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FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 326
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affect: Environmental Conservation
Title Wastewater Discharge Program BRU Air and Water Quality
Component Water Quality
Sponsor Senators Therriault and Olson
Requester Senate Resources Component No. 2062

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	95.7	47.8				
Travel	12.0	6.0				
Contractual	101.6	41.0				
Supplies	2.0	1.0				
Equipment	6.9	1.0				
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	218.2	96.8	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	218.2	96.8				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	218.2	96.8	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	2	2	(see explanation attached - nonpermanent)		

ANALYSIS: (Attach a separate page if necessary)

See Attached.

Prepared by: Lynn J. Tomich Kent Phone (907) 465-5312
Division Air and Water Quality Date/Time 3/11/02 3:01 PM
Approved by: Kurt Fredriksson Date 3/11/2002
Agency Department of Environmental Conservation

Permitting decisions for wastewater discharges covered under the National Pollutant Discharge Elimination System (NPDES) are currently made by the Environmental Protection Agency in Seattle. Alaska is one of only six states in the nation that does not make NPDES permit decisions at the state level. Alaska stakeholders have expressed a desire for local decision making but are guarded about endorsing Alaska primacy unless a state program provides more benefits than one executed by EPA. This bill requires the department to develop a plan for assuming NPDES primacy by the state to be provided to the legislature in January 2004. The plan will enable the Legislature to make a decision on whether or not Alaska will seek NPDES primacy.

During FY2003 and for the first half of FY2004, one full time temporary, non-permanent Environmental Specialist IV and one part time temporary, non-permanent Environmental Specialist III, with assistance by private contractors and the Department of Law, will prepare an implementation plan for state assumption of the federal wastewater discharge permitting program in Alaska.

Other line item funding will provide travel for staff to meet with stakeholders and interested citizens, technical assistance from environmental contractor(s) with experience in NPDES program implementation, basic support costs, and equipment.

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Craver
3/1/02

CS FOR SENATE BILL NO. 326()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS THERRIAULT, Olson

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to evaluating state assumption of the wastewater discharge program**
2 **under the federal Clean Water Act; and providing for an effective date."**

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

4 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 FINDINGS AND PURPOSE. The Department of Environmental Conservation has
7 proposed assuming the national pollutant discharge elimination system (NPDES) permit
8 system program for Alaska under 33 U.S.C. 1342 from the United States Environmental
9 Protection Agency. The department is directed to evaluate the potential benefits and
10 consequences of assuming NPDES primacy for Alaska.

11 *** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 PLAN FOR ASSUMING NPDES PRIMACY BY STATE. (a) The Department of
14 Environmental Conservation shall develop an implementation plan for the assumption of

1 NPDES primacy by the state, including

2 (1) statutory and regulatory changes;

3 (2) procedures for issuing permits;

4 (3) procedures for conflict resolution with the United States Environmental
5 Protection Agency;

6 (4) a statement of the cost of assuming NPDES primacy;

7 (5) a statement of sources of federal funding available.

8 (b) The draft plan shall be submitted to relevant interest groups and the public for
9 review and comment before the Department of Environmental Conservation adopts a final
10 plan. The draft plan shall be submitted to the legislature for review and comment. The final
11 plan shall be submitted to the legislature on the first day of the First Regular Session of the
12 Twenty-Fourth Alaska State Legislature.

13 * **Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

SENATOR
GENE THERRIAULT

Mailing Address:
119 N. Cushman, Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
Fax: (907) 488-4271



Senate

While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax: (907) 465-3884

Senate District Q

Senate Bill 326: "An act relating to evaluating state assumption of the wastewater discharge program under the federal Clean Water Act; and providing for an effective date."

Sponsor: Senator Gene Therriault 

Sponsor Statement

Passage of Senate Bill 326 will direct the Department of Environmental Conservation (DEC) to evaluate the potential benefits and consequences of assuming primacy for the National Pollutant Discharge Elimination System (NPDES) program and develop an implementation plan.

In 1972 the federal government enacted the Clean Water Act (CWA) to protect and restore the quality of the nation's water. The CWA provided that states can be authorized to operate their own NPDES program as long as it complies with federal requirements. Currently 44 states and the U.S. Virgin Islands administer their own NPDES program and Idaho is currently considering assuming NPDES primacy. The main reason that states have adopted primacy is to allow them to tailor their water discharge program to regional concerns and environmental features rather than follow federal guidelines designed to cover all states.

