ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8072

9419 HOUSE RULES

55

INTERROGATORY NO. 10: Please describe in detail the "options available to [you]" referenced on page 2 of the Letter.

RESPONSE: See general objections.

INTERROGATORY NO. 11: Please describe in detail the entire contents of your conversations with Shelia Toomey since November 1994.

a) in particular please state whether you told Shelia Toomey that "the panel could decide to reopen the case against Sanders," or words to that effect. If you did say words to that effect, please explain why you did not tell Representative Sanders this in the Letter.

b) whether you told Shelia Toomey that your options "start with talking to a lawyer," or words to that effect. If so, please explain why you did not tell Representative Sanders this in the Letter.

RESPONSE: See general objections.

INTERROGATORY NO. 12: Please describe in detail the entire contents of your conversation(s) with Shelia Toomey since November 1, 1994. In particular, please state whether your said:

(1) Representative Sander's apology was "minimal," and what you meant by the use of that term, and the facts and circumstances on which you based your statement.

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(907) 276-1557

(2) "I think some committee member were irritated at the tone of his apology," and identified by name, address, and phone number who was irritated and why, and the facts and circumstances on which you based your statement.

(3) "it was a unanimous feeling from the committee that he had not lived up to his responsibility," and describe in detail how and when you obtained this information, and the facts and circumstances giving rise to your opinion.

(4) "the committee felt it was slapped in the face," and if so, whether you believe Representative Sanders has committed any ethics violations since February 1, 1995. Also please include a description of all facts and circumstances upon which you relief for your opinion.

RESPONSE: See general objections.

INTERROGATORY NO. 13: Please describe in detail the contents of any and all conversations you had with Shelia Toomey since November 1, 1994, including but not limited to where, when, and for how long the conversation occurred, whether you or anyone else took notes, and whether anyone else was present.

RESPONSE: See general objections.

INTERROGATORY NO. 14: Please state whether you told Shelia Toomey "I think it was an insult," or words to that effect, and if

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so, please describe in detail the facts or circumstances which gave rise to your opinion.

RESPONSE: See general objections.

INTERROGATORY NO. 15: Please identify by name, address, and phone number the identity of the person or persons who brought the March issue of Representative Sander's legislative newsletter to the attention of the subcommittee. Please describe in detail in what manner it was reported, i.e., whether informally or as a properly sworn complaint.

RESPONSE: See general objections.

INTERROGATORY NO. 16: Please identify any ethics charges brought by anyone, including the Ethics Committee or subcommittees against Representative Sanders prior to taking curative action by mailing the Letter to the media.

RESPONSE: See general objections.

DATED this 11th day of October, 1996, at Anchorage, Alaska.

BOGLE & GATES, P.L.L.C.
Attorneys for the House Subcommittee of the Select Committee on Legislative Ethics

By: _____
Michael R. Spaan

BOGLE&GATES
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(907) 276-1557

This is to certify that on the
11 of October, 1996, a true
and correct copy of this document
was hand delivered/~~mailed/faxed~~
to:

Lester K. Syren, Esq.
Law Offices of Lester K. Syren
1351 Huffman Road, Suite 2A
Anchorage, Alaska 99501

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Company
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10/31/96

Mike Spaan

Attn: Mike SPAAN

Confidential

Potential Witness:

PATRICIA PEREZ: P.O. Box 21243, Juneau, AK 99802 586-2579

Barnett contacted her on 10/31/96.

Perez verified that she worked for Sanders in 1996 and hopes to work for him in 1997. She recalls the March 4 letter to District 19 Straw Poll participants and she participated by printing out the letters, folding them and mailing them. She assisted Jeanne Lovell with the project. She estimates that the entire mailing project took about a day, with other legislative duties being done in between.

She commented that she was surprised to hear that Rep. Sanders was in trouble as he is very conscientious about the ethics law, after getting in trouble previously. She thinks she remembers him talking with Jeanne about whether the letter would be a problem.

Impression: She sounded candid, supportive of Sanders.

P.S. I asked her if she was being represented by an attorney. She said no, she knew nothing about this had been gone 2 weeks.

I think we may wish to have her testify telephonically, if Lester will agree to it.

Exhibit 15

Michael N. White
Hearing Master
1227 W. 9th Avenue
Anchorage, AK 99501

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IN RE: REPRESENTATIVE JERRY SANDERS
CASE H 96-02

ORDER NO. 1

By letter, counsel for Representative Sanders has filed a "Notice of Change of Judge". No authority for exercising a peremptory challenge to a master in an administrative proceeding has been cited. When this was pointed out by letter, counsel cited the civil rule provision that no reason must be given for such a challenge. There is an obvious distinction between setting forth a reason for the tactical decision for exercising a peremptory challenge and the legal authority that gives rise to the right to exercise such a challenge. I can find no authority for such a challenge. The issue was referred to the committee by letter on October 15, 1996 and the Committee has directed that the "Notice of Change of Judge" be disregarded. See attached letter from Susan Barnett.

By letter, counsel for Representative Sanders has identified what he sees to be a basis for recusal of the master, but has not formally moved for recusal. Counsel states that his fiancee, who is not identified in the letter, is the law clerk for Judge Sedwick. No legal authority has been presented as to why that would form a basis for recusal. Undersigned has reviewed the Judicial Canons and finds no basis for the recusal. Undersigned does not know who counsel's fiancee is, was not involved in the case discussed by counsel, and categorically can state that any involvement by counsel's fiancee in the case mentioned, or any other case master's firm has before Judge Sedwick is without significance to undersigned. This matter was also referred to the Committee and the Committee has directed that there be no basis found for a recusal.

Upon a complete review of the file in this matter, it is clear that a status conference would be beneficial to the parties and to the master. Therefore, it is ordered that a status conference will take place at 5:00 P.M. on October 16, 1996. This time was chosen to best accommodate counsel for Representative Sanders who has indicated that he has conflicts during the day. If the parties can reach agreement on a more convenient time on October 16, 1996 or before 1:00 PM on October 17, 1996 one of the attorneys should call undersigned.

Counsel for Representative Sanders has indicated that he has a busy schedule this week. As a result, undersigned is attempting to be as flexible as possible in fitting in such a hearing and will schedule the hearing at any reasonable time to fit counsel's schedule during the next two days or evenings. Said hearing will be limited in time and scope. If counsel for Representative Sanders decides not to appear at the status conference, the master will issue a scheduling order and render decisions on the following outstanding issues, without input from counsel:

1. Representative Sanders' failure to respond to the summons;
2. Whether a hearing will be held and, if so, when the hearing will be held;
3. Issues surrounding what documents are public and what documents are confidential;
4. Pre-hearing schedule, if a hearing is to be ordered;

This schedule will consist of discovery deadlines, motion deadlines and other dates which will be strictly adhered to in preparation for a possible hearing; and

5. Any other procedural matters that the parties wish addressed.

Dated this 15th day of October, 1996.

Michael N. White
Master

Michael N. White
Hearing Master
1227 W. 9th Avenue
Anchorage, AK 99501

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IN RE: REPRESENTATIVE JERRY SANDERS
CASE H 96-02

ORDER NO. 2

A status hearing was scheduled on October 16, 1996 at the office of the hearing officer. Counsel for Representative Sanders was provided the opportunity to reschedule the hearing at his convenience, but chose not to do so, and chose not to appear. As a courtesy, because Mr. Syren indicated that he had depositions this week, the hearing was set for 5:00 PM to accommodate his schedule. Rather than appearing, counsel for Representative Sanders sent a letter indicating that he was not appearing because the time was inconvenient and that he would not appear because he does not wish to waive his client's right to object to the master's appointment.

As stated in a previous order, certain procedural issues would be addressed at the status conference. Those issues would be either addressed at the status conference or would be determined by written order, if Representative Sanders waived his right to be present at the status conference. The committee indicated that due to scheduling issues a hearing, if held, must be held on November 14 and 15, 1996. There has been no motion to continue that date or setting forth reasons that those dates, which fall within the committee's procedural rules, would not be appropriate. It would have been helpful to the undersigned to hear the arguments of counsel, however, counsel waived the right to present such arguments. Had counsel contacted the master and tried to reschedule the hearing to a date convenient to him, every effort would have been made to do so. On the contrary, counsel simply indicated that he would not appear. Based upon the documents on file, I make the following

orders regarding scheduling and other procedural aspects of the case:

1. Representative Sanders has not responded to the summons. His attorney has appeared in the case. No objection has been raised as to the manner of service or notice, although objection has been made as to the time given for a response to the summons. Representative Sanders was charged by the committee on September 23, 1996. The summons and the charges were received by Representative Sanders' attorney on September 26, 1996. (October 7, 1996 letter from Lester Syren to Margie Mac Neille). Committee procedures provide for ten days to respond to the charges. Sec. 14(d). Ten days have passed and no response has been made. A.S. 24.60.170(j) provides that if a person formally charged has not admitted the allegations of the charge that the committee shall schedule a hearing on the charge. If Representative Sanders wishes to respond to the charges, he may do so, however, his delay in responding to the charges is not going to delay the proceedings. Therefore, a hearing will be scheduled on the charges.

2. A.S. 24.60.170(j) provides that the hearing shall be held more than twenty days after service of the summons. Committee procedures set forth that the hearing shall be held on a date more than twenty days after the service of the charges, but no later than sixty days from the service of the charges. Procedures at Sec. 14(d). The hearing shall take place on November 14-15, 1996 in Anchorage, Alaska.

3. The parties shall provide to each other by November 1, 1996 the following information in discovery:

a) The names and addresses of all witnesses it intends to call at the hearing;

b) A summary of the testimony to be elicited by each witness; and

c) A copy of all documents expected to be admitted at the hearing.

A willful failure to comply with this, or any other discovery order may result in the exclusion of evidence at the hearing.

4. Either party may serve upon the other written discovery requests. Any requests served in writing shall be

served by October 28, 1996 and shall be answered by November 8, 1996.

5. Depositions may be conducted consistent with the Civil Rules and the Committee Procedures, but shall be completed by November 7, 1996.

6. Witness lists shall be exchanged on or before November 1, 1996.

7. A final pre-trial status conference shall be held on November 11, 1996 at 3:00 PM at a place to be determined later.

8. All documents, including letters sent to the committee, filed relating to this case since the date of the service of the complaint, are to be treated as public documents, in the absence of an order otherwise. A.S. 24.60.170(m). If either party has objection to any document generated after the filing of the complaint being treated as a public document, that party shall file a motion setting forth with particularity, the previously filed documents and the basis for a claim of confidentiality. Such a motion shall be filed by October 18, 1996. Absent an order to the contrary, all documents generated after the filing of the complaint may be released on October 21, 1996.

9. All requests for relief or for any type of ruling shall be in the form of a motion with the original sent to the committee and a copy facsimiled to the master. The letters that have been sent have been confusing. It is often difficult to determine whether somewhere within the rhetoric there is a request for relief or whether the entire document is simply sent to complain about the process, without seeking a ruling.

10. No appearance by counsel for Representative Sanders shall be construed to be a waiver to challenge his asserted right to exercise a peremptory challenge to the master.

11. If there are any further matters that the parties believe should be addressed, they are requested to call them to the attention of the master.

12. All deadlines set in this case will be strictly enforced, absent a demonstration of good cause otherwise.

Dated this 16th day of October, 1996.

Michael N. White
Master

Michael N. White
Hearing Master
1227 W. 9th Ave.
Anchorage, AK 99501

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CASE H-96-02

ORDER NO. 3

Based upon the request by respondent for additional time to address issues relating to public disclosure, it is ordered that either party may file a brief by noon on October 23, 1996 as to public dissemination of documents relating to this case.

It is further ordered that no documents shall be released until further order of the master which is expected to be rendered on October 23 or October 24, 1996.

Dated this 18th day of October, 1996.

