

HB

299

# Municipality of Anchorage



ENTERPRISE ACTIVITIES

P.O. BOX 196650  
ANCHORAGE, ALASKA 99519-6650  
(907) 343-4906

Tom Fink,  
Mayor

April 16, 1991

Representative Dave Choquette  
House of Representatives  
P.O. Box X  
Juneau, Alaska 99811

Dear Representative Choquette:

We have reviewed your draft House Bill, attached, and find it acceptable. Sec. 2. AS 46.03.822 satisfies the concerns of the Municipality of Anchorage, its utilities and the expectations of private utilities. We would expect support from all other municipalities and utilities throughout the state.

Thank you for your assistance.

Sincerely,

*Will Gay*  
Will Gay  
Executive Manager

Attachment

POSITION PAPER  
HAZARDOUS MATERIAL CLEANUP  
MUNICIPALITY OF ANCHORAGE

Municipality Liability for Release of Hazardous Substances by  
Another Person

It is essential that Municipalities receive a waiver of liability for the cleanup of hazardous substances generated by or from a facility or vessel owned by another person. Construction projects, throughout the state and in Anchorage, will grind to a halt if the current statute is not amended.

Contamination by petroleum products is common in developed areas because of leaking underground fuel storage tanks (i.e., gasoline, furnace oil) and surface spills from vehicles, fuel stations, homeowners, etc. It is almost impossible to do extended deep excavation in Anchorage for laying or relaying a water or sewer main, telephone cable, electric cable or gas lines without encountering some evidence of petroleum products.

Unless the contamination was the direct result of negligence or misconduct by the utility, the utility should not be liable for cleanup of contamination, within Municipal rights-of-ways, discovered while either designing or constructing a utility project. The Municipality should report the discovery of any contamination to the Alaska Department of Environmental Conservation and then proceed on with the project.

It is imperative that construction contracts not be halted or delayed. The short Alaskan construction season does not allow time for project delays. The Municipality or utilities will also be liable for substantial damage claims from contractors for delay caused by halting work. In a large project these delay claims could cost more than cleaning up the contamination caused by others solely because Municipalities or utilities are perceived to be a deep pocket.

The provision of essential services such as roads, storm drains, water and sewer mains, gas lines, cable television, telephone cable, and electric cable will be severely delayed and the cost substantially increased if this issue is not promptly resolved. A number of projects in Anchorage and the surrounding area are on hold now because of this issue.

City of Fairbanks

From the  
City Attorney's Office

MEMORANDUM

APR 23 1990

Deputy City Mgr.  
UNR026

TO: Virgil Gillespie, Deputy City Manager - Utilities  
FROM: *Ron Smith*  
Ron Smith, Deputy City Attorney  
SUBJECT: House Bill No. 547 - Liability of MUS for Clean-up of  
Spill Discovered by MUS While Installing Underground  
Utilities  
DATE: April 20, 1990

Yesterday I received a call from Mr. Bill Huffman, the Assistant Enterprise Manager for Anchorage, 343-4906. He asked that the City support House Bill No. 547 and in particular request the support of Senator Steve Frank.

This Bill provides an exemption from liability created by AS 46.03.822 to municipalities to clean up oil or other hazardous waste discovered by them in right-of-ways owned by municipalities unless the release of the hazardous waste was caused by actions of the municipality.

He related that Anchorage currently has a suit pending to require them to pay for clean up of an oil spill. This oil spill was caused by a leaking tank from a gas station. Anchorage discovered and reported the oil while excavating to install a water line in a right-of-way owned by the municipality. The landowner downstream from the gas station and the Anchorage right-of-way is suing Anchorage using the strict liability provisions of this state statute to require Anchorage to clean up the oil from the leaking gas station's underground tanks.

I could not believe that the statute could be interpreted this broadly. However, it imposes strict liability on owners of "a facility, from which there is a release...of a hazardous substance." "Facility" is defined to include "a site or area at which a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located (emphasis added)."

