

S

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29

COMMITTEE REPORT
SENATE

1/29/81

FURTHER: None

Date: February 17, 1981

Mr. President:

The Committee on JUDICIARY has had SB 29
nuclear materials

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SB 29 "An Act relating to nuclear materials." same title
- new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

COMMITTEE REPORT
SENATE

FURTHER: Judiciary

4/18/79

Date: 5-12-80

Mr. President:

HEALTH, EDUCATION &
SOCIAL SERVICES

The Committee on _____ has had SB 209

prohibiting the disposal of nuclear waste material

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Collette

Ben ...

CHAIRMAN

20 P. 15

By SENATE RESOURCES COMMITTEE

To: _____ SENATE BILL No. SB 29

To: _____ HOUSE BILL No. _____

PAGE: 1 LINE: 27

Add new section 2

*Sec. 2 AS 18.45 is amended by adding a new section to read:

Sec. 18.45.027. TRANSPORTATION OF NUCLEAR WASTE MATERIAL.

The transportation of nuclear waste material in the state, except for purposes of disposal outside the state, is prohibited.

Add new section 3

*Sec. 3 AS 46.03.250 is amended to read:

Sec. 46.03.250. AUTHORITY. The department shall adopt regulations establishing standards governing the discharge of low level radiation [RADIONUCLIDES] to the air, water, land and subsurface of the state.

Add new section 4

*Sec. 4 AS 46.03.260 is amended to read:

Sec. 46.03.260. USE OF ATOMIC RADIATION. A person who conducts an operation which results in the discharge of low level radiation [RADIONUCLIDES] to the air, water, land or subsurface land of the state must obtain a permit from the department before commencing the discharge.

RENUMBER ALL SUBSEQUENT SECTIONS IN THE BILL ACCORDINGLY

AMENDMENT TO S.B. 29

SECTION _____

Notwithstanding any other provision of law, nothing in Sections 1-6 of this bill shall apply to the exploration for, or the extraction and milling operations of uranium ore.

EXPLANATION

The legislation in its present form will adversely affect the future of uranium mining industry in the State of Alaska in several respects. This amendment merely insures that no ambiguity in the law will be read so as to preclude the growth of a uranium mining industry in the state. Without an express exemption for the operation of uranium mines and mills, the sections in the bill that govern nuclear fuel production facilities could be read to apply to uranium milling operations, thus imposing onerous burdens on the mineral extraction portion of the industry. Similarly, uranium mill tailings are subject to special rules under the federal Solid Waste Disposal Act. However, S.B. 29 in its present form imposes a dual regulatory system by regulating low level nuclear waste and hazardous wastes. Uranium tailings will most likely be low level nuclear waste. Without clarification the uranium extraction industry will be subject to two duplicative sets of rules.

By SENATE RESOURCES COMMITTEETo: _____ SENATE BILL No. SB 29

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RENUMBER ALL SUBSEQUENT SECTIONS IN THE BILL ACCORDINGLY

A M E N D M E N T

OFFERED IN THE SENATE:

BY: JUDICIARY

TO: _____ SENATE BILL No. SB 29

HOUSE BILL No. _____

PAGE: _____

LINE: _____

Page 1, line 13:

After "Conservation" insert "to construct the facility on land designated by the legislature under (b) of this section".

Page 1, after line 13:

Insert

"(b) The legislature shall designate by law the land in the state on which a nuclear fuel production, utilization, reprocessing or disposal facility may be located."

Page 1, line 14:


Change "(b)" to "(c)"

394-72270-1

\$3.95/V-270

A NUCLEAR PLANT ACCIDENT COULD KILL 50,000 PEOPLE,
DAMAGE \$17 BILLION WORTH OF PROPERTY OVER A 600,000
SQUARE MILE AREA, & INFLICT AN UNTOLD NUMBER OF
INJURIES & GENETIC MUTATIONS—& IT COULD HAPPEN TODAY!

THE
**SILENT
BOMB**



**A GUIDE TO THE NUCLEAR
ENERGY CONTROVERSY**

EDITED BY
PETER FAULKNER.
WITH A FOREWORD BY
PAUL R. EHRLICH

THE SILENT BOMB

EDITED BY
PETER FAULKNER



V-270
VINTAGE

5B29

2/24/81

JIM BOREMAN



"MAYBE ONE OF THESE DAYS I OUGHTA START THINKING ABOUT GETTING A LITTER BOX."

SBZ9

Nuke safeguard: a good proposal

2/25/81
Among the worries Alaskans ought not face in this perilous world is the fear of accident resulting from use of nuclear power. Sometimes geographical isolation and sparse population are blessings in disguise; in this case Alaska is fortunate to afford the luxury of insulation from the nuclear power dilemma.

That's why many will applaud the action of the state senate Monday to seek a ban on construction of nuclear reactors and on storage or transportation of nuclear waste in the state.

The ban would not be absolute. Medical and research uses for low-level radioactive materials would be permitted, if state-approved guidelines are maintained. Nuclear projects, moreover, could be undertaken — but only with prior approval of the legislature and the state Department of Environmental Conservation.

But such requirements force the debate into the public forum where it belongs — and before nuclear facilities are in place. Citizens must reserve the right to express their attitudes toward nuclear industry through the political process before the industry arrives.

Americans elsewhere may be forced — against their best instincts, we suspect — to embrace increased use of nuclear power over the next few decades. Surviving the 20th Century in peace and security may require running the terrible risk of letting the nuclear genie out of its bottle, despite the real fears many people feel in the wake of the Three Mile Island disaster.

But Alaska is blessed with tremendous fossil-fuel reserves and hydroelectric power potential — easily enough to serve the state's power needs without need for nuclear power. The senate's action is a commonsense reflection of that fact, and we can only hope the Alaska House of Representatives follows suit without delay.

SB 29

Bill banning nuclear activity passes Senate

2/23/81
JUNEAU (AP)—The Senate voted today to ban nuclear fuel facilities in Alaska, as well as the storage or disposal of high-level nuclear waste, unless specifically authorized by the Legislature.

The legislation (CSSB29), approved by a unanimous vote, also would prohibit transportation of high-level nuclear waste in the state, except when transporting the waste outside Alaska for disposal.

Under the bill, a nuclear fuel production facility or waste disposal facility could not be built in Alaska unless the Legislature specifically designated, by law, a site for the facility. In addition, a facility would be required to obtain a permit from the Department of Environmental Conservation.

The bill also stipulates that regulations adopted by the department

governing issuance of a permit would have to be approved by both the municipality with jurisdiction over the proposed facility and the governor.

The bill differentiates between high-level and low-level nuclear waste. The measure directs DEC to adopt regulations defining low-level radiation and establishing standards for the discharge of low-level radiation and other nuclear waste material which does not constitute a threat to public health and which may be stored or disposed in the state.

The department also would be required, under the bill, to establish procedures for the storage and disposal of radioactive materials used in medicine, education or scientific research, which are not considered high-level waste.

The bill sponsored by Senate President Jalmar Kerttula, D-Palmer, now goes to the House.

SB29

Senate passes nuclear ban bill

Our Juneau bureau

JUNEAU — The Alaska Senate voted unanimously Monday to ban construction of nuclear reactors and high-level nuclear waste or storage sites in the state unless the projects are approved in advance by the full legislature.

The bill, which now goes to the state House, also would prohibit transportation of high-level nuclear waste material within Alaska, except for the purpose of disposing of the waste outside the state.

The bill (CSSB29) says a "nuclear fuel production, utilization, reprocessing or disposal facility" can't be built unless the legislature has passed a law designating a site for the facility.

The bill also would require a nuclear facility to obtain a permit from the state Department of Environmental Conservation (DEC) Municipalities containing a potential site and



the governor also would have to approve any such permit, according to the measure, which passed the Senate 18-0.

But under the bill, prior legislative approval wouldn't be necessary for transportation of such low level radioactive material as used in medicine, education or scientific research, providing the materials are stored and disposed of according to state regulations.

The measure would order the DEC to set those standards — defining "nuclear waste material which does not constitute a threat to public health or

2/24/81
safety" and setting procedures for storage and disposal of the low level materials.

Sen. Pat Rodey, D-Anchorage, said he has received as much mail on the nuclear measure as on any other bill, and that he felt there "is much public concern" over dealing with radioactive materials.

Alaska has no commercial nuclear reactors, but Senate President Jay Kerttula, D-Palmer and prime sponsor of the Senate nuclear bill, said state officials are looking into any possible nuclear storage by the military in the state.

The Hanford nuclear disposal site in Washington state currently handles much of the nation's nuclear waste, but under a new Washington law, no more nuclear waste can be sent into that state after July 1 unless a compact is signed between Washington and the state shipping the materials.

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Introduced: 1/13/81
Referred: Resources and
Judiciary

1 IN THE SENATE

BY KERTTULA

2 SENATE BILL NO. 29

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 . A BILL

6 For an Act entitled: "An Act relating to nuclear materials."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 18.45.025 is amended to read:

9 Sec. 18.45.025. FACILITIES SITING PERMIT REQUIRED. (a) A [NO]
10 person may not construct a nuclear fuel production facility, utiliza-
11 tion facility, reprocessing facility, or nuclear waste disposal facility
12 in the state unless he has first obtained a permit from the Department
13 of Environmental Conservation.

14 (b) The Department of Environmental Conservation shall adopt
15 regulations governing the issuance of [THESE] permits required by (a)
16 of this section. However, a [; HOWEVER, NO] permit may not be issued
17 until

18 [(1) THE LEGISLATURE HAS APPROVED THE REGULATIONS BY A CON-
19 CURRENT RESOLUTION CONCURRED IN BY A MAJORITY OF THE MEMBERS OF EACH
20 HOUSE;]

21 (2) the municipality [LOCAL GOVERNMENT] with jurisdiction
22 over the proposed facility site has approved the permit; and

23 [(3) THE LEGISLATURE HAS APPROVED THE PERMIT BY A CONCURRENT
24 RESOLUTION CONCURRED IN BY A MAJORITY OF THE MEMBERS OF EACH HOUSE;
25 AND] *UNLESS IT IS LOCATED IN WILLOW.*

26 (4) the governor has approved the permit.

27 * Sec. 2. AS 46.03 is amended by adding a new section to read:

28 Sec. 46.03.843. STORAGE AND DISPOSAL OF HIGH LEVEL NUCLEAR WASTE
29 MATERIAL. (a) The storage and disposal of high level nuclear waste

1 material in the state is prohibited.

2 (b) For purposes of this section, "high level nuclear waste
3 material"

4 (1) means

5 (A) nuclear waste materials produced by nuclear power
6 plants; and

7 (B) material of a kind or quantity which, when stored
8 or disposed, would constitute a threat to the health or safety of
9 the public, as determined by the department under AS 46.03.250 by
10 regulation;

11 (2) does not include radioactive materials used in medicine,
12 education, or scientific research which are stored or disposed of in
13 conformity with procedures established by the department by regulation.
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Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99511

MEMORANDUM

DATE: February 2, 1981
TO: Senate Judiciary Members
FROM: Kevin K. Bruce, Committee Aid
RE: SB 29

Please find enclosed the following material for hearings on SB 29, "An Act relating to nuclear materials":

- A.) SB 29
- B.) Amendments by Senate Resources Committee
- C.) Testimony by Department of Environmental Conservation on SB 29
- D.) Background material on SB 269 and HB 511, introduced last legislature.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Testimony on SB-29
Relating to the Disposal of Radioactive Wastes'

January 28, 1981

The Department of Environmental Conservation welcomes the opportunity to review and comment on SB-29, relating to the disposal of radioactive wastes in Alaska. We support this bill, and would like to request your consideration of several additions which would clarify portions of other statutes which have overlapping and conflicting requirements on disposal of radioactive wastes.

As written, SB-29 will accomplish two things. First, it will eliminate certain aspects of the currently existing Alaska Statute 18.45.025 which would be found to be unconstitutional under the terms of a recent state supreme court decision. These changes would take the legislature out of the formal process of reviewing and approving regulations and permits relating to the disposal of nuclear wastes. However, the Department would still have to obtain local government and governor approval to either activity. These conditions are retained from the present AS 18.45.025, and are supported by the Department as desirable preconditions for issuing permits for high level nuclear activities.

The second thing accomplished by the bill will be to prohibit the disposal of high level wastes. The Committee should be aware that this is probably pre-empted by federal law, but it would not hurt anything to retain this provision. It would clearly state the legislature's intent that these highly toxic wastes should not be disposed of in Alaska.

While the Department is supporting of the current provisions of the bill, the Committee should be aware that AS 46.03.250 and AS 46.03.260 also cover the adoption of regulations and issuance of permits for disposal of radioactive wastes. In an effort to clarify the jurisdiction of each statute, the Department recommends that a slight housekeeping amendment be added to these two statutes to make them apply only to low level radioactive wastes. These statutes would then read as follows:

AS 46.03.250 is amended to read:

Sec. 46.03.250. AUTHORITY. The department shall adopt regulations establishing standards governing the discharge of low level radiation [RADIONUCLIDES] to the air, water, land, and subsurface of the state.

AS 46.03.260 is amended to read:

Sec. 46.03.260. USE OF ATOMIC RADIATION. A person who conducts an operation which results in the discharge of low level radiation [RADIONUCLIDES] to the air, water, land or subsurface land of the state must obtain a permit from the department before commencing the discharge.

With these changes, the Alaska Statutes relating to radioactive waste disposal will be made compatible with recent court decisions, and portions of present statutes which overlap in their jurisdiction will be corrected.

The Department thanks the Committee for consideration of our comments, and we would be glad to respond to any questions or provide any additional information which might be requested.

Last session two measures (SB 269 and SJR 34) were introduced in the Senate. HB 511 was introduced in the House. These bills concerned nuclear materials.

SB 269 was considered by the Health, Education and Social Services Committee. A committee substitute replaced the original bill and this substitute was passed out of committee. It was further referred to the Senate Judiciary Committee. The Judiciary Committee had the bill under consideration when the session ended.

SB 269 is similar to the current bill SB 29.

Attached for you information is the pertinent background material relative to SB 269 and HB 511.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY


MEMORANDUM

April 4, 1980

SUBJECT: CSSB 269, relating to nuclear wastes

TO: Senator Glenn Hackney, Chairman
Senate Health, Education and Social Services
Committee

FROM: John B. Chenoweth
Legislative Counsel



There was some confusion concerning instructions to complete the second redraft of this committee substitute. While the department's "position paper" wanted a ban only on "high level nuclear wastes" from nuclear power plants, your committee's actual request was limited to "high level nuclear wastes", presumably from any source. I do not know how to quantify "high level" with precision. Not wanting to tie to a figure expressed in terms of measurements that delight physicists and trouble legislators, I have suggested language in the draft that leaves the determination (other than as to wastes from nuclear plants) to an administrative agency. I note that, at 18 AAC 85, the Department of Environmental Conservation has already defined permissible disposable nuclear wastes.

The bill draft also makes clear that the prohibition is not intended to preclude storage and disposal of quantities of nuclear wastes generally used in education, research and medicine.

JBC:ljb

Enclosure

COMMITTEE REPORT
SENATE

FURTHER: Judiciary

4/18/79

Date: 5-12-80

Mr. President: HEALTH, EDUCATION &

The Committee on SOCIAL SERVICES has had SB 209

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Collette

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CHAIRMAN
50 11-80

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

JAY S. HAMMOND, GOVERNOR

POUCH Q - JUNEAU 99811

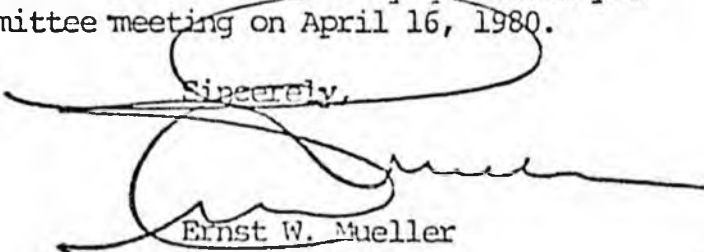
April 15, 1980

The Honorable Glenn Hackney
Chairman
Senate Health & Social
Services Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Hackney:

The Alaska Department of Environmental Conservation would like to submit the following comments and recommendations on SB 269 concerning the disposal of nuclear wastes in Alaska. We support this bill and the several minor changes which have been recommended. We would be more than willing to present these comments and answer any questions you might have at the 3:00 pm Committee meeting on April 16, 1980.

Sincerely,



Ernst W. Mueller
Commissioner

Enclosure

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

REVIEW OF SB-269
AN ACT PROHIBITING THE DISPOSAL OF NUCLEAR WASTE MATERIAL

Submitted to the
Senate Health, Education and Social Services Committee

SB 269 makes changes in the current Alaska Statutes 18.45.025 FACILITIES SITING PERMIT REQUIRED, to prohibit the siting of any facilities which would allow the storage or disposal of radioactive waste materials within the State of Alaska. The Department strongly supports this legislation, particularly as it relates to the disposal of highly radioactive waste materials from nuclear power plants.

Wastes from nuclear power generating facilities require extremely long storage times before their radioactivity is reduced to safe levels. These wastes are difficult to contain in a safe manner, require extremely expensive containment technology which up to now has not proven reliable for long-term storage. While wastes from existing plants in other states will require some form of disposal method, Alaska should not become a dumping ground for these wastes. SB 267 would prohibit this from occurring, except in the unlikely event of federal preemption.

In supporting this legislation, we understand that a change has been or is going to be made in the legislation to expressly prohibit only the disposal of high level radioactive wastes from nuclear power plants. We support this change, because the disposal of small amounts of low level radioactive wastes generated from medical, laboratory and industrial facilities can be accomplished without creating a hazard to public health and the environment. Many of these low-level wastes cause no danger to the public if they are disposed in a safe and environmentally sound manner. Therefore, the existing authority to establish regulations under AS 46.03.250 should be adequate to assure proper handling and safe disposal of the low-level radioactive waste materials presently being generated in Alaska.

We thank you for the opportunity to comment on this legislation.

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

POUCH H-06-JUNEAU 99811

POUCH H-06-JUNEAU/99811

April 15, 1980

The Honorable Glenn Hackney
Chairman
Health, Education
and Social Services Committee
Alaska State Senate
Pouch "V", State Capitol Building
Juneau, Alaska 99811

Document # 79-80

Dear Senator Hackney:

Sid Heidersdorf, Radiological Physicist for the Division of Public Health, is out of town this week and therefore unable to testify at the Wednesday hearing on CSSB 269. He has asked that I convey his concerns regarding this bill to you for consideration by your committee.

We are pleased to note that the Committee Substitute for Senate Bill 269 allows the storage and disposal of nuclear waste resulting from medicine, scientific research and education. We have a few additional concerns we feel should be weighed by the committee in their deliberations on this bill.

Consideration No. 1

Section 18.45.025 removes nuclear waste disposal facilities from the permit requirements listing. At some time in the future, if disposal requirements from medical, scientific and educational sources become great enough, a waste disposal facility may be required within the state for wastes generated from these sources. In that event, any such facility should be required to receive a permit from the Department of Environmental Conservation.

Consideration No. 2

Section 18.45.027 prohibits the transportation of nuclear waste material in the state except for purposes of disposal outside the state. It is suggested that the prohibition should be directed against high level nuclear waste materials since there may be necessity to transport low level wastes from medical, scientific and educational sources. The State has regulations covering the transportation of nuclear materials (18 AAC 85.320).

Consideration No. 3

Section 18.45.029(b)(1)(B) seems to add to the potential for confusion

over the term "high level nuclear material" rather than to clarify the definition as intended. For example, low level wastes from medical, research and educational uses, when improperly stored or disposed of, could be "material of a kind or quantity which would constitute a threat to the health or safety of the public....". Safe disposal of radioactive wastes is already covered by regulation in 13 AAC 85.270 - 310.

Recommendations

1. In Section 18.45.025, retain the requirement for a permit for the siting of a nuclear waste disposal facility.
2. In Section 18.45.029, delete subpart (1) (B) since it does not appear to add clarity to the definition of "high level nuclear material" and rephrase 18.45.029 (1) (A) to read "nuclear waste material produced by nuclear power plants and nuclear fuel processing facilities".
3. A preferable alternative to Recommendations 1 and 2 is to delete Section 18.45.029 in its entirety and rephrase Section 18.45.027 as follows:

Section 18.45.027. TRANSPORTATION, STORAGE AND DISPOSAL OF NUCLEAR WASTE MATERIAL. The transportation, except for purposes of disposal outside the state, storage and disposal of high level nuclear waste material from nuclear power plants or nuclear fuel processing facilities is prohibited.

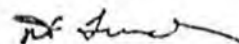
Such phrasing would be consistent with the continued use of low level nuclear materials for medical, scientific or educational purposes and would eliminate the need for defining "high level nuclear waste".

Department's Position

The Department of Health and Social Services is neutral on CSSB No. 269 if these recommendations are incorporated in the final draft.

Thank you for the opportunity to present Mr. Heidersdorf's testimony to you in this letter. He will be back in his office Monday, April 21st and will be able to provide you or your committee members with any additional information you may require.

