

ALASKA LEGISLATURE

1621

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

adopted ^{as} amended
NO OBJ
AMENDMENT
2/27/97 #14

0-LS0091VT.6
Lauterbach
2/27/97

OFFERED IN THE HOUSE BY REPRESENTATIVE KELLY
TO: Draft CSHB 51() ("T" Version)

- 1 Page 1, line 7:
- 2 Delete "sec. 3"
- 3 Insert "sec. 4"

- 4 Page 2, following line 7:
- 5 Insert a new bill section to read:
- 6 **** Sec. 3.** AS 46.03.080 is amended by adding a new subsection to read:
- 7 (b) If the available evidence reasonably demonstrates that the natural
- 8 condition of a body of water does not meet the requirements of the quality or purity
- 9 standards that would otherwise be applicable to the classification of the water adopted
- 10 under (a) of this section, the natural condition of the water shall constitute the
- 11 applicable standard of quality or purity."

- 12 Renumber the following bill sections accordingly.

- 13 Page 2, line 20:
- 14 Delete "if the available"

- 15 Page 2, line 21 - 25:
- 16 Delete all material.

- 17 Page 4, lines 15 - 16:
- 18 Delete "or discharge characteristics"

- 19 Page 4, line 18:

1 Delete "discharge standard"

2 Insert "permit limits"

3 Page 4, lines 20 - 21:

4 Delete " , ~~and physical conditions~~ or discharge characteristics"

5 Insert "~~or economic conditions~~"

6 Page 5, line 10:

7 Delete "sec. 3"

8 Insert "sec. 4"

as amended 2/27/97

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CS HB 51 ()

(1)

Page 1, line 5, following "to"

NO OBJ

Delete "implement water quality"

laws

~~after laws and implement water quality standards~~

Insert "adopt"

Page 1, line 5, following "evidence"

(2)

Insert "that ensure that water quality standards are sufficient to protect human health and the propagation of fish and wildlife"

Failed

standards laws and implement water quality ~~regulations~~

ALASKA MARINE CONSERVATION COUNCIL

Box 101145 Anchorage, Alaska 99510
(907) 277-5357; 277-5975 (fax); amcc@igc.apc.org

February 20, 1997

Representative Mark Hanley
Alaska House of Representatives
State Capitol
Juneau, AK 99801

RE: HB 51 hearing before the House Finance Committee

Dear Representative Hanley:

On behalf of our membership, the Alaska Marine Conservation Council strongly opposes HB 51, a bill before your Finance Committee today. AMCC is a community-based organization formed by fishermen and composed of commercial and sport fishers, subsistence users, scientists, and coastal residents throughout Alaska who rely on healthy marine ecosystems for livelihood and sustenance.

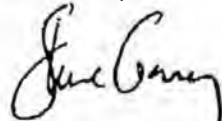
HB 51 is exactly the *wrong* direction for Alaska on issues of water quality. While we have many serious concerns with this bill, we would like to highlight two of the most problematic:

- HB 51 would not allow Alaska to set water quality standards based on multiple use compatibility which is required by the federal Clean Water Act. This is absolutely unacceptable and inappropriate for Alaska in that it grants preferential treatment to industrial polluters *over* fishing if a conflict occurs.
- HB 51 limits Alaska's water quality standards to meeting the weakest standard in the nation by preventing establishment of more stringent standards in any situation.

In short, HB 51 jeopardizes the health and welfare of all Alaskans, particularly our members who rely on healthy waters for their livelihoods. *We urge you to oppose this bill and also to oppose HB 128* a similar bill in nature that has been directed through the House Resources Committee. Alaska's coastal economies are directly dependent on the health of our waters, and to support this bill is nothing short of turning your back on all of those constituents and citizens.

Thank you for your consideration of our comments.

Sincerely,



Steve Ganey
Project Coordinator

cc: House Finance Committee
Governor Tony Knowles
All members of the State House and Senate

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
JUDICIARY COMMITTEE, MEMBER
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER
HESS BUDGET SUBCOMMITTEE, MEMBER



INTERIM:
716 WEST 4TH AVENUE, SUITE 640
ANCHORAGE, AK 99501
PHONE: (907) 258-8191
FAX: (907) 258-2916

SESSION:
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

Letters of Support
HB 51

Distributed After Distribution Of Bill Packet

FAIRBANKS GOLD MINING, INC.
a subsidiary of
AMAX GOLD INC.
FORT KNOX MINE

February 25, 1997

Honorable Norman Rokeberg
Alaska House of Representatives
State Capitol
Juneau, Alaska 99801-1182

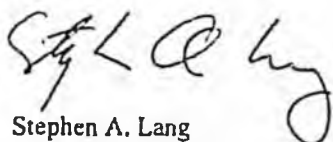
Dear Representative Rokeberg:

You had asked for Fairbanks Gold Mining's position on House Bill 51. We support it, and we also support House Bill 128 as introduced by Representative Hudson. We believe it is good public policy for the Alaska legislature to provide direction to state agencies such as the Department of Environmental Conservation (DEC).

AS46.03.870, which is intended to provide direction to DEC on water quality issues, is too vague, thereby, if effect, authorizing DEC to set policy. Thus, more guidance is needed from elected officials, and HB51 would do that.

As we have discussed with you, it would enhance the bill to have a definitions section added at the appropriate time.

Sincerely,



Stephen A. Lang
General Manager



PLACER DOME U.S. INC.

DONLIN CREEK PROJECT
5011 JEWEL LAKE ROAD, SUITE 205
ANCHORAGE, ALASKA 99502
(907) 243-1957
FACSIMILE (907) 243-6628

FEB 10 1997

February 6, 1997

Representative Norm Rokeberg
State Capitol
Juneau, Alaska 99801-1182

Representative Rokeberg:

On behalf of Placer Dome U.S. Inc., I would like to thank you for taking the time to meet with Joe Danni, Dave Parish and me on January 14 and allowing us to provide you with a brief update of our Donlin Creek exploration activities. As we discussed, we cannot say whether or not we have a gold mine at this time, but we are very encouraged by our results, and will continue to invest exploration dollars in the project during 1997.

It was encouraging to hear the support for the mining industry in Alaska and gratifying to hear that our hiring programs are a benefit to the area.

We feel the single most important legislative issue facing our project is the need for acceptable, workable and defensible modifications to the existing water quality standards.

Once again, thank you.

Sincerely,

Stanley T. Foo
Placer Dome U.S. Inc.
State Manager, Alaska

P.S. - My family and I are very excited about relocating to Alaska in 1997.

cc J. Danni-PDUS Vice President of Human Resources and Public Affairs



Fairbanks North Star Borough

Assembly

809 Pioneer Road

P.O. Box 71267

Fairbanks, Alaska 99707-1267

907/459-1000

Fax 907/459-1224

March 18, 1996

Mr. Al Vezey, Representative
 Alaska State Legislature
 State Capitol (MS 3100)
 Juneau, Alaska 99801-1182

MAR 18 1996

Dear Representative Vezey:

Enclosed for your information is a copy of Fairbanks North Star Borough Resolution 96-022, recently adopted by the Assembly.

The resolution addresses the EPA's recent proposal for changing the National Pollutant Discharge Elimination System permits.

I would call your attention to the third page which expresses the most fundamental problems in government. We have jumped track from our constitutional foundation by delegating the authority to create law to unelected bureaucracies.

Your efforts to return us to our constitutional foundations are greatly appreciated. It is time the legislature re-assert its duty to make law. The bureaucracy does not govern us. It is there to serve the people, comply with the law of the elected representative, and perform in an advisory capacity when the legislature is crafting law.

Please alert others in the legislature of our resolution, particularly any committees which will debate your proposed legislation.

Sincerely,

Bob Logan, Assemblymember
 Fairbanks North Star Borough

Enclosure as stated
 Faxed 3/18/96, original mailed

Post-It® Fax Note	7671	Date	3/18	# of pages	4
To	Rep. Al Vezey	From	Bob Logan		
Co./Dept.		Co.	FNSB Assembly		
Phone #		Phone #			
Fax #		Fax #			

Dist. by Rep. Vezey

By: Bob Logan
Ladd McBride
Hank Bartos
Larry Hackenmiller
Dan LaSota
Karen Parr
Jay Quakenbush
Paul Chizmar
Cheryl Kilgore

Introduced: 03/14/96
Amended: 03/14/96
Adopted: 03/14/96
Immediate Reconsideration
Failed: 03/14/96
Adopted: 03/14/96

RESOLUTION NO. 96-022

A RESOLUTION OPPOSING THE DRAFT ENVIRONMENTAL PROTECTION AGENCY'S MODIFICATIONS OF A GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES, AS IT RELATES TO ALASKA

WHEREAS, the Environmental Protection Agency (EPA) has issued draft NPDES General Permit (GP) modifications and is currently accepting public comment; and

WHEREAS, the draft GP is a substantive change to the existing GP because of its impact on existing GP holders, expanded application to new operators and new reporting rules; and

WHEREAS, the draft GP contains unrealistic restrictions including prohibiting moving an outfall location during the mining season, and requiring a minimum 1,000 foot separation distance between dischargers having modified turbidity limits; and

WHEREAS, there is no scientific basis for requiring an arsenic level of 0.18 ppb as proposed in the draft GP. EPA headquarters in Washington DC does not support this level and has already approved arsenic levels of 50 ppb in at least 25 states. To impose this requirement only on Alaska placer mines is arbitrary and capricious; and

WHEREAS, the draft GP includes reporting requirements for arsenic levels that are below detection, and then can charge the miner civilly and/or criminally if arsenic is found. Also, the levels are in conflict with requirements accepted by EPA headquarters; and

WHEREAS, the draft GP assumes "0" for background levels of arsenic and turbidity which is seldom the case. The current GP assumes actual background; and

WHEREAS, the draft GP is in conflict with and seeks to override state regulations which allow mixing zones; and

WHEREAS, for the first time this draft GP requires that all dredgers have an NPDES permit and stipulations of this draft GP are so onerous that no dredge miner will qualify for a GP. The proposed changes will add between 1,000 and 2,000 new permittees, all of which will be forced to have an individual permit. Because of the otherwise minimal impact, these miners are not required to have any other permit. This proposed change is without scientific basis and is a violation of due process. The draft GP will not only increase the number of individual permits but will increase permit processing costs rather than reducing the costs which was the purpose of the new GP; and

WHEREAS, the Forty-mile River and some other areas surrounded by "Wild & Scenic River" designations, are state-owned navigable waterways and not a Wild & Scenic River as envisioned in the draft GP. It is arbitrary and capricious to require a different standard for this state river or any other river or stream unless there is scientific support for those standards. To date, no such support has been offered; and

WHEREAS, EPA does not have the people to process the new Gps or the lps that will be generated by the requirements contained in the draft GP. Also, there is not time for EPA to review all existing Gps, publish them, and still issue them in time for the upcoming mining season; and

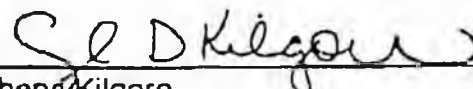
WHEREAS, economic damage from these restrictions will be felt in commercial placer mining and all related support industries as well as in recreational mining which is a resident and tourist activity.

NOW, THEREFORE, BE IT RESOLVED that the Fairbanks North Star Borough Assembly respectfully requests the Environmental Protection Agency to (1) withdraw from the settlement; (2) discard the draft GP; and (3) hold public hearings in each state of Region 10 (including at least two locations in Alaska) before any other draft GP is included in a settlement agreement.

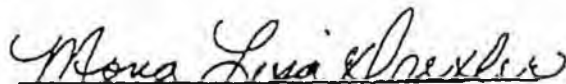
BE IT FURTHER RESOLVED that this arbitrary and capricious action demonstrates to our Congressional Delegation that it is time to take regulatory authority away from nonelected bureaucracies and place the authority to write law where it belongs under the constitution. . . with those who are elected.

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Honorable Bill Clinton, President of the United States of America; Carol Browner, Administrator, United States Environmental Protection Agency; Tim Hamlin of the United States Environmental Protection Agency, Region 10; all members of Alaska's Congressional Delegation; the Honorable Tony Knowles, Governor, State of Alaska, the Honorable Michele Brown, Commissioner, Alaska Department of Environmental Conservation and all members of the Interior Delegation.

PASSED AND APPROVED THIS 14TH DAY OF MARCH, 1996.


Cheryl Kilgore
Presiding Officer

ATTEST:


Mona Lisa Drexler, CMQ/AAE
Municipal Borough Clerk

Ayes: Parr, Hackenmiller, Logan, Bartos, McBride, Quakenbush, LaSota, Chizmar and Kilgore

Noes: Layne St. John

RESOLUTION NO. 96-022

Page 3 of 3

0-LS0091VT
Lauterbach
2/17/97

Adopted
2/18/97

CS FOR HOUSE BILL NO. 51()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ROKEBERG AND KELLY, Foster, Hodgins, Vezey, Bunde, Cowdery, Mulder, Kohring, Williams

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to water quality and the procedures required to implement
2 certain federal regulatory changes."

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

4 * Section 1. FINDINGS AND INTENT. The legislature confirms that it is the policy of
5 the state to implement water quality laws based on scientific and technical evidence. The
6 legislature specifically requests that state agencies possessing the necessary expertise to
7 implement AS 46.03.085 - 46.03.088, enacted by sec. 3 of this Act, coordinate their efforts
8 to enable cost efficiencies in adopting regulations that encourage the creation and retention
9 of jobs for Alaskans and the economic development of the state's natural resources consistent
10 with the public interest. It is the legislature's intent that Alaska's water quality regulations
11 be adopted and implemented in a credible manner, be based on scientifically measurable
12 criteria, and be economically feasible to comply with. The people of Alaska express their will
13 through the legislature, and regulations implement legislative action.

14 * Sec. 2. AS 46.03.050 is amended by adding a new subsection to read:

copy on file
CSHB 51()

1 (b) The department may continue to investigate the feasibility of securing
2 federal approval under 33 U.S.C. 1342(b) of the state's permit program for discharges
3 into navigable water so that the department has authority to administer the national
4 pollutant discharge elimination system in the state in lieu of the federal permit program
5 otherwise applicable to the state under 33 U.S.C. 1342(a). Nothing in AS 46.03.085 -
6 46.03.088 may be interpreted to prevent the department from continuing its effort to
7 secure approval under 33 U.S.C. 1342(b).

8 * Sec. 3. AS 46.03 is amended by adding new sections to read:

9 Sec. 46.03.085. Water quality standards. (a) In adopting and applying water
10 quality standards, the department, consistent with 33 U.S.C. 1251 - 1376 (Clean Water
11 Act),

12 (1) shall ensure that the standards are sufficient to protect human health
13 and propagation of fish and wildlife;

14 (2) shall consider reasonably available information on the background
15 condition of bodies of water, including the presence of naturally occurring pollutants,
16 such as arsenic;

17 (3) shall use scientific justification to develop water quality standards
18 that can be reliably measured;

19 (4) may not require water discharged by a user to be of a higher quality
20 than the background condition of the water receiving the discharge; if the available
21 evidence reasonably demonstrates that the background condition of a body of water
22 does not meet the standards contained in the water quality criterion applicable to that
23 water under regulations of the department and the background condition maintains and
24 protects the existing uses of the water, then the background condition of that body of
25 water constitutes the criterion that must be met by a discharge into that body of water;
26 and

27 (5) shall provide procedures for permitting mixing zones in state bodies
28 of water under regulations adopted by the department.

29 (b) Except when setting standards under AS 03.05.011(a) for shellfish growing
30 areas, as defined in the national shellfish sanitation program manual of operations
31 published by the Food and Drug Administration, the department may adopt a water

1 quality standard or other regulation related to water quality that is more restrictive than
2 applicable federal water quality criteria or regulations only after following the
3 procedures in AS 46.03.087(b).

4 (c) Notwithstanding AS 44.62.230, a person may submit a written request to
5 the department to amend the state's water quality standards, criteria, or other
6 regulations to incorporate a reduction in or elimination of a federal water quality
7 standard, criteria, or other regulation. The request must state clearly and concisely the
8 state and federal standard, criteria, or regulation in question and provide the department
9 with the reasons and basis for the requested amendment. Within 90 days after
10 receiving the request, or by another date mutually agreed on by the applicant and the
11 department, the department shall either propose regulations to incorporate the reduction
12 or elimination of the federal provision or initiate the procedure required under
13 AS 46.03.087(b). If, following the procedure under AS 46.03.087(b), the department
14 is unable to make the written findings required under AS 46.03.087(b)(3), the
15 department shall propose regulations that amend the state's water quality standards to
16 incorporate the reduction in or elimination of the federal water quality criteria or
17 regulations.

18 (d) Except as otherwise provided in AS 46.03.087, the measurement of
19 constituents other than sediment to determine whether a permittee is in compliance
20 with permit limitations based on water quality shall be by methods approved in writing
21 by the United States Environmental Protection Agency or by substantially equivalent
22 methods approved by the department.

23 (e) Except as otherwise provided in AS 46.03.087, the measurement of
24 sediment to determine whether a permittee is in compliance with permit limitations
25 based on water quality shall be by the volumetric Imhoff cone method for settleable
26 solids. However, this subsection may not be construed to limit the department's
27 authority to adopt water quality criteria for total suspended solids to meet United States
28 Environmental Protection Agency requirements.

29 **Sec. 46.03.087. Special procedures for certain water quality regulations.**

30 (a) The department may, after following the procedures in this section, adopt a

31 (1) water quality standard or discharge standard that is more restrictive

1 ~~that~~ applicable federal water quality criteria or discharge standards;

2 (2) water quality standard or discharge standard for which there is no
3 corresponding federal water quality criteria or discharge standard; or

4 (3) regulation that allows the use of a method that is not substantially
5 equivalent to methods approved by the United States Environmental Protection Agency
6 for the measurement of constituents to determine whether a permittee is in compliance
7 with permit limitations related to water quality.

