
HOUSE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF HEALTH TO ADOPT RULES FOR A PERMIT TO DISCHARGE POLLUTANTS THAT INCLUDE THE MAJOR FACTORS THAT ARE CONSIDERED IN IDENTIFYING THE FUNCTIONAL EQUIVALENT OF A DIRECT DISCHARGE FOR POINT SOURCES OR NON-POINT SOURCES.

1 WHEREAS, the Clean Water Act was enacted to regulate
2 pollution from point sources into surface waters by requiring a
3 permit through the National Pollutant Discharge System (NPDES);
4 that limits the pollutants that may be emitted by a point source
5 and the treatment steps that are necessary to limit those
6 pollutants; and
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8 WHEREAS, the United States Supreme Court held that the
9 Clean Water Act requires a permit when pollutants originating
10 from a point source can be conclusively traced to navigable
11 waters via the "functional equivalent of a direct discharge";
12 and
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14 WHEREAS, determining "functional equivalent" is complicated
15 by factors such as:

- 16 (1) Time and distance a pollutant travels;
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18 (2) The nature of the material through which the pollutant
19 travels; and
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21 (3) The extent to which the concentration of the pollutant
22 changes as it travels; and
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25 WHEREAS, the Court elaborated that functional equivalent
26 permit determinations should preserve the authority of states to
27 regulate groundwater and other non-point sources of pollution;
28 and
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30 WHEREAS, the Department of Health is responsible for
31 proposing rules defining "functional equivalent" relating to the



