

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8734 HOUSE RESOURCES

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 341

Revision Date: _____
Title: An Act establishing a tax court...
Sponsor: Rep. Green
Requestor: House Resources

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component: _____
COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	267.0	267.0	267.0	267.0	267.0	267.0
TRAVEL						
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	4.0	4.0	4.0	4.0	4.0	4.0
EQUIPMENT	17.8					
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	293.8	276.0	276.0	276.0	276.0	276.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES (

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	293.8	276.0	276.0	276.0	276.0	276.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	293.8	276.0	276.0	276.0	276.0	276.0



Estimate of any current year (FY 96) cost: \$ None

POSITIONS

FULL-TIME	4.0	4.0	4.0	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel 
Agency: Alaska Court System
Approved by: Arthur H. Snowden, II, Administrative Director 
Agency: Alaska Court System

Phone: 264-8228
Date: 01/17/96
Date: 01/17/96

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Alaska Court System

Fiscal Analysis

HB 341

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Superior Court Judge, Anchorage, PFT, 12 months	\$96,600	\$52,365	\$148,965
Secretary, 12A, Anchorage, PFT, 12 months	27,108	10,363	37,471
In Court Clerk, 12A, Anchorage, PFT, 12 months	27,108	10,363	37,471
Law Clerk, 13D, Anchorage, PFT, 12 months	31,824	11,278	43,102
			<hr/>
		Total Personal Services	267,009

Contractual

Postage, telephone, annual updates to legal reference materials, copier rental, etc. 5,000

This fiscal note assumes that the cost of the 3-master panels will be assessed to the parties.

Supplies

Office, courtroom and computer supplies. 4,000

Equipment (one time item)

Office furniture, computer or data terminal, software, dictation equipment, statutes, rules of court, facsimile machine, etc 17,800

Total Estimated Cost \$293,809

9-LS1129AK ✓
Chenoweth
1/17/96

CS FOR HOUSE BILL NO. 341()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to consideration and determination by the superior court of
2 disputes involving certain taxes and penalties due, and amending provisions relating
3 to the assessment, levy, and collection of taxes and penalties by the state and to
4 the tax liability of taxpayers; and amending Rule 609(b) of the Alaska Rules of
5 Appellate Procedure; and providing for an effective date."

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

7 * Section 1. AS 22.10.020(d) is amended to read:

8 (d) The superior court has jurisdiction in all matters appealed to it from a
9 subordinate court, or administrative agency when appeal is provided by law. The
10 hearings on appeal from a final order or judgment

11 (1) of a subordinate court [OR ADMINISTRATIVE AGENCY] shall
12 be on the record unless the superior court, in its discretion, grants a trial de novo, in
13 whole or in part;

1 (2) of the Department of Revenue in matters relating to fixing the
2 amount of, or imposing a penalty on, a tax levied and collected by the state when
3 appeal is taken under AS 43.05.242(c)(1) shall be heard as a trial de novo as a
4 matter of right;

5 (3) of the Department of Revenue in matters relating to fixing the
6 amount of, or imposing a penalty on, a tax levied and collected by the state when
7 appeal is taken under AS 43.05.242(c)(2) shall be on the record unless the
8 superior court, in its discretion, grants a trial de novo, in whole or in part;

9 (4) of an administrative agency, except for a matter described in
10 (2) or (3) of this subsection, shall be on the record unless the superior court, in
11 its discretion, grants a trial de novo, in whole or in part.

12 * Sec. 2. AS 37.10.410 is amended to read:

13 Sec. 37.10.410. "ADMINISTRATIVE PROCEEDINGS INVOLVING TAXES"
14 DEFINED. (a) The following money received by the state is considered to be
15 received as a result of the termination of an administrative proceeding for purposes of
16 applying art. IX, sec. 17(a), Constitution of the State of Alaska:

17 (1) past due taxes that are received by the state for each tax year for
18 which a request for an informal conference under AS 43.05.240(a) is made to the
19 Department of Revenue, together with penalties and interest on the taxes;

20 (2) past due taxes that are received by the state after a request for a
21 formal hearing under AS 43.05.240(b)(1) is made to the Department of Revenue,
22 together with penalties and interest on the taxes.

23 (b) Money received by the state under the following conditions is not
24 considered to be received as the result of the termination of an administrative
25 proceeding for purposes of applying art. IX, sec. 17(a), Constitution of the State of
26 Alaska:

27 (1) taxes that are not due at the time the request for the proceeding was
28 made under AS 43.05.240(a) or (b)(1) or 43.05.242(b);

29 (2) taxes set out in a return not audited by the Department of Revenue
30 at the date of collection; or

31 (3) taxes collected for a tax year for which the taxpayer did not give

1 notice of appeal of an assessment made by the Department of Revenue.

2 * Sec. 3. AS 43.05.240 is amended by adding a new subsection to read:

3 (e) The provisions of this section do not apply to the action of the department
4 in fixing the amount of a tax or in imposing a penalty related to a tax described in
5 AS 43.05.242(a).

6 * Sec. 4. AS 43.05 is amended by adding new subsections to read:

7 Sec. 43.05.242. APPEAL OF CERTAIN TAXES AND RELATED
8 PENALTIES. (a) The provisions of this section apply to a matter relating to fixing
9 the amount of, or imposing a penalty on, a tax levied and collected by the state under

10 (1) AS 43.19 and AS 43.20;

11 (2) former AS 43.21;

12 (3) AS 43.55;

13 (4) AS 43.65;

14 (5) AS 43.75.

15 (b) A person aggrieved by the action of the department in fixing the amount
16 of a tax or in imposing a penalty may apply to the department within 60 days from the
17 date of mailing the notice required to be given to the person by the department, giving
18 notice of the grievance, and requesting an informal hearing. At the informal hearing,
19 the person aggrieved may present arguments and evidence relevant to the amount of
20 tax or penalty due the state. If the department determines that a correction is
21 warranted, the department shall make the correction.

22 (c) A person aggrieved by the action of the department under (b) of this
23 section in fixing the amount of a tax or in imposing a penalty may

24 (1) within 30 days after decision resulting from the informal hearing,
25 appeal to the superior court in the judicial district in which the person resides; when
26 an appeal is taken under this paragraph,

27 (A) the taxpayer shall be given access to the file of the
28 department in the matter for preparation of the appeal;

29 (B) if, after the appeal is heard,

30 (i) it appears that the tax was correct, the court shall
31 confirm the tax;

1

(ii) it appears that the tax was incorrect, the court shall

2

determine the amount of the tax; if the person aggrieved is entitled to

3

recover the tax or part of it, the court shall order the repayment, and the

4

department shall immediately pay the amount due and attach a certified

5

copy of the judgment to the payment; or

6

(2) within 30 days after decision resulting from an informal hearing,

7

apply to the department and request a formal hearing; when a formal hearing is

8

requested under this paragraph,

9

(A) the department may subpoena witnesses, administer oaths,

10

and make inquiries necessary to determine the amount of the tax or penalty due

11

the state;

12

(B) the person aggrieved may present arguments and evidence

13

relevant to the amount of the tax or penalty due the state; and

14

(C) if the department determines that a correction is warranted,

15

the department shall make the correction.

16

Sec. 43.05.244. TAX, PENALTY, AND INTEREST PAYABLE BEFORE

17

APPEAL. (a) In an appeal from a decision of the department involving a deficiency

18

of taxes levied and collected by the state under a tax described in AS 43.05.242(a), the

19

taxpayer shall pay to the state the full amount of the tax, penalty, and interest in

20

respect of the amount of tax assessed that is not in dispute. The taxpayer shall post

21

a bond, obtain a letter of credit, or provide other evidence satisfactory to the tax court

22

that it is able to pay the amount of tax, penalty, and interest in respect of the amount

23

of tax assessed that is in dispute and that is the basis of the taxpayer's appeal.

24

(b) The tax and interest due under this section are the amounts stated in the

25

final order of the department from which the appeal is taken, or if the final order

26

appealed from is a summary judgment or partial summary judgment, the amount shall

27

be as originally assessed on the issue or issues disposed of.

28

* Sec. 5. AS 43.05.245 is amended to read:

29

Sec. 43.05.245. ASSESSMENT AND COLLECTION OF TAX, PENALTIES,

30

AND INTEREST. If a taxpayer fails to file a return or report required by this title in

31

the time required by law or regulation, or makes an erroneous or fraudulent return, the

1 department shall proceed to assess the license fees, tax, penalties, or interest and make
2 a return from information that [WHICH] it obtains. A return made and subscribed by
3 the department in accordance with this section is presumed sufficient for all legal
4 purposes. However, nothing prevents a taxpayer from presenting evidence or other
5 information on an appeal under AS 43.05.240 or 43.05.242 in order to rebut the
6 presumed sufficiency of a return made and subscribed by the department, nor does the
7 presumption of sufficiency alter the parties' respective burdens of proof once the
8 taxpayer has presented evidence or other material information to rebut that
9 presumption. The assessment of license fees, tax, penalties, or interest under this
10 section occurs when the department issues a notice and demand for payment of the
11 license fees, tax, penalties, or interest. The notice and demand for payment is issued
12 when the notice and demand is delivered to the taxpayer in person or placed in the
13 United States mail, addressed to the last known address of the taxpayer. Penalties and
14 interest assessed under this title shall be collected in the same manner as provided in
15 this title for the collection of tax or license fees.

16 * Sec. 6. AS 43.05 is amended by adding a new section to read:

17 Sec. 43.05.254. OVERPAYMENT. If it has been finally determined that an
18 overpayment exists, either the taxpayer or the commissioner may elect within 60 days
19 to credit the overpayment, including any interest accruing on the overpayment, against
20 the tax liability of the taxpayer for the current tax year and subsequent tax years. The
21 amount of the refund not credited within three years of the date of the election shall
22 be paid to the taxpayer, with interest accrued at the rate established in AS 43.05.280.

23 * Sec. 7. AS 43.20.200(a) is amended to read:

24 (a) As soon as practicable after a return is filed, the department may examine
25 it and determine the correct amount of the tax. If an error is disclosed by the
26 examination, the department shall so notify the taxpayer by first-class mail. The
27 taxpayer may petition for redetermination of deficiency as provided in AS 43.05.240
28 or 43.05.242.

29 * Sec. 8. AS 43.20.270(a) is amended to read:

30 (a) The department may collect taxes, with interest, penalties, and other
31 additional amounts permitted by law, by distraint and sale, in the manner provided in

1 this section, of the property of a person liable to pay the taxes, interest, penalties, or
2 other additional amounts, who neglects or refuses to pay them within 10 days from the
3 mailing of notice and demand for payment of them, and who has not appealed from
4 the assessment of the taxes, interest, penalties, and other additional amounts under
5 AS 43.05.240 or 43.05.242.

