

HB

546

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
MAY 03 2004
SENATE FINANCE
COMMITTEE

DATE: 5/1/04

FURTHER:

DATE TURNED IN TO OFFICE: 3 May 2004

Finance Committee considered CS FOR HOUSE BILL NO. 546(JUD)

HB 546 POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL

"An Act relating to regulation of the discharge of pollutants from timber-related activities under the National Pollutant Discharge Elimination System; relating to waste treatment and disposal permits; making conforming amendments; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#

Department	Date	Fiscal	Indet.	Zero	FN#
DEC	4.2.6				#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>	X			
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

FISCAL NOTE

REPORTED OUT

MAY 03 2004

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 546
(H) Publish Date: 3/25/04

SENATE FINANCE
COMMITTEE

Revision Date/Time (Note if correction):	Dept. Affected: <u>Environmental Conservation</u>
Title: <u>An Act relating to regulation of timber-related discharges under NPDES</u>	RDU: <u>Air & Water Quality</u>
Sponsor: <u>Rules Committee</u>	Component: <u>Water Quality</u>
Requester: <u>Governor</u>	Component No.: <u>2062</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	67.0	67.0	67.0	67.0	67.0	67.0
Travel	21.0	21.0	7.0	7.0	7.0	7.0
Contractual	300.9	300.9	56.0	56.0	56.0	56.0
Supplies	3.0	3.0	1.0	1.0	1.0	1.0
Equipment	20.7	4.5	1.5	1.5	1.5	1.5
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	412.6	396.4	132.5	132.5	132.5	132.5

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (1005)	0.0	0.0	30.0	30.0	30.0	30.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	235.0	235.0	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	177.6	161.4	102.5	102.5	102.5	102.5
1005 GF/Program Receipts	0.0	0.0	30.0	30.0	30.0	30.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	412.6	396.4	132.5	132.5	132.5	132.5

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill directs the Department of Environmental Conservation to seek authority from the U.S. Environmental Protection Agency (EPA) to implement the federal National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program for timber-related activities. The Department projects a two-year (FY 2005 and FY 2006) effort to complete program development and transition work necessary to apply to EPA for NPDES primacy. With EPA approval, the Department would begin implementing the NPDES program for timber-related activities in FY 2007. The funds to support transition to primacy consist of General Funds and Federal Receipts. A total of \$470.0 in one-time federal grant funds are available to support program development work. The balance of the development and transition costs are General Funds. Upon implementing the program in FY 2007, the Department anticipates annual program receipts of \$30.0.

(continued)

Prepared by: Lynn J. Tomich Kent
Division: Air & Water Quality
Approved by: Kurt Fredriksson, Deputy Commissioner
Agency: Department of Environmental Conservation

Phone: (907) 465-5312
Date/Time: 3/9/2004
Date: 3/9/2004

FISCAL NOTE # 1

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB 546

ANALYSIS CONTINUATION

The FY 2005-2006 funds will provide the following services:

Personal Services - one permanent position to develop permit process regulations, conduct the rulemaking process, develop written permitting procedures, standardized program forms, and the NPDES primacy application to EPA. Development of the Log Transfer Facility general permit will begin in FY 2006.

Travel - program and regulations development, primacy application, and NPDES permit writing and compliance training for new and existing staff.

Contractual - two long term non-permanent positions to assist in developing written permitting procedures, standardized program forms, and the NPDES primacy application to EPA; professional services assistance; RSA to Dept. of Law for legal assistance with regulations development; and position support costs.

Supplies - standard office supplies.

Equipment - office furniture and computers for staff. The FY 2006 budget eliminates the funding for office equipment, which is a one-time purchase.

The Department anticipates NPDES primacy approval from EPA beginning in FY 2007 for timber industry related permitting. The fiscal note for FY 2007 and beyond reflects the ongoing costs of implementing the program and provides the following:

Personal Services - one permanent position to develop individual permits, general permits, issue authorizations under general permits, review dive survey reports, conduct inspections and take enforcement actions if necessary.

Travel - staff permitting and facility inspections (one inspection of each operating facility during the 5-year life of the permit); ongoing technical training; and occasional program development meetings.

Contractual - public notices; staff training; professional services contracts for assistance with NPDES permitting and compliance-related issues; RSA to Dept. of Law for enforcement actions and program legal assistance; and position support costs.

Supplies - standard office supplies and water quality sampling supplies.

Equipment - ongoing office equipment and computer replacement costs, environmental monitoring equipment purchase or replacement, and other facility inspection equipment (such as personal safety gear and cameras).