Sincerely,



Dean F. Tirador, M.D.
Director
Division of Public Health

DFT/md

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

opinion

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

(907) 465-3686

April 15, 1980

The Honorable Glenn Hackney
Alaska State Legislature
Senate
Pouch V
Juneau, Alaska 99811

Re: Nuclear Waste Transportation
Our file J-66-606-80

Dear Senator Hackney:

On April 4, you requested this department's views on whether the State of Alaska could prohibit the Federal Government from utilizing state roads to transport nuclear waste for disposal within the state. The state of the law in this matter is fluid, and we cannot give a definitive answer.

Many states, and local governments, have enacted legislation prohibiting or restricting the transportation of radioactive wastes across their roads. ~~In response, the Federal Department of Transportation has proposed regulations which, if enacted, would preempt states from imposing outright prohibitions on nuclear waste transport, at least on federal aid highways,~~ although states would be allowed a voice in particular routing decisions. A copy of these regulations is enclosed. Several states are actively protesting these

regulations, and are contemplating litigation in the event that they are adopted -- on the grounds that the regulations are statutorily and constitutionally unauthorized.

Absent the adoption of these regulations, the state probably could prohibit private carriers from transporting nuclear wastes across state roads. A different problem exists with respect to transportation by the Federal Government and its instrumentalities. Unless a specific statutory waiver could be found, direct federal transport would be immune from state regulation. Hancock v. Train, 426 U.S. 167 (1976). Congress has waived federal sovereign immunity with respect to solid waste activities in section 6001 of the Resource Conservation Recovery Act of 1976 (P.L. 94-950). The applicability of that waiver to nuclear waste transportation by the Federal Government would be questioned under section 1006(a) of the Act, which provides that:

Nothing in this Act shall be construed to apply to (or to authorize any state, interstate, or local authority to regulate) any activity or substance which is subject to the . . . Atomic Energy Act of 1954 (42 U.S.C. 2011 and following) except to the extent that such application (or regulation) is not inconsistent with the requirements of such acts.

As implemented, the regulation of the transportation of nuclear wastes is governed not by the Atomic Energy Act, but rather by the Hazardous Materials Transportation Act.

49 U.S.C. § 1801 et seq. Thus, the exceptions to the sovereign immunity waiver contained in the Resource Conservation and Recovery Act, at least potentially, may not include the transportation of nuclear waste materials. However, because sovereign immunity waivers are strictly construed in favor of the Federal Government (Hancock v. Train, supra) the argument may be a difficult one to make. */

As I hope this letter indicates, the subject of the permissible scope of state regulation with respect to nuclear power involves an accommodation of several major federal regulatory programs, and ongoing federal agency activities. Certainly, 42 U.S.C. § 2021 -- the state cooperation section of the Atomic Energy Act -- has certain preemptive effects. For example, it has been held that states may not prohibit the construction of a nuclear plant for reasons premised on radioactivity hazards, although it may deny siting approval on other environmental or land use grounds. See Northern States Power Co. v. State of Minnesota, 447 F.2d 1143 (8th Cir. 1971); United States v. City of New York, ___ F. Supp. ___, 12 ERC 1600 (SDNY, December 26, 1978); Pacific Legal Foundation v. California State Energy Comm'n,

*/ The sovereign immunity waiver in the Clean Air Act (sec. 118: P.L. 95-95) may also be applicable, to the extent that transportation of nuclear waste poses a threat of atmospheric radioactive release.

The Honorable Glenn Hackney

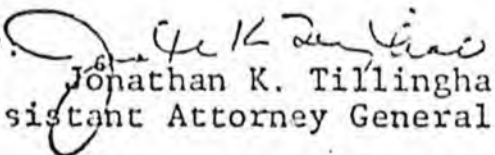
April 15, 1980
Page 4.

___ F. Supp. ___ 12 ERC 1899 (S.D. Cal., March 6, 1979).

The extent to which this rationale is applicable to direct regulation of nuclear waste disposal activities is unclear. Because it is unsettled, many state and local governments have chosen to legislate in this area. Moreover, it is my understanding the Nuclear Regulatory Commission has taken a cooperative attitude in this respect -- although the Department of Transportation, as noted previously, may differ. In sum, it does not appear from initial review that there exists any clear legal obstacle at this time which would override the public interest which would be served by state nuclear power regulation.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
Jonathan K. Tillinghast
Assistant Attorney General

JKT:d1m

Enc.

cc: Ernst W. Mueller, w/enc.
Commissioner
Department of Environmental
Conservation

POSITION PAPER / Department of Health & Social Services

POSITION PAPER

SENATE BILL NO. 269

"An Act prohibiting the disposal of nuclear waste material."

Senate Bill No. 269 prohibits the storage and disposal of nuclear waste material in Alaska. This prohibition is without qualification as to quantity, origin, and kind.

Alaska has approximately 35 licensed users of radioactive materials. Since Alaska is not an Agreement State under the Atomic Energy Act, the Department of Health and Social Services does not have jurisdiction over these sources. They are licensed and controlled by the United States Nuclear Regulatory Commission.

Presently, nuclear waste material in some form or other is either stored and/or disposed of in Alaska. It is estimated that from eight to ten of the facilities licensed in the State by the Nuclear Regulatory Commission use unsealed sources which require some storage and disposal following use.

Unsealed sources, as differentiated from sealed sources, are those not encapsulated in a container. Unsealed sources, kept in openable bottles or other containers, are necessary in research and nuclear medicine so they can be used in various laboratory procedures or in medical practice by ingestion, inhalation or injection. This use results in various kinds of radioactive wastes. Facilities presently using unsealed sources are four hospitals located in Juneau, Anchorage, and Fairbanks. Unsealed sources are also frequently used in private, Federal, and State research and/or educational facilities carrying out activities such as those conducted by the NOAA Auke Bay Fisheries Laboratory, U.S. Geological Survey, and the University of Alaska Institutes of Marine Science and Arctic Biology. Some of these unsealed sources may also be used in industrial applications--for example, activities related to the oil industry.

Radioactive wastes are in the form of liquids, contaminated laboratory articles, biological samples, and such items as towels and clothing. Generally these would be stored in liquid-tight barrels, on site, in an area with limited and controlled access. Storage is necessary until materials can be shipped to a licensed radioactive waste disposal site, such as the one in Rickland, Washington. Alaska does not have an approved waste disposal site, and the present low volume of such waste has not yet caused a problem for users in Alaska.

Presently, hospitals in Alaska store radioactive waste until it has decayed to very low levels (near background). The material is then either incinerated or disposed of in sanitary sewerage systems according to regulations established by the Nuclear Regulatory Commission.

This Bill, if passed as presently worded, will eliminate the use of unsealed radioactive sources in Alaska--a situation which will have a harmful impact on the delivery of medical services and research activities within the State. Accordingly, the following changes in wording are recommended:

Line 12: Leave in the phrase "OR NUCLEAR WASTE DISPOSAL FACILITY".

Lines 26-28: Section 18.45.027. DISPOSAL OF NUCLEAR WASTE MATERIAL. The disposal of high levels of nuclear waste material in the State from nuclear power plants is prohibited.

The changes recommended above are suggested only to protect the use of radioactive materials in nuclear medicine facilities, research, and education. It is recognized that the prohibition of the disposal of high level waste from nuclear power plants may directly affect future State policy and the interest of other State agencies. This matter of State policy regarding disposal of high level waste has ramifications far beyond the authority of this Department, and consequently is not addressed by this position paper.

With the above recommended changes, the Department of Health and Social Services takes a neutral stand on Senate Bill No. 269.

Recommended by:

Dean F. Tirador
Dean F. Tirador, M.D.
Director, Division
of Public Health

Date:

17 Nov 50

Approved by:

Helen D. Beirne
Helen D. Beirne
Commissioner

Date:

3/20/50

DEPARTMENT OF HEALTH & SOCIAL SERVICES

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

2000
MAR 18 1980
JAY S. IRVING, GOVERNOR

POUCH 0 - JUNEAU 99811

The Honorable J. M. Kerttula
Senator
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Kerttula:

The Department recently completed an analysis of House Bill 511 relating to the disposal of hazardous wastes. Because of your interest in hazardous wastes, we have enclosed a copy for your information. The bill will need some changes if we are to develop a reasonable hazardous waste disposal program, and our analysis makes recommendations on how that might occur.

There have been indications in the past several weeks that the House Resources Committee expects to schedule this bill for hearings. We are working with committee's staff in drafting a substitute bill in preparation for those hearings. This should occur soon, and we will keep you informed on this effort.

Sincerely yours,

C. Deming Cowles

C. Deming Cowles
Deputy Commissioner

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

ANALYSIS OF HB 511, AN ACT RELATING TO THE DISPOSAL OF HAZARDOUS WASTE

I. SUMMARY OF BILL

The department interprets the intent of HB 511 to mean that the Legislature wishes to protect the lands and people of the state from the potential dangers of hazardous waste disposal rather than the use or generation of hazardous materials. The bill delegates to the Alaska Department of Environmental Conservation (ADEC) the power to adopt regulations for the safe, proper disposal of hazardous waste so as to protect the health, safety and welfare of the public and the quality of the environment. However, it grants this power with reservations, since the bill also prohibits the disposal of hazardous waste in Alaska unless processing renders the wastes harmless.

B. ANALYSIS

The department's interpretation of HB 511 takes into account the numerous examples of illness, death, and mutations throughout the continental United States that have been traced directly to disposal sites for hazardous wastes. The department further assumes that the intent is not to halt the use or generation of hazardous substances except in certain instances, because such a ban would hinder economic development. As the Alaska economy diversifies the possibility exists that more industries and corporations which generate hazardous waste will be attracted to and wish to locate in the state.

1. Positive Aspects of the Bill

HB 511 is the first attempt to grant specific Legislative authority to handle and manage hazardous wastes in Alaska. Currently the Alaska Statutes authorize ADEC to adopt regulations concerning collection and disposal of garbage, refuse, and other discarded solid waste materials from industrial, commercial, agricultural and community activities or operations. It is under this broad statutory authority that ADEC has assumed responsibility for establishing a hazardous waste management program. Specific legislative authorization would, however, clarify the state's role and responsibility in hazardous waste management.

Specifically, the following aspects of the bill are necessary for a coordinated hazardous waste management program.

- (a) Section 20 authorizes the department to adopt regulations for the disposal of hazardous wastes. This power, however, is limited by Section 10, which bans all disposal of hazardous waste in the state. The materials considered below are examples of wastes which the department presumes could be regulated under the bill.

While uranium is not presently being mined in Alaska, at least one earlier mine and continuing explorations present evidence that Alaska has the potential for large-scale uranium mining. The large amounts of waste rock and overburden contain potentially hazardous radioactive materials, either directly through radon escape or indirectly through leachate. From a practical standpoint, this overburden would have to remain in Alaska.

Waste oil is considered by the Environmental Protection Agency to be hazardous. In fact, it is singled out for special treatment because the use of waste oils for dust suppression or incineration has been known to cause serious environmental effects. However, waste oil is heavily utilized as a dust suppressant on roads throughout Alaska. The only State requirement to its use in such a manner is that the user obtain a department permit under 18 AAC 75.010-060. The use of waste oil in this manner may be considered illegal by EPA once their final hazardous waste regulations are promulgated this Spring and Summer.

Because of Alaska's increasing involvement in petroleum production, the number of oil spills has been increasing yearly. In 1979 alone there were four major oil spills - the M/V Lee Wang Zin near Ketchikan, the M/V Ryuyu Maru off the Pribiloffs, the Cordova Chugach Cannery, and the Atigun Pass spill. Oil spilled from these four incidents alone totalled over 632,000 gallons. Much of this oil went directly into the environment; the remainder has or is being cleaned up. While EPA does not consider oily wastes as hazardous, Alaska does consider them special enough to warrant specific legislation, AS 30.25.120.(c). Also, Section 30.25.061(c) of HB 205, "An Act Relating to the Prevention and Control of Oil Pollution" deals with the disposal of oil spill clean-up materials. When not handled correctly these wastes pose a hazard for individuals and the environment. Bulky, difficult and expensive to transport, and a cause of localized air pollution if burned and water pollution if leachate forms, oily wastes cannot be shipped out of state nor simply left in a stored condition with no future plan for disposal.

In the above situations the conditions under which disposal will be allowed must be clarified. If section 10 were deleted or modified, Section 20 would give the department the authority to clarify these conditions and would then provide the sound basis for a management program geared to Alaskan conditions.

- (b) If Section 10 were deleted or modified, Section 20 would be the start of obtaining the required authority should the department decide that assumption of the federally-mandated hazardous waste program is in the best interest of the state.

In 1976 the Resource Conservation and Recovery Act (RCRA) was passed by Congress. One of the main goals of the Act was prevention of pollution caused by the disposal of hazardous wastes, the primary means for achievement being a manifest system. The manifest, similar to a bill of lading and signed by all persons in contact with the wastes, would be filed with the responsible state or federal agency. In this way a waste could be traced from generation to final disposal.

Congress stressed that states should assume responsibility for their own hazardous waste management program. Funds were appropriated for hazardous waste inventories, economic analyses of additional state resources needed under program adoption, analyses of the effect on industries, and planning. If a state did not assume responsibility, EPA would be required to manage hazardous wastes in that state.

Alaska is considering whether or not to assume all or part of the RCRA-mandated program or allow the Environmental Protection Agency to assume responsibility. Some of the points to consider are additional staff and paperwork necessary for program implementation, need for the State to have control over these wastes versus leaving control in federal hands, and the economic feasibility and preferences of industrial generators regarding state or federal jurisdiction. While federal money is available for program planning and start-up, the program must be completely state-funded within a few years. The department plans to make its decision in Fall, 1980.

While the authority given this department in HB 511 would probably be sufficient for interim authorization, full authorization by EPA will be dependent on the passage of complete legislative program authority as well as numerous requirements promulgated as regulations. Not only would a section on the state's authority to write regulations for specified aspects of hazardous waste management be needed, the bill should be changed to reflect the shortcomings and considerations discussed below.

2. Shortcomings of the Bill

The bill as written has several deficiencies;

- a. Sections 10 and 20 are conflicting. Whereas Section 10 prohibits disposal of hazardous waste in Alaska, Section 20 authorizes ADEC to write regulations for the safe disposal of hazardous waste. Since some hazardous wastes may need disposal in state, the Legislature should remove the conflict.

- b. The bill defines hazardous waste so broadly that it is vague. The definition of hazardous wastes, taken from the Resource Conservation and Recovery Act, is adequate, however, RCRA further authorizes the Environmental Protection Agency to refine the definition by listing hazardous wastes. While the department could use Sec. 20 to identify hazardous wastes, the bill does not specifically give the department that authority.
- c. Banning hazardous waste disposal alone will not guarantee protection. Transportation and storage of hazardous wastes are potentially as damaging as disposal. Even should Section 10 stand as written, hazardous waste will need to be stored prior to processing or transporting. Again, the department could use Sec. 20 to guarantee proper treatment, storage, and transportation methods, but the bill does not explicitly grant this authority.
- d. Section 30 singles out corporations for special punishment for a violation of any hazardous waste requirement. However, the potential of contamination from improper hazardous waste handling is as great from individuals as from corporations. Penalties should either come under existing penalty provisions in AS 46.03 or be generalized so as to cover everyone.
- e. A slight point in Section 10 is that once a hazardous waste is processed to remove its harmful qualities, it is no longer hazardous. Therefore this qualifying phrase in the section is unnecessary.

3. Considerations

- a. At this time the status of hazardous waste in Alaska is unknown. The department recently began a inventory of hazardous waste types and amounts, generators, disposal sites, transporters, processors, and handling methods in order to determine what controls Alaska should have. This would include evaluating whether Alaska needs a disposal site and what alternatives are available for disposal of hazardous wastes. Once these results are available the Legislature will be in a position to know what legislation would protect the people and lands of the State.
- b. Many states are reacting to improper and unsafe hazardous waste disposal practices by prohibiting all disposal or by prohibiting disposal of out-of-state generated hazardous wastes. As the Alaskan economy diversifies, there will be the probability of attracting more industries and corporations that potentially generate hazardous waste. The Legislature should consider the possibility that Washington, which is the destination of most Alaskan transportable hazardous wastes, might not accept Alaskan hazardous waste in the future.

- c. The term "processed" is undefined; its definition will clarify the distinction between processing or treatment and disposal.

C. RECOMMENDATIONS

Hazardous waste generation is often a necessary part of industrial development. Since economic diversification is a prime goal of the state, limiting or banning the disposal of hazardous waste could limit the number and types of industries wishing to locate in Alaska.

Even with limited industrial activity, however, a total ban on hazardous waste disposal would be inappropriate. Hazardous wastes are generated by medical facilities, by automobiles and other vehicles, by utilities and other facilities. However, the state must guarantee that when such wastes are generated that disposal and storage does not threaten or harm its people or environment. To do this HB 511 should be modified to take into account why and how hazardous wastes are generated and by whom.

As currently drafted, House Bill-511 would modify Alaska Statutes relating to the Department of Health and Social Services. Because the intent of this legislation is for the Department of Environmental Conservation to carry out hazardous wastes control efforts, we recommend that this proposed legislation be integrated into Alaska Statutes 46.03, which relates to the Department of Environmental as follows:

1. AS 46.03.020(10) be amended to add the following

(I) "Proper handling, transportation, treatment, storage, disposal, and control of hazardous wastes from the time of initial generation to final disposition."

2. The title of Article 6 be amended to read as follows:

"Article 6. Pesticide and hazardous solid waste control"

3. A new section AS 46.03.340 be added as follows:

"46.03.340. HAZARDOUS WASTE CLASSIFICATION, REPORTING. (a)

The department shall classify hazardous wastes and their sources. Classifications made under this subsection may be for the state as a whole or to substate areas.

(b) the department may require a person generating, handling, or possessing hazardous solid wastes to submit reports containing information concerning location, amounts, and types of hazardous wastes.

4. A new section AS 46.03.350 is added to read as follows:

"46.03.350. HAZARDOUS SOLID WASTE REGULATIONS. The department shall adopt hazardous waste control regulations to provide for the disposal of hazardous wastes to protect the public health, livestock, wildlife, and the environment from any adverse effects. Such regulations may include requirements

for the handling, treatment, storage, and disposal of hazardous wastes, containerization, labeling and reporting."

5. AS 46.03.826 DEFINITIONS be amended to add the following:

() "Generation" means the act or process of producing hazardous waste.

() "Hazardous Waste" means a waste or combination of wastes which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or increase in serious, irreversable, or incom-
passitating reversible illness or propose a substantial present or potential hazard to human health or environment when improperly disposed."

The Drift of Things

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Membership Comments Requested on Disposal of High-Level Radioactive Waste

The Government, Energy, and Minerals (GEM) Committee of the Society of Mining Engineers reviewed the following policy statement on disposal of high-level radioactive waste. This statement was adopted by the Association of Engineering Geologists with the request that SME-AIME endorse and publicize the statement.

Before presentation to the SME-AIME Board of Directors for endorsement, the GEM Committee requests input from the membership. Address comments to GEM Committee, c/o Claude L. Crowley, Society of Mining Engineers, Caller No. D, Littleton, CO 80127.

Association of Engineering Geologists Policy Statement on Disposal of High-Level Radioactive Waste

Adopted by the AEG Board of Directors
June 27, 1980

It is the position of the Association of Engineering Geologists that radioactive nuclear wastes can be safely isolated and disposed of by deep underground burial in secure geological environments. The scientific and technical means to locate and define the boundaries of these environments and to achieve such safe disposal is well developed and increasing. Sufficient criteria have now been established to permit responsible selection of candidate sites. A sense of urgency regarding safe disposal of nuclear wastes prevails and it can and must be satisfied.

The waste is dangerous over a long period of time and many people have been so conditioned in this concept that they tend to react emotionally rather than objectively when radioactive waste is mentioned. This has resulted in a call to cease construction of nuclear power plants and passage of laws to prohibit the disposal of nuclear waste.

Nuclear waste has been produced from civil and military activity. This accumulated waste must be disposed of soon because present temporary storage facilities are not designed for permanent separation of the waste from the biosphere.

One of the methods of isolation of the waste is deep burial in specially excavated spaces in structurally adequate bedrock where ground water is absent or will not return to the biosphere carrying with it waste materials and where erosion will not expose the waste during its radioactive lifetime. To these conditions is added a requirement for a location such that future societies will most probably never expose the waste inadvertently. The location and demonstration of the feasible, acceptable character of such sites is a geological problem. It can be solved by the investigative and analytical methods now available within the geological professions.

Repository sites should be strategically located, as far as geological and subsurface conditions permit, with respect to the regional distribution of nuclear facilities. Each site should be selected only on the basis of a progressive sequence of comprehensive investigations.

Primary considerations in the selection of each repository site must be long-term geological integrity of the host rock through natural retardation of radionuclide travel and amenability to simple, proven, and reliable methods of engineered design and construction. Safe disposal sites can be found in several types of rock. Technologies exist to ensure selection of disposal sites in these geologic media which can provide long-term integrity without harmful effects due to migration of radioactive materials to the biosphere.

Each disposal site should be selected and developed cooperatively by governmental entities, private industry and academic researchers. Full and open disclosure must be an integral part of the entire process to assure the protection of the health, welfare and safety of the public. The selection process should proceed with all deliberate speed.