6 * Sec. 9. AS 43.55.013(g) is amended to read:

7 (g) The monthly production at the economic limit for a lease or property is
8 presumed to be 3,000 Mcf times the number of well days for the lease or property
9 during that month for which the tax is to be paid. The taxpayer may rebut this
10 presumption at a formal hearing under AS 43.05.242(c)(2) [AS 43.05.240] by
11 providing clear and convincing evidence of a different monthly production rate at the
12 economic limit for the lease or property. The hearing shall be held before February 15
13 of the year or within six months after commencement of gas production for a lease or
14 property. The monthly production rate at the economic limit for the lease or property
15 based upon the clear and convincing evidence of the taxpayer shall be calculated by
16 dividing the value determined under (i) of this section into the average monthly direct
17 operating cost determined under (h) of this section.

18 * Sec. 10. COURT RULE CHANGE; RULES OF APPELLATE PROCEDURE. The
19 provisions of AS 22.10.020(d)(2), added by sec. 1 of this Act, have the effect of changing
20 Rule 609(b) of the Alaska Rules of Appellate Procedure relating to the superior court's
21 exercise of its discretion to grant a de novo review of certain appeals of decisions of the
22 Department of Revenue involving taxes and related penalties.

23 * Sec. 11. This Act takes effect July 1, 1996.

HB

342

A D K L N O W G

AMENDMENT #1
(old amendment #6)

passed

IN THE HOUSE

TO HB 342
Version "K" 4/18/96

Page 2, line 16 - at the end of paragraph (4) add:

"when site specific information is reasonably known or available"

AMENDMENT #2

IN THE HOUSE

TO HB 342
Version "K"

Page 3/Line 1 Delete

[(1) HOLD A PUBLIC HEARING ON THE PROPOSED STANDARD OR
REGULATION;

(2) AT LEAST 30 DAYS BEFORE THE HEARING UNDER (1) OF THIS
SUBSECTION,

Insert

"make available to the public"

(conforming amendment P.2/L.6 delete [AFTER THE PUBLIC
HEARING REQUIRED] and insert "following the process"

Renumber accordingly

#4

AMENDMENT #3

IN THE HOUSE

TO HB 342
Version "K" 4/18/96

Page 2, Line 2 AFTER "..of regulations."

Delete [PROMPTLY, BUT NO LATER THAN 12 MONTHS, AFTER
THE EFFECTIVE DATE OF]

Insert "Within 90 days, or by another date mutually agreed upon by the
applicant and the department, of receipt of a request to amend the state's
water quality standards to incorporate"

9-LS1141\K ✓
Lauterbach
4/18/96

CS FOR HOUSE BILL NO. 342(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

**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 46.03 is amended by adding new sections to read:

4 Sec. 46.03.085. WATER QUALITY STANDARDS; MEASUREMENTS. (a)

5 Except as otherwise provided in AS 46.03.087, the measurement of constituents to
6 determine whether a permittee is in compliance with permit limitations based on water
7 quality shall be by methods approved in writing by the United States Environmental
8 Protection Agency or by substantially equivalent methods approved by the department.

9 (b) The measurement of sediment to determine whether a permittee is in
10 compliance with permit limitations based on water quality shall be by the volumetric
11 Imhoff Cone method.

12 (c) Except when setting standards under AS 03.05.011(a) for shellfish growing
13 areas, as defined in the national shellfish sanitation program manual of operations
14 published by the Food and Drug Administration, and except as provided in
15 AS 46.03.087, the department may not adopt a water quality standard or other

1 regulation relating to water quality that is more restrictive than applicable federal water
2 quality criteria or regulations. Promptly, but no later than 12 months, after the
3 effective date of a change in, or elimination of, federal water quality criteria, the
4 department shall either propose regulations that amend the state's water quality
5 standards to incorporate the change or elimination or follow the process required under
6 AS 46.03.087(b). If, after the public hearing required under AS 46.03.087(b), the
7 department is unable to make the written findings required under AS 46.03.087(b)(4),
8 the department shall propose regulations that amend the state's water quality standards
9 to incorporate the change or elimination of the federal water quality criteria.

10 (d) In adopting and applying water quality standards, the department

11 (1) shall ensure that the standards are sufficient to protect human health
12 and maintain the state's aquatic productivity;

13 (2) shall consider the natural condition of bodies of water,

14 (3) shall use scientific justifications and water quality criteria that can
15 be reliably measured; and

16 (4) may not require discharged water to be of a higher quality, in a
17 more restrictive use classification, or otherwise cleaner than the natural condition of
18 the water into which the discharge is made.

19 Sec. 46.03.087. SPECIAL PROCEDURES FOR CERTAIN WATER
20 QUALITY REGULATIONS. (a) The department may, after following the procedures
21 in this section, adopt a

22 (1) water quality standard or discharge standard that is more restrictive
23 than applicable federal water quality criteria or discharge standards;

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

26 (3) regulation that allows the use of a method that is not substantially
27 equivalent to methods approved by the United States Environmental Protection Agency
28 for the measurement of constituents to determine whether a permittee is in compliance
29 with permit limitations relating to water quality.

30 (b) In order to adopt a standard or regulation governed by (a) of this section,
31 the department shall

1 (1) hold a public hearing on the proposed standard or regulation;
2 (2) at least 30 days before the hearing under (1) of this subsection,
3 make available to the public, at convenient locations, copies of the proposed standard
4 or regulation and the findings of the department that describe the basis for adoption;
5 (3) consider in writing the economic feasibility of the proposed
6 standard or regulation; and

7 (4) find in writing, as applicable, that
8 (A) hydrologic conditions or discharge characteristics in the
9 state or in an area of the state reasonably require the water quality standard,
10 discharge standard, or method of measurement to protect human health and
11 welfare or to maintain the state's aquatic productivity;

12 (B) the proposed standard, regulation, or method of
13 measurement is technologically feasible; and

14 (C) hydrologic conditions or discharge characteristics are
15 significantly different in the state or in an area of the state from those upon
16 which the corresponding federal criteria or regulations are based.

17 * **Sec. 2. TRANSITIONAL REVIEW OF REGULATIONS.** (a) The Department of
18 Environmental Conservation shall, by August 1, 1997, review its water quality regulations that
19 are in effect on the effective date of this Act in order to determine if they comply with federal
20 requirements and are not more stringent than applicable federal regulations. If the review
21 indicates that there are state regulations that are more stringent than applicable federal
22 regulations, the department shall determine whether it could justify those regulations under the
23 requirements of AS 46.03.087(b)(4), enacted by sec. 1 of this Act. If the department
24 determines that it cannot meet the requirements of AS 46.03.087(b)(4), the department shall
25 propose the necessary revisions to the regulations.

26 (b) The Department of Environmental Conservation shall, by January 31, 1998, offer
27 in writing to orally brief the resources committees of the house and senate concerning the
28 department's review and proposed revisions required under (a) of this section.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
410 Willoughby Street, Suite 105
Juneau, AK 99801-1795

Phone: (907) 465-5066
Fax: (907) 465-5070

April 26, 1996

The Honorable Gail Phillips
Alaska House of Representatives
State Capitol, Room 208
Juneau, AK 99801-1182

Madame Speaker:

I would like to apologize for the confusion surrounding amendments and potential fiscal impacts associated with HB342; and, in particular, for DEC changing its position on the fiscal impact. I understand that it is especially problematic at this time in the session.

The bill was significantly changed in House Resources. DEC testified at House Resources that the bill as amended would have no fiscal impact. Subsequently, department staff took a second look at the final committee substitute and realized we had underestimated the potential fiscal impacts and the workload on the department from HB342.

I want to assure you that this second look originated with DEC staff, not from external prompting, although the timing certainly was awful. I think that, frankly, we over-relied upon technical water quality staff who were not sufficiently versed in analyzing proposed legislation and its impacts -- and certainly not in the quick time frames necessary as the legislature finishes its work. It was our error.

Attached please find a copy of the fiscal note we believe represents the probable costs associated with this bill should it pass the Legislature. We have approached this conservatively although it is difficult to how many requests for regulatory changes will be made. Here is a brief narrative explanation for these costs, which total \$60.0 for FY 97 and FY 98 and \$40.0 each fiscal year after. Under Section 1 of the bill:

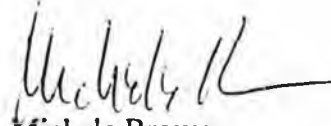
- ▶ **Sec. 46.03.085(c)** We have assumed two significant requests under this section each fiscal year. Some staff time for public noticing and initial review would be required, but we believe we can do that work within our existing budget. Contractual services in the amount of \$40.0 would be required, however, to actually complete the required technical analysis and review. This amount also includes the potential costs under 43.03.087(b)(2) and (b)(3).

Under Section 2 of the bill:

- ▶ This section requires a full review of state water quality regulations as they relate to federal regulations, to determine where state standards may be stricter. At least part of this work is already in progress by staff covered in the existing budget; however, we estimate that some additional or expansive review would require \$20.0 in contractual services.

Again, I apologize for this inconvenience and misunderstanding. Although I appreciate the awkwardness of submitting a fiscal note at this late date, I believe I have to correct our error and indicate the fiscal impact of this legislation.

Sincerely,



Michele Brown
Commissioner

EP/MB/sl (G:\COMMMS\FISCAL\NTE\AF01.DOC)

cc: Representative Norman Rokeberg
Representative Joe Green

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB342(RES)

Revision Date: _____
Title: An Act relating to Water Quality
Sponsor: Rep. Rokeberg
Requestor: _____

Department Affected: Environmental Conservation
BRU: Air & Water Quality
Component: Water Quality

COMPONENT SERIAL NO. 2062

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	60.0	60.0	40.0	40.0	40.0	40.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	60.0	60.0	40.0	40.0	40.0	40.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	60.0	60.0	40.0	40.0	40.0	40.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	60.0	60.0	40.0	40.0	40.0	40.0

Estimate of any current year (FY96) cost: \$ 0.0

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.)

See attached page.

Prepared by: Susan Braley/Len Verrelli, Director
Division: Air & Water Quality

Phone: 465-5060
Date: 4/26/96

Approved by Commissioner: *Michele R*
Agency: Department of Environmental Conservation

Date: 4/26/96

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Attachment to Fiscal Note, CSHB 342(RES), 4/24/96

Sec. 46.03.085(c) would require that the department respond to a request for a change to the water quality standards by taking some action to propose new or revised regulations within 180 days, or another date mutually agreed on by the applicant and the department. The fiscal impact of this section is difficult to assess, given the unknown of what might be proposed and how flexible the applicant might be. This section represents a potential fiscal impact to the department, although some fiscal aspects of this section are already in workplan priorities for FY 97 (staff time on specific WQS issues, public notice costs for regulation changes). Potential contractual costs for third party expertise on the given issue or parameter are difficult to assess, without knowing what may be requested as a result of this bill. With a conservative estimate of 2 requests at 20.0K contractual per year, the total contractual cost for third party expertise would be \$40.0.

