THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

Department of Environmental Conservation

DIVISION OF ADMINISTRATIVE SERVICES

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March 29, 2022

The Honorable Click Bishop
The Honorable Bert Stedman
Co-Chairs, Senate Finance Committee
State Capitol Room 516
Juneau AK, 99801

Dear Senators Bishop and Stedman:

Thank you for the opportunity to provide information about the Department of Environmental Conservation's Primacy initiatives on March 14. Questions arose during this meeting that required additional information. Responses related to the Resource Conservation and Recovery Act Subtitle C initiative are provided below, with responses related to the Clean Water Act Section 404 initiative forthcoming.

- **Can we treat fuel contaminated soil instead of shipping it out? Follow up with more information using Bethel, Nome, Anchorage, Southeast as examples of shipping costs.**

While petroleum is regulated under RCRA Subtitle C, it is not considered a hazardous waste. DEC already has regulations (under 18 AAC 75 Oil and Other Hazardous Substances Pollution Control) that are stricter than most of the federal regulations, thus little or nothing would change for the petroleum cleanup process or costs.

Under existing regulations, treatment of contaminated soil from fuel spills is an option. For thermal treatment, the time required and the logistics and cost to mobilize an approved treatment unit to a site may make it cost prohibitive. Some rural communities opt for landspreading or landfarming the material to reduce the contaminants to levels that the soils can be used or disposed of in the landfill.

DEC's Solid Waste Program has also established parameters and an application form to dispose of small amounts of low-level fuel contaminated soil in a Class III (rural) landfill. The regulations allow for additional disposal options for larger quantities, higher contamination, or other contaminants in certain landfills.

Responsible parties are responsible for the cost and arrangements for shipping contaminated soil, out of state or to in-state treatment or disposal facilities. The costs can vary significantly. Shipping petroleum-contaminated soil to Oregon or Washington for treatment or disposal can run about $400-$500 per ton from Southcentral or Southeast Alaska and $500-$600 per ton from other parts of Alaska.

- **Provide examples of regulatory flexibility? Examples of where DEC thinks we need this greater flexibility. What things are we thinking of changing?**

DEC would consider taking the approach that other states with RCRA-C primacy have adopted (but that EPA has not) of regulating electronics as a "Universal Waste." "Universal wastes" are not counted against a business's generator status if the items are legally recycled and meet other qualifying factors. Electronics are similar to other Universal Wastes, in that they are generated in large quantities and have a functioning recycling market. Under the federal regulations, if a business generates over 220 lbs of hazardous waste in a calendar month, they must register as a Small Quantity Generator and meet federal training, record keeping, and reporting requirements. It is easy for a business to generate over 220 lbs considering the rate at which electronics must be replaced (ex., several computers, monitors, or other electronics often replaced in a single month). By adopting the approach taken by other states, DEC could allow businesses that EPA treats as Small Quantity Generators from becoming regulated under RCRA at all.

For a list of other Universal Wastes visit: https://www.epa.gov/hw/universal-waste#:~:text=The%20federal%20regulations%20identify%20five,equipment%2C%20lamps%20and%20aerosol%20cans.

DEC also anticipates that creosote-treated timbers may be eligible for exemption under a state-run program. Under federal regulations, certain waste streams must be tested by the Toxicity Characteristic Leaching Procedure (TCLP) to determine if they qualify as hazardous waste. If those waste streams have a documented history of passing the TCLP test, a state program can issue a policy exempting those streams from further testing and hazardous waste disposal requirements.

Since Very Small Quantity Generators are not required to register, it is not possible to identify all generators based on publicly available information, and generator status can change monthly. Most small businesses are probably not aware of their requirements for counting and managing hazardous waste, which is where DEC will be able to provide further outreach and guidance to protect Alaska's environment.

- **EPA is looking to lower the threshold for PM 2.5 which affects Fairbanks air quality. How will DEC be helping with that if the threshold is lowered?**

This is not a RCRA issue but is regulated under the Clean Air Act.