Original sponsor: Kerttula

1 IN THE SENATE

BY THE FREE CONFERENCE COMMITTEE

2 FREE CONFERENCE CS FOR SENATE BILL NO. 29

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to hazardous wastes and to nuclear
7 and radioactive facilities and materials; and providing
8 for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 18.45.025 is amended to read:

11 Sec. 18.45.025. FACILITIES SITING PERMIT REQUIRED. (a) A [NO]
12 person may not construct a nuclear fuel production facility, utiliza-
13 tion facility, reprocessing facility, or nuclear waste disposal facility
14 in the state unless he has first obtained a permit from the Department
15 of Environmental Conservation to construct the facility on land desig-
16 nated by the legislature under (b) of this section.

17 (b) The legislature shall designate by law the land in the state
18 on which a nuclear fuel production, nuclear utilization, nuclear repro-
19 cessing, or nuclear waste disposal facility may be located. In desig-
20 nating the land in the state on which a nuclear fuel production, nuclear
21 utilization, nuclear reprocessing, or nuclear waste disposal facility
22 may be located, the legislature shall act to protect the public health
23 and safety.

24 (c) The Department of Environmental Conservation shall adopt
25 regulations governing the issuance of [THESE] permits required by (a)
26 of this section. However, a [; HOWEVER, NO] permit may not be issued
27 until

28 [(1) THE LEGISLATURE HAS APPROVED THE REGULATIONS BY A CON-
29 CURRENT RESOLUTION CONCURRED IN BY A MAJORITY OF THE MEMBERS OF EACH

1 HOUSE;]

2 (2) the municipality [LOCAL GOVERNMENT] with jurisdiction
3 over the proposed facility site has approved the permit; and

4 [(3) THE LEGISLATURE HAS APPROVED THE PERMIT BY A CONCURRENT
5 RESOLUTION CONCURRED IN BY A MAJORITY OF THE MEMBERS OF EACH HOUSE;
6 AND]

7 (4) the governor has approved the permit.

8 * Sec. 2. AS 18.45 is amended by adding a new section to read:

9 Sec. 18.45.027. TRANSPORTATION OF NUCLEAR WASTE MATERIAL. (a)

10 The transportation of high level nuclear waste material, except for
11 purposes of disposal outside the state, is prohibited.

12 (b) For purposes of this section, "high level nuclear waste
13 material"

14 (1) means

15 (A) nuclear waste materials produced by nuclear power
16 plants; and

17 (B) material of a kind or quantity which, when stored
18 or disposed, would constitute a threat to the health or safety of
19 the public, as determined by the Department of Environmental
20 Conservation under AS 46.03.250 by regulation;

21 (2) does not include radioactive materials used in medicine,
22 education, or scientific research which are stored or disposed of in
23 conformity with procedures established by the Department of Environmen-
24 tal Conservation by regulation adopted under AS 46.03.250(3).

25 * Sec. 3. AS 18.45.080 is amended by adding new paragraphs to read:

26 (7) "nuclear fuel production facility" means a facility that
27 purifies radioactive mineral concentrates and fabricates fissionable
28 material to be used for producing energy in a nuclear reactor;

29 (8) "nuclear utilization facility" means an apparatus,

1 device, or equipment in which nuclear fission is sustained in a self-
2 supporting and controlled chain reaction; the term does not include an
3 apparatus, device, or equipment used exclusively for educational,
4 medical, or research purposes.

5 * Sec. 4. AS 18.45 is amended by adding a new section to read:

6 Sec. 18.45.090. EXEMPTION. The provisions of this chapter do not
7 apply to permit an agency or officer of the state to regulate the
8 exploration for or the extraction and milling of uranium ore.

9 * Sec. 5. AS 46.03.250 is amended to read:

10 Sec. 46.03.250. AUTHORITY. The department shall adopt regula-
11 tions

12 (1) establishing standards governing the discharge of low
13 level radioactive materials [RADIONUCLIDES] to the air, water, land,
14 and subsurface land of the state;

15 (2) establishing safeguards for radioactive waste materials
16 that do not constitute a threat to public health or safety and that may
17 be stored or disposed in the state; and

18 (3) establishing procedures for the storage and disposal of
19 radioactive materials used in medicine, education, instruments, indus-
20 trial testing, or scientific research.

21 * Sec. 6. AS 46.03.260 is amended to read:

22 Sec. 46.03.260. USE OF RADIOACTIVE MATERIALS [ATOMIC RADIATION].
23 A person who conducts an operation which results in the discharge of
24 low level radioactive materials [RADIONUCLIDES] to the air, water, land
25 or subsurface land of the state must obtain a permit from the depart-
26 ment before commencing the discharge.

27 * Sec. 7. AS 46.03.900 is amended by adding a new paragraph to read:

28 (30) "low level radioactive materials" means a radioactive
29 waste other than

1 (A) used nuclear reactor fuel;

2 (B) waste produced during the reprocessing of used
3 nuclear reactor fuel; and

4 (C) elements having an atomic number greater than 92
5 and containing 10 or more nanocuries per gram.

6 * Sec. 8. AS 46.03.020(10) is amended by adding a new subparagraph to
7 read:

8 (I) handling, transportation, treatment, storage, and
9 disposal of hazardous wastes;

10 * Sec. 9. AS 46.03.100 is amended by adding a new subsection to read:

11 (c) A permit for disposal of a hazardous waste may not be issued
12 under this section unless the applicant for the permit has furnished
13 proof to the commissioner of financial ability to control the hazardous
14 waste. Proof of financial responsibility may be demonstrated by self-
15 insurance, insurance, surety, or guarantee, under regulations issued by
16 the department. Acceptance of proof of financial responsibility under
17 this subsection expires

18 (1) one year from its issuance for self-insurance;

19 (2) on the effective date of a change in the surety bond,
20 guarantee, or insurance agreement; or

21 (3) on the expiration or cancellation of the surety bond,
22 guarantee, or insurance agreement.

23 * Sec. 10. AS 46.03 is amended by adding new sections to read:

24 ARTICLE 5. RADIATION AND HAZARDOUS WASTE PROTECTION.

25 Sec. 46.03.296. DISPOSAL OF HAZARDOUS WASTES. (a) It is unlawful
26 to dispose of hazardous wastes in the state unless ~~_____~~

27 (1) the waste has been treated and ^{MAY BE} disposed of in a manner
28 that uses the maximum degree of reduction of the harmful qualities of a
29 hazardous waste which is subject to this chapter and which the depart-

1 ment, on a case-by-case basis, determines is achievable for the hazar-
2 dous waste by application of production processes and available methods,
3 systems and techniques, taking into account energy, environmental, and
4 economic impacts and other costs; and

5 (2) the waste is disposed of in a manner that will ensure
6 the protection of human health, livestock, wildlife, property, and the
7 environment.

8 (b) The department shall adopt regulations in accordance with the
9 Administrative Procedure Act (AS 44.62) for the treatment, storage, and
10 disposal of hazardous wastes to ensure the protection of human health,
11 livestock, wildlife, property, and the environment.

12 Sec. 46.03.299. CONTROL OF HAZARDOUS WASTES. (a) The department
13 shall, by regulations adopted under the Administrative Procedure Act
14 (AS 44.62), establish a state hazardous waste program.

15 (b) The state hazardous waste program shall, consistent with and
16 substantially equivalent to the Federal Conservation and Recovery Act
17 of 1976 (P.L. 94-580, 42 U.S.C. 6901 - 6987),

18 (1) establish criteria to identify the characteristics of
19 hazardous wastes;

20 (2) enumerate specific hazardous wastes (within the meaning
21 of AS 46.03.900(31)) subject to the provisions of AS 46.03.302 and
22 46.03.305; however, the department may not list as hazardous a waste
23 that has not been listed as a hazardous waste by the United States
24 Environmental Protection Agency under 42 U.S.C. 6921, unless the
25 commissioner first determines that the waste is hazardous as defined in
26 this chapter;

27 (3) identify the sources of hazardous wastes enumerated
28 under (2) of this subsection;

29 (4) qualify the department to receive authorization from the

1 administrator of the Environmental Protection Agency to administer and
2 enforce a hazardous waste program in accordance with the Federal
3 Resource Conservation and Recovery Act;

4 (5) determine the amount of a hazardous waste that is so
5 small as to not present a hazard to public health, livestock, fish,
6 wildlife, and the environment of the state when disposed of;

7 (6) exempt a person who generates, treats, transports,
8 stores, or disposes of a hazardous waste from the provisions of this
9 chapter if the quantity of the hazardous waste is less than the amount
10 identified in (5) of this section; and

11 (7) establish

12 (A) criteria for identifying appropriate hazardous
13 waste disposal site locations;

14 (B) procedures by which the public shall have opportu-
15 nity to

16 (i) participate in hazardous waste disposal site
17 locations; and

18 (ii) review and comment on issuance of hazardous
19 waste disposal permits by the department.

20 Sec. 46.03.302. HAZARDOUS WASTE PERMIT. (a) A person may not
21 treat, transport, store, or dispose of a hazardous waste as defined by
22 the department by regulation unless that person first secures a permit
23 from the department and submits to the department any reports or mani-
24 fests that the department may require for handling the hazardous wastes.

25 (b) A person who generates hazardous waste is not required to
26 obtain a permit under (a) of this section unless the person also treats,
27 transports, stores, or disposes of the hazardous waste.

28 Sec. 46.03.305. HAZARDOUS WASTE REPORTS AND MANIFESTS. A person
29 who generates hazardous wastes shall submit to the department reports

1 or manifests that the department may require for handling the hazardous
2 wastes.

3 Sec. 46.03.308. TRANSPORTATION OF HAZARDOUS WASTES. Hazardous
4 wastes may not be transported to a hazardous waste disposal site unless
5 the wastes are accompanied by a report or manifest which the department
6 may require for handling hazardous wastes.

7 Sec. 46.03.311. PUBLIC RECORDS. (a) Permits, permit applica-
8 tions, records, reports, and information and documentation obtained
9 under AS 46.03.302 - 46.03.308 are available to the public for in-
10 spection and copying. However, upon a showing satisfactory to the
11 commissioner that a record, report, permit, application, or information
12 would, if made public, divulge methods or processes entitled to protec-
13 tion as trade secrets, the commissioner shall treat the record, report,
14 permit, application, or information as confidential.

15 (b) Information that is confidential may be transmitted under a
16 continuing restriction of confidentiality to other officers, employees,
17 or authorized representatives of the state or of the United States if

18 (1) the person responsible for furnishing the record,
19 report, permit, application, or information to which such information
20 pertains is informed at least two weeks before the transmittal; and

21 (2) the information has been acquired by the department
22 under the provisions of AS 46.03.296 - 46.03.311.

23 (c) The provisions of this section do not limit the department's
24 authority to release confidential information during emergency situa-
25 tions.

26 * Sec. 11. AS 46.03.790(a) is amended to read:

27 (a) A person who violates or who causes or permits a violation of
28 a provision of this chapter or AS 46.04, or of a regulation, lawful
29 order of the department, or permit, approval, or acceptance, or term or

1 condition of a permit, approval, or acceptance issued under this
2 chapter or AS 46.04 is guilty of a class B misdemeanor [VIOLATION].

3 * Sec. 12. AS 46.03.790(b) is amended to read:

4 (b) A person who wilfully violates a provision of this chapter,
5 or of a regulation, lawful order of the department, or permit, approval,
6 or acceptance, or term or condition of a permit, approval, or accep-
7 tance issued under this chapter or AS 46.04 is guilty of a class A
8 misdemeanor.

9 * Sec. 13. AS 46.03 is amended by adding new sections to read:

10 Sec. 46.03.830. PROOF OF FINANCIAL RESPONSIBILITY REQUIRED FOR
11 PETROCHEMICAL FACILITY OR HAZARDOUS WASTE DISPOSAL SITE OPERATION. (a)
12 A person may not operate a petrochemical facility or a hazardous waste
13 disposal site unless the person has furnished proof to the commissioner
14 of financial ability to control a hazardous waste that will be used in,
15 produced by, or disposed of at the facility or the site. Proof of
16 financial responsibility shall include responsibility for the hazardous
17 waste after the facility or site is closed, and may be demonstrated by
18 self-insurance, insurance, surety, or guarantee, under regulations
19 issued by the department.

20 (b) Acceptance of proof of financial responsibility under this
21 section expires

22 (1) one year from its issuance for self-insurance;

23 (2) on the effective date of a change in the surety bond,
24 guarantee, or insurance agreement; or

25 (3) on the expiration or cancellation of the surety bond,
26 guarantee, or insurance agreement.

27 Sec. 46.03.833. COMPLIANCE WITH FINANCIAL RESPONSIBILITY REQUIRE-
28 MENTS. (a) A person whose proof of financial responsibility is
29 accepted by the department under AS 46.03.830 or under 46.03.100(c)

1 shall notify the department at least 90 days before the effective date
2 of a change, expiration, or cancellation in the surety bond, guarantee,
3 or insurance agreement. Application for renewal of acceptance of proof
4 of financial responsibility under AS 46.03.830 or 46.03.100(c) must be
5 filed at least 90 days before the date of expiration.

6 (b) The department, after notice and hearing, may revoke accept-
7 ance of proof of financial responsibility if it determines that

8 (1) acceptance was procured by fraud or misrepresentation;
9 or

10 (2) a change of circumstance has occurred that warrants
11 revocation under regulations issued by the department.

12 * Sec. 14. AS 46.03.900 is amended by adding new paragraphs to read:

13 (30) "dispose" has the same meaning as the term "disposal" is
14 defined in 42 U.S.C. 6903(3);

15 (31) "hazardous waste" means a waste or combination of wastes
16 which because of quantity, concentration, or physical, chemical, or
17 infectious characteristics may

18 (A) cause, or significantly contribute to, an increase
19 in mortality or an increase in serious irreversible or [incapaci-
20 tating] reversible illness; or

21 (B) pose a substantial [present or potential] hazard to
22 human health or the environment when improperly managed, treated,
23 stored, transported, or disposed of;

24 (32) "manifest" means the form used for identifying the
25 quantity, composition, origin, routing, and destination of a hazardous
26 waste when the hazardous waste is transported;

27 (33) "storage" means the containment of hazardous waste,
28 either on a temporary basis or for a period of years, in a manner that
29 does not constitute disposal of the hazardous waste;

1 (34) "treat" has the same meaning as the term "treatment" is
2 defined in 42 U.S.C. 6903(27).

3 * Sec. 15. This Act takes effect July 1, 1981.
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AMEND SECTION 18.45.160(4)

(4) "Nuclear fuel production facility" means a facility that purifies radioactive mineral concentrates and fabricates fissionable material to be used in for producing energy in a nuclear reactor; however, nothing in this act shall apply to a facility that mills and refines uranium ore.

EXPLANATION

Ensures that the definition of nuclear fuel production facility applies only to a uranium enrichment plant. The present language could be construed as to include a uranium mill and such facilities are an essential part of any uranium operation.

SIDNEY HEIDERSDORF

DEPT HEALTH & SOCIAL SERVICES

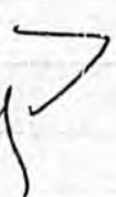
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SB79

TESTIFY

DEBBIE

BEAR



1. DEPT. OF EN. CON.

DEMMING COLES #2600

2. KERTTULA

CONTRACTED ✓

3. ROLAND STARKS

586-2345

4. ELIZABETH QUADRE

LEG. OF WOMEN VOTERS

586-3340

(SITE DIRECTION FOR REGS FROM)
LEGISLATURE

5. TOM ANNA (SP)

COMMISSIONER MUELLER

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 9, 1981

SUBJECT: Nuclear material
(CSSB 29 (Judiciary))

TO: Senator Patrick M. Rodey, Chairman
Senate Judiciary Committee

FROM: John B. Chenoweth
Legislative Counsel

May I ask:

(1) You prohibit transportation of nuclear waste material for disposal in-state, authorizing only transportation to points outside the state. (AS 18.45.027, added by * Sec. 2.) Yet, you authorize construction of in-state nuclear waste disposal facilities under certain circumstances. How does the waste material legally get to these in-state facilities to be disposed of? How does this mesh with AS 46.03.843, precluding disposal of high-level wastes but appearing to permit disposal of low-level wastes? How do hospitals and labs legally handle disposal of wastes if this becomes law?

(2) How does AS 46.03.843(b)(1)(B), wherein the Department of Environmental Conservation may determine when something constitutes a threat to the health or safety of the public under AS 46.03.250 (presumably these are, under the definition, "high-level" wastes), mesh with the new language of amended AS 46.03.250 which authorizes regulations concerning low-level radiation? Are high-level radiation and low-level radiation mutually exclusive?

This bill is obviously in need of more work.

JBC:ljb

Enclosure

A M E N D M E N T

OFFERED IN THE SENATE:

By: JUDICIARY

To: _____ SENATE BILL No. SB 29

HOUSE BILL No. _____

PAGE: _____

LINE: _____

Page 1, line 13:

After "Conservation" insert "to construct the facility on land designated by the legislature under (b) of this section".

Page 1, after line 13:

Insert

"(b) The legislature shall designate by law the land in the state on which a nuclear fuel production, utilization, reprocessing or disposal facility may be located."

Page 1, line 14:

Change "(b)" to "(c)"



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

SUMMARY OF JOINT SENATE-HOUSE HEARING
OF
FEBRUARY 16, 1981

Room 116, State Capitol - Juneau, Alaska

Legislation before Committee:

SB 11 "An Act continuing the existence of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

CSSB 29 "An Act relating to nuclear materials."

The joint meeting of the House and Senate Judiciary Committees was called to order by Chairman Rodey at 2:05 p.m., and was co-chaired by Representative Miller.

Senate members present were: Senators Rodey, Ray, Parr, and Hohman. Senator Bennett was absent.

An overview of the Alaska Bar Association was presented by William B. Rozell, President, Alaska Bar Association. Among those items discussed were the Fee Arbitration Committee, Conciliation Panels, Continuing Legal Education Commission, and the Sunset Review.

The Chair then heard questions from the floor and general discussion concerning Bar Association activities.

CSSB 29, scheduled for hearing, was deferred until a future date.

Hearing no objections, Chairman Rodey adjourned the meeting at 3:15 p.m.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

FOUCH • STATE CAPITAL
JUNEAU, ALASKA 99801
907 465 1001

MEMORANDUM

February 9, 1981

SUBJECT: Nuclear material
(CSSE 29 (Judiciary))

TO: Senator Patrick M. Rodey, Chairman
Senate Judiciary Committee

FROM: John B. Chensveth
Legislative Counsel 1837

May I ask:

How Waste

(1) You prohibit transportation of nuclear waste material for disposal in-state, authorizing only transportation to points outside the state. (AS 18.45.027, added by * Sec. 2.) Yet, you authorize construction of in-state nuclear waste disposal facilities under certain circumstances. How does the waste material legally get to these in-state facilities to be disposed of? How does this mesh with AS 46.03.843, precluding disposal of high-level wastes but appearing to permit disposal of low-level wastes? How do hospitals and labs legally handle disposal of wastes if this becomes law?

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This bill is obviously in need of more work.

JBC:ljb

enclosure

NUCLEAR WASTE POLICY ACT OF 1980

PL 96-573

RECEIVED

FEB 09 1981

SHORT TITLE

SECTION 1. This Act may be cited as the "Low-Level Radioactive Waste Policy Act".

DEFINITIONS

SEC. 2. As used in this Act—

(1) The term "disposal" means the long-term isolation of low-level radioactive waste pursuant to requirements established by the Nuclear Regulatory Commission under applicable law.

(2) The term "low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11 e. (2) of the Atomic Energy Act of 1954.

(3) The term "State" means any State of the United States, the District of Columbia, and, subject to the provisions of Public Law 98-205, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(4) For purposes of this Act the term "atomic energy defense activities of the Secretary" includes those activities and facilities of the Department of Energy carrying out the function of (i) Naval reactors development and propulsion, (ii) weapons activities, verification and control technology, (iii) defense materials production, (iv) inertial confinement fusion, (v) defense waste management and (vi) defense nuclear materials, (vii) defense security and safeguards, (all as included in the Department of Energy appropriations account in any fiscal year for atomic energy defense activities).

GENERAL PROVISIONS

SEC. 3(a). Compacts established under this Act or actions taken under such compacts shall not be applicable to the transportation, management, or disposal of low-level radioactive waste from atomic energy defense activities of the Secretary or Federal research and development activities.

(b) Any facility established or operated exclusively for the disposal of low-level radioactive waste produced by atomic energy defense activities of the Secretary or Federal research and development activities shall not be subject to compacts established under this Act or actions taken under such compacts.

LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

SEC. 4. (a) (1) It is the policy of the Federal Government that—

(A) each State is responsible for providing for the availability of capacity either within or outside the State for the disposal of low-level radioactive waste generated within its borders except for waste generated as a result of defense activities of the Secretary or Federal research and development activities; and

(B) low-level radioactive waste can be

most safely and efficiently managed on a regional basis.

(2)(A) To carry out the policy set forth in paragraph (1), the States may enter into such compacts as may be necessary to provide for the establishment and operation of regional disposal facilities for low-level radioactive waste.

(B) A compact entered into under subparagraph (A) shall not take effect until the Congress has by law consented to the compact. Each such compact shall provide that every 5 years after the compact has taken effect the Congress may by law withdraw its consent. After January 1, 1986, any such compact may restrict the use of the regional disposal facilities under the compact to the disposal of low-level radioactive waste generated within the region.