Section 2 would require a full review of the state water quality regulations against the existing federal regulations, and subsequent action if the review found that the state regulations were stricter than the federal regulations and would then require going through the procedures under 46.03.087. Water Quality Standards staff are currently in the process of developing a numeric criteria table which I believe will meet the intent of part of this section, therefore no additional staff are required. Contractual services to provide potential needed third party expertise to justify recommendations on any regulations stricter than federal standards is estimated at \$20.0K for the next two fiscal years.

The total cost estimates for a fiscal note, per section of CSHB 342(RES) include:

Section 1 46.03.085

Contractual = 40.0 K

Section 2

Contractual = 20.0 K

March 30, 1996

State of Alaska
House of Representatives
Resources Committee

RE: csHB342

Dear Committee member:

This bill concerns Trout Unlimited because it will weaken overall the beneficial effects (for all Alaskans) of the State's clean water standards.

First, while TU understands the Oil and Gas Subcommittee's concerns regarding uptake/discharge discrepancy, TU does not believe that this bill is an appropriate avenue to address that issue. A variance or exclusion for turbidity standards would be appropriate.

Second, this appears to be an attempt to circumvent the Alaska water quality standards, which by federal law are only allowed to be more constrictive than the federal standards. Trout Unlimited believes that a direct approach to addressing the issue of the State's water quality standards is more appropriate.

Trout Unlimited's position on water quality is one of a conservative approach recognizing the value of clean water for both human and fishery resource needs. Industrial needs, especially nonrenewable extractive, must not be placed above renewable resource requirements. History demonstrates this to be folly, expensive folly.

Sincerely yours in conservation,

Dennis H. Randa, President
Alaska Council of Trout Unlimited
P.O. Box 3055
Soldotna, Ak 99669

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907)272-1481 Direct: (907)272-9497 Fax: (907)279-8114
Marilyn Crockett, Assistant Executive Director

March 31, 1996

TO: Members of the House Resources Committee
Representative Norm Rokeberg

FROM: Marilyn Crockett

RE: Concerns Identified During March 29, 1996 Hearing on CSHB342

Following are suggestions for addressing concerns raised during the March 29 hearing on CSHB342:

1. Reference to the 303(d) list and "existing" quality of waters

We have amended sections AS 16.05.050(b) and AS 38.05.020(c) on page 1, and section AS 46.03.085(c) on page 2 to remove the specific reference to the EPA-approved 303(d) Impaired Waterbodies List and replaced it with a description of waterbodies which do not meet, or are not expected to meet, the state's water quality standards. This language is consistent with the criteria for listing a waterbody on the 303(d) list, and would be based on current available data and information and best professional judgement of ADEC in determining the quality of a specific waterbody. Such a determination would include "point" and "nonpoint" sources and would be based on the "existing" quality of the waterbody; therefore, the term "existing" in these sections remains appropriate.

2. Use of the terminology "consistent with" might prohibit the state from adopting regulations which are less restrictive than federal requirements

Sections (d) and (e) have been amended to remove the phrase "remain consistent with, and" and inserting in its place the word "are". Assuming EPA would approve less restrictive standards, as revised these sections would only require state standards to be no more restrictive than federal standards.

March 31, 1996

Page 2

3. Requirement to amend state regulations within 12 months of every federal change

Section (e) has been modified to require ADEC to adopt, by August 31, amendments to state regulations to ensure they are no more restrictive than the federal regulations in place on January 1 of that same year. This would allow the department eight months to review the federal standards and propose and adopt any amendments necessary to the state standards. The August 31 adoption date also allows time for the required Department of Law review which occurs subsequent to departmental adoption, and the 30-day filing requirement with the Lt. Governor's office. The goal is to have regulations become effective prior to December 31 each year.

4. Ability to develop and use state methods instead of EPA-approved methods.

A new section (g) has been added which allows the state to adopt regulations specifying methods other than EPA-approved methods, after satisfying the same requirements as those required under (f) (for more stringent state standards or state standards where no corresponding federal standard exists). The rest of the bill which addresses these requirements has been modified to reflect that these provisions also apply to use of state methods.

5. Definition of "peer review"

AOGA believes it is not necessary to define "peer review" in statute. No definition for this term was included in AS 46.14 (Air), the statute from which these requirements were borrowed. Further, peer review is a recognized and accepted practice in the scientific community and needs no explanation. We believe the requirements contained within these sections are sufficiently detailed to provide guidance to ADEC and the public on the process to be utilized.

The amendments described in this letter are reflected on the attached copy of the bill by ~~strikeout~~ for deleted language and **bold italics** for inserted language.

(Revised 3/31/96)

CS FOR HOUSE BILL NO. 342(RESOURCES)
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) Except for a waterbody waterbodies which the Department of Environmental Conservation
5 has determined do not meet applicable State Water Quality Standards solely through the
6 implementation of technology-based or similar controls, included on an EPA-approved 303(d) Impaired
7 Waterbodies List; [T]the commissioner may not require a [HIGHER DISCHARGE] more restrictive water
8 quality [STANDARD] for discharged water [USED] than the existing quality of the receiving water.
9 [RECEIVED FOR THE USE.]

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

11 (c) Except for a waterbody waterbodies which the Department of Environmental Conservation
12 has determined do not meet applicable State Water Quality Standards solely through the
13 implementation of technology-based or similar controls, included on an EPA-approved 303(d) Impaired
14 Waterbodies List; [T]the commissioner may not require a [HIGHER DISCHARGE] more restrictive water
15 quality [STANDARD] for discharged water [USED] than the existing quality of the receiving water.
16 [RECEIVED FOR THE USE.]

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

18 Sec. 46.03.085. WATER QUALITY STANDARDS. (a) If, in considering the discharge of water
19 and establishing permit limitations for discharged water, the commissioner finds it necessary to establish

1 discharge standards, the measurement of constituents to determine compliance with such permit limitations
2 shall be by methods approved by the U.S. Environmental Protection Agency.

3 [(A)] (b) If, in considering the discharge of water and establishing [CRITERIA FOR WATER
4 QUALITY] permit limitations for discharged water, the commissioner finds it necessary to establish a
5 discharge standard for sediment, the measurement of the sediment shall be by the volumetric Imhoff Cone
6 method or by another method approved by the U.S. Environmental Protection Agency for the measurement
7 of sediment.

8 (B) (c) Except for a waterbody waterbodies which the Department of Environmental
9 Conservation has determined do not meet applicable State Water Quality Standards solely through the
10 implementation of technology-based or similar controls, included on an EPA-approved 303(d) Impaired
11 Waterbodies List, [I]n applying the water quality [CRITERIA AND LIMITS] regulations authorized under
12 this chapter, the commissioner may require a person who uses water to meet a discharge [STANDARD]
13 permit limit that is compatible with downstream uses at the point of the downstream uses if the
14 [STANDARD] permit limit

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

16 [(2)] IS NOT MORE RESTRICTIVE THAN CURRENT APPLICABLE FEDERAL
17 WATER QUALITY STANDARDS:] and

18 [(3)] (2) does not require a [HIGHER] more restrictive discharge water quality
19 [STANDARD] than the existing quality of the receiving water [RECEIVED FOR THE USE].

20 (C) (d) [IF FEDERAL WATER QUALITY STANDARDS CHANGE] Within 12 months of
21 effective date of this legislation, the commissioner shall [PROMPTLY] adopt regulations that amend the
22 state's water quality standards so that the state's water quality standards remain consistent with, and are not
23 more restrictive than applicable federal water quality standards.

24 (e) Within 12 months of the effective date of any amendments to federal water quality standards, By
25 August 31 of each year, the Commissioner shall adopt regulations that amend the state's water quality
26 standards so that the state's water quality standards remain consistent with, and are not more restrictive than
27 applicable federal water quality standards in effect on January 1 of that year.

28 (f) After public hearing, the department may adopt state water quality standards which are more

1 restrictive than applicable federal water quality standards or for which no corresponding federal water quality
2 standards exist only after satisfying the requirements of (insert appropriate new citation here)

3 (g) After public hearing, the department may adopt regulations authorizing the use of methods
4 which differ from methods approved by the U. S. Environmental Protection Agency for the
5 measurement of constituents to determine compliance with permit limitations only after satisfying the
6 requirements of (insert appropriate new citation here)

7 (New citation) (a) Before the department adopts a regulation described in 18 AAC 46.03.085(f) or
8 (g), written findings under (e) and (f) of this section shall be made available by the department to the public
9 at locations throughout the state that the department considers appropriate.

10 (b) Before the department adopts a regulation described in 18 AAC 46.03.085(f) or (g), the
11 department shall submit the findings described under (a) of this section, the studies on which the findings are
12 based, and other related data for peer review to a minimum of three separate parties who are not employees
13 of the department and who are determined by the commissioner to be technically qualified in the subject
14 matter under review. The commissioner shall ensure that the peer review includes an analysis of the factors
15 considered by the commissioner to support the standards or methods proposed to be adopted and
16 recommendations, if any, for additional research or investigation considered appropriate. Peer review reports
17 shall be submitted to the commissioner within 45 days after the department submits a matter for peer review
18 unless the commissioner determines that additional time is required.

19 (c) The department shall make available to the public at least 30 days before the public hearing
20 required under 18 AAC 46.03.085(f) or (g), at convenient locations, copies of the department's proposed
21 regulation, the findings of the department describing the basis for adoption of the regulation, and the peer
22 review reports, submitted under (b) of this section.

23 (d) The department shall contract with persons to perform peer review under (b) of this section. All
24 persons selected shall be selected on the basis of competitive sealed proposals under AS 36.30.200—AS
25 36.30.270 (State Procurement Code). The commissioner may not contract with a person to perform peer
26 review under this section if the person has a significant financial interest or other significant interest that could
27 bias evaluation of the proposed regulation. An interest is not considered significant under this subsection if
28 it is an interest possessed generally by the public or by a large class of persons or if the effect of the interest

1 on the person's ability to be impartial is only conjectural.

2 (e) In preparation for peer review under (b) of this section, and before adopting a regulation described
3 under 18 AAC 46.03.085(f) or (g), the department shall

4 (1) find in writing that exposure profiles and either hydrologic conditions or discharge
5 characteristics in the state or in an area of the state reasonably require the water quality standard, or discharge
6 standard or method to protect human health and welfare or the environment;

7 (2) find in writing that the proposed standard, or discharge limitation or method is
8 technologically feasible; and

9 (3) prepare a written analysis of the economic feasibility of the proposal.

10 (f) Before adopting a regulation described in 18 AAC 46.03.085(f) or (g) of this section, the
11 department shall find in writing that exposure profiles and either hydrologic conditions or discharge
12 characteristics are significantly different in the state or in an area of the state from those upon which the
13 corresponding federal regulation is based.



Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

Phone: 907-463-3366

Fax: 907-463-3312

The Alaska Environmental Lobby Opposes House Bill 342

House Bill 342 is an Act relating to water quality.