8 (b) Before adopting a standard or regulation governed by (a) of this section,
9 the department shall

10 (1) make available to the public, at convenient locations, copies of the
11 proposal and the findings of the department that describe the basis for the proposal;

12 (2) consider and prepare a written finding assessing the economic and
13 technological feasibility of the proposal; and

14 (3) find in writing, as applicable, that

15 (A) biological, chemical, and physical conditions or discharge
16 characteristics in the area of the state or at the particular site where the
17 standard or regulation applies reasonably require the water quality standard,
18 discharge standard, or method of measurement to protect human health and
19 welfare or propagation of fish and wildlife; and

20 (B) biological, chemical, and physical conditions or discharge
21 characteristics are significantly different in that area of the state or at that
22 particular site from those upon which the corresponding federal criteria or
23 regulations are based.

24 **Sec. 46.03.088. Definition of "background condition."** In AS 46.03.085 -
25 46.03.087, and in regulations of the department that relate to water quality,
26 "background condition" means the biological, chemical, and physical conditions of a
27 body of water outside the area of influence of the discharge under consideration.
28 When the department performs background sampling to determine a background
29 condition during an enforcement action, the department shall measure conditions that
30 are upslope or outside the area of influence of the discharge. If several discharges to
31 a body of water exist and an enforcement action is being taken, the department's

1 background sampling shall measure conditions immediately upslope from each
2 discharge.

3 * Sec. 4. TRANSITIONAL REVIEW OF REGULATIONS. (a) The Department of
4 Environmental Conservation shall, during the triennial review process of regulations that is
5 required under 33 U.S.C. 1313(c) (Clean Water Act), review its water quality regulations that
6 are in effect on the effective date of this Act in order to determine if they comply with federal
7 requirements and are not more stringent than applicable federal regulations. If the review
8 indicates that there are state regulations that are more stringent than applicable federal
9 regulations, the department shall determine whether it could justify those regulations under the
10 requirements of AS 46.03.087(b)(3), enacted by sec. 3 of this Act. If the department
11 determines that it cannot meet the requirements of AS 46.03.087(b)(3), the department shall
12 adopt the necessary revisions to the regulations. It is the legislature's intent that the
13 department complete its review of all regulations governed by this subsection and its adoption
14 of all necessary revisions required under this subsection within four years after the effective
15 date of this section.

16 (b) The Department of Environmental Conservation shall, by January 31, 1999, and
17 annually thereafter until all of the state water quality regulations in effect on the effective date
18 of this Act are reviewed, prepare a written report on the status of the department's review and
19 revisions required under (a) of this section. The department shall submit the report to the
20 governor and notify the legislature that the report is available.

Handout — 2/19/97

testimony

DECLARATION OF DICK MYREN

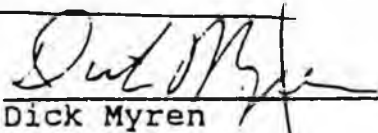
I, Dick Myren, do declare as follows:

1. I am a retired fishery research biologist from the National Marine Fisheries Service (NMFS) laboratory located at Auke Bay, Alaska. I received a general doctorate degree from Cornell University in 1964 under Dr. John Barlow, Professor of Oceanography. My doctoral dissertation was on pollution in a Long Island, N.Y. estuary involving biological oceanography. Prior education included two years in graduate school at the University of Washington School of Fisheries with several courses in physical and chemical oceanography. Employment since my doctorate was primarily in baseline monitoring studies at Port Valdez in conjunction with the Trans-Alaska Pipeline and the tanker deballist facility. I have one major publication on these studies and one in draft at the NMFS Auke Bay laboratory.

2. On the morning of March 18, 1992, I called Tom Kessler of Kessler and Associates, the Forest Service's oceanography consultant for the EIS, to question him about his work on the mixing zone and oceanography near Point Sherman, Lynn Canal. He agreed the calculation on page 5 of Technical Memorandum #4, Lynn Canal Flushing and Submarine Waste Water Discharge, Jan. 4, 1992, was wrong. We agreed that the flushing rate as he defined it, and as calculated, was in error by a factor of 10. The 20 day flushing rate should have been approximately 200 days, and the 12 day rate should have been approximately 120 days. These figures are derived simply by dividing 65,000,000,000 cu. meters by 4,000 cu. meters/sec. and by 12,000 cu. meters/sec.

3. The incorrect flushing time of 20 days is also quoted in the FEIS on page 4-39, and is used as the basis for the calculations in Table 4-16 on page 4-40.

Dated this 19th day of March, 1992.


Dick Myren

Enclosure (3)

State of Alaska
Office of the Governor

TONY KNOWLES
Governor
P.O. Box 110001
Juneau, Alaska 99811-0001
NEWS RELEASE



Bob King
Press Secretary
Claire Richardson
Deputy Press Secretary
907-465-3500
FAX: 907-465-3533

FOR IMMEDIATE RELEASE: January 24, 1997

97-027

KNOWLES APPLAUDS STRONG GROWTH IN MINING
Receives Alaska Minerals Commission's 1997 Report

Governor Tony Knowles underscored his commitment to the state's mining industry today when he received the 1997 Alaska Minerals Commission report highlighting a third consecutive year of strong growth since he took office.

"New mines are coming on line around the state, especially in rural Alaska, and Alaskans are filling lots of new jobs," Knowles said. "My priority is creating public-private partnerships that improve the economic and regulatory climate for environmentally sound mining efforts that result in more and better jobs for Alaskans."

The mining year was highlighted by the commissioning of a new mine at Fort Knox near Fairbanks and the construction of the Illinois Creek Mine near Galena. Together the mines will employ about 485 workers and are expected to produce about 420,000 ounces of gold each year.

Alaska Minerals Commission chairwoman Irene Anderson thanked Knowles for taking action on recommendations made by the commission last year. "The continued funding of the airborne geophysical surveys is just one of the legislative and administrative actions that have contributed significantly to continued strong growth of the mining industry," Anderson said.

* Some of the commission's recommendations for 1997 include the state assuming control of a federal program monitoring the discharge of pollutants into streams, continued investment in aerial mapping of Alaska's mineral resources, and support of the Alaska Mineral and Energy Resource Education Fund.

"The growth of high-paying mining jobs combined with the continued protection of our environment shows that the relationship between my administration and the mining industry is working very well," Knowles said. "We're not only creating jobs by developing our resources, we're doing it right."

Commerce Commissioner William Hensley, whose staff provided administrative and professional support to the Alaska Minerals Commission says it is recommending that the state should take control of the federal National Pollutant Discharge Elimination System program to simplify the permit process.

"At present, a federal agency based in Seattle runs the program. The commission believes the process would be more efficient if it was operated by Alaskans. The water quality standards would remain subject to federal approval," Hensley said.

Another area the commission would like to see changes in is the airborne surveying of Alaska's geophysical features. Up until now, efforts have been short term.

"The commission feels strongly that mapping should be institutionalized rather than based on annual appropriations," Hensley said. "Competition for mining investment dollars is fierce and some countries have been mapping for years. They understand that if you don't have the information you can't play in the mining game."

During today's presentation of the report, Knowles pledged to continue working to maintain the positive trend in Alaskan mining activity and told commission members that he and his staff would carefully examine the 1997 recommendations.

Attachment 2/19/97

**Alaska
Wilderness
Recreation &
Tourism
Association**

**P.O. Box 22827
Juneau, AK 99802
Phone (907) 463 3038
Fax (907) 463.3280
E mail awrta@alaska.net**

February 20, 1997

House Finance Committee Members

Dear Sirs:

The Alaska Wilderness Recreation and Tourism Association (AWRTA) is a trade association representing 300 travel and tourism related businesses across Alaska. Our members share a common concern for the quality of Alaska's natural environment and resources, which are the basis for their businesses. Alaska's reputation and image as pristine and unspoiled is what attracts visitors, and is becoming increasingly valuable in a world where these qualities are constantly threatened.

We are extremely concerned by the proposals made in H.B. 51. The bill lowers water quality standards and weakens the state's ability to protect Alaskans' health and economic interests in clean water.


The bill makes the dirtiest uses of water the dominant uses. It means that the state can no longer apply the multiple use provisions of the Clean Water Act to meet the needs of industries that rely on clean water in setting water quality standards. This will affect not only tourism uses, including sectors dependent on sport-fishing and wildlife viewing, but also commercial fishing.

H.B. 51 also imposes new, confusing, and costly requirements that shift the burden of ensuring water quality from the industrial users who want to reduce it, to the state and the public, including those of us who rely on clean water for our livelihood.

We are particularly concerned about the message that this type of legislation sends about Alaskans' stewardship of its natural resources and environment. At a time when other states and countries around the world are wrestling with how to ensure safe water supplies, our legislators are creating new threats to ours. And while the tourism and commercial fishing industry spend huge sums to market Alaska as a place where clean water and a pristine environment mean the highest quality products and experiences, the legislature is considering legislation that sends the opposite message.

Please withdraw this flawed bill. Let all affected industries and the public continue to work with state resource managers to develop regulatory standards that protect our waters and all users' interests in them.

Sincerely,



Steven Behnke
Executive Director



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

HB 51 - Twentieth Legislature

"An act relating to the Department of Environmental Conservation"

Clean water is critical to the economic prosperity and health of Alaskans. Unlike the majority of states, Alaska enjoys a reputation for having pristine waters. Resource extractive industries in Alaska should be willing to meet high water quality standards, designed to protect our pristine waters, rather than to underwrite legislative attempts to weaken our standards. The Alaska Environmental Lobby is opposed to this bill because it would:

- jeopardize the health and welfare of Alaskans and their ability to protect their water resources by lowering Alaska's water quality standards to the lowest level of standards nationwide,
- lead to greater confusion, delays, and litigation in the permitting process,
- violate a basic principle of the Clean Water Act by ignoring the concept of multiple users when setting water quality standards,
- introduce a definition of "background condition" that would make polluted water the standard for future discharges,
- require DEC to deal with new, time-intensive, confusing procedures for administering water quality standards, without the benefit of sufficient additional funding.

At a time when Alaskans demand state control over the state's natural resources, HB 51 would hand over the power to determine the quality of Alaska's waters to the federal government. At a time when Alaskans are attempting to convince the rest of the nation of our good stewardship of federal lands, such as ANWR and NPR-A, HB 51 would show the nation how willing we are to compromise our water quality to placate industry. The state's unique attributes that Alaskans value so highly - our abundant fish runs, our rich estuaries, our cold, clean streams - must be protected by unique standards drafted by professional resource managers in concert with the industrial interests within the state and with over-sight by all concerned Alaskans.

Susan E. Schrader, Executive Director
2/17/97

Fatty
RCAC
GINSBURG

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 3
To <i>(Kulyn)</i>	From <i>A.N.C.</i>	
Co. <i>(H) LIN</i>	Co.	
Dept.	Phone # <i>258-8111</i>	
Fax # <i>465-2278</i>	Fax #	

RCAC on HB 51

- The Regional Citizens' Advisory Council of Prince William Sound (RCAC) is an independent non-profit corporation formed after the Exxon Valdez oil spill. Our mission is citizens promoting environmentally safe operation of the Valdez Marine Terminal and associated tankers. RCAC advises Alyeska Pipeline Service Co., crude oil shippers, regulatory agencies and the public on ways to prevent oil spills, improve spill response capability, and otherwise mitigate the environmental impacts of the terminal and tankers. RCAC's 18 member organizations include communities impacted by the 1989 Exxon Valdez Oil Spill, as well as commercial fishing, aquaculture, Native, recreation, tourism and environmental interests.

~~This bill significantly changes one of the most important aspects of environmental law in Alaska. We urge you to slow down and recommend referral to the Resources Committee. Alaskans care about water quality. We urge you to give affected communities, ~~impacted communities~~ and concerned citizens the time and opportunity to analyze and understand this bill. Please don't decide this public policy until the public has had a chance to tell you what they think.~~

- Current water quality standards emphasize pollution prevention. HB 51 moves the emphasis away from prevention, to a wait and see approach. Worry about the damage after it's done.

- This bill puts a much higher priority on SOME types of jobs. It relegates certain economic resources – fisheries and a spectacular environment so important to tourism – to a distant second. Under this bill, state regulators

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would have to prove fish are dying in order to set standards higher than the federal minimum. Under this bill, it's not enough that a pollutant may be wreaking havoc on the reproductive cycles of certain fish. They have to die before ADEC could set higher standards.

- This removes the very flexibility that Alaskans have always insisted on to manage their own affairs. Why would we want to be bound only by federal standards? We have unique circumstances, challenges and problems in Alaska. We must retain the flexibility to address site-specific needs and issues, and to do so with common sense and regard for the interests of all Alaskans.
- For the past two years, RCAC has been participating in a cooperative working group with EPA, ADEC and Alyeska on a new federal discharge permit for Alyeska's ballast water treatment facility. After two years, we have consensus of citizens, regulators and the regulated industry. Yes, it's hard work. Yes, it's complicated and frustrating at times. But it works. And it's a good way to avoid lawsuits and bitter fighting. And it's a good way to balance economic, social and environmental needs of a complex world. HB 51 would throw us back to the dark ages.
- The ballast water treatment facility at the Valdez Marine Terminal is a ~~unique plant~~. It discharges an average of 16 million gallons of ~~oil salt water~~ effluent into Port Valdez every day. Among the water quality standards used here is a limit on total aqueous hydrocarbons. It's a state standard with no federal equivalent. In theory, HB 51 would allow the state to set its own standards where no federal standards exist, but the burden of so-called 'scientific proof' is set so high that we would likely see no limits at all. How

then do we protect Port Valdez from oil-containing discharges such as the recent one from the Alyeska ballast water treatment plant?

- Alaska is one of the few states that has not been delegated to administer the federal National Pollutant Discharge Elimination System permit program. RCAC has no position on who should administer the program. But it's absolutely imperative that ADEC have adequate funding to do the job if indeed the state takes it over.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

OIL & GAS, CHAIRMAN
LABOR & COMMERCE, VICE CHAIRMAN
ADMINISTRATIVE REGULATION REVIEW, VICE CHAIRMAN
HEALTH, EDUCATION & SOCIAL SERVICES, MEMBER
ECONOMIC DEVELOPMENT, MEMBER



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Representative Norman Rokeberg

SUMMARY OF CHANGES INCLUDED IN PROPOSED FIN CS

Listed below are the differences between Version L which passed out of the House Oil and Gas Committee and Version T blank CS for Finance dated 2/17/97:

1. Title change: DELETED CURRENT title AND REPLACED with new title:

An Act relating to water quality and the procedures required to implement certain federal regulatory changes.

2. Section 1. FINDINGS AND INTENT. Page 1, Line 9 after interest:

INSERT: "It is the legislature's intent that Alaska's water quality regulations be adopted and implemented in a credible manner, be based on scientifically measurable criteria and be economically feasible to comply with. The people of Alaska express their will through the legislature and regulations implement legislative action.

3. Section 2.

DELET language in VERSION L on Page 1, Lines 10-12 and inserted language in Findings and Intent on Page 1, Lines 10-12 on Version T

DELET AND INSERT: Page 1, Lines 12-15 AND Page 2, Lines 1-5 in Version L:
TO: Page 4, Line 24 Version T

4. Section 3.

VERSION L Page 2, Line 7 after "department":

DELETE: "shall"

INSERT: "may"

VERSION L Page 2, Line 11 after 1342(a) .

DELETE: Lines 11-14

INSERT: "Nothing in AS 43.03.085 and AS 43.03.88 shall be interpreted to prevent the department from continuing its effort to secure approval under 33 U.S.C 1342(b).

5. Section 4.

VERSION L Page 2, Lines 27, 28, 30 and 31:

DELETE: "natural"
INSERT: "background"

VERSION L Page 3 Lines 10-15:

DELETE: Lines 10-15

INSERT:

"Notwithstanding AS 44.62.230, a person may submit a written request to the department to amend the state's water quality standards, criteria or other regulations to incorporate a education in or an elimination of federal water quality standard, criteria or regulation. The request must state clearly and concisely the federal standard, criteria or other regulation in question and provide the department with the reasons and basis for the requested amendrment. Within 90 days after receiving the request, or by another date mutually agreed on by the applicant and the department, the department shall either propose regulations to incorporate the reduction or elimination of the federal provision or initiate the procedure required under AS 46.03.087(b)."

VERSION L Page 4, Lines 19 and 24:

DELETE: "hydrologic"
INSERT: "biological, chemical, and physical"

Al

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DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER

February 18, 1997

The Honorable Mark Hanley
The Honorable Gene Therriault
Co-Chairmen, House Finance Committee
Juneau, AK 99801

Dear Representatives Hanley and Therriault:

Please accept this letter as the department's written concerns with CSHB51 (O&G) which is presently in your committee. For reasons outlined below, we are strongly opposed to this legislation.

The sponsor's statement for HB 51 says that the intent is to "foster resource development within the State of Alaska while endeavoring to simplify the regulatory climate." The bill does neither. It is ambiguous and several of its provisions are contradictory. Rather than simplifying the regulatory climate, it adds yet another layer of process, process that in turn adds no value to developing well reasoned water quality standards.

Therefore, to the extent the intent of the legislation is unclear, it is hard for us to make any specific recommendations on how to fix it. And, to the extent unclear legislation becomes law, everyone's costs go up. Our limited staff time would be diverted from permitting to sorting out the new, confusing process set out in this bill which would apply in nearly every instance when water quality standards are proposed.

Going through the bill section-by-section, I will highlight some of the major problems we see with the legislation.

Section 1. The Department supports the policy of enabling cost efficiencies, creation and retention of jobs for Alaskans, and the economic development of the State's natural resources. But that development must be done right. Doing it right means setting standards based upon sound science, prudent resource management, and full public involvement. For water quality standards, public health and multiple use compatibility must also be compelling policies.

Section 2. This section applies to all the Department's environmental programs. While the basis of certain aspects of environmental rules is science, several of the authorities modified by this language relate to construction standards, which are not "science" based. In addition, environmental regulations often reflect societal choices, not pure science. Mixing zones are a classic example. They are not based solely on "science" as required by this section rather they are societal choices allowing a portion of a water body to be used by one user only.