Michael N. White, Master

Michael N. White
Hearing Master
1227 W. 9th Ave.
Anchorage, AK 99501

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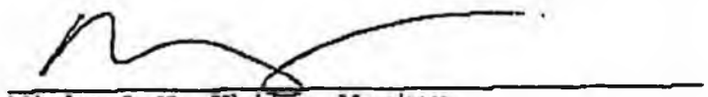
CASE H-96-02

ORDER NO. 4

Based upon the scheduling in this case, all persons who are served with discovery requests for which there is a valid legal obligation to respond, shall do so within ten days of service of the request. If this order will cause an undue hardship upon the rescipient of the discovery, the person may contact the undersigned to seek additional time to the extent such is needed.

Dated this 18th day of October, 1996.



Michael N. White, Master

Michael N. White
Hearing Master
1227 W. 9th Ave.
Anchorage, AK 99501

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CASE H-96-02

ORDER NO. 5

Counsel for Representative Sanders has filed an objection to a subpoena for back up files of Representative Sanders. The subpoena was not attached to the objection. Absent a copy of the subpoena it is difficult to assess the arguments made by Representative Sanders. Submitted with the objection is a two page letter to Pam Varni which sets forth in more detail the basis for the objections raised. I will treat the letter as an exhibit containing argument on the objection.

If the committee wishes to respond to the objections, it shall do so by October 24, 1996. If either party wishes a brief telephonic hearing on this issue, counsel shall discuss a convenient time for such and contact undersigned.

Dated this 21st day of October, 1996.

Michael N. White, Master

Michael N. White
Hearing Master
1227 W. 9th Ave.
Anchorage, AK 99501

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CASE H-96-02

ORDER NO. 6

1. Apparently in response to the objection to the subpoena served upon Legislative Affairs, the committee has delivered to the master, in a sealed envelope, the materials responsive to the subpoena. The parties should address what it is they wish the master to do in regard to these documents by October 25, 1996. If there is a request for the responsive documents to be screened, the parties should advise the master as to categories of documents that the respective parties believe should be produced and the categories of documents that should not be produced.

2. By Order No. 3, the parties were directed to brief, if they desired to do so, issues as to the public dissemination of documents by October 23, 1996. Pursuant to the order of the Superior Court, briefing shall be filed by October 28, 1996. Although it appears that the court did not stay a decision on this issue, and that the court did not indicate that it would address this particular issue, the parties can expect that no decision on this issue will be rendered until after the hearing of October 29, 1996. All other scheduling orders will remain in effect until modified or stayed by the court.

Dated this 22nd day of October, 1996.

___/s/_____
Michael N. White, Master

Received 8:05 AM.
10-28-96

Michael N. White
Hearing Master
1227 W. 9th Avenue
Anchorage, AK 99501

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IN RE: REPRESENTATIVE JERRY SANDERS
CASE H 96-02

ORDER NO. 7

The committee served a subpoena on the Executive Director of the Legislative Affairs Agency on or about October 15, 1996. The subpoena called for certain backup files of Representative Sanders and payroll records.

On October 18, 1996, counsel for Representative Sanders filed a two paragraph "[O]bjection to Subpoena to Appear and Produce". In addition, counsel for Representative Sanders attached a two page letter to the subject of the subpoena in which he outlined his objections to the subpoena. On October 21, undersigned submitted Order Number 5 in which the parties were invited to initiate a hearing, to express their positions, if desired. Neither party sought a hearing. The committee submitted a memorandum setting forth its position on the subpoena. No additional materials or arguments were submitted by Representative Sanders.

During the week of October 21, 1996, the subject of the subpoena delivered the documents, in a sealed envelope to the master. In response, Order Number 6 was issued. That order invited input by either party as to the issues regarding the documents. Such input was to be provided by October 25, 1996. No response by Representative Sanders was filed.

Therefore, before the master is the two paragraph objection, the memorandum by the committee, and the actual documents responsive to the subpoena. Based on a careful review of the papers filed, the master holds that the documents responsive to the subpoena are properly

discoverable and will be provided to the committee forthwith.

The objection filed by Representative Sanders asserts that the subpoena is defective because it does not comply with AS 24.25.010, that it seeks attorney client privileged material, work product material and is in violation of the Fourth and Fifth Amendments to the United States Constitution. Additional objection is made that the subpoena is vague, overbroad and irrelevant.[1]

AS 24.60.150(b)(2) provides the legal authority for the issuance of the subpoena. The provisions of AS 24.25.010 are clearly not applicable to investigations by the Ethics Committee. The subpoena complies with AS 24.60.150(b)(2) and was therefore properly issued.

---

[1] In a letter of October 23, 1996, counsel for Representative Sanders made additional assertions regarding the discoverability of the subject documents. Undersigned has repeatedly stated that arguments regarding issues in this case shall be set forth in pleadings, not in letters. Such a requirement assures fairness to both parties and assures an adequate record. Two points were made in the letter. First, counsel argues that the order of Judge Murphy prohibits dissemination of the subpoenaed documents. The master does not read the order to apply to distribution of discovery documents to the parties. The order addresses dissemination of documents to the public, not to the parties. Additionally, with due respect to the court, the order is not totally clear to the master about public dissemination of documents. The order clearly prohibits disclosure of documents until after Petitioner (Representative Sanders) has an opportunity to file motions regarding dissemination by the close of business on October 28, 1996. Undersigned does not read the order to go beyond providing Representative Sanders additional time to provide briefing to the master, based upon Representative Sanders argument to the court that he had been required to file briefing by October 18, 1996. Resolution of this issue is not necessary to deciding the subpoena issue, however, the parties may wish to obtain clarification from the court as to the breadth of the stay of public dissemination of documents. Based upon the scheduling of a hearing for October 29, 1996, undersigned told the parties that no order would issue as to public documents until after that hearing. There now is reason to believe that a hearing may not take place on October 29, 1996 due to additional pleadings filed by the committee. Undersigned reads the order as only staying dissemination of documents until October 28, 1996, by which time Petitioner will have an opportunity to brief the issues. It would be of assistance to the master for the parties to obtain clarification from the court, or in the absence of such clarification, filing a memorandum setting forth the parties' positions as to the intention of the court. The second argument set forth in counsel's letter has to do with the availability of discovery in this matter. Counsel misinterprets a prior statement by the master about whether written discovery to non-parties pursuant to Civil Rules 33 and 34 may be obtained from non-parties. The issue of whether a non-party can be subjected to interrogatories and requests for production is not remotely similar to whether the committee or the respondent may obtain documents through the use of a subpoena.

The other objections set forth by Representative Sanders have no merit and merit little discussion. Undersigned has reviewed the materials responsive to the subpoena. There are no documents which even arguably could fall under any of the privileges asserted by Representative Sanders. The documents consist of a computer preserved letter, along with an apparent computer mailing list of the recipients of the letter. No privilege even remotely would apply to these materials. Undersigned knows nothing of the facts of the allegations other than what is alleged in the complaint. Although Representative Sanders has asserted that the materials are irrelevant and would not lead to relevant or admissible evidence, he has failed to demonstrate the validity of that argument. On their face, the documents appear to be directly relevant to the charges asserted by the committee. Certainly, under standards relating to discovery, the materials are not irrelevant.

For the reasons set forth, the master produces the documents to the committee. The documents are attached to this order. These documents are not public documents and shall not be disseminated beyond the parties to this case.

Dated this 27th day of October, 1996.

Michael N. White
Master

Michael N. White
Hearing Master
1227 W. 9th Avenue
Anchorage, AK 99501

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IN RE: REPRESENTATIVE JERRY SANDERS
CASE H 96-02

ORDER NO. 8

Although not requried to do so, the committee submitted the issue of public disclosure of documents relating to this case to the hearing officer for decision. The hearing officer scheduled a status conference with the issue of the public dissemination of documents to be one of the topics addressed. Counsel for Representative Sanders did not attend the hearing. After the scheduled hearing, the hearing officer ordered that documents relating to this case, which were generated after the finding of probable cause, would become public as of October 21, 1996, in the absence of an order to the contrary. Representative Sanders was given until October 18, 1996 to file a motion or memorandum setting forth objections to the proposed public dissemination of documents. Rather than filing a substantive response, on October 18, 1996, Representative Sanders, through counsel, asserted that the order for briefing by October 18, 1996 gave him insufficient time. In response, the hearing officer ordered that briefing could be filed by October 23, 1996, and stayed release of documents until after that date. Prior to October 23, 1996, as a result of an order entered by Judge Murphy, the hearing officer once again extended the time for briefing this issue until October 28, 1996. The committee filed a memorandum urging release of documents, Representative Sanders has not filed a motion or memorandum objecting to the release of documents.

On October 28, 1996 the Superior Court dismissed Representative Sanders' appeal in which one of the issues was the public dissemination of documents. There is

sufficient information available for this order to be entered relating to the release of documents to the public.

Courts recognize that there is a fundamental public interest in Alaska in the disclosure of documents relating to public business. Anchorage School District v. Anchorage Daily News, 779 P.2d 1191 (Alaska 1989). Because of the fundamental nature of the public right to know, the burden of establishing a basis for non-disclosure is on the person or body which seeks non-disclosure. Anchorage School District v. Anchorage Daily News, 779 P.2d 1191, 1193 (Alaska 1989). In the Anchorage School District case, the court stated:

> The people of this state, through their elected representatives, have stated in the clearest of terms that it is more important that they have access to this type of information than that it remain confidential. Id at 1193. [emphasis in original]

When specifically addressing the public right to know as to the legislative process, the issue is up to the legislature to decide. Abood v. League of Women Voters of Alaska, 743 P.2d 333 (Alaska 1987). The legislature has decided when and to what extent its ethics committee process should be open to the public, and its decision in this regard is absolutely controlling.

AS 24.60.170(m) provides:

> All documents issued by the committee after a determination of probable cause to believe that the subject of a complaint has violated this chapter, including an opinion recommending corrective action under (g) of this section and a formal charge under (h) of this section are subject to public inspection. Hearings of the committee under (j) of this section are open to the public, and documents presented at a hearing and motions filed in connection with the hearing, are subject to inspection by the public. Deliberations of the committee following a hearing, deliberations on motions filed by the subject of a charge under (h) of this section, and

deliberations concerning appropriate sanctions are confidential.

AS 24.60.170(m) differs from AS 24.60.170(d) which provides that committee action taken before the finding of probable cause is confidential. The structure enacted by the legislature is entirely sensible. Legislators accused of violations for which there is no probable cause are protected from public disclosure of what might amount to rumors and innuendo, while conduct that has been determined to establish probable cause of a violation will be disclosed.

AS 24.60.170(m) is relatively straightforward. It provides that documents issued by the committee after the determination of probable cause "are subject to public inspection". Additionally, the statute provides that documents submitted at hearing and motions connected with the hearing are public documents. Motions made before the hearing are "connected with the hearing" and should be considered public documents. Essentially, the legislature set forth a standard similar to that in effect for any civil litigation. Based upon the above, the hearing officer agrees with the position of the committee at page two of its memorandum which identifies categories of documents which should be subject to public inspection.

Therefore, it is ordered that the following documents shall be available for public inspection:

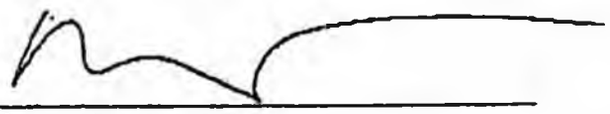
1. All motions filed by either party or byt any person relating to discovery sought from that person;
2. All correspondence submitted to the hearing officer or the committee by any party to this case or by any person relating to discovery sought from the person;
3. All correspondence generated by the hearing officer relating to this case;
4. All orders issued by the hearing officer;
5. Public notices of hearings or public meetings; and
6. All documents generated after the finding of probable cause by the committee relating to this case.