*Section 1 of HB 342 would amend AS 16.05.050 to prohibit the commissioner from requiring "a more restrictive water quality for discharged water than the existing quality of the receiving water" *Section 2 of the Bill-using the same language-amends AS 38.05.020 to the same result.

The intent of these amendments is unclear because the language is vague. A tighter phrasing (in both *Sec. 1 and *Sec. 2) might read: **In waters which have not been impacted by human activity the commissioner may not require a more restrictive water quality for discharged water than the existing quality of the receiving water.**

Even with such language in *Sec. 1 and *Sec. 2 HB 342's intent is still unclear since that described situation seems to be already covered by 18AAC 70.035 (suggested to replace 18 AAC 70.025) in the States Water Quality Standards which reads in part:

(a) If the department finds that a natural condition of a waterbody is demonstrated to be of lower quality than a water quality criterion for the classes in 18 ACC 70.020 (b) and that the natural condition will fully protect designated uses in 18 ACC 70.020 (b)the natural condition constitutes the applicable water quality criterion.

*Section 3. of HB 342 amends AS 46.03 with the apparent result of limiting the State's water quality criteria for settlement strictly to settleable solids. The sediments which cause turbidity are primarily "fines". These smaller particles remain suspended for longer periods and are the type of sediment most often associated with heavy metals. Ignoring them-as this Bill would have us do-could result in violations of the Clean Water Act and could impact the State's salmon resource.

HB 342's amendment of AS 46.03 would also require Alaska to adopt any less restrictive federal water quality standard adopted for the rest of the nation (**unless the department can satisfy the requirements of a new citation presented in the Bill by the Alaska Oil and Gas Association**). Although the obvious intent is to avoid a situation where Alaska might find itself requiring a higher water quality standard than the rest of the nation, HB 342 overlooks the possibility that Alaska might-enviably-someday be the only state in the nation in a position to maintain that higher water quality standard.

4/1/96

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ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY • CLEAN AIR COALITION • DENALI CITIZENS' COUNCIL
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Jeffs. Corey

CS FOR HOUSE BILL NO. 342(RESOURCES)
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) Except for a waterbody included on an EPA-approved 303(d) Impaired Waterbodies List,

DEC OUT

5 [T]he commissioner may not require a [HIGHER DISCHARGE] more restrictive water quality
6 [STANDARD] for discharged water [USED] than the existing quality of the receiving water.
7 [RECEIVED FOR THE USE.]

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

9 (c) Except for a waterbody included on an EPA-approved 303(d) Impaired Waterbodies List,

10 [T]he commissioner may not require a [HIGHER DISCHARGE] more restrictive water quality
11 [STANDARD] for discharged water [USED] than the ~~existing~~ existing quality of the receiving water.
12 [RECEIVED FOR THE USE.] *Natural*

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

14 Sec. 46.03.085. WATER QUALITY STANDARDS. (a) If, in considering the discharge of
15 water and establishing permit limitations for discharged water, the commissioner finds it necessary
16 to establish discharge standards, the measurement of constituents to determine compliance with such
17 permit limitations shall be by methods approved by the U.S. Environmental Protection Agency.

*DAVIES
DEC
needs
exception*

18 [(A)] (b) If, in considering the discharge of water and establishing [CRITERIA FOR
19 WATER QUALITY] permit limitations for discharged water, the commissioner finds it necessary

1 to establish a discharge standard for sediment, the measurement of the sediment shall be by the
2 volumetric Imhoff Cone method or by another method approved by the U.S. Environmental
3 Protection Agency for the measurement of sediment.

4 (B) (c) Except for a waterbody included on an EPA-approved 303(d) Impaired Waterbodies
5 List, [I]in applying the water quality [CRITERIA AND LIMITS] regulations authorized under this
6 chapter, the commissioner may require a person who uses water to meet a discharge [STANDARD]
7 permit limit that is compatible with downstream uses at the point of the downstream uses if the
8 [STANDARD] permit limit

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

10 [(2) IS NOT MORE RESTRICTIVE THAN CURRENT APPLICABLE FEDERAL
11 WATER QUALITY STANDARDS;] and

12 [(3) (2) does not require a [HIGHER] more restrictive discharge water quality
13 [STANDARD] than the existing quality of the receiving water [RECEIVED FOR THE USE].

14 (C) (d) [IF FEDERAL WATER QUALITY STANDARDS CHANGE] Within 12 months
15 of effective date of this legislation, the commissioner shall [PROMPTLY] adopt regulations that
16 amend the state's water quality standards so that the state's water quality standards remain consistent
17 with, and not more restrictive than, applicable federal water quality standards.

18 (e) Within ^{*}12 months of the effective date of any amendments to federal water quality
19 standards, the Commissioner shall ^{initiate} adopt regulations that amend the state's water quality standards
20 so that the state's water quality standards remain consistent with, and not more restrictive than,
21 applicable federal water quality standards.

22 (f) After public hearing, the department may adopt state water quality standards which are
23 more restrictive than applicable federal water quality standards or for which no corresponding
24 federal water quality standards exist only after satisfying the requirements of (insert appropriate new
25 citation here)

26 (New citation) (a) Before the department adopts a regulation described in 1§ AAC
27 46.03.085(f), written findings under (e) and (f) of this section shall be made available by the
28 department to the public at locations throughout the state that the department considers appropriate.

1 (b) Before the department adopts a regulation described in 18 AAC 46.03.085(d), the
2 department shall submit the findings described under (a) of this section, the studies on which the
3 findings are based, and other related data for peer review to a minimum of three separate parties who
4 are not employees of the department and who are determined by the commissioner to be technically
5 qualified in the subject matter under review. The commissioner shall ensure that the peer review
6 includes an analysis of the factors considered by the commissioner to support the standards proposed
7 to be adopted and recommendations, if any, for additional research or investigation considered
8 appropriate. Peer review reports shall be submitted to the commissioner within 45 days after the
9 department submits a matter for peer review unless the commissioner determines that additional time
10 is required.

11 (c) The department shall make available to the public at least 30 days before the public
12 hearing required under 18 AAC 46.03.085(f), at convenient locations, copies of the department's
13 proposed regulation, the findings of the department describing the basis for adoption of the
14 regulation, and the peer review reports, submitted under (b) of this section.

15 (d) The department shall contract with persons to perform peer review under (b) of this
16 section. All persons selected shall be selected on the basis of competitive sealed proposals under
17 AS 36.30.200—AS 36.30.270 (State Procurement Code). The commissioner may not contract with
18 a person to perform peer review under this section if the person has a significant financial interest
19 or other significant interest that could bias evaluation of the proposed regulation. An interest is not
20 considered significant under this subsection if it is an interest possessed generally by the public or
21 by a large class of persons or if the effect of the interest on the person's ability to be impartial is only
22 conjectural.

23 (e) In preparation for peer review under (b) of this section, and before adopting a regulation
24 described under 18 AAC 46.03.085(f), the department shall

25 (1) find in writing that exposure profiles and either hydrologic conditions or discharge
26 characteristics in the state or in an area of the state reasonably require the water quality standard or
27 discharge standard to protect human health and welfare or the environment;

28 (2) find in writing that the proposed standard or discharge limitation is

1 technologically feasible; and

2 (3) prepare a written analysis of the economic feasibility of the proposal.

3 (f) Before adopting a regulation described in 18 AAC 46.03.085(f) of this section, the
4 department shall find in writing that exposure profiles and either hydrologic conditions or discharge
5 characteristics are significantly different in the state or in an area of the state from those upon which
6 the corresponding federal regulation is based.

**Description of amendments to CSHB342 proposed by Alaska Oil and Gas Association
March 27, 1996**

General comment: DEC has expressed concerns in previous testimony about inconsistent use the terms such as "standards" and "criteria". We have attempted to address these concerns by substituting the term "permit limits" or "permit limitations" where appropriate.

COMMENT NO. 1: Page 1, Line 4: The purpose of the EPA-required "Impaired Waterbodies List" is to identify waterbodies which do not presently meet water quality standards and establish discharge limitations which are more restrictive than would normally be required, in an attempt to improve the quality of that waterbody. Recognizing this, and concerns expressed by DEC, it is suggested this caveat be added to this section.

COMMENT NO. 2: Page 1, Lines 5-7:

It is suggested this section be amended to make it absolutely clear that discharges should not have to be "cleaner" than the waterbody which is receiving the discharge. While the water received for the use plays a factor, the waterbody of concern needs to be the body of water which is receiving the discharge.

COMMENT NO. 3 Page 1, Line 9: See Comment No. 1.

COMMENT NO. 4: Page 1, Lines 10-12: See Comment No. 2.

COMMENT NO. 5: Page 1, Lines 14-17: A new section (a) has been added (and subsequent sections renumbered accordingly) to require that ALL measurement methods used in the water quality regulations must be consistent with those which have been developed and approved by EPA. EPA-approved methods are "tried and true", and are implemented only after rigorous examination to determine their appropriateness.

COMMENT NO. 6: Page 1, Lines 18-19: The term "permit limitations" is proposed to be substituted for the phrase "criteria for water quality" (see General Comment above).

COMMENT NO. 7: Page 2, Lines 3-7: Reference to Impaired Waterbodies List has been added (see Comment No. 1). Also, different terminology has been suggested in place of "criteria and limits" and "standard" (see General Comment above).

COMMENT NO. 8: Page 2, Lines 9-10: It is proposed section (2) be deleted and section (3) be renumbered accordingly. If the other sections of this legislation are adopted as proposed, it would not be possible for permit limits to be more restrictive than federal standards (except as provided for under section (f)); therefore this section is unnecessary. Further, if section (f) is adopted as proposed, this section (2) would be in conflict.

COMMENT NO. 9: Page 2, Lines 11-12: Modified to meet the intent of amendments proposed to AS 16.05.050(b) and AS 38.05.020(c) on Page 1. (See Comment No. 2.)

**Description of amendments to CSHB342 proposed by Alaska Oil and Gas Association
Page 2**

COMMENT NO. 10: Page 2, Lines 13-16: Would require DEC to review the current state standards to determine their consistency with federal requirements, and where inconsistent, adopt regulations bringing them into line within 12 months of the effective date of this legislation.

COMMENT NO. 11: Page 2, Lines 17-20: Requires DEC to amend state requirements within 12 months of a change to federal requirements.

COMMENT NO. 12: Page 2, Lines 21-24: It is possible there may be extraordinary conditions in Alaska where circumstances may warrant state standards which are *more* restrictive than federal requirements, or where no corresponding federal requirement exists. A similar possibility for air quality standards was recognized by the Legislature in 1993 when adopting the state's new Air Quality Control statute authorizing state assumption of the EPA Title V program (AS 46.14). This section would allow the department to adopt such standards, after public hearing, and *after* satisfying requirements for peer review and development of specific findings of need, etc.