This section also creates confusion regarding "background condition." There are terms of art

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This section also creates confusion regarding "background condition." There are terms of art dealing with "background" and "natural condition." These maybe factors when dealing with permitting or compliance but are generally not issues in standards setting. In fact, a serious source of confusion in the bill is the lack of distinction between standard settings, permit issuance, and compliance monitoring. Standards are only one part of a sound water management program. Standards set basic levels of protection for public health, resource values, and other water uses. Permitting sets the terms and conditions for particular discharges to ensure that human or aquatic life health is not harmed and that other water users are not shut out by the first user on the block. Compliance is verifying that the permit terms are being followed.

To apply this, say there's a standard of X parts per billion for a contaminant. This standard was set based upon aquatic life mortality or human health impacts from long-term exposure. An operator discharging into a water body would have to show that his discharge would not cause a violation of that standard in the water body. However, in permitting the discharge the agency can factor in individual circumstances. For example a mixing zone can be designed when there is no feasible treatment technology and no public health or aquatic life risk is posed from the specific discharge into the specific water body. If so, the operator could then have a permit to meet the standard at the edge of a mixing zone rather than at the point of discharge. Finally, in compliance checking, if the standard is exceeded but the source of the exceedance stems from a different operator upstream, enforcement discretion is used so that the downstream water user is not responsible for pollution from an upstream user.

There are other site specific tools to make sure that standards are imposed in a common sense manner. But, trying to deal with industrial permitting and compliance issues through a broad brush downgrading of standards relegates public health and resource protection to incidental and secondary consideration at best.

Section 3. We don't see the need for this section as now written in the committee substitute. At industries' request, the Department is looking into the possibilities of assuming NPDES delegation from EPA. We will be awarding a contract soon to present strategies with costs and possible funding sources. No statutory authority is necessary or needed for us to continue this project.

Enclosed you will find a letter from EPA regarding this bill and indicating that its adoption would likely preclude state assumption of the NPDES program. For all delegations, the EPA -- as do all other federal agencies that delegate programs to the states - looks at a variety of issues, including whether or not the state is "at least as stringent" as the federal rules. To the extent this legislation dictates that water quality standards be set based only on the least stringent "science" without the other considerations in the Clean Water Act including protection for shared users, we would not have a program that was at least as stringent as the federal government.

The reason the federal government has such a requirement -- that the states be at least as stringent -- is to ensure all people in this country have the same basic public health and environmental protection. That is, no matter where you live in the United States, there is a floor below which no state may go. Some programs do allow states to do case-by-case adjustments, just

like our state water quality program allows an applicant to use the natural condition of a water body as a basis for a water quality standard change that is less restrictive than the federal criteria. The Clean Water Act and federal regulations adopted under it were intended solely as a floor to give states the ability to tailor standards to local conditions. Those criteria were not meant -- and in many cases may not be able to be used -- as a mandatory ceiling.

Section 4. Section (a) conflicts with the Clean Water Act, for many reasons. In addition to the reasons stated above, all existing and potential uses are required to be protected in the Act, including protection of propagation of fish, shellfish, wildlife recreation in and on the water, domestic water supply, agricultural, industrial, and navigational uses. This bill ignores that multiple use protection.

We also believe that setting in statute specific measurement tools as is proposed in Section (e) is short sighted. If it is in statute, we have no way to allow someone to use another method if they so desire.

Finally, the heart of this section is to establish special procedures for adopting water quality standards that are more stringent than federal criteria. Testimony on the bill indicates that this idea was taken from Alaska's air statute. There is a critical difference however between the federal Clean Air Act and the Clean Water Act that makes this concept difficult if not impossible to apply to water quality standards. The Clean Air Act gives EPA authority to set ambient air quality standards; the Clean Water Act does not.

As a result, this "special" procedure would come into play nearly every time the state proposed any water quality standard or discharge limit, including mixing zones. Not only will this add cost and time to the entire process but, because of other processes already provided for in state law, it is very likely that the Department will have multiple simultaneous requests. That is, requests could be filed under the process in this bill, requests could be filed under the Administrative Procedures Act (AS 44.62.220) and finally through the triennial review. Effectively, what we would have is the ability for groups with opposing views to use these processes to fight each other and unduly delay projects.

There is no requirement that the person petitioning the department to change the state's standard provide the department with any information upon which to make a decision. Under the Administrative Procedures Act, the petitioner must provide the department with the information needed to make a decision. AS 44.62.230 lays out what any department must do when it receives a petition to adopt, change, or repeal a regulation. It says that within 30 days we must either deny the petition or schedule a hearing. It is unclear to me how this process is flawed to the point that an entirely new, duplicative, and simultaneous process must be created.

Section 46.03.087(b) requires that the department make a finding on the economic feasibility of a given standard. How do we make the determination that something is or is not "economically feasible?" On an individual basis? By industry group? Based on what kind of information? Does the most financially marginal operation set the standards for the state? To require that water quality standards be set by considering only whether the person can afford to comply puts thousands of

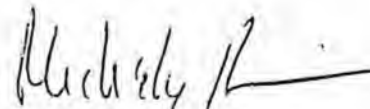
Alaskans at risk from detrimental health effects.

We don't know what is meant by the terms "hydrological conditions" or "discharge characteristics." These are not terms of art in the water world. EPA's criteria are based on laboratory toxicity tests. This seems to be another example of confusion between standard setting and permitting.

Section 5. This section requires DEC to continually be on the look out for changes in federal water quality criteria. I question the wisdom in using Department resources in this way, just for the sake of becoming as minimally stringent as possible. When faced with the choice of creating a comparison table from the 6,700 pages of federal guidance, and dealing with actually addressing water quality standards that we know need review, we have chosen the latter.

In summary, setting water quality standards that assure Alaskans' long-term public health and water quality needs is by its nature a complex and intensive process blending science and public policy choices. The science used to justify many positions taken on these issues can be as numerous as the individuals looking at the information. What works for one party will not work for another. That's why it takes continual interactive public discussion to achieve that balance. Reducing water quality standards by blanket statements, adding yet another process to follow, and passing confusing and contradictory legislation will not advance that effort.

Sincerely,



Michele Brown,
Commissioner

Enclosures:

- Water Quality Work Group Package
- EPA Letter dated February 14, 1997

cc: The Honorable Eldon Mulder (w/encl)
The Honorable Gary Davis (w/encl)
The Honorable Richard Foster (w/encl)
The Honorable Pete Kelly (w/encl)
The Honorable Vic Kohring (w/encl)
The Honorable Terry Martin (w/encl)
The Honorable John Davies (w/encl)
The Honorable Ben Grussendorf (w/encl)
The Honorable Carl Moses (w/encl)
Pat Pourchot, Legislative Director, Office of the Governor (w/encl)

ISSUE	APPROACH	TO WQWG	TO COMMISSIONER
petroleum hydrocarbons -- re-evaluate Total Aromatic Hydrocarbon, Total Aqueous Hydrocarbon, and oil & grease standard	Research and report available information, including background of current standards, alternative compound specific data, and other states' criteria.	4/30/97	5/15/97
dissolved metals -- criteria for metals should be based on dissolved metal and bioavailable metal species	Research and report on derivation of EPA criteria, federal guidance, evolution of EPA conversion factors, and bioavailability of dissolved vs. Particulate metals.	3/31/97	4/15/97
reclassification -- define in detail the process and requirements for petitioners to follow	Draft reclassification guidance document for petitioners, including a decision tree and application information.	5/1/97	5/15/97
fecal coliform -- sampling frequency should be changed from 5/month to once/week.	Review origin of fecal coliform sampling requirements in permits and make changes in DEC written guidance on monitoring requirements, as appropriate.	2/3/97	3/5/97
total dissolved solids -- State should re-evaluate the TDS standards	Review TDS information on other states, Canada, DEC paper, and DPA TDS research ... look at differences between WQS and DW regs, review in-state TDS studies ... report results and recommendations for TDS changes to consider regs changes.	5/15/97	6/5/97
compliance schedules -- change regulations to allow DEC and/or EPA to enter into water quality compliance schedules in permits	Review court decisions on need for compliance schedule language in standards and propose language for regulation change.	2/3/97	2/28/97
National Toxics Rule -- Alaska needs to get out from under the NTR	DEC to discuss approaches with EPA and make appropriate request, after conceptual approval given.	12/19/96	letter signed by Commissioner
303(d) Listing -- develop science-based criteria and guidelines for adding and removing streams from the listing of impaired water bodies	Review federal and other states regulations and guidance ... develop guidance document for Alaska.	4/22/97	5/6/97
Arsenic -- State should adopt its own human health criteria	Petition EPA for exemption during interim period of EPA research, allowing Alaska standard to be in effect.	Advised @ 12/19 meeting	ongoing Commissioner discussions w/EPA
acute toxicity -- consider an acute whole effluent toxicity criterion for effluents	Review and report on whole effluent toxicity information and make recommendations for changes.	2/1/97	2/15/97
pH -- re-evaluate the State's pH criteria	Review regulations and resolve discrepancies with State and federal regulations.	2/14/97	3/5/97
non-indigenous species -- address this issue and consider adopting WQS to protect State waters from such a threat	Assemble information about the issue and consult with federal agencies on situation ... make recommendations.	1/20/97	2/21/97



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue
Seattle, Washington 98101REPLY TO
ATTN OF: OW-134

FEB 14 1997

Michele Brown, Commissioner
Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Dear Commissioner Brown:

EPA has completed its review of the CS(L) for House Bill 51 (CSHB 51) in response to your request for comments. CSHB 51 would establish a procedure to change State water quality standards that are more stringent than Federal water quality criteria. We have several concerns about how this legislation could affect the Alaska's water quality standards (WQS) program and the likelihood of authorizing the State of Alaska to operate the Federal National Pollutant Discharge Elimination System (NPDES) permitting program. EPA's concerns fall into three categories: inconsistencies/interpretation problems, WQS program problems, and NPDES program problems.

Inconsistencies/Interpretation

The bill contains ambiguous language and inconsistencies with portions of the Clean Water Act (CWA) dealing with WQS and NPDES permitting. Examples of inconsistencies and interpretation problems that are of concern to EPA are highlighted below.

- CSHB 51 § 46.03.087(a)(1) and (2) refer to the adoption of "water quality standards and discharge standards." We are not certain what is meant by the term "discharge standard." Discharge standards could be interpreted to mean effluent limits or effluent guidelines. National NPDES regulations do not allow permit limits that are less restrictive than technology-based effluent guidelines.
- § 46.03.085(b) refers to "other regulation related to water quality." We are concerned about what this phrase may include. Since there are no Federal criteria or regulations for mixing zones and zones of deposit, these NPDES tools could be affected by this legislation.

- § 46.085(c) provides a timeframe during which DEC must amend the WQS to incorporate a reduction or elimination in the federal water quality criteria or follow the procedure in § 46.087(b). There is no explanation of how the reduction or elimination of the criterion is to be justified and how it will be consistent with the CWA or the Federal water quality standards regulations (40 CFR Part 131).
- § 46.03.085(a) states that DEC, in adopting and applying WQS, "shall ensure that the standards are sufficient to protect human health and propagation of fish and wildlife." This provision is not consistent with the CWA. Section 101(a)(2) of the CWA provides for the protection of propagation of fish, shellfish, wildlife, and recreation in and on the water. Section 303(c)(2)(A) of the CWA includes additional uses that WQS should protect: domestic water supply, agricultural, industrial, and navigational uses. Any changes to WQS that are made in accordance with this legislation may not protect all designated uses in the Alaska WQS and the CWA.

Overall, these types of interpretation problems will likely result in some confusion about how CSHB 51 should be implemented and mixed expectations in the regulated community and the public. These kinds of problems will likely contribute to a more resource-intensive water management program.

WQS Program

As you know, any change in a state WQS requires review and approval by EPA. EPA has serious concerns regarding both the process for WQS revision, and the basis for such revisions in §§ 46.03.085(c) and 46.03.087(b). Based on these concerns, it is possible that WQS that Alaska revises under these provisions will not be approvable.

First, we are concerned whether 90 days [see § 46.03.085(c)] provides adequate time for DEC to make scientifically sound decisions, as required by Federal WQS regulations, about whether a WQS change is warranted. Our concerns are heightened by the fact that HB 51 contains no provisions that require those who are requesting the amendment to supply any data or justification to support the need for the change. Since the burden of proof for determining whether a standards change is needed rests with DEC, these decisions may be based on little or no information. Ninety days may not allow DEC to collect adequate supporting data. Additionally, this section of CSHB 51 appears to overlap with existing portions of the Alaska WQS regulations [18 AAC 70.025(d)]. This section in the Alaska WQS regulations already contains a provision that allows the use of "natural conditions" as the basis for WQS changes [18 AAC 70.025(b)] that are less restrictive than Federal criteria and it requires the applicant

seeking the WQS change to provide DEC with the data and information needed to make the determination.

Second, we are concerned that the technical basis in CSHB 51 for any proposed WQS changes is tied to "hydrologic conditions or discharge conditions" [§ 46.03.087(b)]. EPA Federal criteria are based on laboratory toxicity tests and do not necessarily consider hydraulic conditions or discharge characteristics. It is doubtful that a change in a criterion that is based strictly on "hydrologic conditions and discharge characteristics" will be scientifically defensible for protection of all designated uses. Therefore, such changes to WQS may not result in approvable WQS regulations. Where the change is to adopt criteria that are less stringent than the existing criteria, there needs to be a justification that the criteria are adequate to fully protect the use.

EPA is also concerned about how the requirements in Sections 4 and 5 will be implemented. Section 5 of this bill requires DEC to conduct a triennial review and identify State regulations that are more stringent than Federal regulations. The Federal WQS regulations direct States to, "at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards, and, as appropriate, modifying and adopting standards". Section 4 of CSHB 51 contains provisions that require a 90-day review of individual portions of the Alaska WQS regulations. The 90-day review is triggered by a request to change a State WQS because it may be more stringent than a Federal criterion. It is conceivable that DEC would be responsible for numerous 90-day reviews and standard changes required in Section 4 at the same time that it is required to conduct the triennial review that is contained in Section 5. This would result in a confusing, time-consuming, piecemeal approach to WQS and management of the water quality program.

NPDES Program

EPA Region 10 continues to be interested in authorizing the State of Alaska to operate the National Pollutant Discharge Elimination System (NPDES) program throughout the State. As you know, we have provided DEC a grant for the purpose of conducting an analysis that details both the costs and options for assuming the NPDES program. The results of the analysis should be available in late spring. To obtain NPDES program authorization, the State must demonstrate that adequate resources are available to successfully manage an NPDES program.

In addition, the Alaska Attorney General would need to examine existing state statutes and regulations to determine whether the state has all the necessary legal authorities to operate an NPDES permitting and compliance program. Any missing legal provisions would need to be enacted before the state applies for authorization. Also, EPA would have to be assured

that the state does not have statutes or regulations that are incompatible with authorization.

Sec. 46.03.085(a)(3) of CSHB 51 states that the Department "shall use scientific justification and water quality criteria that can be reliably measured." Some Federal water quality criteria are established at levels below detection (e.g. dioxin). It is not clear if these criteria would be considered to not "be reliably measured." While compliance determinations are based on the minimum level of quantification, permit limits must be established using the water quality criterion value and may be below the detection level. This language could be construed to disallow issuance of permits with appropriate limits and therefore could jeopardize attempts by Alaska to pursue authorization of the NPDES program.

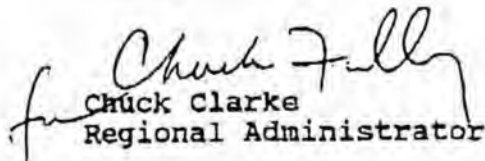
In addition, § 46.03.085(a)(4) states that DEC "may not require discharged water to be of higher quality than the natural conditions of the receiving water." On occasion, technology-based limitations (established either through national guidelines or best professional judgment of the permitting authority) require a discharge to be higher in quality (i.e., meet a higher standard) than the receiving water. This language would contradict the NPDES regulations which require achievement of technology-based limitations without regard for receiving water conditions. Again, this will jeopardize any future State attempts to assume the NPDES program.

Conclusions

We believe that the problems discussed above would create added confusion and inefficiencies in the implementation of Alaska WQS program rather than improved responsiveness and effectiveness. To implement CSHB 51 would require additional time and effort on the part of DEC staff. Yet, the resource-intensive nature of CSHB 51 would not contribute to the development of the capacity needed to assume the NPDES program. Furthermore, certain provisions of CSHB 51 may create legal problems that will jeopardize both approval of State WQS revisions and authorization of the NPDES program.

We appreciate the opportunity to review and provide comments on CSHB 51. If you have any questions about these comments contact me at (206) 553-0422 or Marcia Lagerloef, at (206) 553-0176.

Sincerely,


Chuck Clarke
Regional Administrator

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER

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February 20, 1997

The Honorable Mark Hanley
The Honorable Gene Therriault
Co-Chairmen, House Finance Committee
Juneau, AK 99801

Dear Representatives Hanley and Therriault:

As you requested during the hearing on February 18, we have reviewed the blank committee substitute for HB 51 adopted by the House Finance Committee. Our concerns with this proposal are outlined below. We remain strongly opposed to this legislation.

As a starting point, I think it would be useful to try to explain the difference between "criteria" and "standards" and the respective roles of EPA and the states in establishing water quality standards.

Generally speaking, EPA will not adopt standards and the states will not develop criteria. "Water quality criteria" are scientific information regarding the concentrations of specific chemicals or other pollutants in water which protect aquatic life or human health. In other words, criteria is the amount of pollution a water body can stand before it becomes impaired. Criteria must be used in establishing a water quality standard. EPA's criteria are guidance for states when they establish water quality standards unless a state, through a rigorous scientific process, has developed its own criteria.

"Standards" are legally enforceable state-established requirements that consist of two things; one, the uses a water body should be protected for and; two, the criteria or pollution limits which are necessary to protect those uses. So to have a water quality program based on criteria only completely eliminates the modification of those criteria to the given uses made of a particular body of water.

