



**DEPARTMENT OF THE AIR FORCE
REGIONAL ENVIRONMENTAL COORDINATOR, REGION 10
510 Hickam Ave., Bldg 250 Bay A,
Travis AFB, CA 94535**

03 March 2017

Senator Micciche
Alaska State Legislature
State Capitol Room 508
Juneau, AK 99801

Subject: DoD Comments on Alaska Senate Bill 64

Dear Senator Micciche:

As the U.S. Department of Defense Regional Environmental Coordinator for Region 10, which includes the State of Alaska, I recommend amendments to Senate Bill 64 (SB 64) to address national defense concerns.

The Department of Defense is concerned that it cannot comply with the proposed law as drafted due to Federal real property law constraints that prohibit the Department from placing covenants or other use restrictions, including in the form of notices, on real property in its inventory except when disposing of the property. This concern only applies so long as the property is owned by the United States and under the administrative jurisdiction of the Department of Defense. The Department is also concerned that the proposed statute is based on application of the State's police powers on federal property, to which the United States has not consented.

When transferring property to a non-Federal entity, the Department can, and normally does, require an environmental covenant in order to protect any remedy the Department has put in place and thereby prevent endangerment of public health and safety. The Department believes that it and the State should work closely to achieve the substantive goals of an environmental covenant, namely to prevent, over the long term, land uses that would either interfere with the remedy or cause an exposure to contamination that would threaten human health and safety. The Department believes the State's efforts in this regard would likely qualify for payment under the Defense State Memorandum of Agreement. To avoid its concern, while still allowing the two agencies to work toward their mutual goal of ensuring the public health and safety are protected, the Department recommends editing the proposed statute as follows:

Amend section 46.04.300 by adding the following new subsection:

“(f) An environmental covenant is not required in the case of real property owned by the United States and under the administrative jurisdiction of the Department of Defense so long as

the real property remains under the administrative jurisdiction of the Department of Defense. The department may enter into agreements or decision documents with the Department of Defense to achieve the substantive goals of an environmental covenant.”

Amend section 46.04.340 by adding the following new subsection:

“(l) A notice of activity and use limitation is not required in the case of real property owned by the United States and under the administrative jurisdiction of the Department of Defense so long as the real property remains under the administrative jurisdiction of the Department of Defense. The department may enter into agreements or decision documents with the Department of Defense to achieve the substantive goals of a notice of activity and use limitation.”

The Department also suggests changing “AS 46.04.300” to “AS 46.04.340” in section 46.04.340(b) to avoid inadvertently incorporating by reference requirements that do not, by their terms, appear to be relevant to the notice of activity and use limitation. In addition, the Department suggests referring to the “Comprehensive Environmental Response, Compensation, and Liability Act of 1980” in section 46.04.390(3)(A), which is the statutory short title of the law mentioned. Similarly the Department suggests changing “Resource Conservation and Recovery Act” to “Solid Waste Disposal Act” in section 46.04.390(A), which is the statutory short title for the entire law, of which RCRA is only an amendment.

The Department remains committed to working with the State of Alaska and its Department of Environmental Conservation and the Alaska Statement of Cooperation agencies on environmental cleanup and other issues. Please feel free to contact my office if you have any questions or need any additional information. I can be reached at (707) 424-8290, or by email at robert.shirley.2@us.af.mil

Sincerely,



ROBERT SHIRLEY
DoD Regional Environmental Coordinator
Region 10