EPA is currently reviewing the National Ambient Air Quality Standard for PM 2.5 and it is possible that it will be revised to a more stringent level. DEC has a Memorandum of Understanding with the Fairbanks North Star Borough that outlines the two agencies' roles and responsibilities with respect to air quality planning, monitoring, regulation, and implementation of federal requirements to help bring the area into attainment. DEC, in its primacy role under the Clean Air Act, would expect to continue its efforts in the area, which would include working with the Borough on any new designation recommendation related to a new/revised standard and any updated PM2.5 air quality plan designed to meet a new standard. DEC will continue to implement programs to reduce PM 2.5 as outlined in the existing air quality plan and it is possible that additional measures would be needed to bring the area into compliance.

- **How would the technical and compliance assistance and the location of Seattle vs Alaska apply to disposal of batteries? In urban vs rural Alaska? What are the costs related to disposal? Who bears those costs?**

Under either EPA's regulations, or DEC's program, batteries may be managed as Universal Waste, which significantly reduces the costs of management and does not impact generator status if they are properly recycled. The cost of shipping, recycling, and/or disposal of a waste is the responsibility of the generator - be it a business or a community. DEC's approach would be the same for urban vs rural Alaska to provide guidance that would ensure that Universal Waste streams are properly recycled to maximize any savings, thereby reducing the shipping cost borne by the generator.

Waste batteries are typically managed by recycling. The cost of battery recycling is dependent on shipping location and battery chemistry. In Alaska, batteries must be shipped to Washington State for recycling. Shipping costs vary widely depending on shipping origin with remote villages having shipping costs of 50 – 150% higher than their respective hub community (such as Bethel, Kotzebue, Nome, etc.). Typical battery chemistries include lead acid (typical car battery), alkaline or carbon zinc (i.e., AA batteries), Nickel Cadmium, Nickel Metal Hydride, Lithium (rechargeable tools), or Lithium Ion (cell phone or laptop).

The following two examples use Bethel as the location of origin and are based on current costs:

Lead acid battery (these have enough value that recyclers pay for batteries) –
Recycling credit $0.10 to $0.20 credit per pound (in Washington)
Shipping cost: From Bethel - $0.30 to $0.45 per pound

Total cost: $0.10 to $0.35 per pound

Nickel-Cadmium battery
Recycling cost: $0.20 to $2.00 per pound (in Washington)
Shipping cost: From Bethel - $0.30 to $0.45 per pound

Total cost: $0.50 to $2.45 per pound

- **What's the caseload of the current solid waste positions? Does it vary per region? What training does staff need to provide technical assistance?**

Each Environmental Program Specialist (EPS) has from 22 to 48 facilities that they oversee. These duties include permitting, inspection, compliance, and technical assistance. Those with fewer facilities are responsible for the more complex facilities that require additional work, such as reviewing monitoring reports, complex design reviews, as well as increased inspections and communication regarding facility compliance. In addition, all specialists are responsible for other solid waste issues, complaints, and public assistance for their geographic area and/or expertise.

All Solid Waste staff take the McCoy Hazardous Waste training course and RCRA-C staff will also be required to take the training listed in the following link: https://www.epa.gov/sites/default/files/2018-05/documents/credentials-rcra-inspector-training-epa-3500-1-rcra.pdf

- **What sections of the statutory authority would DEC be implementing or what regulations would be developed that would not be dependent on the current administration?**

The current statutory authority to create regulations is long standing, and creation of regulation would initially be primarily adopting federal regulations by reference by amending 18 AAC 62. Once adopted, DEC will be able to clarify some of the more complicated regulations for generators and determine where the Department could apply flexibility. While there are areas where DEC would be allowed flexibility and have enforcement discretion, the Department must be at least as stringent as the EPA in requirements and would be subject to regular review and oversight of the statewide primacy program.

- **Provide specific examples of times where the EPA failed to provide assistance.**

EPA's Region X RCRA program is built to support the established primacy programs in Oregon, Washington, and Idaho. This means their focus is enforcement for difficult cases, not providing the level of technical assistance and compliance support that DEC would like to focus on. DEC will have much greater regulatory flexibility under a state-managed program; and the six Alaska-based staff will focus on technical and compliance assistance, using enforcement as a final option.

