

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2334 SCOMM 96: HOUSE SPEC. COMM. ON OIL & GAS, 1995-1996

**18 AAC 70.022. HUMAN HEALTH RISK LEVEL FOR CARCINOGENIC SUBSTANCES.** After January 1, 1995, any adoption by the department of water quality criteria for a carcinogenic substance for the protection of human health will be based on a lifetime incremental cancer risk level of 1 in 100,000 for exposed individuals. (Eff. 1/4/95, Register 133)

**Authority:** AS 46.03.020  
AS 46.03.050  
AS 46.03.070  
AS 46.03.080

**18 AAC 70.023. WHOLE EFFLUENT TOXICITY LIMIT.** (a) An effluent discharged to a water may not impart chronic toxicity to aquatic organisms, expressed as 1.0 chronic toxic unit, at the point of discharge, or if the department authorizes a mixing zone in a permit, approval, or certification, at or beyond the mixing zone boundary, based on the minimum effluent dilution achieved in the mixing zone. If the department determines that an effluent has reasonable potential to cause or contribute to exceedance of this limit, the department will require whole effluent toxicity testing as a condition of a permit, approval, or certification. The permittee shall use methods and species approved by the United States Environmental Protection Agency in *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms* (2d ed. 1989) (Office of Research and Development, Cincinnati, OH, EPA-600/4-89/001), *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms* (1988) (Office of Research and Development, Cincinnati, OH, EPA-600/4-87/028), and *Supplement to "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Surface Waters to Freshwater Organisms"* (September 1989) (Office of Research and Development, Cincinnati, OH, EPA-600/4-89/001a, Revision 1), or alternate methods and species approved by the department that provide equivalent estimates of chronic toxicity. The department will, in its discretion, require that the testing use sensitive and biologically important life stages of indigenous species.

(b) In this section, "chronic toxic unit" means an expression of the chronic toxicity of an effluent, determined as  $(100/\text{NOEC})$ , where NOEC, the "No Observed Effects Concentration," is the highest tested percentage concentration of an effluent, established by direct testing of toxicity to aquatic organisms, that causes no observable adverse effects, including effects on growth, development, behavior, reproduction, or survival, over a test duration that generally is one-tenth or more of the lifespan of the test organism. Other equivalent chronic toxicity endpoints approved by the department, such as the "25 percent Inhibition Concentration ( $\text{IC}_{25}$ )", may be used in place of NOEC, and may incorporate shorter test durations. (Eff. 1/4/95, Register 133)

**Authority:** AS 46.03.020  
AS 46.03.050  
AS 46.03.070  
AS 46.03.080

**18 AAC 70.025. SITE-SPECIFIC CRITERIA.** (a) The department will, in its discretion, administratively authorize in a permit, certification, or approval issued in accordance with (b) of this section, or establish in regulation under (c) of this section, a site-specific water quality criterion that modifies a water quality criterion set out in 18 AAC 70.020(b) if the department finds that the evidence is sufficient to reasonably demonstrate that the site-specific criterion will fully protect designated uses in 18 AAC 70.020(b) and that

(1) a criterion in 18 AAC 70.020(b) would require that the receiving water at a certain site be of higher quality than natural conditions;

(2) for reasons specific to a certain site, a criterion in 18 AAC 70.020(b) is more stringent or less stringent than necessary to ensure full protection of the corresponding use class; or

(3) a criterion would be better expressed in terms different from those used in 18 AAC 70.020(b).

(b) If the department finds that a natural condition of a waterbody has been demonstrated to be of lower quality than a water quality criterion for the use classes in 18 AAC 70.020(b) and that the natural condition will fully protect designated uses in 18 AAC 70.020(b), the natural condition constitutes the applicable water quality criterion. Upon application or on its own initiative, the department will determine whether a natural condition should be approved as a site-specific water quality criterion. Before making the determination, the department will issue public notice of a proposed approval under this subsection and provide opportunity for public comment. If a natural condition varies with time, the natural condition will be determined to be the prevailing highest quality natural condition measured during an annual, seasonal, or shorter time period before discharge or operation, or as the actual natural condition measured concurrent with discharge or operation. The department will, in its discretion, determine a natural condition for one or more seasonal or shorter time periods to reflect variable ambient conditions. The department will, in its discretion, require additional or continuing monitoring of natural conditions.

(c) Except as provided in (b) of this section, upon application, or on its own initiative, the department will, in its discretion, set site-specific criteria in regulation for reasons listed in (a)(2) and (3) of this section. The department will set a site-specific criterion for the "growth and propagation of fish, shellfish, other aquatic life, and wildlife" use classes in 18 AAC 70.020(a)(1)(C) and 18 AAC 70.020(a)(2)(C) only if the department finds that the evidence is sufficient to reasonably demonstrate that

(1) the species or habitats present, or expected to be present under natural conditions, are more sensitive or less sensitive to a substance than indicated by the criterion, and a site-specific criterion is required to prevent adverse effects or to alleviate an unnecessarily restrictive general criterion; or

(2) the natural characteristics of the receiving environment would increase or reduce the biological availability or the toxicity of a substance, or otherwise alter the substance, and a site-specific criterion is required to prevent adverse effects or to alleviate an unnecessarily restrictive general criterion.

(d) An applicant seeking a site-specific criterion under (b) or (c) of this section shall provide all information that the department determines is necessary to modify an existing criterion. The department will, in a timely manner, request and review for completeness, information submitted under this subsection. In all cases, the burden of proof is on the applicant seeking a site-specific criterion. (Eff. 1/7/87, Register 100; am 1/4/95, Register 133)

**Authority:** AS 46.03.020 AS 46.03.090  
AS 46.03.050 AS 46.03.100  
AS 46.03.070 AS 46.03.110  
AS 46.03.080 AS 46.03.720

#### **18 AAC 70.030. PROCEDURE FOR APPLYING WATER QUALITY**

**CRITERIA.** In applying the appropriate water quality criteria for any water body or portion of a water body, the department will use the following procedure:

(1) if a water body is protected for more than one use class under 18 AAC 70.050, the most stringent water quality criteria for all the included use classes will apply;

(2) at the boundary between waters protected for different use classes under 18 AAC 70.050, the water quality criteria for the more stringent use class will apply; and

(3) in estuaries, where the fresh and marine water quality criteria differ within the same use class, the standard will be determined on the basis of salinity; however, the marine water quality criteria will apply for dissolved oxygen if the salinity is one part per thousand or greater and for fecal coliform bacteria if the salinity is 10 parts per thousand or greater. (In effect before 7/28/59; am 5/24/70, Register 34; am 8/28/71, Register 39; am 10/22/72, Register 44; am 8/12/73, Register 47; am 2/2/79, Register 69; am 1/7/87, Register 100)

**Authority:** AS 46.03.020(10)  
AS 46.03.070  
AS 46.03.080

**18 AAC 70.032. MIXING ZONES.** (a) In applying the water quality criteria and limits set by or under this chapter, the department will, in its discretion, upon application, authorize in a permit or certification, a mixing zone. The department will not authorize a mixing zone if it finds that available evidence reasonably demonstrates that

(1) pollutants discharged could

(A) bioaccumulate, concentrate, or persist above natural levels in sediments, water, or biota to significantly adverse levels based on consideration of bioaccumulation and bioconcentration factors, toxicity, and exposure;

(B) be expected to cause carcinogenic, mutagenic, or teratogenic effects on biota or human health, so that significant human health risks could occur to consumers of water, fish, or shellfish when evaluated using reasonable assumptions about exposure pathways, including exposure duration of affected aquatic organisms in the proposed mixing zone and the patterns of fisheries use and consumption in the area; or

(C) otherwise create a public health hazard through encroachment on water supply or contact recreation users of the waterbody;

(2) there could be an adverse impact on anadromous or resident fish or shellfish spawning or rearing, a barrier formed to migratory species, failure to provide a zone of passage, or an adverse effect on threatened or endangered species;

(3) flushing or mixing of the waterbody is not adequate to ensure full protection of uses of the waterbody outside the proposed mixing zone; or

(4) there could be an environmental effect so adverse that a mixing zone is not appropriate.

(b) The water quality standards and limits set by or under this chapter may be exceeded only within a mixing zone authorized by the department. A discharge may not cause or reasonably be expected to cause lethality to passing organisms in the mixing zone, or a toxic effect in the water column, sediments, or biota outside the boundaries of the mixing zone. Human health and chronic aquatic life criteria apply at and beyond the boundaries of the mixing zone. Acute aquatic life criteria apply at and beyond the boundaries of a smaller initial zone surrounding the outfall. The initial zone for application of acute criteria must be sized to prevent lethality to passing organisms. Methods for calculating the boundaries of the zone for application of acute criteria, unless otherwise specified by the department, must follow procedures under Alternatives 2 or 3 in Section 5.1.2 of the United States Environmental Protection Agency's Water Quality Standards Handbook, Second Edition, September 1993.

(c) In determining whether a mixing zone is appropriate, and in determining the size of a mixing zone, the department will ensure that existing uses of the waterbody as a whole are maintained and fully protected so that any discharge will neither partially nor completely eliminate an existing use in a waterbody as a whole, cause significant growth reduction or genetic impairment of endemic aquatic populations within the overall waterbody, or impair the overall biological integrity of the waterbody. In making a determination under this section, the department will consider

(1) the physical, biological, and chemical characteristics of the receiving water, including volume and flow rate;

- water;
- (2) the effects that the discharge might have on the uses of the receiving water;
  - (3) the flushing and mixing characteristics of the receiving water;
  - (4) effluent treatment technology requirements under federal or state law;
  - (5) the characteristics of the effluent, including volume, flow rate, dispersion, and quality after treatment;
  - (6) methods to analyze and model near-field and far-field mixing; and
  - (7) the cumulative effects of multiple mixing zones and diffuse, nonpoint source inputs located within, or affecting, the receiving water.

(d) A mixing zone must be as small as practicable and will be authorized by the department only after the applicant has submitted to the department evidence that the department finds affirmatively demonstrates that

- (1) the applicable requirements of this chapter will be met; and
- (2) an effluent or substance that might exceed the water quality criteria and limits set by or under this chapter will be treated to remove, reduce, and disperse pollutants, using methods found by the department to be most effective and technologically and economically feasible, consistent with the highest statutory and regulatory treatment requirements.

(e) The department will reduce in size or deny a mixing zone if the department finds that available evidence reasonably demonstrates that pollutants discharged will result in undesirable or nuisance aquatic life; produce objectionable color, taste, or odor in aquatic resources harvested for human consumption; or preclude or limit established processing activities or commercial, sport, personal-use, or subsistence fish and shellfish harvesting.

(f) Unless the department finds that evidence provided to the department is sufficient to reasonably demonstrate in accordance with this section that the size limitations can be safely increased, a mixing zone must comply with the following size limitations in order to be authorized by the department:

- (1) for estuarine and marine waters, the cumulative linear length of all mixing zones intersected on any given cross section of an estuary, inlet, cove, channel, or other marine water, measured at mean lower low water, may not exceed 10 percent of the total length of that cross section, nor may the total horizontal area allocated to mixing zones in these waters exceed 10 percent of the surface area, measured at mean lower low water;
- (2) for lakes, the total horizontal area allocated to all mixing zones may not exceed 10 percent of the lake's surface area;

(3) for streams, rivers, or other flowing fresh waters,

(A) a mixing zone may not extend downstream beyond the point of complete mixing, as determined using standard river flow mixing models accepted by the department, or beyond the location where a public health hazard reasonably could be expected to occur, whichever point is nearer to the point of discharge;

(B) in calculating the size of a mixing zone and maximum pollutant discharge limitations, the volume of flow available for dilution must be determined using

(i) the actual flow as determined by gauging data collected concurrent with the discharge; or

(ii) for conventional or nontoxic substances, the default 2-year, 3-day low flow (3Q2) appropriate to the period of discharge, and for toxic substances, the 10-year, 7-day low flow (7Q10) as the chronic criteria design flow for protection of aquatic life; these low flows must be calculated using methods of Ashton and Carlson, *Determination of Seasonal, Frequency and Durational Aspects of Streamflow with Regard to Fish Passage Through Roadway Drainage Structures* (1984); Carlson, *Seasonal, Frequency and Durational Aspects of Streamflow in Southeast and Coastal Alaska* (1987); or another appropriate regional regression flow model approved by the department; numeric water quality criteria apply at all design flows that are equal to or greater than these critical low flows;

(C) a mixing zone may not result in

(i) permanent or irreparable displacement of indigenous organisms; or

(ii) a reduction in fish population levels in the waterbody; and

(D) a mixing zone will not be authorized in an area of

(i) anadromous fish spawning; or

(ii) resident fish spawning redds for Arctic grayling, northern pike, rainbow trout, lake trout, brook trout, cutthroat trout, whitefish, sheefish, Arctic char (Dolly Varden), burbot, and landlocked coho, king, and sockeye salmon.

(g) An applicant requesting authorization for a mixing zone shall provide to the department all information reasonably necessary for a decision on an application for a mixing zone, including all information and demonstrations required in this section and other information that the department determines is necessary to meet the requirements of this section. The burden of proof for justifying a mixing zone through demonstrating compliance with the requirements of this section rests with the applicant. The department will, in a timely manner, request and review for completeness, information submitted under this section. (In effect before 7/28/59; am 5/24/70, Register 34; am 8/28/71, Register 39; am 10/22/72, Register 44; am 8/12/73, Register 47; am 2/2/79, Register 69; am 4/23/79, Register 70; am 9/19/79, Register 71; am 3/30/84, Register 89; am 9/15/88, Register 107; am 1/4/95, Register 133)

**Authority:** AS 46.03.020  
AS 46.03.050  
AS 46.03.070  
AS 46.03.080  
AS 46.03.100  
AS 46.03.110

**18 AAC 70.033. ZONES OF DEPOSIT.** (a) In its discretion, the department will issue or certify a permit that allows deposit of substances on the bottom of marine waters within limits set by the department. The water quality criteria of 18 AAC 70.020(b) and the antidegradation requirement of 18 AAC 70.010(c) may be exceeded in a zone of deposit. However, the standards must be met at every point outside the zone of deposit. In no case may the water quality standards be violated in the water column outside the zone of deposit by any action, including leaching from, or suspension of, deposited materials. Limits of deposit will be defined in a short-term variance issued under 18 AAC 70.015 or a permit issued or certified under 18 AAC 15.

(b) In deciding whether to allow a zone of deposit, the department will consider, to the extent it deems appropriate,

- (1) alternatives that would eliminate, or reduce, any adverse effects of the deposit;
- (2) the potential direct and indirect impacts on human health;
- (3) the potential impacts on aquatic life and other wildlife, including the potential for bioaccumulation and persistence;
- (4) the potential impacts on other uses of the water body;
- (5) the expected duration of the deposit and any adverse effects; and
- (6) the potential transport of pollutants by biological, physical, and chemical processes.

(c) The department will, in its discretion, require an applicant to provide information that the department deems necessary to adequately assess (b)(1) - (b)(6) of this section. In all cases, the burden of proof for providing the required information is on the person seeking to establish a zone of deposit. (Eff. 3/30/84, Register 89; am 1/7/87, Register 100)

**Authority:** AS 46.03.020(10)  
AS 46.03.070  
AS 46.03.080  
AS 46.03.100  
AS 46.03.110

**18 AAC 70.034. THERMAL DISCHARGES.** Under section 316(a) of the Clean Water Act of 1977, if the owner or operator of a thermal discharge source, after opportunity for public hearing, can show to the department's satisfaction that application of the temperature criterion in 18 AAC 70.020 is more stringent than needed to assure the protection and propagation of diverse indigenous and anadromous populations of aquatic life in waters to which the discharge would occur, the department will, in its discretion, apply a new temperature criterion to the water body affected. The new criterion will assure the protection and propagation of diverse indigenous and anadromous populations of aquatic life, and other wildlife, in and on that water body, according to its protected use classes. (Eff. 2/2/79, Register 69; am 1/7/87, Register 100)

**Authority:** AS 46.03.020  
AS 46.03.070  
AS 46.03.080

**18 AAC 70.040. NATURAL CONDITIONS.** Repealed and consolidated into 18 AAC 70.010. 2/2/79.

**18 AAC 70.050. CLASSIFICATION OF STATE WATERS.** (a) Except as specified in (b) of this section, state water is protected for the following use classes:

- (1) fresh waters - Classes (1)(A), (1)(B), and (1)(C);
- (2) groundwaters - Class (1)(A);
- (3) marine waters - Classes (2)(A), (2)(B), (2)(C), and (2)(D).

(b) Specific water of the state is protected only for the designated use class shown, as follows:

| WATERSHED<br>TYPE/NAME | NUMBER*  | LATITUDE<br>LONGITUDE**   | LOCATION          | DESIGNATED<br>USE CLASS                                        | REACH OF<br>WATER AFFECTED                                                                      |
|------------------------|----------|---------------------------|-------------------|----------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| Amy Creek              | 19030004 | 148°26'55"W<br>65°32'30"N | Near Livengood    | (1)(A)(i)<br>(1)(A)(iii)<br>(1)(A)(iv)<br>(1)(B)(ii)<br>(1)(C) | Headwaters of Amy Creek<br>to its confluence with<br>Livengood Creek                            |
| Chena River            | 190 3004 | 64°47'45"N<br>147°54'45"W | Near<br>Fairbanks | (1)(A)(ii)<br>(1)(A)(iii)<br>(1)(A)(iv)<br>(1)(B)<br>(1)(C)    | Confluence of Chena<br>and Chena Slough to the<br>confluence of Chena River<br>and Tanana River |
| Franklin Creek         | 19030004 | 148°30'08"W<br>65°33'07"N | Near Livengood    | (1)(A)(iv)                                                     | Headwaters of Franklin<br>Creek to Hess Creek Dam/<br>reservoir diversion ditch                 |
| Gertrude Creek         | 19030004 | 148°30'05"W<br>65°32'05"N | Near Livengood    | (1)(A)(i)<br>(1)(A)(iv)<br>(1)(B)(ii)<br>(1)(C)                | Headwaters of Gertrude<br>Creek to its confluence<br>with Livengood Creek                       |
| Heine Creek            | 19030004 | 148°25'12"W<br>65°33'60"N | Near Livengood    | (1)(A)(iv)<br>(1)(C)                                           | Headwaters of Heine<br>Creek to Hess Creek Dam/reservoir<br>diversion ditch                     |
| Isabell Creek          | 19030004 | 148°31'42"W<br>65°32'50"N | Near Livengood    | (1)(A)(iv)                                                     | Headwaters of Isabell Creek to<br>Hess Creek Dam road crossing                                  |
| Isabell Creek          | 19030004 | 148°31'42"W<br>65°32'50"N | Near Livengood    | (1)(A)(iv)<br>(1)(C)                                           | Hess Creek Dam road crossing<br>to Hess Creek Dam/reservoir diversion<br>ditch                  |

\* Watershed numbers refer to watersheds established by the U.S. Department of Interior, Geological Survey "HYDROLOGIC UNIT MAP - 1974 STATE OF ALASKA" for sale by the U.S. Geological Survey, Fairbanks, AK 99701; Denver, CO 80225; or Reston, VA 22092. This document is on file in the lieutenant governor's office and may be seen at any department office.

\*\* River latitudes and longitudes are set at the downstream end of the affected river reach, as determined from U.S. Department of Interior, Geological Survey quadrangle maps or as assigned in "Water Resources Data for Alaska Water Year 1977" (U.S. Geological Survey Water Data Report AK-77-1).

| WATERSHED<br>TYPE/NAME                                         | NUMBER*  | LATITUDE<br>LONGITUDE**   | LOCATION       | DESIGNATED<br>USE CLASS                                                     | REACH OF<br>WATER AFFECTED                                                                                                                                                                   |
|----------------------------------------------------------------|----------|---------------------------|----------------|-----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Lillian Creek                                                  | 19030004 | 148°34'23"W<br>65°30'40"N | Near Livengood | (1)(A)(iv)                                                                  | Headwaters of Lillian Creek<br>to its confluence with Livengood Creek                                                                                                                        |
| Lucille Creek                                                  | 19030004 | 148°27'25"W<br>65°32'25"N | Near Livengood | (1)(A)(iv)                                                                  | Headwaters of Lucille Creek<br>to its confluence with Livengood Creek                                                                                                                        |
| Nolan Creek<br>and all its tributaries<br>excluding Acme Creek | 190 3005 | 67°27'35"N<br>150°14'49"W | Near Wiseman   | (1)(A)(iv)                                                                  | Headwaters of Nolan Creek to its<br>confluence with Wiseman Creek, and<br>from the headwaters of each tributary<br>of Nolan Creek to its confluence with<br>Nolan Creek excluding Acme Creek |
| Olive Creek                                                    | 19030004 | 148°30'44"W<br>65°28'40"N | Near Livengood | (1)(A)(iv)                                                                  | Headwaters of Olive Creek to 1.5 miles<br>above its confluence with the Tolovana<br>River                                                                                                    |
| Olive Creek                                                    | 19030004 | 148°30'44"W<br>65°28'40"N | Near Livengood | (1)(A)(i)<br>(1)(A)(iii)<br>(1)(A)(iv)<br>(1)(B)(i)<br>(1)(B)(ii)<br>(1)(C) | 1.5 miles above the confluence with the<br>Tolovana River to its confluence with the<br>Tolovana River                                                                                       |
| ReadyCreek                                                     | 19030004 | 148°35'30"W<br>65°29'43"N | Near Livengood | (1)(A)(i)<br>(1)(A)(iii)<br>(1)(A)(iv)<br>(1)(B)(ii)<br>(1)(C)              | Headwaters of Ready Bullion Bullion<br>Creek to its confluence with Livengood<br>Creek                                                                                                       |

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| WATERSHED<br>TYPE/NAME | NUMBER*  | LATITUDE<br>LONGITUDE**   | LOCATION       | DESIGNATED<br>USE CLASS                                        | REACH OF<br>WATER AFFECTED                                                |
|------------------------|----------|---------------------------|----------------|----------------------------------------------------------------|---------------------------------------------------------------------------|
| Ruth Creek             | 19030004 | 148°32'30"W<br>65°31'26"N | Near Livengood | (1)(A)(iv)                                                     | Headwaters of Ruth Creek to its<br>confluence with Livengood Creek        |
| Steel Creek            | 19030004 | 148°24'50"W<br>65°28'12"N | Near Livengood | (1)(A)(i)<br>(1)(A)(iii)<br>(1)(A)(iv)<br>(1)(B)(ii)<br>(1)(C) | Headwaters of Steel Creek<br>to its confluence with the<br>Tolovana River |
| Wonder Creek           | 19030004 | 148°27'21"W<br>65°33'33"N | Near Livengood | (1)(A)(iv)<br>(1)(C)                                           | Headwaters of Wonder Creek to<br>Hess Creek Dam/reservoir diversion ditch |

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\*\* River latitudes and longitudes are set at the downstream end of the affected river reach, as determined from U.S. Department of Interior, Geological Survey quadrangle maps or as assigned in "Water Resources Data for Alaska Water Year 1977" (U.S. Geological Survey Water -Data Report AK-77-1).

(In effect before 7/28/59; am 5/24/70, Register 34; am 8/28/71, Register 39; am 10/22/72, Register 44; am 8/12/73, Register 47; am 2/2/79, Register 69; am 9/22/84, Register 91; am 1/7/87, Register 100; am 11/30/89, Register 112)

Authority: AS 46.03.020(10)  
AS 46.03.070  
AS 46.03.080

**18 AAC 70.055. PROCEDURE FOR RECLASSIFICATION.** (a) At least once each year, the department will hold hearings for the purpose of reviewing the classification of state water under 18 AAC 70.050. In its discretion, the department will use information obtained from the public hearings, and from other sources considered appropriate by the department, in carrying out the department's policymaking functions with respect to reclassification of state water.

