

**ALASKA STATE LEGISLATURE
ADMINISTRATIVE REGULATION REVIEW COMMITTEE**

January 28, 2016

9:03 a.m.

MEMBERS PRESENT

Representative Jim Colver, Vice Chair
Senator Mia Costello
Senator Berta Gardner
Representative Mike Hawker
Representative Adam Wool

MEMBERS ABSENT

Senator Lesil McGuire, Chair

COMMITTEE CALENDAR

DEPARTMENT OF ENVIRONMENTAL CONSERVATION PROPOSED CLEANUP LEVEL
AMENDMENTS FOR 18 AAC 75

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

KRISTIN RYAN, Director
Division of Spill Prevention and Response
Department of Environmental Conservation (DEC)
Anchorage, Alaska

POSITION STATEMENT: Discussed the proposed cleanup level
amendments for 18 AAC 75.

RALPH HULBERT, representing himself
AlasChem Engineering
Palmer, Alaska

POSITION STATEMENT: Commented on the proposed cleanup level
amendments for 18 AAC 75.

LARRY ACOMB, Environmental Consultant
Geosphere, Inc.

Anchorage, Alaska

POSITION STATEMENT: Commented on the proposed cleanup level amendments for 18 AAC 75.

ACTION NARRATIVE

[9:03:51 AM](#)

VICE CHAIR JIM COLVER called the Administrative Regulation Review Committee meeting to order at 9:03 a.m. Present at the call to order were Senators Costello and Gardner and Representatives Wool and Vice Chair Colver.

Department of Environmental Conservation Proposed Cleanup Level Amendments for 18 AAC 75

[9:04:49 AM](#)

VICE CHAIR COLVER announced the committee would hear a review of the Department of Environmental Conservation (DEC) proposed cleanup level amendments for 18 AAC 75. Because the proposed regulations have generated such concern from experts, the purpose of the hearing is to shine a light on their relevance and necessity, he said.

[9:05:38 AM](#)

REPRESENTATIVE HAWKER joined the committee.

[9:06:03 AM](#)

KRISTIN RYAN, Director, Division of Spill Prevention and Response, Department of Environmental Conservation (DEC), stated that the division is responsible for the immediate response to a spill and oversight of long-term mitigation. The Contaminated Sites Program oversees long-term cleanup of contaminant releases, but has not updated the regulations for quite some time. What the committee is interested in today, she said, are the updates to one of the tables in the proposed regulations regarding cleanup levels for soil and groundwater and how they are calculated for contaminated sites. She emphasized that the new numbers are based on new science.

She explained that the division held three public workshops to discuss the proposed changes; one was teleconferenced, one was held in Anchorage, and one was held in Fairbanks. She described the regulations for contaminated sites as a cafeteria plan with a variety of options available to a responsible party who has a contamination release. The table under discussion today is one option that is similar to a general permit. It's a one-size-fits-all approach and is meant to protect human health in all

situations. A second option available to a responsible party is a more customized cleanup process. She noted that the division has been updating the manuals and calculators to simplify the customized process. She assured the committee that there are multiple options available to a responsible party to determine the best and most cost-effective way to clean up contamination that has occurred.

MS. RYAN related that the division received quite a few comments on the proposed regulations and is now in a deliberative process deciding how to accommodate the articulated concerns before the regulation package is finalized and adopted. She emphasized that the decisions about the proposed contaminant levels are based on the best science available about the risks associated with the different contaminants. The driving focus in the proposed new levels is to do no harm to human health. She offered to answer questions.

[9:11:25 AM](#)

SENATOR COSTELLO asked what statute provides DEC the authority to make these regulatory changes.

MS. RYAN said she would follow up with the specific statute.

REPRESENTATIVE WOOL asked if the table includes just the new requirements.

MS. RYAN explained that the table was repealed and readopted. Returning to Senator Costello's question, she advised that AS 46.09.020 gives the department broad authority to develop guidelines for setting up cleanup of hazardous substances.

REPRESENTATIVE WOOL expressed interest in a side-by-side comparison of the old and new contamination numbers.

MS. RYAN agreed to provide a comparison.

VICE CHAIR COLVER asked if DEC is adopting more stringent standards than the U.S. Environmental Protection Agency (EPA) for arsenic in groundwater.

MS. RYAN answered yes; the proposed standard is higher than what public water systems have to meet for water that comes out of the tap. The standard for public drinking water systems considers many different factors, including the ability for the water system to treat the water. The levels DEC is obligated to establish are for groundwater, which can be used for a variety

of things. She clarified that the proposed regulations do not change the requirements for arsenic removal for drinking water systems in the state. The proposed regulations establish the cleanup level a responsible party is expected to achieve when they have released arsenic into the environment.

MS. RYAN said the division is trying to decide how to address the concerns that the Table reflects a level for arsenic that is lower than the background level for a lot of the state, while also recognizing that that number is best known to be protective of human health and the environment. That being said, she assured members that DEC does not expect a responsible party to cleanup a contaminated site to more than the background level in the particular site.

VICE CHAIR COLVER asked if DEC would be flexible in enforcing these regulations based on the existence or absence of baseline data on the levels of naturally occurring arsenic in soil and groundwater.

MS. RYAN answered yes, but the expectation is that a responsible party will need to collect samples to prove that they did not contribute more arsenic to the environment than existed previously. She advised that just 100 sites in the state have been identified as having arsenic as a contaminate of concern. She also noted that DEC has a lot of background information about arsenic, particularly around military bases, and is able to utilize that information for nearby sites.

[9:20:37 AM](#)

SENATOR COSTELLO read AS 46.09.020 and commented that it appears as though there is a conversation between the entity doing the cleanup and the department, but it isn't clear that the section actually provides the authority to make the regulatory changes.

MS. RYAN replied their statutory authority is mingled with the statute on spills, and is based on immediate response. The statute relating to longer term remediation was added later. She confirmed that DEC does have a conversation at most sites about what and how much the responsible party is expected to clean up, but there's a lot of give and take weighing what is good for the community and the environment. Often they establish institutional controls which allows the contamination to stay in the ground if it is determined to be unfeasible or uneconomical to remove.

[9:24:18 AM](#)

VICE CHAIR COLVER opened public testimony.

[9:24:29 AM](#)

RALPH HULBERT, representing himself, AlasChem Engineering, said everybody that commented on the proposed arsenic levels being below the background levels should understand that arsenic in the groundwater has to do with the historic groundwater chemistry, not surface arsenic. He opined that this is more complex than what the CSP has in any of its guidance. He pointed out that the CSP for arsenic describes altered or disturbed areas that may contain naturally occurring arsenic, but it's not possible to prove that something was added. He also commented on the problems with the proposed chromium levels, the limits on polycyclic aromatic hydrocarbons, and the problems associated with the proposed cleanup levels of volatiles. He concluded his comments suggesting that a valid and robust risk management policy is needed.

[9:31:52 AM](#)

VICE CHAIR COLVER asked what the proposed regulations will mean in the field.

MR. HULBERT replied a lot of time and money will be spent lining up to talk to DEC.

VICE CHAIR COLVER asked if it's fair to say that the additional DEC staff proposed to interface with the business community will drive up costs for the state.

MR. HULBERT replied globally yes but individually no, because DEC has a policy to bill everybody for their conversations.

VICE CHAIR COLVER asked what the impact will be if these regulations are adopted.

MR. HULBERT opined that the aggressive remediation that DEC seems to prefer will most likely cause more human health risks than they will solve.

[9:35:59 AM](#)

SENATOR COSTELLO asked Ms. Ryan if the department charges for the time it spends talking to the party it is working with.

MS. RYAN answered yes; the division is statutorily required to recover all costs.

SENATOR COSTELLO asked if that includes conversations on the telephone and in person.

MS. RYAN replied DEC doesn't bill for telephone conversations, but the clock generally is turned on when they go out to a site and have more lengthy conversations.

SENATOR COSTELLO cited the statute and asked if the responsible party is charged if the state takes over the remediation.

MS. RYAN said that is correct, but that statute was intended for spill response and the need for an immediate response to limit the risk to the environment. She didn't recall that being done on a contaminated site.

REPRESENTATIVE WOOL asked if she said that the arsenic level in the table reflects the level for drinking water.

MS. RYAN replied the table does not reflect drinking water. It reflects ground water, which can be used for drinking water or any other activity.

SENATOR GARDNER asked her to speak to the risk to humans associated with the cleanup of arsenic as opposed to leaving the arsenic in the ground. She noted that insurance requirements are perhaps reflecting the high risks associated with exposure.

MS. RYAN said any kind of cleanup has to be done by a contractor who knows how to control the risks to ensure that individuals aren't exposed to unsafe levels of a contaminant. Every site is different, but DEC oftentimes allows the contaminant to stay where it is and naturally attenuate. Cleanup is required in situations where the public might be exposed.

9:42:50 AM

LARRY ACOMB, Environmental Consultant, Geosphere, Inc., said he typically works as a subcontractor to larger consulting firms and the responsible party generally is the federal government or a large oil company.