Excepted from this order are documents which are subject to attorney-client or work product privileges, documents provided in discovery, investigative reports which

are not used at the hearing and documents relating to deliberations of the committee.

In sum, the rule is for disclosure of all those categories of documents which would be disclosed in any civil case. If there are any particular documents for which there is a doubt in either parties' mind about whether disclosure is required, the party should submit the document to the hearing officer and a decision on an expedited basis will be made.

Dated this 29th day of October, 1996.



Michael N. White
Master

Michael N. White
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1227 W. 9th Avenue
Anchorage, AK 99501

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IN RE: REPRESENTATIVE JERRY SANDERS
CASE H 96-02

ORDER NO. 9

Respondent has moved for a protective order as to the timing of the depositions of Representative Sanders and another witness. The committee has responded that it does not oppose a change of dates, but indicates that there may be difficulty of holding the deposition on the proposed date of Respondent, due to travel plans. It is ordered that the motion is granted and that the depositions shall take place at a time convenient for the parties on November 7, 1996 or November 8, 1996, or on such other date as agreed to between the parties.

Dated this 29th day of October, 1996.

Michael N. White
Master

HB

51

LEGISLATIVE REFERENCE LIBRARY

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3808
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 400
Juneau, Alaska 99801-2105

Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

HB342

HOUSE SPECIAL COMMITTEE ON OIL + GAS
2-20-96
3-21-96

HOUSE RESOURCES
3-27-96
3-29-96
4-1-96
4-17-96
4-19-96

SENATE RESOURCES
5-1-96
5-2-96
5-3-96
5-6-96

HB51

HOUSE SPECIAL COMMITTEE ON OIL + GAS
1-23-97
1-30-97

HOUSE FINANCE
2-18-97 < 2-20-97
2-26-97
2-27-97

LEGAL SERVICES

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

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

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

MEMORANDUM March 17, 1997

SUBJECT: Sectional Summary of CSHB 51( ). (Draft version "C")

TO: Representative Pete Kott
Attn: George Dozier

FROM: Terri Lauterbach
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. You have not asked any particular questions about this bill, so this summary is brief. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, let me know.

Section 1. Findings and intent. Subsection (b) relates specifically to sec. 5.

Section 2. Clarifies that the state policy is to have DEC seek primacy for NPDES enforcement.

Section 3. Describes circumstances under which the natural condition of water should constitute the applicable standard of quality for the water. "Natural condition" is not defined.

Section 4. Sec. 46.03.085 sets requirements for the state's water quality standards. Sec. 46.03.087 establishes special procedures for DEC to follow in order to adopt a regulation that is an exception to the requirements of Sec. 46.03.085. Sec. 46.03.088 gives a definition of "background condition" which is a term used in Sec.46.03.085(a)(4). Also applies that definition to DEC's regulations.

Section 5. Allows DEC to impose administrative penalties for violations relating to public water supply systems. This section will allow Alaska to continue its "primacy" status in this area by bringing state law into conformity with a new federal law enacted in August 1996. Please see the findings in sec. 1(b) for further detail.

Section 6. Court rule change section.

— Sectional Analysis on Proposed CS —

Section 7. Court rule change section.

Section 8. Requires review and rejustification of current water quality regulations.

Section 9. Allows the regulations process to begin immediately although the regulations can't take effect until the related bill section takes effect.

Section 10. Provides that the authority under sec. 5 to impose administrative penalties won't take effect until absolutely required under federal law or regulations.

Section 11. Effective date for the beginning of the regulations process under sec. 9.

TML:jdr
97-186.jdr

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Lauterbach
3/19/97

AMENDMENT

#2

OFFERED IN THE HOUSE

TO: Draft CSHB 51( ) ("~~C~~" 5 Version)

Page 5, following line ~~13~~ 21:

Insert "(1)"

Page 5, lines 15 - 16:

Delete ". When"

Insert "; when"

delete

Page 5, line 18:

Delete ". If"

Insert "; if"

Page 5, line ~~21~~ 25, following "~~discharge".~~ 1972

Insert ";

~~(1)~~ 3 "drinking water" means a body of water or a water supply from which the water is safe to drink in its natural state;

~~(2)~~ 4 "industrial use" means use of a water supply for fish processing, food processing, mining, placer mining, manufacturing, development, or production, including energy production"

Alaska Environmental Lobby, Inc.
P.O. Box 22151 Juneau, Alaska 99802
Phone: 907-463-3366
Fax: 907-463-3312

Twentieth Legislature - First Session

HB 51: "An act relating to water quality and the procedures required to implement certain federal regulatory changes."

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

- jeopardize the health and welfare of Alaskans and their ability to protect their water resources by lowering Alaska's water quality standards to the lowest level of standards nationwide,

- lead to greater confusion, delays, and litigation in the permitting process,

- conflict with a basic principle of the Clean Water Act by ignoring the concept of multiple users when setting water quality standards,

- introduce a definition of "background condition" that would make polluted water the standard for future discharges,

- require DEC to deal with new, time-intensive, confusing procedures for administering water quality standards, without the benefit of sufficient additional funding,

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

Susan E. Schrader, Executive Director
3/19/97

ALASKA STATE LEGISLATURE
House of Representatives

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Representative Norman Rokeberg

MEMORANDUM

TO: Representative Pete Kott
Chairman, House Rules Committee

FROM: Representative Norman Rokeberg

DATE: March 18, 1997

SUBJECT: **Sponsor Statement**

The Resource Development Council, (RDC), has been a prime supporter of last year's HB 342 and now on HB 51. HB 51 is a common sense approach to proposing regulations.

The battle over resource development in Alaska is not about money. Opposition from the environmental community is rarely about money, it is about humans using the land and resources. Their disdain for private property rights and economic activity is evident when the rhetoric states they are pursuing a broader public interest objective.

The environmental community seems to be ignoring the long history of resource development and extraction in Alaska. The contribution of resource development to the quality of life and jobs in Alaska does not impress them. They do not care about jobs and the contribution that resource development makes to the local, state, and national economies.

Alaska has the right to utilize our rich resources in a responsible manner to benefit the citizens of our great state.

WHY DO WE NEED HB 51 AND WHY NOW?

1. A different way of proposing regulations is needed for DEC as well as a different point of view. (Unfortunately, this point of view is not shared by DEC or the environmental community.)

2. Regulations should be based on sound science that are technologically feasible.

3. All departments need to begin to do cost/benefit analysis. Regulations that make compliance standards stricter and stricter are unlikely to result in significant risk reduction. It will increase costs substantially and be wasteful. Zero tolerance is the ideal but remember it is only the ideal. (The analysis required in the bill for proposed regulations by DEC should already be in place because of similar requirements set forth in EPA requirements for states.)

4. Unreasonable delays in permitting of all types of industries that need water quality permits: i.e., the Red Dog mine began its mixing zone application in 1983 and on March 28, 1997 half of its request will ***finally*** become final.

5. DEC does not think the Legislature is the proper forum for debating water policy. Frankly, DEC believes we are unqualified and unreasonable. However, for over a year DEC has been unable or unwilling to identify DEC regulations that are more strict than the federal regulation they are based upon. (The review process outlined in the bill is already required of DEC by the federal Clean Water Act and EPA. DEC has chosen to characterize the review process as an insurmountable task.)

6. This bill is symbolic of the message we are trying to send to industry: ***ALASKA IS OPEN FOR BUSINESS.***

PolicyFax

Essay

by the Alexis de Tocqueville Institution ✦ Just call 510/208-8000

Topic Code 23

Environmental Politics: Who Cares About the Facts?

In the battle between environ-mentalism and sound science the facts are often the earliest casualties. Such was the case in the crusade to save the Northern Spotted Owl, hatched, like so many such plans, somewhere in the bureaucratic tangle of the Department of the Interior's (DOI) regulatory sub-agencies of the Fish and Wildlife Service, the National Park Service, and the Bureau of Land Management.

The scheme, conceived by DOI bureaucrats in cahoots with well-heeled special interest lawyers, and aided and abetted by liberal judges, was a classic example of questionable science used to advance the agenda of environmental extremists. By listing the owl as an "endangered species," old growth forests — decreed as the owls' habitat by their protectors — were removed from timber harvest.

This economic quarantine cost tens of thousands of loggers and mill workers their jobs, and devastated the communities across the Pacific Northwest that depend upon the forest products industry. Moreover, the owl-inspired logging restrictions rippled throughout the economy, increasing the price of the average new house by as much as $5,000.

Ironically, as NBC Nightly News reported in their broadcast of September 17, the Northern Spotted Owl is not endangered at all. The owls' so-called "endangered" status is no more than a smoke screen to cordon-off old growth forests to logging interests. According to the NBC report, the owl is doing well in new growth forests, despite the federal regulations that insist they live only in old growth habitat. The reason for their adaptation it seems is that the dusky footed wood rat — a delicacy in the owl diet — thrives in new growth forests.

The owls, therefore, in open defiance of federal regulations, continue to pursue their livelihood of rat catching in the new growth forests. Unfortunately for the loggers and mill workers, and their families, without the big dollar support of legions of environmental lawyers behind them, they are unable to pursue *their* livelihoods.

Today the Department of Interior, moving down the "to-do" list of the extreme environmental lobby, is on a new misinformation campaign. Now they want to stop ranching on public rangeland.

A June internal memo from the Department's Office of Communications to Secretary Babbit and Bureau of Land Management (BLM) Director Jim Baca proposes that "we must make deliberate and public attempts to prove how bad the conditions are in many riparian zones," despite that fact that BLM's "own statistics can be used to show the range is in better shape than at any point in this century."

Riparian zone is a fancy name for a stream or river bank. These areas are indeed of great ecological — and economic — value. They support wildlife and vegetation and filter pollutants that enter the water. They also provide access to water for livestock, crop irrigation, and domestic use. The better they function ecologically, the better their value economically. Indeed, as the BLM itself has reported, "experience has shown that riparian enhancement efforts are much more cost effective and successful if carried out in cooperation with livestock operations."

Not withstanding BLM's report, it seems the DOI's Communications Office has found a hidden value of riparian areas — politics. That political value, demonstrated in the Northern Spotted Owl fight, has emboldened BLM Director Baca to issue a flagrant and irresponsible directive to BLM's state office directors. In a September 15 memo Baca wrote: "Last night the Senate voted for a moratorium on the Rangeland Reform Initiative through the Interior Appropriations Bill." Indeed they did, by a vote of 59-40.

The Baca memo continued: "Our bottom line is this: we will deliver on grazing reform — both to increase grazing fees and improve our on-the-ground management and regulation of the public range. If the House and Senate can agree how to do that, great; if not we will be implementing it administratively."

Evidently, the Interior Department has the same regard for the legislative process as they do for their own statistics. Through and intra-agency memo, BLM state officials have been directed to disregard a federal statute that has been on the books for nearly 60 years. The Clinton-Babbitt rangeland reform plan would reverse a fundamental premise of the original Taylor Grazing Act, passed by Congress in 1934 to direct administrative power away from Washington and toward local users of the land.

The Clinton-Babbitt plan, if enacted, would also substantially change the long-established and complex system of property rights to such things as range improvements like fencing and stock ponds, and claims to water and mineral rights, wildlife rights, and petroleum exploration and timber harvest rights. Secretary Babbitt hails this reform as a "New American Land Ethic." Fortunately, the "old American land ethic" — protection of private property rights — is provided for under the 5th Amendment of the Constitution, and changing it requires more than a couple of agency memos.

With the DOI's planned rangeland deception, like the Northern Spotted Owl hoax, jobs, families, and communities are at stake. According to cattle industry sources, this dramatic increase in grazing costs, if enacted, could forces as many as two-thirds of the public land cattle ranchers out of business. In Arizona alone, Secretary Babbitt's home state, more that 60 percent of the state's $515 million-plus cattle operations depend on public land.