(b) A decision on whether to proceed with reclassification is a matter of the department's discretion. Before amending 18 AAC 70.050 to reclassify state water, the department will conduct at least one public hearing, and otherwise comply with 40 C.F.R. Part 131, as amended effective December 8, 1983, and other applicable state and federal statutes and regulations.

(c) An interested person may petition the department for the adoption or repeal of a classification of state water under 18 AAC 70.050 in accordance with AS 44.62.220 - 44.62.230. This subsection neither expands nor restricts the opportunity to petition provided under AS 44.62.220 - 44.62.230. The opportunity to petition does not give rise to an adjudicatory hearing nor to any adjudicative procedures under AS 44.62.330 -- 44.62.630.

(d) The following water may not be reclassified under this section:

(1) water in areas administered under the National Wilderness Preservation System;

(2) water in state and national parks, national preserves and monuments, national recreation areas, and national wildlife refuges;

(3) wild and scenic rivers established under 16 U.S.C. 1271 et seq.;

(4) marine sanctuaries established under 33 U.S.C. 1401 et seq.;

(5) estuarine sanctuaries established under 16 U.S.C. 4151 et seq.;

(6) water in critical habitat areas established under AS 16.20.220 -- 16.20.270;  
and

(7) water in Land Use Designation (LUD) II areas established by the U.S. Forest Service. (Eff. 2/2/79, Register 69; am 12/19/82, Register 84; am 1/7/87, Register 100)

**Authority:** AS 46.03.020  
AS 46.03.070  
AS 46.03.080

**18 AAC 70.058. RECLASSIFICATION CRITERIA.** Repealed 1/7/87.

**18 AAC 70.060. PERMITS.** Repealed 10/22/72.

**18 AAC 70.070. WATER QUALITY CRITERIA FOR WATERS OF THE STATE OF ALASKA.** Repealed and consolidated into section 20(b). 10/22/72.

**18 AAC 70.080. MINIMUM TREATMENT.** Repealed and consolidated into 18 AAC 72. 2/2/79.

**18 AAC 70.081. CERTIFICATE OF REASONABLE ASSURANCE.** Repealed 8/21/78.

**18 AAC 70.082. PUBLIC NOTICE OF APPLICATION.** Repealed 8/21/78.

**18 AAC 70.083. PUBLIC HEARING.** Repealed 8/21/78.

**18 AAC 70.084. NOTICE OF PUBLIC HEARING.** Repealed 8/21/78.

**18 AAC 70.085. ACTION UPON APPLICATION.** Repealed 8/21/78.

**18 AAC 70.086. ENFORCEMENT DISCRETION.** In determining whether to initiate enforcement action on a water quality violation, the department will consider whether the activity in question was conducted in compliance with permit conditions established in accordance with AS 46.03.100 or 46.03.110(e), and with 18 AAC 15; engineering plans approved in accordance with AS 46.03.720; or best management practices adopted by the department. This section is intended to confirm the department's enforcement discretion, and does not create a reviewable decision. (Eff. 2/2/79, Register 69; am 1/7/87, Register 100)

**Authority:** AS 46.03.020

**18 AAC 70.090. IMPLEMENTATION AND ENFORCEMENT PLAN.** Consolidated in 18 AAC 72. 2/29/79.

**18 AAC 70.100. PENALTIES.** Repealed 8/21/78.

**18 AAC 70.110. DEFINITIONS.** Repealed. (In effect before 7/28/59; am 5/24/70, Register 34; am 8/28/71, Register 39; am 10/22/72, Register 44; am 8/12/73, Register 47; am 2/2/79, Register 69; am 4/23/79, Register 70; am 9/19/79, Register 71; am 6/23/85, Register 94; am 1/7/87, Register 100; repealed 1/4/95, Register 133)

**18 AAC 70.990. DEFINITIONS.** Unless the context indicates otherwise, in this chapter

(1) "acute" means of, relating to, or resulting from a level of toxicity of a substance, a substance combination, or an effluent sufficient to produce observable lethal or sublethal effects in aquatic organisms exposed for short periods of time, typically 96 hours or less;

(2) "anadromous fish" has the meaning given that term in the definitions section of the Catalog of Waters Important for Spawning, Rearing, or Migration of Anadromous Fishes, adopted by reference in 5 AAC 95.010;

(3) "apparent color" means the condition of water that results in the visual sensations of hue and intensity, due both to substances in solution and to suspended matter;

(4) "aquaculture" means the cultivation of aquatic plants or animals for human use or consumption;

(5) "boundary" means a line or landmark that serves to clarify, outline, or mark a limit, border, or interface;

(6) "carcinogenic" means a substance that is expected to cause cancer in aquatic life or, for human health purposes, that is classified as a Group A or Group B carcinogen according to the United States Environmental Protection Agency *Guidelines for Carcinogen Risk Assessment*, 51 Fed. Reg. 33992, 33999 - 34000 (1986); Group A includes substances that have been shown to cause cancer in humans; Group B, based on epidemiologic and other studies, includes "probable human carcinogens" and is divided between

(A) "B1", for which there is limited evidence of carcinogenicity in humans; and

(B) "B2", for which there is sufficient evidence of carcinogenicity in animals, but inadequate or no evidence of carcinogenicity in humans from epidemiologic studies;

(7) "central office" means the main office of the Alaska Department of Environmental Conservation in Juneau;

(8) "certification" means the certificate of reasonable assurance the department may issue under 33 U.S.C. 1341 (Clean Water Act, sec. 401), as amended through February 4, 1987;

(9) "Clean Water Act" means the Federal Water Pollution Control Act (33 U.S.C. 1251 - 1387), as amended through February 4, 1987;

(10) "chronic" means of, relating to, or resulting from a level of toxicity of a substance, a substance combination, or an effluent sufficient to produce observable lethal or sublethal effects, including effects on growth, development, behavior, reproduction, or survival, in aquatic organisms exposed for a period of time that generally is one-tenth or more of their life span;

(11) "color" means the condition that results in the visual sensations of hue and intensity as measured after turbidity is removed;

(12) "commissioner" means the commissioner of the Department of Environmental Conservation, or the commissioner's designee;

(13) "compensation point for photosynthetic activity" means the point at which incident light penetration allows plankton to photosynthetically produce enough oxygen to balance their respiration requirements;

(14) "contact recreation" means activities in which there is direct and intimate contact with water; examples include wading, swimming, diving, water skiing, and any intimate contact with water directly related to shoreline activities;

(15) "criterion" means a set concentration or limit of a water quality parameter that, when not exceeded, will protect an organism, a population of organisms, a community of organisms, or a prescribed water use with a reasonable degree of safety; a criterion might be a narrative statement instead of a numerical concentration or limit;

(16) "department" means the Alaska Department of Environmental Conservation;

(17) "designated uses" means those uses specified in 18 AAC 70.020 as protected use classes for each waterbody or segment, whether or not those uses are being attained;

(18) "dissolved oxygen" means the concentration of oxygen in water as determined either by the Winkler (iodometric) method and its modifications or by the membrane electrode method;

(19) "effluent" means the segment of a wastewater stream that follows the final step in a treatment process and precedes discharge of the wastewater stream to the receiving environment;

(20) "existing uses" means those uses actually attained in a waterbody on or after November 28, 1975;

(21) "fecal coliform bacteria" means those bacteria that can ferment lactose at  $44.5^{\circ} \pm 0.2^{\circ}\text{C}$  to produce gas in a multiple tube procedure; "fecal coliform bacteria" also means all bacteria that produce blue colonies within  $24 \pm$  hours of incubation at  $44.5^{\circ} \pm 0.2^{\circ}\text{C}$  in an M-FC broth medium;

(22) "fish" means any of the group of cold-blooded vertebrates that live in water and have permanent gills for breathing and fins for locomotion;

(23) "grain size accumulation graph" means a plot of sediment-sieving data showing logarithm of grain size in millimeters on the horizontal axis and percent accumulation by weight (linear scale) on the vertical axis;

(24) "groundwater" means water in the zone of saturation; in this paragraph, "zone of saturation" is the zone below the water table, where all interstices are filled with water;

(25) "highest statutory and regulatory treatment requirements" means

(A) any federal technology-based effluent limitation identified in 40 C.F.R. 125.3, as amended through November 29, 1994;

(B) minimum treatment standards in 18 AAC 72.040; and

(C) any treatment requirement imposed under another state law that is more stringent than a requirement of this chapter;

(26) "industrial use" means use of a water supply for a manufacturing or production enterprise except food processing, and includes mining, placer mining, energy production, or development;

(27) "irreparable displacement" means a change in aquatic organism use or presence due to a decrease in water quality that is irreversible by natural processes so that the biological system will not return to a state functionally equivalent to the original after cessation of discharge;

(28) "lake" means an inland waterbody of substantial size that occupies a basin or hollow in the earth's surface and that might or might not have a current or a single direction of flow;

(29) "mean" means the average of values obtained over a specified time period and, for fecal coliform analysis, is computed as a logarithm;

(30) "micrograms per liter ( $\mu\text{g/l}$ )" means the concentration at which one millionth of a gram ( $10^{-6}$  g) is found in a volume of one liter;

(31) "milligrams per liter ( $\text{mg/l}$ )" means the concentration at which one thousandth of a gram ( $10^{-3}$  g) is found in a volume of one liter; it is approximately equal to the unit "parts per million (PPM)," formerly of common use;

(32) "mixing zone" means a volume of water, adjacent to a discharge, in which wastes discharged mix with the receiving water;

(33) "most probable number (MPN)" means the statistic that represents the number of individuals most likely present in a given sample, based on test data;

(34) "natural condition" means any physical, chemical, biological, or radiological condition existing in a waterbody before any human-caused influence on, discharge to, or addition of material to, the waterbody;

(35) "nephelometric turbidity unit (NTU)" has the meaning given the term "NTU" in 18 AAC 80.990;

(36) "nonpoint source" means a source of pollution other than a point source;

(37) "oils and grease" means oils and grease as defined by the procedure used under 18 AAC 70.020(c)(1);

(38) "pH" means the negative logarithm of the hydrogen-ion concentration, expressed as moles per liter:

$$\text{pH} = -\log_{10} (\text{H}^+);$$

(39) "point of complete mixing" means the computed point where the variation in the concentration of a water quality parameter across a stream or river is predicted to be less than five percent;

(40) "point source" means a discernible, confined, and discrete conveyance, including a pipe, ditch, channel, tunnel, conduit, well, container, rolling stock, or vessel or other floating craft, from which pollutants are or could be discharged;

(41) "pollution" has the meaning given that term in AS 46.03.900;

(42) "residues" means floating solids, debris, sludge, deposits, foam, scum, or any other material or substance remaining in a waterbody as a result of direct or nearby human activity;

(43) "secondary recreation" means recreation activities in which water use is incidental, accidental, or sensory; it includes fishing, boating, camping, hunting, hiking, and vacationing;

(44) "sediment" means solid material of organic or mineral origin that is transported by, suspended in, or deposited from water and includes chemical and biochemical precipitates and organic material such as humus;

(45) "settleable solids" means solid material of organic or mineral origin that is transported by and deposited from water, as measured by the volumetric Imhoff cone method and at the method detection limits specified in method 2540(F), *Standard Methods for the Examination of Water and Wastewater*, 18th edition (1992);

(46) "sheen" means an iridescent appearance on the water surface;

(47) "significantly adverse levels" means concentrations of pollutants that would impair the productivity or biological integrity of the overall waterbody, including reducing or eliminating the viability or sustainability of a given species or community of species in the overall waterbody;

(48) "sodium adsorption ratio (SAR)" means the estimated degree to which sodium from a given water will be adsorbed in soil, as proposed in *Diagnosis and Improvement of Saline and Alkali Soils*, Agriculture Handbook No. 60, United States Salinity Laboratory Staff, United States Department of Agriculture, and is expressed as the quotient of the sodium ion concentration and the square root of half the sum of the calcium and magnesium ion concentrations:

$$\frac{(Na^{++})}{\sqrt{\frac{(Ca^{++}) + (Mg^{++})}{2}}}$$

(49) "spawning" means the process of producing, emitting, or depositing eggs, sperm, seed, germ, larvae, young, or juveniles, especially in large numbers, by aquatic life;

(50) "thermocline" means a zone of water between a warmer, surface zone and a colder, deep-water zone in a thermally stratified waterbody, in which water temperature decreases rapidly with depth;

(51) "total aqueous hydrocarbons (TAqH)" means those collective dissolved and water-accommodated monoaromatic and polynuclear aromatic petroleum hydrocarbons that are persistent in the water column; "total aqueous hydrocarbons" does not include floating surface oils or greases;

(52) "total aromatic hydrocarbons (TAH)" means the sum of the following volatile monoaromatic hydrocarbon compounds: benzene, ethylbenzene, toluene, and the xylene isomers, commonly called BETX;

(53) "toxic" means of, relating to, or resulting from a substance or substance combination that causes death, disease, malignancy, genetic mutations, abnormalities or malfunctions in growth, development, behavior, or reproduction, or other physical or physiological abnormalities or malfunctions in affected organisms or their offspring;

(54) "toxic substances" means those substances or substance combinations, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available, cause a toxic effect in the affected organism or its offspring; "toxic substances" includes the following substances, and any other substance identified as a toxic pollutant under 33 U.S.C. 1317(a) (Clean Water Act, sec. 307(a)), as amended through February 4, 1987:

2-chlorophenol; 2,4-dichlorophenol; 2,4-dimethylphenol; acenaphthene; acrolein; acrylonitrile; Aldrin/Dieldrin; antimony; arsenic; asbestos; benzene; benzidine; beryllium; cadmium; carbon tetrachloride; Chlordane; chlorinated benzenes; chlorinated naphthalene; chlorinated ethanes; chloroalkyl ethers; chloroform; chlorophenols; chlorophenoxy herbicides; chromium; copper; cyanide; DDT; Demeton; dichlorobenzenes; dichlorobenzidine; dichloroethylenes; dichloropropane; dichloropropene; dinitrotoluene; diphenylhydrazine; Endosulfan; Endrin; ethylbenzene; fluoranthene; Guthion; haloethers; halo-methanes; Heptachlor; hexachlorobutadiene; hexachlorocyclohexane; hexachlorocyclopentadiene; isophorone; lead; Lindane; Malathion; mercury; methoxy-chlor; Mirex; naphthalene; nickel; nitrobenzene; nitrophenols; nitrosamines; p-dioxin; Parathion; PCBs; pentachlorophenol; phenol; phthalate esters; polynuclear aromatic hydrocarbons; selenium; silver; tetrachloroethylene; thallium; toluene; Toxaphene; trichloroethylene; vinyl chloride; and zinc;

(55) "treatment works" has the meaning given that term in AS 46.03.900;

(56) "turbidity" means an expression of the optical property that causes light to be scattered and absorbed rather than transmitted in straight lines through a water sample; turbidity in water is caused by the presence of suspended matter such as clay, silt, finely divided organic and inorganic matter, plankton, and other microscopic organisms;

(57) "water," "waterbody," and "waters" have the meaning given the term "waters" in AS 46.03.900;

(58) "water of the United States" has the meaning given the term "waters of the United States" in 40 C.F.R. 122.2, as amended through November 29, 1994;

(59) "water recreation" means contact recreation or secondary recreation, as defined in this section;

(60) "water supply" means any of the waters of the state that are designated in this chapter to be protected for fresh water or marine water uses, including waters used for drinking, culinary, food processing, agricultural, aquacultural, seafood processing, and industrial purposes; "water supply" does not necessarily mean that a waterbody, protected as a supply for the uses listed in this paragraph, is safe to drink in its natural state; and

(61) "wildlife" means all species of mammals, birds, reptiles, and amphibians.  
(Eff. 1/4/95, Register 133)

**Authority:** AS 46.03.020  
AS 46.03.050  
AS 46.03.070  
AS 46.03.080  
AS 46.03.090  
AS 46.03.100  
AS 46.03.110  
AS 46.03.720

Editor's note: Before Register 133, 1/4/95, the definitions for 18 AAC 70 appeared in former 18 AAC 70.110.

Editor's note: The central office of the Alaska Department of Environmental Conservation, referred to in 18 AAC 70.990, is located at 410 Willoughby Avenue, Suite 105, Juneau, AK 99801-1795.

**ALASKA STATUTES**  
**CITED AS AUTHORITY FOR 18 AAC 70**

# Alaska Statutes

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## Title 46. Water, Air, Energy, and Environmental Conservation.

### Chapter

- 03. Environmental Conservation (§§ 46.03.010 — 46.03.900)
- 04. Oil and Hazardous Substance Pollution Control (§§ 46.04.010 — 46.04.900)
- 06. Recycling and Reduction of Litter (§§ 46.06.010 — 46.06.150)
- 07. Village Safe Water Act (§§ 46.07.010 — 46.07.080)
- 08. Oil and Hazardous Substance Releases (§§ 46.08.005 — 46.08.900)
- 09. Hazardous Substance Release Control (§§ 46.09.010 — 46.09.900)
- 11. Conservation of Energy and Materials (§§ 46.11.010 — 46.11.900)
- 13. Alaska State Emergency Response Commission (§§ 46.13.010 — 46.13.900)
- 15. Water Use Act (§§ 46.15.010 — 46.15.270)
- 16. Management and Use of Water in Mining (§§ 46.16.010 — 46.16.100)
- 17. Supervision of Safety of Dams and Reservoirs (§§ 46.17.010 — 46.17.900)
- 30. Water and Wastewater Works Operators (§§ 46.30.010 — 46.30.130)
- 35. Environmental Procedures Coordination (§§ 46.35.010 — 46.35.210)
- 40. The Alaska Coastal Management Program (§§ 46.40.010 — 46.40.210)
- 45. Northwest Interstate Compact on Low-level Radioactive Waste Management (§§ 46.45.010, 46.45.020)

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Revisor's notes. — The provisions of this title were redrafted in 1987 to remove personal pronouns pursuant to § 4, ch. 58,

SLA 1982 and in 1987 and 1991 to make other minor word changes.

## Chapter 03. Environmental Conservation.

### Article

1. Declaration of Policy (§ 46.03.010)
2. Department of Environmental Conservation (§§ 46.03.020 — 46.03.045)
3. Water Pollution Control and Waste Disposal (§§ 46.03.050 — 46.03.120)
4. Air Pollution Control (§§ 46.03.140 — 46.03.245)
5. Radiation and Hazardous Waste Protection (§§ 46.03.250 — 46.03.317)
6. Pesticide Control (§§ 46.03.320, 46.03.330)
7. Underground Storage Tank Systems (§§ 46.03.360 — 46.03.450)
8. Prohibited Acts and Penalties (§§ 46.03.710 — 46.03.850)
9. General Provisions (§§ 46.03.860 — 46.03.900)

### Article 1. Declaration of Policy.

#### Section

10. Declaration of policy

**Sec. 46.03.010. Declaration of policy.** (a) It is the policy of the state to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution, in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being.

(b) It is the policy of the state to improve and coordinate the environmental plans, functions, powers, and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations, and concerned individuals, and to develop and manage the basic resources of water, land, and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations. (§ 3 ch 120 SLA 1971)

#### NOTES TO DECISIONS

This chapter is not void for vagueness under the Alaska and United States constitutions. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

When the somewhat shadowy boundaries of the area of prohibited conduct were contrasted with the overall purpose of this chapter and the absence of any evidence of discriminatory application, the supreme court could not say that the presumption of constitutionality of the statute was overcome. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

There can be no doubt of the gen-

eral frame of operation of this chapter; no contention can be made that this chapter has a subterfugal purpose or effect of curtailing the exercise of protected political or individual rights to speech, association, privacy and the like. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

As to adequacy of notice of what acts prohibited, see *Stock v. State*, 526 P.2d 3 (Alaska 1974).

The concern indicated by this chapter is the protection of the environment from pollution. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

**Article 2. Department of Environmental Conservation.****Section**

20. Powers of the department  
30. Water quality enhancement, water supply, sewage, and solid waste facilities grants

**Section**

32. Alaska clean water fund  
34. Alaska clean water account  
36. Alaska drinking water fund  
38. Alaska drinking water account

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

- (1) enter into contracts necessary or convenient to carry out the functions, powers, and duties of the department;
- (2) review and appraise programs and activities of state departments and agencies in light of the policy set out in AS 46.03.010 for the purpose of determining the extent to which the programs and activities are contributing to the achievement of that policy and to make recommendations to the departments and agencies, including but not limited to, environmental guidelines;
- (3) consult with and cooperate with
  - (A) officials and representatives of any nonprofit corporation or organization in the state;
  - (B) persons, organizations, and groups, public and private, using, served by, interested in, or concerned with the environment of the state;
- (4) appear and participate in proceedings before any state or federal regulatory agency involving or affecting the purposes of the department;
- (5) undertake studies, inquiries, surveys, or analyses it may consider essential to the accomplishment of the purposes of the department; these activities may be carried out by the personnel of the department or in cooperation with public or private agencies, including educational, civic, and research organizations, colleges, universities, institutes, and foundations;
- (6) at reasonable times enter and inspect with the consent of the owner or occupier any property or premises to investigate either actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with a regulation that may be adopted under AS 46.03.020 — 46.03.040; information relating to secret processes or methods of manufacture discovered during investigation is confidential;
- (7) conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books, and documents by the issuance of a subpoena;
- (8) advise and cooperate with municipal, regional, and other local agencies and officials in the state, to carry out the purposes of this chapter;
- (9) act as the official agency of the state in all matters affecting the purposes of the department under federal laws now or hereafter enacted;

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

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

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

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

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

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

(F) *[Repealed, § 12 ch 172 SLA 1978.]*

(G) control of pesticides;

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

(I) handling, transportation, treatment, storage, and disposal of hazardous wastes;

(11) after consultation with other state agencies and local government officials, identify and propose for addition or deletion, by regulation, other licenses, permits, or authorizations for which the provisions of AS 46.35 are applicable;

(12) *[Repealed, § 92 ch 36 SLA 1990.]*

(13) inspect the premises of sellers and suppliers of paint, vessels, and marine and boating supplies, and take other actions necessary to enforce AS 46.03.715. (§ 3 ch 120 SLA 1971; am § 1 ch 220 SLA 1976; am § 2 ch 60 SLA 1977; am § 12 ch 172 SLA 1978; am § 8 ch 93 SLA 1981; am § 86 ch 138 SLA 1986; am § 1 ch 67 SLA 1987; am § 92 ch 36 SLA 1990; am § 30 ch 126 SLA 1994)

**Effect of amendments.** — The 1994 amendment, effective July 1, 1994, in paragraph (11), deleted “, and report annually to the legislature the permits that have been included or deleted” at the end and made a minor stylistic change.

#### NOTES TO DECISIONS

Cited in *Colville Envtl. Servs., Inc. v. North Slope Borough*, 831 P.2d 341 (Alaska 1992).

**Sec. 46.03.050. Authority.** The department has jurisdiction to prevent and abate the pollution of the waters of the state. (§ 3 ch 120 SLA 1971)

**Sec. 46.03.060. Water pollution control plan.** The department shall develop comprehensive plans for water pollution control in the state and conduct investigations it considers advisable and necessary for the discharge of its duties. (§ 3 ch 120 SLA 1971)

**Collateral references.** — Health board's power to prescribe methods of keeping water free from impurities. 23 ALR 228.

