

HB

185

<TARGET><BILL>HB 185</BILL><SUBJECT>HB
185</SUBJECT><COMM>HRES27</COMM></TARGET>

CS FOR HOUSE BILL NO. 185(RES)

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SEVENTH LEGISLATURE - FIRST SESSION**

BY THE HOUSE RESOURCES COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVE TAMMIE WILSON

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to an exemption from authorizations that may be required by the**
2 **Department of Environmental Conservation for the firing or other use of munitions on**
3 **active ranges."**

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

5 *** Section 1.** AS 46.03.100(e) is amended to read:

6 (e) This section does not apply to

7 (1) a person discharging only domestic sewage into a publicly owned
8 treatment works;

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

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

11 (4) discharges of solid or liquid waste material or water discharges
12 from the following activities if the discharge is incidental to the activity and the
13 activity does not produce a discharge from a point source, as that term is defined in
14 regulations adopted under this chapter, into any waters of the United States:

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 or service, unless otherwise regulated
20 under 33 U.S.C. 1251 - 1376 (Federal Water Pollution Control Act), as amended
21 [IT RESULTS IN A DISCHARGE INTO WATERS OF THE UNITED STATES].

27-LS0506E
Bullard
3/14/11

CS FOR HOUSE BILL NO. 185()
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TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY

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

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

(7) the firing or other use of munitions in training activities conducted on active ranges, including active ranges operated by the United States Department of Defense or a United States military agency or service, unless otherwise regulated under 33 U.S.C. 1251 - 1376 (Federal Water Pollution Control Act), as amended [IT RESULTS IN A DISCHARGE INTO WATERS OF THE UNITED STATES].

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version 27-LS0506\B
 () Publish Date _____

Identifier (file name) HB185-DEC-WQ-03-11-11
 Title Exempt Discharges from Use of Munitions Dept. Affected Environmental Conserv
 Appropriation Division of Water
 Allocation Water Quality
 Sponsor Representative T. Wilson
 Requester House Resources Committee OMB Component Number 2062

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services	0.0		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	0.0
Services	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Commodities	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Capital Outlay	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Grants	0.0		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	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES								
CHANGE IN REVENUES								

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0		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	0.0
1004 GF	0.0		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	0.0
1037 GF/Mental Health	0.0		0.0	0.0	0.0	0.0	0.0	0.0
Other (please identify)	0.0		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	0.0	0.0

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by Lynn J. Tomich Kent, Director
 Division Water
 Approved by Dan Easton
Deputy Commissioner

Phone (907) 269-7599
 Date/Time 3/11/11 8:00 AM
 Date 3/11/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB 185

Analysis

There are no fiscal impact on the Department of Environmental Conservation's Water programs from this proposed legislation.

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

**DIVISION OF WATER
DIRECTOR'S OFFICE**

SEAN PARNELL, GOVERNOR

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Anchorage, AK 99501-2617
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March 21, 2011

The Honorable Paul Seaton
House of Representatives
Alaska State Capitol, Room 102
Juneau, AK 99801-1182

The Honorable Eric Feige
House of Representatives
Alaska State Capitol, Room 126
Juneau, AK 99801-1182

Dear Representatives Seaton and Feige:

At the March 18 House Resources Committee meeting on CSHB 185, this Department and the Department of Law were asked to provide additional information to the committee. The Department has conferred with the Department of Law on the following information.

What does the Federal Water Pollution Control Act regulate?

The federal Clean Water Act (CWA) prohibits the discharge of pollutants, which includes munitions, into navigable waters without a permit. "Navigable waters" are defined as "waters of the United States, including the territorial seas." "Waters of the United States" are defined in EPA regulation as follows:

40 CFR 230.3(s) The term *waters of the United States* means:

- (1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) All interstate waters including interstate wetlands;
- (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
 - (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (iii) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (4) All impoundments of waters otherwise defined as waters of the United

States under this definition;

(5) Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;

(6) The territorial sea;

(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (s)(1) through (6) of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

The types of waters that are included in "waters of the United States" have been the subject of much litigation nationwide and its interpretation is continually in a state of flux as courts around the country interpret it on a case-by-case basis.

What is the old state policy vs. the "new" state policy regarding permitting of munitions discharges?

Alaska Statute (AS) 46.03.100 prohibits the discharge of solid or liquid waste to the lands and waters of the state. It has been longstanding state policy via AS 46.03.100(e)(7) to exempt firing ranges from these state permitting requirements.

The CWA, however, requires a permit for discharges of munitions to "waters of the United States" and in order for the Department to receive primacy to issue wastewater discharge permits under the CWA, we had to resolve the discrepancy between the CWA requirement and the longstanding state policy to exempt firing ranges from permit requirements. We did this in a change to AS 46.03.100(e)(7), passed in 2008 (sec. 4, ch. 17, SLA 2008), by adding a phrase to the existing state permitting exemption for firing ranges -- ". . . unless it results in a discharge into waters of the United States." While this change made Alaska's statutes consistent with the requirements of the CWA and was ultimately approved by the EPA in the state's request for primacy, it has the potential to cause the state to be more restrictive (i.e. more stringent) than the CWA or longstanding state policy. This is because the Department of Defense has been working with EPA on the federal requirement to obtain a permit for the discharge of munitions into waters of the United States. So, if that requirement changes, no CWA permit is required, and the state statute remains as is, then the state statute would still require a munitions range operator to obtain a permit, thus exceeding the requirements of the CWA. To avoid that scenario, the goal of CSHB 185 is to match the federal requirements by citing to the CWA.

