

SB

91

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/21/07

FURTHER: Judiciary

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Resources Committee considered SENATE BILL NO. 91

SB 91 POLLUTANT DISCHARGE PERMITS

"An Act relating to the authority of the Department of Environmental Conservation to require certain monitoring, sampling, and reporting and to require permits for certain discharges of pollutants; relating to criminal penalties for violations of the permit program; and providing for an effective date."

and recommends:

- be replaced with SCS or CS SB91 (RES)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Index	Zero	FY

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Index	Zero	FY
DEC	1/10/07				

APPROPRIATION - no fiscal note

SIGNATURES AND LEGAL DESIGNATION	PRINTED	DO NOT SIGN	DATE	NO.
	Green	<input checked="" type="checkbox"/>		
	Measure	<input checked="" type="checkbox"/>		
	STEGMAN	<input checked="" type="checkbox"/>		
	WAGNER	<input checked="" type="checkbox"/>		
	Wielechowski			
CHAIR:	MURPHY	<input checked="" type="checkbox"/>		

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER

rec'd March 1, 2007
[Signature]
SARAH PALIN, GOVERNOR
410 Willoughby Ave., Ste 303
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PHONE: (907) 465-5065
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March 1, 2007

The Honorable Charles Huggins
Chairman, Senate Resources Committee
State Capitol, Room 119
Juneau, AK 99811

MAR 06 2007

Dear Senator Huggins:

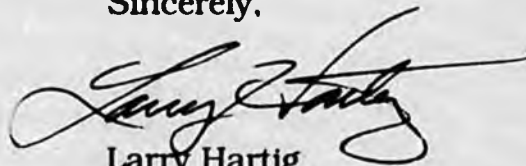
The Department of Environmental Conservation (DEC) respectfully requests a hearing for SB 91 "An Act relating to the authority of DEC to require certain monitoring, sampling, and reporting and to require permits for certain discharges of pollutants."

In 2005, the Alaska legislature passed legislation which directed DEC to take all actions necessary to assume the National Pollutant Discharge Elimination System (NPDES) wastewater discharge permitting authority from the Environmental Protection Agency (EPA). The program includes responsibility for issuing and monitoring compliance with the permits.

EPA approval of a state NPDES Program requires that the state have comprehensive statutory authority to implement the program. EPA has identified a number of areas where current state statutes need to be amended to complete the statutory underpinnings for an Alaska NPDES program. Our attorneys agree with EPA's assessment and conclusions in this regard. SB 91 addresses all shortcomings in the current statutes. Correcting the identified statutory shortcomings is a prerequisite to further progress towards NPDES primacy for Alaska.

I have enclosed several documents for your information as you consider this important piece of legislation, including Governor Palin's transmittal letter and a copy of the Department's Annual Report to the Legislature on the status of the primacy effort. If you require further information, please contact me or Linda Hay, DEC's Legislative Liaison, at 465-5290.

Sincerely,



Larry Hartig
Commissioner

Enclosures

1. Gavel In & Call to order: Note time - Note members present

2. Presentation: Natural Gas Pricing & Trends

N.Y. Ellis Island

Marianne Kah, Chief Economist, ConocoPhillips Inc, Houston

a. Ask presenter to place herself on the the record

3. SB 91 - Pollutant Discharge Permits

a. Administration speaking to the bill - will offer amendment

DEC Commissioner Larry Hartig (brief intro of legislation)

Lynn Kent, Director, Div. of Water

Cam Leonard, Assistant Attorney General

moved out of amend

b. Public Testimony: Set time limit

c. Move bill? Judiciary is next cmte of referral

4. SB 44 - Approp: Fire Island Wind Farm

a. SPONSOR: Senator Lesil McGuire and/or Marit Carlson-Van Dort

b. Public Testimony - Set time limit

heard & held

- more signed up to hear

Meeting Adjourned @ _____

SARAH PALIN
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February 20, 2007

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

Dear President Green:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the authority of the Department of Environmental Conservation (department) to require certain monitoring, sampling, and reporting and to require permits for certain discharges of pollutants, and to criminal penalties for violations of the permit program.