In other public land states, the consequences are more dire. Ranching is the economic lifeblood in rural communities throughout these states, and like the logging towns of the Pacific Northwest, their fate may be at the mercy of some bureaucratic whim.

There's an old saying "figures don't lie, but liars figure." By that measure there seems to be a whole lot of "figuring" going on at the Department of the Interior, because with the powerful environmental lobby on your side, and the Northern Spotted Owl victory under your belt, who cares about the facts?

☆ ☆ ☆ ☆ ☆

ABOUT THE AUTHOR

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quality goals for a specific water body and serve as the regulatory basis for the establishment of water-quality-based treatment controls and strategies beyond the technology-based levels of treatment required by sections 301(b) and 306 of the Act.

§ 131.3 Definitions.

(a) *The Act* means the Clean Water Act (Public Law 92-500, as amended. (33 U.S.C. 1251 *et seq.*)).

(b) *Criteria* are elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.

(c) *Section 304(a) criteria* are developed by EPA under authority of Section 304(a) of the Act based on the latest scientific information on the relationship that the effect of a constituent concentration has on particular aquatic species and/or human health. This information is issued periodically to the States as guidance for use in developing criteria.

(d) *Toxic pollutants* are those pollutants listed by the Administrator under Section 307(a) of the Act.

(e) *Existing uses* are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.

(f) *Designated uses* are those uses specified in water quality standards for each water body or segment whether or not they are being attained.

(g) *Use Attainability Analysis* is a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in § 131.10(g).

(h) *Water quality limited segment* means any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by Sections 301(b) and 306 of the Act.

(i) *Water quality standards* are provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

(j) *States* include: the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

§ 131.4 State authority.

States are responsible for reviewing, establishing and revising water quality standards. Under Section 510 of the Act, States may develop water quality standards more stringent than required by this regulation.

§ 131.5 EPA authority.

Under Section 303(c) of the Act, EPA is to review and to approve or disapprove State-adopted water quality standards. The review involves a determination of: (a) Whether the State has adopted water uses which are consistent with the requirements of the Clean Water Act; (b) whether the State has adopted criteria that protect the designated water uses; (c) whether the State has followed its legal procedures for revising or adopting standards; (d) whether the State standards which do not include the uses specified in Section 101(a)(2) of the Act are based upon appropriate technical and scientific data and analyses, and (e) whether the State submission meets the requirements included in Section 131.6 of this part. If EPA determines that State water quality standards are consistent with the factors listed in (a)—(e) of this subsection, EPA approves the standards. EPA must disapprove the State water quality standards and promulgate Federal standards under Section 303(c)(4) of the Act, if State adopted standards are not consistent with the factors listed in (a)—(e) of this subsection. EPA may also promulgate a new or revised standard where necessary to meet the requirements of the Act.

§ 131.6 Minimum requirements for water quality standards submission.

The following elements must be included in each State's water quality standards submitted to EPA for review:

(a) Use designations consistent with the provisions of Sections 101(a)(2) and 303(c)(2) of the Act.

(b) Methods used and analyses conducted to support water quality standards revisions.

(c) Water quality criteria sufficient to protect the designated uses.

(d) An antidegradation policy consistent with § 131.12.

(e) Certification by the State Attorney General or other appropriate legal authority within the State that the water quality standards were duly adopted pursuant to State law.

(f) General information which will aid the Agency in determining the adequacy of the scientific basis of the standards which do not include the uses specified in Section 101(a)(2) of the Act as well as information on general policies applicable to State standards which may affect their application and implementation.

Subpart B—Establishment of Water Quality Standards

§ 131.10 Designation of uses.

(a) Each State must specify appropriate water uses to be achieved and protected. The classification of the waters of the State must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. In no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States.

(b) In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.

(c) States may adopt sub-categories of a use and set the appropriate criteria to reflect varying needs of such sub-categories of uses, for instance, to differentiate between cold water and warm water fisheries.

(d) At a minimum, uses are deemed attainable if they can be achieved by the imposition of effluent limits required under Sections 301(b) and 306 of the Act and cost-effective and reasonable best management practices for nonpoint source control.

(e) Prior to adding or removing any use, or establishing sub-categories of a use, the State shall provide notice and an opportunity for a public hearing under § 131.20(b) of this regulation.

(f) States may adopt seasonal uses as an alternative to reclassifying a water body or segment thereof to uses requiring less stringent water quality criteria. If seasonal uses are adopted, water quality criteria should be adjusted to reflect the seasonal uses, however, such criteria shall not preclude the attainment and maintenance of a more protective use in another season.

(g) States may remove a designated use which is *not* an existing use, as defined in § 131.3, or establish sub-categories of a use if the State can

FISCAL NOTE

No. 4
Bill Version: CSHB 51(FIN)
(H) Publish Date: 3/5/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date: 2/25/97 | Dept. Affected: Fish and Game
Title: An Act Relating to the Department of Environmental Conservation | BRU: Habitat and Restoration | Component: Habitat
Sponsor: Rep. Rokeberg
Requester: House Finance | COMPONENT SERIAL NO. 486

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 100	FY 01	FY 02	FY 03
PERSONAL SERVICES	37.5	37.5	37.5	37.5	37.5	37.5
TRAVEL	6.0	6.0	6.0	6.0	6.0	6.0
CONTRACTUAL	4.0	4.0	4.0	4.0	4.0	4.0
SUPPLIES	3.0	3.0	3.0	3.0	3.0	3.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	50.5	50.5	50.5	50.5	50.5	50.5
CAPITAL EXPENDITURES	50.5	50.5	50.5	50.5	50.5	50.5
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)						
1002 Federal Receipts						
1003 GF Match						
1004 GF	50.5	50.5	50.5	50.5	50.5	50.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	50.5	50.5	50.5	50.5	50.5	50.5

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

POSITIONS						
FULL-TIME	0.5	0.5	0.5	0.5	0.5	0.5
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill proposes certain procedures that must be followed in order to develop state water quality standards for which there is no corresponding Federal water criteria. Alaska has standards for total suspended solids, turbidity, and stream sediment accumulation for which there is no corresponding Federal criteria. It is difficult to estimate the cost on conducting the work to demonstrate the need for such standards, because it is hightly dependent on availiability of site-specific data. Development of site specific criteria cost to the Department of Fish and Game has been as high as $62,000 for one site. This fiscal note assumes a cost of $10,000 per site with a maximum of five sites per year.

Prepared by: Janet Kowalski, Director JK | Phone: 465-4105
Division: Habitat and Restoration | Date: 2/25/97
Approved by Commi Frank Rue | Date: 2/25/97
Agency: Department of Fish and Game

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COMMITTEE COPY — Fiscal Notes HB 51 —

FISCAL NOTE

No. 3
Bill Version: CSHB 51(FIN)
(H) Publish Date: 3/5/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date: 2/5/97
Department Affected: Environmental Conservation
Title: An Act relating to the Department of Environmental Conservation
BRU: Department-wide
Sponsor: Reps Rokeberg and Kelly
Component: All
Requestor: House Finance Committee
COMPONENT SERIAL NO. 633

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	95.1	95.1	95.1	95.1	95.1	95.1
TRAVEL	3.0	3.0	3.0	3.0	3.0	3.0
CONTRACTUAL	174.0	174.0	174.0	174.0	174.0	174.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	3.0	3.0	3.0	3.0	3.0	3.0
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	276.1	276.1	276.1	276.1	276.1	276.1
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	276.1	276.1	276.1	276.1	276.1	276.1
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	276.1	276.1	276.1	276.1	276.1	276.1

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

POSITIONS						
FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Susan Braley
Phone: 907-465-5308
Division: Air & Water Quality
Date: 2/18/97

Approved by Commissioner:
Agency: Department of Environmental Conservation
Date 2/19/97

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CSHB 51 (O&G)

The fiscal impact in HB 51 is in **Sections 4 & 5** of the bill.

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

Because of the contentious nature of making changes to the state water quality standards, it is vital that we seek and have available for the public, third party expertise on the water quality standard in question. Past experience with contractual funding for third party expertise shows that costs run from $20,000 to $75,000 depending on the complexity of the issue. For example, an initial review done just on settling velocities of sediment for the A-J Mine's tailing impoundment cost the Department $20,000 in 1994. Given the estimate of four changes requested per year, it is estimated that $100,000 in contractual expenses will be incurred per year to gather third party expertise on the issues. Public notice and hearing costs run approximately $10,000 per regulatory change. Contractual funding is also included for consultation with a Department of Law attorney at .25 FTE, as necessary to implement the regulatory provisions of the bill.

Therefore, the fiscal note includes:

Line 100	1 FTE professional staff (Envir. Specialist III)	**$95,100**
Line 200	Travel (hearings, research)	$3000
Line 300	Contractual Costs for 3rd party expertise	$100.000
	Public Notice costs	$40.000
	Department of Law RSA	$34,000
Line 400	Supplies	$1000
Line 500	Equipment	$3000
	TOTAL SECTION 4 & 5 PER YEAR	**= $276,100**

FISCAL NOTE

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

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date:
Title: An Act Relating to the Department of Environmental Conservation
Sponsor: Rokeberg and Kelly
Requester: House Oil and Gas Committee

Dept. Affected: Fish and Game
BRU: Habitat and Restoration
Component: Habitat
COMPONENT SERIAL NO. 486

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 100	FY 01	FY 02	FY 03
PERSONAL SERVICES	150.0	150.0	112.5	112.5	112.5	[illegible]
TRAVEL	18.0	18.0	13.0	13.0	13.0	[illegible]
CONTRACTUAL	[illegible]	[illegible]	9.0	[illegible]	9.0	[illegible]
SUPPLIES	3.0	3.0	6.0	6.0	6.0	[illegible]
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	188.0	188.0	140.5	140.5	140.5	140
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

	FY 98	FY 99	FY 100	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF	188.0	188.0	140.5	140.5	140.5	[illegible]
1005 GF Program Receipts						
1037 GF Mental Health						
Other						
TOTAL	188.0	188.0	140.5	140.5	140.5	[illegible]

Estimate of any current year (FY97) cost: $

POSITIONS

	FY 98	FY 99	FY 100	FY 01	FY 02	FY 03
FULL-TIME	2	2	1	1	1	
PART-TIME			1	1	1	
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Additional expenditures stem from the increased workload that will occur as the department is required to increase the scope, substance, and specificity of its AS 16.05.840, 16.05.870, and 16.20 permit application reviews and significantly increase field inspections and site-specific water quality data collection (background conditions) in lieu of complete reliance on the Department of Environmental Conservation's water quality standards and wastewater discharge permitting program. Additional expenditures will occur assisting ADEC in developing a NPDES program that will be approved by EPA. Estimate that five reviews requiring ADF&G participation will be conducted annually to adopt regulations under AS 46.03.087(b).

Prepared by: [signature] Phone: 465-4105
Division: Habitat and Restoration Date: 1/29/97
Approved by Commissioner: Frank Rue [signature] for Date: 1/29/97
Agency: Fish and Game

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Rev. 11/95 (36) Shot [illegible] OBR

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One additional permitting position will be needed to increase the scope of AS 16.05.870 and AS 16.20 permit reviews for activities previously afforded full protection under ADEC's wastewater permit program. This is largely due to the significantly increased field presence that will be required to collect and evaluate background conditions under AS 46.03.085(a)(4) and concerns that AS 46.03.085(e) will preempt retention of the Aquatic Life Standard's numerical turbidity and stream substrate sediment accumultation criteria. The corresponding federal narrative sediment criteria lumps settleable solids, turbidity, and total suspended solids together and does not include numeric limitations. Under a best case scenario, it would still require readoption of these criteria under AS 46.03.087, potentially on a site-specific basis. Greater statutory assurance that ADEC could retain it's Aquatic Life turbidity and sediment accumulation criteria would significantly reduce this cost estimate.