(b)(1) In order to assist the States in carrying out the policy set forth in subsection (a)(1), the Secretary shall prepare and submit to Congress and to each of the States within 120 days after the date of the enactment of this Act a report which—

(A) defines the disposal capacity needed for present and future low-level radioactive waste on a regional basis;

(B) defines the status of all commercial low-level radioactive waste disposal sites and includes an evaluation of the license status of each such site, the state of operation of each site, including operating history, an analysis of the adequacy of disposal technology employed at each site to contain low-level radioactive wastes for their hazardous lifetimes, and such recommendations as the Secretary considers appropriate to assure protection of the public health and safety from wastes transported to such sites;

(C) evaluates the transportation requirements on a regional basis and in comparison with performance of present transportation practices for the shipment of low-level radioactive wastes, including an inventory of types and quantities of low-level wastes, and evaluation of shipment requirements for each type of waste and an evaluation of the ability of generators, shippers, and carriers to meet such requirements; and

(D) evaluates the capability of the low-level radioactive waste disposal facilities owned and operated by the Department of Energy to provide interim storage for commercially generated low-level waste and estimates the costs associated with such interim storage.

(2) In carrying out this subsection, the Secretary shall consult with the Governors of the States, the Nuclear Regulatory Commission, the Environmental Protection Agency, the United States Geological Survey, and the Secretary of Transportation, and such other agencies and departments as he finds appropriate.

The long title of the act is amended to read as follows:

"To set forth a Federal policy for the disposal of low-level radioactive wastes, and for other purposes."

League of Women Voters of Alaska

8926 Birch Lane
Juneau, Alaska 99801
February 4, 1981

The Honorable Pat Rodey, Chairman
Senate Judiciary Committee
Alaska Legislature
Juneau, Alaska 99811

Re: Senate Bill 29 (Nuclear Materials)

Dear Senator Rodey and Members of the Committee:

The League of Women Voters of Alaska supports enactment of Senate Bill 29, including proposed new AS 46.03.843 (prohibiting in-state storage of high level nuclear waste material).

The League of Women Voters of the United States (LWVUS) has developed numerous positions relating to natural resources and the environment. Among these is a position on energy, including a policy that reliance on nuclear fission should not be increased, and that special attention must be given to solving waste disposal and other health and safety problems associated with this energy source. A copy of the full text of the LWVUS position on energy can be provided if the Committee so desires.

The League has given special attention to the problems of nuclear (including low-level radioactive) waste disposal. At the national level, the League lobbied for nuclear waste legislation that would assign the states a significant role in the federal-state interaction leading to decisions on nuclear waste disposal. The problem is one which must be resolved, and on an environmentally sound, site specific basis, using a decision process that affords ample opportunity for citizen participation.

The Honorable Pat Rodey
February 4, 1981
Page Two

We note that the present statute as amended by SB 29 will afford opportunities for meaningful citizen participation: first, when the regulations to be issued by the Department have been drafted and are out for public review and comment; and second, when municipalities hold their public hearings in order to develop the municipality's position regarding a permit for a specific proposed facility site. We invite the Committee's attention, however, to the draft uniform procedural regulations (now out for public comment) resulting from the Governor's Permit Reform Project. Under these regulations, the Department will decide whether these facility permits are Class I or Class II permits. Class I permits can be issued without any public notice. Probably nuclear waste disposal facility permits (even for low-level radioactive waste facilities) should be Class II permits.

We do ask that the Committee consider incorporating into the legislative history, as guidance to the Department of Environmental Conservation when drafting its facility siting permit regulations, the League's "Criteria for Evaluating Suitability of Storage or Disposal Sites for Hazardous and Nuclear (Including Low-Level Radioactive) Waste." A copy of these criteria is attached as Exhibit A. Presumably the only nuclear waste storage facilities which could be permitted (under the legislation as written) would be for storage of low-level radioactive wastes, and the League's "criteria" apply to those facilities as well.

We invite the Committee's attention to proposed new AS 18.45.027, which was amended into SB 29 on January 29 in the Senate Resources Committee (Senate Journal, page 140). That proposed section would read:

"The transportation of nuclear waste material in the state, except for purposes of disposal outside the state, is prohibited."

We question whether it was not the intention to prohibit in-state transportation of high-level nuclear waste material in the state, rather than to prohibit the transportation of all nuclear waste material. We are concerned that the wording adopted in the Senate Resources Committee amendment may

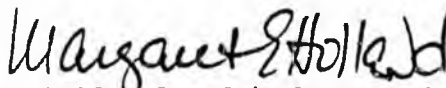
The Honorable Pat Rodey
February 4, 1981
Page Three

unintentionally prohibit all in-state transport of even those low-level radioactive materials used in medicine, education or scientific research, which presumably should be taken away from the Alaskan institutions or hospitals where they have been used and stored in a suitably permitted Alaskan disposal facility for low-level radioactive wastes.

We are leaving with the Committee one copy of the "Nuclear Waste Primer," published by the League of Women Voters Education Fund. It provides more information than the title implies, and may be of some help to Committee members or staff.

Thank you for considering our comments.

Sincerely yours,



Margaret Holland, Chief Lobbyist,
League of Women Voters of Alaska

Criteria for Evaluating Suitability of Storage or Disposal Sites for Hazardous and Nuclear (including Low Level Radioactive) Waste

These criteria, developed in April 1980, are an arrangement of national Environmental Quality and Land Use positions to help Leagues judge both the process employed in site determination and the suitability of a proposed site.

To ensure safe disposal:

- No disposal or storage sites shall be located in natural hazard areas such as floodplains, areas with high seismic or volcanic activity, areas of unstable geologic, ice or snow formations, or areas subject to extensive damage from hurricanes.
- There should be an examination of alternative sites, methods of storage and methods of treatment.
- Both on and off site monitoring for contamination of ground and surface waters and soils are of the utmost importance.
- Containers should be designed to prevent leakage of the material stored or disposed of.
- When containers are stored there should be regular inspections for possible leakage.

Siting of waste disposal or storage facilities should not take place in areas of critical concern, which include:

- Drinking water supply sources such as reservoirs and other storage facilities and sole source aquifers and watersheds.
- Fragile land areas such as shorelines of rivers, lakes and streams; estuaries and bays or wetlands.
- Where there are rare or valuable ecosystems or geologic formations, significant wildlife habitat or unique scenic or historic areas.
- Areas with significant renewable resource value, such as prime agricultural lands, aquifer or aquifer recharge areas, significant grazing and forest lands.

The waste siting decision-making process should provide for:

- Ample and effective public participation, including adequate funding for such participation.
- Economic, social and environmental impacts statements so that both decision makers and the public have information on which to base a decision. Secondary land use demands, in addition to the actual site, should be considered — roads, sewers, water, etc.
- Site selection in conformance with any adopted comprehensive plan — an example would be an adopted Coastal Zone Management Plan.
- Participation and review by all governmental levels to assure conformance with comprehensive plans at each level of government.
- Procedures for mediation of intergovernmental conflicts.

Exhibit A

NOTE REGARDING THE FOLLOWING FRAME ON MICROFILM:

COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES
IN ALASKA STATE ARCHIVES. TITLE PAGE ONLY HAS
BEEN FILMED.

"A NUCLEAR WASTE PRIMER"
League of Women Voters
Education fund.

League of Women Voters Education Fund

**NUCLEAR
WASTE
PRIMER**

A

Amendment

Page 9, line 1

Sec. 46.03.299. CONTROL OF HAZARDOUS WASTES. The department shall, by regulations adopted under the Administrative Procedure Act (AS 44.62), establish a state hazardous waste program; the state hazardous waste program shall

(1) consistent with and substantially equivalent to the Federal Conservation and Recovery Act of 1976 (P.L. 94-580, 42 U.S.A. 6901-6987),

(A) establish criteria to identify the characteristics of hazardous wastes;

(B) enumerate specific hazardous wastes (within the meaning of AS 46.03.900(31) subject to the provisions of AS 46.03.302 and 46.03.305; however, the department may not list as hazardous a waste that has not been listed as a hazardous waste by the United States Environmental Protection Agency under 42 U.S.C. 6921, unless the commissioner first determines that the waste poses a ~~substantial~~ threat to the public health and welfare; and

(C) etc.

MAKES THE DETERMINATION

that the waste ~~is~~

FCC REPORT RE: CHSSB 29

Letter of Intent

In passing this Free Conference Committee report it is the intention of the legislature that the Department of Environmental Conservation shall not administer the Hazardous Waste program such that either private citizens or businesses are required to obtain permits from both the Federal and State governments for the same activity.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

opinion

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

(907) 465-3686

April 15, 1980

The Honorable Glenn Hackney
Alaska State Legislature
Senate
Pouch V
Juneau, Alaska 99811

Re: Nuclear Waste Transportation
Our file J-66-606-80

Dear Senator Hackney:

On April 4, you requested this department's views on whether the State of Alaska could prohibit the Federal Government from utilizing state roads to transport nuclear waste for disposal within the state. The state of the law in this matter is fluid, and we cannot give a definitive answer.

Many states, and local governments, have enacted legislation prohibiting or restricting the transportation of radioactive wastes across their roads. ~~In response, the Federal Department of Transportation has proposed regulations which, if enacted, would preempt states from imposing outright prohibitions on nuclear waste transport, at least on federal aid highways,~~ although states would be allowed a voice in particular routing decisions. A copy of these regulations is enclosed. Several states are actively protesting these

regulations, and are contemplating litigation in the event that they are adopted -- on the grounds that the regulations are statutorily and constitutionally unauthorized.

Absent the adoption of these regulations, the state probably could prohibit private carriers from transporting nuclear wastes across state roads. A different problem exists with respect to transportation by the Federal Government and its instrumentalities. Unless a specific statutory waiver could be found, direct federal transport would be immune from state regulation. Hancock v. Train, 426 U.S. 167 (1976). Congress has waived federal sovereign immunity with respect to solid waste activities in section 6001 of the Resource Conservation Recovery Act of 1976 (P.L. 94-950). The applicability of that waiver to nuclear waste transportation by the Federal Government would be questioned under section 1006(a) of the Act, which provides that:

Nothing in this Act shall be construed to apply to (or to authorize any state, interstate, or local authority to regulate) any activity or substance which is subject to the . . . Atomic Energy Act of 1954 (42 U.S.C. 2011 and following) except to the extent that such application (or regulation) is not inconsistent with the requirements of such acts.

As implemented, the regulation of the transportation of nuclear wastes is governed not by the Atomic Energy Act, but rather by the Hazardous Materials Transportation Act.

49 U.S.C. § 1801 et seq. Thus, the exceptions to the sovereign immunity waiver contained in the Resource Conservation and Recovery Act, at least potentially, may not include the transportation of nuclear waste materials. However, because sovereign immunity waivers are strictly construed in favor of the Federal Government (Hancock v. Train, supra) the argument may be a difficult one to make. */

As I hope this letter indicates, the subject of the permissible scope of state regulation with respect to nuclear power involves an accommodation of several major federal regulatory programs, and ongoing federal agency activities. Certainly, 42 U.S.C. § 2021 -- the state cooperation section of the Atomic Energy Act -- has certain preemptive effects. For example, it has been held that states may not prohibit the construction of a nuclear plant for reasons premised on radioactivity hazards, although it may deny siting approval on other environmental or land use grounds. See Northern States Power Co. v. State of Minnesota, 447 F.2d 1143 (8th Cir. 1971); United States v. City of New York, ___ F. Supp. ___, 12 ERC 1600 (SDNY, December 26, 1978); Pacific Legal Foundation v. California State Energy Comm'n,

*/ The sovereign immunity waiver in the Clean Air Act (sec. 118: P.L. 95-95) may also be applicable, to the extent that transportation of nuclear waste poses a threat of atmospheric radioactive release.

The Honorable Glenn Hackney

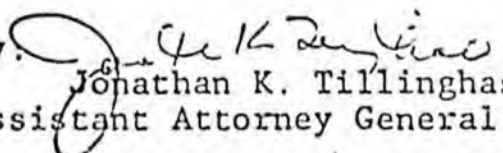
April 15, 1980
Page 4.

___ F. Supp. ___ 12 ERC 1899 (S.D. Cal., March 6, 1979).

The extent to which this rationale is applicable to direct regulation of nuclear waste disposal activities is unclear. Because it is unsettled, many state and local governments have chosen to legislate in this area. Moreover, it is my understanding the Nuclear Regulatory Commission has taken a cooperative attitude in this respect -- although the Department of Transportation, as noted previously, may differ. In sum, it does not appear from initial review that there exists any clear legal obstacle at this time which would override the public interest which would be served by state nuclear power regulation.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
Jonathan K. Tillinghast
Assistant Attorney General

JKT:d1m

Enc.

cc: Ernst W. Mueller, w/enc.
Commissioner
Department of Environmental
Conservation

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF
THE DEPARTMENTS OF NATURAL RESOURCES,
ENVIRONMENTAL CONSERVATION AND FISH AND GAME;
THE BOARDS OF FISHERIES AND GAME AND THE
ALASKA COASTAL POLICY COUNCIL

Notice is hereby given that the Departments of Natural Resources, Environmental Conservation and Fish and Game; the Alaska Coastal Policy Council, and Boards of Fisheries and Game, under the authority vested by AS 16.05.-020(1) and (3); AS 16.05.050; AS 16.05.251; AS 16.05.255; AS 16.05.270; AS 16.05.050-060; AS 16.20.120; AS 16.20.240; AS 38.05.020(b)(1); AS 44.19.893; AS 44.19.894; AS 46.03.-020(10); AS 46.40.040 and AS 46.40.200, propose to jointly adopt regulations in a new Title 22 of the Alaska Administrative Code ("Interagency Regulations"), and to amend 6 AAC 80, to implement and make specific the above-cited statutes as follows:

(1) Adoption of 22 AAC 10, which would designate most permits issued by the above entities for construction or operation of a facility as either "Class I" or "Class II" permits, and would require that Class I permits be issued in 30 days and Class II permits be issued in 65 days. These deadlines may be extended if:

(a) a project involves complex issues requiring additional time for review;

(b) a public hearing is held;

(c) the agency and the applicant mutually agree in writing to a more lengthy review period;

(d) the deciding agency processes the application jointly with a federal agency.

The regulations of each agency and board will specify whether each particular permit will be a Class I or Class II permit, and the applicable regulations in 22 AAC 10 will then apply.

The following list sets forth the proposed classification of permits for each agency:

CLASS I

CLASS II

Department of Natural Resources

1. General Land Use Permit
(AS 38.05.330)

Formerly:

Div. of Parks:

- Assembly Permit
- Disturbance of Natural Materials
- Field Archaeology Permit
- State Park Use Permit
- Access Route Permit
- Special Events Permit
- Special Land Use Permit
- Non-compatible Use Permit

Div. of Forest, Land & Water Management

- Right of Way Permit
- Special Land Use Permit
- Tideland Permit
- Personal Use Permit
- Trapping Cabin Permit
- Miscellaneous Land Use Permit
- Stock Driveways Permit
- Grazing Permit

2. Burning Permit
3. Temporary Water Use Permit
4. Plan of Operations Review Outside Coastal Area of the State.

1. Plan of Operations Review Within Coastal Area of the State. */

*/ However, public notice will not be provided unless required by federal law in order to obtain a binding coastal management consistency determination.

CLASS I

CLASS II

Department of Fish and Game, and Boards of Fisheries and Game

1. Habitat Protection Permit

None

Formerly:

- Anadromous Stream Permit
- Fish Passage Permit
- Critical Habitat Permit
- Refuge Permit
- Sanctuary Permit

Alaska Coastal Policy Council (as administered by the Division of Policy Development and Planning)

1. When made by the division, coastal management consistency determinations on direct state and federal activities involving less complex matters

1. When made by the division, coastal management consistency determinations involving
A. private applicants; and
B. direct state and federal activities involving more complex matters.

Department of Environmental Conservation

1. Air Quality Control Permit to Operate AS 46.03.020

1. Variance to Air Quality Standards AS 46.03.170

2. Air Quality Control Permit to Open Burn AS 46.03.020

2. Solid Waste Management Permit AS 46.03 100

3. Permit to Interfere with Salmon Spawning Streams and Waters AS 16.10.010

3. Short Term Variance (Water Quality Standards) AS 46.03.020

4. Plan Review of Sewage Treatment Works AS 46.03.020

4. Waste Disposal Permit AS 46.03.020

5. Subdivision Plan Review 18 AAC 72.065

5. 401 Certification Certification of Reasonable Assurance AS 46.03.020

6. Surface Oiling Permit AS 46 03.020

6. Oil Discharge Permit for Scientific Purposes AS 46.03.020

- | | |
|---|---|
| 7. Plan Review of Public Water Systems AS 46.03.020 | **7. Oil Discharge Contingency Plans AS 46.04.030 |
| 8. Seafood Processing Plant | **8. Proof of Financial Responsibility AS 46.04.040 |
| 9. Milk, Milk Products, Process | 9. Permit to Apply Pesticides AS 46.03.020 |
| 10. Slaughterhouse Operation | |
| 11. Food Service | |
| 12. Swimming Pool Plan Approval | |

The procedures governing issuance of Class I permits do not require public notice, and require interagency review only on an informal basis and only when coastal management issues are involved; Class II permits, however, do require public notice and interagency review. Public hearings may be held on either class of permits if required by law or if the agency determines that good cause exists. Articulation of the basis of the decision must be provided at the time of issuance for Class II permits, and in the event of appeal for Class I permits.

In addition, the proposed uniform procedures define the rights of the applicant and the public, and the procedural protections available. These include: (1) deadlines for request of additional information from the applicant, for receipt of comments by agencies and the public, and for appeal of permit decisions; (2) maintenance of a record file for each permit application which for Class II permits will include a record of all communications between the state and persons not employed by the state; the contents of the record file shall be public information unless required by law to be confidential; (3) provision for interested parties to keep informed and remain actively involved throughout the permit review and appeal processes; (4) assignment of "great weight" to comments from state agencies in their primary areas of expertise. In addition, applicants and persons directly and adversely affected by a permit decision have the right to appeal. However, this appeal right is conditioned upon raising a material issue, and the appellant must have raised his issues on appeal at available stages in the decision-making process. The proposed regulations establish two types of appeal: a "Class A" informal appeal, and a

** Public notice will not be provided.

"Class B" appeal involving more formal adjudicatory procedures. The regulations of each agency will specify which class of appeal applies to a particular permit decision, and a Class A appeal may be taken even if a Class B appeal is available.

Finally, the proposed regulations substantially change the coastal management decision making process of the state. Under existing regulations, the state is required to ensure that state actions, including permit and license decisions, are consistent with the state's coastal management program. The proposed regulations establish a process for arriving at a single, conclusive consistency determination for most activities by dividing responsibility for coastal management decisions among the agencies on the following basis:

(a) Division of Policy Development and Planning

When an activity requires preparation of an environmental impact statement by the federal government, or when it occurs on the OCS, the consistency determination will be made by the Division of Policy Development and Planning.

(b) Department of Natural Resources

Except when (a) applies, when an activity requires the disposal of state land or an interest in state land, consistency determinations will be made by the Department of Natural Resources as part of its existing responsibility to determine that the disposal is in the "best interests" of the state. Consistency determinations relating to "plans of operation" will also be made by DNR.

(c) Department of Environmental Conservation

For activities occurring in the coastal area which require neither an EIS, a land disposal, nor a plan of operations, the consistency determination will be made by the Department of Environmental Conservation as part of any necessary "Section 401" determination under the federal Clean Water Act.

(2) 6 AAC 80.900(20) is proposed to be amended to change the definition of "feasible and prudent" to conform to that phrase's meaning in sec. 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. § 1653(f)).

These regulations are comprehensive and complex, and this summary attempts to highlight only their major points. A longer executive summary has been prepared. Persons interested in natural resource permit reform are strongly encouraged to obtain a copy of the longer summary and the regulations from:

Alaska Department of Law
Attn: Special Assistant Attorney
General Jon K. Tillinghast
Pouch K, State Capitol
Juneau, Alaska 99811

These regulations are a major component of Governor Hammond's permit reform project, the goals of which are to unify, simplify, expedite and make fairer state natural resource decision-making. Suggestions other than those proposed in the regulations are encouraged. Specifically, interested persons are urged to comment upon the question of whether state agency comments on pending federal permits should be made solely by the same agency delegated coastal management responsibilities in the regulations. This is an issue which may be resolved in the final regulations.

Written comments on the regulations may be submitted to the Alaska Department of Law at the above address at any time prior to February 27, 1981. Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at hearings to be held at the following times and places:

FAIRBANKS - time: 7:00 P.M. to 10:00 P.M.

place: Chamber of Commerce Log Cabin
Basement meeting room
555 1st Avenue

date: February 4, 1981

ANCHORAGE - time: 7:00 P.M. to 10:00 P.M.

place: Municipal Offices - Assembly Hall
3500 East Tudor Road

date: February 6, 1981

JUNEAU -

time: 7:00 P.M. to 10:00 P.M.

place: City Borough Council Chambers

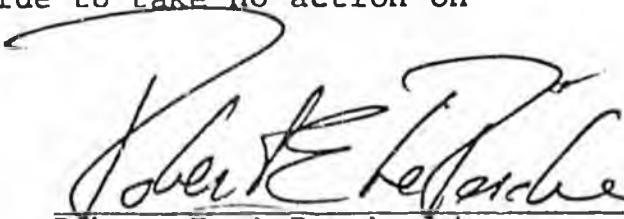
date: February 9, 1981

It is estimated that this action will require increased appropriations as follows: FY 1980-81 \$79,000.00; FY 1981-82 \$302,000.00

The above agencies, boards and council, upon their own motion or at the instance of any interested persons, may at any time after February 27, 1981 and without further notice adopt the proposals in a manner consistent with the scope of this notice, or may decide to take no action on them.