Constitutionality and construction of statutes for protection of municipal water supply. 72 ALR 673.

Validity of prohibition or regulation of bathing, swimming, boating, fishing, etc., to protect public water supply. 56 ALR2d 790.

**Sec. 46.03.070. Pollution standards.** After public hearing, the department may adopt standards and make them public and determine what qualities and properties of water indicate a polluted condition actually or potentially deleterious, harmful, detrimental, or injurious to the public health, safety, or welfare, to terrestrial and aquatic life or their growth and propagation, or to the use of waters for domestic, commercial, industrial, agricultural, recreational, or other reasonable purposes. (§ 3 ch 120 SLA 1971)

**Sec. 46.03.080. Quality and purity standards.** After study and public hearings held upon due notice, the department may establish standards of quality and purity or group the designated waters of the state into classes as to minimum quality and purity, or both. The department shall classify waters in accordance with considerations of best usage in the interest of the public. The department may alter and modify classifications after hearing. (§ 3 ch 120 SLA 1971)

**Collateral references.** — Statute prescribing standard of purity of water fur-

nished for human consumption. 6 ALR 475.

**Sec. 46.03.090. Plans for pollution disposal.** The department may require the submission of plans for sewage and industrial waste disposal or treatment or both for a publicly or privately owned or operated industrial establishment, community, public or private property subdivision or development. (§ 3 ch 120 SLA 1971)

## NOTES TO DECISIONS

Quoted in *State v. Anderson*, 749 P.2d 1342 (Alaska 1988).

**Sec. 46.03.100. Waste disposal permit.** (a) A person who conducts an operation that results in the disposal of solid or liquid waste material or heated process or cooling water into the waters or onto the land of the state shall procure a permit from the department before disposing of the waste material or water. The permit shall be obtained for direct disposal and for disposal into publicly operated sewerage systems.

(b) A permit for disposal of a hazardous waste may not be issued under this section unless the applicant for the permit has furnished proof to the commissioner of financial ability to control the hazardous waste. Proof of financial responsibility may be demonstrated by self-insurance, insurance, surety, or guarantee, under regulations adopted by the department. Acceptance of proof of financial responsibility under this subsection expires

(1) one year from its issuance for self-insurance;

(2) on the effective date of a change in the surety bond, guarantee, or insurance agreement; or

(3) on the expiration or cancellation of the surety bond, guarantee, or insurance agreement.

(c) This section does not apply to a person discharging only domestic sewage into a sewerage system.

(d) This section does not apply to injection projects permitted under AS 31.05.030(h).

(e) A person who applies for a solid waste permit under this section shall demonstrate to the satisfaction of the commissioner that the applicant has reasonably considered all solid waste management options and that the permit would be consistent with the practices and priorities established under AS 46.06.021. (§ 3 ch 120 SLA 1971; am § 3 ch 22 SLA 1976; am § 9 ch 93 SLA 1981; am § 4 ch 91 SLA 1984; am § 3 ch 88 SLA 1990)

**Revisor's notes.** — Subsections (b) and (c) were formerly (c) and (b), respectively. Relettered in 1987.

**Cross references.** — For further requirements for persons submitting proof of financial ability under this section, see AS 46.03.833.

**Effect of amendments.** — The 1990 amendment added subsection (e).

**Opinions of attorney general.** — This section confers upon the Department of Environmental Conservation permit authority over dredge or fill activities, including residential subdivisions, within

wetlands, estuaries, and inland and coastal marshes periodically inundated by discernible bodies of fresh or salt water upland from the mean high tide line to the extent of the aquatic or salt water vegetation line. November 13, 1975 Op. Att'y Gen.

Dredge or fill activities in coastal and fresh water wetlands shoreward to the aquatic vegetation line do result in the disposal of solid waste material into the waters of the state within the meaning of this section and thus, to the extent that these activities are of a commercial or in-

dustrial nature, do require a permit from the Department of Environmental Conservation. November 13, 1975 Op. Att'y Gen.

The state has jurisdiction to require

permits of government contractors discharging sewage from a federally-owned treatment plant. June 28, 1977 Op. Att'y Gen.

**Sec. 46.03.110. Waste disposal permit procedure.** (a) An application for a permit shall be made on forms prescribed by the department or on forms prescribed by the United States Environmental Protection Agency and must contain the name and address of the applicant, a description of the applicant's operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other information considered necessary by the department. Application for permit shall be made at least 60 days before commencement of a proposed discharge.

(b) Upon receipt of a proper application the department shall publish notice of the application in two separate publications of a newspaper of general circulation within the general area in which the disposal of waste material is proposed to be made. The notice may also be published in other appropriate information media. The notice must include a statement that a person who wants to present views to the department in regard to the application may do so in writing to the department within 30 days of the second publication of the notice. The written response entitles the writer to a copy of the application.

(c) When the department receives an application, the commissioner shall immediately send copies of the application to the commissioner of fish and game, the commissioner of natural resources, the commissioner of commerce and economic development, and the commissioner of health and social services.

(d) The department may specify in a permit the terms and conditions under which waste material may be disposed of. The terms and conditions shall be directed to avoiding pollution and to otherwise carry out the policies of this chapter. A permit may not be effective for a period in excess of five years from the date of issuance.

(e) If the department has certified a National Pollutant Discharge Elimination System permit under 33 U.S.C. 1341 (sec. 401, Federal Water Pollution Control Act Amendments of 1972), and the United States Environmental Protection Agency has issued that permit to a person, the department may waive the requirements of this section, and adopt the federal permit as the permit required under AS 46.03.100. (§ 3 ch 120 SLA 1971; am § 6 ch 104 SLA 1971; am § 116 ch 218 SLA 1976; am §§ 4, 5 ch 220 SLA 1976)

**Opinions of attorney general.** — This section requires no more than that the Department of Environmental Conservation allow a 30-day public comment period, and that it fully and completely review

those comments on receipt. June 11, 1975 Op. Att'y Gen.

The Department of Environmental Conservation cannot issue a waste disposal permit prior to expiration of the 30-day

public comment period. June 11, 1975 Op. Att'y Gen.

If the Department of Environmental Conservation has reviewed and considered all public and agency comments prior to the expiration of the 60-day period, and has also completed the preparation of the permit itself within that period, it would be competent for the department to waive the remainder of the 60-day "pre-com-

mencement" period, and issue the permit at that time. June 11, 1975 Op. Att'y Gen.

The public comments received pursuant to subsection (b) of this section function similarly to environmental impact statements for federal agencies contemplating major federal actions significantly affecting the quality of the environment. June 11, 1975 Op. Att'y Gen.

**Sec. 46.03.120. Termination or modification of waste disposal permit.** (a) The department may terminate a permit upon 30 days' written notice if the department finds

(1) that the permit was procured by misrepresentation of material fact or by failure of the applicant to disclose fully the facts relating to its issuance;

(2) that there has been a violation of the conditions of the permit;

(3) that there has been a material change in the quantity or type of waste disposed of.

(b) The department may modify a permit if the department finds that a material change in the quality or classification of the waters of the state has occurred. (§ 3 ch 120 SLA 1971)

**Sec. 46.03.720. Construction and operation of certain facilities prohibited.** (a) A person may not construct, extend, install, or operate a sewerage system or treatment works, or any part of a sewerage system or treatment works, until plans for it are submitted to the department for review and the department approves them in writing and issues a written permit.

(b) A person may not construct, extend, install, or operate a public water supply system, or any part of a public water supply system, until plans for it are submitted to the department for review and the department approves them in writing.

(c) The department may waive the requirements of this section. (§ 3 ch 120 SLA 1971; am § 7 ch 220 SLA 1976)

**Opinions of attorney general.** — The state has jurisdiction to require permits of government contractors discharging sewage from a federally-owned treatment plant. June 28, 1977 Op. Att'y Gen.

The Department of Environmental Conservation's regulations concerning on-site water wells and wastewater disposal systems are a legitimate exercise of the de-

partment's police power though the department lacks authority to adjudicate among conflicting future uses of land. The department also has authority under this section to regulate the construction of all (private and public) water wells drawn from a public water source. September 5, 1985 Op. Att'y Gen.

**Sec. 46.03.900. Definitions. In this chapter**

(1) "air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances or a combination of these;

(2) "air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities and duration that tend to be injurious to human health or welfare, animal or plant life or property or would unreasonably interfere with the enjoyment of life or property;

(3) "atomic radiation" means all ionizing radiation;

(4) "broadcast chemicals" means chemical substances which are released into the air or onto land or water for the purpose of preventing, destroying, repelling, stimulating or retarding plant or animal life, or chemical substances released for meteorological control, oil spill control or fire control;

(5) "commissioner" means the commissioner of environmental conservation;

(6) "department" means the Department of Environmental Conservation;

(7) "dispose" has the meaning given "disposal" in 42 U.S.C. 6903(3);

(8) "facility" means any offshore or onshore structure, improvement, vessel, vehicle, land, enterprise, or endeavor;

(9) "hazardous waste" means a waste or combination of wastes that because of quantity, concentration, or physical, chemical, or infectious characteristics may

(A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly managed, treated, stored, transported, or disposed of;

(10) "hazardous waste reduction" means decreasing, avoiding, or eliminating wastes that are hazardous to human health or the environment through source reduction or recycling; the term does not include hazardous waste treatment or hazardous waste disposal;

(11) "industrial waste" means a liquid, gaseous, solid, or other waste substance or a combination of them resulting from process of industry, manufacturing trade or business, or from the development of natural resources; however, gravel, sand, mud, or earth taken from its original situs and put through sluice boxes, dredges, or other devices for the washing and recovery of the precious metal contained in them and redeposited in the same watershed from which it came is not industrial waste;

(12) "low level radioactive materials" means a radioactive waste other than

(A) used nuclear reactor fuel;

(B) waste produced during the reprocessing of used nuclear reactor fuel; and

(C) elements having an atomic number greater than 92 and containing 10 or more nanocuries per gram;

(13) "manifest" means the form used for identifying the quantity, composition, origin, routing, and destination of a hazardous waste when the hazardous waste is transported;

(14) "mining waste" means solid waste from the extraction, beneficiation and processing of ores and minerals, including coal, and including phosphate rock and overburden from the mining of uranium ore;

(15) "motor vehicle" has the meaning given in AS 28.40.100;

(16) "other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, trimmings from logging operations, sand, lime cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, heat from cooling or other operations, and other substances not sewage or industrial waste which may cause or tend to cause pollution of the waters of the state;

(17) "person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other entity whatsoever;

(18) "pesticide" means any chemical or biological agent intended for preventing, destroying, repelling, or mitigating plant or animal life and any substance intended for use as a plant regulator, defoliant or desiccant, including but not limited to insecticides, fungicides, rodenticides, herbicides, nematocides, and biocides;

(19) "pollution" means the contamination or altering of waters, land or subsurface land of the state in a manner which creates a nuisance or makes waters, land or subsurface land unclean, or noxious, or impure, or unfit so that they are actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, or recreational use, or to livestock, wild animals, bird, fish, or other aquatic life;

(20) "resource recovery" means the recovery of materials or energy from solid wastes for industrial use, agriculture, heat production, power production, or other processes or purposes and includes the reuse of materials or products to conserve natural resources;

(21) "restricted-use pesticides" means pesticides that are classified for restricted use under 7 U.S.C. 136a(d)(1)(C) (sec. 3(d)(1)(C), Federal Insecticide, Fungicide, and Rodenticide Act), as amended;

(22) "service" means a function performed or service provided by the state or by a municipality under a duty or power authorized by AS 29 or other provision of law authorizing a municipality to perform functions or provide services, or a comparable function performed or service provided by a village; "service" includes functions not previously performed and services not previously provided;

(23) "sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments, or other places, together with ground water infiltration and surface water as may be present; the admixture with sewage of industrial wastes or other wastes is "sewage";

(24) "sewer system" or "sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other appurtenant constructions, devices, and appliances used for conducting sewage, industrial waste, or other wastes to a point of ultimate disposal;

(25) "solid waste" means all unwanted, abandoned, or discarded solid or semi-solid material whether or not subject to decomposition, originating from any source;

(26) "solid waste disposal facility" means a facility for the discharge, deposit, injection, consolidation, or placement of solid waste into or onto the land and includes transfer stations and sanitary landfills;

(27) "solid waste processing facility" means a facility for the extraction of materials from solid waste, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal and includes incinerators, shredders, balers, and transfer stations;

(28) "standard" means the measure of purity or quality for air, water, and land in relation to their reasonable and necessary use as established by the department;

(29) "storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste;

(30) "treat" has the meaning given "treatment" in 42 U.S.C. 6903(34);

(31) "treatment works" means a plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works installed for the purpose of treating, neutralizing, stabilizing, or disposing of sewage, industrial waste, or other wastes;

(32) "village" means a place within the unorganized borough or within a borough as to a power, function, or service that is not exercised or provided by the borough on an areawide or nonareawide basis that

(A) has irrevocably waived, in a form approved by the Department of Law, any claim of sovereign immunity that might arise under this chapter; and

(B) has

(i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);

(ii) a traditional village council recognized by the United States as eligible for federal aid to Indians; or

(iii) a council recognized by the commissioner of community and regional affairs under regulations adopted by the Department of Community and Regional Affairs to determine and give official recognition of village entities under AS 44.47.150(b);

(33) "waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy" means (A) waste, including drilling muds, cuttings, hydrocarbons, brine, acid, sand, and emulsions or mixtures of fluids produced from and unique to the operation or maintenance of a well, whether naturally occurring or added for the operation or productivity of the well; and (B) waste that is derived intrinsically from primary field operations; "waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy" does not include spent solvents and oils from equipment maintenance activities, discarded chemical products, or fuels;

(34) "waste derived intrinsically from primary field operations" means waste produced from a well, and removed

(A) at the drill site; or

(B) at crude oil production facilities by crude oil or wastewater treatment process before custody transfer of the crude oil;

(35) "waters" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea, and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state. (§ 3 ch 120 SLA 1971; am §§ 16, 17 ch 220 SLA 1976; am § 2 ch 26 SLA 1977; am § 2 ch 129 SLA 1977; am §§ 7, 12 ch 172 SLA 1978; am § 5 ch 163 SLA 1980; am §§ 7, 14 ch 93 SLA 1981; am §§ 115, 116 ch 59 SLA 1982; am § 9 ch 77 SLA 1984; am § 4 ch 97 SLA 1989; am § 62 ch 21 SLA 1991; am § 11 ch 83 SLA 1991)

**Revisor's notes.** — Reorganized in 1984, 1989, and 1991 to alphabetize the defined terms and to maintain alphabetical order.

**Cross references.** — For definitions of "electronic product," "electronic product radiation," and "radiation source" with regard to radiation protection, see AS 18.60.545; for additional definitions applicable to AS 46.03.822 — 46.03.823, see AS 46.03.826.

**Effect of amendments.** — The 1989

amendment, effective July 1, 1989, added paragraph (10).

The first 1991 amendment, effective June 11, 1991, repealed former paragraph (16).

The second 1991 amendment, effective June 28, 1991, added paragraphs (22) and (32).

**Editor's notes.** — Section 23, ch. 83, SLA 1991 provides that paragraphs (22) and (32), enacted by § 11, ch. 83, SLA 1991 "do not apply to a release of oil or a

hazardous substance and resultant cleanup activities or to efforts to respond to or abate that release if the release occurred before June 28, 1991."

Opinions of attorney general. — "Waters," within the meaning of para-

graph (33) (now paragraph (34)) of this section, clearly encompasses environments which are components of the marine ecosystem, but are not themselves subject to continuous inundation. November 13, 1975 Op. Att'y Gen.

#### NOTES TO DECISIONS

This chapter is not void for vagueness under the Alaska and United States constitutions. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

When the somewhat shadowy boundaries of the area of prohibited conduct were contrasted with the overall purpose of this chapter and the absence of any evidence of discriminatory application, the supreme court could not say that the presumption of constitutionality of the statute was overcome. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

As to purpose of this chapter, see *Stock v. State*, 526 P.2d 3 (Alaska 1974).

Definitional language of paragraph (19) incorporated in AS 46.03.710. — See *Stock v. State*, 526 P.2d 3 (Alaska 1974).

For waters to be polluted, there must first be a contamination or alteration. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

The alteration must create a nuisance. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

Or it must make the waters unclean, or noxious, or impure, or unfit so that they are actually or potentially harmful or detrimental or injurious (a) to public health, safety or welfare, (b) to domestic, commercial, industrial or recreational use, or (c) to livestock, wild animals, bird, fish or other aquatic life. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

The alteration must have a specific effect, resulting in water so impure that it is actually or potentially harmful to any one of the three categories listed in paragraph (19). *Stock v. State*, 526 P.2d 3 (Alaska 1974).

The term "alteration" is broader than contamination, as waters may be altered by purifying as well as befouling. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

And means "change". — Commonly understood, the word "alteration" means "change," and as here used, could encompass any change in the waters whether by taking away or adding substances. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

The term "nuisance" has a well established meaning at common law. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

The definition of "pollution" as applied to creating conditions that are "actually," as opposed to "potentially," harmful while admittedly broad in scope, appears to have sufficient clarity in all but de minimis situations. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

Foreseeability requirement imposed in cases of potentially harmful alterations of water. — By use of the word "potentially" in paragraph (19) in prohibiting potentially harmful alterations of water, this chapter prohibits acts which a reasonable person would foresee as creating a substantial risk of making water actually injurious to the statutorily protected interests. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

In "potentiality" cases, the state must hereafter prove that the threatened injury was foreseeable to a reasonable man in the position of the defendant at the time of the act or omission. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

The foreseeability requirement is no more than a narrowing construction. — The supreme court imposes it only to give this chapter definite enough standards to survive on its face and in future cases. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

Effect of foreseeability requirement. — A foreseeability requirement assures that fair notice is given to the defendant that his conduct is within the ambit of the statute. Such an element added to the definition of the offense also criminalizes only that conduct which is serious enough to warrant enforcement and conviction, thus discouraging discriminatory enforcement. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

Application of foreseeability requirement is prospective. — The supreme court could not find plain error in the district court's failure to anticipate and apply to defendant the narrowing construction of paragraph (19) and AS

46.03.710 which it orders for future cases. *Stock v. State*, 526 P.2d 3 (Alaska 1974).

Emptying lagoon of raw sewage into stream. — Whatever may be the outer boundaries of conduct prohibited by AS 46.03.710 as defined by paragraph (19), it

is beyond dispute that the emptying of a lagoon of raw sewage into a stream running through residential areas comes within the definition of the term "pollution." *Stock v. State*, 526 P.2d 3 (Alaska 1974).

# ALASKA STATE LEGISLATURE

## House of Representatives

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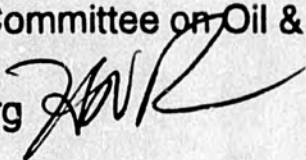
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SESSION:  
STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE: (907) 465-4968  
FAX: (907) 465-2040

### Representative Norman Rokeberg

### MEMORANDUM

TO: Members of the House Special Committee on Oil & Gas

FROM: Representative Norman Rokeberg 

DATE: February 19, 1996

SUBJECT: HB 342 - An Act relating to water quality

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Attached is a copy of a sponsor statement for HB 342. The packets for this bill were prepared and distributed last September. If you have any questions please contact myself or my staff person, Shirley Armstrong at 465-4968.

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

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## Representative Norman Rokeberg

### SPONSOR STATEMENT

### HB 342 - "An Act relating to water quality."

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HB 342 is a bill that attempts to provide certainty to members of the public and industry on the water standards that will be applied to the users of water.

Secondly, the bill provides the same direction to the Departments of Environmental Conservation, Fish & Game and Natural Resources that the commissioners may not require a higher standard for discharged water than the existing water used.

Thirdly, it establishes the volumetric Imhoff Cone method as the criteria for establishing a discharge water quality standard for the measurement of sediment.

Fourthly, it directs the commissioner to establish a standard that reflects a range of values that are satisfactory for downstream water uses.

Lastly, the standard developed for water quality cannot be more restrictive than applicable federal water quality standards.

I urge the support of the committee to provide certainty to the public in enforcement of Alaska's water quality requirements.

**ALASKA OIL AND GAS ASSOCIATION  
POSITION ON  
HB 342, WATER QUALITY STANDARDS**

The Alaska Oil and Gas Association (AOGA) is a trade association whose 19 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

AOGA supports the goal of HB 342 to 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, an impartial scientific peer review should be established. In addition, 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. That process should involve a review panel comprised of representatives other than the agency issuing the regulations in question.

## Message from the Executive Director

by Becky L. Gay

# Water quality standards: A good faith effort

After six years trying to complete a so-called triennial review for Alaska's water quality regulations, Governor Knowles and Commissioner Gene Burden tried something a little different last month. After an exhaustive administrative review of the regulations and in order to move away from the rhetoric of opposition, a threatened lawsuit, and other obstacles to resolution, a friendly "hostage-taking" took place at the Governor's office in Juneau.

Taking two representatives of each "side," specifically RDC and the Alaska Oil and Gas Association along with Clean Water Alliance and Sierra Club Legal Defense Fund, and a full complement of DEC staff, Governor Knowles stuck us in his conference room for six hours to get beyond the impasse which has been frustrating all sides. The Commissioner briefed us on what the Knowles administration actions would be, the reasons for those actions and asked for honest debate and hopefully, agreement on moving forward.

None of us were totally pleased, but I believe all were pretty surprised that the Governor could get us moving in the same direction. It was a good faith effort and with a little perseverance, the water quality standards will work. They need to give certainty to the regulated community, be technologically achievable and economically feasible and not be challenged in court.

The adoption draft for revisions to the water quality standards for anti-degradation, treatment works and pe-

troleum hydrocarbons was recently signed by Commissioner Burden and is now at the Department of Law for review. *The actions taken are:*

**Anti-degradation:** The administration determined the absence of such a regulation was a deficiency, as the original standards did not include this aspect. Since it was added in final administrative review, this regulation was not subject to the same extensive public scrutiny, but is identical to federal law. *Action: State adopted additional anti-degradation provisions which specifically protect "out-standing national resource waters."*

**Treatment works:** Under review, DEC determined that treatment works in natural waterbodies (sewage lagoons, tailings impoundments, etc.) are permitted under solid waste and domestic water programs and were therefore redundant if included in the water quality regulations. *Action: Repealed.*

**Petroleum hydrocarbons:** Much of the debate surrounding oil or diesel limits in wastewater discharges is focused on measurement methodology and analysis found in "Note 8" of the current regulation. DEC is amending the regulation to clarify required measurements. *Action: DEC repealed the current Note 8, instead adopting August 1993 version of Note 8. DEC will further research need for a numerical particulate standard by July 1996.*

**Human health risk:** The array of variables used to determine a risk level were debated, reflecting concerns about the importance of "Alaskanizing" specific values. The present Alaska standard of  $10^{-5}$  was retained using federal values, in direct response to federal law. *Action: DEC retained current level and will initiate rulemaking to determine Alaska-specific values.*

**Sediment:** Most of the discussion

on sediment was whether settleable solids or total suspended solids (TSS) should be the standard. Since there is no criteria for TSS in EPA, a significant factor supporting DEC's regulation is that testing for settleable solids uses simple field equipment and procedures. *Action: DEC retained the existing regulation, clarifying settleable solids as the regulated parameter, agreeing to study and report on the need for a TSS standard by July 1996.*

**Mixing zones:** Mixing zones are designated areas of a waterbody in which wastewater enters and mixes with a receiving water, diluting the discharge within the zone, but meeting water quality standards at and beyond the zone boundaries. DEC noted the current regulations provide better controls by setting stricter standards and addressing fresh water rivers and streams. *Action: DEC will prepare interim guidance and initiate rule-making and complete guidance by April. DEC retained authority to grant or deny mixing zones based on factual data presented.*

Of all the issues debated, mixing zones were held out for the most additional scrutiny. It is RDC's understanding that the next round of discussions will include all users of mixing zones and be open to the most technical data possible. Additional aspects under consideration are size limits, toxics and lethality. Marine mixing zones will also be included in the discussion, although the regulations under review dealt with fresh water. Existing mixing zones will remain, and all efforts will be made to ensure no unintended side-effects occur.