COMMENT NO. 13: Page 2, Lines 25-29 and Pages 3 and 4: The requirements contained in these sections for peer review and written findings were borrowed from the corresponding sections of AS 46.14. The only changes to these requirements are those necessary to make these sections applicable to the water program rather than the air program. These requirements (and the authorization for standards more prescriptive than the federal standards and for state standards where there are no corresponding federal standards) were agreed to by the members of the Air Legislative Working Group whose participants included representatives from DEC, municipalities, industries, utilities and environmental groups. (Note: we will rely on your expertise to identify the appropriate citation for these sections.)

★ 1975 *Serving Alaska for 20 years* 1995 ★

Resource Development Council

for Alaska, Inc.

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Phone 907/276-0700 Fax 276-3887

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RDC Testimony on CSHB 342(O&G) presented to the House Resources Committee March 27, 1996

Thank you, Chairmen Green and Williams and members of the Committee, for the opportunity to testify on CS for HB342(O&G), "an Act relating to water quality." I am Becky Gay, Executive Director of the Resource Development Council for Alaska, Inc.(RDC).

RDC supports the goal of the CS for HB342 to strengthen the mandate for economically-feasible and technologically-achievable State water quality standards which are scientifically-based and consistent with federal standards.

RDC also supports the CS specifying EPA-approved measurements which are in line with the State Department of Environmental Conservation's (DEC) current policy on settleable solids measurements, and which in fact, strengthen that policy.

Additionally, RDC supports legislation which provides for the following:

- An efficient "change mechanism" for changing state regulations to match federal regulations;
- A professional and definitive process, including an independent panel review, 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. This will strengthen DEC's ability to use natural background levels as the standard when natural levels exceed the State standard, as is often the case in Alaska, particularly with arsenic.

Presently states are required to amend regulations to match federal regulations only when federal regulations become more restrictive. This is a one-way street. The State needs to legislate a similar requirement to automatically adjust state standards when federal changes result in less strict standards, or when federal mandates are deleted from law. Such a provision still allows the State to set stricter standards if it chooses, but will encourage a pro-active response automatically and a review of that decision.

RDC Testimony on CSHB342 - House Resources

March 27, 1996

page 2

For those few cases where the State argues for a stricter standard than federally required, this legislation should establish an impartial review methodology for evaluating the merit of such an argument. Such a review should also allow for an appeal from the regulated community or industries involved.

One change RDC recommends is replacing Section 1 (b) and Section 2 (c) with language which would read, "The Commissioner may not require a more restrictive water quality for discharge water than the existing quality of the receiving water." This should help address DEC's concern that polluted or impaired waterbodies might become more degraded under the current language.

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

M E M O R A N D U M

TO: Steven J. Koorse, Esquire
FROM: S. Hayes Smith

DATE: June 1, 1995
FILE: 99999.000306

Human Health Water Quality Standards for Arsenic

- 1) Alabama: 50 ug/l Alabama Water Quality Criteria Standards. Ala. Admin. Code r.335-6-10-.07, tbl. 1 (1991).
- 2) Alaska: 0.018 ug/l One of 14 states/territories that failed to adopt sufficient numeric criteria to meet § 303(c)(2)(B) of the Federal Clean Water Act. (33 U.S.C. § 1313(c)(2)(B)). 0.018 ug/l was promulgated by the EPA pursuant to § 303(c)(4)(A) of the Clean Water Act. (33 U.S.C. § 1313(c)(4)(A)). Notice of this was published in Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance; Final Rule, 57 Fed. Reg. 246 (1992). (to be codified at 26 C.F.R. § 131).
- 3) Arizona: 50 ug/l Arizona Water Quality Standards. Ariz. Admin. R. & Regs. § R18-11-121, app. A (1992).
- 4) Arkansas: 0.018 ug/l Promulgated by the EPA. See Alaska.
- 5) California: 0.018 ug/l Promulgated by the EPA. See Alaska.
- 6) Colorado: 50 ug/l Colorado Water Quality Standards. Colo. Code Regs. tit. 5, ch. 1002, art. 8 § 3.1.16, tbl. III (1991).
- 7) Connecticut: There is no numeric human health criteria for arsenic in Connecticut. Connecticut Water Quality Standards.

- §§ II-III (1987). The Connecticut drinking water limit is 0.05 mg/l. (Reg. of Conn. § 19-13-B102(e) (1990).
- 8) Delaware: 50 ug/l Delaware Water Quality Standards § 9.3(b), tbl. 2 (1990).
- 9) Washington D.C.: 0.018 ug/l Promulgated by the EPA. See Alaska.
- 10) Florida: 0.018 ug/l Promulgated by the EPA. See Alaska.
- 11) Georgia: 50 ug/l Georgia Water Quality Control Regulations and Standards. Ga. R & Regs. § 391-3-6-.03 (1993).
- 12) Hawaii: No standard has been developed for human health/fish consumption. Hawaii Water Quality Standards. Haw. Admin. R. § 11-54-04 (1992).
- 13) Idaho: 0.018 ug/l Promulgated by the EPA. See Alaska.
- 14) Illinois: There is no human health/fish consumption criteria for arsenic in Illinois. The Public and Food Processing Water supply Standard is 0.05 mg/l. Illinois Water Pollution Control Rules. Ill. Admin. Code tit. 35 § 302.304 (1994).
- 15) Indiana: 0.022 ug/l (Where public drinking water intake is present), and 0.175 ug/l (Outside of mixing zone where there is no public drinking water intake). Indiana Water Quality Standards. Ind. Admin. Code tit. 327 § 2-1-6, tbl. 1 (1990).
- 16) Iowa: 50 ug/l Iowa Water Quality Standards. Iowa Admin. Code tit. IV r. 61.3(455B), tbl. 1 (1990).

- 17) Kansas: 0.018 ug/l Promulgated by the EPA. See Alaska.
- 18) Kentucky: No arsenic standard for Human Health protection.
401 Kv. Admin. Reg. 5:031 § 2(2), tbl. 2 (1992). For warm water aquatic habitat creatures, it is 50 ug/l under 5:031 § 4(5), tbl. 2 (1992).
- 19) Louisiana: 50 ug/l Louisiana Water Quality Standards.
La. Admin. Code tit. 33, pt. IX, ch. 11 § 113(C), tbl. 1 (1992).
- 20) Maine: 0.018 ug/l Based on § 304(a) of Federal Clean Water Act. Maine Water Quality Control Regulations, ch. 584 (1989).
- 21) Maryland: 50 ug/l Maryland Water Pollution Control Regulations. Md. Regs. Code, tit. 26, subtit. 08, ch. 02 § .03-2, tbl. I (1990).
- 22) Massachusetts: 0.018 ug/l Pursuant to § 304(a) of Federal Clean Water Act. Massachusetts Surface Water Quality Standards. Mass. Regs. Code tit. 314 § 4.05(5)(e) (1990).
- 23) Michigan: 0.018 ug/l Promulgated by the EPA. See Alaska.
- 24) Minnesota: 50 ug/l Minnesota Water Quality Standards.
Minn. R. 7050.0220, subpt. 3(A) (1983).
- 25) Mississippi: 0.0175 ug/l Mississippi Water Quality Standards § 4, app. A. (Available on infobase).
- 26) Missouri: 50 ug/l for drinking water supply. No. does not have an arsenic criteria for human health protection/fish consumption Missouri Water Quality Standards. Mo. Code Regs. tit. 10 § 20-7.031, tbl. A (1991).

- 27) Montana: 0.05 mg/l Based on 40 CFR part 141. Montana Surface Water Quality Standards. Mont Admin. Code §§ 6.20.617 to 6.20.624 (1985).
- 28) Nebraska: 0.05 mg/l Nebraska Water Quality Standards. Dept. of Environmental Control tit. 117, ch. 4 § .004.01B (1990).
- 29) Nevada: 0.018 ug/l Promulgated by the EPA. See Alaska.
- 30) New Hampshire: 2.2 ng/l New Hampshire Water Quality Standards. N. H. Code Admin. R. Env-Ws 432.03, tbl. 1 (1990).
- 31) New Jersey: 0.018 ug/l Promulgated by the EPA. See Alaska.
- 32) New Mexico: New Mexico has no human health/fish consumption limit for arsenic. The Domestic Water Supply Limit is 0.05 mg/l. New Mexico Water Quality Standards § 3-101(B) (1991).
- 33) New York: 50 ug/l New York Water Classifications and Quality Standards. N. Y. Comp. Codes, R & Regs. tit. 6, ch. V § 703.5, tbl. 1 (1994).
- 34) North Carolina: North Carolina does not have a human health/ fish consumption numeric quality for arsenic. 50 ug/l is the standard to protect aquatic life. North Carolina Water Quality Standards. N.C. Admin. Code tit. 15A, ch. 2, subch. 2B §§ .0211(b)(3)(L), .0211(c) (1991).

- 35) North Dakota: 0.018 ug/l North Dakota Water Quality Standards. N. D. Admin. Code § 33-16-02-06. (Available on info base).
- 36) Ohio: 50 ug/l Ohio Water Quality Standards. Ohio Admin. Code § 3745-1-07, tbl. 7-1 (1993).
- 37) Oklahoma: 0.175 ug/l Oklahoma Water Quality Standards. Okla. Admin. Code tit. § 785:45-5-10(6)(B) (1993).
- 38) Oregon: 0.018 ug/l Based on EPA standards. Oregon Water Quality Standards. Or. Admin. R. § 340-41-205(2)(p)(B) (1990).
- 39) Pennsylvania: 0.02 ug/l Pennsylvania Water Quality Standards. 25 Pa. Code § 16.102, App. A (1994). (Available on infobase).
- 40) Rhode Island: 0.018 ug/l Promulgated by the EPA. See Alaska.
- 41) South Carolina: 0.018 ug/l Incorporated by reference from EPA. South Carolina Water Classification Standards. S. C. Code Regs. § 61-68 E(7) (1992).
- 42) South Dakota: 0.05 mg/l South Dakota Water Quality Standards. S. D. Admin. Code § 74:03:02:33 (1987).
- 43) Tennessee: 50 ug/l Tennessee Water Quality Standards. Tenn. R. & Regs. § 1200-4-3.03(1)(j) (1991).
- 44) Texas: 50 ug/l Texas Water Quality Standards. Tex. Admin. Codes tit. 30 § 307.6(d)(2)(B), tbl. 3 (1992).
- 45) Utah: 0.002 ug/l Utah Water Quality Standards. Utah Admin. Code R 317-2-14, tbl. 2.14.6 (1992).