Based on feedback from industry and DEC's staff experiences, EPA has been non-responsive to inquiries. DEC staff is often asked to interpret RCRA-C requirements but cannot speak to the requirements because the Department does not have the authority.

In some cases where the federal regulations are less clear, other states publish clarifying guidance to assist generators**.** EPA has published some guidance - one of the most often referenced is the EPA Small Business Guide to Managing Hazardous Waste. The current version, updated in 2019, does not mention requirements for electronic waste. Under a state primacy program, DEC would have the ability to provide clarifying guidance to assist generators.

- **Provide examples of the fines that were levied? Some were implemented on DOT on hospitals for various violations – provide more information. What would DEC have done differently? Which of the fines of recent years does DEC consider to be punitive?**

See the enclosed spreadsheet for fines levied.

Due to EPA's focus on enforcement, some Alaskan businesses may not even know their generator status and therefore have no understanding on how to manage hazardous waste under RCRA-C. DEC's approach to RCRA-C would be through compliance assistance, stressing education and guidance. Routine inspections will be conducted to walk through generators' facilities, which will be an opportunity for inspectors to provide real-time guidance. If something needs correction, DEC's inspector will share that immediately with the generator, and provide written documentation outlining what needs to be corrected and actions that may be taken to bring their business into compliance. While DEC would focus efforts on compliance assistance, DEC would still reserve the right to assess fines based on the gravity of the violation or on a facility's compliance history.

DEC's inspectors will be assigned a group of facilities for inspection. This will enable DEC's inspectors to be familiar with the needs of the generator and build professional relationships with them so that they may be the first to be called when the generator has a RCRA-C question and able to provide technical

assistance. Stakeholders have commended the DEC Solid Waste Program for this approach, which is used in overseeing RCRA-D.

DEC regularly works with the solid waste staff at EPA Region X, and while DEC plans on taking a different approach than the EPA program, the Department appreciates the individuals and the work that they do. Based on the Department's observations and the feedback received from the regulated community, DEC believes that providing technical and compliance assistance in addition to enforcement will produce fewer violations, better protecting Alaska's public health and environment while resulting in fewer fines.

- **What happened in 2019 where the fines were high but number of inspections was low? Was it a state entity or somewhere else? If State, when was the fine paid?**

In 2019, EPA settled two cases that compose the majority of this fine:

BPXA, for the Prudhoe Bay Unit: $125,100

Joint Base Elmendorf Richardson: $78,919

Note that these cases were not for inspections that occurred in 2019, rather, they involved findings from inspections in a prior year that were ultimately settled in 2019.

- **Of these fines in 2018-2021 were any of them related to pebble mine or the like?**

No, none of the fines were related to Pebble Mine.

- **Provide a list or map of communities showing where they fall under the definition of size of generator?**

The EPA ECHO Map, which provides data on regulated facilities, is attached. Below are instructions to use the EPA ECHO mapping system.

EPA ECHO Map:

1) Open EPA ECHO Facility Search page: Facility Search – Enforcement and Compliance Data | ECHO | US EPA
2) For "Search Media Program" - Select "Hazardous Waste (RCRA)"
3) For "Geographic Location"- under State – select "AK – Alaska"
4) Under "Facility Characteristics" – Go to Universe, then select either Large Quantity Generator (LQG), Small Quantity Generator (SQG), or Very Small Quantity Generator (VSQG). If you want to select multiple items, push down the Ctrl key, and click on desired items.
5) On the right side of the screen, there is a box titled "Search Criteria Selected", which is orange. Make sure Interactive Map is selected, then push "Search".
6) This will create a map – zoom into Alaska to see sites on map. Information on specific sites can be obtained from either clicking on the map or going to the table below the map.