A summary of the actions taken are available at RDC and DEC. Please call me directly and I will make sure your concerns are advance to the appropriate level.

**Resource Review** is the official monthly publication of the Resource Development Council. RDC is located at 121 W. Fireweed, Suite 250, Anchorage, AK 99503. (907) 276-0700. Fax: 276-3887. Material in the publication may be reprinted without permission provided appropriate credit is given.

Writer & Editor  
Carl Portman

# Alaska Oil and Gas Association

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

April 22, 1996

## STATEMENT OF SUPPORT - CSHB342 (RESOURCES)

The Alaska Oil and Gas Association supports CSHB342 as passed by the House Resources Committee on April 19, 1996. This legislation will provide the basis for the State of Alaska to have 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 regulations. It also provides an efficient mechanism for amending the state's regulations when federal requirements change, and allows ADEC to take into account the natural condition of waterbodies when setting discharge standards in permits.



# Resource Development Council for Alaska, Inc.

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Congressman Don Young  
Governor Tony Knowles

April 22, 1996

Representative Norm Rokeberg, Sponsor  
and members of the Alaska State House  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Rokeberg,

RDC supports CS for HB 342 (Resources), "an Act relating to water quality," which strengthens the Alaska mandate for economically-feasible and technologically-achievable state water quality standards.

Presently states are required to amend regulations to match federal regulations only when federal regulations become more restrictive. This is a one-way street. CS for HB 342 legislates a similar requirement to adjust state standards when federal changes result in less strict standards, or when federal mandates are deleted from law.

It should be understood that the State may still set stricter standards, but this legislation will encourage a pro-active response automatically and a review of such a decision. For those few cases where the State argues for a standard stricter than federally required, this bill also establishes a methodology for evaluating the merit of such an argument.

RDC supports CS for HB 342 for the additional provisions:

- An efficient "change mechanism" for agency response to consistency with federal regulations;
- A professional and definitive process for evaluating any conclusion which results in state standards being set stricter than federal requirements;
- An allowance for discharge waters to match the quality of the receiving waters strengthening DEC's resolve to use natural background levels as the standard when natural levels exceed the State standard, as is often the case in Alaska;
- Specifying EPA-approved measurements, in particular the volumetric Imhoff Cone method which strengthens the Department of Environmental Conservation's (DEC) current policy on settleable solids measurements.

RDC urges the Legislature to vote positively on this important bill in time to be successful this session.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL  
for Alaska, Inc.

Becky L. Gay  
Executive Director

copies to RDC Board, AMA, AOGA and member communities



2173 University Ave. S., #101  
Fairbanks, AK 99709  
907-474-2080  
Fax 907-474-2082

## FAX TRANSMITTAL

TO: Representative Norman Rokeberg      DATE: 4/24/96  
ORG.: State House of Representatives  
CITY: Juneau, AK      NO.: 907-465-2040

## MESSAGE

As Chairman of the Fairbanks Branch of the Alaska Miners Association and Project Manager for Ryan Lode Mines, I wish to express support for CSHB343 "An Act relating to water quality" with the changes suggested by Steve Borell, Executive Director of the Alaska Miners Association on this date. Your efforts in addressing the water quality issue is greatly appreciated.

Yours truly,

Richard A. Hughes, P. E.  
Project Manager



# Resource Review

March 1995

A monthly publication of the Resource Development Council, Inc.

## Retain existing water quality standards

*Utility rates across Alaska could increase an average of 400 percent if the state increases the human health risk level from 1 in 100,000 to 1 in 1 million. While the benefits are hardly measurable, the costs are enormous*

By Becky L. Gay and Carl Portman

The Resource Development Council and a broad coalition of businesses, individuals, organizations and local communities, are gearing up to defend the state's water quality standards, signed into law in December, but now the subject of a controversial administrative appeal and subsequent public hearings.

The Alaska Coalition for Responsible Water Quality Management is

watching the review process closely and has offered additional science and cost-benefit data defending the existing regulations. The coalition includes the communities of Anchorage, Fairbanks and Juneau, as well as water and wastewater utilities and resource producers, ranging from oil, mining and forest product companies to seafood processors. The Coalition supports the existing regulations and believes they ensure protection for Alaskans without placing un-

necessary and overwhelming restrictions on development.

Department of Environmental Conservation Commissioner Gene Burden re-opened the water quality issue in response to a petition filed by the Sierra Club Legal Defense Fund (SCLDF). The environmental law group is seeking to repeal or suspend five provisions in the regulations: Human health risk levels, mixing zones, treatment works, sediment and petroleum hydrocarbons. Hearings on the regulations were held in Anchorage, Fairbanks and Juneau in March and the public comment record is open until April 19.

SCLDF had threatened to sue to block the regulations, but the Knowles administration convinced the group to pursue the administrative appeal route. Under the administrative appeal, the regulations will stay in effect until the issues are settled. Burden emphasized that DEC's decision to re-open the regulations to further public comment does not mean the state is ready to sign off on the petition.

Sections of the regulations to be re-opened are limited to the five areas challenged in the petition, but DEC intends to use the review period to propose an anti-degradation provision, which was not a part of the regulations.

(Continued to page 4)



A change in the Alaska water quality standard risk level of 1 in 100,000 to 1 in 1 million and/or a loss of mixing zones would drive dischargers into advanced metals removal for wastewater. In Juneau, utility rates would increase by 293% with customers paying an additional \$138 per month for sewer service. See page 5 for rate impacts across Alaska.

(Photo by Carl Portman)

# RDC urges ADEC to reject petition, retain water quality standards

(Continued from page 1)

The water quality standards are used as a basis for limits in wastewater discharge permits issued to industries and local communities. The existing standards were the product of an intense, five-year public process which included 12 public hearings, two state-wide teleconferences, two public comment periods running 213 days and three two-day meetings of a State Water Quality Standards Advisory Group. The regulations were signed into law in December, but shortly after they became effective, the environmental group's petition was filed.

RDC members were very active in the prior round of hearings and testimony. The public record clearly showed widespread support for the regulations.

RDC believes there should be some finality to the regulatory process and has told Commissioner Burden that after all the effort expended by all sides in this debate, it seems unreasonable to go through the process again.

Compounding the water quality issue is the historic decision to classify all waters in Alaska to the highest use, namely drinking water and aquatic life, regardless of activity or reality. Due to the lack of money to sample, characterize and classify thousands of waterbodies, the state made the most stringent choice, creating some strange regulatory situations.

For instance, taken literally, if you poured a glass of drinking water from most Alaskan communities into a natural waterbody, you would be violating current discharge standards.

RDC is distributing briefing papers on water quality for those who want more detailed information. Here are summaries:

**Human health risk:** The present Alaska standard is  $10^{-5}$ , which sets the risk level at 1 in 100,000. In this debate,

risk is calculated from an array of variables and reported as the potential chance of getting cancer from some source, namely ingesting polluted water or fish. (The statistical risk of dying from cancer in the U.S. is about 1 in 4, or 25,000 per 100,000.)

Because of the conservative assumptions used in risk assessment, the actual individual risk for most Alaskans is much lower, since people move from place to place and very little fish they eat are contaminated. Here's the catch: the 1 in 100,000 risk level is based on people eating contaminated fish for 70 years. Moreover, the contaminated fish would have had to spend its life at an industrial or municipal wastewater outfall — an unrealistic assumption.

While the risks are estimated, the costs are certain and will either be borne by the taxpayer for upgrades to public sewage systems, or by the consumer for upgrades to industrial systems. The Municipality of Anchorage estimates that sewer utility rates would increase 407 percent if the State increases the human health risk level to 1 in 1 million. The average utility rate increase across Alaska would be approximately 400%.

Those advocating the stricter 1 in 1 million standard reflect a broader public perception about risk. This perception demands that large amounts of resources and attention be devoted to alleged dangers that are speculative and small. This is particularly disturbing in light of the fact that in Alaska lack of rural drinking water and sanitation systems pose the greatest threats to public health.

EPA gives states discretion to set risk levels between  $10^{-5}$  and  $10^{-7}$  (1 in 10 million). But, local communities, utilities and industries say the higher risk standard of  $10^{-6}$  (1 in 1 million) is impossible to meet, noting that states with the higher standard are granting administrative exemptions in discharge permits

## Alaska standards are technologically achievable and economically feasible

RDC urges its members to submit comments supporting the existing water quality standards, which took effect in December. Submit comments to: Water Quality Management Section, AK Dept. of Environmental Conservation, 210 Willoughby Avenue, Suite 100, Juneau, AK 99801-1795, or fax to 907-465-2274.

### FOR IMMEDIATE RELEASE: ACTION

#### Main Point:

- Urge DEC to retain the existing water quality regulations and reject the petition filed by the Sierra Club Legal Defense Fund.

#### Other Points:

- The existing regulations afford a sufficient level of protection for Alaskans without placing overwhelming restrictions on development.

- The 1 in 100,000 risk level adopted by DEC protects human health.

- The mixing zone provisions are critical for communities and industries.

- The newly-adopted Treatment Works definition is necessary for all Alaskan municipalities and industries responsible for waste treatment. It should be retained as adopted by the department.

- The petroleum hydrocarbons, oil and grease standards adopted by DEC are a good first step toward resolving concerns and should be retained to serve as a starting point for discussions to be held during Phase II of the water quality standards review.

- The proposed antidegradation policy should be withdrawn from this process and should be included in Phase II of the state's triennial review process.

Please write a brief letter today. The opposition has launched a major campaign demanding that the current regulations be repealed.

## Rate impact of advanced metals removal for wastewater

| Utility   | Current Revenue Requirement | Current Sewer Rate | Type of Treatment | Capital Cost for advanced treatment | Additional Revenue Required* for advanced treatment | Percent Rate Increase | Projected Monthly Rate |
|-----------|-----------------------------|--------------------|-------------------|-------------------------------------|-----------------------------------------------------|-----------------------|------------------------|
| Anchorage | \$22,607,000                | \$21.65            | Primary           | \$346,807,000                       | \$91,941,000                                        | 407%                  | \$109.70               |
| Fairbanks | 6,370,000                   | 24.45              | Secondary         | 54,948,000                          | 16,845,000                                          | 264%                  | 89.11                  |
| Juneau    | 4,149,000                   | 35.35              | Secondary         | 40,380,000                          | 12,145,000                                          | 293%                  | 138.83                 |
| Kenai     | 850,000                     | 41.00              | Secondary         | 11,244,000                          | 2,745,000                                           | 323%                  | 173.41                 |
| Ketchikan | 1,296,000                   | 24.15              | Primary           | 36,133,000                          | 7,431,000                                           | 573%                  | 162.62                 |
| Kodiak    | 1,633,000                   | 32.20              | Secondary         | 22,170,000                          | 6,270,000                                           | 384%                  | 155.83                 |
| Nome      | 533,000                     | 32.00              | Secondary         | 7,602,000                           | 1,570,000                                           | 295%                  | 126.26                 |
| Sitka     | 1,033,000                   | 24.00              | Primary           | 33,726,000                          | 6,843,000                                           | 662%                  | 182.92                 |

\*Includes debt service (10% of capital cost)

A change in the Alaska water quality standard risk level of 1 in 100,000 to 1 in 1 million and/or a loss of mixing zones would drive dischargers into advanced metals removal for wastewater. The construction and operation of advanced metals removal facilities are extremely expensive and the technology generally unproven.

because dischargers simply cannot comply. The existing  $10^{-5}$  standard already requires sampling accuracy for some constituents beyond the limits of testing equipment; in many cases this standard is ten times more stringent than naturally-occurring background levels of various substances in state waters.

**Mixing zones:** Municipalities, as well as industries, including mining, timber, fish processing, and oil and gas rely on mixing zones. Mixing zones enable a discharger to use the natural assimilative capacity of a receiving water while satisfying water quality regulations in a feasible, safe and cost-effective manner outside the zone. Mixing zones are a legal provision recognizing standards can be accommodated within a predictable and acceptable distance from the point of discharge. Allowing mixing zones is an essential regulatory rule for site-specific situations. The new standards provide comprehensive requirements for extensive analysis prior to DEC authorization of fresh water mixing zones and prohibit mixing zones in certain circumstances. These regulations are significantly more restrictive than the previous regulations, and repealing them would be a step backward.

As an example, elimination of mixing zones in Cook Inlet would require a zero discharge of process waters, affecting fish processors and Cook Inlet communities, including Anchorage. For the oil and gas industry, estimates of

### It does not make sense

• It does not make sense for water quality standards to be so restrictive that discharges must be cleaner than natural water.

• It does not make sense for Anchorage to spend nearly \$350 million to construct an advanced metals removal facility to remove one pound per day of arsenic, at a cost to Anchorage ratepayers of \$110 per month, when Knik Arm contains over 10,000 pounds of natural arsenic that has no impact on aquatic life.

• It does not make sense to establish more restrictive limits for Alaska than EPA recently recommended as being necessary for protection of people around the Great Lakes.

• It does not make sense to blindly follow the bad examples set by Idaho, Washington and Oregon who adopted 1 in 1 million risk limits and now have a convoluted permitting process because no dischargers can meet the limits.

the cost of reinjection of the process waters is over \$50 million. According to Wylie Barrow, General Manager of Unocal, the Trading Bay Field and McArthur River Field would be prematurely abandoned, resulting in the loss of 875 oil industry and service company jobs, \$87,474,300 in state royalty and taxes, and \$581,000,000 in gross revenues.

**Hydrocarbons, oil and grease limits:** In the general sense, petro-

leum hydrocarbons and oil and grease are just as they sound to the lay person. For regulatory purposes, it gets much more complex, looking at the individual components that make up the hydrocarbons, oil and grease.

The existing requirements adopted by DEC limit hydrocarbons to those that would pose significant potential environmental impact. More sensitive detection and reporting limits are included, and the numeric criteria for hydrocarbons remain the same as in earlier regulations.

Essentially all water discharges are affected by the hydrocarbon limits in the existing standards. If standards become even stricter, every stormwater or municipal discharge (without a mixing zone) will be in violation. The cost of compliance would be exorbitant with minimal environmental improvement. Enforcement will be costly and selective, since even small boat harbors will be out of compliance.

**Treatment works:** Water-borne wastes may, in some cases, be held in constructed "treatment works" for purposes of treatment and disposal. Treatment works may include mine tailings impoundments, sediment settling ponds, sewage lagoons, cooling water ponds, landfill containments and other waste treatment facilities. Treatment works in natural water bodies are primarily used four ways throughout Alaska.

(Continued to page 6)

# Alaskans must understand implications, costs and benefits of water quality standards

(Continued from page 5)

• **Village treatment systems:** Village systems commonly use nearby lagoons or ponds for naturally aerated treatment. If natural waterbodies or impoundments in natural drainages could not be used for treatment works, approximately 30 to 50 small wastewater treatment systems in the state may require modification to more complex mechanical treatment systems. Capital and operating costs for more sophisticated mechanical systems in Alaskan villages have proven prohibitive.

• **Stormwater runoff:** Treatment of stormwater runoff by use of detention ponds for municipal, other governmental and industrial sites is a common practice. The practice is identified by the Environmental Protection Agency and by most state regulations as the best management practice (BMP). Treatment of stormwater by other means is normally not economically feasible.

• **Mining:** Uses treatment works in the form of settling, sediment and tailings ponds.

• **Fish processing and hatchery systems:** Both discharge untreated wastes into water bodies designated as waters of the state or the United States.

Urban and rural Alaska face different options and costs for complying. For instance, the Municipality of Anchorage estimates capital construction costs of \$347 million and ongoing operation and maintenance costs of \$92 million per year for complying with the proposed changes to the water quality standards at the city's major treatment works. The monthly user rate would increase from \$22 to \$110.

In rural Alaska, the cost of installing a mechanical system is estimated to be between \$2 million and \$10 million with operating and maintenance costs running between \$200,000 and \$400,000 annually. Cumulative capital costs for treatment alone could exceed \$900 million with additional annual operation and maintenance costs exceeding \$20 million.

**Sediment:** The recently-adopted sediment standard relies on a combination of settleable solids and turbidity to regulate sediment loads. The standard also provides for the use of a simple, recognized field procedure to measure settleable solids. Rapid determination of discharge quality can be used for control of treatment and discharge timing. Within an hour, a discharger or an agency can determine compliance or violation of a standard, versus an alternative method which would require three to four weeks of laboratory analysis.

**Anti-degradation:** Since this was not part of the years of public hearings and other work, RDC believes this important aspect deserves more study and consideration and should not be

held to the same administrative time line as the adopted regulations. Many people are confused, for example, about the difference between anti-degradation and "anti-backsliding," which have important distinctions in the regulatory arena.

RDC supports the current water quality standards, which are the result of years of work, discussion, debate and testimony. RDC was one of many groups which spent many hours with its membership, the public and the Administration working to shape water quality standards which are technologically and economically feasible for Alaska. Shouldn't we give them a chance to work?

*Editor's Note: Briefing packets on this issue are available at RDC. Call 276-0700 for a copy.*



## Salvage timber bill advances

Legislation that would change state law to allow loggers quicker access to trees that will lose substantial economic value due to disease or fire, has passed the Senate and at press time was moving to Governor Tony Knowles' desk, pending House concurrence of Senate changes.

RDC supports HB 121, known as the salvage timber bill. RDC believes the bill will serve as a vital forest management tool to help manage dead and dying forest in Alaska. HB 121 would give DNR the ability to accelerate its timber sale program for insect-damaged trees.

The state currently is required to list targeted stands on a five-year plan for at least two years before timber can be offered for sale. Even if the timber is threatened with disease or infestation the wood can't be sold and cut. The legislation would allow the DNR commissioner to waive the two-year requirement after determining a particular stand of trees is likely to lose substantial value if not cut within two years.

Time is a critical factor in harvesting dead or dying timber and reforesting infested stands. HB 121 would allow the private sector to respond in a timely manner to harvest dead trees and reforest infested areas before the trees deteriorate to an uneconomic level. After about two years of spruce bark beetle infestation, there is insufficient value in the forest to meet the costs of reforestation, as well as the costs of the sale and the infrastructure required for harvests.

In response to misinformation on the bill, RDC noted that HB 121 would not exempt salvage timber sales from public review nor eliminate public planning for lands and resources. Moreover, HB 121 does not exempt timber sales from reforestation provisions of existing state law.

RDC urges its members to write the Governor in support of HB 121.

(Continued to page 7)

# Water quality standards and the arsenic cancer risk

*Editor's Note: The Montana Legislature passed several bills revising the state's water quality standards and requiring that treatment standards be economically, environmentally and technologically feasible. Legislation passed by the Montana Legislature and supported by Governor Rasicot revised the human health risk level from 1 in 1 million to 1 in 100,000 and adjusted the standard for arsenic from 1 in 1 million to 1 in 1,000 risk. The revisions were made after local communities and businesses throughout Montana were unable to obtain waivers from stricter standards which were economically and technologically infeasible.*

By Senator Lorents Grosfield  
Chairman, Montana Senate  
Natural Resources Committee

Second of two-part series  
(Edited for space)

One of the troubling policy questions that we must continually weigh is, how "clean" does "clean" need to be? If we are discharging water into a stream, should "clean" mean as close as we

can get to totally pure? Should it mean cleaner than the water naturally occurring in the stream? Should it mean as clean as the water we're discharging into? Should it mean clean enough to meet all the water quality standards that have been set to protect our health and environment?

Take Anchorage, Alaska, a city of about 250,000 people. Recently it was discovered the discharge into Cook Inlet from the municipal sewage treatment facility contained too much arsenic to meet the standard. An analysis of the problem revealed that it would cost the city \$970 million to upgrade its system in order to eliminate enough arsenic to meet the standard. That's over \$12,000 for every family! The amount of arsenic to be eliminated was about one pound. But further investigation revealed that literally hundreds of pounds of arsenic already arrives naturally from the various rivers that flow into Cook Inlet and from the tide coming in from the ocean. Given that hundreds of pounds are already arriving naturally, what possible sense would it make for the city to tax its citizens enough to pay the \$970 million to eliminate one pound from the city's discharge? Could it be perhaps that the standard is flawed, or at least needed an exemption to deal with the specific Anchorage situation?

It's important to remember that water quality standards have not been cast in stone by some supreme being. Environmental science is not an exact science and none of these standards are "infallible."

Take Senate Bill 331 and the issue of Montana's water quality standard for arsenic. Arsenic is a known cancer causing agent. But there are at least four major points that need to be understood.

First, SB 331 changed the standard for arsenic from being based on a one-in-a-million increased lifetime cancer risk to a one-in-a-thousand increased risk. Does this mean that the Legislature has increased the cancer risk 1,000 times? Absolutely not.

At a one-in-a-million increased risk, the Montana water quality standard for arsenic in Montana streams and rivers

before SB 331 was 0.018 parts per billion (18 parts per trillion). But the EPA drinking water standard is 50 parts per billion (50,000 parts per trillion). This means that our old standard for streams and rivers was 2,778 times more restrictive than the federal drinking water standard!

The new one-in-a-thousand cancer risk standard in SB 331, for discharges to our rivers, streams and groundwater, figures out at 18 parts per billion, which is still almost three times stricter than the federal drinking water standard of 50. But what is even more telling are the relatively high levels of arsenic that occur in most Montana streams naturally. For example, the average arsenic in the Missouri River at Toston from natural sources is about 24 parts per billion. With this level of arsenic naturally occurring in the river, there is no increased cancer risk in the upper Missouri River by moving the standard from 0.018 to 18. Why? Because the standard is still less than what's there naturally.

Granted, not all Montana streams have as much naturally occurring arsenic as the Upper Missouri. The average natural arsenic in the Yellowstone River at Livingston is about 21 parts per billion. By the time the Yellowstone reaches the North Dakota border, it is down to about 7. But in the Madison River at West Yellowstone, the natural arsenic level is about 260 parts per billion!

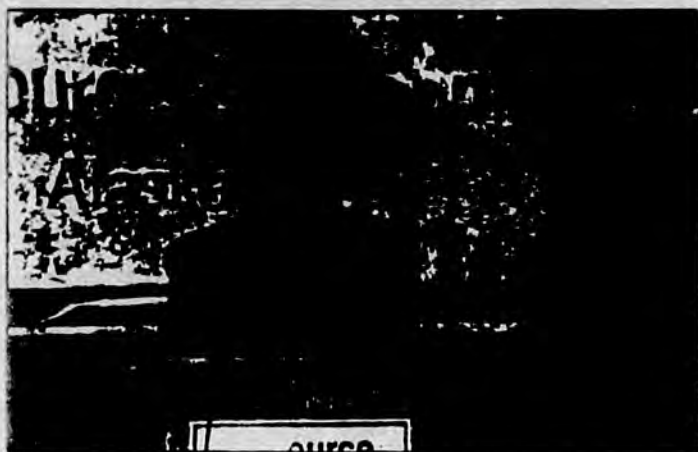
Remember, with our standard now at 18, we are still nearly three times stricter than the federal standard of 50, which like all federal drinking water standards, already has a significant safety margin built into it.