He said the technical issues with the proposed regulations are well documented and should be used as a starting point to continue the revision of the regulations. He stressed that DEC should not try to promulgate the regulations without going back out for public comment and without working with the environmental professionals in the community to solve the problems with the current regulation package. He cited the

example of the use of the Andelman equation in some of the calculations of drinking water cleanup levels.

MR. ACOMB said Ms. Ryan indicated that there are alternate options for calculating cleanup levels, but DEC doesn't offer an alternative to the Andelman equation that's used to calculate Table C groundwater cleanup levels. The ramification of that ripples throughout the rest of the regulations, he said.

VICE CHAIR COLVER asked him to expand on the last statement.

MR. ACOMB explained that the EPA uses the relatively conservative Andelman equation to set screening levels but not for conducting risk calculations or for setting alternative cleanup levels at sites. DEC proposes to use the equation to assess the concentration of contaminants that volatilize from tap water in residential use, and effectively offers no alternative. The result of that calculation is used to set the Table C cleanup levels and those values are used in the calculation of the other soil cleanup levels listed in Table B1. Thus the statement that the ramifications of using the Andelman equation ripple through the rest of the regulations. He described this as a technical detail that has great significance.

[9:48:54 AM](#)

MR. ACOMB maintained that the requirement for DEC to assess the impact of the proposed regulation changes has not been adequately addressed. He relayed that he is making a presentation at the Alaska Forum on the Environment in two weeks and part of that will be to quantify some of the costs associated with the regulation change package. He offered to share the calculations, noting it will be a crude quantification but more than currently exists in the DEC documentation.

VICE CHAIR COLVER confirmed the committee would like to receive the information.

REPRESENTATIVE WOOL asked if using the Andelman equation in Table C and using that calculation to determine values in Table B1 is a new methodology.

MR. ACOMB replied it's an old equation, but what's significant is that this is the first time that DEC has looked at the risk of breathing volatiles that emanate from contaminated tap water.

REPRESENTATIVE WOOL asked if all the levels are based on ingesting or breathing volatiles from tap water and then those

levels are reverse engineered for groundwater. He posed a hypothetical example involving arsenic.

MR. ACOMB said that's generally correct, but not the reference to arsenic because it isn't a volatile organic compound (VOC). He reiterated that this is the first time DEC has considered volatilization from groundwater and dermal contact, and the volatilization from tap water or groundwater is the more restrictive pathway.

VICE CHAIR COLVER asked him to continue his testimony.

MR. ACOMB said he is pointing out technical details, but they need to be ironed out before the regulations are implemented. He again suggested that DEC use the existing comments and not try to implement the regulation package without first working with environmental professionals in the community. He noted that Ms. Ryan said DEC is trying to develop human health risk-based cleanup levels but the proposed regulations cap the groundwater and soil concentrations at the Csat or solubility values instead of using risk-based concentrations. So not everything in the Table is truly risk-based, he said, and that should be corrected.

He highlighted that DEC also said there are other options than using the table value, but those options won't be available until DEC updates the calculations for the new exposure routes it wants to address in the proposed regulations. In particular, the hydrocarbon risk calculator should be available for the individual compounds before the regulations are promulgated. However, the equations that drive that tool first need to be reviewed by DEC and the environmental community to make certain that it is doing what they want it to do. If the tool is revised, it would have to include the Andelman equation or some alternative, but there's been no decision about what would be a good alternative.

VICE CHAIR COLVER summarized that the environmental and scientific community believes that DEC should reopen public comment, work with the professionals in the field and the private sector to retool this regulation, and develop the [the hydrocarbon risk calculator] tool before proceeding with implementation.

MR. ACOMB answered yes, but the first step is for DEC to work with environmental professionals in the community to address the technical concerns that have been brought up. He suggested

convening several working groups to address the different issues.

VICE CHAIR COLVER asked him to give his perspective of the public comment periods that DEC held.

MR. ACOMB characterized the October 14 workshop he attended as an overview or introduction to the proposed regulation package. It was well attended and people from the audience asked questions and brought up issues. He said a conversation that a DEC chemist and three chemists in the audience had about arsenic demonstrates the type of input the environmental community can offer that could help DEC develop a better, more easily implemented package of regulations.

[10:01:33 AM](#)

SENATOR COSTELLO asked if the proposed regulations require reopening sites that were previously closed.

MR. ACOMB said if DEC decided to evaluate how these regulation changes impact closed sites, there is the potential for many sites to be reopened.

SENATOR GARDNER thanked Mr. Acomb for his testimony saying it gave her a template for thinking about these issues.