Under the federal Clean Water Act, discharges of pollutants to surface waters require a permit either from the United States Environmental Protection Agency (EPA), or from a state that has received approval from the EPA to administer the permitting program. Alaska has applied to the EPA for approval of a state permitting program, and the EPA is currently reviewing Alaska's application. Under federal law, the EPA cannot approve a state program unless it is as stringent as the EPA's program. This bill would revise certain provisions of law governing the department's permitting and enforcement authority, in order to align the state's permit requirements with the EPA's. The changes are all designed to help facilitate final approval by the EPA of Alaska's program.

Three of the proposed changes would involve current exclusions from the requirement of getting a discharge permit. The first exclusion is for sewage. Current state law provides that the discharge of sewage into a "sewerage system" does not need a permit. Federal law exempts only discharges of sewage into "publicly owned treatment works." The difference is that the federal exemption is for sewage going to a place where it will receive treatment; while the state exemption is broader and needs to be amended in order to reflect a treatment requirement. The solution offered by this bill would be simply to change the state exemption so that it matches the EPA's: only sewage discharged to a publicly owned treatment works would be exempt from the permit requirement.

The Honorable Lyda Green
February 20, 2007
Page 2

The second exclusion would be for discharges that are incidental to certain drilling and trenching activities. Current state law exempts those discharges from the permit requirement if they don't result in a discharge "directly into any surface water." To align state law with the federal permit program, that phrase would be changed by deleting the word "directly" and changing "surface water" to "waters of the United States," a term defined identically in state and federal regulations.

The third and final exclusion is for the discharge of munitions on active ranges. The federal definition of "pollutant" at 40 C.F.R. 122.2 includes munitions, so a permit is required for their discharge to waters of the United States. Yet state law exempts the discharge of munitions from the permit requirement. This bill would limit the state's munitions exemption to discharges that do not enter waters of the United States, again to bring state law into line with federal law.

The bill includes three other provisions. One would give the department the authority to require site sampling and reporting of results analogous to what the EPA exercises under sec. 308 of the Clean Water Act. Another clarifies that the department's permitting authority extends to all "pollutants" listed under federal law. The third provision also follows federal law (33 U.S.C. 1319(c)) by allowing the department to pursue criminal enforcement for negligent violations of any aspect of the state permit program.

This bill is an essential component of the state's effort to receive primacy from the EPA in the permitting of discharges in our state. I support continuing forward with efforts to receive primacy, and I urge your prompt and favorable action on this measure.

Sincerely,

Sarah Palin
Governor

**Department of Environmental Conservation
NPDES Primacy
Overview and Status - February 2007**

Background

Section 402 of the Clean Water Act (CWA) requires that all discharges to surface waters be permitted under the National Pollutant Discharge Elimination System (NPDES) permit program.

The CWA intends for states to implement (to have "primacy" for) the NPDES program with the Environmental Protection Agency (EPA) acting in an oversight role.

Forty-five states have primacy for the NPDES program. The four other states, aside from Alaska, that do not have NPDES primacy are Idaho, New Mexico, New Hampshire and Massachusetts.

EPA is the NPDES authority in Alaska. DEC plays a secondary role "certifying" that EPA permits meet state water quality standards and issuing state permits for very small discharges that EPA cannot get to.

In 2005, the Alaska legislature (SB 110) directed DEC to take all actions necessary to assume the NPDES discharge permitting authority including responsibility for issuing and monitoring compliance with the permits.

NPDES Program Components

There are six components to the NPDES permit program. The State intends to assume responsibility for the first five.

1. *NPDES Permitting* which amounts to developing, issuing, modifying and renewing the permits.
2. *Stormwater Program* which consists of permitting stormwater discharges from construction and industrial activities as well as permitting the stormwater collected and discharged by large municipal storm sewer systems.
3. *Compliance and Enforcement* which includes monitoring compliance with permit terms and conditions and taking enforcement action when necessary.
4. *Federal Facilities* which involves permitting of discharges from federally-owned facilities, such as Department of Defense installations.
5. *Pre-treatment Program* which consists of regulating highly toxic discharges into sewerage systems.
6. *Biosolids Management Program* which regulates the disposal of sewage treatment byproducts, or "sludge."

**Department of Environmental Conservation
NPDES Primacy
Overview and Status - February 2007**

The Biosolids component is a small component of the NPDES program in Alaska. States have the option whether to assume primacy for this part of the program.

NPDES Primacy Application

The application to assume NPDES primacy includes:

1. A letter from the Governor requesting approval of the state's application;
2. A program narrative that describes how the state will issue permits, ensure permit compliance, perform enforcement, fund the program, track issued permits and enforcement actions, and submit periodic reports to EPA;
3. An Attorney General statement of legal authority that confirms the state's laws and regulations are sufficient to implement the NPDES program;
4. A signed Memorandum of Agreement (MOA) between the state and EPA that establishes timeframes for the state to assume authority for the program components over a five-year period; and
5. A compliance assurance agreement developed between the State and EPA that describes the methods the State will employ to assure that permittees comply with the terms and conditions of their permits.

Application Status

DEC submitted the NPDES primacy application to EPA by July 1, 2006, as directed by the legislature.

EPA provided an extensive list of comments on the application on October 31, 2006. It was not until EPA reviewed the Department's full application submission that they identified several statutory shortcomings that must be corrected in order to demonstrate that the Department has the necessary authority to implement the NPDES program. Legislative action on these statutory amendments is being pursued during the current legislative session (HB 149 and SB 91).

DEC is also making revisions to the program description, Attorney General's statement, MOA, and regulations in response to EPA comments.

DEC intends to submit a revised application to EPA this summer, and anticipates EPA program approval by the end of the calendar year.

Sectional Analysis of SB 91/HB 149

Sec. 1.

Gives ADEC authority equivalent to that of EPA under sec. 308 of the Clean Water Act (CWA), to require monitoring, sampling and reporting.

Sec. 2.

Broadens the scope of ADEC's permitting authority to cover discharges of waste material as well as disposal. Also deletes an exemption for domestic sewage, which is dealt with elsewhere (see sec. 4 of bill, amending AS 46.03.100(e)(1)).

Sec. 3.

Clarifies that it is up to ADEC what form of authorization to require for any given discharge or activity.

Sec. 4.

This section changes three current exemptions from the permit requirement, in all cases to comply with the scope of the federal NPDES program. The exemptions are for domestic sewage, discharges incidental to drilling and trenching, and munitions.

Sec. 5.

Expands ADEC's authority to include monitoring and reporting requirements in APDES permits to be equivalent to EPA's authority under the CWA.

Secs. 6 & 7.

Clarify that the state term "waste material" covers "pollutants" as defined under federal law.

Sec. 8.

This follows the CWA in making negligent violations of the NPDES permit program enforceable through criminal misdemeanor charges.

Sec. 9.

Provides for an immediate effective date, to facilitate timely program approval by EPA.

NPDES Program Approval Criteria

Federal law sets out the criteria that EPA uses in reviewing and approving state permit programs for discharges of pollutants into surface waters. The criteria are listed broadly in section 402(b) of the federal Clean Water Act (codified at 33 U.S.C. § 1342(b)). More detailed approval criteria are found in EPA's regulations, at 40 CFR Part 123. A brief summary of both the statutory and regulatory approval criteria follows.

Under the Clean Water Act (CWA), a state seeking approval of its NPDES program must have authority to do the following¹:

- issue permits that comply with the CWA, are limited to five years duration, can be terminated or modified for cause, and control disposal into wells;
- enter onto the premises of regulated facilities to inspect and monitor, and require reports as provided in CWA § 308;
- provide public notice and opportunity to comment on permit applications;
- ensure that the EPA Administrator also gets notice of each application;
- ensure that it won't issue a permit that would impair anchorage or navigation in navigable waters;
- enforce permits and the program through civil and criminal penalties;
- regulate publicly owned treatment works (POTWs, for treatment of domestic wastewater) in compliance with the CWA; and
- ensure that industrial users of POTWs also comply with CWA requirements.

¹ Note: this list is a simplified summary of the detailed provisions found in Clean Water Act section 402(b)(1)-(9).

EPA has promulgated regulations, and also issued guidance, that together establish very detailed requirements for a state permit program. The regulations are at 40 CFR Part 123. Alaska's on-going efforts to obtain NPDES primacy have been largely guided by the regulatory criteria set out there, and the discussions between ADEC and EPA over the details of the state's proposed program routinely return to the issue of what federal law requires.

While a comprehensive summary of those requirements is not practical, given their complexity, one over-riding requirement is that the state program must be as stringent as the federal program. A state cannot cut corners on any matter subject to a regulatory requirement. In effect this limits the flexibility a state has when it chooses to implement its own permit program.

All of the provisions of HB 149/SB 91 are designed to satisfy EPA's stated concerns that current state law is not as stringent as federal law on certain specific topics. ADEC and the Department of Law will be available to answer questions that legislators may have about any of the provisions of this bill.

STATE OF ALASKA

**DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER**

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January 24, 2007

The Honorable Lyda Green
President of the Senate
Alaska State Legislature
State Capitol, Room 516
Juneau, Alaska 99801

The Honorable John Harris
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, Alaska 99801

Dear President Green and Speaker Harris:

The 24th Alaska Legislature passed Senate Bill 110 during its 1st regular session in 2005 directing the Department of Environmental Conservation (DEC) to seek primacy from the Environmental Protection Agency (EPA) for the National Pollutant Discharge Elimination System (NPDES) wastewater discharge program. Governor Murkowski signed this legislation into law on August 27, 2005 with an effective date of November 25, 2005. Section 6 of the bill reads as follows:

REPORT TO THE LEGISLATURE. Until full authority for administering the National Pollutant Discharge Elimination System has been transferred to the Department of Environmental Conservation, the Department of Environmental Conservation shall submit, within 10 days after the date the Legislature convenes in regular session, a report to both houses of the Legislature and the governor that includes the following information:

- (1) the department's progress in preparing and submitting its application to the United States Environmental Protection Agency by June 30, 2006;
- (2) a description of the progress by the United States Environmental Protection Agency in reviewing the state's application and the expected or actual date and contents of the agency's approval; and
- (3) the progress made by the Department of Environmental Conservation and the United States Environmental Protection Agency during the five-year National Pollutant Discharge Elimination System program transition period, the identification of the program responsibilities that have been transferred to the Department of Environmental Conservation and the program

responsibilities retained by the United States Environmental Protection Agency, whether the transition is proceeding on schedule, and identification of relevant statutory, regulatory, or financial impediments to obtaining National Pollutant Discharge Elimination System primacy as intended by the Legislature.

This letter is the Department's second progress report to the Legislature. The first progress report was transmitted on January 9, 2006.

As required by Section 5 of SB 110, the Department has continued to confer with the NPDES Primacy Work Group, which includes representatives of affected permittees. The Work Group met three times and participated in one teleconference during the last calendar year, providing key assistance in the design of the APDES program, regulations, and primacy application development.

The Work Group's members are listed at the DEC website at: http://www.dec.state.ak.us/water/npdes/work_group.htm, along with agendas, meeting summaries, and other documents germane to the Work Group process. All Work Group meetings have been publicly noticed and open to the public with a specific allocation of time on the agenda for public comment. In addition to the Work Group, DEC met with staff from other State agencies to provide updates on our progress toward NPDES assumption. Staff also presented status reports at conferences attended by affected permittees.

Section 5 of SB 110 provided legislative direction to the Department to submit the NPDES primacy application to the U.S. Environmental Protection Agency (EPA) before July 1, 2006. The Department completed a major element of the primacy application by adopting program regulations on June 28, 2006. The complete primacy application was submitted to EPA on time, on June 29, 2006.

EPA provided an extensive list of comments on our application on October 31, 2006 and met with Department staff in mid November 2006 to discuss and clarify those comments. The Department and EPA have developed a work plan and process to address all EPA comments and to make any necessary revisions to the NPDES application components. The Department's goal is to resubmit the NPDES application to EPA by June 15, 2007.

Despite EPA opportunity to review SB 110 language and prior legislative direction regarding NPDES primacy (HB 546 in 2004), it was not until EPA reviewed the Department's full June 29, 2006 application submission that they identified what EPA believes are several statutory shortcomings that must be corrected in order to demonstrate that the Department has the necessary authority to implement the NPDES program. Legislative action on these statutory amendments will be pursued during the current legislative session.

Dear President Green and
Speaker Harris

3

January 24, 2007

Notwithstanding EPA's opportunities to review and provide comment on the pre-public and public comment versions of the Department's draft regulations for the NPDES program, EPA responded to the state's application with several comments that will also require revisions to the program regulations that were adopted on June 28, 2006. The Department intends to propose these regulatory changes for public comment this spring. The revised regulations must be adopted prior to re-submitting the primacy application to EPA.

There are currently no financial impediments to obtaining NPDES primacy.

Once EPA determines that the application is complete and meets all federal requirements for a state-run NPDES program, they will initiate a public review and consultation process. The Department expects that EPA can complete this process and issue program approval by the end of December 2007.

Concurrent with developing the NPDES primacy application, the Department has successfully implemented several components of its capacity development plan to ensure the Department has the staffing and training to implement the NPDES program when authority is transferred from EPA. For example, ten of the fourteen new positions allocated to the Department as part of SB 110 have been filled, and over 35 staff have attended two EPA courses - the NPDES Permit Writers' course and EPA's Basic Inspector course. A third course, the Water Quality Standards Academy, is scheduled in February 2007.

As noted in the January 9, 2006 Report to the Legislature, the case proceedings in *Defenders of Wildlife v. EPA*, 420 F.3d 946 (9th Cir. 2005), in which the United States Ninth Circuit Court of Appeals reversed EPA's decision to grant NPDES primacy to the State of Arizona, is still ongoing. In this case, the plaintiffs alleged that EPA had failed to consider, pursuant to the endangered Species Act (ESA), the possible harm that could be caused to habitat and wildlife by Arizona's assumption of primacy. The Ninth Circuit Court reversed and remanded the primacy-granting decision to EPA with instructions to weigh Arizona's application under the ESA. In the fall of 2006, through the Department of Justice, EPA petitioned for Supreme Court review of the Ninth Circuit's decision. The State of Alaska filed an *amicus* brief (i.e., "friend of the court") in support of EPA's petition. In January 2007, the Supreme Court decided to hear the case. While awaiting a Supreme Court decision, we continue to prepare the NPDES application as if EPA consultation under the ESA will not be required to approve our application. If, however, the Supreme Court decides that EPA must conduct an ESA consultation when considering approval of Alaska's NPDES program, it could cause considerable delays in EPA's approval action. EPA would have to conduct ESA consultation in a unique arena - one where they will have to consider potential impacts to endangered species of future state permits not yet issued or even applied for.

Dear President Green and
Speaker Harris

4

January 24, 2007

The Department looks forward to working with you on legislation to ensure full authority to implement the NPDES program and is prepared to answer any questions you may have about our progress toward primacy.

Sincerely,



Mike Maher
Acting Commissioner

cc: John Bitney, Legislative Director, Office of the Governor
Kirsten Waid, Senate Secretary, Alaska State Legislature
Suzi Lowell, House Chief Clerk, Alaska State Legislature

CS FOR SENATE BILL NO. 91(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the authority of the Department of Environmental Conservation to**
2 **require certain monitoring, sampling, and reporting and to require permits for certain**
3 **discharges of pollutants; relating to criminal penalties for violations of the permit**
4 **program; and providing for an effective date."**

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

6 *** Section 1. AS 46.03.020 is amended to read:**

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

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

10 (2) review and appraise programs and activities of state departments
11 and agencies in light of the policy set out in AS 46.03.010 for the purpose of
12 determining the extent to which the programs and activities are contributing to the
13 achievement of that policy and to make recommendations to the departments and
14 agencies, including environmental guidelines;

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(3) consult with and cooperate with

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

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

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

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

(6) at reasonable times, enter and inspect with the consent of the owner or occupier any property or premises to investigate either actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with a regulation that may be adopted under AS 46.03.020 - 46.03.040; information relating to secret processes or methods of manufacture discovered during investigation is confidential;

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

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

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

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

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

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

1 (C) protection of public water supplies by establishing
2 minimum drinking water standards, and standards for the construction,
3 improvement, and maintenance of public water supply systems;

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

5 (E) collection and disposal of garbage, refuse, and other
6 discarded solid materials from industrial, commercial, agricultural, and
7 community activities or operations;

8 (F) control of pesticides;

9 (G) other purposes as may be required for the implementation
10 of the policy declared in AS 46.03.010;

11 (H) handling, transportation, treatment, storage, and disposal of
12 hazardous wastes;

13 (11) inspect the premises of sellers and suppliers of paint, vessels, and
14 marine and boating supplies, and take other actions necessary to enforce
15 AS 46.03.715;

16 (12) notwithstanding any other provision of law, take all actions
17 necessary to receive authorization from the administrator of the United States
18 Environmental Protection Agency to administer and enforce a National Pollutant
19 Discharge Elimination System program in accordance with 33 U.S.C. 1342 (sec. 402,
20 Clean Water Act), 33 U.S.C. 1345 (sec. 405, Clean Water Act), 40 C.F.R. Part 123,
21 and 40 C.F.R. Part 403, as amended;

22 (13) require the owner or operator of a facility to undertake
23 monitoring, sampling, and reporting activities described in 33 U.S.C. 1318 (sec.
24 308, Clean Water Act).

25 * Sec. 2. AS 46.03.100(a) is amended to read:

26 (a) A person may not construct, modify, or operate a sewerage system or
27 treatment works or take any action [DISPOSE OF OR CONDUCT AN
28 OPERATION] that results in the disposal or discharge of solid or liquid waste
29 material or heated process or cooling water into the waters or onto the land of the state
30 without prior authorization from the department. [DEPARTMENT
31 AUTHORIZATION SHALL BE OBTAINED FOR DIRECT DISPOSAL AND FOR

1 DISPOSAL, OTHER THAN OF DOMESTIC SEWAGE, INTO PUBLICLY
2 OWNED OR OPERATED SEWERAGE SYSTEMS.]

3 * Sec. 3. AS 46.03.100(b) is amended to read:

4 (b) Prior authorization may be provided by the department, in its discretion.
5 [IS PROVIDED] through one or a combination of the following:

6 (1) an individual permit issued for a specific facility or disposal
7 activity;

8 (2) a general permit issued on a statewide, regional, or other
9 geographical basis for a category of disposal activities that the commissioner, using
10 information available when the permit is developed, determines are similar in nature
11 and will comply with applicable environmental quality standards established under
12 this title;

13 (3) regulations adopted by the department authorizing a category of
14 disposal without requiring a permit and establishing specific siting or operational
15 requirements, discharge limits, or best management practices for the disposal
16 category;

17 (4) designation and approval of a plan as described under (c) of this
18 section;

19 (5) an integrated waste management and disposal authorization as
20 described in (d) of this section.

21 * Sec. 4. AS 46.03.100(e) is amended to read:

22 (e) This section does not apply to

23 (1) a person discharging only domestic sewage into a publicly owned
24 treatment works [SEWERAGE SYSTEM];

25 (2) disposals subject to regulation under AS 31.05.030(e)(2);

26 (3) injection projects permitted under AS 31.05.030(h);

27 (4) discharges of solid or liquid waste material or water discharges
28 from the following activities if the discharge is incidental to the activity and the
29 activity does not produce a discharge from a point source, as that term is defined in
30 regulations adopted under this chapter, [DIRECTLY] into any waters [SURFACE
31 WATER] of the United States [STATE]:

1 (A) mineral drilling, trenching, ditching, and similar activities;

2 (B) landscaping;

3 (C) water well drilling and geophysical drilling; or

4 (D) drilling, ditching, trenching, and similar activities
5 associated with facility construction and maintenance or with road or other
6 transportation facility construction and maintenance; however, the exemption
7 provided by this subparagraph does not relieve a person from obtaining a prior
8 authorization under this section if the drilling, ditching, trenching, or similar
9 activity will involve the removal of the groundwater, stormwater, or
10 wastewater runoff that has accumulated and is present at an excavation site for
11 facility, road, or other transportation construction or maintenance and a prior
12 authorization is otherwise required by this section;

13 (5) bilge pumping, unless the bilge product pumped may be expected
14 to yield an oily sludge, emulsion, or sheen on the surface of any water of the state;

15 (6) cooling water discharges from a boat or vessel into any surface
16 water of the state; or

17 (7) the firing or other use of munitions in training activities conducted
18 on active ranges, including active ranges operated by the United States Department of
19 Defense or a United States military agency, unless it results in a discharge into
20 waters of the United States.

21 * Sec. 5. AS 46.03.100(h) is amended to read:

22 (h) The program developed to issue permits by the department to authorize
23 discharge of pollutants into surface waters and submitted to the United States
24 Environmental Protection Agency for approval under 33 U.S.C. 1342 (sec. 402, Clean
25 Water Act) shall include the monitoring and reporting requirements included in the
26 permits, limited to those requirements authorized [MANDATED] by law, including
27 33 U.S.C. 1318 (sec. 308, Clean Water Act), and any legal settlements, and those
28 necessary to ascertain compliance with the effluent limitations contained in the permit
29 and with state water quality standards.

30 * Sec. 6. AS 46.03.100 is amended by adding a new subsection to read:

31 (m) For purposes of the permit program authorized by the United States

1 Environmental Protection Agency under 33 U.S.C. 1342 (sec. 402, Clean Water Act),
2 "waste material" includes pollutants as defined in 33 U.S.C. 1362(6) (sec. 502(6),
3 Clean Water Act).

4 * Sec. 7. AS 46.03.110 is amended by adding a new subsection to read:

5 (f) The standards for determining waste material in AS 46.03.100(m) apply to
6 this section.

7 * Sec. 8. AS 46.03.790 is amended by adding a new subsection to read:

8 (i) Notwithstanding (a) and (d) of this section, a person is guilty of a class A
9 misdemeanor if the person negligently

10 (1) violates a regulation adopted by the department under
11 AS 46.03.020(12);

12 (2) violates a permit issued under the program authorized by
13 AS 46.03.020(12);

14 (3) fails to provide information or provides false information required
15 by a regulation adopted under AS 46.03.020(12);

16 (4) makes a false statement, representation, or certification in an
17 application, notice, record, report, permit, or other document filed, maintained, or used
18 for purposes of compliance with a permit issued under or a regulation adopted under
19 AS 46.03.020(12); or

20 (5) renders inaccurate a monitoring device or method required to be
21 maintained by a permit issued under or a regulation adopted under AS 46.03.020(12).

22 * Sec. 9. This Act takes effect immediately under AS 01.10.070(c).

moved by Sen. Green

4-11-07
SGL ordered
5:30 PM

passed

AMENDMENT

OFFERED IN SENATE RESOURCES

BY

TO: SB 91

Amendment #1

Page 4, line 4:

Following "pollutants":

Delete "listed"

Insert "as defined"

Amendment #2

Page 4, line 10:

Following "(a)"

Insert "and (d)"

SENATE BILL NO. 91

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/21/07

Referred: Resources, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the authority of the Department of Environmental Conservation to**
2 **require certain monitoring, sampling, and reporting and to require permits for certain**
3 **discharges of pollutants; relating to criminal penalties for violations of the permit**
4 **program; and providing for an effective date."**

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

6 *** Section 1. AS 46.03.020 is amended by adding a new paragraph to read:**

7 (13) require the owner or operator of a facility to undertake
8 monitoring, sampling, and reporting activities described in 33 U.S.C. 1318 (sec. 308,
9 Clean Water Act).

10 *** Sec 2. AS 46.03.100(a) is amended to read:**

11 (a) A person may not construct, modify, or operate a sewerage system or
12 treatment works or take any action [DISPOSE OF OR CONDUCT AN
13 OPERATION] that results in the disposal or discharge of solid or liquid waste
14 material or heated process or cooling water into the waters or onto the land of the state

1 without prior authorization from the department. [DEPARTMENT
2 AUTHORIZATION SHALL BE OBTAINED FOR DIRECT DISPOSAL AND FOR
3 DISPOSAL, OTHER THAN OF DOMESTIC SEWAGE, INTO PUBLICLY
4 OWNED OR OPERATED SEWERAGE SYSTEMS.]

5 * Sec. 3. AS 46.03.100(b) is amended to read:

6 (b) Prior authorization may be provided by the department, In its discretion,
7 [IS PROVIDED] through one or a combination of the following:

8 (1) an individual permit issued for a specific facility or disposal
9 activity,

10 (2) a general permit issued on a statewide, regional, or other
11 geographical basis for a category of disposal activities that the commissioner, using
12 information available when the permit is developed, determines are similar in nature
13 and will comply with applicable environmental quality standards established under
14 this title;

15 (3) regulations adopted by the department authorizing a category of
16 disposal without requiring a permit and establishing specific siting or operational
17 requirements, discharge limits, or best management practices for the disposal
18 category;

19 (4) designation and approval of a plan as described under (c) of this
20 section;

21 (5) an integrated waste management and disposal authorization as
22 described in (d) of this section.

23 * Sec. 4. AS 46.03.100(e) is amended to read:

24 (e) This section does not apply to

25 (1) a person discharging only domestic sewage into a publicly owned
26 treatment works [SEWERAGE SYSTEM];

27 (2) disposals subject to regulation under AS 31.05.030(e)(2);

28 (3) injection projects permitted under AS 31.05.030(h);

29 (4) discharges of solid or liquid waste material or water discharges
30 from the following activities if the discharge is incidental to the activity and the
31 activity does not produce a discharge from a point source, as that term is defined in

1 regulations adopted under this chapter, [DIRECTLY] into any waters [SURFACE
2 WATER] of the United States [STATE]:

3 (A) mineral drilling, trenching, ditching, and similar activities;

4 (B) landscaping;

5 (C) water well drilling and geophysical drilling; or

6 (D) drilling, ditching, trenching, and similar activities
7 associated with facility construction and maintenance or with road or other
8 transportation facility construction and maintenance; however, the exemption
9 provided by this subparagraph does not relieve a person from obtaining a prior
10 authorization under this section if the drilling, ditching, trenching, or similar
11 activity will involve the removal of the groundwater, stormwater, or
12 wastewater runoff that has accumulated and is present at an excavation site for
13 facility, road, or other transportation construction or maintenance and a prior
14 authorization is otherwise required by this section;

15 (5) bilge pumping, unless the bilge product pumped may be expected
16 to yield an oily sludge, emulsion, or sheen on the surface of any water of the state;

17 (6) cooling water discharges from a boat or vessel into any surface
18 water of the state; or

19 (7) the firing or other use of munitions in training activities conducted
20 on active ranges, including active ranges operated by the United States Department of
21 Defense or a United States military agency, unless it results in a discharge into
22 waters of the United States.

23 * Sec. 5. AS 46.03.100(h) is amended to read:

24 (h) The program developed to issue permits by the department to authorize
25 discharge of pollutants into surface waters and submitted to the United States
26 Environmental Protection Agency for approval under 33 U.S.C. 1342 (sec. 402, Clean
27 Water Act) shall include the monitoring and reporting requirements included in the
28 permits, limited to those requirements authorized [MANDATED] by law, including
29 33 U.S.C. 1318 (sec. 308, Clean Water Act), and any legal settlements, and those
30 necessary to ascertain compliance with the effluent limitations contained in the permit
31 and with state water quality standards.

1 * **Sec. 6.** AS 46.03.100 is amended by adding a new subsection to read:

2 (m) For purposes of the permit program authorized by the United States
3 Environmental Protection Agency under 33 U.S.C. 1342 (sec. 402, Clean Water Act),
4 "waste material" includes pollutants listed in 33 U.S.C. 1362(6) (sec. 502(6), Clean
5 Water Act).

6 * **Sec. 7.** AS 46.03.110 is amended by adding a new subsection to read:

7 (f) The standards for determining waste material in AS 46.03.100(m) apply to
8 this section.

9 * **Sec. 8.** AS 46.03.790 is amended by adding a new subsection to read:

10 (i) Notwithstanding (a) of this section, a person is guilty of a class A
11 misdemeanor if the person negligently

12 (1) violates a regulation adopted by the department under
13 AS 46.03.020(12);

14 (2) violates a permit issued under the program authorized by
15 AS 46.03.020(12);

16 (3) fails to provide information or provides false information required
17 by a regulation adopted under AS 46.03.020(12);

18 (4) makes a false statement, representation, or certification in an
19 application, notice, record, report, permit, or other document filed, maintained, or used
20 for purposes of compliance with a permit issued under or a regulation adopted under
21 AS 46.03.020(12); or

22 (5) renders inaccurate a monitoring device or method required to be
23 maintained by a permit issued under or a regulation adopted under AS 46.03.020(12).

24 * **Sec. 9.** This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 91
(S) Publish Date: 2/21/07

Revision Date/Time (Note if correction): _____ Dept. Affected: Dept of Environmental Conservation
Title: "An Act relating to the authority of the Dept. of Env. Cons. to require certain monitoring, sampling." RDU: Division of Water
Component: Water Quality
Sponsor: Rules Committee
Requester: Governor Component No. 2062

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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--Do not abbreviate)	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 (FY2007) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

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 would align the state's wastewater permitting and compliance requirements with the Environmental Protection Agency's (EPA) in order to make Alaska's program approvable by EPA. This bill will have no fiscal impact.

Prepared by: Lynn J. Tomich Kent, Director Phone (907) 269-6281
Division: Water Date/Time 1/10/07 9:00 AM
Approved by: Mike Maher - Acting Commissioner Date _____
Agency: Department of Environmental Conservation