Section 1. The Department supports the policy of enabling cost efficiencies, creation and retention of jobs for Alaskans, and the economic development of the State's natural resources. But that development must be done right. Doing it right means setting standards based upon sound science, prudent resource management, and full public involvement. For water quality standards, public health and multiple use compatibility must also be compelling policies.

Added to this section is language that water quality regulations be adopted and implemented in a credible manner, a standard to which I hold all of our regulations. This sentence then goes on to say that they must be based on scientifically measurable criteria and be economically feasible to comply with. These last two issues are concerns.

There are two types of water quality criteria and standards -- numeric and narrative. As the name implies, numeric criteria are "measurable" and are expressed as concentrations of chemicals, usually as micrograms per liter (ug/l). Narrative criteria however are expressed as descriptive statements; for example "free from toxic pollutants in toxic amounts." This kind of criteria or standard is used to protect against toxic effects when no numeric concentration is available or the specific chemicals in an effluent cannot be identified. They are also used to protect aesthetic qualities of water and ensure its natural beauty. Narrative criteria and standard, therefore, may not necessarily be "scientifically measurable."

Economical feasibility is also a concern. How do we make the determination that something is or is not "economically feasible?" On an individual basis? By industry group? Based on what kind of information? Does the most financially marginal operation set the water quality standards for the state? To require that water quality standards be set by considering only whether the person can afford to comply puts thousands of Alaskans at risk from detrimental health effects.

Section 2. We don't see the need for this section as written, although we appreciate the support for our ability to assume primacy. At industries' request, the Department is looking into the possibilities of assuming NPDES delegation from EPA. We will be awarding a contract soon to present strategies with costs and possible funding sources. The cost of this contract is not a factor in our fiscal note.

We must note that EPA's letter of February 14, 1997, which was previously provided to the committee, states that EPA views this legislation as a barrier to state assumption of the NPDES program.

Section 3. Section (a) conflicts with the Clean Water Act, for many reasons. In addition to the reasons stated above, all existing and potential uses are required to be protected in the Act, including protection of propagation of fish, shellfish, wildlife recreation in and on the water, domestic water supply, agricultural, industrial, and navigational uses. This bill ignores that multiple use protection.

Section (a)(2) and (a)(4) create confusion regarding "background condition." "Background" and "natural condition" are terms of art. "Natural" is the condition of a water body before human impact. "Background condition" is that which exists after human influence -- which may or may not be the same as "natural". Natural conditions may be a factor in standards setting, and both background and natural conditions may be factors when dealing with permitting and compliance, but they can't be used interchangeably

In fact, a serious source of continued confusion in the bill is the lack of distinction between standard settings, permit issuance, and compliance monitoring. Standards are only one part of a sound water management program. Standards set basic levels of protection for public health, resource values, and other water uses. Permitting sets the terms and conditions for particular discharges to ensure that human or aquatic life health is not harmed and that other water users are not shut out by the first user on the block. Compliance is verifying that the permit terms are being followed.

To apply this, say there's a standard of X parts per billion for a contaminant. This standard was set based upon aquatic life mortality or human health impacts from long-term exposure. An operator discharging into a water body would have to show that his discharge would not cause a violation of that standard in the water body. However, in permitting the discharge the agency can factor in individual circumstances. For example a mixing zone can be designed when there is no feasible treatment technology and no public health or aquatic life risk is posed from the specific discharge into the specific water body. If so, the operator could then have a permit to meet the standard at the edge of a mixing zone rather than at the point of discharge.

Finally, in compliance checking, if the standard is exceeded but the source of the exceedance stems from a different operator upstream, enforcement discretion is used so that the downstream water user is not responsible for pollution from an upstream user. Section (a)(4) as written would allow for successive and cumulative pollution of a water body, effectively limiting the number of users of a given water body. It also conflicts with the Clean Water Act's requirements that when designating uses of a water body and the appropriate criteria for those uses, the state must take into consideration the water quality standards of the downstream users.

There are other site specific tools to make sure that standards are imposed in a common sense manner. But, trying to deal with industrial permitting and compliance issues through a broad brush downgrading of standards relegates public health and resource protection to incidental and secondary consideration at best.

We also believe that setting in statute specific measurement tools as is proposed in Section (e) is short sighted. If it is in statute, we have no way to allow someone to use another method if they so desire.

Finally, the heart of this section is to establish special procedures for adopting water quality standards that are more stringent than federal criteria. Testimony on the bill indicates that this idea was taken from Alaska's air statute. There is a critical difference, however, between the federal Clean Air Act and the Clean Water Act that makes this concept difficult, if not impossible, to apply to water quality standards. The Clean Air Act gives EPA the responsibility to set ambient air quality standards; the Clean Water Act does not.

As a result, this "special" procedure would come into play nearly every time the state proposed any water quality standard or discharge limit, including mixing zones. Not only will this add cost and time to the entire process but, because of other processes already provided for in state law, it is likely that the Department could have multiple simultaneous requests. That is, requests could be filed under the process in this bill, requests could be filed under the Administrative Procedures Act (AS 44.62.220) and finally through the triennial review. Effectively, what we would have is the ability for groups with opposing views to use these processes to fight each other and unduly delay projects.

AS 44.62.230 already lays out what any department must do when it receives a petition to adopt, change, or repeal a regulation. It is unclear to me how this process is flawed to the point that an

entirely new, duplicative, and simultaneous process must be created.

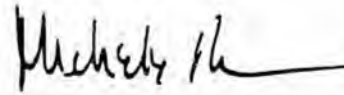
Section 46.03.087(b)(2) requires that the department make a finding on the economic feasibility of a given standard. As stated above, determining "economic feasibility" is problematic at best.

Section 46.03.087(b)(3) requires that we find an area's biological, chemical, or physical condition, or its "discharge characteristics" reasonably require the proposed standard. EPA's criteria are based on laboratory toxicity tests. This seems to be another example of confusion between standard setting and permitting.

Section 4. This section requires DEC to continually be on the look out for changes in federal water quality criteria. I question the wisdom in using Department resources in this way, just for the sake of becoming as minimally stringent as possible. When faced with the choice of creating a comparison table from the 6,700 pages of federal guidance, and dealing with actually addressing water quality standards that we know need review, we have chosen the latter.

In summary, setting water quality standards that assure Alaskans' long-term public health and water quality needs is by its nature a complex and intensive process blending science and public policy choices. The science used to justify many positions taken on these issues can be as numerous as the individuals looking at the information. What works for one party will not work for another. That's why it takes continual interactive public discussion to achieve that balance. Reducing water quality standards by blanket statements, ignoring the need for multiple uses of water so necessary for our economic development, adding yet another process to follow, and passing confusing and contradictory legislation will not advance that effort.

Sincerely,



Michele Brown,
Commissioner

cc: The Honorable Eldon Mulder
The Honorable Gary Davis
The Honorable Richard Foster
The Honorable Pete Kelly
The Honorable Vic Kohring
The Honorable Terry Martin
The Honorable John Davies
The Honorable Ben Grussendorf
The Honorable Carl Moses
Pat Pourchot, Legislative Director, Office of the Governor

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR
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Juneau, AK 99801-1795
PHONE: (907) 465-5065
FAX: (907) 465-5070
<http://www.state.ak.us/dec/home.htm>

February 25, 1997

The Honorable Pete Kelly
Alaska State House of Representatives
Capitol Building, Room 411
Juneau, AK 99801

Dear Representative Kelly:

Your letter of February 22, 1997 identifies a problem with DEC water quality regulations which came to our attention during our recent permitting action for the Cominco Red Dog mine. You make the statement in your letter that "One of the problems in ADEC's regulations is the way 'natural conditions' language is used in 18 AAC 70.025(b). This language allows the use of 'natural conditions' lower than those that would protect uses in 18 AAC 70.020(b), only if the 'natural conditions' fully protect the uses in 18 AAC 70.020(b)." We share your conclusion that current language under 18 AAC 70.025 (b) is not logical when applied in all circumstances, particularly when a waterbody has been misclassified.

We have begun discussions within ADEC on how we could improve our regulations to more rationally address waters with natural conditions that exceed the criteria of 18 AAC 70.020. We are looking at a number of options. One option would be to remove the natural condition provision from 18 AAC 70.025 entirely, and replace it with a new regulation that would presumptively establish natural conditions as water quality standards when they exceed the criteria of 18 AAC 70.020. The new regulation would not require that the natural condition fully protect all designated uses.

In my view, a provision of that sort would be appropriate as an introductory section in our standards, perhaps as an addition to 18 AAC 70.010. That regulation already provides that the standards "specify the degree of degradation that may not be exceeded in a water body as a result of human actions." Obviously ADEC cannot and would not take any enforcement action against a discharger based on the natural condition of the receiving water. Instead, the issue of how to account for impaired natural conditions usually arises when setting effluent limits in a discharge permit. Since EPA writes such permits in Alaska, and also approves any changes to our water quality standards, we intend to include that agency in our deliberation on how best to take natural conditions into account. A quick legislative fix, depending on how it is interpreted by EPA, could prove a detriment to those seeking permits rather than a help.

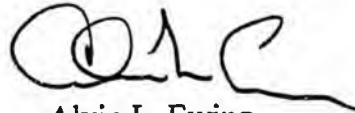
Your letter requested specific language to correct the standards problem you have identified. I haven't done that because I am not yet sure what the best fix is. We are giving priority to the revision and improvement of our water quality standards and when we have determined the best fix, we will proceed with the change. However, given the mandatory procedures that accompany any rule-making under the

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Administration Procedures Act, I cannot commit to an effective date for a new natural condition regulation during this legislative session. I expect we will have a revised rule in effect during this calendar year.

Again, I thank you for your interest and suggestions. I look forward to a continued productive dialogue on this and related issues.

Sincerely,



Alvin L. Ewing
Deputy Commissioner

cc: The Honorable Eldon Mulder
The Honorable Gary Davis
The Honorable Richard Foster
The Honorable Pete Kelly
The Honorable Vic Kohring
The Honorable Terry Martin
The Honorable John Davies
The Honorable Ben Grussendorf
The Honorable Carl Moses
Pat Pourchot, Legislative Director, Office of the Governor

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February 25, 1997

The Honorable Mark Hanley
The Honorable Gene Therriault
Co-Chairmen, House Finance Committee
Alaska State House of Representatives
Capitol Building
Juneau, AK 99801-1182

Dear Representative Hanley:

In the interest of ensuring full deliberation on HB 51, I would like to follow up on some issues raised at last week's hearing.

A question arose on how HB 51 shifts the burden of proof from the discharger to the state. Unfortunately, I don't believe my response was either clear or complete. The answer is that the bill imposes upon the department the burden of proving "economics" in standard setting. Economics has never been, nor should be, part of standards setting, although it is a very legitimate consideration in other aspects of water resources management, such as permitting or treatment technology requirements.

Water quality standards are set based upon the science which determines the levels of pollutants a water body can absorb before harm occurs. The Clean Water Act and the federal water quality criteria -- to which this bill requires the state to defer -- are set solely upon science. They do not factor in the costs of compliance whatsoever. In short, standards are science, not economics, based. Yet, HB 51 switches the burden from a wastewater discharger working with the department to meet the protective, science based water quality standards to DEC, to demonstrate that those standards are economic to achieve.

DEC does indeed have responsibility to work with dischargers to find reasonable ways to meet water quality standards and that is where economics and feasibility are valid factors. We have a variety of tools to do that, including mixing zone standards, site specific standards, reclassification procedures and the flexibility to deal with the circumstances where natural conditions exceed standards.

I was also asked what this bill would require DEC to do that it isn't already required to do. There are at least three significant areas. The first is the issue of economic analysis for standard setting that I just described. The second is the requirement for DEC to go through the entire body of federal water quality criteria (over 6,700 pages) looking for instances where state standards could be construed to be more stringent than federal criteria. We think it is a far more useful task to work on

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periodically reviewing and updating standards that we know are in need of re-analysis.

The third new requirement is the proposed AS 46.03.087 (b) (3) finding before DEC can adopt or retain a standard more stringent than the federal counterpart. Since state standards normally apply to the entire state, DEC would have to evaluate the biological, chemical and physical conditions of the entire state, to show both: (1) that the state standard is required to protect humans, fish and wildlife (087 (b) (3) (A)); and (2) those conditions are different from those on which the federal criterion is based.

For example, the state regulates turbidity to protect fish habitat. The federal criterion is a narrative provision limiting effects on photosynthetic activity from increased sediment, while the state standard is numeric and factors in background levels. We consider the federal criterion unusable in Alaska because it doesn't work in shallow lakes and clear streams, and it depends on a seasonal norm that would be hard to determine in variable waters. The transitional review would pick up this standard as more stringent than the federal criteria. To retain the turbidity standard under HB 51, DEC would have to make the proposed .087 (b) (3) finding. The process would be a serious burden on finite department resources to address a standard with which no one has raised a problem. Current law does not place that burden on DEC. Instead, if someone has reason to believe that the turbidity standard is flawed, they can either petition for a regulation change through the Administrative Procedures Act, or seek relief through other means such as site-specific criteria, reclassification, mixing zones, etc.

Finally I would observe that good legislation begins with a clear objective and is based on a sound legal and factual basis. We remain unclear on the objective of HB 51 and I would like to point out two statements made during the hearing that I don't believe have a factual basis.

One testifier stated that several problems affecting small placer miners have gone unaddressed by DEC for a number of years. He provided no specifics, except to say that state regulations require dischargers to put water with high sediment loads coming from glacier fed streams back into the stream cleaner than they received it. That simply is not true. DEC has a regulatory provision that allows consideration of natural background conditions when setting limits in permits. We routinely use that provision and I am not aware of any situation where state regulations have resulted in a permit requiring a discharger to return wastewater to a stream cleaner than natural background.

Regarding natural background conditions Representative Pete Kelly, in a recent letter, pointed out language in DEC's regulations that is problematic in limited circumstances such as the naturally toxic waters in the area of the Cominco Red Dog mine. I have provided committee members with a copy of my response.

Representative Pete Kelly asserted during committee discussions that there are many state requirements that are much more onerous than federal requirements. If that statement is true, I wish someone would come forward and indicate precisely what those requirements are. States have the responsibility under the Clean Water Act (CWA) for establishing water quality standards and cover many areas the federal guidance does not address. However, when states fail to do their job,

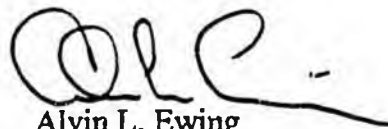
February 25, 1997

according to EPA, EPA will impose criteria, like it did for arsenic. In fact, Representative Kelly used arsenic to attempt to illustrate his point. However, it does not support his assertion. The federal imposition of an arsenic standard which makes no sense for Alaska is precisely why we should not automatically defer to the federal government. The Governor had to petition EPA for relief of that standard and recently learned that the petition was granted.

The department's position remains that HB 51 provides absolutely no help in addressing the standards Alaskans have highlighted as being of most concern. It would, in fact, hinder the aggressive action plan we have underway to address those issues.

Thank you for your thoughtful consideration of our comments.

Sincerely,



Alvin L. Ewing
Deputy Commissioner

Enclosure

cc: The Honorable Eldon Mulder
The Honorable Gary Davis
The Honorable Richard Foster
The Honorable Pete Kelly
The Honorable Vic Kohring
The Honorable Terry Martin
The Honorable John Davies
The Honorable Ben Grussendorf
The Honorable Carl Moses
Pat Pourchot, Legislative Director, Office of the Governor

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 10
 1200 Sixth Avenue
 Seattle, Washington 98101

FEB 26 1997

Reply To
 Attn Of: AOO

Michele Brown, Commissioner
 Alaska Department of Environmental Conservation
 410 Willoughby Avenue, Suite 105
 Juneau, Alaska 99801-1795

Dear Commissioner Brown:

This letter is a follow-up to my February 14, 1997, letter concerning House Bill 51. In re-looking at the proposed legislation, I thought it worth clarifying an additional area of potential confusion in the bill.

The potential confusion concerns the use of the terms "standards" and "criteria" throughout the bill, with these terms sometimes being used in a manner inconsistent with how they are used in the Federal Clean Water Act and the State of Alaska's water quality standards regulation.

According to language in the Clean Water Act and Alaska's water quality standards regulations, water quality standards consist of two parts. The first part is designated beneficial uses, such as "drinking water supply," or "growth and propagation of fish and other aquatic organisms." For any particular waterbody, there are typically a number of beneficial uses designated. The second part of water quality standards is the "criteria" necessary to protect the designated beneficial uses. Criteria are the maximum concentrations of pollutants that can occur in a waterbody without jeopardizing the beneficial uses of the waterbody. An example of a criterion for a marine waterbody with the designated use "growth and propagation of fish and other aquatic life" would be 2.9 micrograms per liter of copper. (i.e., this concentration of copper is the maximum concentration that can be present in a marine waterbody and still ensure the survival and reproduction of fish and other organisms.)

Only when the beneficial uses and the criteria necessary to protect them are combined do water quality "standards" exist. The Clean Water Act gives the responsibility to the states, not to the Federal Government, to adopt water quality standards.

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The Clean Water Act requires the Environmental Protection Agency (EPA) to develop a list of national water quality criteria that are protective of beneficial uses. In developing these numbers, EPA relies on currently available scientific information about the effects of pollutants on aquatic organisms. The scientific basis for each criterion EPA develops is published in a criteria development document. It is important to note that these numbers are not national "standards" or "criteria" that all states must meet. The EPA national criteria merely constitute guidelines that states must consider in adopting criteria as part of their water quality standards. If a state adopts a criterion that is less stringent than EPA's guidelines, the state must provide a scientifically defensible basis for the criterion. Ultimately, EPA must review and approve all revisions to state water quality standards.

This Clean Water Act approach differs markedly from that established in the Clean Air Act for ambient air quality "standards." Please note that the use of the term "standards" has a different connotation under the Clean Air Act than it does under the Clean Water Act.

The Clean Air Act directs EPA to identify and set national standards for pollutants which may reasonably be anticipated to protect public health and the environment. EPA has set national primary and secondary ambient air quality standards for six common air pollutants since 1970 (carbon monoxide, particulate matter, ozone, lead, sulphur dioxide, and nitrous dioxide). Primary standards are designed to protect public health. Secondary standards are designed to protect the public welfare and the environment.