- **Could the number of generators increase significantly due to infrastructure projects coming from the Infrastructure Bill?**

It is reasonable to expect that the increase in projects due to the Infrastructure Bill will generate more hazardous and non-hazardous waste in Alaska. DEC is not able to project the volume of increase or what effect that will have on the program at this time.

- **Hazardous waste sites on North Slope – how will DEC handle these?**

DEC is successfully implementing RCRA-D, which regulates non-hazardous waste, and staff work with solid waste generators and landfills across the state. This includes waste generators and landfills on the North Slope. The Department is aware of the financial, practical, and logistical challenges of managing waste in this region, and will bring that expertise to the regulatory oversight of the RCRA-C hazardous waste program.

Additionally, please see attached EPA Press Release regarding a Settlement to Resolve Federal Hazardous Waste and Oil Spill Prevention Violations on the North Slope of Alaska. The $6.5 million fine levied against a local government may be of interest in light of DEC's budget request. If DEC were to have primacy over RCRA Subtitle C, there would be qualified in-state staff with the authority to advise communities and facilities on how to comply with the hazardous waste laws that protect Alaskans' public health and our environment.

If you would like more information or have additional questions, I am happy to assist.

Sincerely,

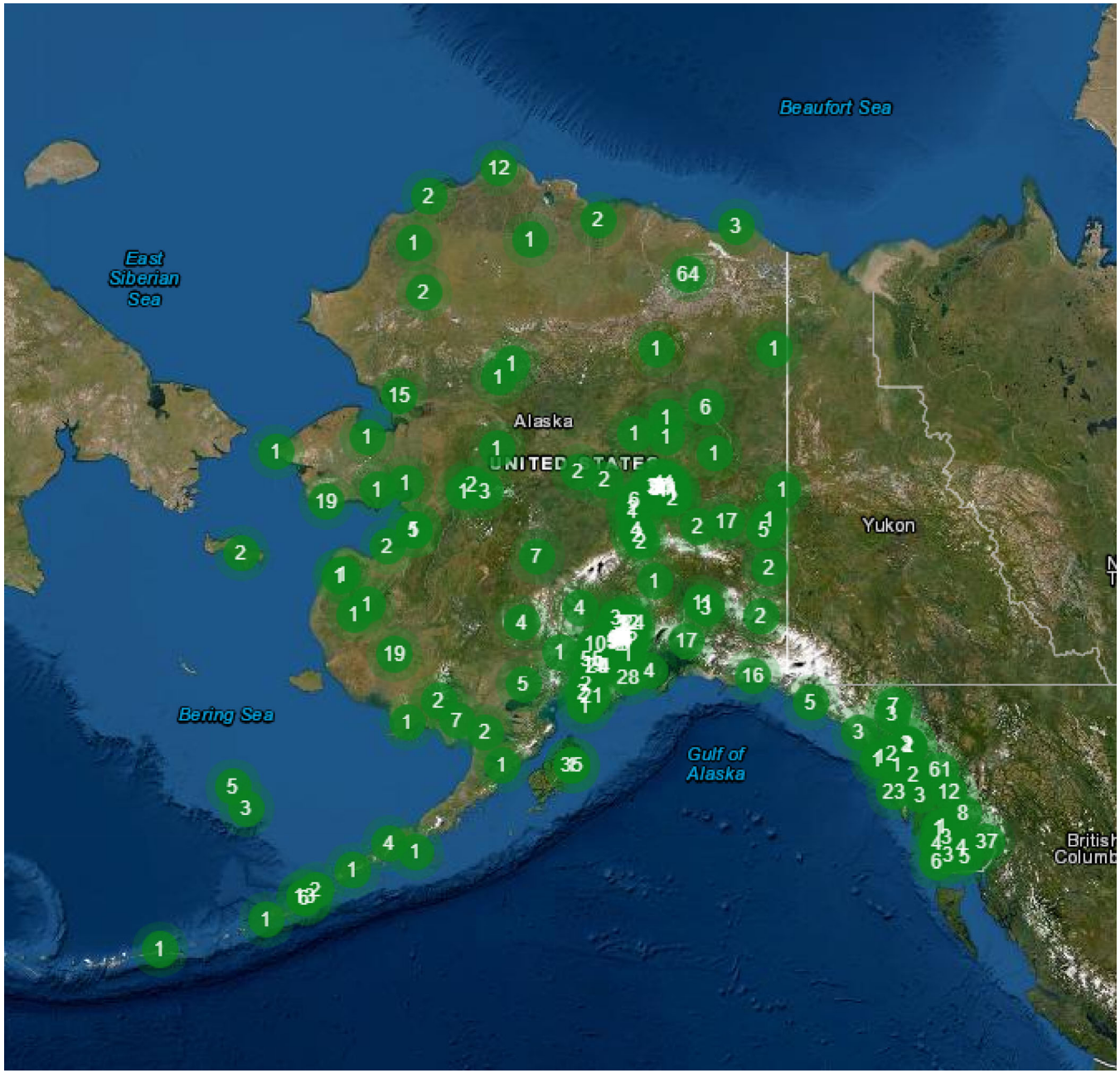
Megan Kohler
Administrative Services Director