Senate Bill 326 would direct the DEC to study and describe:

- EPA's existing program in Alaska,
- Required and recommended primacy program components,
- Advantages, disadvantages, and experiences from similarly situated states along with their program costs,
- Draft rules and regulations needed for primacy,
- Guidance and implementation recommendations for executing the permit review, issuing permits and performing field compliance assistance,
- Necessary resources including number of staff, use of contractors and specific technical expertise of staff for an Alaskan program,
- legal issues and propose solutions necessary to acquire primacy, and
- A proposed action plan to secure federal funding as an ongoing contributor to offset operational costs of an Alaska NPDES permit Program.

This proposal is supported by the Waste Water Permit Work Group which was formed by the Department of Environmental Conservation. This group is comprised of external stakeholders who were asked to make recommendations to guide the rebuilding of the wastewater discharge program. I envision this group being involved throughout this proposed process helping to evaluate the pros and cons of state assumption of the NPDES program. This review would involve public comment and a final report to be submitted to the First Regular Session of the Twenty-Fourth Alaska State Legislature. The Legislature could then take action if it believed assumption would be in the state's best interest.

DRAFT
Division Air and Water Quality
NPDES PRIMACY: Is this Appropriate for Alaska?

Synopsis: Permitting decisions for wastewater discharges from Alaska businesses, industries and municipalities are currently made by the Environmental Protection Agency (EPA) in Seattle. It is in the best interest of Alaskans to make these resource decisions locally. Alaska stakeholders have expressed a desire for local decision making. Yet, stakeholders are guarded about endorsing Alaska primacy unless the details of the program are fully described so they can decide if a state program will have more benefits than the one executed by EPA.

\$ 315.0 is required (218.2 in FY 03 and 96.8 in FY 04) to develop an implementation plan for state assumption of the federal wastewater permitting that affects seafood processing, mining, municipal sewage treatment, oil and gas waste water discharges and other operations across Alaska. The main products of this work will be draft statutes, draft regulations, program guidelines and an implementation schedule.

The products will be based upon meeting legal requirements and will apply the knowledge gained from programs executed in other states to create an environmentally protective program for Alaska that is cost-efficient and friendly to users and the public. The implementation study will provide full program disclosure to the Legislature, affected stakeholders and interested members of the general public to seek a policy decision by the Legislature about whether the Department should move forward to seek delegation from EPA.

Stakeholder interest on this issue is expected to be strong. Resource development leaders will likely play a key role in Legislative discussion of this proposal.

Background: In 1999, the Department formed a Waste Water Permit Work Group of external stakeholders to aid in guiding the rebuild of the wastewater discharge program. The state's current "certification" program is a review and certification of federal permits that protects Alaska water quality and affords unique site specific permit features that benefit Alaska operators.

Of the work group's 10 recommendations aimed at making the program more efficient and sustainable, one is the pursuit of state decision making – state primacy for federal National Pollutant Discharge Elimination System (NPDES) permits – a permit required for discharge to surface waters. This recommendation, however, came with the caveat of "not at any cost" since the work group and the Department understood that other aspects of the wastewater discharge program needed attention and resources first before launching a full effort to pursue primacy.

During FY 02 and much of FY 03, the Department will be accomplishing the rebuild of the certification/existing state permit program in response to the 10 recommendations. The stakeholder group is still active in guiding this work and is keenly interested in any efforts to more fully examine NPDES primacy for Alaska. Funding an NPDES implementation study in FY03 is a logical next step especially while the stakeholder work group is still well intact and able to provide guidance.

Alaska is one of only six states in the nation that does NOT make NPDES permit decisions at the state level. EPA issues approximately 80 NPDES permits in Alaska each year - permits that are valid for 5 years. Several hundred more Alaska operations are approved to operate under the terms of various general permits issued by EPA. In the last couple of years, two other states have sought and attained state primacy and Idaho is currently assessing whether to seek delegation. Alaska could acquire many lessons learned from these states in crafting a program best suited to our needs.

The implementation study is to be viewed as a Phase III effort - an initial scoping study was performed by Easton Environmental in 1998 (Phase I), followed by the Department's more detailed scoping discussions with the Waste Water Permit Work Group in 1999 and 2000 (Phase II).