REPRESENTATIVE WOOL asked if the new levels are based on new science or new methodology.

MR. ACOMB offered his belief that the decision to assess risk of inhalation of volatiles in tap water caused DEC to include the Andelman equation. It's a simple but overly conservative equation, which is why the EPA only uses it for screening purposes.

[10:05:58 AM](#)

REPRESENTATIVE HAWKER asked Ms. Ryan to clarify where the agency is in the process of promulgating these regulations and what steps it anticipates taking to resolve the questions that have been raised.

MS. RYAN said the extended comment period has closed and the workshops were a success. The comments have been informative and the regulation drafting process has been productive. DEC is still reviewing the comments and she didn't know what the next steps would be.

REPRESENTATIVE HAWKER asked if DEC intends to incorporate the points that have been raised into a revised regulatory package or move forward with the package as originally promulgated.

MS. RYAN replied they definitely will make changes based on the comments, but she didn't know if they'd go back out for more public comment.

10:09:34 AM

REPRESENTATIVE HAWKER summarized that DEC intends to make changes to the original regulatory package but isn't sure when or how those changes will be made and isn't sure if there will be additional public comment.

MS. RYAN agreed with the summary.

REPRESENTATIVE HAWKER offered the following counsel for the agency:

Kristin, if I look at the package that we've been provided, which is basically the entirety of the published public comment, and quite frankly and in the hypothetical if I completely discount and ignore all the comments from corporate and business entities under the hypothetical presumption that they're simply out for their own best economic interests and really do not have the interests that you are charged with regulating as their primary objective. Let's just discount them; completely take them off the board and not consider them.

That leaves me with the comments from other government regulatory agencies, particularly the Department of the Army, the Department of Defense and most particularly the U.S. Army Corps of Engineers' comments on your regulations. And since the Army and the Department of Defense have had some really bad experiences in Alaska and have left us with some, literally some tragic environmental challenges, let's take them off the board and presume they're just trying to protect themselves.

But let's look at the Corps of Engineers. They serve the regulatory purpose that we do as well. I mean they're the guys that we have to go to for permitting, for corporate projects, for engineering projects, water projects. They're the guys that have a similar

mission to you. So if we confine our examination only to their comments on your regulations, I would really ask you to look at those comments.

To me they are a really significant criticism of the entirety of your package of regulations. I think they point out that they are basically not doable; they create standards that are unachievable; they create a... You can go through the whole thing, but I think the points raised by the Corps of Engineers are an absolutely succinct statement, an encapsulation from another government regulatory agency of all the comments that have been placed on record. And I've got to tell you personally, I as a legislature would be really, really and have incredible problems with your going forward with a regulatory package that does not directly and publically address the problems and issues raised by the Corps of Engineers, and that you specifically - because there are such manifest problems with these regulations - that you absolutely must take these out for a complete review, public review so the other entities who do have legitimate concerns raised, have a second bite at the apple to work this through with you.

But again, if you use the Corps of Engineers' comments as your roadmap, I think you're on the right trail here. And again, this is when I would strongly admonish you to take that approach and recognize that this package is just not ready for prime time. And I appreciate you indulging my thoughts there Kristin, and I know you'll pass it up the line.

10:13:08 AM

VICE CHAIR COLVER concurred with the comments and noted that other committee members were nodding in agreement. He said the committee can't necessarily mandate anything, but it is the public's voice and interface with the agencies to bring light to issues in an effort to do a better job.

SENATOR COSTELLO agreed with Representative Hawker's comments and said she would be grieved to learn that the department may not go out for another round of public comments. She also pointed out that the EPA only uses the Andelman equation for screening purposes and DEC proposes using it to set cleanup levels despite the fact that AS 46.09.020(a)(1)(B) says the

department's guidelines shall be consistent with national guidelines.

[10:16:19 AM](#)

MS. RYAN explained that the national contingency plan referred to in statute is a specific document related to spill response so it doesn't apply in this situation.

SENATOR COSTELLO asked which statute provides DEC the authority for the proposed regulations.

MS. RYAN replied it is the beginning of that section as well as some other broad authorities the department has to establish regulations.

[10:17:23 AM](#)

VICE CHAIR COLVER recommended the committee draft a letter directing DEC to revise the regulations for 18 AAC 75, submit the package to a working group of experts and government entities, and then open a public comment period. He noted nods of approval and opined that the consensus is that it is inappropriate to move forward with the adoption of the proposed regulations at this time.

[10:19:17 AM](#)

There being no further business to come before the committee, Vice Chair Colver adjourned the Administrative Regulation Review Committee at 10:19 a.m.