Projected impact on Alaska economy and local government

- eliminates the current patchwork of federal and state permits for the timber industry.
- increased permit and compliance fees for owners/operators of facilities with timber-related wastewater discharges.

Personal Services New Position Detail

Department of Environmental Conservation
Partial NPDES Primacy

Scenario: A Scenario for FY2005 Fiscal Notes (3605)
Component: Water Quality (2062)
RDU: Air and Water Quality (206)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#028	Environmental Spec III	FT	A	GP	Juneau	2,	18 B	12.0		47,316	0	0	19,712	67,028

Justification: Implementation - NPDES Primacy for timber related discharges.

Funding Detail:

1004	General Fund Receipts	100.00%	67,028
Total Funding:		100.00%	67,028

Component Summary:

Total New Positions: 1

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	67,028
Total Funding:	100.00%	67,028

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER

410 Willoughby Ave., Ste 303
Juneau, AK 99801-1795
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May 1, 2004

The Honorable Gary Wilken
Chairman, Senate Finance Committee
Alaska State Senate
State Capitol, Room 518
Juneau, Alaska 99801

Dear Senator Wilken,

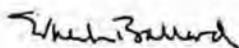
Attached is a packet of information on HB 546, a bill that has passed through House Resources, Judiciary and Finance Committees and passed the House with a vote of 37 – 0. The companion bill, SB 378 was heard in Senate Resources and rests in your Committee having had one public hearing on April 22, 2004. The Department of Environmental Conservation sponsored HB 546, an “Act relating to the regulation of the discharge of pollutants from timber-related activities under the National Pollutant Discharge Elimination System; relating to waste treatment and disposal permits; making conforming amendments; and providing for an effective date,” and asks for your consideration in hearing HB 546 before the Senate Finance Committee.

HB 546 instructs DEC to seek primacy for a portion of the federal National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting program, namely the portion related to timber industry discharges. While DEC supports seeking state primacy for the entire NPDES program, partial primacy for timber-related discharges will provide an opportunity to test the concept in an industry sector where the state has significant expertise.

The fiscal note reflects a two-year effort to complete program development and to achieve U.S. Environmental Protection Agency approval. Annual costs for FY 2005 and FY 2006 are divided between federal grant funds of \$235.0 available for two years with the balance of \$177.6 in FY 2005 and \$161.4 in FY 2006 derived from general funds. After the two-year implementation, the general fund support decreases with the addition of general fund program receipts from fees.

Dan Easton, DEC’s Water Division Director will provide you with any additional information you might require regarding this bill. Your staff can contact Mr. Easton at 465-5135, or Melanie Lesh, the department’s legislative liaison, at 465-5290. As always, please contact me if I can be of assistance.

Sincerely,



Ernesta Ballard
Commissioner



DEPARTMENT OF ENVIRONMENTAL CONSERVATION

HB 546

PARTIAL NPDES PRIMACY FOR TIMBER-RELATED WASTEWATER DISCHARGES

HB 546 instructs DEC to seek primacy for permitting timber-related waste discharges under the federal National Pollutant Discharge Elimination System (NPDES) discharge permitting program. Upon approval, the Alaska Department of Environmental Conservation (DEC), and not the U.S. Environmental Protection Agency (EPA), would issue discharge permits for the timber industry sector in Alaska.

The NPDES Program

The NPDES wastewater discharge permit program is established under Section 402 of the Clean Water Act (CWA). In Alaska, major industries with NPDES permits include timber, seafood, mining, and oil and gas. Municipal sewage treatment facilities also require NPDES permits. The CWA envisions that each state will seek primacy for the program and tailor it to the state's individual needs. Alaska is among only five states that have not yet sought primacy.

Partial Primacy

While primacy for the entire NPDES program is the norm, states have the option of seeking partial primacy for one or more specific industry sectors. Under a partial primacy arrangement, the state issues permits and conducts monitoring and compliance activities for the sector. EPA retains oversight authority. The Alaska water quality standards serve as the basis for all NPDES permits regardless of whether the EPA or the State implements the program.

Timber Sector Wastewater Discharges

NPDES permitting of timber sector discharges primarily focuses on permitting log transfer facilities.

- 98 log transfer facilities are eligible to be covered under an NPDES General Permit that governs the discharge of bark and wood waste into the marine environment.
- 98 log transfer facilities are eligible for coverage under the NPDES Multi-Sector General Permit for uplands stormwater management.
- All sawmills are eligible for coverage under the NPDES Multi-Sector General Permit for uplands stormwater management.
- Any new timber facility construction that disturbs greater than one acre is eligible for coverage under the NPDES construction general permit for stormwater management.
- Logging camps with domestic wastewater (approx. 12) require a permit. Most of them fall below the current EPA threshold for minor discharges and are currently issued a state, rather than an NPDES domestic wastewater discharge permit.