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

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

Increased AS 16.05.870 and AS 16.20 Permit Review and Compliance Inspections

	Annually	
Line 100	75.0	1 - Habitat Biolcgist
Line 200	7.0	
Line 300	5.0	
Line 400	3.0	
TOTAL	90.0	

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

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

NPDES Program Assumption (Years 1 and 2 Only)

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

FISCAL NOTE

No. 1

STATE OF ALASKA

BILL NO

Bill Version: CSHB 51 (O&G)

(H) Publish Date: 1/31/97

1997 LEGISLATIVE SESSION

Revision Date: 1/22/97 5:00 P.M.

Department Affected: Environmental Conservation

Title: An Act relating to the Department of Environmental Conservation

BRU: Department-wide

Sponsor: Reps Rokeberg and Kelly

Component: All

Requestor: House Special Committee on Oil and Gas

COMPONENT SERIAL NO. 633

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	2,597.0	2,597.0	2,597.0	2,597.0	2,597.0	2,597.0
TRAVEL	208.0	208.0	208.0	208.0	208.0	208.0
CONTRACTUAL	681.0	681.0	681.0	681.0	681.0	543.0
SUPPLIES	204.0	204.0	204.0	204.0	204.0	204.0
EQUIPMENT	212.0	212.0	212.0	212.0	212.0	212.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	3902.0	3902.0	3902.0	3902.0	3902.0	3764.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
FUND SOURCE						
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	3,902.0	3,902.0	3,902.0	3,902.0	3,902.0	3,902.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	3,902.0	3,902.0	3,902.0	3,902.0	3,902.0	3,902.0

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Susan Braley SB

Phone: 907-465-5308

Division: Air & Water Quality

Date: 1/22/97

Approved by Commissioner: Frank Rue Acting Comm.

Agency: Department of Environmental Conservation

Date: 1-22-97

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

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

All Sections.

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

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

Section 2.

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

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

Line 100	2 FTE (Economist II)	$190,000
	1 FTE (Economist III)	$107,600
	Total Line 100	**$297,600**
Line 200	Travel	$5,000
Line 300	Contractual	$3,000
Line 400	Supplies	$3,000
Line 500	Equipment	$9,000

TOTAL COSTS SECTION 2 PER YEAR ..... = $317,600

Section 3.

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

maintain the NPDES program.

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

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

Section 4 & 5.

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

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

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

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

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

TOTAL COSTS OF HB 51 FOR ALL SECTIONS:

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

FISCAL NOTE

No. 2
Bill Version: HB 71
(H) Publish Date: 1/15/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date:
Title: Administrative Penalties for Violation of Public Water Supply System Requirements
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Environmental Conservation
BRU:
Component:
COMPONENT SERIAL NO.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	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
1003 GF Match	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0

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

POSITIONS:					
FULL-TIME	0	0	0	0	0
PART-TIME	0	0	0	0	0
TEMPORARY	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Larry Jones
Phone: 465-5010
Division: Director, Division of Administrative Services
Date: 11/7/96

Approved by Commissioner:
Agency: Department of Environmental Conservation
Date: 11/7/96

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- Fiscal Notes HB 71

FISCAL NOTE

No. 1
Bill Version: HB 71
(H) Publish Date: 1/15/97

STATE OF ALASKA
'97 LEGISLATIVE SESSION

Division Date:
Title: An Act ... to administrative penalties for violation of public water supply system requirements; amends civil court rule 82
Sponsor: Rules by Request
Requester: Governor

Dept. Affected: Department of Law
BRU: Civil Division
Component: Environmental Law
COMPONENT SERIAL NO. 2092

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
...ier						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS						
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill is in response to a recent change to the federal Safe Water Drinking Act that requires that the state have minimum administrative penalty authority in order to maintain state primacy for enforcement of the federal drinking water program. Presently, the State of Alaska must initiate a lawsuit to collect civil assessments for violation of the requirements for public water supply systems. The 1996 amendments to the Safe Water Drinking Act condition receipt of federal money for drinking water system construction on a state's maintaining primacy under the federal program. Otherwise, the federal construction money allocated to this state is reallocated to the federal Environmental Protection Agency for its use in exercising primary enforcement authority in Alaska and the remainder of the federal money is reallocated to other states that do exercise primary enforcement authority.

Passage of this bill would have no fiscal impact on the Department of Law. Most administrative actions proposed by this legislation could be handled by Department of Environmental Conservation staff. The more complicated

Prepared by: Joan M. Kasson
Division: Administrative Services Division
Phone: 465-3672
Date: 11/6/98

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: 11/6/98

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ANALYSIS CONTINUATION:

cases that the Department of Law would handle are expected to take about the same time that the department presently expends on compliance order and lawsuits that the present law require for drinking water enforcement.

0-LS0091\C
Lauterbach
3/13/97

CS FOR HOUSE BILL NO. 51( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

"An Act relating to water quality and the procedures required to implement certain federal regulatory changes; relating to administrative penalties for violation of public water supply system requirements; amending Rules 79 and 82, Alaska Rules of Civil Procedure, regarding attorney fees; and providing for an effective date."

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

*** Section 1.** FINDINGS AND INTENT. (a) The legislature confirms that it is the policy of the state to adopt laws and implement water quality standards based on scientific and technical evidence. The legislature specifically requests the Department of Environmental Conservation, when implementing AS 46.03.085 - 46.03.088, enacted by sec. 4 of this Act, to coordinate its efforts with other state agencies to achieve cost efficiencies and, when adopting regulations, to consider measures that encourage the creation and retention of jobs for Alaskans and the economic development of the state's natural resources consistent with

erlined [DELETED TEXT BRACKETED]

Proposed Rules C.S HB 51

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

(b) The legislature also finds that

(1) the federal government has required, in the federal Safe Drinking Water Act amendments of 1996 (P.L. 104-182), that states have minimum administrative penalty authority in order to maintain primary enforcement authority for the federal drinking water program (42 U.S.C. 300f - 300j-26);

(2) the state cannot receive federal money for construction of public drinking water systems unless it maintains primacy under the federal program (sec. 130, P.L. 104-182);

(3) maintaining state primary enforcement authority for the federal program is in the best interests of the state so as to provide maximum flexibility and local control of this program and to ensure continued federal money for Alaska public water supply system construction projects;

(4) ensuring public health through protection of public water supplies is of fundamental importance to the people of the state;

(5) sec. 5 of this Act is in the public interest by enacting administrative penalty authority in order to meet the minimum federal requirements for maintaining state primary enforcement authority for the federal drinking water program.

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

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

* **Sec. 3.** AS 46.03.080 is amended by adding a new subsection to read:

(b) If the available evidence reasonably demonstrates that the natural condition of a body of water does not meet the requirements of the quality or purity standards

that would otherwise be applicable to the classification of the water adopted under (a) of this section, the natural condition of the water shall constitute the applicable standard of quality or purity.

* **Sec. 4.** AS 46.03 is amended by adding new sections to read:

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

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

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

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

(4) may not require water discharged by a user to be of a higher quality than the background condition of the water receiving the discharge; and

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

(b) Except when setting standards under AS 03.05.011(a) for shellfish growing areas, as defined in the national shellfish sanitation program manual of operations published by the Food and Drug Administration, the department may adopt a water quality standard or other regulation related to water quality that is more restrictive than applicable federal water quality criteria or regulations only after following the procedures in AS 46.03.087(b).

(c) Notwithstanding AS 44.62.230, a person may submit a written request to the department to amend the state's water quality standards, criteria, or other regulations to incorporate a reduction in or elimination of a federal water quality standard, criteria, or other regulation. The request must state clearly and concisely the state and federal standard, criteria, or regulation in question and provide the department with the reasons and basis for the requested amendment. Within 90 days after receiving the request, or by another date mutually agreed on by the applicant and the

department, the department shall either propose regulations to incorporate the reduction or elimination of the federal provision or initiate the procedure required under AS 46.03.087(b). If, following the procedure under AS 46.03.087(b), the department is unable to make the written findings required under AS 46.03.087(b)(3), the department shall propose regulations that amend the state's water quality standards to incorporate the reduction in or elimination of the federal water quality criteria or regulations.

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

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

Sec. 46.03.087. Special procedures for certain water quality regulations. (a) The department may, after following the procedures in this section, adopt a

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

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

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

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

(1) make available to the public, at convenient locations, copies of the

proposal and the findings of the department that describe the basis for the proposal;

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

(3) find in writing, as applicable, that

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

(B) biological, chemical, physical, or economic conditions are significantly different in that area of the state or at that particular site from those upon which the corresponding federal criteria or regulations are based.

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

* **Sec. 5.** AS 46.03 is amended by adding a new section to read:

Sec. 46.03.761. Administrative penalties. (a) The department may assess an administrative penalty against a person who violates or causes or permits to be violated a provision of AS 46.03.720(b) or a term or condition of a regulation, order, permit, approval, or certificate of the department issued or adopted under AS 46.03.720(b).

(b) An administrative penalty assessed under this section may not exceed $1,000 a day for each violation if the affected public water supply system serves a population of more than 10,000 persons. An administrative penalty assessed under this section may not exceed $750 a day for each violation if the affected public water

supply system serves a population of 10,000 or fewer persons. Each provision, term, or condition violated is a separate and distinct violation. If a violation of a provision, term, or condition continues from day to day, each day is a separate violation.

(c) In determining the amount of a penalty assessed under this section, the department shall consider

(1) the effect of the violation on the public health or the environment;

(2) reasonable costs incurred by the state in the detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person by not complying with the requirement for which a violation is charged;

(4) any previous history of compliance or noncompliance with this chapter, AS 46.04, AS 46.09, and AS 46.14;

(5) the need to deter future violations;

(6) the extent and seriousness of the violation, including the potential for the violation to threaten public health or the environment;

(7) whether the person achieved compliance with the requirement violated within the shortest feasible time; and

(8) other factors considered relevant to the assessment that are adopted by the department in regulation.

(d) If a penalty is assessed under this section, the department shall provide the assessment notice to the person assessed by personal service or by certified mail, return receipt requested. The notice must inform the person of the amount of the proposed penalty and that the person has 30 days within which to file a notice with the department contesting the proposed penalty. If, within 30 days after the receipt of the notification issued by the department, the person fails to file a notice contesting the proposed penalty, the proposed penalty is considered a final order. The department may extend the time periods specified in this subsection for good cause.

(e) If a person files notice contesting a proposed penalty under (d) of this section, the department shall afford an opportunity for a hearing in accordance with its adjudicatory hearing procedures. After an opportunity for a hearing, the department shall issue an order, based upon findings of fact, affirming, modifying, or rescinding

the administrative penalty. The order is the final agency action on the penalty.

(f) A person against whom an administrative penalty is assessed may obtain judicial review of the administrative penalty by filing a notice of appeal in the superior court as provided by the Alaska Rules of Appellate Procedure. An order of the department under (e) of this section becomes final and is not subject to review by a court if a notice of appeal is not filed with the superior court within the period provided for by the Alaska Rules of Appellate Procedure.

(g) Action under this section by the department does not limit or otherwise affect the authority of the department to otherwise enforce this chapter, AS 46.04, AS 46.08, AS 46.09, AS 46.14, or regulations adopted under those statutes, or to recover damages, restoration expenses, investigation costs, court costs, attorney fees, or other necessary expenses. The court shall set off against a judicial civil assessment subsequently awarded under AS 46.03.760 an amount ordered to be paid under this section by the same person for the same violation.

(h) If a person fails to pay an administrative penalty assessed under this section after the penalty becomes final, the department may bring an action to collect the penalty. The amount of the penalty is not subject to review by the court in such an action.

(i) If the department prevails in a collection action brought under (h) of this section, the court shall order the person to pay full reasonable attorney fees and costs incurred by the department in the collection action.

* **Sec. 6.** The provisions of AS 46.03.761(i), added by sec. 5 of this Act, have the effect of amending Rule 79 and Rule 82, Alaska Rules of Civil Procedure, by allowing the recovery of full reasonable attorney fees and costs in certain actions.

