

HB

263

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 263(RES)
 (H) Publish Date: 1/30/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
 Title Regulations of Hot Springs BRU Environmental Health
 Component Food Safety and Sanitation
 Sponsor Representative Fate
 Requester House Resources Committee Component No. 2343

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact expected from this bill. Regulations of public swimming pools and spas will be revised later this year and would need to be consistent with this bill for flow-through hot springs pools.

Prepared by: Janice Adair, Director Phone 269-7644
 Division: Environmental Health Date/Time: 1/22/02 12:29 PM
 Approved by: Kurt Fredriksson Date: 1/22/2002
 Agency: Department of Environmental Conservation

REPRESENTATIVE
HUGH "BUD" FATE

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Fairbanks, AK 99701
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Alaska State Legislature



House Of Representatives

While in session:

State Capitol
Juneau, Alaska
99801-1182
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Fax: (907)465-3883

House District 33

SPONSOR STATEMENT

HB 263

Regulation of Hot Springs Water

Part of the enjoyment inherent in Hot Springs Resorts and mineral waters is how natural they are. To heavily chlorinate or otherwise treat the water seriously diminishes the experience. House Bill 263 eliminates the need for a constantly recycling hot springs to be chemically treated so long as the coliform load remains low.

In one situation with a flow through hot springs outdoor rock lake, a resort recently settled with the Department of Environmental Conservation. This bill is attempting to be similar to that settlement so that other resorts don't have to experience the legal battles and subsequent expenses that went along with it.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF ENVIRONMENTAL HEALTH
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January 24, 2002

The Honorable Beverly Masek
Co-Chairman, House Resources Committee
Room 128, Capitol Building
Juneau, AK 99801

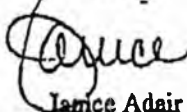
Re: HB 263, an act relating to hot springs

Dear Representative Masek:

Attached is a version of HB 263 that was prepared by Representative Fate to address the concerns the department expressed at the House Resources Committee hearing on this bill yesterday. This language works for us.

I want to thank you, the other committee members, and Representative Fate for being sensitive to our concerns and so willing to work with us to resolve them.

Sincerely,



Janice Adair
Director

Attachment: HB 263 Work Draft drafted by Jay Hardenbrook

- cc: The Honorable Hugh Fate
- The Honorable Drew Salzi, Co-Chairman
- The Honorable Joe Green
- ~~The Honorable Lesil McGuire~~
- The Honorable Gary Stevens
- The Honorable Mike Chenault
- The Honorable Mary Kapsner
- The Honorable Beth Kerttula
- (all with attachment as noted)

Post-It® Fax Note	7671	Date	1/25	# of Pages	3
To	MALL	From	Janice		
Co./Dept.	DEP	Co.	DEC EH		
Phone #	465-5855	Phone #	269-7644		
Fax #	465-5862	Fax #	269-7654		

STATE OF ALASKA

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May 3, 2001

The Honorable Gene Therriault
Alaska State Senate
Room 121, Capitol Building
Juneau, AK 99801

The Honorable Hugh Fate
Alaska House of Representatives
Room 416, Capitol Building
Juneau, AK 99801

Re: SB 214; HB 263: Flow Through Hot Spring Pools

Dear Senator Therriault and Representative Fate:

The purpose of this letter is to share with you problems our department has identified with the above-referenced legislation in the hopes that we may be able to come to an agreement on how it should be amended.

The primary problem is with the definition of a "flow-through hot spring pool." As written, the definition would include any pool – even one that is constructed from man-made materials such as concrete or plastic – that uses hot springs water as its water source. As drafted, our ability to require that pools constructed of man-made materials be chlorinated or filtered is unclear. When water is insufficiently treated, other disease-causing pathogens such as *Pseudomonas*, *Cryptosporidium*, Legionnaires' disease, *Giardia*, or *E. coli* will thrive because there are little or no competing bacteria to keep them in check. That is why chlorination and filtration of these pools is so important. Enclosed you will find the pertinent sections from a report by the Centers for Disease Control and Prevention on Waterborne Outbreaks that discuss the types of outbreaks it investigated between 1997 and 1998. It explains problems found both in treated and fresh contact recreational waters and how they might be avoided.

The second problem we see is that the bill places the current water quality standard for these waters in statute. While we don't disagree with the fecal coliform standard, if the water quality standard changes for other contact recreational waters, it should change for these types of facilities also. We would prefer to have the department's water quality standard for contact recreational waters cross-referenced.

Following is how we'd suggest the referenced bills be amended:

The Honorable Gene Therriault
The Honorable Hugh Fate
May 3, 2001
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Sec. 44.46.028. Flow-through hot springs pools. (a) A ~~flow-through~~ hot springs pool, whether natural or modified, that is being operated as part of a commercial establishment, is exempt from further water quality regulation by the Department of Environmental Conservation while the fecal coliform count in the pool meets the water quality standards for contact recreational waters adopted by the department under AS 46.03.070 and AS 46.03.080 ~~is maintained at 100 colonies or less per 100 milliliters~~ and the pool is free from dangerous levels of disease-causing pathogens.