Attachments:
EPA RCRA C Fines – 5 Year Summary
RCRA Map
EPA Press Release

Cc: Michael Partlow, Legislative Finance Division
Josie Stern, Office of Management and Budget
Cody Grussendorf, Staff to Senator Bishop
Pete Ecklund, Staff to Senator Stedman

RCRAName	Fine	Issues	Year Assessed
ALASKA DOT & PF 6860 GLACIER HWY	$118,100	Respondent failed to perform hazardous waste determinations, stored hazardous waste without a permit, and failed to label containers of used oil. As a result of this action, Respondent cleaned up the area where the waste had been stored, preventing the potential release of hazardous waste to the soil.	2016
ALASKA REGIONAL HOSPITAL	$6,000	for violations of RCRA requirements for management of containers of hazardous waste and for tracking of shipments of hazardous waste.	2017
ALASKA REGIONAL HOSPITAL	$32,429	EPA alleges that Alaska Regional Hospitalfailed to determine that 10 containers of solid waste were listed hazardous waste, stored hazardouswaste without a storage permit, failed to submit the required Biennial Report, failed to properly managenon-creditable hazardous waste pharmaceuticals, and failed to properly manage universal waste.	2020
BPXA	$125,100	The RCRA permit requires compliance with third party liabilityfinancial assurance requirements, and five consecutive annual policies failed to provide adequatecoverage for third party bodily injury and property damage claims. Additionally, the facility failed tolabel containers of hazardous waste.	2019
COSTCO WHOLESALE #107	$2,000	The violations involve failure to properly label acontainer of hazardous waste and failure to conduct weekly inspections.	2021
GOLDEN VALLEY ELECTRIC ASSN	$20,178	EPA alleges that Golden Valley ElectricAssociation stored hazardous waste without a storage permit, failed to prepare a correct Land DisposalRestrictions notice, failed to properly manage universal waste and failed to properly label containers ofused oil.	2021
STEEL FAB	$42,000	The violations include disposal of at least one drum of ignitable hazardous waste, which the company was not aware of, and mismanagement of containers of hazardous waste and universal waste.	2018
TESORO ALASKA COMPANY LLC KENAI REFINERY	$9,000	The violations involved the violations of the large quantity generator container management standards and management of batteries as universal waste.	2019
UNIVAR SOLUTIONS USA INC.	$4,000	The violations involved failure to properly mark or label containers ofhazardous waste, failure to conduct weekly inspections of hazardous waste central accumulation areasduring 2018, failure to maintain a signed copy of a manifest for at least three years, and failure toproperly mark or label universal waste.	2020
UNIVERSITY OF ALASKA FAIRBANKS	$7,000	Alaska for failure to comply with RCRA requirements for management of containers of hazardous waste and requirements for training workers handling hazardous waste.	2017
US AIR FORCE, EIELSON AFB	$23,354	The violations are based on an October 2020 inspection of Eielson Air Force Base and include 1)failure to make a hazardous waste determination; 2) failure to comply with the conditions to storehazardous waste without a permit or interim status by not performing weekly inspections; 3) failure toproperly manage universal waste lamps; and 4) failure to properly label a container of used oil.	2021
US ARMY GARRISON FORT WAINWRIGHT	$32,000	(1) failure to make a hazardous waste determination, (2) failure to comply with the conditions to operate without a permit or interim status, (3) storage of hazardous waste for over 90 days without a permit or interim status; and (4) failure to comply with used oil requirements.	2017

