



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

## Department of Environmental Conservation

OFFICE OF THE COMMISSIONER

P.O. Box 111800  
Juneau, Alaska 99811-1800  
Main: 907.465.5066  
Fax: 907.465.5070

April 13, 2023

The Honorable Kelly Merrick, Chair  
Senate Budget Subcommittee  
Department of Environmental Conservation  
State Capitol  
Juneau, AK 99801

Dear Senator Merrick,

Thank you for the opportunity to present to the Department of Environmental Conservation Senate Budget Subcommittee on the Spill Prevention and Response Fund on April 10. Questions arose during this meeting that required additional information, which I have responded to below.

***How much was factored into the production forecast for Willow and Pikka?***

According to the Bureau of Land Management, estimates for Willow include up to 180,000 barrels per day for an estimated total of 576 million barrels of oil over 30 years. The Pikka Project, Phase 1, is estimated at upwards of 80,000 barrels per day for up to 30 years.

**Why aren't local communities paying the \$0.0095 refined fuel surcharge?**

In 2015, the legislature passed HB 158 that implemented a \$0.0095 surcharge on refined fuels. The legislation provided for a number of exemptions including fuel sold to a federal or state government agency for official use. There was the assumption based on a plain reading of statute that that this surcharge would apply to local municipalities (letter dated April 9, 2015, from the Department of Revenue (DOR) to Senator MacKinnon that states "The surcharge bills only exempt "federal and state.") and the fiscal note at that time accounted for those additional revenues to be collected and deposited in the fund.

Beginning on July 1, 2015, local governments began paying the applicable surcharge. On June 23, 2016, the City of Nome submitted a request for a refund for a total of \$21,006.48 on fuel that was purchased between July 1, 2015 and April 30, 2016 on the grounds that the statute does not expressly provide for applicability to municipalities. DOR denied their claim and on April 6, 2017, the Department issued an Informal Conference Decision upholding the denial of the refund claim. The City of Nome

subsequently filed a notice of appeal with the Office of Administrative Hearings (OAH) based on AS 29.71.030 – A state law or regulation may not assess or tax, or be construed to assess or tax, a municipality unless the law or regulation expressly provides that the municipality is to be assessed or taxed by the particular law or regulation.

On July 23, 2018, OAH ruled that both the legislative history of HB 158 and the plain language of the surcharge statute are silent as to the applicability to municipalities and as such, DOR cannot override the statutory requirement expressed in Title 29 that exempts municipalities from taxation and assessment unless expressly provided for (OAH Nome Joint Utility – motor fuel refund.)

***Please provide additional information regarding the Wrangell Junkyard.***

The Wrangell Junkyard operated on the property as Byford Salvage from the 1960s until the late 1990s when the property was sold. The new owner barged out the marketable metal for salvage over a short period of time before abandoning the property, leaving large piles of metal and other debris and improperly stored hazardous materials including hundreds of batteries, transformers, tanks, drums and tires.

Between 2000 and 2004, EPA and DEC conducted limited site assessment work on the property because the responsible parties were unable to do so. However, much of the site was not accessible due to the large volume of debris/waste on the surface. In 2006, the City of Wrangell foreclosed on the property due to unpaid property taxes. Beginning in 2010, the City began clearing the metal debris from the site but lacked the financial and technical resources to conduct the necessary cleanup. Because of this, they applied for Targeted Brownfield Services from EPA to help address the site.

In 2014, EPA Region 10 conducted a Targeted Brownfield Assessment at the site on behalf of the City and Borough of Wrangell. The results, published in 2015, documented extremely high levels of contamination. Additionally, sample results from subsurface soil, surface water, groundwater, marine sediments, and shellfish tissue contained elevated concentrations of lead and other contaminants. In spring 2015, EPA determined the site poses an imminent risk to human health and the environment and initiated plans to conduct a Time Critical Removal Action under Superfund, but the Gold King Mine release in Colorado subsequently became a higher EPA response priority. DEC concurred with the EPA determination that an imminent and substantial risk to human health and the environment is present at the site and in late 2015 initiated a state-led emergency cleanup of the site to address the risks.

During construction of an access road in 2016 large quantities of buried metal, rubber, and wood debris were found. Although no new contaminants were found, the volume of contaminated material requiring treatment was much greater than originally estimated; perhaps four times as much.

The state expected to have the contractor complete most of the work by late May of 2016 and to have the treated material removed and transported to a hazardous waste facility in Oregon. But when the estimated total volume expanded to over 18,000 cubic yards, the new plan became to treat soil and store it on-site.

In the summer of 2017, the DEC issued a contract for monofill construction and a separate contract for engineering services. In late August of 2017, in response to local concerns about the proposed construction of the monofill, the department agreed to prepare the proposed site, but postpone transport of the treated material until April 1, 2018. The project was halted to allow the Wrangell community, including the Wrangell Cooperative Association (WCA) and the CBW, to explore potential disposal options with DEC, including alternative locations for the monofill and shipping and disposal of the material at a facility in the lower '48. Preparation of the rock pit was completed in fall of 2017, but no material was moved into the pit.

In May of 2018, as the monofill construction was about to begin, then-Governor Walker requested funding be added to the FY19 state capital projects budget to cover the cost of shipping and disposal in lieu of monofill disposal. The Alaska Legislature approved the request for \$5 million but directed that it be funded out of the state's Emergency Account of the Oil and Hazardous Substance Release Prevention and Response Fund. By the fall of 2018, DEC's contractors had shipped some 30,000 tons of contaminated soil, wastes, and debris from the site to a disposal facility in the Lower '48.

On April 19, 2019, the Contaminated Sites program issued a cleanup complete determination for the Wrangell Junkyard lead contaminated site cleanup project. The total cost to clean up and restore the site was approximately \$24.5 million all paid out of the Emergency Response Account. Since all potential responsible parties are deceased, and the property was received through foreclosure by the City and Borough of Wrangell in the mid-2000s, cost recovery is not possible per AS 46.06.822(k).

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Brune", with a long, sweeping underline.

Jason Brune  
Commissioner

Attachments: HB 158 - Alper to MacKinnon re HB158-SB86 4-09-15.pdf  
OAH Nome Joint Utility – motor fuel refund.pdf