The second point is that fish are not as sensitive to arsenic as humans. Changing the standard to 18 will have absolutely no effect on fish. The arsenic standard set for healthy fish is 190 parts per billion; that is, below this level, fish will not be affected at all, and it's not until continual exposure for a week or more at a level of 360 parts per billion that fish will actually die.

The third major point is that we

(Continued to page 5)





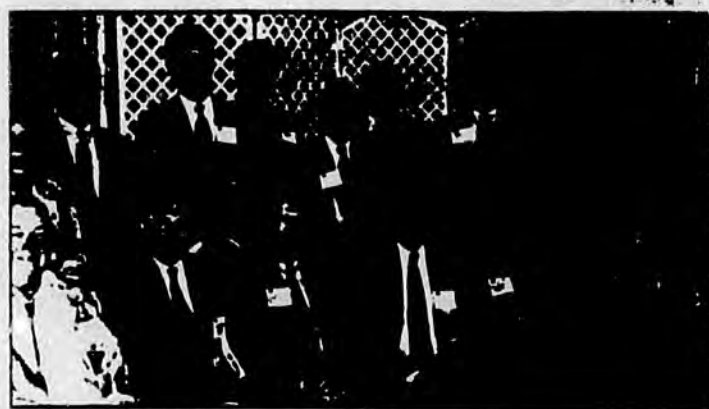
Congressman Don Young, Chairman of the House Resources Committee, enjoys a warm welcome before the large luncheon crowd at the RDC Annual Meeting. Young addressed new opportunities for Alaska in the new Congress.



Outgoing President Dave Parish receives a "First Barrel of Oil" plaque from President Elizabeth Rensch for his outstanding service to RDC. Parish first came to RDC ten years ago as a student intern during summer break from college.



RDC board member John Forceskie, President of Teamsters Local 959, receives special recognition and a plaque from RDC's outgoing President Dave Parish. Forceskie, who retires from the Teamsters this month, served as Vice President of RDC for eight years, longer than any other board member in that office.



At upper right, members of RDC's new Executive Committee pose for the camera. At bottom right, Gail Phillips, Speaker of the Alaska House, presents Eielson Junior High School student Katrina Balash with a certificate for her winning essay in the RDC Statewide Essay Contest. Katrina's essay addressed "The Role of Resource Development in Alaska's Economy." The winner in the high school category was Skagway's Lisa See who focused on "Opening ANWR."



## Montana strives for reasonable water quality standards

(Continued from page 2)

cannot, even given present technologies, reliably measure arsenic at less than 3 parts per billion. Now, if 0.018 parts per billion is not measurable, it's not detectable, and if it's not detectable it's certainly not enforceable.

The fourth point pertains to the creation of the old standard at 0.018 parts per billion. It was based on a Tai-

wan study showing that a person living in Taiwan had a one-in-a-million increased chance of getting cancer IF that person drank 2 liters of water per day from that same "contaminated" source of supply each consecutive day for 70 years and ate an average of 6.5 grams of fish caught from that same source of supply each day for 70 years.

If a person were to do these things, that person would have a one-in-a-million increased chance of getting cancer.

Given all this, was it reasonable to have a standard set at 0.018 parts per billion in the first place? Is it reasonable to have a water quality standard for discharges to streams and groundwater set at a level 2,778 times

stricter than the federal drinking water standard? It reasonable to have standards we cannot even measure? Is it reasonable to have standards set at a level substantially below the condition that nature provides naturally?

Don't forget who pays for the implementation of these standards.

## ARCO, BP

North Slope producers were upbeat in their assessment of Alaska's potential at the Jan. 21 "Meet Alaska" conference. ARCO told of new work on West Sak; BP talked about its prospects at Milne Point and Badami. Much of the optimism stems from perceptions of a new relationship with state government. (Page 2)

## Alyeska Pipeline

Alyeska Pipeline submitted its final plan for its Valdez vapor control project to EPA, and is optimistic about early approval. (Page 3)

## Governor

Commerce Commissioner Hensley says Gov. Knowles was encouraged over his meetings with industry in Los Angeles and Houston, and plans meetings in London in March. Knowles wants to listen to industry concerns as well as sell the companies on the state's oil priorities. (Page 3)

## Legislature

State Sen. Loren Leman will hold hearings of his Senate Resources Committee Feb. 1, looking for ideas on ways the state can encourage new oil and gas investment.

House Resources chair Rep. Joe Green predicts his committee will also deal with oil and gas incentives. (Page 5)

# INSIDE



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## Environmental groups file appeal

# Water quality regs open again

Dept. of Environmental Conservation Commissioner Gene Burden has reopened issues in new state water quality regulations signed into effect by former DEC Commissioner John Sandor in early December, in response to a petition filed with DEC Jan. 12 by the Sierra Club Legal Defense Fund. SCLDF was acting on behalf of the Alaska Clean Water Alliance, United Fishermen of Alaska, and Alaska Wilderness Recreation and Tourism Assoc. Hearings on the regulations will be held in Juneau, Anchorage and Fairbanks, the commissioner said. DEC officials are making efforts to assure people that the fact that the regulations have been opened for further hearings does not mean DEC is ready to sign off on positions put forward by the environmental law group.

SCLDF had threatened to sue to enjoin the regulations but State Attorney General Bruce Botelho talked the group into taking the administrative appeal route. (The Knowles administration did not want to be slapped with an environmental lawsuit in its first days in office, even though the issues were linked to the previous administration.) Under an administrative appeal, the regulations being questioned stay in effect until issues are settled one way or another. If an action for an injunction were filed, and succeeded, the regulations would be shelved. Sources in the Knowles administration said there were no "guarantees" given SCLDF by state attorneys, but that there was an "expectation" there would be opportunity for further comment on the regulations, i.e. that the appeal would not be denied. *Continued on Page 8*

## Oil and Gas Director Eason's resignation accepted

The Knowles administration accepted the resignation of Jim Eason, veteran director of the Division of Oil and Gas. All division directors were asked to submit their resignations. Eason served the division for 14 years through four state administrations and nine Commissioners of Natural Resources. While sometimes at odds with the industry, Eason was a strong defender of the state's interests.

## Environmental law group challenges state's water quality regulations

*Continued from Page 1*

SCLDF's appeal challenged five areas in the regulations: (1) exemption of water "treatment works" from standards; (2) sediment criteria, to cover only settleable, and not suspended, solids; (3) criteria for Total Hydrocarbons; (4) criteria for mixing zone authorizations; and (5) human health risk level. The human health "acceptable" risk level of 1 additional case of cancer in 100,000 population, instead of 1 in 1 million, was the most controversial part of the new regulations. Commissioner Burden has asked DEC staff to prepare a justification as to why the 1 in 100,000 standard is the preferable standard for Alaska. Sections of the regulations to be reopened are limited to the five areas challenged in the SCLDF's petition. In addition, the department intends to use this opportunity to propose language dealing with antidegradation, which was excluded from the final regulations at the suggestion of the attorney general, who expressed concern that the public had not had adequate opportunity to comment on that specific section. The 60-day comment period is expected to commence Feb. 13, when copies of the formal package will be available to the public.

### Upcoming events

**February 13, 1995:** Revised deadline for comments on proposed revisions and additions to the Classification of State Agency Approvals ("ABC" list). Comments should be submitted to Chas Dense, DGC, P.O. Box 110030, Juneau, Alaska 99811-0030. Phone: 1-907-465-3562.

**February 17, 1995:** Deadline for submission of recommendations for changes to Air Quality Control Regulations. Comments should be submitted to John Stone, ADEC, 410 Willoughby Avenue, Suite 105, Juneau, Alaska 99801.

Alaska Oil and Gas Association  
121 West Fireweed, Suite 207  
Anchorage, Alaska 99503



Greater Fairbanks Chamber of Commerce  
709 2nd Ave., Fairbanks, AK 99701  
(907) 452-1105

Issue No. 5  
March 10, 1995

## Fairbanks Spared in Base Cutting

Fairbanks' wide open spaces are a rare and highly desirable commodity from the military point of view, Maj. Gen. Thomas Needham told the Fairbanks chamber at their General Membership Luncheon Feb. 28.

Needham spoke to the Fairbanks chamber the same day that the latest round of base closures and realignments was announced by the Department of Defense, but the news for Fairbanks was mostly good.

"It's not easy talking to a chamber of commerce on the day the secretary (of the Department of Defense) announces base cutbacks and closures," Needham said.

Fort Wainwright, Needham said, would be spared further cuts for the foreseeable future and may actually gain some military and civilian personnel due to the transfer of responsibilities and personnel from Fort Greely near Delta Junction.

"According to the announcement made by the secretary, Fort Greely will become a sub-post of Fort Wainwright," Needham said.

The Department of the Army has decided to transfer Fort Greely's Northern Warfare Training Center and Cold Region Testing Center to Fort Wainwright. Along with the new responsibilities, Fort Wainwright will gain approximately 205 military and 56 civilian positions, according to the Department of Defense.

According to a Department of the Army report, the move will cost Delta Junction, the town closest to Fort Greely, 969 jobs or 36 percent of the area's employment base between 1996 and 2001. Direct employment by the military accounts for 724 of those jobs and the other 245 are "indirect" employment created as a collateral effect of military activity.

"It's too early to tell how many," Needham said. "Cooks can be moved pretty easily, but it is harder

to move a power plant."

Needham said it is still too early to say whether the move will mean more civilian jobs for Fairbanksans working on construction of new facilities. He did, however, point out that while defense contracts are down an average of 23 percent nationwide this year, the level remained virtually unchanged in Alaska.

Needham said Alaska will wind up with about 6,500 soldiers, approximately 5,000 at Fort Wainwright and most of the balance at Fort Richardson. The Army will also hang on to its 1.6 million acres of land in Alaska, he said.

Availability of space, Needham said, is part of what makes the Interior a desirable home for the military. As Anchorage grows, the military is running out of room for "live-fire" exercises.

"The trouble with live-fires at Fort Richardson is that, because of environmental constraints, we can only do it in the winter when there is 8-inches of ice," Needham said. "We're running out of room down there."

The Army has 916,000 acres available for training at Fort Wainwright, 62,000 acres at Fort Richardson and 662,000 acres that they will retain at Fort Greely, according to Linda Douglass of the Fort Wainwright Public Affairs Department.

According to the Department of the Army report, the realignment between Fort Greely and Fort Wainwright will result in a \$23 million implementation investment that will yield a net savings of \$43 million during the implementation period and \$19 million a year thereafter.

Needham said the army plans to spend \$2 million to upgrade Bassett Army Hospital at Fort Wainwright and another \$5 million on barracks renovation.

"Family housing is adequate, but we have let barracks slide," Needham said. "In the barracks, we (see Needham, next page)

(Needham continued from page 1)  
have soldiers sitting on furniture older than they are."

The Army also plans to fix up the post swimming pool and spend another \$12 million on roads and other projects.

"The good news is that we have money to train," Needham said, adding that he expects Alaska's military to be called to a global hot spot some day.

Needham thanked Fairbanks for its support of Fort Wainwright during the army post of excellence evaluation that recently went on in Fairbanks.

"Both Fairbanks and the post had a good day when the evaluation team was here," Needham said. "We sincerely appreciate the support we get from the community."

Needham said he doesn't expect the results of the evaluation until some time in June.

"We won't know until they call us and tell us to come to Washington (D.C.)," Needham said.

## \* Board Hears Report on Water Quality Standards

The Sierra Club is mounting a new challenge to Alaska's Water Quality Standards which could cost Alaskans billions of dollars and stifle future development the chamber board was told at their March 6 meeting.

Mary Nordale, President of the Alaska Miner's Association, and Bill Jeffress, of Fairbanks Gold, gave the board a briefing on the Department of Environmental Conservation water quality standards review currently underway. The Sierra Club Legal Defense Fund has petitioned the DEC to revoke the water quality standard signed into law by Gov. Hickel on Dec. 5, 1994.

If the new standard being sought by the Sierra Club goes into effect, it could kill the mining, fishing and timber industries, Jeffress said. The Fort Knox project near Fairbanks, due to begin construction this summer, could be jeopardized by new, more stringent standards, Jeffress said.

Alaska's current standard allows a human health risk of 1 in 100,000. That means a person would have a 1 in 100,000 chance of contracting cancer if they were to drink two liters of treated water a day for 70 years, Jeffress said. The Sierra Club wants the risk factor changed to 1 in 1 million.

To put it into perspective, he said, your chances of being hit by an airplane falling from the sky involve about half the risk of the state's 1 in 100,000 standard. According to Jeffress' figures, Americans have a 1 in 4 chance of dying from cancer with or without the 1 in 1 million standard.

The Sierra Club's standards are unattainable, Jeffress said. Under the 1 in 1 million standard, drinking water would not be an acceptable discharge, he said. The technology doesn't exist, Jeffress said, to remove natural levels of arsenic from Alaska's water to the 1 in 1 million standard.

Nordale said the 1 in 1 million standard, if applied, would apply across the board and cost state and local government in Alaska \$2 billion to upgrade waste water systems. She estimated the cost to owners of residential septic systems at \$50,000 per lot.

Jeffress said the effect on the Alaskan economy would be catastrophic. He said venture capital for development would likely be scared off by the 1 in 1 million standard. The higher standards have proven fiscally and technologically unattainable in other states, he said. If we ignore the public process, he said, the regulations will go into effect virtually unopposed.

There will be a public hearing on the proposed water quality standards at 7 p.m., March 17 in the Noel Wein Library. Jeffress urged all interested parties to attend the meeting.

### March Luncheon Speakers

**March 14** British Petroleum Alaska President John Morgan will address the membership on development opportunities on the North Slope and what needs to be done to make those opportunities a reality. There will also be a Parka Parade preview.

**March 21** MarkAir Director of Marketing Craig Johnson will speak on MarkAir's economic impact in the state of Alaska.

**March 28** American Red Cross will give a Koyukuk River flood update.

### Business After Hours

5-7 p.m., Thursday March 23

at

### Frontier Business Machines

hosted by

Margherita Gilbertson

See insert for details

## Water-quality rule changes draw criticism on all sides

The Associated Press

**JUNEAU** — Proposed changes in the state's water-quality regulations are being panned by industry and environmental representatives alike.

But their complaints differ: Citizen groups say the regulations didn't change enough, while a mining representative says the changes are a major break from the past and could cause problems.

The state revised the regulations in response to a January 1995 petition by the Sierra Club Legal Defense Fund, represent-

ing United Fishermen of Alaska, the Alaska Clean Water Alliance and the Alaska Wilderness Recreation and Tourism Association.

The groups petitioned the state after Gov. Walter Hickel signed new water-quality regulations just hours before he left office in December 1994. Those regulations followed a three-year battle over water-quality standards.

The proposed changes focus on mixing-zone regulations, with potential effects on mining, oil and pulp companies. Mixing zones are areas near a

discharge where state water-quality standards are exceeded.

"Mixing zones were designed as a temporary exemption to Clean Water Act principles," said Gershon Cohen, who heads the Alaska Clean Water Alliance. "But mixing zones have become the rule, not the exception."

Pamela Grefsrud of the state Department of Environmental Conservation said the revisions were largely minor language changes intended to clarify the regulations. But the Alaska Miners Association disagrees.

"It's very disturbing DEC

has presented this as minor changes when they've broken with the past. It's a very, very different document than anything we've had in the state," said Paul Rusanowski, Juneau branch chairman of the association.

One of the changes is a new definition of mixing zones, which Rusanowski said is likely to confuse people because it differs from what has been described as a mixing zone for years.

Another revised section could be interpreted to require the state to review a previously

approved discharge into water if any circumstances change, he said. That could pose problems for companies when changes occur, such as a drop in water flow in a dry year.

But Sierra Club Legal Defense Fund representatives are disappointed the revisions don't do more to narrow the situations in which a mixing zone for toxins or carcinogens are allowed, said Kelly Nolen, associate attorney for the organization.

A hearing on the proposed changes was held Friday night in Juneau.

# oice of The Times

## Inlet oil jobs, revenue face serious threat

*This concludes a two-part series on the over-regulation of the oil industry in Cook Inlet.*

By BILL STAMPS

The oil industry in Cook Inlet has done many positive things for this region of the state. Unfortunately, where once 12 major companies operated, only three remain. And they face being over-regulated out of existence by federal and state agencies.

The issue has to do with the requirements of a permit to discharge water from an oil platform. Many people probably aren't aware that a permit "violation" does not have to be something that causes harm to the environment — only violate the written text of the permit.

For instance, oil companies have to report a spill the size of less than one tablespoon. Millions of gallons of water move by an oil platform every hour, and if one tablespoon of anything not listed on the permit goes into the waters of Cook Inlet, a company is required to report it as a violation.

Another violation would be for a company to draw a bucket of water from Cook Inlet and pour it back in. A company would not be allowed to dump the water back into Cook Inlet if permission to do so is not written into the permit. That's because the natural waters of Cook Inlet may not meet the water discharge standards imposed on oil companies by the Environmental Protection Agency.

Can you imagine the EPA telling the fishing industry that fishermen are not allowed to wash off the decks of their boats because the waters of Cook Inlet are not clean enough to be dumped into the waters of Cook Inlet?

The reporting requirements placed on oil companies by the EPA and Alaska Department of Environmental Conservation are excessive and costly to the industry. Proposed regulations are even worse.

Consider some of the disparities in the standards placed on oil companies. Oil companies are allowed to discharge up to 50 milligrams of suspended solids per liter into Cook Inlet. The city of Anchorage is allowed to discharge 120 milligrams per liter. Ships (including Greenpeace's ship) are allowed 150 milligrams per liter.

Even Mother Nature is not held to the same strict permit requirements that the oil companies are. Cook Inlet waters naturally have from 2,000 milligrams of suspended solids per liter in the northern part to 200 in the southern part.

An oil company discharges produced



water and drilling mud and cuttings into Cook Inlet. These are byproducts of production and drilling operations. Even though four recent studies have shown that produced water and drilling mud and cuttings have no negative impact on the waters of Cook Inlet, the EPA is proposing extensive new testing requirements under the proposed National Pollutant Discharge Elimination System (NPDES) permit.

Consider also the approximate amounts of treated sewage discharged daily into Cook Inlet in 1994 by the following Cook Inlet area cities (numbers provided by the cities):

- Homer discharges approximately 300,000 to 400,000 gallons a day.
- Soldotna discharges about 500,000 gallons per day (via the Kenai River).
- Kenai discharges approximately 825,000 gallons per day.
- Eagle River discharges approximately 1.3 million gallons a day.
- Anchorage (Point Woronzof) discharges about 30 million gallons a day.

Those "dirty oil" platforms discharge the smallest amount — approximately 60,000 gallons a day.

Environmental extremists want a zero discharge from the oil industry into Cook Inlet. We should tip our hats to the EPA and to ADEC for not agreeing to this and recognize the zero-discharge issue for what it is: an attempt by the radical environmentalists to shut down the oil industry in Cook Inlet. It would take an estimated \$50 million to achieve zero discharge on the oil platforms.

Even though recent studies have shown the oil companies have done no

harm to the waters of Cook Inlet, they are being targeted for much tougher, more expensive and **unnecessary** discharging standards than other entities. Anchorage, for instance, is not required to meet the same total suspended solids standard the oil companies have to meet. Why? Because the cost would be too great for residents to bear if municipalities had to meet the same standards.

Oil companies operating in the declining fields can't afford the additional costs either. And they could use some support right now from the community.

Alaskans need to send letters to the EPA and the ADEC stating support for environmental protection of the waters of Cook Inlet but opposing unnecessary and expensive regulations in the proposed NPDES permit. We don't want to see the industry kicked out because of unnecessary standards demanded by extremists.

Letters from individual Alaskans are like votes in an election — each and every one counts. Public comments are being received through Jan. 29, 1996. Send your letters to:

EPA, Region X  
Attention: Ocean Programs Section  
WD-137  
1200 Sixth Ave.  
Seattle, Washington 98101

ADEC  
Southcentral Regional Office  
555 Cordova Street  
Anchorage, AK 99501

*Bill Stamps is chairman of the Kenai chapter of the Alaska Support Industry Alliance.*

ADN 8/24/85

# Water rules will go

## Knowles wants new standards

Daily News staff and wire reports

JUNEAU — The Knowles administration said Wednesday it will change some controversial rules environmentalists say allow too much pollution in Alaska's relatively clean waters. The rules were approved the last day of the Hickel administration and were supported by industry and pro-development groups.

Environmentalists had hoped for a complete reversal. But clean-water activists said they were satisfied Gov. Tony Knowles agreed to revise at least some rules and to study others to see if changes are needed.

"There's ample room for industries to operate in Alaska with strong water standards and still make a profit," said Gershon Cohen, who heads the Alaska Clean Water Alliance. "We're not interested in stopping industry and stopping economic uses of natural resources."

Among the revisions will be a policy identical to federal standards for protecting high-quality waters such as those in national and state parks or wildlife refuges. The state previously had no such policy.

Rules on mixing zones also will be clarified. Mixing zones are parts of bays

## WATER: Pollution rules in for a change

Continued from Page B-1

and other waters where a fixed amount of pollutants can be discharged without penalty. The idea is to use the water to dilute potentially harmful compounds so they won't hurt fish or other wildlife, or people, outside the mixing zone. Cohen and others felt Hickel's mixing zone rules were too lax.

The state also will set up rules to determine acceptable levels of cancer-causing chemicals that might be absorbed by fish that people eat, said Gene Burden, environmental conservation commissioner.

The compromise was reached Tuesday, when the governor's staff met with business and conservation leaders.

Hickel's top environ-



mental officials devised the new rules mainly to help wood-pulp mills and to speed the development of new mines, including the planned A-J mine near Juneau. Many pro-business groups had said the state's previous water-pollution standards were too harsh and hurt businesses. On Wednesday, one business supporter appeared satisfied with Knowles' compromise, which retains some of Hickel's rules.

"Certainly, there are areas in which we would have preferred a different

outcome," said Becky Gay, who heads the Resource Development Council, a trade group. "Nevertheless, we believe the Knowles administration has made a good faith effort to address the concerns of both sides."

State officials plan to begin meetings with interested parties next month with business and conservation leaders to work out details of the new water-quality standards, which could be in place within six months, Burden said.

State leaders said working out a compromise will benefit the business climate and the environment. Knowles told reporters, "This is a very positive step forward from the gridlock and confrontation and hard feelings that were there before."

Please see Page B-2. WATER

## FORUM / LETTERS

# Costs outweigh benefits of tougher water standards

By BECKY GAY

In a state with so much water, it is understandably hard for most people to grasp the implications, costs and benefits of Alaska's strict water-quality standards signed into law in December.

The standards are used for setting pollutant limits in wastewater discharge permits issued to industries and local communities. Limits are used to control discharges and prevent contamination of state waters and fish. Risk levels describe the statistical possibility of some hypothetically affected population getting cancer from ingesting polluted water or fish.

For a reality check, the statistical risk of dying from cancer in the United States is one in four. But for risk management purposes, the current Alaska standard for waste-water discharges has been set at the strict limit of one in 100,000.

Why? Because although risk assessment may be a science, risk management is definitely policy-driven, not something science can determine.

Risk is one of the least understood concepts at the heart of the debate over Alaska's water-quality standards. Those advocating even stricter standards reflect a broader public perception about risk. This perception translates into demands that require large amounts of resources and attention be devoted to alleged dangers that often give only margin-



al gains. While arguing about minute elements, large obvious risks remain unfunded.

For instance, in Alaska, the lack of rural drinking water and sanitation systems poses a far greater threat to public health than outweighs any marginal health benefit gained from changing the risk level from one in 100,000 to one in 1 million.