* **Sec. 7.** AS 46.03.761(i), added by sec. 5 of this Act, takes effect only if sec. 6 of this Act receives the two-thirds majority vote of each house of the legislature required by art. IV, sec. 15, Constitution of the State of Alaska.

* **Sec. 8.** TRANSITIONAL REVIEW OF WATER QUALITY REGULATIONS. (a) The Department of Environmental Conservation shall, during the triennial review process of regulations that is required under 33 U.S.C. 1313(c) (Clean Water Act), review its water quality regulations that are in effect on the effective date of this Act in order to determine if

they comply with federal requirements and are not more stringent than applicable federal regulations. If the review indicates that there are state regulations that are more stringent than applicable federal regulations, the department shall determine whether it could justify those regulations under the requirements of AS 46.03.087(b)(3), enacted by sec. 4 of this Act. If the department determines that it cannot meet the requirements of AS 46.03.087(b)(3), the department shall adopt the necessary revisions to the regulations. It is the legislature's intent that the department complete its review of all regulations governed by this subsection and its adoption of all necessary revisions required under this subsection within four years after the effective date of this section.

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

*** Sec. 9.** TRANSITION: REGULATIONS FOR ADMINISTRATIVE PENALTIES. The Department of Environmental Conservation may immediately proceed to adopt regulations to implement changes made by sec. 5 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of sec. 5 of this Act.

*** Sec. 10.** Sections 1(b) and 5 of this Act take effect on the effective date of regulations adopted by the United States Environmental Protection Agency (EPA) implementing the state administrative penalty requirement for state primary enforcement authority under 42 U.S.C. 300g-2 of the federal Safe Drinking Water Act or, if EPA determines that regulations are not necessary, on the date EPA requires under the authority of that statute that the state must have administrative penalty authority to maintain its state primacy over the federal drinking water program, whichever event occurs first in time. The commissioner of environmental conservation shall notify the lieutenant governor and the revisor of statutes of the effective date of the state administrative penalty authority requirement.

*** Sec. 11.** Section 9 of this Act takes effect immediately under AS 01.10.070(c).

0-LS0091U
Lauterbach
3/19/97

CS FOR HOUSE BILL NO. 51( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

"An Act relating to the Department of Environmental Conservation; amending Rules 79 and 82, Alaska Rules of Civil Procedure; and providing for an effective date."

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

* **Section 1.** FINDINGS AND INTENT. (a) The legislature confirms that it is the policy of the state to adopt laws and implement water quality standards based on scientific and technical evidence. The legislature specifically requests the Department of Environmental Conservation, when implementing AS 46.03.085 - 46.03.088, enacted by sec. 4 of this Act, to coordinate its efforts with other state agencies to achieve cost efficiencies and, when adopting regulations, to consider measures that encourage the creation and retention of jobs for Alaskans and the economic development of the state's natural resources consistent with the public interest. It is the legislature's intent that Alaska's water quality regulations be adopted and implemented in a credible manner, be based on scientific criteria, and be economically feasible to comply with. The people of Alaska express their will through the

legislature, and regulations implement legislative action.

(b) The legislature also finds that

(1) the federal government has required, in the federal Safe Drinking Water Act amendments of 1996 (P.L. 104-182), that states have minimum administrative penalty authority in order to maintain primary enforcement authority for the federal drinking water program (42 U.S.C. 300f - 300j-26);

(2) the state cannot receive federal money for construction of public drinking water systems unless it maintains primacy under the federal program (sec. 130, P.L. 104-182);

(3) maintaining state primary enforcement authority for the federal program is in the best interests of the state so as to provide maximum flexibility and local control of this program and to ensure continued federal money for Alaska public water supply system construction projects;

(4) ensuring public health through protection of public water supplies is of fundamental importance to the people of the state;

(5) sec. 5 of this Act is in the public interest by enacting administrative penalty authority in order to meet the minimum federal requirements for maintaining state primary enforcement authority for the federal drinking water program.

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

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

* Sec. 3. AS 46.03.080 is amended by adding new subsections to read:

(b) If the available evidence reasonably demonstrates that the natural condition of a body of water does not meet the requirements of the quality or purity standards that would otherwise be applicable to the classification of the water adopted under (a) of this section, the natural condition of the water shall constitute the applicable standard of quality or purity.

(c) In this section, "natural condition" means the baseline water quality when the baseline data is obtainable unless the baseline water quality has been altered by historical or upslope activity. If the baseline data is not obtainable or if the baseline water quality has been altered by historical or upslope activity, then "natural condition" has the meaning given to "background condition" in AS 46.03.088.

* Sec. 4. AS 46.03 is amended by adding new sections to read:

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

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

(2) shall consider reasonably available information on the background or natural condition of bodies of water, including the presence of naturally occurring pollutants, such as, but not limited to, arsenic;

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

(4) may not require water discharged by a user to be of a higher quality than the background or natural condition of the water receiving the discharge; and

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

(b) Except when setting standards under AS 03.05.011(a) for shellfish growing areas, as defined in the national shellfish sanitation program manual of operations published by the Food and Drug Administration, the department may adopt a water quality standard or other regulation related to water quality that is more restrictive than applicable federal water quality criteria or regulations only after following the procedures in AS 46.03.087(b).

(c) Notwithstanding AS 44.62.230, a person may submit a written request to the department to amend the state's water quality standards, criteria, or other regulations to incorporate a reduction in or elimination of a federal water quality standard, criteria, or other regulation. The request must state clearly and concisely the state and federal standard, criteria, or regulation in question and provide the department

with the reasons and basis for the requested amendment. Within 90 days after receiving the request, or by another date mutually agreed on by the applicant and the department, the department shall either propose regulations to incorporate the reduction or elimination of the federal provision or initiate the procedure required under AS 46.03.087(b). If, following the procedure under AS 46.03.087(b), the department is unable to make the written findings required under AS 46.03.087(b)(3), the department shall propose regulations that amend the state's water quality standards to incorporate the reduction in or elimination of the federal water quality criteria or regulations.

(d) Except as otherwise provided in AS 46.03.087, the measurement of constituents other than sediment to determine whether a permittee is in compliance with permit limitations based on water quality shall be by methods approved in writing by the United States Environmental Protection Agency. put back in language of the work draft

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

Sec. 46.03.087. Special procedures for certain water quality regulations. (a) The department may, after following the procedures in this section, adopt a

(1) water quality standard or permit limit that is more restrictive than the applicable federal water quality standard, criteria, or other regulation;

(2) water quality standard or permit limit for which there is no corresponding federal water quality standard, criteria, or other regulation; or

(3) regulation that allows the use of a method that is substantially equivalent to methods approved by the United States Environmental Protection Agency for the measurement of constituents to determine whether a permittee is in compliance with permit limitations related to water quality.

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

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

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

(3) find in writing, as applicable, that

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

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

Sec. 46.03.088. Definitions. In AS 46.03.085 - 46.03.087, and in regulations of the department that relate to water quality,

(1) "background condition" means the biological, chemical, and physical conditions of a body of water outside the area of influence of the discharge under consideration; when the department performs background sampling to determine a background condition during an enforcement action, the department shall measure conditions that are upslope or outside the area of influence of the discharge; if several discharges to a body of water exist and an enforcement action is being taken, the department's background sampling shall measure conditions immediately upslope from each discharge;

(2) "natural condition" means a physical, chemical, biological, or radiological condition existing in a body of water before human, industrial, or commercial use caused an influence on, a discharge to, or addition of material to the water known at the time of enactment of the federal law known as the Federal Water Pollution Control Act Amendments of 1972.

* **Sec. 5.** AS 46.03 is amended by adding a new section to read:

Sec. 46.03.761. Administrative penalties. (a) The department may assess an administrative penalty against a person who violates or causes or permits to be

violated a provision of AS 46.03.720(b) or a term or condition of a regulation, order, permit, approval, or certificate of the department issued or adopted under AS 46.03.720(b).

(b) An administrative penalty assessed under this section may not exceed $1,000 a day for each violation if the affected public water supply system serves a population of more than 10,000 persons. An administrative penalty assessed under this section may not exceed $750 a day for each violation if the affected public water supply system serves a population of 10,000 or fewer persons. Each provision, term, or condition violated is a separate and distinct violation. If a violation of a provision, term, or condition continues from day to day, each day is a separate violation.

(c) In determining the amount of a penalty assessed under this section, the department shall consider

(1) the effect of the violation on the public health or the environment;

(2) reasonable costs incurred by the state in the detection, investigation, and attempted correction of the violation;

(3) the economic savings realized by the person by not complying with the requirement for which a violation is charged;

(4) any previous history of compliance or noncompliance with this chapter, AS 46.04, AS 46.09, and AS 46.14;

(5) the need to deter future violations;

(6) the extent and seriousness of the violation, including the potential for the violation to threaten public health or the environment;

(7) whether the person achieved compliance with the requirement violated within the shortest feasible time; and

(8) other factors considered relevant to the assessment that are adopted by the department in regulation.

(d) If a penalty is assessed under this section, the department shall provide the assessment notice to the person assessed by personal service or by certified mail, return receipt requested. The notice must inform the person of the amount of the proposed penalty and that the person has 30 days within which to file a notice with the department contesting the proposed penalty. If, within 30 days after the receipt of the

notification issued by the department, the person fails to file a notice contesting the proposed penalty, the proposed penalty is considered a final order. The department may extend the time periods specified in this subsection for good cause.

(e) If a person files notice contesting a proposed penalty under (d) of this section, the department shall afford an opportunity for a hearing in accordance with its adjudicatory hearing procedures. After an opportunity for a hearing, the department shall issue an order, based upon findings of fact, affirming, modifying, or rescinding the administrative penalty. The order is the final agency action on the penalty.

(f) A person against whom an administrative penalty is assessed may obtain judicial review of the administrative penalty by filing a notice of appeal in the superior court as provided by the Alaska Rules of Appellate Procedure. An order of the department under (e) of this section becomes final and is not subject to review by a court if a notice of appeal is not filed with the superior court within the period provided for by the Alaska Rules of Appellate Procedure.

(g) Action under this section by the department does not limit or otherwise affect the authority of the department to otherwise enforce this chapter, AS 46.04, AS 46.08, AS 46.09, AS 46.14, or regulations adopted under those statutes, or to recover damages, restoration expenses, investigation costs, court costs, attorney fees, or other necessary expenses. The court shall set off against a judicial civil assessment subsequently awarded under AS 46.03.760 an amount ordered to be paid under this section by the same person for the same violation.

(h) If a person fails to pay an administrative penalty assessed under this section after the penalty becomes final, the department may bring an action to collect the penalty. The amount of the penalty is not subject to review by the court in such an action.

(i) If the department prevails in a collection action brought under (h) of this section, the court shall order the person to pay full reasonable attorney fees and costs incurred by the department in the collection action.

* Sec. 6. The provisions of AS 46.03.761(i), added by sec. 5 of this Act, have the effect of amending Rule 79 and Rule 82, Alaska Rules of Civil Procedure, by allowing the recovery of full reasonable attorney fees and costs in certain actions.

* Sec. 7. AS 46.03.761(i), added by sec. 5 of this Act, takes effect only if sec. 6 of this Act receives the two-thirds majority vote of each house of the legislature required by art. IV, sec. 15, Constitution of the State of Alaska.

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

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

* Sec. 9. TRANSITION: REGULATIONS FOR ADMINISTRATIVE PENALTIES. The Department of Environmental Conservation may immediately proceed to adopt regulations to implement changes made by sec. 5 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of sec. 5 of this Act.