DATE:

8 January 1981


Robert E. LeResche
Commissioner
Department of Natural Resources

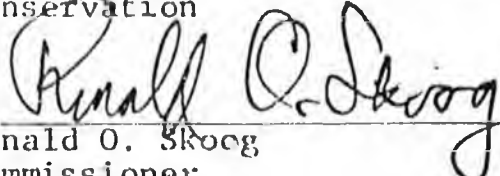
DATE:

8 January 1981


Ernst W. Mueller
Commissioner
Department of Environmental
Conservation

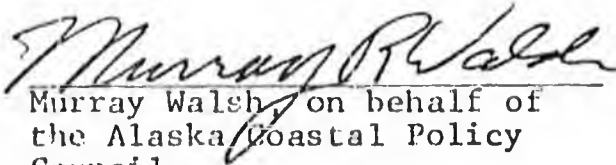
DATE:

9 Jan 81


Ronald O. Skoog
Commissioner
Department of Fish and Game,
and on behalf of the Boards
of Fisheries and Game

DATE:

8 January 1981


Murray Walsh on behalf of
the Alaska Coastal Policy
Council

UNIFORM PROCEDURAL REGULATIONS
EXECUTIVE SUMMARY

A. Intent and Background of Regulations

The purpose of this executive summary is to describe the background and intent of the uniform procedural regulations (22 AAC 10) for which public notice of proposed adoption was jointly issued by four state agencies on January 9, 1980. This summary will also briefly discuss major areas of concern which have emerged with respect to the regulations.

These regulations are the product of a permit reform project established by Governor Hammond on June 17, 1980, and are intended to achieve these primary goals:

1. Establishment of the shortest feasible deadline for the issuance of state permits for natural resource development.

The regulations provide that the departments of Natural Resources, Fish and Game and Environmental Conservation, and the Division of Policy Development and Planning within the Office of the Governor, referred to in the regulations as "resource agencies," must classify their permits as either a "Class I" or "Class II" permit. The regulations provide that Class I permits must be issued within thirty days of receipt of a completed application. Class II permits must be issued within sixty-five days. The published informative summary of the regulations contains the agencies' proposed classifications. The regulations provide for extensions of these deadlines in certain limited cases. As part B of this summary discusses, the regulations attempt to provide sufficient safeguards to insure that an extension will only be given when it is absolutely necessary.

2. Establish uniform permit procedures.

Currently, permit and appeal procedures vary dramatically not only between, but within state agencies. Uniform permit procedures make it far easier for applicants, and the public in general, to do business with state government. If adopted, these regulations would supplant all procedural material contained in the regulations of the particular agencies involved, and a host of administrative orders, interagency agreements, and informal and written understandings. The Class II procedures, the most complex

in the regulations, replace this voluminous mish-mash with a scant 1 1/2 pages of uniform regulations. The regulations of each agency will state the permit requirement; describe the substantive criteria under which that permit will be granted, and will classify the permit. The regulations in proposed 22 AAC 10 will govern administrative proceedings for that permit.

3. Explicitly define the rights of the applicant, and other persons in the permitting process.

Currently, some state agencies have no procedural regulations governing the issuance of their various permits. Other requirements which may significantly affect the outcome of the permit application are found in administrative orders, interagency agreements and other documents and understandings not contained in the administrative code. Sometimes, procedural protections are left to agency "discretion". This approach causes two problems. First, it arguably contravenes the Alaska Administrative Procedure Act which provides, in AS 44.-62.640(2), that all rules of general applicability should be contained in regulations. Second, it promotes misunderstanding between the agency and the public, and in the long run, threatens unnecessary litigation. The proposed regulations attempt to explicitly define the rights of all the parties while avoiding unnecessary procedural burdens.

4. Streamlining the states coastal management decision making process.

Under existing regulations (6 AAC 80.010(b)) implementing the state's Coastal Management Act (AS 46.40), before a state agency may issue a permit for an activity in the coastal area, it must determine that the activity is "consistent" with the state coastal management standards found in 6 AAC 80. Additionally, under sec. 307(c) of the federal Coastal Zone Management Act (16 U.S.C. § 1456), federal agencies must obtain a "consistency determination" from the state before federal permits or licenses in the coastal area may be issued. The state's requirement (6 AAC 80.010(b)) is intended to implement AS 46.40.200, which seeks to insure that state actions, including permit and license decisions, will be consistent with the state's coastal management program. The approach taken in 6 AAC 80.010(b), however, has created both unnecessary duplication and the potential for inconsistent state positions on a project. If an activity needs four state permits, for example, 6 AAC 80.010(b) requires each of the four state agencies to make "consistency determinations" in the course of its

permit proceeding. There is little reason for one finding to be made four times. Moreover, under current procedures, the state will make a fifth consistency determination when a federal agency issuing a permit seeks state certification under sec. 307(c) of the federal act. Compounding this unwarranted duplication is the fact that these multiple consistency determinations need not agree. In October, 1980, the Alaska Coastal Policy Council, by resolution, requested the administration to devise an approach whereby one determination, for both state and federal law purposes, would be made on a project, with that determination being made, to the extent feasible, within existing permitting processes. Article 5 of the proposed regulations contains the administration's proposal. That proposal allocates responsibility for making "one time" consistency determinations in the following manner:

a. When an activity is of such significance as to require the preparation of an environmental impact statement by the federal government, a consistency determination should be made by the governor's office. Accordingly, responsibility in these cases would be vested with the Division of Policy Development and Planning. This is a narrow sphere of responsibility.

b. Under existing law, the Department of Natural Resources cannot dispose of an interest in state land until it finds that the disposal would be in the "best interests" of the state. AS 38.05.035(a)(14). The coastal management standards are essentially a subset of the many factors which as a whole constitute the "public interest". Thus, as a matter of law and practicality, it seems most logical, except in cases involving EIS preparation, to vest "consistency determination" responsibility for state land decisions exclusively in the Department of Natural Resources. Moreover, after many disposals, particularly for oil and gas leases, the Department of Natural Resources will require a "plan of operations" to be approved by the department. To provide continuity in this regard, the regulations provide that the consistency determination on activities authorized in that plan will also be done by DNR.

c. There are a wide range of activities occurring in the coastal area which neither require the preparation of an environmental impact statement, nor are authorized by a state land disposal or plan of operations. The primary impact which these activities will have on the

coastal area is often related to water quality, and those water quality impacts must normally be permitted by either the Environmental Protection Agency or the Army Corps of Engineers under the federal Clean Water Act. Section 401 of that act requires that the Department of Environmental Conservation "certify" that the issuance of that federal license or permit will not violate state water quality standards. By vesting coastal management consistency determination authority for this large residual of activities in the Department of Environmental Conservation, the regulations will allow that determination to be made within the already necessary "sec. 401" process, and by the agency with the primary expertise over the probable primary impact of that activity.

An example of the functioning of the administration's proposal might be helpful. When the Department of Natural Resources considers holding an offshore oil and gas lease sale, that agency will make the only determination as to whether the sale is consistent with the state standards. When a successful lessee seeks to construct an offshore exploratory well, it will apply to the Department of Natural Resources for approval of the plan of operations with respect to that well and related facilities. DNR will then make a conclusive consistency determination on the placement of that well and related facilities. Some of these facilities obviously will need other permits from other agencies. At a minimum, placement of the well offshore will need a permit from the Corps of Engineers. When a consistency determination is requested of the state by the Corps of Engineers under sec. 307(c) of the federal Coastal Zone Management Act, the Division of Policy Development and Planning will utilize the determination already made by the Department of Natural Resources. Moreover, if any other state permits are necessary for an activity approved in the plan, the state permitting agency will not conduct a consistency determination, since the question of whether that activity is consistent with the standards has already been determined by the Department of Natural Resources.

It is the hope of the administration that these regulations will result in major progress in making state permitting procedures more efficient, explicit and fair. Working sessions on these regulations have already been held with industry, environmental and public interest groups. All of these groups endorse the four goals of the regulations. A December 3, 1980, working draft of the regulations has been substantially revised to accommodate many of these groups' recommendations. Inevitably, however, none of the

groups are totally satisfied with the product. Several serious issues regarding the regulations remain. Generally, certain oil industry commentators are unsatisfied with the regulations because they are perceived to (1) give unwarranted recognition to the rights of the public and local governments in the permitting process, and (2) allow state renewable resource agencies to comment on federal permit applications and to have excessive input on state natural resource decisions. Conversely, the federal Office of Coastal Zone Management, and certain environmental commentators, believe that the regulations give inadequate protection to all of the above interests.

The second part of this summary discusses several of the major areas of concern regarding the regulations, and the rationale for the treatment of those concerns given in the current proposal. These rationales, of course, should not be taken as inflexible "positions". The whole purpose of the public notice process is to generate debate on these issues.

B. Major Issues Raised by the Regulations

1. Division of Policy Development and Planning responsibilities.

As the previous section of this summary suggests, the assignment of authority to make "conclusive" coastal management consistency determinations will result in particular state agencies taking a role of primary authority on coastal management issues. Interest groups, depending upon their orientation and past experience, have come to view particular state agencies as more sympathetic to their interests than others. As a result, commentators to date have offered quite variant positions on where that "ultimate authority" should lie.

At the outset, the administration has attempted to develop a "consistency determination" procedure which ensures true interagency consultation. This process was developed to ensure uniformity in the interpretations of the state coastal management standards, and to lessen the practical effect of the choice of actual decision-makers. This effort, described in subsec. (2) of this section, has been alternatively perceived by some industry groups as excessive, and by the federal Office of Coastal Zone Management as insufficient.

Regardless of the safeguards taken in the regulations, the question of the choice of decision-makers has remained prominent. Certain oil industry commentators have recommended that the Governor's Office should have no responsibility for making consistency determinations where a private applicant is involved. The rationale for the administration's proposal has been previously stated.

Because of the narrowness of the DPDP sphere of responsibility (see section (A)(4)(a) above), it will remain almost universally true that the Department of Natural Resources will have exclusive coastal management authority over its own land disposal actions. This aspect of the draft regulations originated as the primary industry proposal on coastal management and was endorsed by the administration primarily because of the legal and logical relationship between the consistency determination and the "best interest finding" under AS 38.05.035(a)(14) (see above). This alternative has been criticized by environmental groups, and by the federal Office of Coastal Zone Management, which believe that the Department of Natural Resources will face a conflict of interest in making a consistency determination on its own proposals. Because in this instance an agency will be reviewing the consistency of its own activities, it is particularly vital that procedural safeguards be placed in the decision making process.

Little criticism has been offered to date of the placement of authority with DEC over the large "residual" category of activities needing sec. 401 certification under the Clean Water Act.

2. The coastal management procedural protections.

There is a danger in "dividing" coastal management responsibilities. The standards themselves (6 AAC 80) are capable of diverse interpretation, although the proposed regulations attempt to tighten these standards by giving a meaning to the phrase "feasible and prudent" which has judicial interpretation. Nonetheless, there will remain a possibility that diverse bodies of administrative precedent might develop as to the meaning of the standards. Second, if the coastal management decision-making process is not sufficiently disciplined, the statutory mission of the particular agency having jurisdiction becomes substantially more important, which makes, in turn, the possibility of a realistic solution to the "duplication" problem all but impossible to achieve.

Several protections have been proposed in response to these problems. First, a disciplined interagency review process had been provided for Class II permits, where most consistency determinations will be made. Section 130. The regulations provide that if the deciding agency (for example, DNR on state land matters) rejects a recommended course of action by a sister agency, the reasons for that rejection must be clearly articulated. See sec. 160(3). Additionally, the deciding agency must accord "great weight" to the comments of its sister agencies, but only if those comments are within the primary area of expertise" of that agency. Section 130(c). This provision has generated both criticism and misunderstanding. The definitions section of the regulations (900) makes it clear that this provision is not intended to give any other agency actual or practical decision-making authority. This is because no commenting agency is deemed to have "primary area of expertise" on the decision itself. The most often used example of the operation of this requirement is with respect to plan of operations approval by the Department of Natural Resources for an oil and gas lease. Let us suppose that the Department of Fish and Game comments that a particular drilling activity will have adverse wildlife impacts, and that to mitigate those impacts a seasonal drilling restriction should be imposed. The deciding agency will normally be required to defer to Fish and Game comments concerning actual or likely adverse impacts, since that is clearly within that department's "primary expertise". However, deciding upon a seasonal drilling restriction depends upon a balance of the magnitude and likelihood of the impact occurring, economic, engineering and other factors. The balancing is solely the province of the deciding agency -- in this case DNR -- and, as a result, the Department of Fish and Game will not be entitled to "great weight" on its recommended seasonal drilling restriction.

Oil industry commentators are unhappy with this safeguard -- even given the narrow definition of "primary area of expertise", which was provided by the Division of Minerals and Energy Management. They see the protection as giving the Department of Fish and Game, if not a "veto", at least unwarranted new authority. Certainly, it gives no commenting agency a "veto" (see above). Moreover, the comments fail to recognize that both sound administrative practice, and federal law, require meaningful coordination of all state agency interests in making coastal management decisions. Presently, that "coordination" occurs by virtue of the ability of other agencies to make their own "consistency determinations" on the same project reviewed by DNR.

They won't be able to do that anymore, and a more substantive role must be provided other agencies in the forum for making the one determination which will bind the entire state.

Conspicuously, the federal Office of Coastal Zone Management has forcefully urged that the state should, and perhaps must go substantially further in ensuring adequate consideration of the views of other agencies. Their primary recommendation has been to require that, for example, DNR plan of operations decisions be appealable to a multi-agency board, on which Fish and Game would presumably sit, and through which they would have a functional veto authority.

To ensure uniformity of interpretation of the guidelines, the regulations provide (sec. 920(9)) that interpretations of the meaning of the guidelines offered by the Office of Coastal Management will be entitled to great weight. This provision has caused little criticism. What has been severely criticized, however, is sec. 570(b), which provides that local governments with an approved coastal management programs will be entitled to great weight on questions of whether a particular activity is consistent with that program. Certain oil industry representatives have insisted that even when a local government has an approved program under AS 46.40, state agencies should not defer to that local government on questions of consistency within its municipal boundaries. The Office of Coastal Management strongly believes that this view is inconsistent with the intent of the act, which is to increase the voice of local government in state decision-making once a program has been approved. The disagreement over sec. 570(b), then, is as much one of law as policy, and the Department of Law is researching the issue.

Finally, until recently, the oil industry has been very critical of the fact that review of plans of operations will be classified as a "Class II" permit, since public notice (sec. 120) is provided for Class II permits. Currently, public notice of proposed plans of operations is not provided by the Department of Natural Resources, and they have seen sec. 120 as imposing a new and unwarranted procedural requirement. Public notice is being provided in certain cases for plans of operations solely because it is required by federal law. As noted previously, in the course of its plan of operations review, the Department of Natural Resources will be performing a consistency determination which will serve as the state's "determination" for federal permit purposes as well. 15 CFR § 930.61 requires that a state

consistency determination on a proposed federal permit or license must be predicated on public notice. Under the proposal, however, public notice will not be provided even when the activity is in the coastal area, if no related federal permit is necessary. For these plans, then, a decision could be made immediately after expiration of the twenty-one day agency review period in sec. 130. Once aware of this federal requirement, criticism of this aspect of the regulations has diminished.

Any significant dilution of these protections may raise serious questions as to the continued legality of the state's program under federal law. The interests of the public, and of local governments in particular, would be severely injured if this were the case.

3. Extensions of permit deadlines.

As noted previously, the regulations provide that the Class I and II permit deadlines may be extended under certain circumstances. These circumstances are:

a. Complex projects. Section 020(a)(1) and 020(b) of the regulations provide that the permit deadlines may be extended if the commissioner of the agency certifies that the project is too "complex" to be adequately reviewed within the timeframe otherwise allowed. There is little disagreement that a sixty-five day review of, for example, the TransAlaska Pipeline, is less than adequate to protect the public interest. This exception was recognized and jointly endorsed by industry and the administration in House Committee substitute for SB 548, a permit reform bill considered in the last legislature. As a safeguard, sec. 020(b) requires that the commissioner's office itself make the certification, and also requires the commissioner to establish the "shortest feasible time" in which review can be completed. Subsequent extensions are not permissible.

b. A maximum twenty day extension is possible if a public hearing is held on the project. Section 020(a)(2), sec. 050(f). There are two reasons for this provision. First, the agency will often not know whether a public hearing is warranted until late in the decision-making process. For example, with Class II permits, the agency will often not know the intensity of public concern until the close of its public notice process, which will often be thirty-five to forty days after the

application has been received. See sec. 120(b)(3). That would leave, at most, twenty-five days to decide upon a hearing, provide adequate advance notice of the hearing, hold the hearing and thoughtfully consider the comments received. That is simply impossible to do. By allowing the additional twenty days at most, the agency can realistically hold a meaningful public hearing. Additionally, as noted in subsec. (4), criteria have been developed to limit the circumstances under which a hearing will be held.

Another reason for the twenty day public hearing "override" relates to the classification of permits themselves. Under SB 548, a third category of permits would be authorized -- Class III permits, which could be issued in ninety days. The primary value of the Class III permit category was to accommodate those permits (for the reasons stated above) for which a public hearing was periodically appropriate. The regulations abandon the Class III option. The administration feels that it is preferable to applicants to provide for an eighty-five day review period only in those cases where a public hearing is actually held, rather than lumping a whole class of permits into a ninety day category, even though in individual cases a public hearing would not be provided. Oil industry commentators nonetheless want this provision deleted, arguing that any public hearing should be held within the sixty-five day Class II period. That is not possible, if anything approaching adequate notice of the hearing is to be provided (see above). Indeed, environmental groups are deeply concerned that a twenty day extension is itself insufficient. If this extension were to be removed, Class III procedures would have to be written, and those permits now normally classified as Class II would be reclassified as Class III if there was any reasonable likelihood of a public hearing ever being warranted on a particular application.

c. Section 020(a)(3) provides that the deadlines can be extended by mutual agreement of the applicant and the department. This provision was originally inserted in SB 548 at the request of industry representatives, who envisioned certain circumstances where the administrative record might not be sufficient by the applicable deadline to sustain a granting of the permit.

d. Section 020(a)(4) authorizes agencies to enter into memoranda of understanding with federal agencies for the joint processing of applications even though the joint processing may result in differing deadlines from those imposed in regulations. However, under sec. 085, these memoranda are authorized only after the agency has weighed the impact of the differing procedures on the applicant. It would be counter-productive if these regulations precluded an agency from entering into a joint permit processing scheme with federal agencies simply because the existing regulations of the state and federal agencies were not compatible. This "exception" has generally been supported to date.

e. The deadline for issuing a permit may be "tolled" -- or suspended -- if the agency finds that, because of the unique nature of the project, additional information beyond that required in the application form is necessary. Section 030. Again, this exception was recognized in SB 548. Agency application forms and generally required attachments will provide, in almost all cases, enough information to reach a meaningful decision. Occasionally, an activity will raise unique issues which an agency must explore further if the permit is to be lawfully granted. It is not the intent of this section to allow or encourage fishing expeditions, or to demand veritable impact statements from the applicant. Any request for additional information must be linked to some information gap which prevents a sufficient assessment of the application under the decision-making criteria of the agency as contained in its statutes and regulations. Environmental groups have criticized sec. 030 because it, one, affords only one opportunity to request additional information and, two, requires that the information be sought early in the decision-making process. Oil industry spokesmen oppose this provision as providing "another loophole" for extending the deadlines.

4. Public hearings and Appeal.

Section 050 of the bill establishes the criteria for holding a public hearing. Oil industry commentators have expressed concern that this provision requires that a public hearing be held in cases where hearings were not authorized in the past. To the contrary, this section is intended to constrain those situations in which permit proceedings will be extended through the holding of a

hearing. Currently, of course, any agency can hold a public hearing on any permit application, even if one is not required by law. The administration did not feel it sound to allow for a twenty day extension of the permit deadline for the holding of a hearing, without also limiting the situations in which a hearing would be appropriate. First, sec. 050(c) explicitly prohibits the holding of duplicative public hearings. Second, in determining whether to hold a hearing, the commissioner is explicitly required to consider the effect of a twenty day delay on the probable starting date of project construction (050(b)(4)) and whether the public concern for the project really has anything to do with the jurisdiction of the agency. Section 050(b)(2). From the applicant's point of view, these are beneficial new provisions.

Similarly, one oil industry spokesman has criticized the appeals sections of Articles 6 and 7 as expressly "legitimizing" the ability of a person other than the applicant to appeal a permit decision if he is directly and adversely affected. That criticism assumes that a member of the public has no such existing right, which could not be more wrong. A careful reading of secs. 610 - 620 in particular will disclose that the regulations in fact impose new, significant obligations on a potential public interest appellant. These requirements -- particularly the requirement of sec. 620 as to active participation throughout the decision-making process -- have been supported by industry. Thus, the criticism appears to be that the regulations should address limitations on the public's existing right to appeal, but should not "legitimize" the right itself.

5. Permit amendments.

The regulations (sec. 080(c)-(d)) provide that changes to a permitted operation which involve significant new impacts require a new permit, while changes which do not involve significant impacts are treated as amendments which do not need public notice. Oil industry commentators have suggested that where the impacts are "insignificant", no communication with the agency should be necessary at all, and the activity should be allowed to proceed. That proposal would create a significant risk of misunderstanding, and perhaps litigation. Initially, the permittee would decide whether he felt this change was "significant". If he felt that it wasn't, he would proceed without notifying the agency. The obvious question is this: What if the agency detects the change, and disagrees as to its significance? The agency would then be free to take enforcement action for violation of its regulations.

6. "Automatic approval".

The regulations do not provide that if a permit deadline is missed, the permit is deemed "automatically issued". No issue surrounding these regulations has caused the administration more difficulty than this one. The administration supports effective enforcement of the deadlines imposed in these regulations. This is particularly so because the deadlines imposed are achievable, and those circumstances in which extensions are absolutely necessary have been clearly delineated.

To provide that permits are deemed automatically "issued", an approach endorsed by certain oil industry representatives and contained in SB 548, carries with it a great deal of disturbing baggage. First, such a provision would require a statutory change. It is not, at this time, a statutorily sufficient grounds for permit issuance that a deadline has been missed. Thus, absent a change in the law, a decision to issue a permit simply because a certain date has been missed would be arbitrary and capricious. Even if a statutory provision was provided, problems would remain. It could be argued that such a statute would be unconstitutional because it would deny a person seriously affected by the decision any real means -- administrative or judicial -- to influence the permit decision. Moreover, an agency with serious concerns over a permit near the close of the decision-making process might have no alternative but to deny the permit rather than to allow the thirtieth or sixty-fifth day to be reached. Third, if an agency should ever desire to issue a permit, but could not justify its decision based on the record, it might simply let the time run intentionally. Since the permit would be "automatically issued" by operation of the calendar, there would be no meaningful judicial review.

A suggestion has been made to alleviate this third problem by providing that judicial review under applicable criteria would still be permissible after the deadline had run, but that the court would review any conflicting evidence or opinion in a light "most favorable to the applicant." This suggestion has merit, but raises additional concerns as to whether the court would feel compelled to conduct a "de novo" review of the project, with resultant substantial delays in project approval.

Most fundamentally, the argument for "automatic approval" assumes that state employees will not use their utmost efforts to comply with their employers' rules and

regulations. Given adequate staffing levels, we believe that there will be little difficulty in meeting the requirements of these regulations. Before anything as difficult and uncertain as "automatic approval" is attempted, we believe that a year's trial period with adequate staff levels should be provided before more severe alternatives are attempted.

7. State Comments on Federal Permit Applications.

A serious issue not addressed in the proposed regulations is the question of the degree to which state agency comments on federal permit applications should be constrained. Basically, the issue, as posed by the oil industry, is this: The regulations do provide that the state will speak with one voice on coastal management matters. However, an agency disenchanted with the results of that decision may still recommend its own terms and conditions -- or permit denial -- through comments on a federal permit application necessary for the facility. For legal or policy reasons, the federal permitting agency may feel compelled to accept that recommendation. As a result, an admitted possibility for "inconsistent" state positions remains.

It has been suggested that the agency with decisional authority on coastal management issues (*i.e.* DNR on state land matters) also have decisional authority on the text of state comments on federal permit applications (other than sec. 401 certifications by DEC) -- and that those comments be compiled at the time the consistency determination is made, so that the applicant will receive a single, inclusive and final "state position" on his project at that time.

The proposal would bring unquestioned benefits. It also has problems. The departments of Fish and Game (AS 16.05.020(2)-(3); AS 16.05.050(1)) and Environmental Conservation (AS 46.03.020(9)) arguably have direct statutory duties which this proposal could unlawfully impair. Second, since the Department of Fish and Game is never given the role of decision-maker on conclusive coastal management matters under the proposed regulations, denying that department its remaining avenue of direct influence would be seen by some as relegating that agency to a "second-class" status among its sister agencies. To the extent this perception is justifiable, demoting advocacy of wildlife concerns in Alaska to a subsidiary level is a policy decision of the most profound proportions.

It is anticipated that the final regulations will resolve this issue. Thus, public comment on this issue is strongly encouraged.

UNIFORM PROCEDURES FOR PERMITS,
CONSISTENCY DETERMINATIONS AND APPEALS

ARTICLE 1. GENERAL PROVISIONS

22 AAC 10.010. SCOPE OF CHAPTER. This chapter establishes uniform permit and appeal procedures for permits issued by the departments of Natural Resources, Environmental Conservation, and the Office of the Governor, Division of Policy Development and Planning, and for habitat protection permits issued by the Department of Fish and Game. Substantive material pertinent to each permit requirement is contained in the regulations of each resource agency. Applicable permits will be identified in each resource agency's regulations as either a Class I or II permit. Those regulations will also contain additional procedural material germane only to a particular permit, and indicate whether a Class A or Class B appeal may be taken from an adverse permit decision.

22 AAC 10.020. DEADLINES ON PERMIT ISSUANCE. (a) This chapter establishes deadlines of 30 and 65 days respectively for an agency decision on each completed Class I and II permit application. These deadlines may be extended by the commissioner of the deciding resource agency if:

(1) the commissioner certifies, under (b) of this section, that the project for which the permit is sought involves substantial complex issues requiring additional time for review;

(2) a public hearing is held under sec. 50 of this chapter. However, extensions under (1) and (2) of this subsection may not be cumulated;

(3) the agency and the applicant mutually agree in writing to a more lengthy review period; or

(4) necessary steps in the decision-making process require more time than that specified in this chapter because the deciding agency is processing the application jointly with a federal agency pursuant to a memorandum of understanding entered into under sec. 085 of this chapter.

(b) A certification under (a)(1) of this section will specify the precise issues or conditions requiring prolonged review, and will establish the shortest feasible time in which that review can be completed. The deadline for reaching an agency decision will not be further extended.

22 AAC 10.030. ADDITIONAL INFORMATION. (a) If a deciding agency receives a completed permit application form which does not contain sufficient information concerning the project to allow the agency to determine compliance of the project with the agency's statutes and regulations, the agency will notify the applicant within 15 days of receipt of a completed application for a Class I permit, and within 30 days of receipt for a Class II permit. The notification will specify all information which the agency requires to determine compliance of the project with the agency's statutes and regulations.

(b) The notification will specify those peculiar facts or issues concerning the proposal which require more information than is provided on a completed application form.

(c) If a timely request under (a) of this section is made, the deadline for reaching an agency decision established in this chapter is tolled from the date of request to the date of full compliance with the request. Subsequent requests for additional information do not toll or extend the applicable deadline.

22 AAC 10.040. SIGNING OF APPLICATIONS. Unless otherwise specifically provided by statute, all permit applications must be signed as follows:

- (1) in the case of corporations, by a duly authorized representative responsible for the overall management of the project or operation;
- (2) in the case of a partnership, by a general partner;
- (3) in the case of a sole proprietorship, by the proprietor; and
- (4) in the case of a municipal, state, federal or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.

22 AAC 10.050. ORAL PUBLIC HEARINGS. (a) An oral public hearing on a permit application will be held if:

- (1) required by statute; or
- (2) subject to (c) of this section, good cause exists for holding a hearing.

(b) In determining whether good cause exists for the holding of a public hearing, the deciding officer will balance at least the following factors:

- (1) the substantiality of actual or, for Class I permits, likely public concern for the activity;
- (2) the degree to which those public concerns are relevant to the criteria for the agency's decision;
- (3) the scope and sufficiency of any pre-application consultation or hearing;
- (4) consideration of public concerns given at previous decision-making stages; and
- (5) the likely effect of delaying an agency decision in order to hold a hearing on the probable starting date of the activity.

(c) A public hearing will not be held under (a)(2) of this section if the deciding officer determines that:

- (1) a public hearing has been held on the project, or will be held in time for the results of that hearing to be considered by the deciding agency; and
- (2) a hearing held by the other agency has provided or will provide a sufficient forum for existing or likely public concern.

(d) The deciding officer or his designee will preside at the hearing. Order of testimony and time limitations will be established by the presiding officer. The deciding officer will consider only that testimony material to the permit decision being made.

(e) At the close of each witness' testimony, the witness may be questioned by the presiding officer and the department staff.

(f) The deadline for reaching an agency decision under this chapter will be extended by a maximum of 20 days if a hearing is held under this section.

22 AAC 10.060. DECISION OF APPLICATIONS. (a) Within the applicable time period provided in this chapter, the deciding officer will serve his decision on the applicant. The decision will include:

- (1) the permit, if it is the deciding officer's determination that a permit should be issued, including all conditions which the agency will impose on the permit; and
- (2) a statement that a person aggrieved by the officer's decision may take a timely Class A or Class B appeal, as applicable.

(b) A copy of the decision will also be served on any person who has timely commented upon the application or has served a written request on the agency for a copy of the decision.

22 AAC 10.070. PERMIT CONDITIONS. The deciding officer will, as authorized by statute or regulation, attach conditions to a permit, including design, operating, monitoring, inspection, sampling, access to records and reporting requirements, and, where authorized by statute, the posting of a performance bond or other surety, that he considers necessary to insure that all statutory and regulatory criteria will be met.

22 AAC 10.080. PERMIT LIMITATIONS. (a) The permit may state that it may not be assigned without prior written approval of the deciding officer. The deciding officer will grant approval under this subsection if he finds that the assignee has assumed the obligations of the permittee; the assignment will not result in an appreciable change in the operation; and the assignee is capable of meeting the permit conditions.

(b) A permit authorizes only that activity specified in the permit. Any change in the permitted activity which the permitting agency determines may result in significant adverse impacts from the permitted activity requires a new permit. Any other change in the permitted activity requires an amendment to the permit.

(c) Unless otherwise required by federal law, applications for a renewal or reissuance of or amendment to a permit will be treated as a Class I permit, except for extensions of a variance under AS 46.03.170. The deciding agency will, however, approve amendments to a permit on an emergency basis when necessary to protect public health, life, or property.

22 AAC 10.085. MEMORANDA OF UNDERSTANDING. A resource agency will, in its discretion, enter into memoranda of understanding with federal agencies for the full or partial joint processing of permit applications. A memorandum of understanding which would extend any deadline established in this chapter will not be entered into unless the commissioner finds that the costs of extension are outweighed by the reduction in procedural burdens on the applicant. A summary of the terms of any memorandum of understanding entered into under this section which extends any deadline established in this chapter will be included in the pertinent resource agency's regulations, and the memorandum will not be effective until the resource agency adopts the summary as provided in this section.

ARTICLE 2. CLASS I PERMITS

22 AAC 10.090. DEADLINE FOR DECISION. An agency decision on a Class I permit application will be served under sec. 60 of this chapter within 30 days of service of a completed application on an individual or office specified in the deciding agency's regulations.

22 AAC 10.100. PROCEDURE. (a) Subject to sec. 570(e) of this chapter, inter-agency review and public notice are not required for Class I permits.

(b) All material prepared by or submitted to the agency with respect to the application will be placed in a record file, which will constitute the administrative record for the agency decision.

(c) Articulation of the basis for the decision is not necessary at the decision stage unless a public hearing has been held on the application under sec. 50 of this chapter,

in which case the basis for the decision will be briefly stated if the hearing produced material testimony adverse to the application.

(d) If a timely Class A or Class B appeal of the agency's decision is taken, the deciding officer, within 10 days of service of the notice of appeal, will serve on all parties an articulation of the basis of his decision, including terms and conditions, based upon the administrative record as it existed at the time of his decision.

(e) Each resource agency will maintain, and will update at least every two weeks, a file or files containing each still-valid Class I permit issued by the agency.

ARTICLE 3. CLASS II PERMITS

22 AAC 10.110. DEADLINE FOR DECISION. An agency decision on a Class II permit application will be served under sec. 60 of this chapter within 65 days of service of a completed application on an individual or office specified in the deciding agency's regulations.

22 AAC 10.120. PUBLIC NOTICE. (a) After the service of a Class II permit application, the deciding agency will cause to be published at least one notice of the application in a newspaper of general circulation for the area which would be affected by the operation, and in other media the agency considers appropriate.

(b) Public notice under this section will include

- (1) the name and address of the applicant, and the location of the proposed activity;
- (2) a summary description of the proposed activity, including its type, size, and manner of operation;
- (3) a statement that a person who wants to present his views to the deciding agency in regard to the application may do so by filing written comments with the agency within 30 days after the final publication of notice; and
- (4) a statement that the non-confidential portion of the application is available for inspection and copying at cost.

(c) A copy of the notice will be sent to any unit of local government having jurisdiction over the proposed activity.

22 AAC 10.130. INTER-AGENCY REVIEW. (a) At the time of publication under sec. 120 of this chapter, the deciding agency will serve a copy of the application, or a summary of the application, on other interested resource agencies, and as required by law on other agencies.

(b) An agency served under (a) of this section may serve comments on the deciding agency, with a copy clearly identified as advisory comments to the applicant, within 21 days of receipt of the application. If the commenting agency recommends denial of the permit, or the inclusion of any term or condition, the factual or judgmental basis for that recommendation must be articulated.

(c) The deciding agency will accord great weight to comments of other resource agencies which meet the requirements of (b) of this section; are within the commenting agency's primary area of expertise; and were submitted by the commissioner's office of the commenting agency.

(d) The applicant may serve on the deciding agency a response to agency comments served under (b) of this section within 10 days of receipt of the comments. A longer response time will be allowed at the applicant's request; however, the granting of an extension correspondingly extends the deadline established in sec. 110 of this chapter.

22 AAC 10.140. RECORD FILE; UNTIMELY COMMENTS. (a) All material prepared by or submitted to the agency with respect to the application will be placed in a record file, which will, subject to (d) of this section, constitute the administrative record for the agency decision. Material required by statute or regulation to be kept confidential will be segregated from the publicly available portion of the file.

(b) Comments not received within the time periods specified in secs. 120(b)(3) and 130(b) of this chapter need not be considered by the staff or deciding officer.

(c) Nothing in this chapter may be construed as limiting an agency's authority to utilize its judgment or expertise in reaching permit decisions.

22 AAC 10.150. EX PARTE COMMUNICATIONS. Whenever practicable, communications between the applicant or other persons not employed by the state and an employee of the deciding agency regarding the application should be in writing. When any oral communication on any matter of substance is made, the agency employee will prepare a memorandum for the record file specifying the person with whom he communicated and the date and time of the communication, and a brief summary of the substance of the communication.

22 AAC 10.160. AGENCY DECISION. The agency decision will meet the requirements of sec. 60 of this chapter, and will contain:

(1) findings made by the state agency concerning the activity's compliance with applicable standards of the deciding agency;

(2) conclusions of the state agency which support its final decision concerning the permit application, including justification of any conditions to which the permit is subject; and

(3) a statement of the factual or judgmental basis for the rejection of any resource agency recommendation under sec. 130(b) of this chapter, or any significant and material recommendation made at a public hearing held under sec. 50 of this chapter.

ARTICLE 4. ENVIRONMENTAL PROCEDURES COORDINATION ACT.

[deferred]

ARTICLE 5. COASTAL MANAGEMENT CONSISTENCY DETERMINATIONS.

22 AAC 10.500. SINGLE DETERMINATION REQUIRED FOR CERTAIN PROJECTS. (a) For activities covered by secs. 510-540 of this chapter which require a coastal management consistency determination under AS 46.40.100(a), AS 46.40.200, 6 AAC 80.010(b), or 16 U.S.C. sec. 1456(c), one consistency determination will be made for that activity in accordance with secs. 510-540 of this chapter. The determination made under secs. 510-540 is conclusive to the extent of its coverage, but does not affect the jurisdiction of any agency over a proposed activity under its own statutes and regulations. Nothing in secs. 500-580 of this chapter may be construed as limiting local government jurisdiction over any activity.

(b) Notwithstanding (a) of this section, secs. 510-540 of this chapter do not insulate an activity from an otherwise required consistency review solely because that activity is a consequence of a previous, less specific decision. However, a consistency determination on a more specific consequential activity is bound by those decisions, findings and conclusions actually made at prior, less specific decision-making stages. Moreover, the scope of any consistency determination on a more specific activity is limited by the scope of the more specific permit proceeding.

(c) Notwithstanding (b) of this section, an agency making a consistency determination under secs. 510-540 of this chapter, may, in the course of a required permit proceeding conducted by that same agency for a more specific consequential activity, reappraise its prior determination on the basis of new information which was not available at the prior stage.

22 AAC 10.510. CONCLUSIVE CONSISTENCY DETERMINATIONS ON ACTIVITIES INVOLVING ENVIRONMENTAL IMPACT STATEMENTS AND ACTIVITIES OCCURRING ON THE OCS. When a direct federal activity or a federal permit or license necessitates preparation of an Environmental Impact Statement under 42 U.S.C. § 4332, the Office of the Governor, Division of Policy Development and Planning, will perform the consistency review for the activity, permit or license under 16 U.S.C. § 1456(c). The division will also conduct the determination for activities occurring on the Outer Continental Shelf adjacent to Alaska. Subject to secs. 500 and 580 of this chapter, no other consistency determination will be made for state or federal law purposes on the activity by a state agency.

22 AAC 10.520. CONCLUSIVE CONSISTENCY DETERMINATIONS INVOLVING DISPOSALS OF INTEREST IN STATE LANDS AND PLANS OF OPERATION. Except as provided in sec. 510 of this chapter, consistency determinations on disposals of an interest in state land will be performed by the Department of Natural Resources. That department will also conduct the consistency determination on activities authorized by a required plan of operations, and subsequent plan amendments. Subject to secs. 500 and 580 of this chapter, no other consistency determination for state or federal law purposes will be made on the activity by a state agency.

22 AAC 10.530. CONCLUSIVE CONSISTENCY DETERMINATIONS INVOLVING § 401 CERTIFICATION. Except as provided in secs. 510 and 520 of this chapter, when a federal permit is necessary for an activity, and state certification of the activity is provided for under Section 401 of the Clean Water Act (33 U.S.C. § 1341), the consistency determination for that activity will be performed by the Department of Environmental Conservation in the course of its certification procedure. Subject to secs. 500 and 580 of this chapter, no other consistency determination will be made for state or federal law purposes by a state agency on the certified activity.

22 AAC 10.540. CONCLUSIVE CONSISTENCY DETERMINATIONS INVOLVING DIRECT STATE AND FEDERAL ACTIVITIES. (a) Except as provided in secs. 520-530 of this chapter, consistency determinations on the following direct state and federal activities will be conducted by the division:

- (1) proposed administrative orders of the governor;
- (2) federal grant applications or applications for other forms of federal assistance if the proposal substantially involves more than one state agency; if the funds are destined for multiple recipients; or if there is no state agency administering the funds;
- (3) all funding and regulations arising from the authority of the federal Coastal Zone Management Act;
- (4) state plans, programs and studies developed by or affecting more than one state agency if no lead agency has been designated by statute or executive action;
- (5) federal activities for which there are no state permits or other approvals required at the current level of detail; and
- (6) other state actions when requested by the action-taking agency.

(b) Except as provided in secs. 510-530 of this chapter, consistency determinations for other direct state and federal activities will be made by the appropriate state agency.

22 AAC 10.550. CONSISTENCY DETERMINATIONS ON OTHER ACTIVITIES. (a) For activities not covered by secs. 510-540 of this chapter, consistency determinations will be made by state agencies in the course of otherwise required permit review, and by the division for the purposes of 15 C.F.R. § 930.

(b) Nothing in this section, or 6 AAC 80.010, may be construed as in any manner limiting the authority of a resource agency to issue general permits.

(c) Subject to approval of the Alaska Coastal Policy Council, agencies may, by regulation, determine which classes or types of actions or permits they administer may have a de minimis impact on the coastal zone, and for which a consistency determination will not be required.

22 AAC 10.560. AIR, LAND AND WATER QUALITY CONSISTENCY REVIEW. When those standards referenced in 6 AAC 80.140 have been or will be addressed for the activity by the Department of Environmental Conservation in a required permit or certification proceeding, those standards will not be a part of any consistency determination for that same activity conducted under this chapter.

22 AAC 10.570. PROCEDURE FOR CONSISTENCY DETERMINATIONS.

(a) When a consistency determination is integrated into an existing permitting process under secs. 510-550 of this chapter, that integration does not alter the procedures applicable to that permit, except as provided in this section.

(b) For the purposes of this section, and secs. 130 and 160(3) of this chapter, when a consistency determination is made under secs. 510-550 of this chapter, "resource agency" includes all state agency members of the Coastal Policy Council and any coastal resource district with an applicable and approved coastal management plan under AS 46.40;

(c) When a consistency determination is made in the course of a disposal of interest in state land under sec. 520 of this chapter:

(1) notice required under AS 38.05.305 and AS 38.05.345 will state that a consistency determination on the proposed disposal will be made, and will solicit comments or consultation on the issue of consistency within the time period provided pursuant to those statutes;

(2) sec. 130 of this chapter applies, except that the time for initiating the 21-day agency comment period under that section is governed by the policies of the Department of Natural Resources; and

(3) sec. 160 applies to that portion of the decision under AS 38.05.035(a)(14) which concerns the consistency of the proposed disposal.

