to oppose this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark & Michelle Kaelke". The signature is written in dark ink and is positioned above the printed name.

Mark & Michelle Kaelke

cc: Governor Tony Knowles

Kerynn Fisher
PO Box 84053
Fairbanks, AK 99708
907/452-3443

April 21, 1997

Testimony to the Alaska State Legislature, Senate Finance Committee

Senator Pearce, Senator Sharo, and members of the Senate Finance Committee:

Thank you for giving the public an opportunity to testify on House Bill 51.

First of all, I am disappointed that the Senate Resources Committee didn't take the time to hear our concerns. I believe this bill has serious implications for the future protection of Alaska's water resources and should have been heard in both the House and Senate Resources Committees. I realize that you are all very busy this session and have a lot of bills you want to pass, but I don't think this is any excuse to bypass public input in the form of testimony at hearings such as this one. So, again, thank you for taking the time to hear our concerns.

I'm concerned that House Bill 51 is just another example of the industry tail wagging the dog when it comes to resource management in our state. Specifically, I'm concerned that the cost of environmental compliance will become a factor in determining how stringent water quality standards should be if you pass this bill. While I appreciate your desire to strengthen Alaska's economy, I don't think that we should cut corners when it comes to environmental protection. This is penny-wise, but dollar-foolish.

House Bill 51 introduces a criteria for the Department of Environmental Conservation to examine the economic and technological feasibility of a standard more protective than a federal standard. I object to this principle for a couple of reasons.

First, I believe that in many cases, federal standards are inadequate in Alaska. ^{For example} Toxins that build up in fish under federal standards might not pose a health risk in the lower forty-eight, but because Alaskans consume far more fish than the average American, this could pose a health risk to many Alaskans. To require DEC to look at the economics of these standards would require a serious time and resource investment from an agency already strapped by budget cuts and would accomplish little other than to confirm what we already ^{know} believe - that Alaska's unique environmental quality deserves protection above federal standards.

Second, and more importantly, I am alarmed that the legislature would put our health and well-being up for sale. What happens when a water quality standard essential to protect our drinking water, fishing waters, and recreational areas poses an economic hardship to a business? Do we then settle for a less-than-adequate standard just to increase someone's bottom line? Do business and industrial uses come before our health? ^{PLEASE}

I am also disappointed that the legislature would write a concept such as "background condition" into state statute. While I realize that some of the state's waters have been contaminated by mining activity years ago, this definition does nothing to encourage users to improve the quality of our waters. At best, we're holding the line at polluted water.

We must all be committed to maintaining the quality of Alaska's environment for our own health and well-being, and for that of our children and grandchildren. Please don't pass this Dirty Water bill.



ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 278-0347

April 21, 1997

Honorable Bert Sharp
Honorable Druc Pearce
Co-Chairs, Senate Finance Committee
Capitol Building
Juneau, AK 99801-1182

RE: House Bill 51, Relating to Water Quality

Dear Senators Sharp & Pearce,

We have reviewed SCSCSHB-51() version "0" and are very appreciative that it incorporates many recommendations that we had suggested in our March 17, 1997 letter to Representative Norm Rokeberg, the bill's sponsor. We support HB-51 with these changes and would ask that a member of your committee move this version "0".

Based on our review of the bill and Commissioner Michelle Brown's April 17, 1997 letter to Representative Rokeberg, some additional changes to version "0" are essential. The following detailed comments recommend specific changes to the Senate CS for HB-51. Our recommended new language is underlined and material we recommend be removed is *[bracketed and italic]*.

1. AS 46.03.080(c) should be changed to read as follows:

(c) In this section, "natural condition" means the definition in AS 60.03.088(4) *[baseline water quality when the baseline data is obtainable unless the baseline water quality has been altered by historical or upslope activity]*. If data to establish the natural condition *[the baseline data]* is not obtainable, or if the natural condition *[baseline water quality]* has been altered by historic or upslope activity, then *["natural condition" has the meaning given to "background condition"]* the background condition as defined in AS 46.03.088 will apply.

NOTE: The first change is necessary to ensure that this bill established a single definition for natural condition. The last change is subtle, but a very important distinction that must be made. The prior language could be interpreted to mean that the background condition might become the applicable standard in accordance with AS 46.03.080. This is not appropriate. The background condition is meant to establish a benchmark against which an effluent will be compared in an enforcement situation. The background condition is not meant to permanently establish an applicable standard for

the waterbody. Remediation or upstream enforcement actions might improve water quality for the waterbody, and if this occurs, it is appropriate that the enforcement benchmark improve as well. This means that background condition is meant to be a temporal condition, while natural condition is a permanent standard. Thus, when the prior language defines natural condition as background, it is combining two terms that must be kept distinct.