* Sec. 10. Sections 1(b) and 5 of this Act take effect on the effective date of regulations adopted by the United States Environmental Protection Agency (EPA) implementing the state administrative penalty requirement for state primary enforcement authority under 42 U.S.C. 300g-2 of the federal Safe Drinking Water Act or, if EPA determines that regulations are not necessary, on the date EPA requires under the authority of that statute that the state must have administrative penalty authority to maintain its state primacy over the federal drinking water

program, whichever event occurs first in time. The commissioner of environmental conservation shall notify the lieutenant governor and the revisor of statutes of the effective date of the state administrative penalty authority requirement.

* **Sec. 11.** Section 9 of this Act takes effect immediately under AS 01.10.070(c).

0-LS0091\C.3
Lauterbach
3/19/97

AMENDMENT

#1

OFFERED IN THE HOUSE

TO: Draft CSHB 51( ) ("J" Version)

Page 3, following line 20:

Insert a new subsection to read:

"(b) In adopting mixing zone regulations under (a)(5) of this section and to ensure that a mixing zone is as small as practicable, the department shall limit the maximum size of a mixing zone, unless available evidence reasonably demonstrates that a larger mixing zone will adequately protect human health and the environment outside the mixing zone, as follows:

(1) for estuarine and marine waters, measured at mean lower low water,

(A) the cumulative lineal length of all mixing zones intersected on any given cross section of an estuary, inlet, cove, channel, or other marine waterway may not exceed 10 percent of the total length of that cross section; and

(B) the horizontal area allocated to mixing zones may not exceed 10 percent of the surface area;

(2) for lakes, the total horizontal area allocated to all mixing zones may not exceed 10 percent of the lake's surface area; and

(3) for streams, rivers, or other flowing fresh waters, the length of a mixing zone may not extend beyond the location described in (A) or (B) of this paragraph, whichever is closer to the point of discharge:

(A) the location that is two times the distance of the computed point of complete mixing, as determined using a standard river flow mixing model accepted by the department; or

(B) the location where available evidence reasonably demonstrates that a public health hazard would occur."

1 Reletter the following subsections accordingly.

0-LS0091\C.2
Lauterbach
3/19/97

AMENDMENT

OFFERED IN THE HOUSE

TO: Draft CSHB 51( ) ("C" Version)

Page 5, following line 13:

Insert "(1)"

Page 5, lines 15 - 16:

Delete ". When"

Insert "; when"

Page 5, line 18:

Delete ". If"

Insert "; if"

Page 5, line 21, following "discharge":

Insert ";

3 ~~(2)~~ "drinking water" means a body of water or a water supply from which the water is safe to drink in its natural state;

4 ~~(3)~~ "industrial use" means use of a water supply for fish processing, food processing, mining, placer mining, manufacturing, development, or production, including energy production"

LEGAL SERVICES

MAR 1 9 1997

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

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

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

MEMORANDUM March 19, 1997

SUBJECT: CSHB 51( ) ("J" version)

TO: Representative Norman Rokeberg
Attn: Shirley Armstrong

FROM: Terri Lauterbach
Legislative Counsel

Enclosed is the new blank CS you requested.

I have modified the suggested definition of "natural condition" for AS 46.03.080(c) in an attempt to avoid the tautology created by referring to "natural condition" within the definition of "natural condition." However, I'm not sure that "baseline water quality" is any less tautological. What is "baseline water quality"?

In the new definition of "natural condition" added to AS 46.03.088, I do not understand the use of the phrase "known at the time of enactment..." Does "known" refer to the physical, chemical, biological, or radiological condition of the water? Does "known" refer to human, industrial, or commercial uses of the water? Does "known" refer to influences, discharges, or additions of material to the water? I do not know how the DEC or a court would interpret this definition.

Because of the deletion of the word "not" in AS 46.03.087(a)(3), I have removed the phrase "or by substantially equivalent methods approved by the department" from AS 46.03.085(d).

Because of confidentiality requirements, I can neither confirm nor deny that there is a sectional analysis from this office for the Rules Committee for "C" version. If you believe that there is one, I advise you to ask for a copy from the staff for the Rules Committee or from a member of the Rules Committee.

Please let me know if I can be of further assistance.

TML:jdr
97-198.jdr

Enclosure

HB71

TONY KNOWLES
GOVERNOR

P.O. Box 110001
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 15, 1997

The Honorable Gail Phillips
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Phillips:

Safe drinking water is essential to the health and well-being of any community. As part of my ongoing effort to build healthy communities in Alaska, this Administration is dedicated to ensuring our public water systems meet all health requirements. In order to meet that goal, it is important that the state retain control over enforcement of the federal drinking water program. Losing that control would lead to the loss of federal construction funds for drinking water systems -- something we cannot afford to see happen, particularly for rural Alaska.

This bill will guarantee the state maintains its control over drinking water programs by complying with a recent change to the federal Safe Drinking Water Act which mandates the state have administrative penalties for violations of public water supply system requirements. This bill appropriately places the administrative penalty authority with the Department of Environmental Conservation (DEC).

The authority to impose administrative penalties is a more efficient and cost-effective way to enforce important public health laws. Presently, the state must initiate a lawsuit in order to impose a civil assessment for a violation of requirements for public water supply systems. Legal costs for a court action potentially far exceed the costs involved in an administrative hearing and any related appeal.

Enacting ad[illegible]istrative penalty authority is essential if the state is to receive this important federal funding for improvement of Alaska public drinking water systems. Maintaining Alaska's primary enforcement authority for the federal drinking water program provides maximum flexibility and local control over this program while at the same time working to ensure the safety of Alaska's public water supply systems.

Sincerely,

Tony Knowles
Governor

— Backup HB 71

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF ENVIRONMENTAL HEALTH
DIRECTOR'S OFFICE
555 CORDOVA STREET
ANCHORAGE, ALASKA 99501
http://www.state.ak.us/dec/home.htm

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January 22, 1997

The Honorable Bill Hudson, Co-Chair
The Honorable Scott Ogan, Co-Chair
House Resources Committee
Capitol Building
Juneau, AK 99801

Re: HB 71, An Act relating to administrative penalties for violation of public water supply system requirements: amendment Alaska Rule of Civil Procedure 82 regarding attorney's fees: and providing for an effective date

Dear Representatives Hudson and Ogan:

The above referenced bill was introduced by the Governor on behalf of the Department of Environmental Conservation on January 15. We would respectively request that a hearing be scheduled on this legislation at your earliest convenience.

This bill will allow DEC to levy administrative penalties, as opposed to going through the court system, for violations of the state's drinking water regulations. This has been necessitated by changes made to the federal Safe Drinking Water Act (SDWA) by Congress in 1996.

As you know, the department has primacy for the drinking water program. That is, the state manages and enforces the terms of the SDWA in lieu of the federal government. Primacy affords us several benefits, including the ability to waive certain monitoring requirements for specific water systems. This has saved systems across the state millions of dollars in monitoring costs. Primacy also allows us to work one-on-one with systems on solving problems, and helping to ensure the delivery of safe water to the communities served.

Finally, the changes made by the 1996 Congress raised the stakes by requiring primacy for continued access to the millions of dollars it appropriates each year for construction of drinking water systems. Alaska's share of this appropriation is expected to be about $27 million next fiscal year.

A sectional analysis and the specific language from the changes made by Congress are enclosed. Please don't hesitate to call me if you have any questions or need further information. I look forward to your committee's favorable action on this legislation.

Sincerely,

Janice Adair
Director

cc: Pat Pourchot, Office of the Governor (w/encl.)
Enclosure:
HB 71/Sectional Analysis (w/attachments)

- SDWA Language re: primacy
- SDWA Amendments/Language re: administrative penalties
- SDWA Amendments Language re: State Revolving Loan Fund

HB 71

An Act relating to administrative penalties for violation of public water supply system requirements; amending Alaska Rule of Civil Procedure 82 regarding attorney's fees; and providing for an effective date.

Section 1. This section simply outlines the need for this legislation. Copies of the pertinent federal laws are attached.

Section 2. This section amends AS 46.03 by adding a new section giving the department authority to assess administrative penalties when drinking water system requirements are violated.

The section provides that the penalty may not exceed $1,000 per day per violation if the public water system serves more than 10,000 people. In Alaska, those systems are:

- Municipality of Anchorage
- City of Juneau
- Fairbanks Municipal Utilities
- USAF Elmendorf
- US Army Ft. Richardson
- US Army Ft. Wainwright

For all other systems, the penalty may not exceed $750 per day per violation.

The section provides that each violation of a term, condition or provision of the drinking water requirements would be a separate violation, and each day is a separate violation. This makes clear that violation of more than one requirement relating to a drinking water system subjects a persons to more than one civil penalty. Like other public health laws, separate violations are provided for each day a violation continues in order to ensure timely and consistent compliance with the health requirement.

The conditions to be considered when establishing the amount of the penalty are set out on page 2, lines 20-31, continuing on page 3, lines 1-4. The section also allows the department to work with the public through the regulatory process on any other factors that should be considered.

The process the department must follow in assessing a penalty and how a person can contest a proposed penalty is specified on page 3, lines 5 -31, continuing on page 4, lines 1-6. These are standard procedures, and assures that if a party feels the penalty has been unfairly or unduly assessed, there is an opportunity for both administrative and judicial review.

Section 3. This allows the department to start drafting regulations to implement this legislation after its passage but prior to its effective date that it outlined in Section 7. We plan to work with the public in developing consensus regulations. That will add time to completing the project, but we feel it is an important and necessary approach.

Section 4. This amends the Court Rule on attorney's fees. Under the existing Court Rules, the

prevailing party in a court action is entitled to a partial award of reasonable attorney's fees. Section 4 amends this provision to allow the court to award full reasonable attorney's fees to the department if a person does not pay the penalty after all administrative and court appeals are completed and the department is forced to go to court to collect the penalty and then succeeds in that collection action. An analagous provision exists in AS 46.03.763. The section also includes standard language regarding the need for two-thirds vote to amend the court rules.

Section 6. This is the effective date for Section 3. It will allow the department to immediately begin the process of regulatory development upon the signing of the legislation.

Section 7. This is the effective date for the remainder of the bill. Typically, primacy requirements come with an effective date from EPA giving the states some specific period of time by which it must have the necessary changes to its regulations or statutes completed. The effect of this section is to delay the actual effective date of the penalty authority until such time that EPA tells the state it must have administrative penalty authority to retain primacy for the drinking water program.

Public Water Systems
42 USC 300f to 300j-26
(Safe Drinking Water Act)
Primacy provision

(3) will keep such records and make such reports with respect to its activities under paragraphs (1) and (2) as the Administrator may require by regulation;

(4) if it permits variances or exemptions, or both, from the requirements of its drinking water regulations which meet the requirements of paragraph (1), permits such variances and exemptions under conditions and in a manner which is not less stringent than the conditions under, and the manner in which variances and exemptions may be granted under sections 300g–4 and 300g–5 of this title;

(5) has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances; and → (SEE SDWA Amendments)

§ 300g–2. State primary enforcement responsibility; regulations; notice and hearing; publication in Federal Register; applications [PHSA § 1413]

(a) For purposes of this subchapter, a State has primary enforcement responsibility for public water systems during any period for which the Administrator determines (pursuant to regulations prescribed under subsection (b) of this section) that such State—

(1) has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations in effect under sections 300g–1(a) and 300g–1(b) of this title;

(2) has adopted and is implementing adequate procedures for the enforcement of such State regulations, including conducting such monitoring and making such inspections as the Administrator may require by regulation;

(b)(1) The Administrator shall, by regulation (proposed within 180 days of December 16, 1974), prescribe the manner in which a State may apply to the Administrator for a determination that the requirements of paragraphs (1), (2), (3), and (4) of subsection (a) of this section are satisfied with respect to the State, the manner in which the determination is made, the period for which the determination will be effective, and the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are met or are no longer met with respect to a State may become effective, the Administrator shall notify such State of the determination and the reasons therefor and shall provide an opportunity for public hearing on the determination. Such regulations shall be promulgated (with such modifications as the Administrator deems appropriate) within 90 days of the publication of the proposed regulations in the Federal Register. The Administrator shall promptly notify in writing the chief executive officer of each State of the promulgation of regulations under this paragraph. Such notice shall contain a copy of the regulations and shall specify a State's authority under this subchapter when it is determined to have primary enforcement responsibility for public water systems.