In order to set these standards, EPA must first conduct an extensive scientific and technical assessment of the pollutant of concern. This review is summarized in a "criteria document." The criteria document puts forth what is known about the health effects of an air pollutant.

Based on the health effects documented in the criteria document, EPA then sets a national ambient air quality standard that is the same for any location in the United States. For example, the primary and secondary standard for carbon monoxide is 9 parts per million in all 50 states.

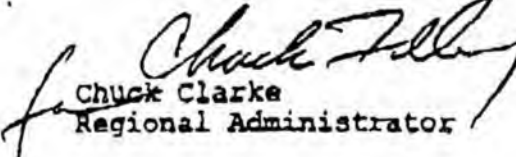
In summary, an ambient air quality standard developed under the Clean Air Act differs from a standard under the Clean Water Act in two important ways. First, the air quality standard is more analogous to a water quality criterion, which is only part of a water quality standard. Second, a national ambient air quality standard is a planning tool that states use to set

emission limits and other air quality control requirements that sources must meet and that assure attainment and maintenance of the national ambient air quality standards. In contrast, EPA's water quality criteria are unenforceable guidelines that states use in developing their own water quality standards.

Without clarification and proper use of these terms, additional inconsistencies and interpretation problems above and beyond those already mentioned in my February 14 letter would result.

Again, we appreciate the opportunity to provide comments on House Bill 51. If you have any questions about these supplemental comments, please feel free to contact me at (206) 553-0479, Rick Albright at (907) 271-3422 or Marcia Lagerloef at (206) 553-0176.

Sincerely,


Chuck Clarke
Regional Administrator



Resource Development Council for Alaska, Inc.

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Legislative and Administrative Packet

**Resource Development Council for Alaska, Inc.
Board of Directors' visit to the Capitol
February 19th - 20th, 1997
Juneau, Alaska**

Includes latest:

- RDC Legislative Matrix
- RDC year-at-a-glance breakfast meetings
- Summary: RDC Legislative and Administrative Priorities
- RDC Issues & Activities Update
- RDC letter to DEC regarding Water Quality Change at Kensington Mine
- RDC letter to Gov. Knowles on National Toxics Rule
- RDC Letter of Support for SJR 9
- RDC testimony on SB 35/ HB 23
- RDC comments on CSHB 51
- RDC comments on ADEC's actions at Red Dog and Ikalukrok Creek
- RDC Journal of Commerce article on Water Quality
- AMEREF at-a-glance
- RDC Board Members in attendance

Resource Development Council Legislative Update

Legislation of Interest to RDC and its members

*denotes action since last report

Bill #	Land & Water Management
HB 29	<u>Oil & Gas Bonding</u> , by Rokeberg, reducing the amount for which proof of financial responsibility must be provided to DEC in conjunction with the operation of certain onshore oil & gas exploration and exploration facilities. Referred to Oil & Gas and Resources.
HB 46	<u>Mining Claims on Public Lands</u> , by Kelly and Therriault. Passed House 37- 3 on 2/7/97. Referred to Senate Resources.
HB 51	<u>Water Quality Standards</u> , by Rokeberg, Kelly and Foster, et al. changes water quality discharge standards. RDC testified on HB 51 on 1/23/97. Referred to Finance. (Hearings scheduled for 2/18 & 2/20 @ 1:30 p.m.).
HB 128	<u>Water Quality Standards</u> , by Hudson, relating to water quality and establishing the Water Science Oversight Board. Referred to Resources & Finance. (Hearing scheduled for 2/18 @ 1 p.m.).
HCR 1	<u>North Slope Natural Gas</u> , by Barnes, Phillips, et al. encourages the state to provide a stable and appropriate fiscal & regulatory environment to promote the Alaska LNG project. Passed the House on 1/29/97. Passed the Senate on 2/6/97. Transmitted to Governor on 2/10/97.
HJR 12	<u>Leases in NPRA</u> , by Green, Hodgins et al. urges the Secretary of the Interior to conduct competitive oil & gas lease sales within NPRA. Passed House 37- 3 on 2/7/97. Referred to Senate Resources. (Hearing scheduled for 2/19 @ 3:30).
	<u>Transportation/ Access</u>
HB 23	<u>Access</u> , by Masek, relating to traditional means of access. Refers only to Title 38 public land. Referred to Resources and Finance. RDC testified on HB 23 on 1/23/97.
SB 35	<u>DNR Access</u> , by Green, Pearce and Taylor, relating to traditional means of access for traditional recreational use, and establishes Chilkat State Park. Refers only to Title 41 park land. Referred to Resources & Finance. RDC testified on SB 35 on 1/23/97. (Hearing scheduled for 2/20 @ 8:00 a.m.).
SJR 13/ HJR 20	<u>RS 2477 Rights of Way</u> , by Halford, Phillips & Taylor, endorses continuing efforts to preserve and protect the original meaning of RS 2477. Referred to Resources. HJR 20 referred to Resources. (Hearing scheduled for 2/20 @ 1 p.m.).
	<u>Other Issues</u>
HB 28	<u>Repeal Coastal Zone Management Program</u> , by Therriault and Kelly, repeals the CZMP and the Alaska Coastal Policy Council. Referred to Resources & Finance. (Hearing scheduled for 2/20 @ 1:00 p.m.).
HB 58	<u>Civil Liability (Tort Reform)</u> , by Porter & Cowdery. Referred to Judiciary and Finance. (Hearings scheduled for 2/19 & 2/21).
HJR 2	<u>Legislative repeal regulations</u> , by Rokeberg and James, a constitutional amendment that allows for legislative repeal of regulations by majority vote. Referred to State Affairs, Judiciary & Finance.
SJR 9/ HJR 13	<u>ANWR Leasing</u> , by Pearce, Adams, et al. endorses ANWR leasing. Passed Senate 17-0-2. Referred to House Resources. (Hearing scheduled for 2/18). HJR 13 referred to Oil & Gas, then Resources.
SB 41	<u>Environmental & Health/ Safety Audits</u> , by Leman, Pearce and Taylor, authorizes environmental and health safety self-audits. Promotes business compliance with environmental laws by allowing businesses to perform their own internal environmental audits. Referred to Judiciary & Finance.
AMEREF	<u>\$50,000 General Fund Request</u> , for the Department of Education for the AMEREF Program for FY 97. This will fund the DOE Program Director @ 60% and other related costs for the program and will continue the public/private partnership.

RDC's 1996 Breakfast-at-a-Glance

Date	Speaker	Topic
1/4/96	Vern McCorkle, Publisher, Jim Martin, Vice President, Alaska Business Monthly	"Will Anchorage and Alaska still be able to compete by the year 2000?"
1/11/96	Dennis Rehberg, Lieutenant Governor of Montana	"War for the West: Federal Lands and Resource Development"
1/18/96	Frank Murkowski, United States Senator	"The Budget Process and what it means for Alaska"
1/25/96	James Kenworthy, Executive Director, AK Science & Technology Foundation	"Co-Investing with AK Science & Technology Foundation: Value-added Projects"
2/1/96	Stoney Wright, Alaska Plant Materials Center, Alaska Department of Natural Resources	"New Developments in Wetlands Revegetation"
2/8/96	Art Sheunemann, Executive Director, Alaska Seafood Marketing Institute	"Alaska Seafood: Holding our Ground in the Pacific Rim"
2/15/96	Ken Boyd, Director, Division of Oil & Gas, Alaska Department of Natural Resources	"1996 Oil & Gas Issues Round-up"
2/22/96	Brad Tuck, Professor of Economics & Interim Dean, School of Public Affairs, UAA	"Economic Impact of Heavy Oil Development"
2/29/96	Jim Duncan, Senate Minority Leader, Alaska State Legislature	"Junenn Report: Prospects for Closing the Fiscal Gap"
3/7/96	Cliff Davis, Vice President, Alaska Projects, Echo Bay Mines Alaska	"A-J Mine Update: New Alternatives Unveiled"
3/21/96	John Rense, Chief Operating Officer, NANA Regional Corporation	"Update on Red Dog Mine"
3/28/96	Ernie Piper, Special Assistant to the Commissioner, ADEC	"Regulatory Issues Facing Resource Development"
4/4/96	John Morgan, President, BP Exploration (Alaska) Inc.	"Overcoming Challenges in Alaska's Oil Frontier"
4/11/96	Mayor Rick Mystrom Senator Ted Stevens	"Come Bond with the Mayor: Setting the Stage for Economic Development"
4/18/96	Neal Fried, Labor Economist, Alaska Department of Labor John Donohue, General Manager, Unocal	"Special Bonus - Federal Update"
4/25/96	Jerry Boughton, Entomologist, U.S. Forest Service Troy Reinhart, Public Relations Manager, Ketchikan Pulp Company	"Economic Trends in Alaska's Basic Industries"
5/2/96	Dave Morgan, City Manager, City of Whittier	"Royalty Relief"
5/9/96	Dale R. Lindsey, CEO/President, Harbor Enterprises, Inc.	"Forest Health Update: Insect & Disease Conditions in Alaska"
5/16/96	Senate President Drue Pearce & House Speaker Gail Phillips	"Extending Ketchikan Pulp Company's Timber Supply Contract"
5/23/96	Jay K. Taylor, President & CEO, Placer Dome U.S., Inc.	"Whittier Road Access: A Development Forecast for Prince William Sound"
5/30/96	Governor Tony Knowles	"Entrepreneurship, the AK Economy & Environment: A Personal Philosophy on Survivorship"
6/13/96	Steve Martin, Superintendent, Denali National Park & Preserve Jim Stratton, Director, Alaska State Parks Sally Gilbert, Conservation System Unit Coordinator	"Report on the Nineteenth Alaska Legislature"
7/9/96	Victor J. Riley, Jr., Chairman of the Board, KeyCorp	"Placer Dome U.S., Inc.: The Mine Development Process"
9/5/96	John Horn, Central Regional Director, AK Dept. of Transportation & Public Facilities	"Proposed South Side Denali Visitor Developments"
9/12/96	Ernesta Ballard, Environmental Consultant, Ballard & Associates	"Transportation Needs & Priorities in Alaska"
9/19/96	Cynthia Quarterman, Director, U.S. Minerals Management Service	"Ketchikan Pulp Mill: Issues and Survival"
9/26/96	Randal Buckendorf, Environmental Chemist, Contaminated Sites Regulation, ADEC	"Update on Federal OCS Leasing Program"
10/3/96	James Jinks, VP & Sr. Legislative Counsel, United Services Automobile Association	"Dolpmt. of AK Contaminated Sites Cleanup Standards & Risk Assessment Principles"
10/10/96	Bennett Brooks, Lead Trade Specialist, AK Department of Environmental Conservation Charles F. Becker, Director, AK Export Assistance Center, U.S. Dept of Commerce	"Regulatory Excesses: Impact on Business"
10/17/96	Mike Belowich, Vice President, Nerox Power Systems	"Alaskans Abroad: Challenges and Opportunities"
10/24/96	Joseph Fields, Chairman, Kantishna Holdings	"Jonesville Coal Mine Update"
10/31/96	Dave Sutter, Land Manager, ARCO Alaska, Inc.	"The Denali Railway System Project Overview"
11/7/96	General Richard Lawson, President, National Mining Association	"New Arctic Oil: The Alpine Discovery"
11/14/96	Representative Mark Hanley, House Finance Co-chair	"New International Threats to Alaska Mining"
11/21 & 22/96	Resource Development Council's 17th Annual Conference	"Preview of the Upcoming Legislative Session"
12/5/96	Bill Schoephoester, President of Board, Alaska Chadux Corp.	"Sharpening Alaska's Competitive Edge: Competing for Capital in a Global Economy"
12/12/96	Fuller Cowell, Publisher, Kent Pollock, Managing Editor, Anchorage Daily News	"Realistic Compliance for Oil Spills"
12/19/96	Janet Kowalski, Director, Division of Habitat & Restoration, AK Department of Fish & Game	"The Newspaper's Role in Resource Development"
		"Permitting & Regulatory Challenges for Alaska"



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RDC's 1997-1998 Legislative and Administrative Priorities

Land and Water Management

- **Water:** Monitor and participate in regulatory and legislative arenas on water quality issues, community wastewater needs, mixing zones, watershed classification, NPDES, reclassification of water bodies, and wetlands. Continue to advocate for standards and methods which are technically achievable, economically feasible and which reflect realistic risk analysis for Alaska conditions.
- **Forestry:** Support funding and increased action to address bug infestation and salvage options on state and federal lands. Support innovative forest management initiatives and the Reforestation Fund in Alaska. Support adequate funding and enforcement of the Alaska Forest Practices Act which includes private land. Advocate and educate on state and federal forestry issues, including a long-term timber supply and increased access.
- **Oil, gas, coal and mineral production:** Support legislative and/or administrative initiatives to encourage new exploration and development, as well as enhanced production from existing fields.
- **Land designations/exchanges/buy-outs:** Analyze for direct or cumulative effect on resource industries, communities and Alaska's economic development future. Oppose withdrawals such as proposed habitat conservation areas.

Transportation/Access

- **Transportation opportunities:** Support access corridors, construction of new transportation facilities, maintenance of existing infrastructure and strong safety standards.
- **Tourism:** Support increased access to tourism opportunities throughout Alaska including helicopter landing sites, airports and rural airstrips, ports, docks and roadways which improve quality of life for residents and visitors alike.
- **Specific projects:** Support improved service and maintenance of the Alaska marine highway, upgrading facilities for residents and visitors; funding maintenance and improvements to the Dalton

highway; construction of a Whittier road access through railroad tunnel with modifications for vehicle pullouts and improve tunnel for safety (DOT/PF Alternative Three); construction of State route 10 (Copper River highway) and a road to Shepard's Point (Cordova) for deep water port access, improved spill response capability and economic diversification opportunities.

- **ANILCA Title XI:** Work with Pacific Legal Foundation to ensure recent settlement is adopted through the federal regulatory process, supporting RDC position on access guarantees.
- **RS 2477 rights-of-way:** Support actions to designate and settle historic RS 2477 rights-of-way across public lands in Alaska, respecting private property rights.

Other Issues

- **ANWR education & advocacy:** Support legislative effort on ANWR issue to open 1002 Study Area lands for oil and gas exploration. Work to stop Wilderness designation. Support funding to educate and lobby at the national level.
- **Regulatory:** Streamline permitting, implement realistic regulations and generally improve the regulatory climate for resource industries.
- **Fisheries:** Support shore-based processing and fisheries policies that assure access and revenues for Alaska's "home fleet." Support reducing waste and better by-catch management, protecting while utilizing resource.
- **Long-range planning:** Support long-range state fiscal planning which includes revenue-enhancement by resource development.
- **Value-added opportunities:** Support value-added opportunities wherever possible throughout Alaska, in all resource sectors.
- **Tax and royalties:** Support fair, equitable taxes and royalties competitive with other national and global jurisdictions, which stimulate jobs, resident opportunities and economic development in Alaska.
- **Education:** Support funding for Alaska-specific educational efforts at all levels about resources and their fundamental economic importance to Alaska and the nation. This includes state support for AMEREF at the K-12 levels.
- **Automatic sunseting** of state standards if federal mandating standards are lowered or repealed.
- **Tort Reform:** Support liability reform efforts which will improve Alaska's business climate for natural resource development.
- **Research, develop and marketing:** Support the research, development and marketing of Alaska resources.
- **Privatization:** Consider privatizing Alaska government services and assets for efficiency and economic benefits.



Resource Development Council

for Alaska, Inc.

1997-98 Issues and Activities Update

RDC is actively involved in a wide range of issues of interest to Alaska's basic industries and critical to Alaska's economic future. RDC's efforts to educate on and advocate for Alaska resource development are supported by membership, events and special activities throughout the year.

Oil and Gas:

RDC continues to support legislative and administrative initiatives encouraging new exploration and development, such as Northstar. RDC worked with the Legislature and the Governor to enact a royalty adjustment bill for marginal and smaller fields, as well as incentives to enhance production from existing fields. RDC continues to testify and comment on other issues affecting the oil and gas industry, including efforts to open the Coastal Plain of ANWR to oil and gas development.

Forestry:

RDC supports funding and increased action to address insect infestations and salvage timber harvests on state and federal lands. Current efforts also support innovative forest management initiatives, including HB 212, a bill applying to the management and sale of state timber. RDC advocates a long-term timber supply and increased access on state and federal forest lands. RDC opposes land withdrawals which further diminish a dedicated timber base for harvest, and provides input to the Forest Service on the Tongass Land Management Plan.

Mining:

RDC supports legislative and administrative initiatives to encourage new exploration and development, as well as enhanced production from existing operations. RDC played a key role in the State's rulemaking on solid waste regulations, particularly the proposed waste disposal and permit fees. RDC works directly on water quality regulatory issues affecting mining, most recently commenting on proposed changes to mixing zones regulations. On the federal front, RDC continues to support reasonable Mining Law reform legislation in Congress. RDC has taken an active role in the extended process to re-open the A-J Mine near Juneau and to reclassify Red Dog and Kalukrok Creeks in the Red Dog area. RDC is active in other key issues affecting the mining industry, such as RS-2477 rights-of-way, ANILCA Title XI access, the National Toxics rule as it applies to Alaska and natural background levels of pollutants like arsenic.

Tourism:

RDC staff and board continues to provide testimony and comment on a wide range of issues, projects and land management plans affecting tourism. Specific projects include the South Slope Denali Management Plan, the proposed road link to Whittier, the proposed Knik Glacier Visitors Center, Kenai Fjords National Park Plan, the Turnagain Arm Management Plan, Hatcher Pass Ski Resort development, the Seward SeaLife Center and related issues of access and management. Throughout 1997-98, RDC will continue to support increased access to tourism opportunities throughout Alaska, including helicopter landing sites on state and federal lands.