Items 2. and 3. below follow from the same reasoning given in this NOTE.

2. Sec. 46.03.085(a)(1) should be changed to read:

(1) shall consider reasonably available information on the background condition or the natural condition of the bodies of water, including the presence of naturally occurring pollutants, such as, but not limited to, arsenic;

3. 46.03.085(a)(3) should be changed to read:

(3) may not require water discharged by a user to be of a higher quality than either the background condition or the natural condition of the water receiving the discharge, whichever is determined by the department to be applicable;

NOTE: As stated above, both "background condition" and "natural condition" are distinct terms defined elsewhere in the bill. The prior language does not appropriately recognize the important distinction between the two terms.

4. 46.03.085(b) should be changed to read:

(b) In adopting mixing zone regulations under (a)(4) of this section and to ensure that a mixing zone is as small as practicable, the department may *[shall]* limit the maximum size of a mixing zone, unless available evidence reasonably demonstrates that these size limitations can be safely increased *[a larger mixing zone will adequately protect human health and the environment outside the mixing zone]*, as follows:

5. 46.03.085(d) should be changed to read:

(d) Notwithstanding AS 44.62.230, if the federal government reduces or eliminates a federal water quality standard, criteria, or other regulation, a person may submit a written request to the department to amend the state's water quality standards, criteria, or other regulations to incorporate *[a reduction in or elimination of a federal water quality standard, criteria, or other regulation]* the federal revision. Such *[the]* request *[for]* must state clearly and concisely the state and federal standard, criteria, or regulation in question and provide the department with the reasons and basis for the requested amendment. Within 90 days after receiving the request, or by another date mutually agreed on by the applicant and the department,

the department shall either propose regulations to incorporate the *[reduction or elimination of the federal provision]* federal revision or initiate the procedure required under AS 46.03.087(b). If, following the procedure under AS 46.03.087(b), the department is unable to make the written findings required under AS 46.03.087(b)(3), the department shall propose regulations that amend the state's water quality standards to incorporate the *[reduction in or elimination of the]* federal revision of water quality standard, criteria, or other regulations.

6. 46.03.088(2), which defines "drinking water" should be removed in its entirety. Workable concepts for drinking water and drinking water supply are found elsewhere in regulation. The bill does not appear to require a new definition of drinking water. AMA does not support elimination of drinking water as a beneficial use of state waters, an eventuality arguable possible under the proposed definition.

7. 46.03.088(3), which defines "industrial use", should be removed in its entirety. The term industrial use is presently defined in regulation as excluding food processing. While AMA believes that no large water users should be exempt from the scrutiny of water quality standards, this bill is not intended to compromise the quality of water used for food processing and therefore this bill is perhaps not the appropriate forum to resolve the exemption issue.

Thank you for this opportunity to comment. This is an important bill and we believe that the changes we have identified above are necessary to answer the questions that have been raised and insure that the bill is scientifically supportable and legally defensible.

If you have any questions please call Karl Hanneinan at 907-452-8685.

Sincerely,



Steven C. Borell, P.E.
Executive Director

cc: Representative Norm Rokberg



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

Twentieth Legislature - First Session

CS HB 51(rls) am: "An act relating to the Department of Environmental Conservation; amending Rules 79 and 82, Alaska Rules of Civil Procedure; and providing for an effective date."

Clean water is critical to the economic prosperity and health of Alaskans. Unlike the majority of states, Alaska enjoys a reputation for having pristine waters. Resource extractive industries in Alaska should be willing to meet high water quality standards, designed to protect our pristine waters, rather than to underwrite legislative attempts to weaken our standards. The Alaska Environmental Lobby is opposed to this bill because it would:

- jeopardize the health and welfare of Alaskans and their ability to protect their water resources by lowering Alaska's water quality standards to the lowest level of federal guidelines applicable nationwide,
- lead to greater confusion, delays, and litigation in the permitting process,
- conflict with a basic principle of the Clean Water Act by setting standards amenable to the most polluting user and ignoring the needs of other users, such as people involved in subsistence, sports, and commercial fishing,
- introduce a definition of "background condition" that would make polluted water the standard for future discharges,
- require DEC to deal with new, time-intensive, confusing procedures for administering water quality standards, without the benefit of sufficient additional funding,

At a time when Alaskans demand state control over the state's natural resources, HB 51 invites increased federal involvement by EPA in determining the quality of Alaska's waters. At a time when Alaskans are attempting to convince the rest of the nation of our good stewardship of federal lands, such as ANWR and NPR-A, HB 51 would show the nation how willing we are to compromise our water quality to placate industry. The state's unique attributes that Alaskans value so highly - our abundant fish runs, our rich estuaries, our cold, clean streams - must be protected by unique standards drafted by professional resource managers in concert with the industrial interests within the state and with over-sight by all concerned Alaskans.