(2) When an application is submitted in accordance with the Administrator's regulations under paragraph (1), the Administrator shall within 90 days of the date on which such application is submitted (A) make the determination applied for, or (B) deny the application and notify the applicant in writing of the reasons for his denial.

(July 1, 1944, c. 373, Title XIV, § 1413, as added Dec. 16, 1974, Pub.L. 93–523, § 2(a), 88 Stat. 1665, as amended June 19, 1986, Pub.L. 99–339, Title I, § 101(e)(2), 100 Stat. 646.)

"(ii) in subparagraph (C), by striking "paragraph exceeds $5,000" and inserting "subsection for a violation of an applicable requirement exceeds $25,000".

(4) By adding at the end the following:

"(h) CONSOLIDATION INCENTIVE.—

"(1) IN GENERAL.—An owner or operator of a public water system may submit to the State in which the system is located (if the State has primary enforcement responsibility under section 1413) or to the Administrator (if the State does not have primary enforcement responsibility) a plan (including specific measures and schedules) for—

"(A) the physical consolidation of the system with 1 or more other systems;

"(B) the consolidation of significant management and administrative functions of the system with 1 or more other systems; or

"(C) the transfer of ownership of the system that may reasonably be expected to improve drinking water quality.

"(2) CONSEQUENCES OF APPROVAL.—If the State or the Administrator approves a plan pursuant to paragraph (1), no enforcement action shall be taken pursuant to this part with respect to a specific violation identified in the approved plan prior to the date that is the earlier of the date on which consolidation is completed according to the plan or the date that is 2 years after the plan is approved.

"(i) DEFINITION OF APPLICABLE REQUIREMENT.—In this section, the term 'applicable requirement' means—

"(1) a requirement of section 1412, 1414, 1415, 1416, 1417, 1441, or 1445;

"(2) a regulation promulgated pursuant to a section referred to in paragraph (1);

"(3) a schedule or requirement imposed pursuant to a section referred to in paragraph (1); and

"(4) a requirement of, or permit issued under, an applicable State program for which the Administrator has made a determination that the requirements of section 1413 have been satisfied, or an applicable State program approved pursuant to this part.".

(b) STATE AUTHORITY FOR ADMINISTRATIVE PENALTIES.—Section 1413(a)(42 U.S.C. 300g-2(a)) is amended—

(1) by striking "and" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting ", and"; and

(3) by adding at the end the following:

"(6) has adopted authority for administrative penalties (unless the constitution of the State prohibits the adoption of the authority) in a maximum amount—

"(A) in the case of a system serving a population of more than 10,000, that is not less than $1,000 per day per violation; and

"(B) in the case of any other system, that is adequate to ensure compliance (as determined by the State);

except that a State may establish a maximum limitation on the total amount of administrative penalties that may be imposed on a public water system per violation."

State Revolving Lian Funds (See § F)

'A' in paragraph '1', by striking ''; or'' and inserting a semicolon.

'B' in paragraph '2', by striking the period at the end and inserting ''; or''; and

'C' by adding at the end the following:

''3' for the collection of a penalty by the United States Government and associated costs and interest against any Federal agency that fails, by the date that is 18 months after the effective date of a final order to pay a penalty assessed by the Administrator under section 1429(b), to pay the penalty.''.

'2' Subsection '(b)' of section 1449 '42 U.S.C. 300j-8(b)' is amended by striking the period at the end of paragraph '2' and inserting ''; or'' and by adding the following new paragraph after paragraph '2':

''3' under subsection '(a)(3)' prior to 60 days after the plaintiff has given notice of such action to the Attorney General and to the Federal agency.''

'c' WASHINGTON AQUEDUCT.—Section 1447 '42 U.S.C. 300j-6' is amended by adding at the end the following:

''(e) WASHINGTON AQUEDUCT.—The Secretary of the Army shall not pass the cost of any penalty assessed under this title on to any customer, user, or other purchaser of drinking water from the Washington Aqueduct system, including finished water from the Dalecarlia or McMillan treatment plant.''.

SEC. 130. STATE REVOLVING LOAN FUNDS.

Part E '42 U.S.C. 300j et seq.' is amended by adding the following new section after section 1451:

''STATE REVOLVING LOAN FUNDS

''SEC. 1452. 'a' GENERAL AUTHORITY.—

''1' GRANTS TO STATES TO ESTABLISH STATE LOAN FUNDS.—

''A' IN GENERAL.—The Administrator shall offer to enter into agreements with eligible States to make capitalization grants, including letters of credit, to the States under this subsection to further the health protection objectives of this title, promote the efficient use of fund resources, and for other purposes as are specified in this title.

''B' ESTABLISHMENT OF FUND.—To be eligible to receive a capitalization grant under this section, a State shall establish a drinking water treatment revolving loan fund (referred to in this section as a 'State loan fund') and comply with the other requirements of this section. Each grant to a State under this section shall be deposited in the State loan fund established by the State, except as otherwise provided in this section and in other provisions of this title. No funds authorized by other provisions of this title to be used for other purposes specified in this title shall be deposited in any State loan fund.

''C' EXTENDED PERIOD.—The grant to a State shall be available to the State for obligation during the fiscal year for which the funds are authorized and during the following fiscal year, except that grants made available from

funds provided prior to fiscal year 1997 shall be available for obligation during each of the fiscal years 1997 and 1998.

"(D) ALLOTMENT FORMULA.—Except as otherwise provided in this section, funds made available to carry out this section shall be allotted to States that have entered into an agreement pursuant to this section (other than the District of Columbia) in accordance with—

"(i) for each of fiscal years 1995 through 1997, a formula that is the same as the formula used to distribute public water system supervision grant funds under section 1443 in fiscal year 1995, except that the minimum proportionate share established in the formula shall be 1 percent of available funds and the formula shall be adjusted to include a minimum proportionate share for the State of Wyoming and the District of Columbia; and

"(ii) for fiscal year 1998 and each subsequent fiscal year, a formula that allocates to each State the proportional share of the State needs identified in the most recent survey conducted pursuant to subsection (h), except that the minimum proportionate share provided to each State shall be the same as the minimum proportionate share provided under clause (i).

"(E) REALLOTMENT.—The grants not obligated by the last day of the period for which the grants are available shall be reallotted according to the appropriate criteria set forth in subparagraph (D), except that the Administrator may reserve and allocate 10 percent of the remaining amount for financial assistance to Indian Tribes in addition to the amount allotted under subsection (i) and none of the funds reallotted by the Administrator shall be reallotted to any State that has not obligated all sums allotted to the State pursuant to this section during the period in which the sums were available for obligation.

"(F) NONPRIMACY STATES.—The State allotment for a State not exercising primary enforcement responsibility for public water systems shall not be deposited in any such fund but shall be allotted by the Administrator under this subparagraph. Pursuant to section 1443(a)(9)(A), such sums allotted under this subparagraph shall be reserved as needed by the Administrator to exercise primary enforcement responsibility under this title in such State and the remainder shall be reallotted to States exercising primary enforcement responsibility for public water systems for deposit in such funds. Whenever the Administrator makes a final determination pursuant to section 1413(b) that the requirements of section 1413(a) are no longer being met by a State, additional grants for such State under this title shall be immediately terminated by the Administrator. This subparagraph shall not apply to any State not exercising primary enforcement responsibility for public water systems as of the date of enactment of the Safe Drinking Water Act Amendments of 1996.

HB

63

0-LS0262\Q
Chenoweth
4/21/97

CS FOR HOUSE BILL NO. 63( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES THERRIAULT, Davies, Kelly, Brice

A BILL

FOR AN ACT ENTITLED

"An Act amending the definition of 'motor fuel' under the state's motor fuel tax to add, as a part of the tax exemption set out in that definition, exemption from the tax for fuel sold for use in jet propulsion aircraft operating in flights that continue from foreign countries, to add exemption from the tax for certain number 6 'residual fuel oil,' also known as bunker fuel, and to delete the exemption from the tax for fuel that is at least 10 percent alcohol by volume; and repealing ch. 42, SLA 1994, the Act providing for the imposition of a different tax levy on residual fuel oil used in and on certain watercraft until June 30, 1998; and providing for an effective date."

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

* **Section 1.** AS 43.40.015(d) is amended to read:

(d) A certificate of use is not required

New Text Underlined [DELETED TEXT BRACKETED]

(1) for fuel exempted under AS 43.40.100(2)(C) [, (F),] or (J) [(K)]; and

(2) for fuel exempted under AS 43.40.100(2)(I) [AS 43.40.100(2)(J)] other than fuel sold or transferred under this exemption to a person who is engaged in construction or mining activity.

* Sec. 2. AS 43.40.100(2) is amended to read:

(2) "motor fuel" means fuel used in an engine for the propulsion of a motor vehicle or aircraft, and fuel used in and on watercraft for any purpose, or in a stationary engine, machine, or mechanical contrivance **that** [WHICH] is run by an internal combustion motor; "motor fuel" does not include

(A) fuel consigned to foreign countries;

(B) fuel sold for use in jet propulsion aircraft operating in flights to foreign countries **or in flights that continue from foreign countries**;

(C) fuel used in stationary power plants operating as public utility plants and generating electrical energy for sale to the general public;

(D) fuel used by nonprofit power associations or corporations for generating electric energy for resale;

(E) fuel used by charitable institutions;

(F) [FUEL WHICH IS AT LEAST 10 PERCENT ALCOHOL BY VOLUME;

(G)] fuel sold or transferred between qualified dealers;

(G) [(H)] fuel sold to federal, state, and local government agencies for official use;

(H) [(I)] fuel used in stationary power plants that generate electrical energy for private residential consumption;

(I) [(J)] fuel used to heat private or commercial buildings or facilities;

(J) [(K)] fuel used for other nontaxable purposes as prescribed by regulations adopted by the department; [OR]

(K) [(L)] fuel used in stationary power plants of 100 **kilowatts** [KW] or less that generate electrical power for commercial enterprises not for

resale; or

(L) residual fuel oil used in and on watercraft if the residual fuel oil is sold or transferred in the state or consumed by a user; for purposes of this subparagraph, "residual fuel oil" means the heavy refined hydrocarbon known as number 6 fuel oil that is the residue from crude oil after refined petroleum products have been extracted by the refining process and that may be consumed or used only when sufficient heat is provided to the oil to reduce its viscosity rated by kinetic unit and to give it fluid properties sufficient for pumping and combustion;

* Sec. 3. Chapter 42, SLA 1994, is repealed.

* Sec. 4. This Act takes effect July 1, 1997.

0-LS0262\T
Chenoweth
4/25/97

CS FOR HOUSE BILL NO. 63(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES THERRIAULT, Davies, Kelly, Brice

A BILL

FOR AN ACT ENTITLED

"An Act amending the definition of 'motor fuel' under the state's motor fuel tax to add, as a part of the tax exemption set out in that definition, exemption from the tax for fuel sold for use in jet propulsion aircraft operating in flights that continue from foreign countries subject to termination of the exemption for that fuel if a refiner operating a refinery at which the fuel was produced fails to comply with terms of a voluntary agreement entered into by the refiner to use Alaska residents, contractors, and suppliers to provide goods and services when the refinery's capacity is expanded, to add exemption from the tax for certain number 6 'residual fuel oil,' also known as bunker fuel, and to delete the exemption from the tax for fuel that is at least 10 percent alcohol by volume; and repealing ch. 42, SLA 1994, the Act providing for the imposition of a different tax levy on residual fuel oil used in and on certain watercraft until