Work Products

Department staff (1.0 PFT, 1.0 PPT) with assistance by private contractors and the Department of Law will prepare a complete analysis that describes the NPDES program opportunity for Alaska. The implementation study will draw upon Idaho's work, previous studies conducted by the Department, nationwide studies of NPDES programs, and stakeholder recommendations and concerns. The study will describe

- EPA's existing program in Alaska,
- required and recommended primacy program components,
- advantages, pitfalls, and experiences from similarly-situated states, including their program costs and staff/contractual resources,
- draft rules and regulations needed for primacy,
- guidance and implementation recommendations for executing the permit review, issuing permits and performing field compliance assistance,
- necessary resources including number of staff, use of contractors and specific technical expertise of staff for an Alaskan program,
- identification of legal issues with proposed resolutions and proposed statutory language necessary to acquire primacy, and
- a proposed action plan to secure federal funding as an ongoing contributor to offset operational costs of an Alaska NPDES permit program.

The study will provide a full background of all information necessary for the Alaska Legislature in consultation with Alaska stakeholders and the Department to decide whether to pursue NPDES primacy.

OPERATING EXPENDITURES	FY 2003	FY 2004
Personal Services	95.7	47.8
Travel	12	6
Contractual	101.6	41
Supplies	2	1
Equipment	6.9	1
TOTAL OPERATING	218.2	96.8



Council of Alaska Producers

P.O. Box 22653 Juneau, Alaska 99802

January 31, 2002

Honorable Senator Therriault:

The Council of Alaska Producers has a strong interest in the State of Alaska assuming the NPDES permit program. We believe there is significant potential to benefit from having the program administered by people familiar with the unique conditions of Alaska, as well as the potential for expediting the permitting process through more accessible permitting staff. Resource development in Alaska may become more economic and attractive to mining and other industries, and the protection of the State waters may be improved as locally knowledgeable persons make water use determinations.

However, we also have some reservations. We are concerned whether or not the State will have permitting flexibility equal to that provided through the State permit certification process. We are also concerned whether the State can best resolve water permitting conflicts with the EPA, if and when they should arise, as program administrator or if they have greater power as a separate entity.

It is our hope that with further evaluation of the NPDES assumption, and with an implementation plan that would provide us with a preview of the State NPDES program, that it will be evident that State assumption of the program will benefit Alaska citizens and Alaskan waters.

State assumption of the NPDES program will be costly. It would be unwise to request appropriation of funds for this program without first providing an implementation plan and an evaluation of the consequences. The legislation proposed in the attached document requests the funds and authority to take this first step.

The Council of Alaska Producers respectfully requests your assistance in drafting and sponsoring this bill.

If you have any questions, please contact Charlotte MacCay at (907) 272-2117, or (907) 266-4552, or on my cell phone at (907) 529-4332. My fax number is (907) 266-4568 and my email is cmaccay@aol.com. Kent Dawson is also available to assist you and can be reached at (907) 463-2533.

With sincere appreciation,

Charlotte L. MacCay

Vice President, Council of Alaska Producers



Resource Development Council for Alaska, Inc.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-2035
(907) 276-0700 Fax: (907) 276-3887 e-mail: Resources@akrdc.org

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March 15, 2002

Senator John Torgerson
Chair, Senate Resources Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

RE: SB 326 — Wastewater Discharge Program

Dear Senator Torgerson:

On behalf of the Resource Development Council for Alaska, Inc. (RDC), I am writing to express our support for SB 326 — Wastewater Discharge Program. This legislation directs the Department of Environmental Conservation (DEC) to assess the costs and benefits of assuming primacy over the National Pollutant Discharge Elimination System (NPDES) program and to develop a plan for implementation. At present Alaska is one of only six states which does not administer its own NPDES program.

As you know, RDC is a private, membership-funded, non-profit trade association. Our members include companies from the mining, timber, oil and gas, tourism and fishing industries. Also within our ranks are local communities, Native corporations, organized labor and industry support firms. Our mission is to expand Alaska's economic base through the responsible development of the state's natural resources.

As a matter of philosophy, RDC's members support opportunities for state primacy over federal regulatory programs. Local control allows broad federal guidelines to be tailored to the unique circumstances and characteristics of Alaska. The regulated community would prefer to deal with government officials based in Fairbanks, Anchorage or Juneau, as opposed to Seattle or Washington, D.C.

DEC has demonstrated a willingness to engage a variety of stakeholders in developing creative solutions to complicated regulatory issues. In this case, the Wastewater Permit Work Group will play an active role in evaluating the program. The review will also be subject to public comment prior to being submitted to the Legislature for final action.

Thank you for your consideration of this matter. Please feel free to contact me with any questions, or if I may be of further assistance.

Sincerely,

Tadd Owens
Executive Director