Why the Timber Sector?

The State of Alaska has significant expertise and a significant role in timber sector permitting and compliance activities. Partial primacy for timber-related discharges will provide an opportunity to test state NPDES primacy in a familiar industry sector.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

HB 546

PARTIAL NPDES PRIMACY FOR TIMBER-RELATED WASTEWATER DISCHARGES

Expected Benefits

Alaskans Protecting Alaska's Water Resources. Alaskans should be in charge of protecting Alaska's environment. The State is committed to, and capable of protecting its own resources. Exercising timber sector wastewater permitting authority is an opportunity for the State of Alaska to demonstrate its commitment and competence.

Rational Rules. A state timber wastewater discharge permit program will be a part of a broader state program for regulating water quality. The state program will be based on six essential elements of a good regulatory program: unambiguous statutory authority, a documented basis for concern, protective standards, rational regulations, documented compliance, and enforcement.

Fair, Predictable Enforcement. A state program will include a coherent system for assessing compliance with permit terms and conditions. Permittees will know exactly what is expected of them. Along with clarity will come higher expectations for compliance and predictable enforcement.

Efficiency and Timeliness. With a state-run timber-related discharge permitting program, permit holders can expect their permits to be timely and current.

Alaskans Accountable to Alaskans. The mission, priorities, level of effort and performance measures of DEC's regulatory programs are subject to annual review and approval by the State Legislature. Planning and budgeting for a federally run NPDES program does not offer this opportunity for state control.

Better Access to Rule Makers and Permit Writers. A state run program will place rule makers and permit writers closer to the Alaskan public and permit holders. No longer will permits be written and enforced by federal staff unfamiliar with the State.

A Focus on Results, Not Process. The federal program focuses on consistent federal process instead of site-specific and risk-based results. The state program will focus on results.

The Costs

The Department projects a two-year (FY 2005 and FY 2006) effort to complete program development and transition work necessary to apply to EPA for timber sector NPDES primacy. Costs to develop and promulgate regulations, develop permitting procedures, secure legal and technical services, and prepare an application are anticipated at approximately \$400 thousand for each of the two-year development and transition effort. One-time federal grant funds are available to cover approximately one-half of the cost. The balance would be paid for with General Funds. Once the program is operating in FY 2007, annual costs would be about \$130 thousand per year. Permit fees would generate approximately \$30 thousand per year.

HB 546 -- Sectional Analysis

Relating to Regulation of the Discharge of Pollutants From Timber-related Activities

Section 1. Provides findings and intent language to lay foundation for assumption of NPDES primacy for timber-related discharges as a single-sector, pilot-project.

Section 2. Adds the timber NPDES program to the list of programs for which DEC is given authority in AS 44.46.025(a) to adopt user fee regulations. By operation of existing law in the AS 37.10.058(2)(B) definition of "designated regulatory service," the permits issued under a timber NPDES program would fall into the category of services for which DEC is required to adopt fixed fee regulations and can use negotiated services agreements in the interim until such regulations have been adopted.

Section 3. Authorizes assumption of partial NPDES primacy limited to timber-related activities.

Section 4. Amends permit application requirement to eliminate conflict with NPDES requirement for submittal of application at least 180 days in advance of planned operation.

Section 5. Changes notice requirements to ensure that notice can be given of the availability of a draft permit, instead of requiring publication of notice at the application receipt stage, which may precede permit development by many months. Also changes requirement for two separate publications to a requirement for "at least two," to allow greater flexibility in structuring notice of availability of draft NPDES permits. Makes conforming amendments.

Section 6. Clarifies permit duration limit and adds explicit authority for regulations to provide for administrative continuance of expiring permits.

Section 7. Amends statutory provisions on termination and modification of waste disposal permits to fill gaps in legal authority needed to satisfy NPDES primacy requirements.

Section 8. Extends existing enhanced civil penalty authority to the timber NPDES program.
(Required for primacy.)

Section 9. Extends criminal penalty provisions to the timber NPDES program (required for primacy) and makes conforming changes.

Section 10. Extends criminal fine provision authorizing payment of up to \$10,000 for each separate violation to violations of the regulations that would be adopted for the timber NPDES program.
(Required for primacy.)

Section 11. Provides for an immediate effective date to allow work on timber NPDES regulations and other efforts to secure primacy to begin without delay.