CSHB 185 would only require the state to issue a permit if it is required to do so under the CWA. It is a subtle, but important change that will retain the state policy to exempt ranges from permitting requirements for munitions discharges to the

land and for discharges to waters that are not required to have a permit under the CWA.

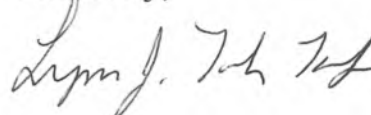
Are non-military training ranges covered by the permit exemption of AS 46.03.100(e)(7)?

Yes - all firing ranges used for training activities on active ranges are exempt from state permitting requirements unless use of the ranges results in a discharge into waters of the United States. CSHB 185 will also exempt all firing ranges used for training activities on active ranges unless the discharge requires a permit under the Clean Water Act.

What is the definition of "active ranges?"

A military representative described "active ranges" from their perspective during the hearing. There is no legal definition of "active range" in state statutes, however, from a permitting perspective an "active range" is one where there are discharges occurring - the range is in use, or will be in use during the 5-year life of a permit (if a permit is required).

Sincerely,



Lynn J. Tomich Kent
Director

cc: Lindsay Wolter, Department of Law

**Alaska State Legislature
House of Representatives**
Representative Tammie Wilson

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Rep.Tammie.Wilson@legis.state.ak.us

Sponsor Statement

House Bill 185 –27th Legislature

HB 185 amends Alaska's Waste Management and Disposal Authorization (AS 46.03.100(e)) such that the use of military ranges can occur in accordance with the Federal Water Pollution Control Act.

Additionally, HB 185 clarifies that all military services, such as the U.S. Coast Guard, conducting training activities on an active range, would be exempt from regulation unless otherwise regulated under the Federal Water Pollution Control Act.

This amendment is important because current state law could be interpreted to restrict the use of Alaska military ranges in a way not required by federal law.

This bill is supported by DMVA, DEC, and the Region 10 USAF Regional Environmental Coordinator Office.

I appreciate the committee's consideration for this bill and request your support.

FEDERAL WATER POLLUTION CONTROL ACT (CLEAN WATER ACT)

33 U.S.C. §§ 1251-1387, October 18, 1972, as amended 1973-1983, 1987, 1988, 1990-1992, 1994, 1995 and 1996.

Overview. The Federal Water Pollution Control Act, popularly known as the Clean Water Act, is a comprehensive statute aimed at restoring and maintaining the chemical, physical and biological integrity of the nation's waters. Enacted originally in 1948, the Act was amended numerous times until it was reorganized and expanded in 1972. It continues to be amended almost every year.

Even prior to the enactment of the 1972 version of the Act, the Act authorized the Public Health Service to prepare comprehensive programs for eliminating or reducing the pollution of interstate waters and tributaries and improving the sanitary condition of surface and underground waters. Due regard was to be given to improvements necessary to conserve waters for public water supplies, propagation of fish and aquatic life, recreational purposes, and agricultural and industrial uses. A number of other provisions found in the current Act were adopted prior to 1972.

Primary authority for the implementation and enforcement of the Clean Water Act now rests with the U.S. Environmental Protection Agency (EPA). In addition to the measures authorized before 1972, the Act authorizes water quality programs, requires federal effluent limitations and state water quality standards, requires permits for the discharge of pollutants into navigable waters, provides enforcement mechanisms, and authorizes funding for wastewater treatment works construction grants and state revolving loan programs, as well as funding to states and tribes for their water quality programs. Provisions have also been added to address water quality problems in specific regions and specific waterways.

Discharge Permits. One of the most significant features of the 1972 Act is the creation of a national pollutant discharge elimination system (NPDES). Except as otherwise provided in the Act, industrial sources and publicly owned treatment works may not discharge pollutants into navigable waters without a permit. The Administrator may issue a permit for discharge upon condition that the discharge meets applicable requirements, which are outlined extensively in the Act and which reflect, among other things, the need to meet federal effluent limitations and state water quality standards. The Act also provides that, with EPA approval, a state may administer its own permit program in lieu of the federal program. There are special provisions on municipal and industrial stormwater discharges. § 1342.

EPA was required, by mid-1973, to promulgate guidelines for determining the degradation of the waters of the territorial seas, the contiguous zone and the oceans. These guidelines were to include, for example: the effect of disposal of pollutants on human health or welfare, including but not limited to plankton, fish, shellfish, wildlife, shorelines and beaches; the effect on marine life, changes in marine ecosystem diversity, productivity and stability, or species and community population changes; the effect of disposal of pollutants on aesthetic, recreation and economic values. Discharge permits may not be issued except in compliance with the guidelines. § 1343.



DEPARTMENT OF THE AIR FORCE
REGIONAL ENVIRONMENTAL COORDINATOR
SAN FRANCISCO, CALIFORNIA 94105-2230

9 March 2011

Clare R. Mendelsohn
Department of Defense
Regional Environmental Coordinator Region 10
50 Fremont St Ste 2450
San Francisco, CA 94105

The Honorable Tammie Wilson
Alaska House of Representatives
State Capitol, Room 415
Juneau, AK 99801-1182

Dear Representative Wilson:

As the Department of Defense (DOD) Regional Environmental Coordinator (REC) for the states in U.S. Environmental Protection Agency (US EPA) Region X, including Alaska, and on behalf of all the military services, I am responsible for coordinating responses to various environmental policies or regulatory matters of interest. I appreciate the opportunity to provide comments on the proposed amendment to Alaska's Clean Water Act (AK CWA).

DoD and Alaska have a long and proud history of cooperation. Alaska's military installations and training range areas within the state are crucial to DoD's worldwide mission. In this spirit of cooperation, DoD has worked with the Alaska Department of Environmental Conservation (ADEC), Alaska Office of the Attorney General, US EPA, the Alaska Military Force Advocacy and Structure Team (AMFAST), and other interested stakeholders to develop this amendment.

As background, under AS §46.03.100, the disposal of solid or liquid waste material into waters or onto land of the state is prohibited without authorization from ADEC. Importantly, the statute was amended in 2008 when Alaska sought US EPA approval of its CWA program (Alaska Pollutant Discharge Elimination System). As a result, the statutory exclusion for military ranges under AS §46.03.100(e)(7) was modified so that it now excludes "the firing or other use of munitions in training activities conducted on active ranges, including active ranges operated by the United States Department of Defense or a United States military agency, *unless it results in a discharge into waters of the United States.*"

This existing language in Alaska's statute ("unless it results in a discharge into waters of the United States") might be interpreted to restrict the use of Alaska military ranges in a way that is not required under the federal Clean Water Act. To alleviate this concern, the proposed amendment would allow the use of military ranges "unless otherwise regulated by the Federal Water Pollution Control Act." Besides helping ensure military ranges can be used in accordance with federal law, federal and Alaska state agencies agree this amendment will not jeopardize continued US EPA approval of Alaska's CWA program.

The benefit of the proposed amendment to the military in Alaska will be to ensure questions regarding the application of the AK CWA to military ranges are determined in accordance with the federal Clean Water Act. Moreover, while there may be uncertainty as to how the federal Clean Water Act program might apply to military ranges, the proposed amendment will not preclude Alaska agencies, the military, USEPA, or a private plaintiff from making any appropriate arguments under the federal statute. Thus, unless amended, the application of the AK CWA to military ranges might be inconsistent with the application of clean water programs in other states. Finally, because ADEC plans to apply its CWA program to munitions starting on October 31, 2011, DoD strongly supports passing this amendment in the 2011 legislative session.

In closing, this amendment will help ensure Alaska's continued capacity to host sustainable military readiness training for our outstanding airmen, soldiers, and sailors. We welcome the opportunity to provide you with any additional information as you consider this important legislation that has the potential to impact DoD installations.

Thank you for the opportunity to provide comment on this proposed amendment.

Sincerely



CLARE R. MENDELSON

DoD Regional Environmental Coordinator, Region 10

STATE OF ALASKA

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
OFFICE OF THE COMMISSIONER

Sean Parnell, GOVERNOR

P. O. BOX 5800

Ft Richardson, ALASKA 99505-5800

PHONE: (907) 428-6003

March 10, 2011

The Honorable Tammie Wilson
Alaska House of Representatives
State Capitol, Room 415
Juneau, Alaska 99801-1182

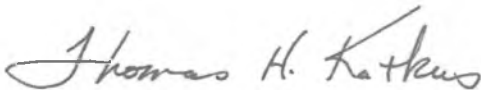
Representative Wilson,

I fully support the proposed amendment to the Alaska Clean Water Act. This amendment minimizes the opportunities for interruption to critical military training while maintaining a high level of environmental protection according to the Federal Water Pollution Control Act.

The United States Military presence in Alaska is vital to the state's safety, security, and economic stability. We must take every opportunity to empower the men and women of the military with the best training scenarios available. Alaska offers premier military training areas that are unmatched by any other location in the world. Although continued military training is critical, the protection of the natural environment on which the training is conducted is equally important. The amendment to the Alaska Clean Water Act both enhances military training capabilities and ensures the protection of Alaska's pristine environment.

Thank you for your efforts regarding this amendment. Your continued support of the United States Military in Alaska and your desire to protect Alaska's natural environment is very much appreciated.

Sincerely,



Thomas H. Katkus
Major General, AKARNG
The Adjutant General-Alaska