US DOD USAF JOINT BASE ELMENDORF-RICHARD	$81,310	EPA alleges that Joint Base Elmendorf-Richardson, the 176th Wing of the Alaska Air National Guard, and Aurora Military Housing III, LLC co-generated hazardous waste at the facility and alleges that between 2011-2015, Joint Base Elmendorf-Richardson failed to make hazardous waste determinations for two waste streams, stored hazardous waste without a permit in at least 16 different locations throughout the facility, and transferred waste at least three times without completing the required manifest to a facility that was not appropriately permitted to receive the waste. EPA also alleges that Joint Base Elmendorf-Richardson failed to properly manage universal waste.	2017
US DOD USAF JOINT BASE ELMENDORF-RICHARD	$78,919	EPAalleges that Joint Base Elmendorf-Richardson generated hazardous waste at the facility and alleges thatbetween 2016-2018, Joint Base Elmendorf-Richardson failed to make hazardous waste determinationsfor two waste streams, failure to conduct required weekly inspections of hazardous waste accumulationareas; improper container management and labeling requirements; and failure of personnel to take partin annual review of training. EPA also alleges that Joint Base Elmendorf-Richardson failed to properlymanage universal waste and inspect containers at the permitted hazardous waste storage facility.	2019
US DOD USAF JOINT BASE ELMENDORF-RICHARD	$61,554	On October 9, 2019, JBER disclosed to EPA Region 10 that it had speculativelyaccumulated a large quantity of expended small-arms cartridge casings (ESACCs) that exhibit thetoxicity characteristic for lead. Prior to 2017, JBER recycled its ESACCs since they are made of avaluable commodity, brass, but in 2017, this recycling activity ceased. Since 75% of the ESACCs werenot recycled in calendar year 2018, the ESACCS became a solid waste, and those that exhibited thetoxicity characteristic for lead became hazardous waste. To date JBER has accumulated about 200,000lbs of brass ESACCs. Under the terms of the CAFO, EPA is allowing JBER to recycle the brassESACCs versus disposing of it in a permitted RCRA treatment, storage, and disposal facility. TheCAFO sets forth schedules and requirements for the storage and recycling of the ESACCs in a mannerthat protects human health and the environment.	2020
USDHS USCG BASE SUPPORTKODIAK	$45,000	The violations occurred between 2013 and 2016 and included unpermitted disposal of contaminated groundwater, failure to conduct required weekly inspections of hazardous waste accumulation areas, violations of container and labeling requirements, storage of hazardous waste beyond 90 days without a permit, and failure to meet permit requirements pertaining to facility inspections and contingency planning requirements. Region 10 also alleged Respondent violated used oil and universal waste requirements.	2017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EPA and Justice Department Propose Settlement to Resolve Federal Hazardous Waste and Oil Spill Prevention Violations on the North Slope of Alaska

March 16, 2022

Contact Information
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SEATTLE (March 16, 2022) – Today, the Environmental Protection Agency and the Department of Justice announced a proposed settlement with the North Slope Borough of Alaska to resolve federal hazardous waste and oil spill violations. The settlement requires the Borough to take comprehensive actions and make infrastructure investments to comply with solid and hazardous waste management rules and oil spill prevention rules. The Borough will also hire an independent third-party auditor to ensure that the compliance requirements in the settlement are successfully implemented and pay a civil penalty of $6.5 million.