Fisheries:

RDC actively supports changes to the Magnuson/Stevens Act recently passed by Congress which strengthens value-added imperatives, inshore allocations and shore-based processing opportunities. RDC supports extension and expansion of the Community Development Quota (CDQ) program. Fisheries infrastructure is often built on coastal wetlands, so RDC comments on watershed issues such as wetlands use which directly affect commercial and sport activities. RDC continues to advocate for marine mixing zones and realistic zones of deposit for shore-based processing industries. RDC hosts educational forums on fisheries issues such as listing the Stellar Sea Lion on the endangered species list and by-catch management.

Water Quality:

RDC launched a broad effort to solicit comments on the state's administrative review of existing water quality standards. RDC supports the state standards and published in-depth comments. In 1997-98, RDC continues its active role to resolve other water regulatory issues, including rulemaking to establish standards for Alaska-specific human health criteria, mixing zones, ground water and contaminated sites regulations and community safe water and drinking water issues. RDC provided comments and continues to monitor the 305(b) report and the 303(d) list of impaired water bodies. RDC was instrumental in the development and passage of HB 342, an act relating to water quality which was vetoed by the Governor.

Transportation:

RDC continues to support construction of an all-Alaska gas pipeline, as well as access corridors, construction of new transportation facilities and maintenance of existing infrastructure to include airports, ports and highways. RDC has filed extensive comments on proposed regulations on helicopter access in the Tongass National Forest, traditional access in Denali State Park and on the proposed RS 2477 rules. RDC recently prevailed in negotiations with U.S. Department of the Interior on ANILCA Title XI access regulations.

Resource Education:

RDC administers the Alaska Mineral and Energy Resource Education Fund (AMEREF), which produces the highly-acclaimed Alaska Resources Kit, a multi-disciplined, K-12 education program which teaches the importance of mineral and energy resources. In 1997-98, RDC's goal is to produce 100 new kits to be distributed statewide to Alaska schools. AMEREF recently completed its new energy and environment module for the kits and is updating other materials. Teacher training programs are underway.

RDC's Annual Resource Conference:

Each November, RDC's Annual Conference features a wide range of speakers discussing the global competitiveness of Alaska's resource industries, forecasts and updates on projects and trends for Alaska's economy. This is RDC's largest educational forum. RDC's 1997 Conference will be November 20 and 21 at the Sheraton Anchorage Hotel.

Thursday Breakfast Forums & Speakers Bureau:

RDC hosts weekly breakfast presentations in Anchorage for the public (September-May) on a variety of statewide resource and economic issues. RDC staff and board members are active in making presentations across Alaska and the Lower 48 on a wide range of resource development issues. Classroom presentations for students and teachers are a vital aspect of RDC's educational efforts.

Community Outreach:

RDC Board and staff recently visited Glenallen and Valdez to meet with local business and community officials, as well as tour industrial sites and other local facilities. Presentations have been made most recently for local groups and media in Sitka, Kenai, Nikiski, Juneau, Anchorage and Fairbanks.

Task Forces:

RDC Board and staff serve Alaska in a variety of ways, including the DEC Alaska Wetlands Working Group, the Pacific Legal Foundation Board of Directors, the Minerals Information Institute, Endangered Species Act Reauthorization Advisory Group, the Public Relations Society of America, the Heritage Land Bank, Anchorage Planning and Zoning Commission, the Alaska Royalty Oil and Gas Advisory Board, the Anchorage Municipal Library Advisory Board and the Optimist Club of Fairbanks.



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February 14, 1997

Ms. Sharmon Stambaugh
Alaska Department of Environmental Conservation
410 Willoughby Avenue
Juneau, AK 99801-1795

Re: Proposed Water Quality Standards for Kensington Mine

Dear Ms. Stambaugh:

Thank you for the opportunity to comment on the Water Quality Standards Regulations, 18 AAC 70, to provide site-specific criteria for Sherman Creek at the Kensington Mine.

The Resource Development Council (RDC) supports the proposed change, which is necessary to accommodate the developer's mining plan and the users' preferred discharge location.

The change in the water quality standard would apply specifically to Sherman Creek during full-scale mining. The change under consideration concerns dissolved inorganic substances, measured as Total Dissolved Solids (TDS).

Throughout the planning, exploration and permitting stages of its Kensington project, Coeur Alaska has worked with the environmental community and commercial fishermen who have concerns about water quality. These interests have stated that they prefer a discharge in Sherman Creek over a marine discharge.

Coeur believes that all uses of Sherman Creek will be protected at the requested levels. Coeur has eliminated Cyanide from its milling process, which will significantly reduce the amounts of toxic metals in the mine effluent.

The background concentration of TDS in Sherman Creek averages 50 milligrams per liter (mg/l) and the current mine drainage is about 540 mg/l. Since concentrations are expected to increase during full-scale mining operations, Coeur has requested a TDS discharge of 1000 mg/l, with

sulfates not to exceed 500 mg/l, and chlorides not to exceed 200 mg/l. Under the current criterion for water supply, TDS may not exceed 500 mg/l, with neither sulfates nor chlorides exceeding 200 mg/l.

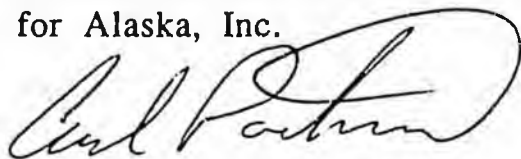
The current standards are based on limiting large amounts of magnesium sulfate and sodium sulfate, both minor sources of sulfate in Kensington's discharge. Dissolved magnesium sulfate and sodium sulfate can impair the taste of drinking water and can cause a laxative effect in large concentrations. The Kensington discharge is also low in chlorides, which, if present, can affect taste and aquatic life.

Not only are magnesium sulfate and sodium sulfate minor sources of sulfate in the Kensington discharge, Coeur is not planning to use Sherman Creek as a drinking water source.

RDC encourages DEC to change the water quality standard for the Kensington mine. Coeur's request is reasonable and is an important factor in the company's mining plan. Moreover, all uses of Sherman Creek will continue to be protected at the requested levels.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

A handwritten signature in cursive script, appearing to read "Carl Portman".

Carl Portman
Communications Director



Resource Development Council for Alaska, Inc.

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- Governor Tony Knowles

February 14, 1997

Governor Tony Knowles
Box 110001
Juneau, AK 99811-0011

Dear Governor Knowles:

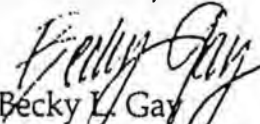
Thank you for recently taking such a firm stand on getting Alaska off the National Toxic Rule (NTR) list which RDC believes has been unfairly imposed by the Environmental Protection Agency (EPA).

Under Commissioner Brown, the Department of Environmental Conservation (DEC) has lately made great strides in the NTR debate, with arsenic in particular. EPA Region X now has enough information (including a 50-state comparative analysis which I hand-delivered to Administrator Chuck Clarke in December 1996) to make a qualified decision allowing Alaska to adopt its own water quality standards and criteria, tailored to Alaska conditions.

RDC is encouraging the Legislature to give statutory backing to your decision to pursue the arsenic standard separately. I believe EPA will appreciate the congruency from that direction, as well as from the Congressional delegation. Not only will it aid EPA's decision-making process in the short run, but it will strengthen Alaska's position in the judicial arena which is surely where the loyal opposition will force the issue next.

Looking forward to seeing you in the Capitol next week with the RDC board delegation,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.


Becky L. Gay
Executive Director

copy Alaska Congressional delegation
Alaska State Legislature
RDC Board and H₂O committee
Commissioner Michele Brown



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February 10, 1997

Senator Rick Halford, Chair
Senate Resources Committee
State Capitol
Juneau, AK 99811

RE: SJR 9, urging the U.S. Congress to pass legislation to open the coastal plain of ANWR to oil & gas exploration, development and production.


I am writing on behalf of the Resource Development Council to urge your support of SJR 9, a resolution endorsing the opening of ANWR's Coastal Plain to environmentally-responsible oil and gas exploration and development.

Alaskans strongly supports a leasing, exploration and development program on ANWR's Coastal Plain. Their support is based on first-hand knowledge and experience with Arctic oil and gas development.

Oil Production from ANWR would continue Alaska's contribution to the nation's daily energy needs beyond the time when the giant reserves at Prudhoe Bay dry up, leasing in ANWR would probably result in a bigger incremental increase in domestic oil production than could be obtained from any other action.

Thank you for giving RDC the opportunity to comment on this resolution which deserves your strong support.

Sincerely,


Becky L. Gay
Executive Director



Resource Development Council for Alaska, Inc.

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January 23, 1997

TO: Senator Lyda Green, Chair
Senate State Affairs Committee
Members of the Senate State Affairs Committee

FROM:  Craig Lyon, Special Assistant, RDC

RE: Support for SB 35, an act relating to Traditional Means of Access for Traditional Outdoor Uses.

Good afternoon. My name is Craig Lyon, Special Assistant with the Resource Development Council. Thank you for the opportunity to provide comment on SB 35. RDC strongly supports the intent of SB 35 and commends Senator Green for introducing this bill.

RDC encourages your prompt consideration of SB 35. Access to Alaska's vast lands is a major priority for RDC. It is imperative Alaska retain the widest possible range of multiple uses on its lands and preserve as many options as possible for access, especially traditional access for recreation and other uses.

Access is a paramount concern to RDC in light of the fact that so much of Alaska's federal and State conservation units are already managed for the preservation of backcountry qualities for those who demand solitude and untracked wilderness experiences. Alaska's parks, both state and federal, can contribute a great deal to tourism and local recreational needs, but reasonable access must be permitted. Tourism demands access and infrastructure to accommodate growing numbers of visitors, and these visitors, as well as local residents, demand a wide variety of opportunities, including flightseeing and aircraft landings. Traditional forms of access, including aircraft, snowmobiles and boats, are an essential element in Alaska's unique access equation. Statistics show air access is among the most popular and highest rated activities for Alaskans and their visitors. Air access quite often affords the only viable access to Alaska's largely inaccessible, roadless land base for people of all physical abilities and for those with a limited time margin.

SB 35 was introduced to protect the rights of Alaskans to access state land and water for recreational use. In a time when the federal government continues to restrict and prohibit access to many areas of the state, the Legislature needs to ensure that decisions to restrict access on State lands are made in a responsible, fair and well represented process.

Thank you for considering RDC's position on this bill, which deserves your support.



Resource Development Council for Alaska, Inc.

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January 21, 1997

Representative Bill Hudson, Co-Chair
Representative Scott Ogan, Co-Chair
House Resources Committee
State Capitol
Juneau, AK 99801-1182

RE: Support for HB 23, an act relating to Traditional Means of Access for Traditional Outdoor Uses.

Dear Representative Hudson & Ogan:

The Resource Development Council (RDC) encourages your prompt consideration of HB 23, an act relating to traditional means of access for traditional outdoor uses.

Access to Alaska's vast lands is a major priority of RDC. It is imperative Alaska retain the widest possible range of multiple uses on its lands and preserve as many options as possible for access, especially traditional access for recreation and other uses.

Access is a paramount concern to RDC in light of the fact that so much of Alaska's federal and State conservation units are already managed for the preservation of backcountry qualities for those who demand solitude and untracked wilderness experiences. Alaska's parks, both state and federal, can contribute a great deal to tourism and local recreational needs, but reasonable access must be permitted. Tourism demands access and infrastructure to accommodate growing numbers of visitors, and these visitors, as well as local residents, demand a wide variety of opportunities, including flightseeing and aircraft landings.

This legislation would make the process of increasing access restrictions and prohibitions more open to the people of Alaska. HB 23 would help ensure that all Alaskans would have proper representation by their elected officials in cases involving restrictions on traditional recreational access. Important access decisions would be kept at the legislative level where they will be debated openly.

Traditional forms of access, including aircraft, snowmobiles and boats, are an essential element in Alaska's unique access equation. Alaskans are very defensive of their rights to access the vast public lands of this northern state.

Thank you for considering RDC's position on this bill, which deserves your support.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

Becky Gay
Executive Director



Resource Development Council for Alaska, Inc.

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January 20, 1997

To: Representative Mark Hodgins, Chair
Representative Norm Rokeberg and Pete Kelly, Co-Sponsors
Members of the House Oil and Gas Special Committee
Alaska State House

From: Becky Gay, Executive Director, RDC

RE: **HB 51 "An Act relating to the Department of Environmental Conservation"**

Thank you, Chairman Hodgins and members of the Committee, for the opportunity to comment in support of HB 51, "an Act relating to the Department of Environmental Conservation." The State must work together actively and honestly to advance economically-feasible, technologically-achievable and enforceable water quality standards for Alaska. This bill is a good step in that direction.

Over the interim, RDC has worked closely with the agencies and the regulated public to address perceived shortcomings in the water quality bill which passed by a huge margin last session, but was then vetoed. Changes are reflected in HB 51 where appropriate, to make it an even better bill.

Especially in light of declining budgets, RDC believes the Legislature is ideally positioned to help DEC make tough choices in the use and protection of water. For instance, the Legislature is the appropriate body to debate and define intent. Final choices between programs for DEC implementation can find "fiscal backing" and should -- with adequate funding.

Congruence between the Legislature and the Administration on certain critical choices will provide Alaska with a springboard from which to regulate efficiently and fairly. Such congruence should also reduce or curtail costs from litigation which arises from ambiguities, vagueness and delay. Statutory authority will minimize wasted efforts and will strengthen agency resolve in areas of concern, like mixing zones.

Currently, there is no state "adjustment policy" on regulations. States are required to change only when federal regulations become more restrictive. This is a one-way street. RDC believes the State needs to legislate a requirement to automatically adjust state standards when federal changes result in less strict standards, or when federal mandates are deleted from law. HB 51 charges DEC to do this.

Foremost, HB 51 requires DEC to set standards and criteria which are scientifically supportable, consistent with existing federal standards and realistic for Alaska.

Where possible, it gives statutory backing for DEC efforts already underway. For instance, HB 51 clarifies the issue (and hopefully strengthens DEC's discretionary resolve) to use natural "background" conditions as the standard when natural levels exceed the State standard. DEC already utilizes this approach, as in the case of arsenic, but is unnerved occasionally by threatened lawsuits. Statutory backing will help.

HB 51 specifically allows for the State to have a stricter standard than federally required. It also allows for DEC to have a standard not in federal law.

HB 51 additionally provides for the following:

- An efficient "change mechanism" for DEC to respond to changes in federal regulations.
- A professional and definitive process (similar to, but not as rigorous as the air program) for evaluating agency conclusions which result in state standards being set stricter than federal requirements.
- An allowance for discharge waters to match the quality of the receiving waters.
- A statutory mandate that mixing zones will be provided for by regulation.

One change RDC recommends is replacing Section 4 (a)(4) with language which reads, "may not require discharged water to be of a higher quality than the natural condition (or existing quality) of the receiving water." This language was debated last year in HB 342 and was found more correct than that which is drafted in HB 51. This change should address concerns that polluted or impaired waterbodies might become more degraded under the current language.

Thank you for giving RDC the opportunity to comment on this legislation. I look forward to working with you in advancing this bill.



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January 13, 1997

Mr. Paul Bateman
Alaska Department of Environmental Conservation
610 University Avenue
Fairbanks, AK 99709-3642

Dear Mr. Bateman:

Thank you for the opportunity to comment on the Water Quality Standards in 18 AAC 70, removal of the one-third above background limit for Total Dissolved Solids (TDS) in Red Dog and Ikalukrok Creeks down to the confluence with the Wulik River near the Red Dog Mine.

The Resource Development Council (RDC) supports the Alaska Department of Environmental Conservation's (ADEC) proposed action to amend 18 AAC 70 to establish site-specific criteria for TDS for Red Dog and Ikalukrok Creeks.

Cominco Alaska Incorporated recently conducted a study on the eggs and fry of rainbow trout, and on larval chironomids which tested the effects of varying concentrations of TDS and changes in TDS concentrations. The study concluded that TDS concentrations up to 1500 milligrams per liter have no adverse effect on the biota of Red Dog or Ikalukrok Creeks.

ADEC's proposed action to remove the one-third above background limit for TDS in Red Dog and Ikalukrok Creeks is a positive action in refining water quality standards to be realistic with Alaska conditions.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.

Becky L. Gay
Becky L. Gay
Executive Director

copy RDC BOARD & MINING MEMBERS



Organization Update:

A plea for Governor, legislature to work together on water quality issues

By Becky Gay

For The Journal of Commerce

In an era facing fiscal gaps and decreased budgets, a scrutiny of statutes and regulations is warranted. Both regulators and the regulated will benefit to see what truly works for Alaska. Where socioeconomic costs are large and benefits are small, a public policy debate is a likely outcome.

It should come as no surprise that this is happening as state water quality regulations undergo revision. The state is now on the brink of clearly defining the use and protection of water in Alaska. Following is a discussion of the many reasons the Legislature and the Knowles administration should work in concert on the subject of water quality.

First, the Legislature is ideally positioned to help the Department of Environmental Conservation (DEC) achieve technologically defensible and economically achievable water quality standards.

On topics ranging from mixing zones to reclassification, statutory guidance can increase clarity, certainty and fiscal resources for permitting and enforcement.

Legislatively, intent can be debated and defined. Many regulatory areas allow for interpretation and agency discretion. Statutory backing for administration efforts will be helpful, and perhaps necessary in some cases.

On one hand, the DEC is considering programs to relinquish to federal control. The Legislature might want to have a say in those decisions and perhaps fund those programs instead. On the other hand, if the state plans to "take over" NPDES permitting, the DEC will need legislative backing and, more importantly, appropriation. Both branches of government and the regulated have a stake in finding a way to provide legal and commensurate funding for permitting.

Having the administration and the Legislature saying the same thing will strengthen personnel resolve within the agencies. At the least, it will provide clear direction and a congruency which might help curtail lawsuits which have been spawned on the vague and confusing. Such unity will help the Environmental Protection Agency (EPA), which is being sued now by Trustees for Alaska, for waiting while the state finalizes mixing zones. Other EPA issues awaiting state initiative which might be moved along by legislative resolve are reclassification petitions, 401 certifications for NPDES permits and Total Maximum Daily Loads (TMDLs).

Without some unity of purpose and an honest dialogue, the cost of environmental conservation may be missing its mark. The state can be more effective, more fair and realistic in assisting economic development while providing good protection for basic resources like water if the Legislature and the administration can agree on going forward with some issues.

It continues to make no sense to regulate discharges to be cleaner than drinking water, as in the case of arsenic. Regulators like to blame the two federal laws (Safe Drinking Water Act vs. Clean Water Act) which allow this conundrum to exist as a federal mandate, but Alaska has expended plenty enough time and money to argue this ridiculous no-win case. The Legislature should immediately adopt the DEC's recommended criteria for arsenic by statute, wasting no more time on the subject. Delegate to the EPA Region X the worry about scientifically explaining their impossible mandate to headquar-



Becky Gay

ters.

If the EPA invokes the National Toxic Rule (NTR) argument, the state can just say "No." A recent study shows other states have successfully asserted themselves, refusing to acknowledge this particular EPA punishment. States far less stringent than Alaska don't even encounter such a list in their region. Together with the Legislature in agreement, the administration can demand instead that the EPA get its own house in order on NTR. This will enable the DEC to get on with other work, helping Alaska be open for business by example.

There is no doubt that regulation requiring below detection limits and arguments over testing methods have interjected great uncertainty into the regulated community permit system. Uncertainty costs society. It costs money and it costs opportunity. Costs will be borne by the taxpayer (for upgrades to public sewage systems to meet such limits) or by the consumer (for costly upgrades to industrial systems) who will see little, if any, commensurate benefit from unrealistic and unworkable regulations.

Unnecessary costs are an excellent win-win dragon to slay. This is the easiest kind of economic abuse to attend to — no one will miss it when it is gone. ■

Becky Gay is Executive Director of the Resource Development Council for Alaska, Inc.



AMEREF

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1997 Program Focus

- Complete the draft revision of Module C, Minerals and Mining, for the Alaska Resources Kit
- Produce new Alaska Resources kits to meet teacher demand
- Statewide teacher training
- Primary adaptation of kit materials for grades K-3

Current Status of State Funding

FY98 funding for the state's portion of the AMEREF program is included in the Department of Education's budget under the Education Special Projects component.

Requested State Funding: \$50,000

FY98 General Fund Appropriation for DOE/ AMEREF Program

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DOE Program Director	\$40,152
Travel, Promotion (AMA Convention)	\$500
Training of trainers	\$4,548
METAB meeting/training	\$1,300
State of AK charges (phone/audios)	\$1,200
(office supplies)	\$2,300

Expenses for all other AMEREF activities, including new kit production, primary adaptation of kit materials for grades K-3 and administrative functions, will continue to be provided for by private sector contributions.

What do all these Alaska schools have in common?

Alrport Heights Elementary	Innoko River School	POLARIS K-12
AKIACHAK SCHOOL	J.R. GILDERSLEEVE SCHOOL	Port Alexander School
Akula Elitnaurvik School	JAMES C. ISABELL SCHOOL	Port Lions School
Aleknagik School	John F. Kennedy Elementary	Rabbit Creek School
ALPENGLOW SCHOOL	John Fredson School	Rampart School
ALYESKA CENTRAL SCHOOL	JOY ELEMENTARY SCHOOL	REDOUBT ELEMENTARY SCHOOL
ANDERSON SCHOOL	Juneau Christian School	Rogers Park Elementary
ANNE HOPKINS WIEN SCHOOL	Kachemak-Selo School	RUSSIAN MISSION SCHOOL
BARANOF ELEMENTARY SCHOOL	KENAI MIDDLE SCHOOL	RYAN MIDDLE SCHOOL
Barnette Elementary School	KING COVE SCHOOL	SAINT MARY'S SCHOOL
Bartlett High School	KODIAK COLLEGE	SALCHA ELEMENTARY
Beluga School	KODIAK HIGH SCHOOL	Sand Lake Elementary
BETTLES FIELD SCHOOL	Kotlik School	Savoonga School
BIG LAKE ELEMENTARY	KOTZEBUE MIDDLE/HIGH SCHOOL	Scenic Park Elementary
BUTTE ELEMENTARY SCHOOL	Koyuk Malemute School	SCHOENBAR MIDDLE SCHOOL
CHEFORNAK SCHOOLS	Lighthouse Christian School	Sears Elementary School
CHIGNIK LAGOON SCHOOL	LOWER KUSKOKWIM - MEDIA CENTER	SERVICE HIGH SCHOOL
CHINOOK ELEMENTARY SCHOOL	MAIN ELEMENTARY	SEVENTH DAY ADVENTIST SCHOOL
CHUGACH EXTENSION	MARTIN L. OLSON SCHOOL	SEWARD ELEMENTARY SCHOOL
CHUGACH OPTIONAL SCHOOL	MAT-SU ALTERNATIVE SCHOOL	Shaktolik School
Chugiak Elementary School Library	Merrelaine A. Kangas School	Shishmaref School
COLONY MIDDLE SCHOOL	METLAKATLA HIGH SCHOOL	SHUNGNAC SCHOOL
COTTONWOOD CREEK	MINCHUMINA COMMUNITY SCHOOL	SITKA ALTERNATIVE SCHOOL
CRAIG HIGH SCHOOL	MOOSE PASS SCHOOL	SITKA HIGH SCHOOL
CRAIK LOGGING SCHOOL	Mountain Village School	Skagway City Schools
DELTA SCHOOL	MT. EDGE CUMBE HIGH	SLANA SCHOOL
DENA'INA SCHOOL	MT. VIEW ELEMENTARY	SOLDOTNA HIGH
DILLINGHAM ELEMENTARY	Naknek Elementary School	SOUTHEAST ISLAND SCHOOL DISTRICT
DIMOND HIGH SCHOOL	NAPAAGTUGMIUT SCHOOL	ST. JOHN'S COMMUNITY SCHOOL
Diomedea School	NENANA CITY PUBLIC	STERLING ELEMENTARY SCHOOL
Dot Lake School	Newhalen School	Stikine Middle School
EAGLE COMMUNITY SCHOOL	NIKOLAEVSK SCHOOL	Swanson Elementary School
EAST ELEMENTARY SCHOOL	Noatak School	TANAINA ELEMENTARY SCHOOL
EEK SCHOOL	Nome Public Schools	TATITLEK COMMUNITY SCHOOL
Elfin Cove School	NOME-BELTZ HIGH SCHOOL	TRAPPER CREEK ELEMENTARY SCHOOL
Evergreen Elementary	NONDALTON SCHOOL	TUKURNGAILNGUQ
FINGER LAKE SCHOOL LIBRARY	North Pole Elementary School	TULUKSAK HIGH SCHOOL
Fire Lake Elementary School	North Pole Middle School	UNALAKLEET SCHOOLS
FLOYD DRYDEN MIDDLE SCHOOL	NORTH SLOPE SCHOOL DISTRICT	Unalaska Schools
Gambell Elementary	NORTH STAR ELEMENTARY SCHOOL	University of Alaska-Fairbanks
Gastineau School	NORTHWEST ARCTIC SCHOOL DISTRICT	University of Alaska-Southeast SITKA
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GEORGE MORGAN HIGH SCHOOL	Northwood Elementary School	Valdez City Schools
GLACIER VALLEY ELEMENTARY	Nunaka Valley	VALDEZ HIGH SCHOOL
Glennallen Elementary School	O'MALLEY ELEMENTARY SCHOOL	Venetie School
Goose Bay Elementary School Library	Ocean View Elementary School	VOZNESENKA SCHOOL
GUSTAVUS SCHOOL	PALMER MIDDLE SCHOOL	Wales-Kingikiniut School
HAINES ELEMENTARY	Paul Banks Elementary School	WASILLA MIDDLE SCHOOL
Hobart Bay School	PEARL CREEK ELEMENTARY SCHOOL	WELLER ELEMENTARY SCHOOL
HOLY CROSS SCHOOL	PERRYVILLE SCHOOL	Wendler Junior High
Homer Intermediate School	PETERSON ELEMENTARY SCHOOL	Whaley Center
Hoonah Elementary School	PILOT POINT SCHOOL	WHITE CLIFF SCHOOL
Houghtaling Elementary School	Pilot Station School	WHITE MOUNTAIN SCHOOL
HUTCHISON CAREER CENTER	Pioneer Peak School Library	Whittier Community School
Iditarod Elementary	Pitkas Point Schools	Willard Bowman Elementary

.....these schools have an AMEREF Alaska Resources Kit !

(this is not a complete listing of schools)

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Juneau Board Trip

February 19 - 20, 1997

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Mr. Carl Portman
Communications Director
Resource Development Council

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

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SESSION
STATE CAPITOL
JUNEAU AK 99801-1182
PHONE (907) 485-4968
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Representative Norman Rokeberg

SPONSOR BILL ANALYSIS

CSHB 51 (O&G)- "An Act relating to DEC and water quality regulations."

HB 51 is an important piece of economic development legislation and regulatory reform that is long overdue. This bill replaces a bill, HB 342, which was vetoed by Governor Knowles last year. *HB 342 passed the House 31 yeas and 8 nays - passed the Senate 14 yeas and 6 nays. Only minor changes have been made to the version that passed the legislature last year.*

The primary thrust of this bill is to make state regulations consistent with federal regulations. In addition as federal criteria changes the bill requires Department of Environmental (DEC) to incorporate a reduction in, or a repeal of each federal regulation effecting water quality. HB 51 is supported by the Resource Development Council (RDC), 18-member Alaska Oil and Gas Association (AOGA), and small independent placer miners.

Currently, Alaska has no mandate or process expressed in state statute that **requires any of our departments to review, evaluate or repeal regulations when the federal government repeals a state requirement or eases compliance criteria.**

HB 51 will foster resource development within the State of Alaska while simplifying the regulatory process. Adoption of federal changes in water quality take a considerable length of time under DEC's current regulatory system unless federal regulations are adopted in mass. For example this method was used by DEC to adopt the federal toxics criteria in mass by reference.

HB 51 will help DEC manage its regulatory responsibilities. HB 51 provides a process for the department to follow when the department begins the process of proposing regulations.

Standardizing state regulations with federal regulations and criteria will provide certainty to members of the public and industry as to the nature of the water quality standards that users requesting water permits will be required to meet.

We must not lose focus of the role regulations in government oversight. The legislature sets policy through statute. Proposed agency regulations must implement the statutes enacted by the legislature. It is not the purview nor the responsibility of departments to interpret or stretch the plain meaning of words contained in statutes. The attorneys that draft bills for us take great pride in capturing the essence of the of legislation proposed and enacted by members of the legislature.

Section 1. The bill contains an intent section that provides DEC the view of the legislature.

Section 2. (NEW SECTION from HB 342) The powers of the department have been amended to require that all DEC regulations be based on science. The definition of background condition will be contained in a new water quality definition section.

Section 3. (NEW SECTION from HB 342) This section was added as a result of concern expressed by DEC last year that HB 342 would prevent DEC **from continuing their efforts to take over from EPA "primacy for administration and permitting" of the national pollutant discharge elimination system (NPDES)**. DEC has used addition of this section to advance a \$3.2 million fiscal note rather than include their continuing NPDES efforts in their annual operating budget.

Section 4. Adds new sections.

- (a) Contains a list of water quality standards and measurements that must be taken into account when proposing, adopting and applying water quality standards.
- (b) **Allows an exception** for DEC to adopt a stricter state regulation than federal standards for shellfish growing areas without additional justification.
- (c) Provides a procedure that allows a permit applicant to petition DEC to amend the state's water quality standards to match the federal criteria within 90 days or another mutually agreed upon date after **federal compliance criteria has been reduced or eliminated** (the administrative procedures act only allows 30 days). At this point **DEC must either 1. proceed to adopt the federal change and propose a new state regulation or; 2. follow the process outlined in the bill to justify a more restrictive a water quality standard.** If DEC needs to keep a stricter **existing** state standard then DEC must make a written justification stating why this situation is unique to Alaska.
- (d) Allows DEC to adopt measurement methods substantially equivalent to EPA methods in order to accommodate special Alaskan circumstances. The measurement of sediment is not included and listed below.
- (e) Establishes the volumetric Imhoff cone method for measurement of settleable solids. However, the bill ***does not prevent DEC from adopting a criteria for total suspended solids*** (underlined words are a DEC amendment by Sen Duncan last year on the Senate floor)..
- (f) Establishes definition of background condition contained on Page 1, Lines 13-15, Page 2, Lines 1-5.
- (g) Adds a new section of law 46-03.087 which establishes the evaluation procedures for:
 - 1. Adoption of **stricter regulations** than federal criteria
 - 2. Adopting a **regulation where there is no federal criteria.**
 - 3. Adopting **measurement methods substantially equivalent to EPA measurements.**
 - 4. Provide process for preparing written findings to justify deviations from federal compliance criteria.
- (h) Allows DEC to review current regulations during their normal triennial review process that is **already required by the Clean Water Act** to determine if there are state regulations stricter than federal compliance criteria.

HB 51 is needed to assure that the state's water quality standards remain consistent and not more restrictive than applicable federal water quality standards unless **there are good scientific reasons** to do so.

I urge your support of this important development tool.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

OIL & GAS, CHAIRMAN
LABOR & COMMERCE, VICE CHAIRMAN
ADMINISTRATIVE REGULATION REVIEW, VICE CHAIRMAN
HEALTH, EDUCATION & SOCIAL SERVICES, MEMBER
ECONOMIC DEVELOPMENT, MEMBER

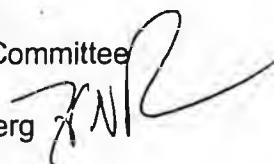
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Representative Norman Rokeberg

MEMORANDUM

TO: Representative Gene Therriault
Co-Chairman, House Finance Committee

FROM: Representative Norman Rokeberg 

DATE: February 12, 1997

SUBJECT: Request for Finance Hearing on CSHB 51(O&G) - water quality regulations

I would like to request a finance hearing for CSHB 51(O&G) for Tuesday, February 18, 1997. The Resource Development Council, (RDC), has been a prime supporter of last year's HB 342 and now on HB 51. Ms. Becky Gay, Executive Director, and the Board of the RDC will be in Juneau next week. We would very much appreciate having a finance hearing so that interested members of the council can testify on the bill.

My office is working on a committee substitute that will address some of the issues raised by DEC during the two public hearings before the House Special Committee on Oil and Gas. We plan to delete the sections that were included in the bill this year at the request of RDC and AOGA. However, it is not possible to accommodate all of the criticisms levied by DEC. Most of their comments and criticisms have no basis in fact. My office, the speaker, and all of last year's bill supporters tried without success to answer and deflect phantom problems to prevent a veto by the Governor. The bill articulates a different point of view. Unfortunately, this point of view is not shared by DEC.

HB 51 is a common sense approach to proposing regulations. The analysis required in the bill for proposed regulations by DEC should already be in place. The legislature should not have to get involved in this type of legislation. But the problems that have surfaced for the industries that need water quality permits have brought those industries to their knees.

In addition the review process outlined in the bill is already required of DEC by the federal Clean Water Act and EPA. DEC has chosen to characterize the review process as an insurmountable task. For over a year DEC has been unable or unwilling to identify DEC regulations that are more strict than the federal regulation they are based upon.

Lastly, the DEC fiscal note attached to the bill deserves special attention by the Finance Committee members. Most of the items contained in the bill do not require additional manpower.

In addition we should have the packet of information to your office no later than tomorrow afternoon. Again, thank you for your consideration.

FISCAL NOTE

**STATE OF ALASKA
1997 LEGISLATIVE SESSION**

No. 1
 BILL NO Bill Version: CSHB 51 (O&G)
 (H) Publish Date: 1/31/97

Revision Date: 1/22/97 5:00 P.M.
 Title: An Act relating to the Department of Environmental Conservation
 Sponsor: Reps Rokeberg and Kelly
 Requestor: House Special Committee on Oil and Gas

Department Affected: Environmental Conservation
 BRU: Department-wide
 Component: All
 COMPONENT SERIAL NO. 633

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	2,597.0	2,597.0	2,597.0	2,597.0	2,597.0	2,597.0
TRAVEL	208.0	208.0	208.0	208.0	208.0	208.0
CONTRACTUAL	681.0	681.0	681.0	681.0	681.0	543.0
SUPPLIES	204.0	204.0	204.0	204.0	204.0	204.0
EQUIPMENT	212.0	212.0	212.0	212.0	212.0	212.0
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	3902.0	3902.0	3902.0	3902.0	3902.0	3764.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

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	3,902.0	3,902.0	3,902.0	3,902.0	3,902.0	3,902.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	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	3,902.0	3,902.0	3,902.0	3,902.0	3,902.0	3,902.0

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS:

FULL-TIME	29	29	29	29	29	29
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Susan Braley *SB*
 Division: Air & Water/Quality

Phone: 907-465-5308
 Date: 1/22/97

Approved by Commissioner: [Signature]
 Agency: Department of Environmental Conservation Date: 1-22-97

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Attachment to Fiscal Note, HB 51 -- 1/22/97

The break out of the fiscal note for HB 51 is shown by pertinent sections of the bill.

All Sections.

There will be significant legal issues associated with several sections of this bill, including obtaining delegation of the NPDES program from EPA as directed by Section 3. Per the Department of Law, they anticipate a full time attorney will be required.

Line 300 (Department of Law RSA) **\$138,000**

Section 2.

This section prohibits the adoption of any environmental regulation by DEC unless the requirements are economically feasible for the persons governed by the regulations without any consideration of the public health impacts. The department administers 29 sets of regulations through Title 18 (Environmental Conservation). In a given year, approximately 15 regulatory packages are developed, revised, or amended by the department, some of which are complex and comprehensive amendments to existing law or are mandated by recent changes to federal law. The requirement to determine the economic feasibility of compliance with all DEC regulations cannot be met solely by DEC technical and scientific staff whose training is in areas other than economics.

Based on the level of regulatory activity in the department, funding for three Economists would be required:

Line 100	2 FTE (Economist II)	\$190,000
	1 FTE (Economist III)	\$107,600
	Total Line 100	\$297,600
Line 200	Travel	\$5,000
Line 300	Contractual	\$3,000
Line 400	Supplies	\$3,000
Line 500	Equipment	\$9,000
TOTAL COSTS SECTION 2 PER YEAR		= \$317,600

Section 3.