Susan E. Schrader, Executive Director
4/21/97





From SEN. Adam.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

MAR 5 1997

Michele Brown, Commissioner
Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Dear Commissioner Brown:

Michele

It is my understanding that the Alaska House Finance Committee passed CSHB51 (T) on February 27, 1997, with amendments, but with no substantive changes, and the bill will soon be scheduled for a vote on the floor of the House. I want to take this time to reaffirm concerns expressed in our letters dated February 14, and February 26, 1997.

Passage into law of CSHB51 will result in added confusion and inefficiencies in the implementation of Alaska's Water Quality Standards program and will jeopardize any future State attempts to assume the National Pollutant Discharge Elimination System (NPDES) program

If you have any questions regarding these comments, please contact me at (206) 553-0422 or Marcia Lagerloef, at (206) 553-0176.

Sincerely,

Chuck Clarke

Chuck Clarke
Regional Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101.

From Sen Adams

REPLY TO
ATTN OF: OW-134

FEB 14 1997

Michele Brown, Commissioner
Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Dear Commissioner Brown:

EPA has completed its review of the CS(L) for House Bill 51 (CSHB 51) in response to your request for comments. CSHB 51 would establish a procedure to change State water quality standards that are more stringent than Federal water quality criteria. We have several concerns about how this legislation could affect the Alaska's water quality standards (WQS) program and the likelihood of authorizing the State of Alaska to operate the Federal National Pollutant Discharge Elimination System (NPDES) permitting program. EPA's concerns fall into three categories: inconsistencies/interpretation problems, WQS program problems, and NPDES program problems.

Inconsistencies/Interpretation

The bill contains ambiguous language and inconsistencies with portions of the Clean Water Act (CWA) dealing with WQS and NPDES permitting. Examples of inconsistencies and interpretation problems that are of concern to EPA are highlighted below.

- CSHB 51 § 46.03.087(a) (1) and (2) refer to the adoption of "water quality standards and discharge standards." We are not certain what is meant by the term "discharge standard." Discharge standards could be interpreted to mean effluent limits or effluent guidelines. National NPDES regulations do not allow permit limits that are less restrictive than technology-based effluent guidelines.
- § 46.03.085(b) refers to "other regulation related to water quality." We are concerned about what this phrase may include. Since there are no Federal criteria or regulations for mixing zones and zones of deposit, these NPDES tools could be affected by this legislation.

- § 46.085(c) provides a timeframe during which DEC must amend the WQS to incorporate a reduction or elimination in the federal water quality criteria or follow the procedure in § 46.087(b). There is no explanation of how the reduction or elimination of the criterion is to be justified and how it will be consistent with the CWA or the Federal water quality standards regulations (40 CFR Part 131).
- § 46.03.085(a) states that DEC, in adopting and applying WQS, "shall ensure that the standards are sufficient to protect human health and propagation of fish and wildlife." This provision is not consistent with the CWA. Section 101(a)(2) of the CWA provides for the protection of propagation of fish, shellfish, wildlife, and recreation in and on the water. Section 303(c)(2)(A) of the CWA includes additional uses that WQS should protect: domestic water supply, agricultural, industrial, and navigational uses. Any changes to WQS that are made in accordance with this legislation may not protect all designated uses in the Alaska WQS and the CWA.

Overall, these types of interpretation problems will likely result in some confusion about how CSHB 51 should be implemented and mixed expectations in the regulated community and the public. These kinds of problems will likely contribute to a more resource-intensive water management program.

WQS Program

As you know, any change in a state WQS requires review and approval by EPA. EPA has serious concerns regarding both the process for WQS revision, and the basis for such revisions in §§ 46.03.085(c) and 46.03.087(b). Based on these concerns, it is possible that WQS that Alaska revises under these provisions will not be approvable.

First, we are concerned whether 90 days [see § 46.03.085(c)] provides adequate time for DEC to make scientifically sound decisions, as required by Federal WQS regulations, about whether a WQS change is warranted. Our concerns are heightened by the fact that HB 51 contains no provisions that require those who are requesting the amendment to supply any data or justification to support the need for the change. Since the burden of proof for determining whether a standards change is needed rests with DEC, these decisions may be based on little or no information. Ninety days may not allow DEC to collect adequate supporting data. Additionally, this section of CSHB 51 appears to overlap with existing portions of the Alaska WQS regulations [18 AAC 70.025(d)]. This section in the Alaska WQS regulations already contains a provision that allows the use of "natural conditions" as the basis for WQS changes [18 AAC 70.025(b)] that are less restrictive than Federal criteria and it requires the applicant

seeking the WQS change to provide DEC with the data and information needed to make the determination.