Risk is calculated from many variables. The calculation that produces the one in 100,000 risk level is based on an assumption of hypothetical people eating contaminated fish for 70 years. In short, people not eating contaminated fish nor drinking contaminated water face a risk much lower — or completely absent. Because of such conservative assumptions, the true individual risk for most Alaskans is far lower since they are not part of an affected population.

Alaskans eat a lot of fish. But whether we eat more than five pounds of contaminated fish per year is the actual question and how many contaminated fish do you think you ate last year?

None, right? Remember, only an affected population faces the risk level under debate, and I'd be willing to bet Alaskans hardly ever eat contaminated fish, much less for 70 years.

I implore Alaska fishing groups to help set the record straight whether or not Alaska fish are more contaminated. If true, that certainly sends a mixed message to our markets regarding Alaska's seafood quality, which the Resource Development Council maintains is the best.

Although risks are minuscule by definition, the costs of managing society's risk aversion are huge. Perceived risk is even more of a societal burden to afford when one considers the competition for scarce resources (money) that could divide urban and rural Alaska communities already fighting to comply with even stricter limits.

Generally, it is a mark of bad public policy when the socioeconomic costs are immense and the marginal benefits are small. This is exactly what will occur if the present water quality regulations get any more onerous.

If the human health-risk level is raised to one in 1 million, the cost for advanced treatment will cause the average utility rate across Alaska to increase approximately 400 percent. Rates in Ketchikan are estimated to increase by 573 percent, Nome by 295 percent, Juneau by 293 percent and Sitka, a whopping 662 percent. Here, where half the state population lives, the Municipality of Anchorage estimates that rates would increase 407 percent. Costs will be borne by the taxpayer (for upgrades to

*Perceived risk is even more of a societal burden to afford when one considers the competition for scarce resources (money) that could divide urban and rural Alaska communities already fighting to comply with even stricter limits.*

public sewage systems) or by the consumer (for upgrades to industrial systems) who will see little, if any, commensurate benefit.

The Resource Development Council believes Alaska water-quality regulations should be both technologically achievable and economically feasible. The existing one in 100,000 standard already requires sampling accuracy for some constituents beyond the limits of testing equipment.

The council also believes standards should not be so restrictive that discharges must be cleaner than drinking water. Does it make sense to follow bad examples set by some states that adopted the stricter risk limits and now operate under de-facto exemptions because dischargers like municipal treatment facilities cannot meet the limits?

The public record clearly has shown widespread support for the current regulations that were the product of an intense, five-year public process spanning two administrations and including 12 public hearings, two statewide

teleconferences, two public comment periods running 213 days and three two-day meetings of a State Water Quality Advisory Group, and this latest administrative review. Isn't it reasonable to have some finality to a public regulatory process as rigorous as this?

Let Alaska give the regulations a chance to work. Write Commissioner Gene Burden at the Department of Environmental Conservation and give him support to retain the current regulations that provide a high level of protection for Alaskans without placing too many overwhelming restrictions on local communities and industry. For additional briefing materials, call the Resource Development Council, 276-0700. Deadline: April 19.

**Becky Gay is executive director of the Resource Development Council for Alaska Inc., now celebrating its 20th year of educating on Alaska resources issues.**

ADN 4/24/95

VOL

## The Anchorage Times

Publisher: BILL J. ALLEN

"Believing in Alaskans, putting Alaska first"

Editors: DENNIS FRADLEY, PAUL JENKINS, WILLIAM I. TOBIN

The Anchorage Times Commentary in this segment of the Anchorage Daily News does not represent the views of the Daily News. It is written and published under an agreement with former owners of The Times, in the interests of preserving a diversity of viewpoints in the community.

# Expensive flush

**IT'S UNLIKELY** that many residents are giving serious thought to the state's water quality standards now under review by the Alaska Department of Environmental Conservation.

But if local sewer bills increase by more than 400 percent as a result of new water discharge regulations requested by environmental activists, the residents will not only take an interest, they probably will be up in arms.

The state's water quality regulations were signed into law by Gov. Walter J. Hickel on Dec. 5, 1994 — the day he left office. The Hickel administration had worked on developing those regulations for about three years, during which there were numerous opportunities for public comment.

The Sierra Club Legal Defense Fund, however, challenged the process. It petitioned the new administration to suspend or repeal the water quality standards that had just been enacted. Gov. Tony Knowles responded by ordering an additional public review period for the regulations.

It is important to note that Knowles did not signal an intention to make any changes in the new water quality law. Neither did he suspend or repeal the regulations as requested. He only provided an additional comment period, which ended last week.

**THE MERE POSSIBILITY**, though, that Sierra Club lawyers might prevail in persuading the new administration to rewrite the law got the attention of Anchorage's elected officials, as well as numerous other local government and business leaders across the state.

According to written testimony from Mayor Rick Mystrom, for instance, the state's water quality standards already "are highly protective of the environment and in some cases are more restrictive than federal standards."

It would cost Anchorage hundreds of millions of dollars, he said, if the state were to adopt the changes requested by the environmentalists — "and unfortunately result in little or no measurable improvement to the environment."

Among changes requested by the Sierra Club is one that would require municipal wastewater dumped into the Inlet to be 10 times purer than the ocean water into which it is discharged.

Complying with such a bizarre standard would require construction of new water treatment facilities. Mystrom says sewer bills for single family dwellings in Anchorage would increase to \$109.70 a month, from an existing rate of \$21.65. The mayor endorsed a resolution that the Anchorage Assembly passed unanimously earlier this month. It requests simply that DEC retain the current water quality standards as enacted last December.

We trust that Anchorage's former mayor, now the governor, will take the city's concern to heart.

# ADN The Anchorage Times

Publisher: BILL J. ALLEN

8/25/95 "Believing in Alaskans, putting Alaska first"

Editors: DENNIS FRADLEY, PAUL IENKINS, WILLIAM I. TOBIN

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## Water quality

**T**HE KNOWLES administration has good reason to celebrate this week's general accord reached with environmentalists and industry over revised water quality regulations for the state. From all accounts, the process followed by the administration in developing a consensus was fair and the final result appears balanced.

Neither side got all that it wanted, but each is signaling it can accept the compromise.

Count us among the skeptics who doubted such a result was possible. We voiced our concern earlier this year when Gov. Tony Knowles ordered the Department of Environmental Conservation to review the state's water quality regulations that were signed by the previous administration on its last day in office.

The Sierra Club Legal Defense Fund petitioned for the repeal of those regulations and although the new administration did not grant the request, it agreed to reopen the process to more public discussion. That sent shudders through the mining, timber and oil industries — and throughout state communities that treat, process and discharge wastewater. There was much apprehension that any changes to the water quality regulations would result in extraordinary expense for all concerned.

That kind of worst-case scenario, as it turns out, did not occur. Instead, the Knowles administration appears to have achieved that oft-sought middle ground that protects the most important objectives of both sides in the debate.

In announcing resolution of the issue Wednesday, Gov. Knowles said, "Industry benefits from having clear standards to work with and from knowing that the administration is willing to work with them to resolve regulatory disputes. And all of Alaska's family benefits from having high standards for the protection of our precious liquid assets."

It's understandable that the governor should feel good about his accomplishment. But as he knows, the debate is by no means over regarding this particular issue.

The compromise itself ensures there will be more give and take to come. For instance, adding a new set of regulations requiring protection of "outstanding national resource waters" is sure to generate legal challenges down the road. Yet-to-come standards for regulating hydrocarbon particulates and total suspended solids, and a further review of mixing zone restrictions all promise more controversy and debate.

That's how it should be. Ongoing review, debate and revision of state water regulations are anticipated in the federal law that provides states the authority to regulate water quality.

An open public process that allows all sides to be represented at the table, as has happened up to this point, is the best way to address these complex issues and serve the state's best interest.

ADN 01 FEB 95

## State agrees to review rules on water quality

The Associated Press

JUNEAU — The Knowles administration has agreed to reopen for public review key sections of water-quality standards adopted on the final day of Gov. Wally Hickel's term.

Department of Environmental Conservation Commissioner Gene Burden has decided to accept additional public comment between Feb. 13 and April 19 on some

sections of the new regulations.

Burden made the decision in response to a Jan. 12 petition from the Sierra Club Legal Defense Fund, which represents several groups that have criticized the rules as too lax.

The Alaska Clean Water Alliance, United Fishermen of Alaska and Alaska Wilderness Recreation

Please see Page D-4, WATER

## WATER: New standards to get review

Continued from Page D-1

and Tourism Association have alleged that the rules actually weaken water-protection standards and threaten public health.

The Hickel administration had defended the rules and said they would protect the state's water bodies from pollution.

Industry generally supported the rules. A mining association official said reopening the regulations would bring uncertainty to the mining and oil and gas

industries.

Sections reopened to public review are those dealing with mixing zones and treatment works, sediment, petroleum hydrocarbons and human health-risk levels.

Mixing zones are areas where water-quality standards can be exceeded as pollutants are released into, and diluted with, public waters. Such zones have been proposed by developers of the Kensington and Alaska-Juneau gold mines.

Critics of the new rules

had wanted several sections of the rules suspended, but the rules will remain in effect during the new public review period, DEC special assistant Ernie Piper said.

"We're not overturning the regulations ... we're not slowing down any permit reviews," Piper said. "At the same time, we're going to be as responsive as possible to public concerns."

Changes could be made to the rules after the comment period, Piper said.

7.

# Miners upset by rules

Changes proposed  
to arsenic levels

By HEATHER ROBERTSON  
Staff Writer

Disputes over draft National Pollution Discharge Elimination System mining permits are one step closer to being resolved if proposed changes to arsenic levels in discharge water are approved.

Since the Environmental Protection Agency, Department of Environmental Conservation and Alaska Mining Association met with local miners March 15 for "all hands on the table" discussion, negotiations regarding the proposed draft NPDES general permit for placer mining in Alaska have led to a partial agreement.

Officials within the last month have proposed revised arsenic levels in the general draft permit. The current placer mining draft permit has miners meet an arsenic level of 0.18 parts per billion, which has drawn fire from mining interests statewide. To compensate, EPA plans to require miners to take monthly site-specific examples of background levels which would give average limits. Limits found could vary from required levels in the current permit.

"Each miner would be granted site-specific arsenic limit based on samples taken of arsenic in



Mike Mathers/News-Miner

**MOVING ON**—Don May Sr. stands above the equipment yard at Polar Mine Inc.'s Lower Gold Mine off Murphy Dome Road Thursday. May stepped down from the company as president and chief executive officer in November, turning the enterprise over to his sons.

the background levels in the receiving water. Miners would then get relief from the current 0.18 ppb levels," said Tim Hamlin, assistant legal counsel for EPA.

Of the obstacles faced in the ongoing petitioning sessions, one

of the challenges faced has been what defines natural background. The dilemma revolves around state requirements regarding current water quality standards. Miners are hoping for a solution that isn't unduly expensive or

impossible to meet.

Don May, owner of Polar Mining, Inc., a placer gold mine in operation in the Goldstream Valley for 46 years, said regulations regarding arsenic levels in the draft permit are unjust.

"We are a local mining company struggling to make ends meet. The regulations aren't fair; they are unmeasurable. The city of Fairbanks has upwards of 50

See MINING, Page A-8

Fairbanks Daily News-Miner, Monday, April 22, 1996

## MINING: Miners, regulators seek compromise on arsenic levels

Continued from Page A-1

for arsenic levels for drinking water. If we as miners take a gallon of city water and put it into the Chena River, we are in violation with current regulations because we are miners," said May. EPA has set themselves up for some huge lawsuits. They should think clearly before they pursue this avenue."

On Monday, the state Senate passed Joint Resolution 39 by a 34-2 vote, requesting that the EPA withdraw its settlement in a lawsuit filed by the Sierra Club Legal Defense Fund on behalf of American Rivers and the Northern Alaska Environmental Center.

Mining representatives are hopeful that the Senate's support will bolster efforts to negotiate the permit with approval by all before the upcoming mining season.

"The state has taken what seems to be a reasonable approach to the permit process," said Steve Borell, executive director of the Alaska Miners Association. "We are pleased that they have taken such a position. Exactly where it goes from here is not certain."

With representatives from DEC, DNR, Fish and Game, and petitioners deciding on legal wording, mining representatives have hopes of seeing a level of mutually satisfactory language emerge in the new permit. In some areas, representatives have had agreements; in other areas negotiators have exchanged views only.

"We don't know what the decisions are going to be in this thing. There were a multitude of terrible errors in that permit. Many things were stupid, to put it mildly;

EPA must surely recognize that," said Borell. "If EPA comes out with a different permit other than the draft and issues another permit with changes, what it will look like, we don't know."

Through lawsuits against the EPA by special interest groups such as American Rivers and the Sierra Club, mining and prospecting is now highly restrictive on the historical gold mining portions of the federal Wild and Scenic Rivers of Alaska. Fines for mining without a proper permit of up to \$25,000 a day can be handed down from the EPA, affecting established mining companies and tourists involved in recreational mining.

"Tourists were never notified that they couldn't mine. With substantive changes to permits, thousands of people have no way to know or comment," said Borell.

"The fact that notification to both tourists and miners was not effective is a major flaw in the EPA process. EPA did not address the people who were going to be impacted by the proposed permit."

He added, "If you're fined, it is one thing if you are breaking the law and know it. It is another if requirements are so nebulous and bad that you can't operate at all. The choice is either to shut down or operate under the letter of the law and still risk penalties."

Hamlin said the EPA doesn't know when it will issue the final new permit. Stating that it may be in the next few months, he said the agency has not decided how to ease the transition from the old to the new permit, but intends to do so with the least possible disruption to miners.

## A Brief History of the Classification of Alaskan Waters From a Review of Water Quality Objectives/Standards Since 1949



1949 The Alaska Water Pollution Control Board was established by the territorial legislature under the authority of Chapter 117, titled simply 'An Act'. The Alaska Water Pollution Control Board was responsible for administration of the Alaska Water Pollution Control 'Act' to safeguard Alaskan waters from pollution and establish standards of water purity which affect public health, fish and wildlife, recreation and industrial development.

According to Amos Alter (Person. comm., 1992), Director of the Division of Sanitation and Engineering for the Alaska Department of Health in 1949, there was only one person assigned to actively administer the water pollution control program. It wasn't possible for this one person to classify all Alaskan waters for different uses. It was also generally believed by the Board that Alaska had a unique chance to protect its pristine waters, unlike states that already had many polluted waterbodies. Therefore, it was determined that Alaskan waters should be generally protected for the highest water use. This was 'water supply and their sources.' Initial limits were provided by the US Public Health Service (USPHS) and included federal Drinking Water Standards.

1952 The first Water Quality Objectives table of standards was produced. This is found in a paper titled, 'Pollution Control Council, Pacific Northwest Area'. It was developed through the coordination of the engineering representatives from pollution control agencies in Alaska, British Columbia, Idaho, Montana, Oregon, and Washington. These standards were applicable to those regions and the Territory of Alaska.

It is in this table, 'applicable to the receiving waters for salt and fresh surface waters and underground waters,' that the first employment of protecting waters for the highest water use is evident. For example, for the parameter 'toxic, colored or other deleterious substances', the USPHS standards applied to four of the five listed water uses.

1959 The Territory of Alaska became the State of Alaska. Concurrently, the Alaska Administrative Procedure Act became effective. Water Quality Objectives were published in the Administrative Code, Title 7, under Health and Welfare. The Water Pollution Control Board was disbanded. The Water Quality Objectives were under the broad authority of A.S. Title 46, (Water) and A.S. Title 16, (Fish and Game). The Commissioner of Health and Welfare after conducting public hearings, could establish standards and/or group the designated waters of the state into classes.

The Water Quality Objectives adopted by the State of Alaska were the same table established in 1952 by the Territory.

1952 - 1979 For 27 years the original work and intent of the Alaska Water Pollution Control Board and the Pacific Northwest Council were repeated in succeeding Water Quality Standard (WQS) revisions. Clarifications in language and some modifications were made but these did not change the character of the original work. Key elements in the classification of state waters follow:

1. It was possible through public hearings to reclassify waters for specific uses. If waters were not reclassified, the 'highest water use' superceded the other uses for a given waterbody.
2. The burden of justifying a reclassification was placed on those wishing to reclassify a waterbody.
3. In 1970, Ward Cove in Ketchikan, Ship Creek in Anchorage, Chena River, Fairbanks, and Silver Bay in Sitka were classified for specific uses as were all coastal waters. In 1971, both Ward Cove and Silver Bay were deleted from the reclassification list.
4. In 1973 the following significant clarification was made: 'if waters have more than one use, the most stringent water quality criterion of the the uses shall apply.' Up until 1979, numeric limits were primarily found in the USPHS Drinking Water Standards because other criteria had not been developed. It became more evident with this wording clarification that criteria and designated uses were integral parts of a water quality standard.

The Department of Environmental Conservation was created in July of 1971 as a split off from the Division of Environmental Health in the Department of Health and Welfare. DEC made few changes in the 1971 Water Quality Standards from previous Department of Health and Welfare standards. Reclassification required public hearings, the approval of the Commissioner of DEC and concurrence by the Administrator of the EPA for interstate waters.

1979 In 1979 significant changes were made in style, format and content of the WQS. Water quality criteria applicable to each use were significantly broadened in scope and detail. It was in this revision that aquatic life criteria made their first appearance with the adoption of 'federal criteria from the 1976 Red Book for the parameter of 'toxic and other deleterious organic and inorganic substances.' The USPHS Drinking Water Standards were also replaced by the Alaska Drinking Water Standards. It was now stated that between the Drinking Water Standards and the aquatic life criteria, the more stringent should be chosen as the applicable criterion. This practice continues today and in most cases, EPA's aquatic life criteria are more stringent than the Drinking Water Standards.

In general, the WQS took a more restrictive turn in 1979. There were many more stipulations that had to be met before a waterbody could be reclassified. For the first time, there was a section that included waterbodies ineligible for reclassification (parks, refuges, etc.). Another section spelled out what conditions defined the designated uses. To eliminate a use for a given waterbody it would have to be proven that those conditions did not exist. Ship Creek and marine waters were deleted from the reclassified list in this revision.

Key points are that although significant alterations were made in 1979, it was still quite possible to reclassify a waterbody after public hearings and the approval of the Commissioner. The burden of proof was on the applicant and the applicant only had to address 'existing uses' of the waterbody in the reclassification procedures.

1979 - 1987 During this period, amendments were proposed and adopted through the public process, but no comprehensive Water Quality Standard document was published with the incurred changes. No significant amendments were made concerning reclassification of waterbodies during this time.

In 1982 one important amendment was the adoption by reference of federal aquatic life criteria for 64 compounds or classes of compounds listed in the 1980 EPA Ambient Water Quality Criteria documents. This adoption by reference includes the bulk of the numeric criteria in effect today. Human health criteria for non-carcinogens also were adopted at that time.

In 1984 Nolan Creek and five tributaries near Wiseman were reclassified for the industrial use.

1987 - Today In 1987, revised Water Quality Standards were published. It was in this revision that aquatic life criteria for nine compounds, published by EPA in 1985, were adopted by reference. The procedures for reclassifying state waters were extensively modified to make them consistent with 1983 EPA regulations. The Clean Water Act does not address procedures for reclassifying state waters. At the time of this revision, two waterbodies remained on the reclassified list, Nolan Creek and Chena River. Although not referred to specifically in the WQS, the department now had to comply with EPA regulations in order to reclassify waterbodies of the state. Significant federal requirements follow:

A) To exclude a designated use through reclassification, it was no longer enough to show that the designated use was not an 'existing use' of the waterbody. One also had to prove that the designated use was not 'attainable.' This provision added a new and more difficult element in the formula for reclassification of state waters. It has proven to be onerous and costly to show that some designated uses might not be attained at some place in time, by some method.

B) EPA's regulations also require that a structured scientific study called a 'use attainability analysis' (UAA) must be conducted to prove that a use cannot be attained. Therefore, the decision to reclassify a waterbody is made after conducting a use attainability analysis. The State's request to reclassify must be approved by the Regional Administrator of EPA. High costs of analysis and strict EPA guidelines were prohibitive for considering all suggested reclassifications proposed. Based on these factors, a provision was added in the WQS that the decision on whether to proceed with a reclassification was at the department's discretion.

In November, 1989 an amendment to the WQS included a revision of the section on Classification of Waters. As a result of the Tolovana Use Attainability Analysis, the Department removed some protected use classes from 14 streams or segments of streams in the Tolovana River Basin. The cost to the state was extensive and it proved to be very difficult to eliminate significant 'attainable' uses that would satisfy the original intent of the applicant. In the final analysis, the department's cost and efforts to reclassify or not to reclassify rested solely on EPA's final approval. Therefore, even if the department wished to reclassify a waterbody, the department decisions can be vetoed by EPA according to the 1983 EPA regulations still in effect today.

The 1989 WQS revision retained the same procedures for reclassification adopted in 1987, and they remain the same today.

# ALASKA WATER QUALITY REGULATIONS

## Summary of Actions

| Issue                               |                                                                                                                                                                                                                                                                | Discussion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Action                                                                                                                                                              |
|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.<br><b>ANTI-DEGRADATION</b>       | Adding a requirement to protect Outstanding National Resource Waters ("ONRW") to existing law that 1.) protects current water uses, and 2.) maintains existing water quality that exceeds minimum standards.                                                   | The absence of a section on ONRW is a deficiency in current regulations. Federal law requires protection of high quality waters such as a water of a national or state park or wildlife refuge or a water of exceptional recreational or ecological significance.                                                                                                                                                                                                                                                                                                                                                             | Adopt additional antidegradation provisions identical to current federal law that protects ONRW.                                                                    |
| 2.<br><b>TREATMENT WORKS</b>        | These are facilities or bodies of water used to treat and/or dispose of sewage or industrial waste, such as municipal treatment plants, sewage lagoons or constructed drainage ditches.                                                                        | Current regulation authorizes treatment works in natural water bodies. DEC is repealing this section because it is redundant with existing permitting laws administered in DEC's Solid Waste and Domestic Waste Water programs. The repealed section also confuses treatment methodologies with water quality standards.                                                                                                                                                                                                                                                                                                      | Repealed.                                                                                                                                                           |
| 3.<br><b>PETROLEUM HYDROCARBONS</b> | These are found in oil or diesel and are limited in wastewater discharges to protect water quality.                                                                                                                                                            | Current law prohibits surface oil sheens and film, but does not measure particulate hydrocarbons or nonaromatics; however, neither did the former regulations. The current regulations more accurately measure the most toxic dissolved hydrocarbons available to aquatic organisms and thus are superior to the former regulations. However, DEC will investigate the need for a particulate standard. DEC concluded that the present "Note 8" describing methodology and analysis for petroleum hydrocarbon testing is confusing and deficient. DEC is amending the regulation to clarify required analytical measurements. | Repeal Note 8 regarding analytical standards and adopt Note 8 from August 1973 version. Conduct research of need for a numerical particulate standard by July 1996. |
| 4.<br><b>SEDIMENT</b>               | "Sediment" can be interpreted as settleable solids or as total suspended solids which includes both settleable and nonsettleable solids.                                                                                                                       | Before the December 1994 changes, the water quality standards defined "sediment" as total suspended solids which includes both settleable and nonsettleable solids, but established a numerical criterion only for settleable solids. DEC's change clarified that settleable solids is the regulated parameter. There is no criteria established for TSS. Neither EPA nor the Region 10 states have a TSS criteria.                                                                                                                                                                                                           | Retain existing section. Complete study of the need for TSS standard and report by July 1996.                                                                       |
| 5.<br><b>MIXING ZONES</b>           | These are designated areas of a waterbody where wastewater enters and mixes with the receiving water. The water quality standards can be exceeded within a MZ to dilute the wastewater discharge, but standards must be met at and beyond the zone boundaries. | The current regulations provide better MZ management controls by setting stricter standards for human health exposures in the vicinity of a proposed MZ; establishing previously lacking criteria for mixing zones in fresh water rivers and streams; and establishing control technology prerequisites. DEC retains the authority to grant or deny a MZ based on the factual data presented. Despite the improvements, there is a need to revisit the regulations to clarify a number of issues, such as size limits for rivers and streams, toxics and lethality.                                                           | Initiate rule making in September 1995. Prepare interim guidance for MZ evaluation ASAP and complete guidance by April 1, 1996.                                     |
| 6.<br><b>RISK LEVEL</b>             | The adoption of a risk level was in response to federal law; however, the state has not developed the human health criteria necessary to effectuate the standard.                                                                                              | EPA devised a mathematical equation composed of factors such as risk level, contaminated fish consumption rates, body weights and contaminated water consumption. When presented with three choices DEC adopted the middle risk factor of 1 in 100,000 or (or $10^{-5}$ ). No other parameters necessary to this equation have been defined so national default standards apply. There are 54 carcinogens for which human health criteria could be established; however, DEC can limit the discharge of a toxic as appropriate to protect public health.                                                                      | Recommend no change and initiate rulemaking to determine Alaska-specific values.                                                                                    |

Industry and Environmental Representatives Hail Cooperative Process

**GOVERNOR TONY KNOWLES  
ANNOUNCES RESOLUTION ON  
WATER QUALITY STANDARDS**



**Need more information?**

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Internet: <http://www.state.ak.us>

Anchorage:  
3601 C St., Suite 758  
Anchorage, AK 99503  
(907) 269-7450

Fairbanks:  
675 7th Ave., Station H-5  
Fairbanks, AK 99701  
(907) 451-2920

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**OFFICE OF THE GOVERNOR  
TONY KNOWLES  
JUNEAU, ALASKA**

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Calling it one of the major achievements of his Administration to date, Governor Tony Knowles has announced the resolution of a long-standing dispute over water quality standards for Alaska designed to be user-friendly to industry but tough enough to protect the state's environment. The regulations are the result of months of intensive work by the Knowles Administration and represent a broad acceptance by state, industry, and environmental representatives.

"This decision is very important for Alaska jobs and families," Knowles said. "Industry benefits from having clear standards to work with and from knowing that the Administration is willing to work with them to resolve regulatory disputes. And all of Alaska's family benefits from having high standards for the protection of our precious liquid assets."

"Governor Knowles and Commissioner Burden were successful in bringing the parties together to discuss the state's decision," said Judy Brady, Executive Director of the Alaska Oil & Gas Association. "While differences of opinion remain on individual components of the package, today's decision brings this phase on water quality to closure and sets the stage for further coordinated efforts on the standards."

"Governor Knowles and ADEC have charted a course that we hope will lead to correction of the major weaknesses in the recently adopted water quality standards," said Eric Jorgensen, managing attorney for the Sierra Club Legal Defense Fund. "In particular, we are pleased that ADEC has decided to re-examine fully the mixing zone regulation and expect that the Governor's proposal will reflect the high priority Alaskans place on clean water."

"Certainly there are areas in which we would have preferred a different outcome in these regulations, nevertheless we believe the Knowles Administration has made a good faith effort to address the concerns of both sides," said Becky Gay, Executive Director of the Resource Development Council. "This agreement allows us to move on and resolve other important water quality regulatory issues."

"The Governor has re-stated his commitment to the protection of Alaskans by taking a conservative approach for discharges containing carcinogens, repealing the new regulation on treatment works, and initiating a rulemaking that will establish standards that address Alaska specific human health criteria," said Gershon Cohen, director of the Alaska Clean Water Alliance.

# ALASKA WATER QUALITY REGULATIONS

## Summary of Actions

|                                             | <i>Issue</i>                                                                                                                                                                                                                                                   | <i>Discussion</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <i>Action</i>                                                                                                                                                       |
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*Industry and Environmental Representatives Hail Cooperative Process*

## GOVERNOR TONY KNOWLES ANNOUNCES RESOLUTION ON WATER QUALITY STANDARDS



### *Need more information?*

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RECEIVED SEP 1 1 1994

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9-LS1141\C  
Lauterbach  
2/19/96

**CS FOR HOUSE BILL NO. 342(O&G)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE SPECIAL COMMITTEE ON OIL AND GAS**

**Offered:**

**Referred:**

**Sponsor(s): REPRESENTATIVE ROKEBERG**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to water quality."**

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

3 **\* Section 1. AS 16.05.050 is amended by adding a new subsection to read:**

4 (b) The commissioner may not require a higher discharge water quality  
5 standard for water use ~~1~~ than the existing quality of water received for the use.

6 **\* Sec. 2. AS 38.05.020 is amended by adding a new subsection to read:**

7 (c) The commissioner may not require a higher discharge water quality  
8 standard for water used than the existing quality of water received for the use.

9 **\* Sec. 3. AS 46.03 is amended by adding a new section to read:**

10 Sec. 46.03.085. WATER QUALITY STANDARDS. (a) If, in considering the  
11 discharge of water and establishing criteria for water quality for discharged water, the  
12 commissioner finds it necessary to establish a discharge standard for sediment, the  
13 measurement of the sediment shall be by the volumetric Imhoff Cone method or by  
14 another method approved by the U.S. Environmental Protection Agency for the  
15 measurement of sediment.

1 (b) In applying the water quality criteria and limits authorized under this  
2 chapter, the commissioner may require a person who uses water to meet a discharge  
3 standard that is compatible with downstream uses at the point of the downstream uses  
4 if the standard

5 (1) reflects a range of values that are satisfactory for the other  
6 downstream uses;

7 (2) is not more restrictive than current applicable federal water quality  
8 standards; and

9 (3) does not require a higher discharge water quality standard than the  
10 existing quality of water received for the use.

11 (c) If federal water quality standards change, the commissioner shall promptly  
12 adopt regulations that amend the state's water quality standards so that the state's water  
13 quality standards remain consistent with, and not more restrictive than, applicable federal  
14 water quality standards.

**SCOMM**

**96:14**

# FISCAL NOTE

## STATE OF ALASKA 1996 LEGISLATIVE SESSION

BILL NO. HB 381

Revision Date: Original Dept Affected Natural Resources  
 Title: An Act relating to oil and gas conservation BRU: Resource Development  
and recovery Component: Oil & Gas Development  
 Sponsor: Representative(s) Green, B. Davis  
 Requestor: \_\_\_\_\_ Component Serial No. #439

| Expenditures/Revenues  | (Thousands of Dollars) |      |      |      |      |      |
|------------------------|------------------------|------|------|------|------|------|
| OPERATING EXPENDITURES | FY97                   | FY98 | FY99 | FY00 | FY01 | FY02 |
| PERSONAL SERVICES      | 0.0                    | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
| TRAVEL                 |                        |      |      |      |      |      |
| CONTRACTUAL            |                        |      |      |      |      |      |
| SUPPLIES               |                        |      |      |      |      |      |
| EQUIPMENT              | 0.0                    |      |      |      |      |      |
| LAND & STRUCTURES      |                        |      |      |      |      |      |
| GRANTS, CLAIMS         |                        |      |      |      |      |      |
| MISCELLANEOUS          |                        |      |      |      |      |      |
| TOTAL OPERATING        | 0.0                    | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |

|                      |     |     |     |     |     |     |
|----------------------|-----|-----|-----|-----|-----|-----|
| 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              | (Thousands of Dollars) |     |     |     |     |     |
|--------------------------|------------------------|-----|-----|-----|-----|-----|
| 1002 Federal Receipts    |                        |     |     |     |     |     |
| 1003 GF Match            |                        |     |     |     |     |     |
| 1004 GF                  |                        |     |     |     |     |     |
| 1005 GF/Program Receipts |                        |     |     |     |     |     |
| 1006 GF/MHTIA            |                        |     |     |     |     |     |
| Other                    | 0.0                    | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| TOTAL                    | 0.0                    | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY96) cost: \$ none

### POSITIONS

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

### ANALYSIS:

(Attach a separate page if necessary)

The fiscal impact to DNR of HB 381 would be zero but there appears to be a fiscal impact to AOGCC. For AOGCC to handle the additional work to evaluate DNR decisions proposed under HB 381, at a minimum, AOGCC would need one Petroleum Geophysicist (Range 24), one Petroleum Economist 1 (Range 22), and one Administrative Clerk II (Range 8). Given the increased workload, we believe one additional Petroleum Engineer (Range 26) would also be needed. This assumes sufficient geologic staff is currently available within the AOGCC to handle any additional workload resulting from HB 381 in that area. The Petroleum Engineer, Petroleum Geophysicist, and Petroleum Economist would evaluate complex unit agreement terms, management issues and associated economic issues, rates of exploration and development, proposed plans of development and operations, revisions to such, and other decisions rendered by DNR pursuant to AS 38.05.180 that prevent waste of oil or gas, insure the greater ultimate recovery of oil or gas, or protect correlative rights of persons owning interests in tracts of land affected.

Prepared by: Ken Boyd, Director Phone: 269-8800  
 Division: Oil & Gas Date: 25-Jan-96  
 Approved by Commissioner: [Signature] Date: 25-Jan-96  
 Agency: Natural Resources

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1/25/96

Estimated cost breakdown for AOGCC to implement this legislation:

An Administrative Clerk II would provide general administrative support to assist the Petroleum Engineer, Petroleum Geophysicist and Petroleum Economist.

Cost for these positions (per year) is:

|                              |             |
|------------------------------|-------------|
| Petroleum Engineer (26A)     | 92.9        |
| Petroleum Geophysicist (24A) | 83.6        |
| Petroleum Economist (22A)    | 75.2        |
| Admin Clerk (8A)             | <u>30.0</u> |

Pers Svcs total 281.7

+ 28.0 (office equipment supplies etc.)

= 309.7 estimated need for AOGCC

# LEGAL SERVICES

## DIVISION OF LEGAL AND RESEARCH SERVICES LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

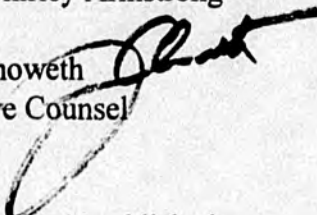
130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

January 25, 1996

**SUBJECT:** House Bill 381, relating to oil and gas conservation and recovery --  
sectional analysis (Work Order No. 9-LS1440\A)

**TO:** Representative Norm Rokeberg, Chair  
House Special Committee on Oil and Gas  
ATTN: Shirley Armstrong

**FROM:** Jack Chenoweth   
Legislative Counsel

The bill was drafted in an effort to establish that, as to matters relating to subsurface development and recovery of oil and gas, decisions and actions of the Alaska Oil and Gas Conservation Commission prevail over decisions and actions of the Department of Natural Resources.

**Bill section 1.** The bill section, adding a new subsection to AS 31.05.030, authorizes the Alaska Oil and Gas Conservation Commission to modify certain determinations and actions of the commissioner of the Department of Natural Resources if the commissioner's decision or action is taken under one of the subsections of AS 38.05.180 specified in paragraph (1) or is taken generally under AS 38.05.180 for a purpose identified in paragraph (2).

**Bill section 2.** The bill section adds a new section, AS 31.05.115, establishing that orders of the Alaska Oil and Gas Conservation Commission taken under AS 31.05 prevail over determinations or actions of the commissioner of natural resources under AS 38.05 as to determinations or actions identified in that section.

**Bill section 3.** The bill section amends AS 38.05.180(q) to confirm that decisions entered by the commissioner of natural resources under AS 38.05.180(p) and (q), relating to cooperative or unit plans applicable to oil and gas development, may be modified by the Alaska Oil and Gas Conservation Commission.

JBC:klb  
96-032.klb

(7)

## HOUSE COMMITTEE REPC. .T

Date Referred to Committee: January 8, 1996

FURTHER REFERRALS:

Resources

Date of Committee Action: 4/16/96The HOUSE SPECIAL COMMITTEE ON OIL AND GAS Committee considered:HB 381

HOUSE BILL NO. 381

OIL AND GAS CONSERVATION &amp; RECOVERY

"An Act relating to oil and gas conservation and recovery."

recommends it be replaced  
with the following committee substituteCSHB381 (016)☒ the same title  
☐ a new title☐ additional referral to \_\_\_\_\_ Committee☐ attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS:

(Dept/Date)

☐ fiscal note(s) \_\_\_\_\_☐ fiscal note(s) \_\_\_\_\_☒ zero fiscal note(s) DOA, DNE☐ zero fiscal note(s) \_\_\_\_\_

| SIGNING WITH RECOMMENDATIONS | DP                                  | DNP                                 | NR                                  | AM |
|------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|----|
| <u>Scott Egan</u>            | <input checked="" type="checkbox"/> |                                     |                                     |    |
| <u>Bruce Danner</u>          | <input checked="" type="checkbox"/> |                                     |                                     |    |
| <u>John B. Gail</u>          |                                     |                                     | <input checked="" type="checkbox"/> |    |
| <u>Dan &amp; Dan</u>         |                                     |                                     | <input checked="" type="checkbox"/> |    |
| <u>Ken R. Kelly</u>          |                                     |                                     | <input checked="" type="checkbox"/> |    |
| <u>David Z. Webster</u>      |                                     | <input checked="" type="checkbox"/> |                                     |    |
| <u>W. F. Williams</u>        | <input checked="" type="checkbox"/> |                                     |                                     |    |
|                              |                                     |                                     |                                     |    |
|                              |                                     |                                     |                                     |    |
|                              |                                     |                                     |                                     |    |
|                              |                                     |                                     |                                     |    |

CHAIR'S SIGNATURE

[Signature]4-16-96

# Alaska State Legislature

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(907) 258-8171 FAX



CO-CHAIR, RESOURCES COMMITTEE  
VICE CHAIR, JUDICIARY COMMITTEE  
MEMBER, STATE AFFAIRS COMMITTEE

FINANCE SUBCOMMITTEES:  
DEPT. OF NATURAL RESOURCES  
DEPT. OF COMMERCE & ECONOMIC DEVELOPMENT  
DEPT. OF ENVIRONMENTAL CONSERVATION

## Representative Joe Green

District 10

TO: Representative Norman Rokeberg, Chairman  
House Special Committee on Oil & Gas

FR: Representative Joe Green *Joe*

RE: HB 381

DATE: April 11, 1996

=====

Please schedule HB381 for a hearing in the Oil & Gas Committee.

As you'll recall, I previously requested a hearing on this bill, and subsequently requested that the hearing be postponed. I requested postponement to allow me the time to inquire if anyone in the Department of Law is working on an opinion that might clarify some of the questions that HB381 addresses. I have learned that the Department of Law is NOT working to clarify these questions, so I feel that HB381 is needed.

Thank you.

# STATE OF ALASKA

## DEPARTMENT OF LAW

### OFFICE OF THE ATTORNEY GENERAL

March 4, 1996

The Honorable Norman Rokeberg, Chairman  
House Special Committee on Oil & Gas  
Alaska State Legislature  
House of Representatives  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Rokeberg:

You have requested that this office answer the following questions:

Does Section 1 of HB 381 give the Alaska Oil and Gas Conservation Commission (AOGCC) the authority to modify a royalty reduction determination under AS 38.05.180(j) made by the commissioner of the Department of Natural Resources [DNR] if one of the purposes of that determination is to insure a greater ultimate recovery of oil or gas? Or other determinations the commissioner of DNR makes?

The short answer to the questions is yes.

The current statutory scheme authorizes the AOGCC to regulate for conservation purposes, to prevent waste of oil or gas, and to protect correlative rights. Section 1 of HB 381 adds a new subsection to AS 31.05.030 authorizing the AOGCC to modify any determination or action by the commissioner of DNR under AS 38.05.180(p), (q), or (u). It further authorizes the AOGCC to modify a determination or action by the commissioner of DNR under other subsections of AS 38.05.180, *if* the purpose of the determination or action is (1) to prevent waste of oil or gas, (2) to insure a greater ultimate recovery of oil or gas, or (3) to protect correlative rights of persons owning interests in tracts of land affected.

AS 38.05.180(j) authorizes the commissioner of DNR to modify royalty determinations to allow for production that would not otherwise be economically feasible. This subsection was amended by the Legislature in 1995 to "encourage otherwise uneconomic production of oil and gas" and permits the commissioner to modify the royalty (1) on certain oil or gas fields or pools if the field or pool has not previously produced oil or gas for sale; (2) to

MAR 06 1996

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

☒ 1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 269-5100  
FAX: (907) 276-3697

☐ KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 451-2811  
FAX: (907) 451-2846

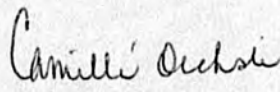
☐ P.O. BOX 110300-DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-6735

prolong the economic life of an oil or gas field or pool as costs per barrel or barrel equivalent increase; or (3) to reestablish production of shut-in oil or gas. This language suggests that the purpose of a royalty reduction determination is to "insure a greater ultimate recovery of oil or gas" and such a determination could, therefore, be subject to modification by the AOGCC under this proposed legislation.

Other determinations the commissioner of DNR makes under other subsections of AS 38.05.180 may similarly be subject to AOGCC oversight because AS 38.05.180 contains a specific legislative finding that "the people of Alaska have an interest in the development of the state's oil and gas resources to maximize the economic and physical recovery of the resources." This suggests that maximizing economic and physical recovery of resources may be a consideration in many determinations made by the commissioner of DNR under AS 38.05.180. If the purpose, in fact, of a specific determination by DNR is to insure a greater ultimate recovery of oil or gas, then that determination, by the explicit terms of this proposed legislation, will be subject to modification by the AOGCC.

Very truly yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:   
Camille Oechsli  
Assistant Attorney General

CO:lh

cc: Representative Joe Green  
Pat Pourchot  
Barbara Ritchie  
Deborah Behr  
Chrystal Smith

**SCOMM**

**96:15**

# FISCAL NOTE

**STATE OF ALASKA**

**BILL NO. CSHB 388 (O&G)**

**1996 LEGISLATIVE SESSION**

|                |                                                                                   |                      |                       |
|----------------|-----------------------------------------------------------------------------------|----------------------|-----------------------|
| Revision Date: | Original                                                                          | Dept Affected        | Natural Resources     |
| Title:         | An Act revising laws relating to oil and gas leasing to authorize a program of... | BRU:                 | Resource Development  |
| Sponsor:       | Representative Rokeberg, B. Davis                                                 | Component:           | Oil & Gas Development |
| Requestor:     | House Resources                                                                   | Component Serial No. | 439                   |

| Expenditures/Revenues         | (Thousands of Dollars) |      |      |      |      |      |
|-------------------------------|------------------------|------|------|------|------|------|
|                               | FY97                   | FY98 | FY99 | FY00 | FY01 | FY02 |
| <b>OPERATING EXPENDITURES</b> |                        |      |      |      |      |      |
| PERSONAL SERVICES             |                        |      |      |      |      |      |
| TRAVEL                        | 3.0                    | 3.0  | 3.0  | 3.0  | 3.0  | 3.0  |
| CONTRACTUAL                   | 5.0                    | 5.0  | 5.0  | 5.0  | 5.0  | 5.0  |
| SUPPLIES                      |                        |      |      |      |      |      |
| EQUIPMENT                     |                        |      |      |      |      |      |
| LAND & STRUCTURES             |                        |      |      |      |      |      |
| GRANTS, CLAIMS                |                        |      |      |      |      |      |
| MISCELLANEOUS                 |                        |      |      |      |      |      |
| <b>TOTAL OPERATING</b>        | 8.0                    | 8.0  | 8.0  | 8.0  | 8.0  | 8.0  |
| <b>CAPITAL EXPENDITURES</b>   | 0.0                    | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |
| <b>CHANGE IN REVENUES ( )</b> | 0.0                    | 0.0  | 0.0  | 0.0  | 0.0  | 0.0  |

| FUND SOURCE              | (Thousands of Dollars) |     |     |     |     |     |
|--------------------------|------------------------|-----|-----|-----|-----|-----|
| 1002 Federal Receipts    |                        |     |     |     |     |     |
| 1003 GF Match            |                        |     |     |     |     |     |
| 1004 GF                  | 8.0                    | 8.0 | 8.0 | 8.0 | 8.0 | 8.0 |
| 1005 GF/Program Receipts |                        |     |     |     |     |     |
| 1006 GF/MHTIA            |                        |     |     |     |     |     |
| Other                    |                        |     |     |     |     |     |
| <b>TOTAL</b>             | 8.0                    | 8.0 | 8.0 | 8.0 | 8.0 | 8.0 |

Estimate of any current year (FY96) cost: \$ none

**POSITIONS**

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

**ANALYSIS:**

(Attach a separate page if necessary)

The fiscal impact will depend on the number of sales that will be held in any one year, these cost are mainly administrative. More sales will mean more advertising for public notices and travel for public hearings. There may be additional printing costs for any supplements to the Final Finding. The \$8.0 is an merely an estimate.

If there are substantial revisions necessary to supplement the finding there may be some additional personnel requirements, but this fiscal note assumes the use of existing staff the fulfill the requirements of the bill.

|                           |                                       |        |           |
|---------------------------|---------------------------------------|--------|-----------|
| Prepared by:              | Ken Boyd, Director <i>[Signature]</i> | Phone: | 269-8800  |
| Division:                 | Oil & Gas                             | Date:  | 15-Mar-96 |
| Approved by Commissioner: | <i>[Signature]</i>                    | Date:  | 15-Mar-96 |
| Agency:                   | Natural Resources                     |        |           |

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# FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 388

## 1996 LEGISLATIVE SESSION

|                                                                                                 |                                             |
|-------------------------------------------------------------------------------------------------|---------------------------------------------|
| Revision Date: <u>Original</u>                                                                  | Dept Affected <u>Natural Resources</u>      |
| Title: <u>An Act revising laws relating to oil and gas leasing to authorize a program of...</u> | BRU: <u>Resource Development</u>            |
| Sponsor: <u>Representative Rokeberg, B. Davis</u>                                               | Component: <u>Oil &amp; Gas Development</u> |
| Requestor: _____                                                                                | Component Serial No. <u>439</u>             |

### Expenditures/Revenues

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY97         | FY98         | FY99         | FY00         | FY01         | FY02         |
|------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES      | 230.0        | 238.1        | 246.4        | 255.0        | 263.9        | 273.2        |
| TRAVEL                 | 8.0          | 8.3          | 8.6          | 8.9          | 9.2          | 9.5          |
| CONTRACTUAL            | 5.5          | 5.7          | 5.9          | 6.1          | 6.3          | 6.5          |
| SUPPLIES               | 9.0          | 9.3          | 9.6          | 10.0         | 10.3         | 10.7         |
| EQUIPMENT              | 37.5         | 15.0         | 15.5         | 16.1         | 16.6         | 17.2         |
| LAND & STRUCTURES      |              |              |              |              |              |              |
| GRANTS, CLAIMS         |              |              |              |              |              |              |
| MISCELLANEOUS          |              |              |              |              |              |              |
| <b>TOTAL OPERATING</b> | <b>290.0</b> | <b>276.3</b> | <b>286.0</b> | <b>296.0</b> | <b>306.4</b> | <b>317.1</b> |

|                             |            |            |            |            |            |            |
|-----------------------------|------------|------------|------------|------------|------------|------------|
| <b>CAPITAL EXPENDITURES</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
|-----------------------------|------------|------------|------------|------------|------------|------------|

|                               |            |            |            |            |            |            |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| <b>CHANGE IN REVENUES ( )</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
|-------------------------------|------------|------------|------------|------------|------------|------------|

### FUND SOURCE

(Thousands of Dollars)

|                          |              |              |              |              |              |              |
|--------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| 1002 Federal Receipts    |              |              |              |              |              |              |
| 1003 GF Match            |              |              |              |              |              |              |
| 1004 GF                  | 290.0        | 276.3        | 286.0        | 296.0        | 306.4        | 317.1        |
| 1005 GF/Program Receipts |              |              |              |              |              |              |
| 1006 GF/MHTIA            |              |              |              |              |              |              |
| Other                    |              |              |              |              |              |              |
| <b>TOTAL</b>             | <b>290.0</b> | <b>276.3</b> | <b>286.0</b> | <b>296.0</b> | <b>306.4</b> | <b>317.1</b> |

Estimate of any current year (FY96) cost: \$ none

### POSITIONS

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 5 | 5 | 5 | 5 | 5 | 5 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

### ANALYSIS:

(Attach a separate page if necessary)

Five additional positions within DO&G will be require to implement the areawide oil and gas leasing program:

One Natural resources Officer II , to determine land ownership, title conflicts, correct title faults, and prepare detailed land title reports, prepare and issue public notices under AS 38.05.945-.946, prepare and organize the annual oil and gas lease sale offerings, and to adjudicate bids and determine successful bidders for lease issuance.