This section requires the department to seek and maintain primacy of the federal National Pollutant Discharge Elimination System (NPDES) program from the USEPA. The major components of the NPDES program include permitting, compliance monitoring, and enforcement. This section represents the most substantive part of the proposed legislation from a fiscal perspective. In 1987 the department analyzed the viability of gaining primacy for the NPDES program and estimated at that time it would cost approximately \$2.3 million to administer the minimum effort required by EPA to

maintain the NPDES program.

The Division of Air and Water Quality is currently in the process of awarding a \$25,000 contract to conduct a new feasibility study on state primacy of the NPDES program. Unfortunately, the results of that study will not be available until June 1997. Therefore, for purposes of this fiscal note, the 1987 analysis has been used as the basis for determining the costs of assuming the NPDES program, taking into account current costs estimates.

Line 100	21 FTE professional staff (Envir. Specialists/Engineers)	\$1,994,700
	4 FTE clerical staff (Admin. Clerk II)	\$209,800
	(to implement NPDES related functions in permitting, monitoring, compliance monitoring, and enforcement)	
	Total Line 100	\$2,204,500
Line 200	Travel (compliance monitoring, enforcement)	\$200,000
Line 300	Contractual	\$400,000
Line 400	Supplies	\$200,000
Line 500	Equipment	\$200,000
	TOTAL COSTS SECTION 3	\$3,204,500

Section 4 & 5.

To achieve the requirements under these sections, one additional full time staff position would be required to handle the requests to change a State water quality standard allowed in Sec. 46.03.085© and Section 36.03.087(b), as well as a full review of the regulations required in Section 5 of the bill. The timelines required in 46.03.085(c) would mean a staff person would have to give immediate and full time attention to the requested change.

Because of the contentious nature of making changes to the state water quality standards, it is vital that we seek, and have available for the public, third party expertise on the water quality standard in question. Past experience with contractual funding for third party expertise shows that costs run from \$20,000 to \$75,000 depending on the complexity of the issue. For example, an initial review done just on settling velocities of sediment for the A-J Mine's tailing impoundment cost the Department \$20,000 in 1994. Given the estimate of four changes requested per year, it is estimated that \$100,000 in contractual expenses will be incurred per year to gather third party expertise on the issues. Public notice and hearing costs run approximately \$10,000 per regulatory change. Therefore, the fiscal note includes:

Line 100	1 FTE professional staff(Envir. Specialist III)	\$95,100
Line 200	Travel (hearings, research)	\$3000

Line 300	Contractual Costs for 3rd party expertise	\$100,000
	Public Notice costs	\$40,000
Line 400	Supplies	\$1000
Line 500	Equipment	\$3000

TOTAL SECTION 4 & 5 PER YEAR = \$242,100

TOTAL COSTS OF HB 51 FOR ALL SECTIONS:

Line 100 (personal services)	\$2,597,200
Line 200 (travel)	\$208,000
Line 300 (contractual)	\$681,000
Line 400 (supplies)	\$204,000
Line 500 (equipment)	\$212,000
TOTAL GF	\$3,902,200

FISCAL NOTE

No. 2
 Bill Version: CSHB 51 (O&G)
 (H) Publish Date: 01/31/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Fish and Game
 Title: An Act Relating to the Department of BRU: Habitat and Restoration
 Environmental Conservation Component: Habitat
 Sponsor: Rokeberg and Kelly
 Requester: House Oil and Gas Committee COMPONENT SERIAL NO. 486

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 100	FY 01	FY 02	FY 03
PERSONAL SERVICES	150.0	150.0	112.5	112.5	112.5	112.5
TRAVEL	18.0	18.0	13.0	13.0	13.0	13.0
CONTRACTUAL	12.0	12.0	9.0	9.0	9.0	9.0
SUPPLIES	8.0	8.0	6.0	6.0	6.0	6.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	188.0	188.0	140.5	140.5	140.5	140.5

CAPITAL EXPENDITURES

CHANGE IN REVENUES ()

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	188.0	188.0	140.5	140.5	140.5	140.5
1005 GF Program Receipts						
1037 GF Mental Health						
Other						
TOTAL	188.0	188.0	140.5	140.5	140.5	140.5

Estimate of any current year (FY97) cost: \$ _____

POSITIONS

FULL-TIME	2	2	1	1	1
PART-TIME			1	1	1
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

Additional expenditures stem from the increased workload that will occur as the department is required to increase the scope, substance, and specificity of its AS 16.05.200, 16.05.870, and 16.20 permit application reviews and significantly increase field inspections and site-specific water quality data collection (background conditions) in lieu of complete reliance on the Department of Environmental Conservation's water quality standards and wastewater discharge permitting program. Additional expenditures will occur assisting ADEC in developing a NPDES program that will be approved by EPA. Estimate that five reviews requiring ADF&G participation will be conducted annually to adopt regulations under AS 46.03.087(b).

Prepared by: [Signature]
 Division: Habitat and Restoration
 Approved by Commissioner: Frank Rue [Signature]
 Agency: Fish and Game

Phone: 465-4105
 Date: 1/29/97
 Date: 1/29/97

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ADF&G Fiscal Note Ass: tions on CSHB 51(O&G)

Page 2

One additional permitting position will be needed to increase the scope of AS 16.05.870 and AS 16.20 permit reviews for activities previously afforded full protection under ADEC's wastewater permit program. This is largely due to the significantly increased field presence that will be required to collect and evaluate background conditions under AS 46.03.085(a)(4) and concerns that AS 46.03.085(e) will preempt retention of the Aquatic Life Standard's numerical turbidity and stream substrate sediment accumulation criteria. The corresponding federal narrative sediment criteria lumps settleable solids, turbidity, and total suspended solids together and does not include numeric limitations. Under a best case scenario, it would still require re-adoption of these criteria under AS 46.03.0E7, potentially on a site-specific basis. Greater statutory assurance that ADEC could retain it's Aquatic Life turbidity and sediment accumulation criteria would significantly reduce this cost estimate.

Estimate five reviews will be conducted annually under AS 46.03.087(b) to adopt water quality regulations for which there is no corresponding federal criteria, a more restrictive criteria is proposed, or for methods that are not substantially similar to methods approved by EPA. Difficult to estimate cost because it is highly dependent on availability of site-specific water quality and hydrologic data; however, estimate it may range a low of \$10,000 per review to a maximum of \$62,000 each (this is the actual annual cost recently incurred assisting ADEC in development of site-specific criteria for Ikalukruk Creek (Red Dog Mine).

Estimate 0.5 FTE Habitat Biologist will be needed in Years 1 and 2 to assist in developing a state-run NPDES program that will be approved by the EPA.

Increased AS 16.05.870 and AS 16.20 Permit Review and Compliance Inspections

	<u>Annually</u>	
Line 100	75.0	1 - Habitat Biologist
Line 200	7.0	
Line 300	5.0	
Line 400	3.0	
TOTAL	90.0	

AS 46.03.087(b) Evaluations (5 annually) (Assume low-range estimate of \$10,000 each)

	<u>Annually</u>	
Line 100	37.5	0.5 - Habitat Biologist
Line 200	6.0	
Line 300	4.0	
Line 400	3.0	
TOTAL	50.5	

NPDES Program Assumption (Years 1 and 2 Only)

	<u>Year 1 and 2</u>	
Line 100	37.5	0.5 - Habitat Biologist
Line 200	5.0	
Line 300	3.0	
Line 400	2.0	
TOTAL	47.5	

**ALASKA OIL AND GAS ASSOCIATION
POSITION ON
WATER QUALITY STANDARDS LEGISLATION
January, 1997**

The Alaska Oil and Gas Association (AOGA) is a trade association whose 18 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

AOGA supports the goal of legislation which would establish reasonable, economically achievable, and scientifically based State water quality standards that are no more stringent than federal standards unless, on a case by case basis, scientific evidence justifies more stringent state regulation.

Specifically, AOGA supports legislation that provides for the following:

State regulations and standards to be consistent with federal requirements;

If circumstances warrant state standards which are more restrictive than federal requirements, a definitive process for evaluating the need for a more stringent standard which considers science and economics;

Efficient amendment of state regulations to match changing federal regulations;

Regulations that specify only EPA-approved measurement methods;

Allowance for discharge waters to match the quality of receiving waters

Presently the state is required to amend its regulations only when changes to federal regulations result in standards which are *more* restrictive than those of the state. To ensure consistency with federal regulations, the state also should be required to amend state standards when changes occur to federal regulations which result in *less* restrictive standards, or when provisions are deleted from federal regulations. There should be an efficient means for agencies to modify existing state regulations to effect this requirement.

Federal regulations should be the basis as well as the boundary for state regulations. In the event that there is a legitimate need for more stringent state regulations, there should be established review criteria, which considers science and economics, for evaluating the merit of the argument for having state regulations that would be more stringent than federal requirements.

Finally, an appeal process should be provided that allows the regulated community to challenge state regulations on the basis that a state regulation is more stringent than federal requirements.

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907)272-1481 Fax: (907)279-8114
Judith M. Brady, Executive Director

February 25, 1997

The Honorable Norman Rokeberg
Alaska State House of Representatives
State Capitol
Juneau, Alaska 99801

AOGA Position Statement on Improving State Water Quality Standards

Dear Representative Rokeberg:

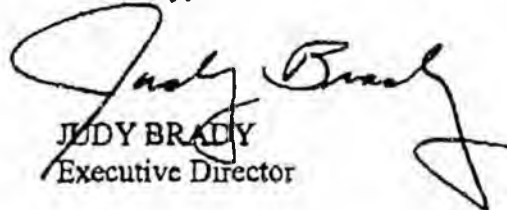
As sponsor of HB 51, we wanted to send you the attached AOGA position statement on improving water quality standards which was approved by the our Board of Directors today.

AOGA supports legislative and administrative efforts which would establish reasonable, economically achievable and scientifically based state water quality regulations that are consistent with the Clean Water Act, recognizing that the Clean Water Act allows states to have more restrictive criteria.

As you know, it is AOGA's policy to work toward consensus legislation. AOGA stands ready to continue to work with members of the Legislature and the Administration to provide technical assistance on water quality legislation to ensure consistency with Clean Water Act requirements and to ensure concerns about NPDES primacy are addressed.

We look forward to working with you in the future.

Sincerely,


JUDY BRADY
Executive Director

Attachment

**ALASKA OIL AND GAS ASSOCIATION
POSITION ON
IMPROVING WATER QUALITY STANDARDS
February 25, 1997**

The Alaska Oil and Gas Association (AOGA) is a trade association whose 18 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

AOGA supports legislative and administrative efforts which would establish reasonable, economically achievable, and scientifically based State water quality regulations that are consistent with the Clean Water Act, recognizing that the Clean Water Act allows states to have more restrictive criteria.

Specifically, AOGA supports the following:

State regulations and standards to be consistent with federal requirements;

If circumstances warrant state standards which are more restrictive than federal requirements, a definitive process for evaluating the need for a more stringent standard which considers science and economics;

Efficient amendment of state regulations to match changing federal regulations;

Regulations that specify only EPA-approved measurement methods;

Allowance for discharge waters to match the quality of receiving waters

Presently the state is required to amend its regulations only when changes to federal regulations result in standards which are *more* restrictive than those of the state. To ensure consistency with federal regulations, the state also should be required to amend state standards when changes occur to federal regulations which result in *less* restrictive standards, or when provisions are deleted from federal regulations. There should be an efficient means for agencies to modify existing state regulations to effect this requirement.

Federal regulations should be the basis as well as the boundary for state regulations. In the event that there is a legitimate need for more stringent state regulations, there should be established review criteria, which considers science and economics, for evaluating the merit of the argument for having state regulations that would be more stringent than federal requirements.

An appeal process should be provided that allows the regulated community to challenge state regulations on the basis that a state regulation is more stringent than federal requirements.

Finally, AOGA urges the legislature and the administration to work with EPA to resolve EPA's technical concerns associated with NPDES primacy.

Miners bitter over new permit guidelines

By PATRICIA JONES
Staff Writer

Claudine Nordeen shook her head in disbelief after learning Tuesday that she and her husband are now required to add nitric acid to placer mining water samples to preserve them for arsenic testing.

"You guys are all worried about cancer but you make up play around with acid," she said in disgust to a permit writer from the U.S. Environmental Protection Agency, who was outlining new federal guidelines for Alaska gold miners using placer- and suction-dredging methods.

The guidelines are included in a new general permit that many, but not all, Alaska miners will work under beginning this summer. The new general permit replaces regulations set in 1994, and the new rules expire in June 1999.

About 30 miners, as well as some local state regulatory employees, gathered Tuesday at the Noel Wien Public Library to go over changes in the operating rules. Much of the discussion about detecting arsenic remained quite acidic, including Nordeen's comment.

She was referring to a discussion earlier in the afternoon workshop, when Carla Fisher, the EPA permit writer in the Seattle office, told the group of miners about the dangers of arsenic.

"Based on a previous study in Taiwan, where there were high concentrations of high arsenic levels, we found high incidents of skin cancer," Fisher said.

Yet to preserve one liter water samples taken from discharged water to test for arsenic, EPA regulations require that Alaska miners use nitric acid. Another miner said he couldn't buy nitric acid because local stores had discontinued carrying that product, due to safety mandates from EPA.

The only way to get around



Sam Haral/News Miner

PERMIT TALK—John Cook, right, of Cook's Mining asks Cindi Godsey, left, of the Environmental Protection Agency about monitoring requirements for new general permits Tuesday during a break in the EPA's workshops for placer miners. Listening in is Larry Peterson, middle, an environmental consultant who helps miners file their permits. Godsey is a national pollutant discharge elimination system permit writer for the EPA.

water sample to a testing lab within 48 hours, Fisher told the group Tuesday.

That's not a realistic option for Nordeen and her husband, since the couple runs a small placer mine near Wiseman, in the Brooks Range. That's more than 200 miles from Fairbanks, where the closest testing lab that can

water is located. Even more contentious to many miners is that the federal requirement included in the general permit keeps discharged water at less than .10 parts per billion of arsenic. That compares with the state Department of Environmental Conservation's drinking water standard of 50 parts per billion.

And the lowest level that laboratory tests can accurately detect arsenic is one part per billion, said Jim Johnson, vice president of Northern Testing Laboratories, Inc. of Fairbanks.

"Many regulations have very little concern about any real health problems," he said, pointing out that municipal water systems can provide water

with more arsenic in it than mines can release into the environment.

Through the commissioner's office, DEC officials have asked regional EPA administrators to relax their regulations in Alaska and let the state's water quality standards be the limit for arsenic in mining operations. See MINES, Page D-2

MINERS

Continued from Page B-1

While that request was not included in the new general permit, EPA will allow each miner to request that the discharge arsenic level be based on the background measure of arsenic in water flowing into the mining operation.

That means that miners will likely need to gather background data to apply for that modification, which must go through a public comment period before approval from DEC and EPA.

"At this point, this year we know we have very limited background samples," said Pete McGee, a Fairbanks manager of a watershed development program for DEC.

NYSE volume totaled 554.12 million shares vs. 556.57 million in the previous session.

The NYSE's composite index rose 3.33 to 398.58. The Nasdaq composite index rose 5.95 to 1,326.30. **Page 7**

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THE EMPIRE

members authorized a strike during contract negotiations. The union reached a contract agreement just before a planned strike, but not before travelers canceled reservations, causing a drop in revenues, Hayden said.

bled notes in the margins as DeLong lectured.

Patrick Pennoyer attended each of the seminars after receiving a mailing promoting them.

tions are the right ones, but he's intrigued.

"I've heard what's been said previously," Pennoyer said. "It seems different hearing it first hand. It's a lot to

Is Juneau's drinking water in jeopardy?

■ *Debate swirls around request to use Gold Creek to discharge water from A-J mine*

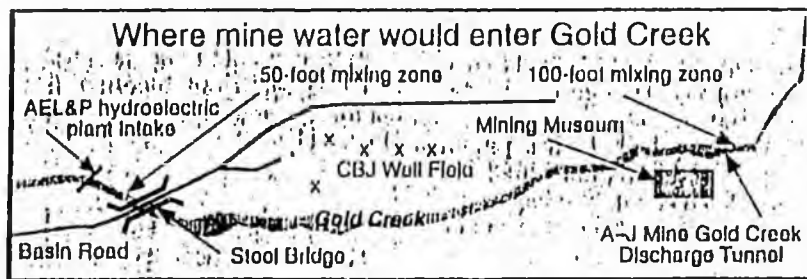
By LORI THOMSON

THE JUNEAU EMPIRE

First Gold Creek gave Juneau's founders chunks of gold to build an industry on. Then it gave the city drinking water.

Now people are debating another use for the creek near downtown — as a place to discharge water from the Alaska-Juneau gold mine.

Echo Bay Alaska Inc., working to develop the mine, wants permission from the state to release wastewater into the creek at levels



Proposed path: Mine wastewater would be released below the Steel Bridge and from the Gold Creek discharge tunnel. Map information courtesy of the Alaska Department of Environmental Conservation.

above federal water-quality standards.

But will a mine discharge threaten Juneau's drinking water?

State officials say it won't, while some mine critics say it could.

Earl Hubbard of the Alaska Department of Environmental Conservation believes Juneau's drinking water from Gold Creek is protected.

People are most concerned about water from underground areas where drilling or other mining activity may have left contaminants. This water — about 406 million gallons of it — is filling up a large set of caverns 1,000 feet below sea level, known as the Deep North.

"The discharge from the Deep North doesn't have a path to get to

Please see Gold, Page 8

Businesses likely win

■ *Legislative agenda makes interests dependent on government program probable losers*

This is the fifth part of a series on the legislative session that opens Monday.

By MARK SABBATINI

THE JUNEAU EMPIRE

The winners of this year's legislative session, according to others, will generally be interest groups dependent on state money.

Those include business developers who may see

Juneau Empire 9 Jan 1997