Second, we are concerned that the technical basis in CSHB 51 for any proposed WQS changes is tied to "hydrologic conditions or discharge conditions" [§ 46.03.087(b)]. EPA Federal criteria are based on laboratory toxicity tests and do not necessarily consider hydraulic conditions or discharge characteristics. It is doubtful that a change in a criterion that is based strictly on "hydrologic conditions and discharge characteristics" will be scientifically defensible for protection of all designated uses. Therefore, such changes to WQS may not result in approvable WQS regulations. Where the change is to adopt criteria that are less stringent than the existing criteria, there needs to be a justification that the criteria are adequate to fully protect the use.

EPA is also concerned about how the requirements in Sections 4 and 5 will be implemented. Section 5 of this bill requires DEC to conduct a triennial review and identify State regulations that are more stringent than Federal regulations. The Federal WQS regulations direct States to, "at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards, and, as appropriate, modifying and adopting standards". Section 4 of CSHB 51 contains provisions that require a 90-day review of individual portions of the Alaska WQS regulations. The 90-day review is triggered by a request to change a State WQS because it may be more stringent than a Federal criterion. It is conceivable that DEC would be responsible for numerous 90-day reviews and standard changes required in Section 4 at the same time that it is required to conduct the triennial review that is contained in Section 5. This would result in a confusing, time-consuming, piecemeal approach to WQS and management of the water quality program.

NPDES Program

EPA Region 10 continues to be interested in authorizing the State of Alaska to operate the National Pollutant Discharge Elimination System (NPDES) program throughout the State. As you know, we have provided DEC a grant for the purpose of conducting an analysis that details both the costs and options for assuming the NPDES program. The results of the analysis should be available in late spring. To obtain NPDES program authorization, the State must demonstrate that adequate resources are available to successfully manage an NPDES program.

In addition, the Alaska Attorney General would need to examine existing state statutes and regulations to determine whether the state has all the necessary legal authorities to operate an NPDES permitting and compliance program. Any missing legal provisions would need to be enacted before the state applies for authorization. Also, EPA would have to be assured

that the state does not have statutes or regulations that are incompatible with authorization.

Sec. 46.03.085(a)(3) of CSHB 51 states that the Department "shall use scientific justification and water quality criteria that can be reliably measured." Some Federal water quality criteria are established at levels below detection (e.g. dioxin). It is not clear if these criteria would be considered to not "be reliably measured." While compliance determinations are based on the minimum level of quantification, permit limits must be established using the water quality criterion value and may be below the detection level. This language could be construed to disallow issuance of permits with appropriate limits and therefore could jeopardize attempts by Alaska to pursue authorization of the NPDES program. •

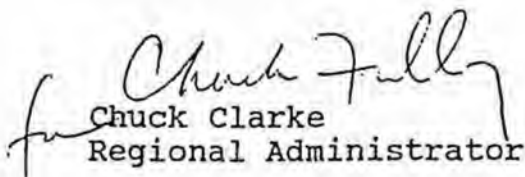
In addition, § 46.03.08 (a)(4) states that DEC "may not require discharged water to be of higher quality than the natural conditions of the receiving water." On occasion, technology-based limitations (established either through national guidelines or best professional judgment of the permitting authority) require a discharge to be higher in quality (i.e., meet a higher standard) than the receiving water. This language would contradict the NPDES regulations which require achievement of technology-based limitations without regard for receiving water conditions. Again, this will jeopardize any future State attempts to assume the NPDES program.

Conclusions

We believe that the problems discussed above would create added confusion and inefficiencies in the implementation of Alaska WQS program rather than improved responsiveness and effectiveness. To implement CSHB 51 would require additional time and effort on the part of DEC staff. Yet, the resource-intensive nature of CSHB 51 would not contribute to the development of the capacity needed to assume the NPDES program. Furthermore, certain provisions of CSHB 51 may create legal problems that will jeopardize both approval of State WQS revisions and authorization of the NPDES program.

We appreciate the opportunity to review and provide comments on CSHB 51. If you have any questions about these comments contact me at (206) 553-0422 or Marcia Lagerloef, at (206) 553-0176.