HB 546/HB 524 Amendment Explanation

- Existing law (AS 46.03.110(b)) requires the Department of Environmental Conservation to publish public notice of a waste disposal permit application or proposal in “two separate publications of a newspaper of general circulation within the general area...” In HB 546, the department initially proposed to change the minimum number of newspaper publications—that is, the number of occasions on which notice must be published in a newspaper—from “two” to “at least one.”
- On March 25, 2004, the House amended HB 524, which also referenced AS 46.03.110(b). That bill amends DEC’s existing authority for waste disposal permits, and used similar language, so that both bills originally read “at least one” publication will be required. Out of concern that publication of notice in a newspaper on only one occasion might not be adequate in some circumstances, an amendment was made to revert back to “two publications” in existing statute. The department did not object to the amendment. The amendment to HB 546, in House Judiciary Committee was made to conform the two bills.
- The questions asked during the House amendment process indicate that clarification on what is considered a newspaper of general circulation may be helpful.
 - A community in which a waste disposal operation requiring a permit (e.g., municipal landfill, industrial wastewater discharge, etc.) will occur may have only a single newspaper of general circulation or it may have several. In some very small communities it may be hard to pinpoint even one newspaper of general circulation.
 - The Alaska Supreme Court’s definition of “newspaper of general circulation” requires only that the paper contain news of general interest to the community and reaches a diverse readership. A newspaper does not have to circulate to a minimum number or percentage of residents of a community to be one of “general circulation.”
 - Under the existing AS 46.03.110(b) language, as well as the language on Section 5 of HB 524 as amended by the House, the department would have the flexibility to identify one or more newspapers of general circulation for the area affected by a proposed waste disposal operation. It could publish the notice in two issues of a single newspaper that qualifies or it could publish the notice in a single issue of two different newspapers that qualify. Either would meet the requirement.
 - This preserves the flexibility to choose to use just one or a combination of two (or more) newspapers, along with other forms of notice, to reach the public most likely to be interested in the waste disposal operation proposed.

HB 546



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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 24, 2004

The Honorable Pete Kott
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill that would allow the State of Alaska to tailor part of its water discharge program to fit state concerns and environmental features. This bill would authorize the State of Alaska to administer National Pollutant Discharge Elimination System (NPDES) permits for the timber industry. Presently, NPDES permitting, compliance, and enforcement decisions are made pursuant to federal law designed to apply generically to all 50 states. The importance and value of assuming primacy is reflected by the fact that 45 other states have assumed primacy from the Environmental Protection Agency (EPA) for administering NPDES permits.

The Department of Environmental Conservation (DEC) has the capacity and experience to successfully implement primacy for the timber industry. DEC regulates a broad universe of technological and water-quality aspects for waste and wastewater disposal activities. These activities include regulation of timber industry discharges such as state certification of NPDES permits for log transfer facilities.

To accommodate NPDES primacy assumption, this bill would amend some existing permit requirements related to application submittals, public notice and comment opportunities, the maximum term of permits, and the causes for termination or modification of an authorization. These amendments would have the added benefit of streamlining and clarifying process requirements, to some extent, for all waste treatment or disposal authorizations.

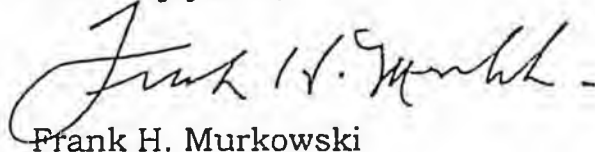
The bill also includes legislative findings and intent language, to underscore the fact that assuming partial primacy for the NPDES program for a single industry sector might facilitate future assumption of a larger part or all of the NPDES program. A single-sector pilot-project-type program would allow

The Honorable Pete Kott
March 24, 2004
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the state to expand the current level of expertise and gain valuable experience in administering the program and working to resolve program administration issues with the EPA, which retains oversight authority over state NPDES programs. Because administration of the NPDES program is complex and costly, and assumption of the full program would require DEC to develop additional expertise, it makes sense to take measured steps toward full assumption by beginning with a single industry sector.

I urge your prompt and favorable action on this measure.

Sincerely yours,

A handwritten signature in cursive script, reading "Frank H. Murkowski".

Frank H. Murkowski
Governor

Enclosure

SENATE FINANCE COMMITTEE

SIGN-IN

HB 546-POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL

NAME: Jon Tillinghast Subject/Bill No: HB 546
Co./Dept./Title: Sealaska Corp. Phone: 586-1400
Address: One Sealaska Plaza Zip: 99801
Do you wish to testify? Yes No Respond To Questions

NAME: Ernesta Ballard Subject/Bill No: HB 546
Co./Dept./Title: Commissioner Phone: _____
Address: DEC Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions