

SB

378

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FILE

SB 378

was referred to the
Senate Finance
Committee

Hearing(s) were held

The bill did not move
from Committee

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

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April 6, 2004

The Honorable Lyda Green
Co-Chair, Senate Finance Committee
State Capitol, Room 516
Juneau, Alaska 99801

The Honorable Gary Wilken
Co-Chair, Senate Finance Committee
State Capitol, Room 518
Juneau, Alaska 99801

Dear Senator's Green and Wilken:

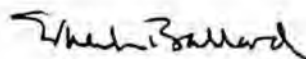
The Department of Environmental Conservation (DEC) respectfully requests your consideration in scheduling SB 378, an "Act relating to the regulation of the discharge of pollutants from timber-related activities under the National Pollutant Discharge Elimination System; relating to waste treatment and disposal permits; making conforming amendments; and providing for an effective date," before the Senate Finance Committee at your earliest convenience.

SB 378 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 that are available for two years with the balance of \$177.6 in FY 2005 and \$161.4 in FY 2006 derived from general funds. With an approved program beginning in FY 2007, costs would be covered through a combination of general funds and permit fees.

Dan Easton, Water Division Director for the Department of Environmental Conservation 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

SB 378 -- 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 37.1.058(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 one," 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.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

SB 378

PARTIAL NPDES PRIMACY FOR TIMBER-RELATED WASTEWATER DISCHARGES

SB 378 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.

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.



FRANK H. MURKOWSKI
GOVERNOR

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SB378
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March 24, 2004

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Therriault:

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 Gene Therriault

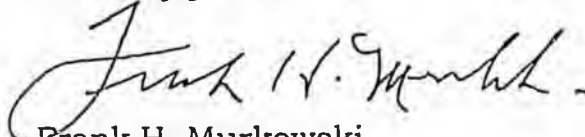
March 24, 2004

Page 2

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, appearing to read "Frank H. Murkowski".

Frank H. Murkowski
Governor

Enclosure

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 3/26/04

FURTHER: Finance

Date of 5-Day Notice: 4/1/04
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4-5-04

Resources Committee considered SENATE BILL NO. 378

SB 378 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:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

Previous

~~PREVIOUS~~ FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DEC	3/9/04	✓			1

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:

Person
Section
Chair
Witness
Other

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			✓	
<i>Joseph DeLuca</i>	✓			
<i>Ben Stevens</i>	✓			
<i>[Signature]</i>	✓			
CHAIR: <i>Scott Ogan</i>			✓	

SENATE FINANCE COMMITTEE

SIGN-IN

SB 378-POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL

NAME: Jon Tillinghast Subject/Bill No: SB 378
Co./Dept./Title: Sealaska Corp. Attorney Phone: 586-1400
Address: One Sealaska Place, Juneau Zip: 99801
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

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