Sincerely,


Chuck Clarke
Regional Administrator

FROM SEN ADAU

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 101200 Sixth Avenue
Seattle, Washington 98101

FEB 26 1997

Reply To
Attn of: AOO

Michele Brown, Commissioner
Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Dear Commissioner Brown:

This letter is a follow-up to my February 14, 1997, letter concerning House Bill 51. In re-looking at the proposed legislation, I thought it worth clarifying an additional area of potential confusion in the bill.

The potential confusion concerns the use of the terms "standards" and "criteria" throughout the bill, with these terms sometimes being used in a manner inconsistent with how they are used in the Federal Clean Water Act and the State of Alaska's water quality standards regulation.

According to language in the Clean Water Act and Alaska's water quality standards regulations, water quality standards consist of two parts. The first part is designated beneficial uses, such as "drinking water supply," or "growth and propagation of fish and other aquatic organisms." For any particular waterbody, there are typically a number of beneficial uses designated. The second part of water quality standards is the "criteria" necessary to protect the designated beneficial uses. Criteria are the maximum concentrations of pollutants that can occur in a waterbody without jeopardizing the beneficial uses of the waterbody. An example of a criterion for a marine waterbody with the designated use "growth and propagation of fish and other aquatic life" would be 2.9 micrograms per liter of copper. (i.e., this concentration of copper is the maximum concentration that can be present in a marine waterbody and still ensure the survival and reproduction of fish and other organisms.)

Only when the beneficial uses and the criteria necessary to protect them are combined do water quality "standards" exist. The Clean Water Act gives the responsibility to the states, not to the Federal Government, to adopt water quality standards.

The Clean Water Act requires the Environmental Protection Agency (EPA) to develop a list of national water quality criteria that are protective of beneficial uses. In developing these numbers, EPA relies on currently available scientific information about the effects of pollutants on aquatic organisms. The scientific basis for each criterion EPA develops is published in a criteria development document. It is important to note that these numbers are not national "standards" or "criteria" that all states must meet. The EPA national criteria merely constitute guidelines that states must consider in adopting criteria as part of their water quality standards. If a state adopts a criterion that is less stringent than EPA's guidelines, the state must provide a scientifically defensible basis for the criterion. Ultimately, EPA must review and approve all revisions to state water quality standards.

This Clean Water Act approach differs markedly from that established in the Clean Air Act for ambient air quality "standards." Please note that the use of the term "standards" has a different connotation under the Clean Air Act than it does under the Clean Water Act.

The Clean Air Act directs EPA to identify and set national standards for pollutants which may reasonably be anticipated to protect public health and the environment. EPA has set national primary and secondary ambient air quality standards for six common air pollutants since 1970 (carbon monoxide, particulate matter, ozone, lead, sulphur dioxide, and nitrous dioxide). Primary standards are designed to protect public health. Secondary standards are designed to protect the public welfare and the environment.

In order to set these standards, EPA must first conduct an extensive scientific and technical assessment of the pollutant of concern. This review is summarized in a "criteria document." The criteria document puts forth what is known about the health effects of an air pollutant.

Based on the health effects documented in the criteria document, EPA then sets a national ambient air quality standard that is the same for any location in the United States. For example, the primary and secondary standard for carbon monoxide is 9 parts per million in all 50 states.

In summary, an ambient air quality standard developed under the Clean Air Act differs from a standard under the Clean Water Act in two important ways. First, the air quality standard is more analogous to a water quality criterion, which is only part of a water quality standard. Second, a national ambient air quality standard is a planning tool that states use to set

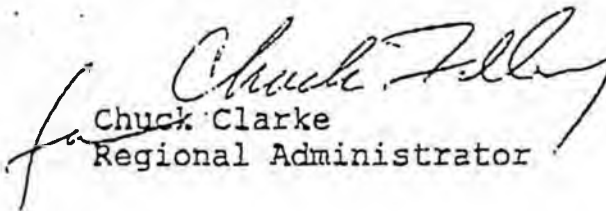
3

emission limits and other air quality control requirements that sources must meet and that assure attainment and maintenance of the national ambient air quality standards. In contrast, EPA's water quality criteria are unenforceable guidelines that states use in developing their own water quality standards.

Without clarification and proper use of these terms, additional inconsistencies and interpretation problems above and beyond those already mentioned in my February 14 letter would result.

Again, we appreciate the opportunity to provide comments on House Bill 51. If you have any questions about these supplemental comments, please feel free to contact me at (206) 553-0479, Rick Albright at (907) 271-3422 or Marcia Lagerloef at (206) 553-0176.

Sincerely,


Chuck Clarke
Regional Administrator