(d) When a consistency determination is made by the division under sec. 510 or 550 of this chapter, the determination is a Class II permit proceeding.

(e) Whenever a consistency determination is made in the course of a Class I proceeding, the deciding agency, notwithstanding sec. 100 of this chapter, will;

(1) timely consult with other resource agencies on a selective and informal basis;

(2) comply with section 160(3) of this chapter;

and
(3) if requested, serve a copy of the consistency determination, with a description of the activity, on the division.

(f) Subject to (c) and (d) of this section, consistency determinations on direct federal and state activities will be conducted according to Class I or II permit procedures as necessary review time warrants.

22 AAC 10.580. APPLICANT RESPONSIBILITY IN MULTIPLE PERMIT CASES. When an activity requires more than one permit, the applicant, in order to obtain a conclusive determination under secs. 510-540 of this chapter, should apply for the appropriate permit under those sections prior to or contemporaneous with application for any other necessary federal permit or license. If an applicant makes premature application for a federal permit or license other than one providing the appropriate forum under secs. 510-540 of this chapter, the division, under sec. 550 of this chapter, may be required to make a determination under 15 C.F.R. § 930.63 before the determination under secs. 510-540 of this chapter is possible. In that event, the division will request the applicant to immediately apply for the appropriate permit, and:

(1) if application is made sufficiently in advance to permit an agency decision under secs. 510-540 of this chapter within the time allowable under 15 C.F.R. § 930.63, defer to that determination; and

(2) if application is not made sufficiently in advance, in its discretion;

(A) proceed to make a consistency determination under sec. 550 of this chapter; or

(B) object to the proposal on the basis of insufficient information under 15 C.F.R. § 930.64(d).

ARTICLE 6. GENERAL APPEALS PROVISIONS.

22 AAC 10.600. CLASSES OF APPEALS. There are two classes of appeals from decisions on a Class I-II permit application. A Class A appeal is informal; a Class B appeal involves more formal adjudicatory procedures. The regulations of each resource agency specify which class of appeal may be taken from particular permit decisions.

22 AAC 10.610. VOLUNTARY RELINQUISHMENT OF RIGHT TO CLASS B APPEAL. (a) Even if an applicant is entitled to a Class B appeal, he may wish to take a Class A appeal in order to expedite the appellate process. The appellate officer will grant a request for a Class A appeal under this section if, at the time of filing a notice of appeal under sec. 620 of this chapter, the applicant serves an executed waiver of rights on a form provided by the agency.

(b) Conversion from a Class B to a Class A appeal is solely for the benefit of the applicant, and deprives the deciding officer of the same rights and opportunities relinquished by the applicant. The agency, on behalf of the deciding officer, would not consent to conversion under this section but for the execution of the waiver by the applicant, and the agency will be acting in express reliance on that waiver.

22 AAC 10.620. NOTICE OF APPEAL. (a) Within 15 days of service of an agency decision under sec. 60 of this chapter, or, for Class I permits, within 15 days of entry of the agency decision for persons not required to be served under sec. 60 of this chapter, a person may serve a notice of appeal upon the deciding agency and the applicant which must contain:

(1) the name, mailing address, and telephone number of the person making the request;

(2) the names and addresses of all persons adversely affected by the decision whom the requestor represents;

(3) a statement as to how the decision will injure the requestor; and

(4) a clear and concise statement of the material factual issues proposed for consideration on appeal.

(b) Where application was made solely for a permit amendment, the notice of appeal may not raise issues relating to the validity of the permit for which an amendment is sought, nor to unrelated terms and conditions of the permit for which no amendment has been sought.

22 AAC 10.630. STAY OF DECISION. (a) The agency's decision is not stayed during the pendency of the hearing. However, a requestor may, contemporaneous with service of his notice of appeal under sec. 620 of this chapter, serve a motion upon the appellate officer to stay the department's decision, or a portion of it, pending the hearing. The agency will then serve the request upon all other requestors, and the applicant. In reviewing a stay motion the appellate officer will consider

(1) the relative harm to the person requesting the stay, the applicant, and the public health and environment, from the granting or denial of a stay;

(2) the resources which would be committed during the pendency of the appeal if the stay were granted or denied; and

(3) the likelihood that the person requesting the stay will prevail on the merits.

(b) No stay will be granted of a denial of a permit application for either a new operation, or an operation which commenced after the effective date of the statute or regulation requiring a permit.

(c) Within 10 days after service of the stay petition under (a) of this section, any party opposing the stay may serve a response upon the appellate officer and all requestors.

(d) The agency will serve its decision on a stay motion within 10 days after the expiration of the deadline for a response under (c) of this section.

22 AAC 10.640. ACTION ON NOTICE OF APPEAL. (a) Within 10 days after service of a notice of appeal, the agency will serve its decision on the notice upon the requestor and the applicant. The agency will grant a request for an appeal if the request discloses that the requestor would be directly and adversely affected by the agency's decision; the requestor has raised a genuine issue of fact material to the decision; if a request for comment was published or a hearing was held on the application, the specific issues presented on appeal were raised in timely submitted comments or hearing testimony; and the requirements of sec. 620 of this chapter have otherwise been met. If a hearing request is granted for a person other than the applicant, the applicant is a party to the appeal.

(b) If the agency grants an adjudicatory hearing request for a Class B appeal, it will publish notice of the action in a newspaper of general circulation for the affected area, and will serve notice on all persons who were served with the decision under sec. 60 of this chapter. A person wanting to intervene in the proceedings may serve upon the agency and all parties a petition for intervention containing the information specified in sec. 620 of this chapter, within 10 days after publication of notice or service of notice under this section, whichever first occurs. Any party may serve an objection to the intervention petition within 10 days after service of the petition upon him. The agency will reach a decision on the intervention request within 10 days after the expiration of the period for serving an objection.

22 AAC 10.650. CONSOLIDATION. When more than one hearing request is granted, all requests will be joined in a single proceeding.

ARTICLE 7. CLASS A APPEALS.

22 AAC 10.700. WRITTEN ARGUMENT ON APPEAL. Within 15 days of service of notice granting his notice of appeal under sec. 640 of this chapter, the requestor shall serve his written arguments on the appellate office and all parties to the appeal.

22 AAC 10.710. SUMMARY ACTION. (a) When the applicant is a requestor, the appellate officer, in his discretion and under applicable standards, will affirm, modify or reverse the decision on the basis of the argument served under sec. 700 of this chapter. When the applicant is a respondent, the appellate officer, in his discretion, will affirm under this subsection.

(b) The appellate officer will require responsive written argument when action is not taken under (a) of this chapter.

(c) The appellate officer will serve notice of responsive argument under (b) of this section within 10 days of service of the requestor's argument under sec. 700 of this chapter.

(d) Argument allowed under this section must be served within 15 days of service of the notice under (c) of this section.

22 AAC 10.720. APPEARANCE BEFORE COMMISSIONER. (a) The appellate officer will serve notice of oral hearing on all parties within 10 days of timely service of allowable written argument under sec. 710 of this chapter if he determines that a hearing will materially aid his disposition of the appeal.

(b) The hearing will be held under procedures which the appellate officer determines are best suited for resolution of the issues and protection of the parties. The notice under (a) of this section will specify the procedures to be followed. The hearing will be held no sooner than 10 nor more than 20 days following service of notice under (a) of this section.

22 AAC 10.730. DECISION ON APPEAL. The appellate officer will serve his findings of fact and conclusions of law upon the parties within 30 days of timely service of argument under sec. 710 of this chapter, or within 30 days of the holding of a hearing under sec. 720 of this chapter.

ARTICLE 8. CLASS B APPEALS.

22 AAC 10.800. DISCOVERY. (a) Immediately after the agency determines that no additional parties will be added to the proceeding, it will serve notice on each requestor that, within 15 days, each requestor must serve upon each respondent

(1) a complete and concise summary of the issues and factual matters which the requestor will present at the hearing;

(2) the name, address, telephone number, and occupation of each witness whom the requestor intends to call at the hearing, and the purpose of his testimony; and

(3) the nature, location, and custodian of any real or documentary evidence which the requestor intends to introduce at the hearing, and the purpose of its introduction.

(b) Within 20 days after service of the matters specified in (a) of this section, each respondent must serve upon each requestor

(1) the name, address, telephone number, and occupation of each witness which the respondent intends to call at the hearing, and the purpose of his testimony; and

(2) the nature, location, and custodian of any real or documentary evidence which the respondent intends to introduce at the hearing, and the purpose of its introduction.

(c) When a party is both a requestor and a respondent, he must serve the matters under (a) of this section as to those issues for which he is a requestor, and must serve the matters under (b) of this section as to those issues for which he is a respondent.

22 AAC 10.810. PREHEARING CONFERENCE. (a) The appellate officer may direct the holding of a prehearing conference if he determines that a conference will substantially aid

resolution of the appeal. At least 10 days' notice of the conference will be given to all parties. The time and place of the conference will be set by the appellate officer, with due regard for the convenience of the parties.

(b) At the prehearing conference, the appellate officer may explore, and is empowered to make any appropriate order regarding

(1) the simplification, clarification, or limitation of the issues, the striking of immaterial issues, and the summary disposition of issues over which there is no genuine dispute;

(2) the admission of facts and the genuineness of documents, and stipulations with respect to facts and documents;

(3) objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits, or other submissions proposed by a party; however, the failure to raise an evidentiary objection at the conference does not preclude a party from raising the objection at the hearing;

(4) matters of which official notice will be taken;

(5) establishment of a schedule, including definite or tentative times relating to the progress of the hearing;

(6) the taking and introduction of depositions;

(7) the use of affidavits in place of oral testimony;

(8) accepting, on good cause shown, supplements to the witness and evidence lists provided under sec. 800 of this chapter (specifically including rebuttal evidence to matters submitted under sec. 800(b) of this chapter);

(9) the exclusion of unduly repetitive or irrelevant evidence; and

(10) any other matter which will expedite the hearing or aid disposition of the matter.

(c) The prehearing conference will be tape recorded.

(d) The appellate officer will prepare, and will serve upon all parties, within 10 days after holding the conference, a written prehearing order reciting the actions taken at the prehearing conference and setting out the schedule for the hearing. The order will include a written statement of the areas of factual agreement and disagreement and of the methods and procedures to be used in developing the evidence and the respective duties of the parties in connection therewith. The order will control the subsequent course of the hearing unless modified by the appellate officer for good cause shown.

22 AAC 10.820. APPELLATE OFFICER. (a) The appellate officer will be designated by the regulations of the agency hearing the appeal. The appellate officer must not have participated or advised in the decision being appealed, and must occupy a position of authority in the agency higher than that of any person participating in the decision being appealed.

(b) When the appeal is subject to the Administrative Procedures Act (AS 44.62.330 et. sec.), a hearing officer will be appointed under AS 44.62.350. The hearing officer will preside on any pre-hearing conference held under sec. 810 of this chapter and at the hearing under sec. 830 of this chapter; rule on the admission or exclusion of evidence; advise the agency on matters of law; and be present during post-hearing consideration of the appeal. The appellate officer will hear the appeal with the hearing officer and the appellate officer will decide the appeal.

(c) When the appeal is not subject to the Administrative Procedures Act, the appeal will be heard as well as decided by the appellate officer and the appellate officer is considered the hearing officer for the purposes of secs. 830 and 840 of this chapter.

(d) The deciding officer or his staff will be represented by the Department of Law. The Department of Law will not advise or represent the hearing or appellate officer. If, for appeals under (c) of this section, the appellate officer determines that he needs legal assistance, he will retain a hearing officer under AS 44.62.350 to perform or assist in those functions which the appellate officer finds appropriate.

22 AAC 10.830. HEARINGS. (a) The sequence of argument, examination, and summation must conform to any prehearing order. The appellate or hearing officer may question a witness and, in multiparty proceedings, may limit cross-examination to one party on each side if he is satisfied that the cross-examination by one party will adequately protect the other parties. Other parties may, however, engage in cross-examination as to matters not covered by previous cross-examination.

(b) Evidence rules are governed by AS 44.62.560.

(c) The burden of proof and of going forward with the evidence is on the requestor.

(d) No issue, testimony or real or documentary evidence may be introduced or advanced at the hearing which was not previously disclosed under sec. 800 or 810(b)(8) of this chapter. The hearing officer may waive this prohibition if the failure to previously disclose was due to

(1) surprise;
(2) newly discovered evidence which by due diligence could not have previously been discovered and disclosed; or
(3) fraud, misrepresentation, or other misconduct of an opposing party.

(e) The prohibition of (d) of this section does not apply to evidence offered solely to rebut or impeach matters first disclosed pursuant to sec. 810(b)(8) of this chapter.

22 AAC 10.840. CERTIFICATION OF RECORD. As soon as the hearing transcript has been prepared, the hearing officer shall certify the record of the hearing and provide notice of the certification to all parties. Except for good cause shown, the cost of transcribing the hearing must be borne by the requestor. Where there is more than one requestor, the hearing officer may apportion the costs.

22 AAC 10.850. FINDINGS AND BRIEFS. Within 10 days after notice of the certification of the record under sec. 840 of this chapter, a party may serve upon the appellate officer, and all parties, proposed findings of fact. The appellate officer, at the close of the hearing, will, in his discretion, also order the submission of briefs if he determines that briefing will substantially aid his resolution of the case. The proposed findings are intended only as an aid to the appellate officer, and a ruling on the acceptance or rejection of the proposed findings is not required.

22 AAC 10.860. DECISION. The appellate officer will serve his findings of fact and conclusions of law upon the parties within 30 days after notice of certification of the record under sec. 850 of this chapter.

ARTICLE 9. MISCELLANEOUS PROVISIONS.

22 AAC 10.900. SERVICE. (a) Any matter required to be served under this chapter may be served by personal delivery, or by registered or certified mail (return receipt requested). Additionally, any matter required to be served before a request for an appeal under sec. 620 of this chapter may be served by first-class mail or interagency mail.

(b) Upon the granting of a request for an appeal under sec 640 of this chapter, a copy of all matters subsequently served, and proof of service, must be mailed to the appellate officer, or to the commissioner if an appellate officer has not yet been appointed. Proof of service must be made by an affidavit of service.

(c) When a pleading or paper filed in a case discloses that a requestor or respondent is represented by counsel, service upon the requestor or respondent must be made upon his attorney.

(d) When mail is used for service, service occurs upon mailing for the purpose of the serving party's obligation, and upon receipt for the purpose of commencing time limits upon the receiving party.

22 AAC 10.910. TIME COMPUTATIONS. Time computations under this chapter will be made in accordance with AS 01.10.-080.

22 AAC 10.920. DEFINITIONS. As used in this chapter:

(1) "appellate officer" means the employee designated by the deciding agency to decide an appeal taken under this chapter;

(2) "commissioner" means the commissioner of the deciding agency or his designee. For the purpose of sec. 020(a)(1) and sec. 020(b) of this chapter, the only authorized designee is the deputy commissioner of the deciding agency;

(3) "completed application" means an application form provided by the agency which is fully completed and properly executed: is accompanied by all material required to be included by the regulations of the deciding agency: and is served in accordance with the deciding agency's regulations at a place identified as appropriate for service in those regulations;

(4) "deciding agency" means the resource agency from which the permit must be obtained;

(5) "deciding officer" means the employee designated by the deciding agency to make the permit decision under sec. 60 of this chapter;

(6) "division" means the Division of Policy Development and Planning, Office of the Governor;

(7) "great weight" means deference unless the assertion is contrary to the weight of fact or opinion in the administrative record;

(8) "permit" means a permit, license, certification, consistency determination, plan review or other authorization or approval issued as a written document which is required to be obtained from a resource agency before construction or operation of a project. The term does not include disposals of an interest in state land or water, but does include all authorizations and approvals, whether proprietary or regulatory, necessary to undertake a project under a previously conveyed property interest;

(9) "primary area of expertise" means that scientific or technical expertise primary and peculiar to a particular resource agency. However, no commenting agency has "primary expertise" for the purpose of this chapter on questions of balancing competing factors. That is a decision vested in the deciding agency. If no balancing of competing factors (including factors within the deciding agency's own primary area of expertise) is involved, the deciding agency must accord great weight to a resource agency's assessment of impacts on that resource. For example, if, under sec. 130 of this chapter, the Department of Environmental Conservation comments that a particular activity will have certain adverse water quality impacts, and that a certain mitigating measure would be appropriate, the deciding agency must accord great weight to the assessment of impact, but will not accord great weight to the recommended condition if deciding upon that condition turns upon a balance of other factors. The primary area of expertise of the Office of Coastal Management is interpreting the meaning of 6 AAC 80;

(10) "requestor" means a person requesting an appeal under sec. 620 of this chapter;

(11) "respondent" means a person defending the agency's decision; and

(12) "resource agency" includes the departments of Environmental Conservation, Natural Resources, and Fish and Game, and the Office of the Governor, Division of Policy Development and Planning.

6 AAC 80.900(20) is amended to read:

(20) "feasible and prudent" has the same meaning as in sec. 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. § 1651(f);

6 AAC 80.010(b) is amended to read:

(b) Nothing in this chapter or in any district program displaces or diminishes the authority of any state agency or local government with respect to resources in the coastal area. Uses and activities conducted by state agencies in the coastal area must be consistent with the applicable district program and the standards contained in this chapter. In authorizing uses or activities in the coastal area under its statutory authority, the appropriate state agency under 22 AAC 10.510-550 shall grant authorization if, in addition to finding that the use or activity complies with the agency's statutes and regulations, the agency finds that the use of activity is consistent with the applicable district program and the standards contained in this chapter.

**PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.**

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

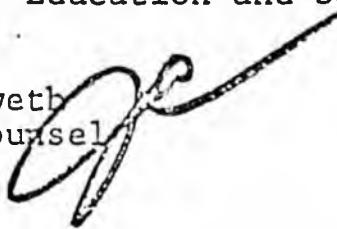
MEMORANDUM

April 4, 1980

SUBJECT: CSSB 269, relating to nuclear wastes

TO: Senator Glenn Hackney, Chairman
Senate Health, Education and Social Services
Committee

FROM: John B. Chenoweth
Legislative Counsel



There was some confusion concerning instructions to complete the second redraft of this committee substitute. While the department's "position paper" wanted a ban only on "high level nuclear wastes" from nuclear power plants, your committee's actual request was limited to "high level nuclear wastes", presumably from any source. I do not know how to quantify "high level" with precision. Not wanting to tie to a figure expressed in terms of measurements that delight physicists and trouble legislators, I have suggested language in the draft that leaves the determination (other than as to wastes from nuclear plants) to an administrative agency. I note that, at 18 AAC 85, the Department of Environmental Conservation has already defined permissible disposable nuclear wastes.

The bill draft also makes clear that the prohibition is not intended to preclude storage and disposal of quantities of nuclear wastes generally used in education, research and medicine.

JBC:ljb

Enclosure

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

JAY S. HAMMOND, GOVERNOR

POUCH Q - JUNEAU 99811

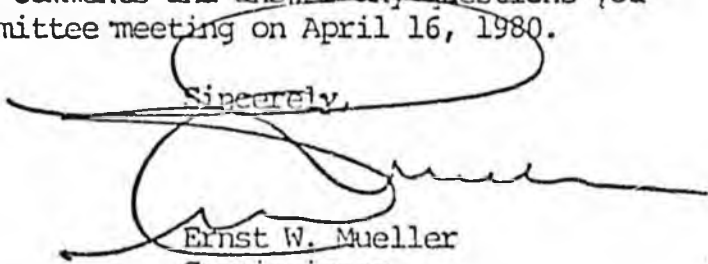
April 15, 1980

The Honorable Glenn Hackney
Chairman
Senate Health & Social
Services Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Hackney:

The Alaska Department of Environmental Conservation would like to submit the following comments and recommendations on SB 269 concerning the disposal of nuclear wastes in Alaska. We support this bill and the several minor changes which have been recommended. We would be more than willing to present these comments and answer any questions you might have at the 3:00 pm Committee meeting on April 16, 1980.

Sincerely,



Ernst W. Mueller
Commissioner

Enclosure

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

REVIEW OF SB-269
AN ACT PROHIBITING THE DISPOSAL OF NUCLEAR WASTE MATERIAL

Submitted to the
Senate Health, Education and Social Services Committee

SB 269 makes changes in the current Alaska Statutes 18.45.025 FACILITIES SITING PERMIT REQUIRED, to prohibit the siting of any facilities which would allow the storage or disposal of radioactive waste materials within the State of Alaska. The Department strongly supports this legislation, particularly as it relates to the disposal of highly radioactive waste materials from nuclear power plants.

Wastes from nuclear power generating facilities require extremely long storage times before their radioactivity is reduced to safe levels. These wastes are difficult to contain in a safe manner, require extremely expensive containment technology which up to now has not proven reliable for long-term storage. While wastes from existing plants in other states will require some form of disposal method, Alaska should not become a dumping ground for these wastes. SB 267 would prohibit this from occurring, except in the unlikely event of federal preemption.