- 46) Vermont: 0.018 ug/l Promulgated by the EPA. See Alaska.
- 47) Virginia: 50 ug/l Virginia Water Quality Standards. VR680-21-00 Water Quality Standards. VR680-21-01.14 (1992).
- 48) Washington: 0.018 ug/l Promulgated by the EPA. See Alaska.
- 49) West Virginia: 2.2 ng/l West Virginia Water Quality Standards. W. Va. Code Regs. § 46-1-9, app. E (1991).
- 50) Wisconsin: 50 ug/l Human Cancer Criterion. (Similar to Human Health). Wisconsin Water Quality Standards. Wisc. Admin. Code § NR 105.09, tbl. 9 (1993).
- 51) Wyoming: 0.018 ug/l Wyoming Water Quality Standards. Wyoming Department of Environmental Quality, Water Division- ch. 1 § 31, app. B. (Old ch. 1 § 21 on Toxic Material applied EPA numeric standard (1985)).
- 52) Puerto Rico: 0.018 ug/l Promulgated by the EPA. See Alaska.



Resource Development Council for Alaska, Inc.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-2035
Phone 907/276-0700 Fax 276-3887

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Here is the change RDC recommends to HB 342:

Section 1 (b) and Sec. 2 (c):

The Commissioner may not require a higher [DISCHARGE WATER QUALITY STANDARD FOR WATER USED THAN THE EXISTING QUALITY OF WATER RECEIVED FOR THE USE] water quality standard for water discharged than in the receiving water.

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To: Jeff Logan
 FROM: Carl Portman
 DATE: March 22, 1996
 Re: HB 342

Here is the change RDC recommends to HB 342:

Section 1 (b) and Sec. 2 (c):

The Commissioner may not require a higher [DISCHARGE WATER QUALITY STANDARD FOR WATER USED THAN THE EXISTING QUALITY OF WATER RECEIVED FOR THE USE] water quality standard for water discharged than in the receiving water.

Thank you for the opportunity to pass on this amendment to HB 342. Becky Gay will contact you Tuesday morning on this legislation when she returns to Anchorage.

Post-it® Fax Note	7671	Date	# of pages	1
To	DAVE P	From	RDC	
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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: 3/22/96
Referred: Resources

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 used than the existing quality of water received for the use.

*REVISOR
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discharge*

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.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Environmental Conservation	DIVISION Air & Water Quality	BILL NUMBER HB 342	SPONSOR Rep. Rokeberg
SHORT TITLE OF BILL An Act relating to water quality			
DEPARTMENT POSITION The department opposes the bill because the intent of the proposed language is confusing and difficult to interpret. As written, it would prevent the department from having the ability to clean up polluted waters; it would also prevent state assumption of the federal National Pollutant Discharge Elimination System (NPDES) permit program.			
PREPARED BY Deena Henking/Susan Braley	DATE 2/7/96	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 2/16/96

SUMMARY

OTHER AGENCIES AFFECTED BY BILL ADF&G ADNR	CONSTITUENT GROUP(S) AFFECTED BY BILL Wastewater dischargers Environmental Groups
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: \$51.0 FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The Bill would not allow stricter wastewater effluent limits than the quality of the water received for the use. It would require the department to write wastewater effluent limits for sediment in terms of settleable solids only; it would not allow effluent limits stricter than federal water quality standards.

ANALYSIS OF BILL/PROGRAM EFFECTS

See attached.

Post-It™ brand fax transmittal memo 7871 # of pages = 5

To <i>Armstrong</i>	From
Co. <i>Rep. Rokeberg</i>	Co.
Dept.	Phone #
Fax # 2640	Fax #

AMENDMENTS PROPOSED

None at this time

PLEASE ATTACH SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



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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: 3/22/96

Referred: Resources

Sponsor(s): REPRESENTATIVE ROKEBERG

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*Discharge
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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.

STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Environmental Conservation	DIVISION Air & Water Quality	BILL NUMBER HB 342	SPONSOR Rep. Rokeberg
SHORT TITLE OF BILL An Act relating to water quality			
DEPARTMENT POSITION The department opposes the bill because the intent of the proposed language is confusing and difficult to interpret. As written, it would prevent the department from having the ability to clean up polluted waters; it would also prevent state assumption of the federal National Pollutant Discharge Elimination System (NPDES) permit program.			
PREPARED BY Doona Henkins <i>djh</i> Susan Bralley <i>Susan Bralley</i>	DATE 2/7/86	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 2/16/86

SUMMARY

OTHER AGENCIES AFFECTED BY BILL ADF&G ADNR	CONSTITUENT GROUP(S) AFFECTED BY BILL Wastewater dischargers Environmental Groups										
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown										
FISCAL IMPACT: \$61.0 X FISCAL NOTE ATTACHED											
BACKGROUND/LEGISLATIVE INTENT The Bill would not allow stricter wastewater effluent limits than the quality of the water received for the use. It would require the department to write wastewater effluent limits for sediment in terms of settleable solids only; it would not allow effluent limits stricter than federal water quality standards.											
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<table border="1"> <tr> <td colspan="2">Post-It™ brand fax transmittal memo 7671 # of pages = 5</td> </tr> <tr> <td>To <i>Armstrong</i></td> <td>From</td> </tr> <tr> <td>Co. <i>Rep. Rokeberg</i></td> <td>Co.</td> </tr> <tr> <td>Dept.</td> <td>Phone #</td> </tr> <tr> <td>Fax # <i>2640</i></td> <td>Fax #</td> </tr> </table>		Post-It™ brand fax transmittal memo 7671 # of pages = 5		To <i>Armstrong</i>	From	Co. <i>Rep. Rokeberg</i>	Co.	Dept.	Phone #	Fax # <i>2640</i>	Fax #
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Fax # <i>2640</i>	Fax #										
AMENDMENTS PROPOSED None at this time											
PLEASE ATTACH SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS											

HB 342
ANALYSIS OF BILL/PROGRAM EFFECTS

CONFUSION OF TERMS

The language of the bill is confusing and difficult to interpret because the author has incorrectly used the terms for water quality criteria, water quality standards and effluent limits. The bill refers to limiting discharge water quality standards when it appears to be referring to effluent limits. The bill would have an indirect effect on state Water Quality Standards since they apply to receiving water quality.

SETTLABLE SOLIDS vs SUSPENDED SOLIDS

Language in Sec. 46.03.085(a) of the bill would require the use of the settleable solids method of measuring sediment if an effluent limit for sediment was established in a permit. The "volumetric Imhoff Cone method" is a reference to one method for measuring settleable solids.

The passage of HB 342 would not allow suspended solids to be used as a measurement for sediment, and thus would require the Department to revise the definition of "secondary treatment" in the Wastewater Regulations. Typically, the efficiency of sewage treatment processes is defined in terms of BOD (biochemical oxygen demand) and suspended solids, and the definition of secondary treatment in 18 AAC 72.990 references the use of suspended solids. The section in the Wastewater Regulations on Minimum Treatment, 18 AAC 72.040, would also have to be revised because it refers in several places to suspended solids.

Since the bill would only allow the measurement of settleable solids, the language in the Water Quality Standards would have to reflect this limitation. This bill uses the term "sediment"; a recent State Superior Court ruled that the term sediment includes suspended solids. The Department revised the Water Quality Standards in January 1995 to clarify that the existing criteria for sediment is limited to settleable solids, but has also agreed to study the need for a total suspended solids (TSS) criteria. Passage of this bill would prohibit future criteria from being developed for total suspended solids and adopted into the Water Quality Standards. Until the TSS study is completed, the need for TSS criteria is unknown.

The bill's intention to allow measurement of sediment only in terms of settleable solids does not recognize the legitimate application of other measurements of sediment. The efficiency of some treatment processes such as classical sewage treatment are historically described in terms of suspended solids. Any biological treatment process with clarifiers or filters also typically lends itself to being described in terms of suspended solids whether sewage or industrial wastewater is being treated. The Clean Water Act defines secondary treatment in terms of suspended solids, and describes secondary treatment waivers in terms of suspended solids also.

Numerous EPA effluent guideline regulations (i.e. effluent limits) characterize wastewater in terms of suspended solids, like mining wastewater discharges from hardrock gold mines that use froth floatation processes.

In the case of sewage treatment plant discharges or other discharges subject to an EPA effluent limitation incorporating suspended solids, it will not be beneficial to the discharger to forbid the state to impose a suspended solids effluent limit. The federal law and regulations will still apply.

RELATIVE STRICTNESS OF STANDARDS

Subsection (b) of the bill is difficult to interpret because of the incorrect use of terminology. Subsection (b)(2) and (3) appears to say that the Department cannot apply an effluent limit that is more restrictive than federal water quality standards. The language also suggests that the effluent limit can not be more strict than the quality of the intake water, although it may also be interpreted to mean the upstream water or receiving water.

It is unclear what the intent of Sec. 46.03.085(b)(1) is. The term "discharge standard" appears to refer to effluent limits, but it is not clear how the term relates to water quality criteria or standards. Subsection (b)(2) is also confusing since effluent limits do not correlate with exceedence of federal water quality standards. It is possible that an effluent limit might be more strict than the related water quality criteria in order to ensure that criteria in the receiving water will be met.

The state needs the flexibility to require effluent limits more strict than the receiving water quality if the receiving water quality has been degraded by other dischargers and more stringent limits are needed to protect water uses. The existing quality of a water should not be interpreted to represent the desirable quality in all cases.

If the receiving water quality is naturally above applicable water quality criteria, that is another issue entirely. In that case the Department typically will allow a discharge up to natural background.

If the discharger must meet an EPA effluent guideline regulation that requires a more stringent discharge quality than the natural or existing receiving water quality, the Department is very limited in its ability to affect the situation. Changes in the state law proposed by HB 342 will not assist the discharger for this kind of circumstance, since the federal regulation would still apply.

The Department has the flexibility in existing statutes and regulations to deal with situations where the natural quality of the receiving water is above applicable receiving water quality. If the receiving water quality is naturally above applicable water quality criteria, and

EPA is not constrained by an effluent guideline regulation that requires a more stringent discharge quality than the natural receiving water quality, the Department may be able to allow a discharge up to background or the Department may be able to consider writing site specific criteria that will reflect the natural quality.

STATE ASSUMPTION OF N.P.D.E.S. PROGRAM

There has been some interest expressed by the Commissioner's Office at DEC to assume the NPDES permitting program, since it appears the Department could implement the program with more flexibility than the EPA is willing to use. If the language in HB 342 were included in the DEC statutes, the Department would not be able to assume the NPDES program, since it would prohibit application of EPA effluent limitation guidelines for suspended solids effluent limits, as well as effluent limits which may require that a discharge be of higher quality than the receiving water.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB342

Revision Date: 3/22/96 Dept. Affected: Fish and Game
 Title: An Act relating to Water BRU: Habitat and Restoration
 Component: Habitat Protection
 Sponsor: Rokeberg
 Requester: House Special Committee Oil & Gas, Resources COMPONENT SERIAL NO. 2100

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES	150.0	150.0	150.0	150.0	150.0	150.0
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	5.0	5.0	5.0	5.0	5.0	5.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	175.0	175.0	175.0	175.0	175.0	175.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	175.0	175.0	175.0	175.0	175.0	175.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	175.0	175.0	175.0	175.0	175.0	175.0

Estimate of any current year (FY96) cost: \$ 0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Additional expenditures stem from the increased workload that will occur as the department is required to substantially increase the scope, substance, and specificity of its AS 16.05.840, 16.05.870, and 16.20 permit application reviews, and to significantly increase the number of field inspections in lieu of its current reliance on state water quality standards and the Department of Environmental Conservation's wastewater discharge permitting program for ensuring adequate water quality and habitat for fish and wildlife.