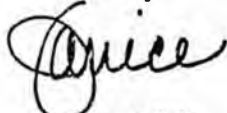
(b) In this section, "natural hot spring" means a naturally occurring impoundment into which geothermal water flows, seeps, or is otherwise held. The naturally occurring impoundment may have minor modifications to support access and bather comfort such as steps and benches.

"Modified hot spring" means a man-made impoundment constructed of natural materials or a naturally occurring impoundment into which geothermal water is directed or piped by human involvement from a geothermal source. A modified hot spring may have a semi-permeable liner in order to control erosion however, the liner may not leach chemicals into the water or create a substrate for the growth and survival of disease-causing microorganisms. ~~flow-through hot springs pool" means a pool in which the water from a naturally occurring hot spring constantly enters the pool to replace an equal amount of water constantly being drained from the pool.~~

I understand the desire to ensure that facilities such as Chena Hot Springs Resorts (CHSR) are not regulated like man-made pools. Certainly our pool and spa regulations do not fit the type of pool at CHSR that was created from its natural hot springs. This "pool," which we refer to as the "Rock Lake," cannot be chlorinated. Also, the regulatory construction requirements for pools would likely not work for a modified hot springs that attempts to be in a natural setting. Recognizing these problems, we entered into an operating agreement with CHSR that was tailored to that operation specifically. Our research of other states' regulation of these types of facilities indicated those that had the best success, such as Colorado, had individual operating agreements. With that approach, any hot spring pool can retain its unique characteristics and still be protective of public health, not just from the water quality standpoint, but also from physical hazards that can cause injuries to users. We plan to revise our pool and spa regulations late this summer or early fall, and to propose such an approach for commercially operated natural and modified hot springs.

Don't hesitate to call if you'd like to discuss this further.

Sincerely,



Janice Adair
Director

Enclosures:

◆ Surveillance for Waterborne-Disease Outbreaks – United States, 1997 – 1998 by the CDC

cc: Lori Backes, Office of Representative Whitaker (w/encl)



TONY KNOWLES, GOVERNOR

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July 28, 2000

Mr. Bernie Karl
Chena Hot Springs Resort
Post Office Box 73440
Fairbanks, Alaska 99701

Dear Mr. Karl:

In a continuing effort to find a mutually satisfactory resolution to the issues surrounding the rock lake at Chena Hot Springs Resort (CHSR), this letter will outline a proposal that will allow the lake to reopen should you agree to its terms.

Two (2) of our environmental health officers spent nearly twelve (12) hours at CHSR recently to view first hand the operation of the rock lake. From that visit, we know the following:

- 1) The water in the lake cannot be effectively disinfected or filtered because it is in part fed from the bottom;
- 2) It takes nine to ten (9-10) hours for the lake to refill after being drained, indicating two (2) turnovers of the water every twenty-four (24) hours; and
- 3) There are many areas where the water does not circulate, particularly around the boulders surrounding the lake. This was evidenced by algae growth.

Because of item number one (1) above, the rock lake cannot meet the vast majority of the regulations adopted for public swimming pools even though the Department of Law has advised that the rock lake falls within the regulatory definition. Therefore, under the authority in our regulations to grant waivers for specific requirements, I'd like to have an agreement - signed by both of us - regarding our joint approach to the rock lake. This agreement will stay in effect until either:

- 1) Alaska statutes are enacted regarding the sanitation requirements for hot springs, or
- 2) The department adopts sanitation regulations specific to hot springs, whichever occurs first. You will have the opportunity to review and comment on any and all regulations we may draft on this topic.

Safe Food. Safe Water. Healthy Communities

Page 2
Bernie Kari
July 28, 2000

By entering into this agreement with the department, you are not agreeing that the rock lake is a public swimming pool and thus subject to the regulations we've adopted for public swimming pools.

Likewise, the department will not require that you follow the regulations for public swimming pools or take any action against you or CHSR for failing to follow the requirements of those regulations with respect to the rock lake. Rather, this written agreement will direct the relationship between us relative to the rock lake.

You have told me that you are willing to limit your bather load in order to reopen the rock lake to the public. Doing so will help – at least in part – to alleviate some of the public health concerns we have, provided that limitation is coupled with a few other things. You also told me that you would be willing to work with us on some of our other concerns after we clear the hurdle of getting the rock lake reopened. Therefore, I would like each of us to agree to the following:

1. In order to limit the potential for bacterial contamination, limit the bather load in the rock lake to twenty (20) people per hour and no more than sixty (60) people in a twenty-four (24)-hour period.
2. Ensure that users of the rock lake shower before using the rock lake as well as after using it and before entering the concrete pool, jacuzzi, or hot tub in order to limit the potential for cross-contamination.