One Natural resources Officer II to perform the land title and status reviews, assist in determining land and ownership boundaries, determine tract acreages, prepare lease sale tract maps and plats.

At least one Natural Resource Officer II will be required if one area is authorized for areawide leasing. If more than one area is authorized, additional Natural Resource Officer II positions would be required. This fiscal note assumes that two Natural resources Officer II positions are needed. These personnel would research, write, and regularly revise areawide best interest findings.

One Natural resources Officer I to assist with research and minor writing tasks in support of best interest findings and responding to public concerns.

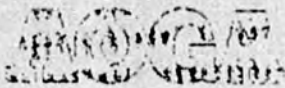
THERE ARE UNCERTAINTIES IN THE BILL WHICH MAY CHANGE THE FISCAL IMPACT ONCE CLARIFIED WITH THE SPONSOR.

|                                              |                        |
|----------------------------------------------|------------------------|
| Prepared by: <u>Ken Boyd, Director</u>       | Phone: <u>269-8800</u> |
| Division: <u>Oil &amp; Gas</u>               | Date: <u>1-Feb-96</u>  |
| Approved by Commissioner: <u>[Signature]</u> | Date: <u>1-Feb-96</u>  |
| Agency: <u>Natural Resources</u>             |                        |

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# Alaska Oil and Gas Association

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121 West Fireweed Lane, Suite 207  
Anchorage, Alaska 99503-2035  
Phone: (907) 272-1481 Fax: (907) 279-8114

March 12, 1996

Representative Norm Rokeberg, Chair  
House Special Committee on Oil and Gas  
State Capitol  
Juneau, Alaska

## CSHB 388, Areawide Leasing

Dear Representative Rokeberg:

The Alaska Oil and Gas Association (AOGA) is a trade association whose 19 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska. AOGA supports the new Committee Substitute to House Bill 388 (CSHB 388 9-LS1341NF), subject only to a few minor suggested changes which are described below.

### Background

The AOGA members encourage a predictable and regular oil and gas leasing program. We view Areawide Leasing as a viable method to allow timely access to the most prospective areas of the State. Annual Areawide Leasing would provide efficiencies and reduce costs associated with the preparation of Best Interest Findings. We advocate a program of Annual Areawide Leasing in all areas of the State where competitive leases are regularly offered. We believe that this can be implemented with simple clarifications to existing authority.

Over the past months AOGA members have offered many ideas to your Oil and Gas Committee regarding Areawide Leasing. Legislative language has also been offered for your consideration. As the AOGA members considered the various alternative Areawide Leasing proposals, we became concerned that earlier concepts created a new and arguably different lease sale program that could ultimately require regulations. The necessity to promulgate regulations poses an unnecessary threat to the Industry's and State's desired time schedule. These earlier Areawide Leasing proposals also created a cumbersome review process that has been streamlined in the new Committee Substitute to House Bill 388.

### Suggested Modifications to CSHB 388

AOGA does have a few specific recommendations regarding the new Committee Substitute to House Bill 388. First, we would suggest that language be added to the title which specifically use the words, "annual Areawide Lease Sales. We would modify Page one at line 5 to read, "purpose of the Alaska Land Act as it applies to oil and gas leasing, to provide for annual Areawide Lease Sales."

Second, we would encourage you to consider AOGA's past recommendation to clarify that Exempt and Reoffer Sales are exempt from certain public notice requirements. This could be accomplished by modifying the language of Section 1 on page 3 such that line 20 reads, "five year oil and gas leasing program under AS 30.05.180(b), except for a sale under (6)(G) of this subsection, are as follows:".

And finally, the language of Section 2 on page 6 at line 11 is awkward, and we suggest the word "sale" be deleted. Acreage is offered for "lease", not for "lease sales".

### **CSHB 388 Brief Analysis**

The most recent Committee Substitute for House Bill 388 after the incorporation of the above suggested changes:

- 1) Clarifies that Reoffer and Exempt Sales need not follow the full preliminary and final Best Interest Finding process [this is accomplished by amending AS 38.05.035(e)(5)];
- 2) Expands eligible Exempt and Reoffer Sale lands to include lands subject to a Best Interest Finding issued within the last 10 years, unless substantial new information necessitates a supplement to the most recent Best Interest Finding and establishes public notice and supplemental Best Interest Finding procedures for Exempt and Reoffer Sales [this is accomplished by amending AS 38.05.035(e) (6)(G) and eliminating AS 38.035(e)(6)(H)];
- 3) States that the Legislature finds that it is in the best interests of the State to make annual Areawide offerings of all State acreage subject to a Best Interest Finding [this is accomplished by adding NEW subsection (AS 38.05.180(a)(2)(B))];
- 4) Modifies Reoffer Sale criteria to allow leasing of areas which are subject to a Best Interest Finding issued within the last 10 years [this is accomplished by amending AS 38.05.180(w)]; and
- 5) Clarifies that Reoffer and Exempt Sales need not follow the full public notice requirements of other oil and gas Lease Sales [this is accomplished by amending AS 38.05.945(a)].

Leases issued at an Areawide Lease Sale would be subject to all existing statutes and regulations now applicable to oil and gas leasing, including: the Best Interest Finding process, appeal procedures, royalty share restrictions; lease size restrictions; annual rental payments; work commitments if they are appropriate; exploration incentive credits; royalty reduction; Unitization; and individual chargeable acreage ownership restrictions.

### **Future Lease Sales Accommodate Areawide Concept**

The Director of the Division of Oil and Gas has advised that he intends to re-design scheduled Sales 85, 86, and 87 to include the lands of critical interest to the Industry. The accompanying Best Interest Findings will be drafted in a manner consistent with the Areawide Leasing concept. Sale 85 is proposed to include the majority of the Cook Inlet lands, Sale 86 includes the Beaufort Sea State waters between the Colville and the Canning Rivers, and Sale 87 includes the State uplands between the Colville and the Canning Rivers, lying north of the Umiat baseline. Copies of the proposed Sale Area maps are attached for your convenience.

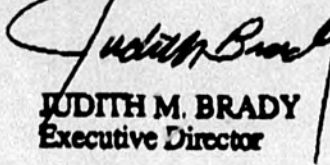
AOGA members have engaged in lengthy discussions on the topics of whether the legislation should mandate annual Areawide Lease Sales and whether the legislation should specify the lands to be offered in Areawide Lease Sales. The nineteen member companies unanimously voted to approve the Areawide Leasing concept embodied by the subject CSHB 388. The most recent Committee Substitute for House Bill 388 does not create a new Lease Sale program, nor does it mandate annual Areawide Lease Sales, it does; however, provide the necessary changes of law to allow Areawide Lease Sales and gives specific guidance and direction to the Division of Oil and Gas to expeditiously make lands of critical interest to the Industry available at annual Areawide Lease Sales. We are confident and hopeful that the Commissioner of Natural Resources and the Director of Oil and Gas

Representative Norm Rokeberg  
March 12, 1996  
Page 3

will, upon passage of this legislation, quickly move to adopt this concept and implement annual  
Acrewide Lease Sales which offer all State acreage which is the subject of an effective Best Interest  
Finding.

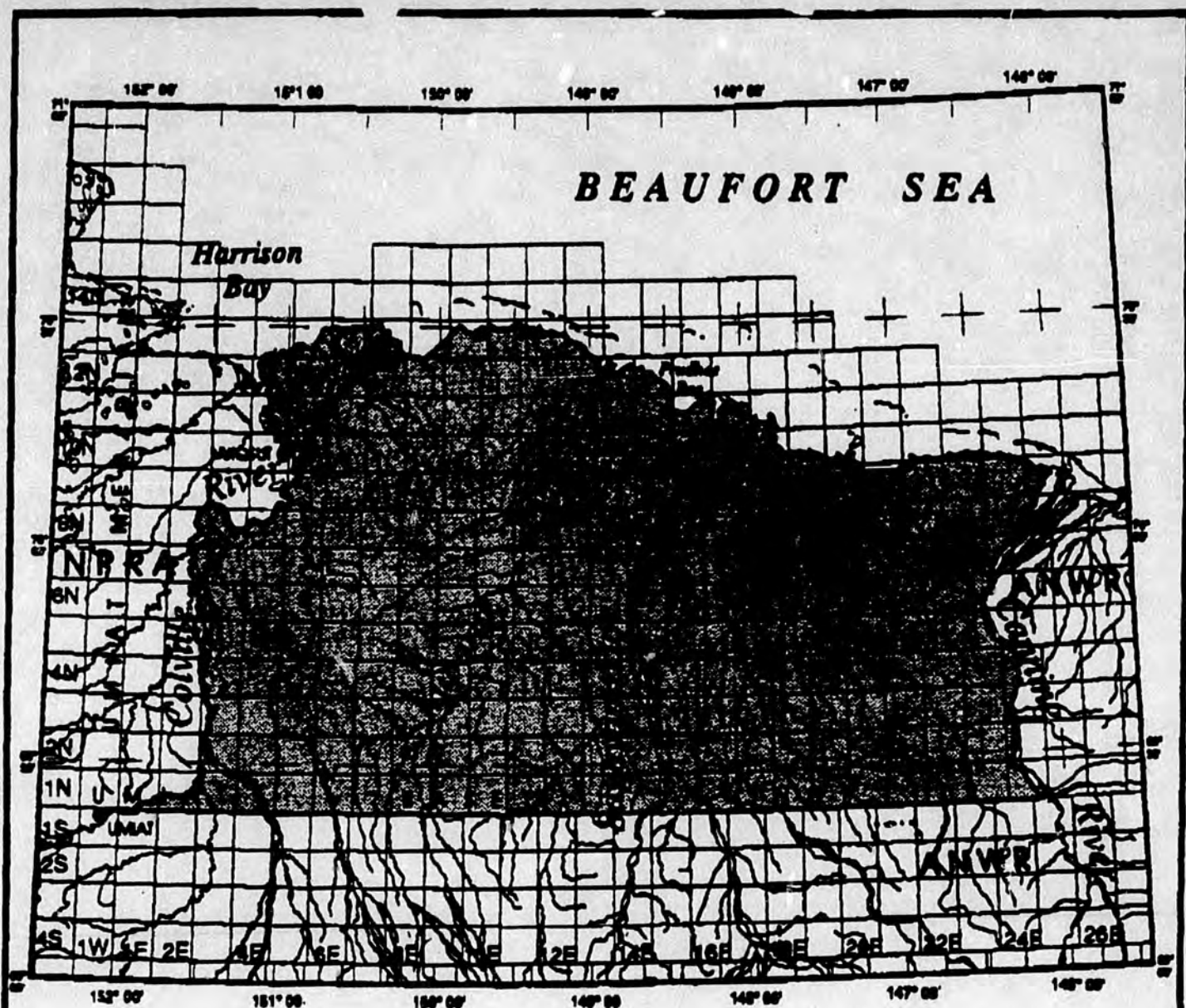
Thank you for the opportunity to offer comments and suggestion on this vital legislation. We are  
hopeful that CSHB 388 will proceed with speed through both the House and the Senate and will be  
fully embraced by the Knowles' Administration.

Sincerely,



JUDITH M. BRADY  
Executive Director

000000 0000 10 - 000000



Proposed Sale 87 Area



STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL AND GAS  
PROPOSED OIL AND GAS LEASE SALE 87  
NORTH SLOPE

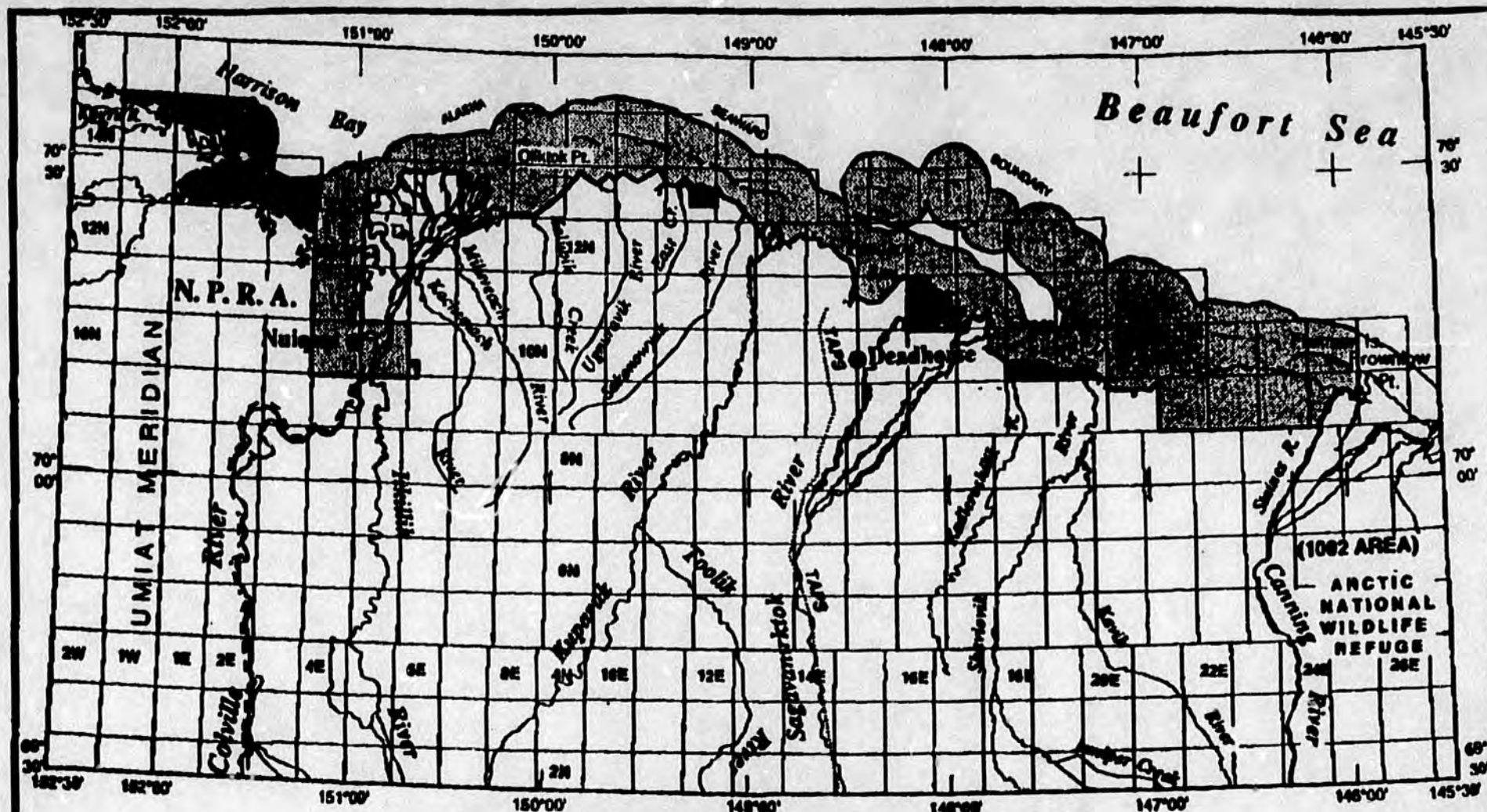
SCALE 1:1,000,000 ONE INCH = 81 MILES APPROX.

DIRECTOR, DIV. OF OIL & GAS  
KENNETH A. BOYD  
PETROLEUM GEOLOGIST  
JAMES HANSEN

DRAWN BY:  
O.D.S. & M.R.  
CHECKED BY:

DATE APP. VERD: 1/11/90  
Alaska State-Area Cont. Projection  
Based On The Clark 1985 Ellipsoid  
Central Meridian: -150.00  
Origin Latitude: 55.00

NOTE: NO DECISION HAS YET BEEN MADE ON WHETHER THE STATE WILL HOLD THIS LEASE SALE. THE STATE IS GATHERING SOCIAL, ENVIRONMENTAL & ECONOMIC INFORMATION ON WHICH TO BASE A DECISION.



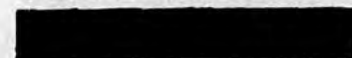
NOTE: NO DECISION HAS YET BEEN MADE ON WHETHER THE STATE WILL HOLD THIS LEASE SALE. THE STATE IS GATHERING SOCIAL, ENVIRONMENTAL & ECONOMIC INFORMATION ON WHICH TO BASE A DECISION.

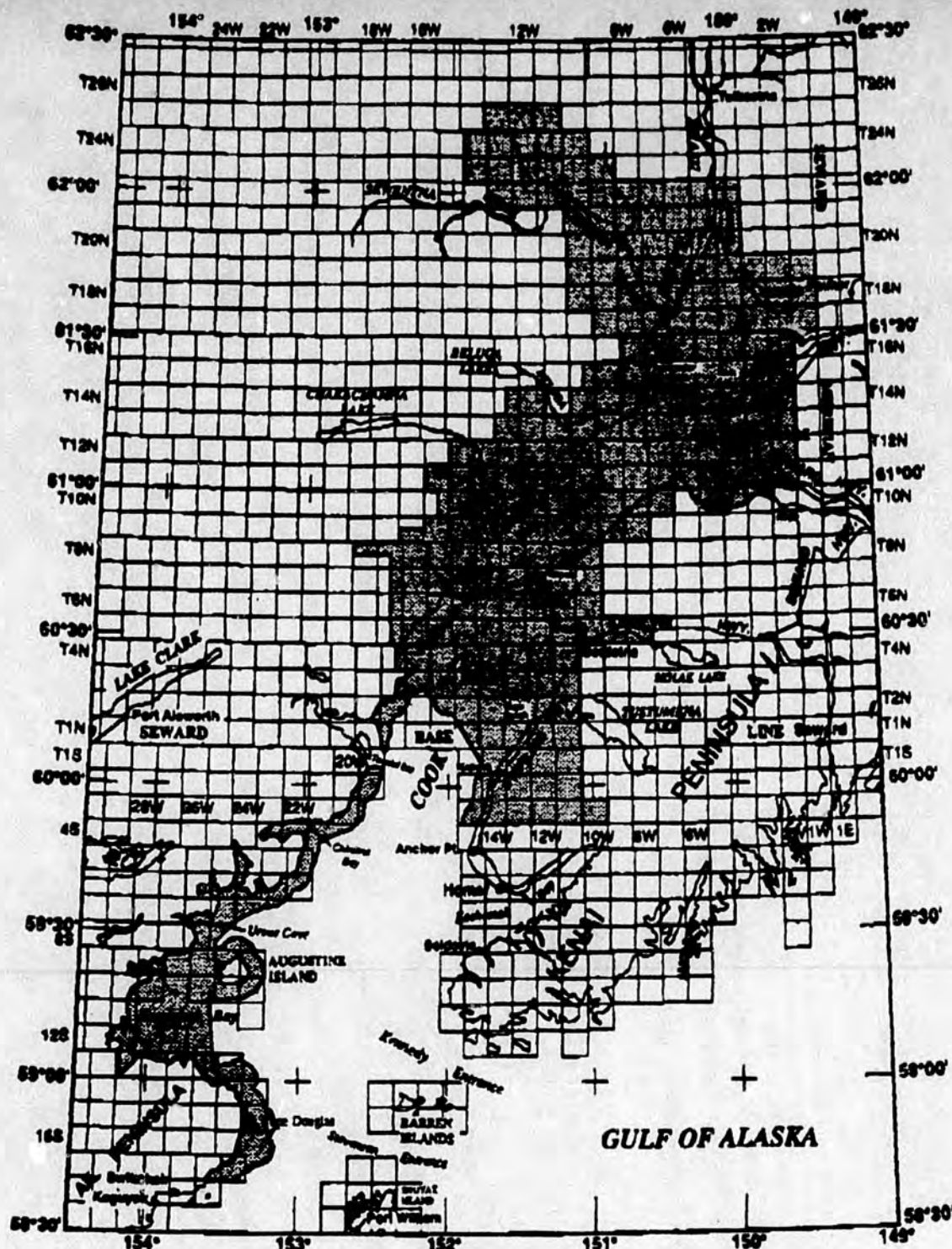
|                                                                                            |                         |
|--------------------------------------------------------------------------------------------|-------------------------|
| STATE OF ALASKA<br>DEPARTMENT OF NATURAL RESOURCES<br>DIVISION OF OIL AND GAS              |                         |
| <b>PROPOSED OIL AND GAS LEASE SALE 86<br/>CENTRAL BEAUFORT SEA</b>                         |                         |
| SCALE 1:11,100,000 ONE INCH = 18 MILES approx.                                             |                         |
| DIRECTOR, DIVISION OF OIL AND GAS<br>KENNETH A. BOYD                                       | DRAWN BY: M.P. & D.P.   |
| PETRO. GEOPHYSICIST,<br>JAMES HANSEN                                                       | CHECKED BY: [Signature] |
| DATE APPROVED: 2-13-86                                                                     |                         |
| BASE MAP: TRANSFERRED FROM U.T.M. PROJECTIONS BY U.S.S.R. REDRAWN IN ALUCAD AND CLARIS CAD |                         |

ORIGINALLY PROPOSED  
SALE AREA



PROPOSED ADDITION





Proposed Sale Area

STATE OF ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL AND GAS

**PROPOSED OIL AND GAS LEASE SALE 85**  
**COOK INLET / KAMISHAK BAY**

SCALE 1: 2,400,000 ONE INCH = 36 MILES approx.

DIRECTOR, DIVISION OF OIL AND GAS  
**JAMES E. EASON**  
PETRO. GEOPHYSICIST,  
**JAMES HANSEN**

DRAWN  
BY: M.P. &  
O.D.S.

CHECKED  
BY: J.

DATE APPROVED 01-09-95

BASE MAP: TRANSFERRED FROM  
U.T.M. PROJECTIONS BY U.S.G.S.  
PROGRAM IN AUTOCAD AND  
CLARIS CAD.

NOTE: NO DECISION HAS YET  
BEEN MADE ON WHETHER THE  
STATE WILL HOLD THIS LEASE  
SALE. THE STATE IS GATHERING  
SOCIAL ENVIRONMENTAL &  
ECONOMIC INFORMATION ON  
WHICH TO BASE A DECISION.