Prepared by: Janet Kowalski
 Division: Habitat and Restoration
 Approved by Commissioner: Oron Brum
 Agency: _____

Phone: 465-4105
 Date: 3/22/96
 Date: 3/22/96

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House of Representatives

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Representative Norman Rokeberg

SPONSOR STATEMENT

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

CSHB 342 (O&G) is supported by the 19 member Alaska Oil and Gas Association. This bill attempts to provide certainty to members of the public and industry on the water quality 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 received for use.

Thirdly, it authorizes the commissioner to establish a discharge standard for sediment and establishes the volumetric Imhoff Cone method or other EPA approved method for the measurement of sediment in discharged water.

Fourthly, it directs the commissioner to establish a standard that reflects a range of values that are satisfactory for downstream water uses but not more restrictive than current applicable federal water quality standards.

Lastly, it directs the commissioner to promptly adopt or amend the state standards so that the state's water quality standards remain consistent and not 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.

FISCAL NOTE
Correction of 2/7/96 Version

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB342

Revision Date: _____
Title: An Act relating to Water Quality
Sponsor: Rep. Rokeberg
Requestor: _____

Department Affected: Environmental Conservation
BRU: Environmental Quality
Component: Water Quality

COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	46.7	0.0	0.0	0.0	0.0	0.0
TRAVEL	2.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	1.9	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.5	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	51.1	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	51.1	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTLA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	51.1	0.0	0.0	0.0	0.0	0.0


Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS:

FULL-TIME	0.5	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 bill will require the Department to revise the Wastewater Regulations and the Water Quality Standards regulations. It is estimated that this process will take a total of 0.5 FTE of staff time plus expenses for public notice, hearing and mailings

Prepared by: Deena J. Henkins/Len Verrelli, Director 
Division: Air & Water Quality

Phone: 465-5060
Date: 2/21/96

Approved by Commissioner: 
Agency: Department of Environmental Conservation

Date: 2/21/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 342

Revision Date: _____ Dept. Affected: Fish and Game
 Title: An Act relating to water. BRU: Habitat and Restoration
 Component: Habitat
 Sponsor: Rokeberg
 Requester: House Special Committee Oil & Gas, Resources COMPONENT SERIAL NO. 486

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	150.0	150.0	150.0	150.0	150.0	150.0
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	5.0	5.0	5.0	5.0	5.0	5.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	175.0	175.0	175.0	175.0	175.0	175.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Additional expenditures stem from the increased workload that will occur as the department is required to substantially increase the scope, substance, and specificity of its AS 16.05.840, 16.05.870, and 16.20 permit application reviews, and to significantly increase the number of field inspections in lieu of its current reliance on state water quality standards and the Department of Environmental Conservations wastewater discharge permitting program for ensuring adequate water quality and habitat for fish and wildlife

Prepared by: Janet Kowalski
 Division: Habitat and Restoration
 Approved by Commissioner: Cecilia Bruce
 Agency: Fish and Game

Phone: 465-4105
 Date: 10/16/95
 Date: 10/16/95

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**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.



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-

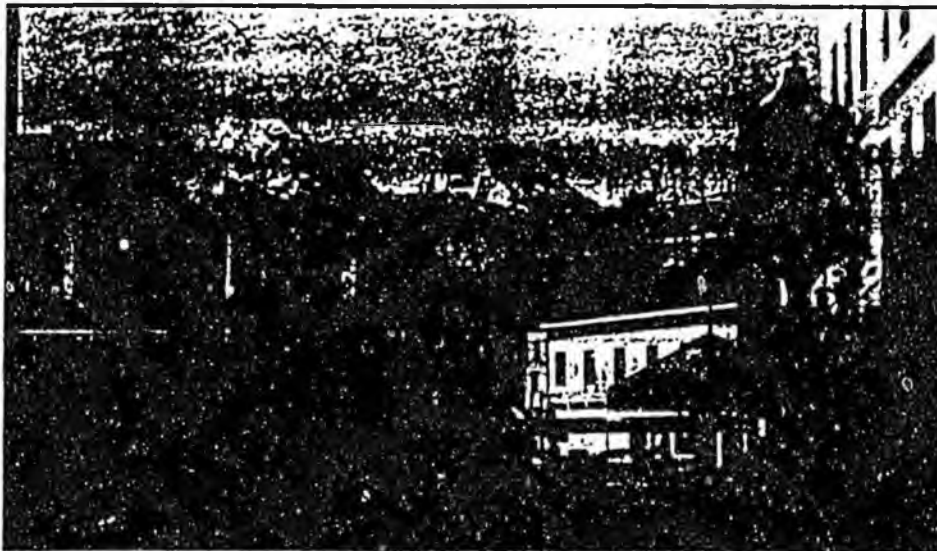
necessary and overwhelming restrictions on development.

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: 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, 110 Willoughby Avenue, Suite 105, Juneau, AK 99801-1795, or fax to 907-465-5274.

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 and safety.

- 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 Fasicot 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!

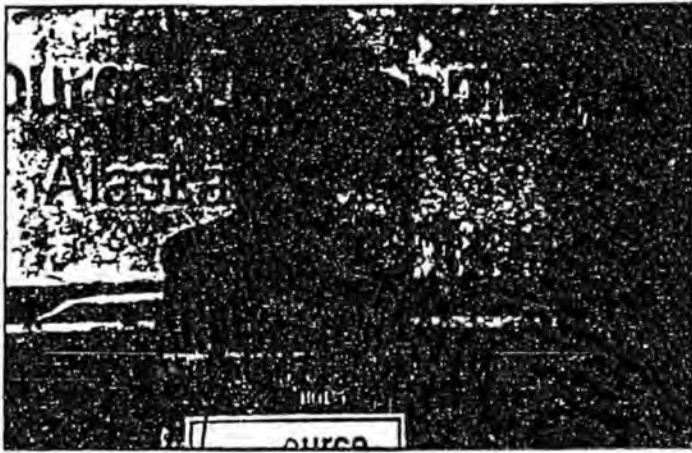
Remember, with our standard now at 18, we are still nearly three times stricter than the federal standard of 50, which like all federal drinking water standards, already has a significant safety margin built into it.

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)





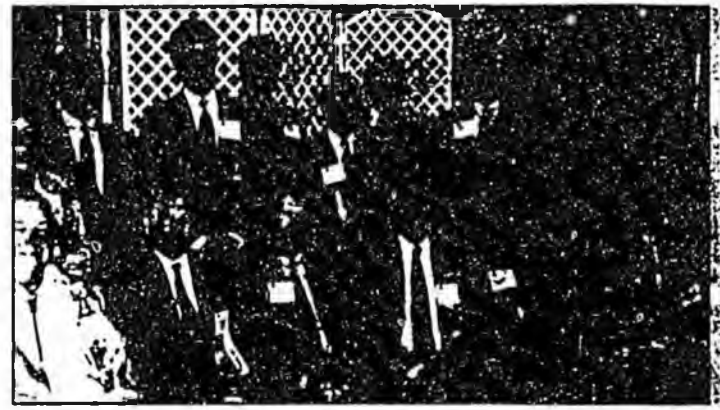
Congressman Don Young, Chairman of the House Resources Committee, enjoys a warm welcome before the large luncheon crowd at the RDC Annual Meeting. Young addressed new opportunities for Alaska in the new Congress.



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 Lemar 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

Published By The Alaska Oil & Gas Association

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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 Mc:gan 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.

Voice 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 unneeded 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 Coraova Street
Anchorage, AK 99501

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

ADN 8/24/77

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 that 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 107 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 IENKINS, WILLIAM J. 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

8/25/95

Publisher: BILL J. ALLEN

"Believing in Alaskans, putting Alaska first"

Editors: DENNIS FRADLEY, PAUL JENKINS, WILLIAM J. 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.

Water quality

THE 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.

HOUSE SPECIAL COMMITTEE ON OIL AND GAS
February 20, 1996
10:07 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Scott Ogan, Vice Chair
Representative Gary Davis
Representative Bill Williams
Representative Tom Brice
Representative Bettye Davis
Representative David Finkelstein

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

Briefing by Department of Law, Mr. Bob Loeffler - TAPS Tariff Cases
Before Federal Energy Regulatory Commission (FERC) and Alaska
Public Utilities Commission (APUC)

* HOUSE BILL NO. 342
"An Act relating to water quality."

- HEARD AND HELD

(* First public hearing)

PREVIOUS ACTION

BILL: HB 342

SHORT TITLE: WATER QUALITY STANDARDS

SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

JRN-DATE	JRN-PG		ACTION
05/09/95	2042	(H)	READ THE FIRST TIME - REFERRAL(S)
05/09/95	2042	(H)	O&G, RESOURCES
10/17/95		(H)	O&G AT 01:00 PM ANCHORAGE LIO
10/17/95		(H)	MINUTE(O&G)
02/13/96		(H)	O&G AT 10:00 AM CAPITOL 124
02/20/96		(H)	O&G AT 10:00 AM CAPITOL 124

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ACTION NARRATIVE

TAPE 96-11, SIDE A

Number 000

The House Oil & Gas Special Committee was called to order by Chairman Norman Rokeberg at 10:07 a.m. Members present at the call to order were Representatives Rokeberg, Ogan, G. Davis, Williams,

MR. LOEFFLER deferred to the Assistant Attorney General, Tina Kobayashi. Ms Kobayashi did not have a comment on this point.

Number 1904

HB 342 WATER QUALITY STANDARDS

CHAIRMAN ROKEBERG announced that next on the agenda was HB 342 an act relating to water quality. Chairman Rokeberg, sponsor of HB 342, said he introduced this bill last session as an attempt to reduce the controversy around regulations issued by the last Administration. During the last interim, meetings were held between representatives of the Administration, industry, and environmental agencies resulting in a number of resolutions and changes in regulations. He said the issues of mixing zones and sediment were not addressed and it is those areas that he wished to address in HB 342.

CHAIRMAN ROKEBERG added that he has an amendment which he will bring forth later in the meeting.

Number 1975

NANCY HILLSTRAND, Pioneer Alaska Fisheries, testified via teleconference from Homer. She had hoped there would have been a short explanation of HB 342. She said water quality is her main

concern as she is in the fisheries processing business. She hoped that the water in Alaska would stay at the highest quality. She stated that it was not good to enhance businesses at the risk of degrading the water supply. She added that her business seeks to maintain good water standards, and she would hope other businesses would strive to do so also. She said we will pay for the water quality in the long run and hoped that the legislature would honor the water quality that we deserve here in Alaska.