In supporting this legislation, we understand that a change has been or is going to be made in the legislation to expressly prohibit only the disposal of high level radioactive wastes from nuclear power plants. We support this change, because the disposal of small amounts of low level radioactive wastes generated from medical, laboratory and industrial facilities can be accomplished without creating a hazard to public health and the environment. Many of these low-level wastes cause no danger to the public if they are disposed in a safe and environmentally sound manner. Therefore, the existing authority to establish regulations under AS 46.03.250 should be adequate to assure proper handling and safe disposal of the low-level radioactive waste materials presently being generated in Alaska.

We thank you for the opportunity to comment on this legislation.

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

POUCH H-06-JUNEAU 99811

POUCH H-06-JUNEAU-9980K

April 15, 1980

The Honorable Glenn Hackney
Chairman
Health, Education
and Social Services Committee
Alaska State Senate
Pouch 'V', State Capitol Building
Juneau, Alaska 99811

Document # 79-80

Dear Senator Hackney:

Sid Heidersdorf, Radiological Physicist for the Division of Public Health, is out of town this week and therefore unable to testify at the Wednesday hearing on CSSE 269. He has asked that I convey his concerns regarding this bill to you for consideration by your committee.

We are pleased to note that the Committee Substitute for Senate Bill 269 allows the storage and disposal of nuclear waste resulting from medicine, scientific research and education. We have a few additional concerns we feel should be weighed by the committee in their deliberations on this bill.

Consideration No. 1

Section 18.45.025 removes nuclear waste disposal facilities from the permit requirements listing. At some time in the future, if disposal requirements from medical, scientific and educational sources become great enough, a waste disposal facility may be required within the state for wastes generated from these sources. In that event, any such facility should be required to receive a permit from the Department of Environmental Conservation.

Consideration No. 2

Section 18.45.027 prohibits the transportation of nuclear waste material in the state except for purposes of disposal outside the state. It is suggested that the prohibition should be directed against high level nuclear waste materials since there may be necessity to transport low level wastes from medical, scientific and educational sources. The State has regulations covering the transportation of nuclear materials (18 AAC 85.320).

Consideration No. 3

Section 18.45.029(b)(1)(B) seems to add to the potential for confusion

over the term "high level nuclear material" rather than to clarify the definition as intended. For example, low level wastes from medical, research and educational uses, when improperly stored or disposed of, could be "material of a kind or quantity which would constitute a threat to the health or safety of the public....". Safe disposal of radioactive wastes is already covered by regulation in 18 AAC 85.270 - 310.

Recommendations

1. In Section 18.45.025, retain the requirement for a permit for the siting of a nuclear waste disposal facility.
2. In Section 18.45.029, delete subpart (1) (B) since it does not appear to add clarity to the definition of "high level nuclear material" and rephrase 18.45.029 (1) (A) to read "nuclear waste material produced by nuclear power plants and nuclear fuel processing facilities".
3. A preferable alternative to Recommendations 1 and 2 is to delete Section 18.45.029 in its entirety and rephrase Section 18.45.027 as follows:

Section 18.45.027. TRANSPORTATION, STORAGE AND DISPOSAL OF NUCLEAR WASTE MATERIAL. The transportation, except for purposes of disposal outside the state, storage and disposal of high level nuclear waste material from nuclear power plants or nuclear fuel processing facilities is prohibited.

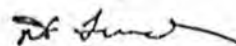
Such phrasing would be consistent with the continued use of low level nuclear materials for medical, scientific or educational purposes and would eliminate the need for defining "high level nuclear waste".

Department's Position

The Department of Health and Social Services is neutral on CSSB No. 269 if these recommendations are incorporated in the final draft.

Thank you for the opportunity to present Mr. Heidersdorf's testimony to you in this letter. He will be back in his office Monday, April 21st and will be able to provide you or your committee members with any additional information you may require.

Sincerely,



Dean F. Tirador, M.D.
Director
Division of Public Health

DFT/nd

POSITION PAPER

SENATE BILL NO. 269

"An Act prohibiting the disposal of nuclear waste material."

Senate Bill No. 269 prohibits the storage and disposal of nuclear waste material in Alaska. This prohibition is without qualification as to quantity, origin, and kind.

Alaska has approximately 35 licensed users of radioactive materials. Since Alaska is not an Agreement State under the Atomic Energy Act, the Department of Health and Social Services does not have jurisdiction over these sources. They are licensed and controlled by the United States Nuclear Regulatory Commission.

Presently, nuclear waste material in some form or other is either stored and/or disposed of in Alaska. It is estimated that from eight to ten of the facilities licensed in the State by the Nuclear Regulatory Commission use unsealed sources which require some storage and disposal following use.

Unsealed sources, as differentiated from sealed sources, are those not encapsulated in a container. Unsealed sources, kept in openable bottles or other containers, are necessary in research and nuclear medicine so they can be used in various laboratory procedures or in medical practice by ingestion, inhalation or injection. This use results in various kinds of radioactive wastes. Facilities presently using unsealed sources are four hospitals located in Juneau, Anchorage, and Fairbanks. Unsealed sources are also frequently used in private, Federal, and State research and/or educational facilities carrying out activities such as those conducted by the NOAA Auke Bay Fisheries Laboratory, U.S. Geological Survey, and the University of Alaska Institutes of Marine Science and Arctic Biology. Some of these unsealed sources may also be used in industrial applications--for example, activities related to the oil industry.

Radioactive wastes are in the form of liquids, contaminated laboratory articles, biological samples, and such items as towels and clothing. Generally these would be stored in liquid-tight barrels, on site, in an area with limited and controlled access. Storage is necessary until materials can be shipped to a licensed radioactive waste disposal site, such as the one in Rickland, Washington. Alaska does not have an approved waste disposal site, and the present low volume of such waste has not yet caused a problem for users in Alaska.

Presently, hospitals in Alaska store radioactive waste until it has decayed to very low levels (near background). The material is then either incinerated or disposed of in sanitary sewerage systems according to regulations established by the Nuclear Regulatory Commission.

This Bill, if passed as presently worded, will eliminate the use of unsealed radioactive sources in Alaska--a situation which will have a harmful impact on the delivery of medical services and research activities within the State. Accordingly, the following changes in wording are recommended:

Line 12: Leave in the phrase "OR NUCLEAR WASTE DISPOSAL FACILITY".

Lines 26-28: Section 18.45.027. DISPOSAL OF NUCLEAR WASTE MATERIAL. The disposal of high levels of nuclear waste material in the State from nuclear power plants is prohibited.

The changes recommended above are suggested only to protect the use of radioactive materials in nuclear medicine facilities, research, and education. It is recognized that the prohibition of the disposal of high level waste from nuclear power plants may directly affect future State policy and the interest of other State agencies. This matter of State policy regarding disposal of high level waste has ramifications far beyond the authority of this Department, and consequently is not addressed by this position paper.

With the above recommended changes, the Department of Health and Social Services takes a neutral stand on Senate Bill No. 269.

Recommended by:

Dean F. Tirador
Dean F. Tirador, M.D.
Director, Division
of Public Health

Date:

17 Nov 80

Approved by:

Helen D. Beirne
Helen D. Beirne
Commissioner

Date:

13/20/80

DEPARTMENT OF HEALTH & SOCIAL SERVICES

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

Sally
MAR 18 1980

JAY S. HILTON, GOVERNOR

POUCH 0 -- JUNEAU 99811

The Honorable J. M. Kerttula
Senator
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Kerttula:

The Department recently completed an analysis of House Bill 511 relating to the disposal of hazardous wastes. Because of your interest in hazardous wastes, we have enclosed a copy for your information. The bill will need some changes if we are to develop a reasonable hazardous waste disposal program, and our analysis makes recommendations on how that might occur.

There have been indications in the past several weeks that the House Resources Committee expects to schedule this bill for hearings. We are working with committee's staff in drafting a substitute bill in preparation for those hearings. This should occur soon, and we will keep you informed on this effort.

Sincerely yours,

C. Deming Cowles

C. Deming Cowles
Deputy Commissioner

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

ANALYSIS OF HB 511, AN ACT
RELATING TO THE DISPOSAL OF HAZARDOUS WASTE

A. SUMMARY OF BILL

The department interprets the intent of HB 511 to mean that the Legislature wishes to protect the lands and people of the state from the potential dangers of hazardous waste disposal rather than the use or generation of hazardous materials. The bill delegates to the Alaska Department of Environmental Conservation (ADEC) the power to adopt regulations for the safe, proper disposal of hazardous waste so as to protect the health, safety and welfare of the public and the quality of the environment. However, it grants this power with reservations, since the bill also prohibits the disposal of hazardous waste in Alaska unless processing renders the wastes harmless.

B. ANALYSIS

The department's interpretation of HB 511 takes into account the numerous examples of illness, death, and mutations throughout the continental United States that have been traced directly to disposal sites for hazardous wastes. The department further assumes that the intent is not to halt the use or generation of hazardous substances except in certain instances, because such a ban would hinder economic development. As the Alaska economy diversifies the possibility exists that more industries and corporations which generate hazardous waste will be attracted to and wish to locate in the state.

1. Positive Aspects of the Bill

HB 511 is the first attempt to grant specific Legislative authority to handle and manage hazardous wastes in Alaska. Currently the Alaska Statutes authorize ADEC to adopt regulations concerning collection and disposal of garbage, refuse, and other discarded solid waste materials from industrial, commercial, agricultural and community activities or operations. It is under this broad statutory authority that ADEC has assumed responsibility for establishing a hazardous waste management program. Specific legislative authorization would, however, clarify the state's role and responsibility in hazardous waste management.

Specifically, the following aspects of the bill are necessary for a coordinated hazardous waste management program.

- (a) Section 20 authorizes the department to adopt regulations for the disposal of hazardous wastes. This power, however, is limited by Section 10, which bans all disposal of hazardous waste in the state. The materials considered below are examples of wastes which the department presumes could be regulated under the bill.

While uranium is not presently being mined in Alaska, at least one earlier mine and continuing explorations present evidence that Alaska has the potential for large-scale uranium mining. The large amounts of waste rock and overburden contain potentially hazardous radioactive materials, either directly through radon escape or indirectly through leachate. From a practical standpoint, this overburden would have to remain in Alaska.

Waste oil is considered by the Environmental Protection Agency to be hazardous. In fact, it is singled out for special treatment because the use of waste oils for dust suppression or incineration has been known to cause serious environmental effects. However, waste oil is heavily utilized as a dust suppressant on roads throughout Alaska. The only State requirement to its use in such a manner is that the user obtain a department permit under 18 AAC 75.010-060. The use of waste oil in this manner may be considered illegal by EPA once their final hazardous waste regulations are promulgated this Spring and Summer.

Because of Alaska's increasing involvement in petroleum production, the number of oil spills has been increasing yearly. In 1979 alone there were four major oil spills - the M/V Lee Wang Zin near Ketchikan, the M/V Ryuyu Maru off the Pribiloffs, the Cordova Chugach Cannery, and the Atigun Pass spill. Oil spilled from these four incidents alone totalled over 632,000 gallons. Much of this oil went directly into the environment; the remainder has or is being cleaned up. While EPA does not consider oily wastes as hazardous, Alaska does consider them special enough to warrant specific legislation, AS 30.25.120.(c). Also, Section 30.25.061(c) of HB 205, "An Act Relating to the Prevention and Control of Oil Pollution" deals with the disposal of oil spill clean-up materials. When not handled correctly these wastes pose a hazard for individuals and the environment. Bulky, difficult and expensive to transport, and a cause of localized air pollution if burned and water pollution if leachate forms, oily wastes cannot be shipped out of state nor simply left in a stored condition with no future plan for disposal.

In the above situations the conditions under which disposal will be allowed must be clarified. If section 10 were deleted or modified, Section 20 would give the department the authority to clarify these conditions and would then provide the sound basis for a management program geared to Alaskan conditions.

- (b) If Section 10 were deleted or modified, Section 20 would be the start of obtaining the required authority should the department decide that assumption of the federally-mandated hazardous waste program is in the best interest of the state.

In 1976 the Resource Conservation and Recovery Act (RCRA) was passed by Congress. One of the main goals of the Act was prevention of pollution caused by the disposal of hazardous wastes, the primary means for achievement being a manifest system. The manifest, similar to a bill of lading and signed by all persons in contact with the wastes, would be filed with the responsible state or federal agency. In this way a waste could be traced from generation to final disposal.

Congress stressed that states should assume responsibility for their own hazardous waste management program. Funds were appropriated for hazardous waste inventories, economic analyses of additional state resources needed under program adoption, analyses of the effect on industries, and planning. If a state did not assume responsibility, EPA would be required to manage hazardous wastes in that state.

Alaska is considering whether or not to assume all or part of the RCRA-mandated program or allow the Environmental Protection Agency to assume responsibility. Some of the points to consider are additional staff and paperwork necessary for program implementation, need for the State to have control over these wastes versus leaving control in federal hands, and the economic feasibility and preferences of industrial generators regarding state or federal jurisdiction. While federal money is available for program planning and start-up, the program must be completely state-funded within a few years. The department plans to make its decision in Fall, 1980.

While the authority given this department in HB 511 would probably be sufficient for interim authorization, full authorization by EPA will be dependent on the passage of complete legislative program authority as well as numerous requirements promulgated as regulations. Not only would a section on the state's authority to write regulations for specified aspects of hazardous waste management be needed, the bill should be changed to reflect the shortcomings and considerations discussed below.

2. Shortcomings of the Bill

The bill as written has several deficiencies;

- a. Sections 10 and 20 are conflicting. Whereas Section 10 prohibits disposal of hazardous waste in Alaska, Section 20 authorizes ADEC to write regulations for the safe disposal of hazardous waste. Since some hazardous wastes may need disposal instate, the Legislature should remove the conflict.

- b. The bill defines hazardous waste so broadly that it is vague. The definition of hazardous wastes, taken from the Resource Conservation and Recovery Act, is adequate, however, RCRA further authorizes the Environmental Protection Agency to refine the definition by listing hazardous wastes. While the department could use Sec. 20 to identify hazardous wastes, the bill does not specifically give the department that authority.
- c. Banning hazardous waste disposal alone will not guarantee protection. Transportation and storage of hazardous wastes are potentially as damaging as disposal. Even should Section 10 stand as written, hazardous wastes will need to be stored prior to processing or transporting. Again, the department could use Sec. 20 to guarantee proper treatment, storage, and transportation methods, but the bill does not explicitly grant this authority.
- d. Section 30 singles out corporations for special punishment for a violation of any hazardous waste requirement. However, the potential of contamination from improper hazardous waste handling is as great from individuals as from corporations. Penalties should either come under existing penalty provisions in AS 46.03 or be generalized so as to cover everyone.
- e. A slight point in Section 10 is that once a hazardous waste is processed to remove its harmful qualities, it is no longer hazardous. Therefore this qualifying phrase in the section is unnecessary.

3. Considerations

- a. At this time the status of hazardous waste in Alaska is unknown. The department recently began an inventory of hazardous waste types and amounts, generators, disposal sites, transporters, processors, and handling methods in order to determine what controls Alaska should have. This would include evaluating whether Alaska needs a disposal site and what alternatives are available for disposal of hazardous wastes. Once these results are available the Legislature will be in a position to know what legislation would protect the people and lands of the State.
- b. Many states are reacting to improper and unsafe hazardous waste disposal practices by prohibiting all disposal or by prohibiting disposal of out-of-state generated hazardous wastes. As the Alaskan economy diversifies, there will be the probability of attracting more industries and corporations that potentially generate hazardous waste. The Legislature should consider the possibility that Washington, which is the destination of most Alaskan transportable hazardous wastes, might not accept Alaskan hazardous waste in the future.

- c. The term "processed" is undefined; its definition will clarify the distinction between processing or treatment and disposal.

C. RECOMMENDATIONS

Hazardous waste generation is often a necessary part of industrial development. Since economic diversification is a prime goal of the state, limiting or banning the disposal of hazardous waste could limit the number and types of industries wishing to locate in Alaska.

Even with limited industrial activity, however, a total ban on hazardous waste disposal would be inappropriate. Hazardous wastes are generated by medical facilities, by automobiles and other vehicles, by utilities and other facilities. However, the state must guarantee that when such wastes are generated that disposal and storage does not threaten or harm its people or environment. To do this HB 511 should be modified to take into account why and how hazardous wastes are generated and by whom.

As currently drafted, House Bill-511 would modify Alaska Statutes relating to the Department of Health and Social Services. Because the intent of this legislation is for the Department of Environmental Conservation to carry out hazardous wastes control efforts, we recommend that this proposed legislation be integrated into Alaska Statutes 46.03, which relates to the Department of Environmental as follows:

1. AS 46.03.020(10) be amended to add the following

(I) "Proper handling, transportation, treatment, storage, disposal, and control of hazardous wastes from the time of initial generation to final disposition."

2. The title of Article 6 be amended to read as follows:

"Article 6. Pesticide and hazardous solid waste control"

3. A new section AS 46.03.340 be added as follows:

"46.03.340. HAZARDOUS WASTE CLASSIFICATION, REPORTING. (a) The department shall classify hazardous wastes and their sources. Classifications made under this subsection may be for the state as a whole or to substate areas.

(b) the department may require a person generating, handling, or possessing hazardous solid wastes to submit reports containing information concerning location, amounts, and types of hazardous wastes.

4. A new section AS 46.03.350 is added to read as follows:

"46.03.350. HAZARDOUS SOLID WASTE REGULATIONS. The department shall adopt hazardous waste control regulations to provide for the disposal of hazardous wastes to protect the public health, livestock, wildlife, and the environment from any adverse effects. Such regulations may include requirements

for the handling, treatment, storage, and disposal of hazardous wastes, containerization, labeling and reporting."

5. AS 46.03.026 DEFINITIONS be amended to add the following:

() "Generation" means the act or process of producing hazardous waste.

() "Hazardous Waste" means a waste or combination of wastes which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or increase in serious, irreversable, or incapacitating reversible illness or propose a substantial present or potential hazard to human health or environment when improperly disposed."



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

DATE: February 2, 1981

TO: Senate Judiciary Members

FROM: Kevin K. Bruce, Committee Aid

RE: SB 29

Please find enclosed the following material for hearings on SB 29, "An Act relating to nuclear materials":

- A.) SB 29
- B.) Amendments by Senate Resources Committee
- C.) Testimony by Department of Environmental Conservation on SB 29
- D.) Background material on SB 269 and HB 511, introduced last legislature.

STATE of Alaska et al., Appellants,
and
Cook Inlet Region, Inc., Appellant
by Intervention.

v.

J. R. LEWIS and Harold H. Galliett, Jr.,
Citizens and Taxpayers of the State of
Alaska, Appellees.

No. 3039.

Supreme Court of Alaska.

Jan. 18, 1977.

Suit was instituted challenging constitutionality of a three-way exchange of land between the State of Alaska, the United States, and a regional native corporation. The Superior Court, Third Judicial District, Anchorage, C. J. Occhipinti, J., entered judgment declaring statute authorizing exchange unconstitutional and issued an injunction, and defendants appealed. The Supreme Court, Boochever, C. J., held that there was no provision in the Constitution against alienation of mineral rights that operates to preclude a land exchange pursuant to an agreement whereby the State will relinquish certain lands, including the subsurface minerals therein, to the United States in order to augment the federal holdings from which regional native corporations will obtain their aboriginal entitlements and, hence, legislative approval of exchange is sufficient once Congress consents to lifting restrictions imposed against alienation of mineral rights; further, authorizing statute is a general act, addressing a matter which is unique, but of state-wide concern, and is not invalid on ground that it weighs provisions of prior acts restricting State's right to alienate minerals and authorizing exchanges of land with native corporations for equal value, and statute is designed to facilitate state-wide land use management and to resolve a host of pressing legal issues and, as such, is not violative of constitutional prohibition on local and special legislation.

Injunction vacated, and declaratory judgment reversed.

Rabinowitz, J., dissented in part and filed an opinion in which Erwin, J., joined.

Burke, J., dissented in part and filed an opinion.

1. Constitutional Law \Leftrightarrow 42.3(2)

Plaintiffs, who claimed that three-way exchange of land between State of Alaska, United States government, and regional corporation organized under Alaska Native Claims Settlement Act would result in losses to state treasury and taxpayers of vast sums of money, who sought to protect mineral resources in land originally selected from federal government under Statehood Act, and who as citizens and taxpayers were in a better position than governor and Attorney General to complain of exchange, had a sufficient personal stake in outcome of controversy to guarantee "the adversity which is fundamental to judicial proceedings" and had standing to bring suit challenging constitutionality of exchange. Laws 1976, c. 19; AS 38.05.125, 38.95.060; Rules of Appellate Procedure, rule 9(e); Const. art. 2, § 19; art. 8, § 9; Alaska Statehood Act, § 6(i), 48 U.S.C.A. preceding section 21; Alaska Native Claims Settlement Act § 22(f), 43 U.S.C.A. § 1621(f).

2. Constitutional Law \Leftrightarrow 12

Statutes \Leftrightarrow 81(1)

In construing a legislative act, a court need only look to the intent of the legislative members who enacted it, but in construing a constitutional provision, which must be ratified by the voters, it is also necessary to look to the meaning that the voters would have placed on the provision.

3. Mines and Minerals \Leftrightarrow 4

Provisions of Constitution, rather than placing restraints on alienation of mineral rights, merely leave decision as to whether to require such reservations to Congress and State's legislature and, thus, impose no impediment to an exchange of land authorized by Congress and state legislature even though exchange involves a conveyance of

See complete doc. in Alaska Reporter