In order that the users of the rock lake are both informed and can help maintain water quality, post the rock lake with signage that is easy for patrons to see and that says or clearly indicates:

1. the water is not disinfected or filtered, that bacteria is present, and they should use at their own risk;
2. people with a communicable disease, open lesions, or mouth, nose or ear discharges may not use the rock lake;
3. the limits on the number of users as outlined in (1) above; and
4. the requirements to shower before using the other vessels at CHSR as outlined in (2) above.

In addition, you must also post the signage you have at the concrete pool that says no one may urinate, spit, blow their nose, or deposit any foreign matter into the lake, that tobacco, food, and drink are prohibited and only persons dressed for bathing may use the lake.

This information can be displayed on however many signs you'd like so long as the message on each sign is easily visible to the users of the lake before they enter it.

So that we can determine if the bather load has been properly set, at least once every thirty (30) days, test the water of the rock lake for compliance with the fecal coliform standard in the state's Water Quality Standards for contact recreational waters. That standard is 100 FC/100 ml of water

Page 3
Bernie Karl
July 28, 2000

and can be found at 18 AAC 70.020(b)(1)(B)(i). A laboratory certified by the department, such as Northern Test Labs must do the testing. The samples must be collected and tested in accordance with the American Public Health Association's Standard Methods for the Examination and Water and Wastewater, 1985 edition. Copies of the test results will need to be faxed to Cory as soon as you receive them from the lab.

If the fecal coliform levels exceed the water quality standards, the rock lake must be closed to the public until the fecal coliform levels come down. Should that happen, we will work with you to try to figure out the source of the bacteria, or we may need to reduce the bather load.

On the other hand, if the samples consistently come back well below the water quality standards level, we will work with you to incrementally increase the bather load.

I should note that those areas in the lake where water does not circulate well provide an excellent place for bacteria to grow. You may need to consider ways to increase the circulation of the water, which will in turn reduce the overall bacteria levels.

Also, it is critically important that the chlorine levels in the concrete pool, hot tubs and jacuzzi be carefully maintained. Any bacteria that might get in there from users of the rock lake (if they don't shower well enough), will grow exponentially unless there is enough chlorine to kill the pathogens.

You have today faxed us the text of the sign you intend to post. It meets the requirements of this agreement. You have also provided us with the test results from the samples collected on July 17, 2000 which show acceptable coliform levels. Therefore, the closure notice for the rock lake is lifted upon your signing this agreement. The next water sample must be collected on August 17, 2000.

As I mentioned to you during one of our telephone conversations, there are also some safety issues we believe need to be addressed as soon as possible after the rock lake is reopened. Addressing these issues will protect you as well as your patrons. Those items are:

1. Somehow indicate the depth of the rock lake, however you feel best fits the aesthetics of the area. Our only concern is that it be done in a fashion that's permanent and clearly visible to the users.
2. While it's hard to imagine someone trying, you should also post a No Diving sign. You never know what people might do.
3. There are sharp edges on at least some of the granite boulders that surround the lake, sharp enough that people can cut themselves. Each boulder needs to be carefully examined for sharp edges, and then somehow smoothed so they will not cut skin. You should also keep people from climbing out of the lake onto the boulders and then getting back into the lake.
4. The lifesaving equipment you have for your concrete pool should be located in an area where it can be easily accessed for both the pool and the rock lake. You probably already do this; we haven't discussed it before. But, I wanted to be sure to mention it, as it is important.

Page 4
Bernie Karl
July 28, 2000

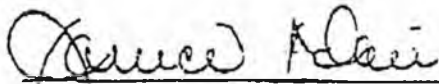
Upon signing this agreement, we both agree to follow the terms outlined above. In addition, Chena Hot Springs Resort and you agree to indemnify and hold the state, its agents and assignees harmless from any claims arising from public use of the rock lake.

Nothing in this agreement shall be construed as preventing the department from issuing a closure notice if there is a public health emergency associated with the rock lake as determined by the Section of Epidemiology in the Division of Public Health, Department of Health and Social Services. Of course, at that point, I know you would want to keep the public out of the lake, too. And, should this happen, we will work with you to try to find the source of the problem including how it can be prevented from reoccurring which may require an amendment to this agreement.

I am looking forward to continuing to work with you on the rock lake as I believe that the more we learn about it, the better job we can do in developing regulations specific to hot springs. I'm glad you've found Cory good to deal with. As I previously told you, he is our "resident expert" on pools and spas, and soon with your help, hot springs.

I am faxing this agreement to you today; please fax me back the signature page. I'll also put two (2) copies in the mail to you. Please keep one for your files and return the second one to me with your original signature.

Sincerely,



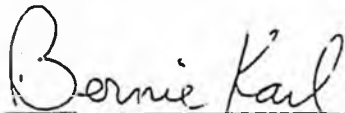
Janice Adair
Director

(Signature indicates agreement to terms set out above)

7-28-00

Date

Agree to the terms set out above:



Bernie Karl
Chena Hot Springs Resort

(Signature indicates agreement to terms set out above)

7-28-00

Date

cc: Michele Brown, Commissioner
Interior Delegation