A multi-year environmental investigation of the Borough uncovered violations of the Resource Conservation and Recovery Act (RCRA), which regulates solid and hazardous waste, and the Clean Water Act (CWA), at numerous facilities owned and operated by the Borough in Utqiagvik, Anaktuvuk Pass, Atqasuk, Kaktovik, Nuiqsut, Point Hope, Point Lay, Wainwright, Deadhorse and Prudhoe Bay. Many of the violations resulted from the Borough's failure to properly manage and store thousands of drums of oil and hazardous waste in these communities, some of which led to oil spills.

"When improperly managed, hazardous wastes and oil can damage the environment and pose a health risk to those who come into contact," **said Acting Assistant Administrator Larry Starfield of the EPA's Office of Enforcement and Compliance Assurance.** "This settlement will help protect the health of the communities and the sensitive ecosystems in the North Slope Borough."

"EPA is committed to protecting people's health and the environment in communities across the North Slope and throughout Alaska," **said Acting Regional Administrator Michelle Pirzadeh of EPA's Region 10. "**By coming into compliance, properly managing hazardous waste, and preventing oil spills, the Borough will reduce health and safety risks and better protect its workers, its communities and the environment."

"Today's settlement will ensure that the Borough completely upgrades its waste and oil management practices to protect its residents and future generations from exposure to hazardous waste and to prevent spills to the surrounding environment," **said Assistant Attorney General Todd Kim of the Justice Department's Environment and Natural Resources Division.** "The work to be performed under this settlement will protect the vital tundra wetlands and waterways that surround many of the Borough's communities."

The alleged RCRA violations include the Borough's unpermitted storage of hazardous waste; failure to identify and characterize hazardous waste; unauthorized transport of hazardous waste; shipment of hazardous waste without proper manifesting and land disposal restriction notices; non-compliant management of universal wastes; and failure to properly label used oil containers. Numerous drums of solid and hazardous waste were improperly stored outdoors, accessible to Borough residents and exposed to the environment. Some drums contained corrosive, ignitable, or toxic waste and were not properly labeled as hazardous.

In addition, the Borough failed to safely store and manage oil in accordance with the CWA's Oil Pollution Prevention regulations, intended to prevent oil spills, at 70 of its facilities. The violations contributed to at least two oil spills into wetlands near the Kasegaluk Lagoon, Kaktovik Lagoon, and Pipsuk Bight. Oil spills in this sensitive arctic tundra habitat can harm fish and other wildlife, as well as downstream waters which are important to Native Alaskans, including for subsistence hunting, fishing, and gathering.

To resolve the alleged violations and come into compliance with federal requirements, the Borough has agreed to close all unpermitted hazardous waste storage facilities; develop a comprehensive waste management plan to minimize generation of and ensure proper tracking and management of solid and hazardous waste; build or retrofit a permitted hazardous waste storage facility; revise its CWA Spill Prevention, Control, and Countermeasure Plan; install adequate secondary containment around oil storage containers; and develop an integrity testing program for oil storage containers that complies with applicable industry standards. The Borough has also agreed to identify a full-time environmental official and will hire an independent third-party auditor to ensure that the compliance requirements in the consent decree are successfully implemented.

The Borough's compliance actions represent a significant investment in its waste management and pollution prevention programs to help protect the residents of the North Slope and their environment from exposure to oil spills and hazardous waste. The Borough began making improvements to its hazardous waste management and oil storage programs during negotiations for the proposed settlement.

The North Slope Borough is the northernmost municipality in the U.S. and the largest of Alaska's 19 organized boroughs. It includes nearly 95,000 square miles and is bordered to the west by the Chukchi Sea and to the east by the Beaufort Sea. Most of its residents live in eight communities throughout the Borough: Anaktuvuk Pass, Atqasuk, Utqiagvik, Kaktovik, Nuiqsut, Point Hope, Point Lay and Wainwright, in addition to two industrial complexes at Deadhorse and Prudhoe Bay. EPA has taken two previous administrative enforcement actions against the Borough in 1998 and 2015 for RCRA hazardous waste management, storage, and treatment violations.

The proposed consent decree will be published in the Federal Register for a 60-day public comment period, available at: www.federalregister.gov EXIT

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