Number 2065

SARAH HANNAN, Executive Director, Alaska Environmental Lobby, Incorporated, was next to testify. She said her organization is a coalition of 20 environmental groups across the state of Alaska. She said the organization has been incorporated for 15 years in Alaska working with the legislature and has a two-fold mission. She said this mission is to work not only on behalf of the coalition but to work with members of the coalition to give them skills in dealing with the legislature. She said they have month long lobbyist who come down from various parts of Alaska to learn about the process. She then introduced Shirley Buckholz, as one of their newest volunteers and said Ms. Buckholz has been working on the water quality issue.

SHIRLEY BUCKHOLZ, Lobbyist, Alaska Environmental Lobby, Incorporated, read from a sponsor statement. "The Alaska

Environmental Lobby, Incorporated, opposes HB 342, 'An act relating to water quality.' Water that has been impaired by humans and their activity needs to be cleaned back up. An increase in the loading of the pollutants will move those pollutants further into other waters. We need to clean these waters up by starting at the original source and discharging higher quality water back into waters that we have previously damaged.

HB 342 violates the intent of the Federal Clean Water Act to keep all waters fishable and swimmable.

HB 342 ignores the fact that additional dirty discharge will cause greater downstream impact, while treated water could improve downstream conditions.

For example the Red Dog Mine background streams are not capable of supporting aquatic life in their natural state. The Alaska Clean Water Alliance (ACWA) is now working with the Department of Environmental Conservation (DEC) and Cominco to help facilitate new permits for the mine recognizing the fact they will not require the mine to discharge at pristine conditions. The Red Dog Creek didn't support aquatic life due to the natural metal content there, not prior human disruption.

The current Alaska water quality standards allow the use of site specific criteria. This specifically deals with natural conditions

and problems. Our current standards work. HB 342 allows our streams and rivers to be polluted. Please oppose it."

MS. BUCKHOLZ then read from her own statement, "This language, 'may not require a higher discharge water quality standard for water used than water received for use,' to me this means something like the Sitka Mill, which has been closed for a couple of years, would, if it had not been closed down, be able to dump dirty water. Originally when the mill started the water was clean but after years of dumping this is not the case. If this bill were in place, as written at the time the mill was closed, they would have been able to continue to operate while dumping poor quality water even though the water they were dumping into was clean when the mill originally opened. Since the water is now of poor quality they could continue dumping in water of poor quality. This would apply be it oil and gas, logging mills, placer mining or whatever.

Mother Earth can only sustain so much of this. Doing away with laws requiring clean-up of water you have previously mucked up and allowing the poor quality dumping to continue is no better than having no laws regarding clean-up."

Number 2228

REPRESENTATIVE OGAN clarified that Ms. Buckholz was his constituent and invited her to discuss issues of concern to her with him. He

said it is of benefit to the state that citizens get involved with the legislative process.

Number 2253

REPRESENTATIVE BRICE asked for background on the connection mentioned between the Red Dog Mine and the Alaska Alliance for Clean Water (ACWA) in their attempt to establish clean water standards.

Number 2277

MS. HANNAN said the ACWA is one of the 20 member groups. She said the arrangement has come about through a suit placed against Cominco. The alliance is now in the settlement process, and is participating in facilitating their additional permits to operate. She said she would get the contact name and phone number of Gershon Cohen of the ACWA.

Number 2317

ALICE BULLINGTON, UNOCAL, testified via teleconference from Anchorage. She read a statement into the record, "UNOCAL supports the goal of HB 342 which would establish state water quality standards that are no more stringent than the federal standards unless, on a case by case basis, scientific and economic evidence

justifies more stringent state regulations.

UNOCAL feels that the state water quality standards should be consistent with federal requirements, regulations should require only EPA approved measurement methods, and allowances should be made for discharge waters to match the quality of receiving waters.

The state is required to amend its regulations only when changes to federal regulations result in more restrictive standards. The state should also be required to change its standards when the federal regulations become less stringent. UNOCAL encourages agencies to develop efficient methods of modifying existing regulations to reflect changes in federal standards.

And finally, UNOCAL feels that there should be established review criteria for evaluating the merit of the argument for having state regulations that would be more stringent than federal requirements.

Thank you for the opportunity to provide testimony on the proposed bill."

Number 2390

REPRESENTATIVE GARY DAVIS asked if Ms. Bullington would elaborate on her company's utilization of mixing zones and the studies of producing downstream sediment.

Number 2404

MS. BULLINGTON said recently UNOCAL has gone through a rigorous process to determine what the impact of our mixing zones are in the Cook Inlet, including permanent mixing zone studies. She said they have found that there has not been an impact on the water of Cook Inlet from their continuing operations. She added that UNOCAL has done the most rigorous studies in the state of Alaska. She said these studies have incorporated over 800 modeling runs in an effort to determine what the worst case scenario would be in the Cook Inlet.

TAPE 95-11, SIDE B

Number 000

CHAIRMAN ROKEBERG asked if she had any comments about the language of HB 342 involving the water quality criteria and standards.

Number 015

MS. BULLINGTON said the initial draft of HB 342 is very good. She said she was aware of the discussions on how to change the language and expressed her willingness to help form a final draft of HB 342.

Number 045

SUSAN BRALEY, Chief, Technical Services and Program Development, Division of Air and Water Quality, Department of Environmental Conservation, was next to testify. She read a statement into the record, "among other things, our section is responsible for managing and administering the Alaska Water Quality Standards, which are regulations designed to protect the water quality of the state of Alaska.

I am here today to testify on behalf of the department on HB 342, an act relating to water quality. The department has concerns with this legislation because the statutory changes it proposes are difficult to interpret and would unduly limit the flexibility of establishing water quality criteria or permitting limits for the measurement of sediment, and also for waters already polluted or impaired.

Some of our concerns include: just overall the language in HB 342 appears to incorrectly using the terms for water quality criteria, water quality standards, and effluent limit discharges." She said she would be willing to explain how those terms are used and why the legislation is confusing. "This leads to difficulty in interpreting the legislation and how it relates to the existing Alaska Water Quality Standards regulations.

As read, it is not clear what the intent of HB 342 is. For example in Section 3(a), it appears to be to limit the measurement of

sediment to determine water quality in the water quality standards, but this change would also affect other regulations that the department has, for example, in our waste water regulations the efficiency of some treatment processes such as classical sewage treatment are historically described in terms of suspended solids. Because this bill would require that you could only measure in terms of settleable solids, it would prohibit the ability to use suspended solids as a monitoring tool or a measurement tool.

Subsection (b) is also difficult to interpret. In the instance where it appears to say that the department cannot apply an effluent limit that is more restrictive than federal water quality standards. The language also suggests that the effluent limit can not be more strict than the quality of the intake water, although it may also be interpreted to mean the upstream water or receiving water.

The bill does not recognize that some waters are already polluted. This bill would limit the ability to clean the waters back up to their original condition, since the language suggests that an effluent limit cannot be more strict than the quality of the intake water.

I would like to note that the department already has the flexibility in existing statutes and regulations to deal with situations where the natural quality of the receiving water is

above applicable receiving water quality.

As a final note, there has been some interest at the Department of Environmental Conservation (DEC) to assume the federal National Pollutant Discharge Elimination System (NPDES) permitting program, since it appears the DEC could implement the program with more flexibility than the Environmental Protection Agency (EPA) is willing to use. If language in HB 342 were included in the DEC statutes, the department would not be able to assume the NPDES program, since it would prohibit application of EPA effluent limitation guidelines for suspended solids effluent limits and therefore EPA would not agree to allow DEC to take over the NPDES program.

The department appreciates the opportunity to testify on HB 342."

MS. BRALEY said she would be available to answer any questions and would be happy to work with the legislators on HB 342.

Number 177

REPRESENTATIVE OGAN said the intent of HB 342 is to bring some common sense into the regulatory schemes. He said several of his constituents, miners in particular, have had problems with needing to have water that was cleaner than the water upstream. He asked if DEC reviews situations on a case by case basis. He again

referred to the case of water that goes through a heavy metal area before it reaches the mining area, but that the miners are required to clean up the water at a cost prohibitive rate.

Number 228

MS. BRALEY said the situation faced is that miners are required to get a federal NPDES permit, which creates limitations are outside the DEC's ability to do anything. She said on review of HB 342, it appeared that this was one of the things that the legislation was trying to correct by the bill's description of taking sediment and describing it as settleable solids rather than suspended solids. She didn't believe that HB 342 would correct the situation with the NPDES permits because DEC does not have primacy, therefore EPA is the agency that determines what the discharge limitations should be. She said DEC has been working with both the industry and EPA to reach a common sense approach.

Number 285

MS. BRALEY referred back to Representative Brice's question regarding the Red Dog Creek where the intake water doesn't support any life, and it is actually being cleaned up to the point where fish are going up farther in the stream than they have ever gone up before. She said DEC is working with Red Dog and the EPA to go through the reclassification as well as using site specific

criteria for the Red Dog Creek so that the miners won't ever have to go through this situation again by removing the strictest and highest use of water quality of that stream, which is drinking water. She said DEC has a section in their regulations which allows them to look at natural background quality and set site specific criteria that would apply to that specific water.

MS. BRALEY said that the Red Dog Creek issue is a complicated issue and the DEC is trying to use a couple of mechanisms to create a situation that will last a long time.

Number 344

REPRESENTATIVE FINKELSTEIN asked if the DEC had discretion to consider the issues in HB 342 in regards to intake water.

Number 355

MS. BRALEY said DEC does for state permits. She said DEC does have the ability to deal with natural background conditions in setting discharge limitations already, so HB 342 would increase their ability. She said, what HB 342 does not do, is resolve the issue of the NPDES permit and how it is applied.

REPRESENTATIVE FINKELSTEIN asked if DEC has the ability to consider settleable solids where it is biologically appropriate.

Number 394

MS. BRALEY said yes they do. She said DEC revised the Water Quality Standards in January of 1995. She said sediment is listed as a criteria and at that time there was a lot of discussion about this issue. She said this discussion included whether you used the Imhoff Cone which measures what settles out versus the total suspended solids. She said the DEC clarified in the January 1995 regulations, that for purposes of measuring sediment, it was specified that it is would use the settleable solid method. She reiterated the problem of HB 342, referring to only using settleable solids as discharges. She said this takes it out of the criteria description and puts it into another description. It is common with NPDES and state permits to require that a Total Suspended Solids (TSS) be used as a measurement to see how you are doing. She referred to her experience of using this method when she worked at a seafood processing plant in Kodiak. She said TSS would not be able to be used as a monitoring tool under HB 342, a tool commonly used by industry.

Number 468

REPRESENTATIVE FINKELSTEIN asked if the most critical factor, from a fishery perspective, was suspended rather the settle solids.

Number 489