It is not absolutely clear that Anchorage is going to be liable. However, I called Cam Leonard, the Assistant Attorney General who advises DEC here in Fairbanks. He told me that there have not yet been any court decisions interpreting this statute. He also agreed with me that imposition of liability to clean up would not be fair to a utility that has done nothing wrong. However, it was his opinion that the statute was written very broadly and that it could be argued that a municipal utility could be held liable for the cost of clean up of oil discovered when excavating to install an underground utility line.

House Bill No. 547  
April 20, 1990  
Page Two

Therefore, I request that MUB take a strong position that there be a statutory exemption for municipalities in this case. House Bill 547 does this and it should be adopted or the language in it attached to a bill that is going to be adopted this year. Bill Huffman mentioned that House Bill 220 on LUST (Leaking Underground Storage Tanks) is likely to be adopted and concerns the same subject matter.

cc: Brian Phillips  
Kaye Barthelme  
John Mike  
Marty Lanum  
Jon Paul Stenberg

*Ron*

# Fairbanks Municipal Utilities System

April 23, 1990

VIA FAX - 11:22 AM

The Honorable Steve Frank  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, AK 99811



Dear Senator Frank:

This letter is to request that you support House Bill 547 or have similar language added to another bill which is likely to pass. This bill provides an exemption from liability created by AS 46.03.822 to municipalities to clean up oil or other hazardous waste discovered by them in rights-of-way owned by municipalities, unless the release of the hazardous waste was caused by actions of the municipality.

Enclosed is a memo from Ron Smith, the Fairbanks Deputy City Attorney, which shows that there is currently a real risk to the City to excavate in City rights-of-way for underground utilities. We just learned that Anchorage currently has a suit pending to require them to pay for clean up of an oil spill. This oil spill was caused by a leaking tank from a gas station. Anchorage discovered and reported the oil while excavating to install a water line in a right-of-way owned by the municipality. The landowner downstream from the gas station and the utility right-of-way is suing the City using the strict liability provisions of this state statute to require Anchorage to clean up the oil from the leaking gas station's underground tanks.

While I am sure that AS 46.03.822 was never intended to be this broadly interpreted, this lawsuit shows that it can be. Even if the courts ultimately resolve this in favor of municipalities the City can expend a tremendous amount of money defending such a law suit. If a legal theory is arguable, then with their deep pockets municipalities make attractive targets to lawyers.

As you are aware the City of Fairbanks, as well as other Alaskan cities, is having serious financial trouble. Granting municipalities this exemption is something the Legislature can do to assist municipalities without costing the State any money.

## Municipal Utilities System

The Honorable Steve Frank  
April 23, 1990  
Page Two

Again, I urge you to support this bill. If I or Ron Smith can assist in any way or answer any questions, please call me at 459-6211 or Ron Smith at 459-6340.

Sincerely,



V.M. Gillespie  
Deputy City Manager-  
Utilities

Enclosure: Memo of Ron Smith, April 20, 1990

xc: City Council  
Public Utilities Board

# STATE OF ALASKA

**DEPT. OF ENVIRONMENTAL CONSERVATION**

WALTER J. HICKEL, GOVERNOR

April 30, 1991

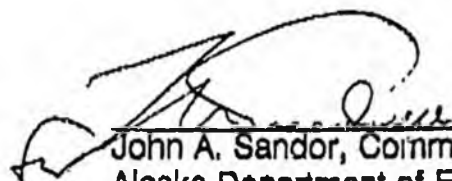
**BILL NUMBER:** CSHB 299 (O&G)

**TITLE:** Relating to municipal and utility liability for releases or threatened releases of hazardous substances.

**DEPARTMENT POSITION:** DEC does not oppose this bill.

**ANALYSIS:**

This legislation would exempt from the strict liability statutes municipalities and utilities which discover a release or possible release of hazardous substance in a state, municipal, or utility right-of-way during excavation, providing the release or threatened release was caused by the municipality's or utility's negligence, recklessness or intentional misconduct, and providing the municipality or utility reports the release or threatened release to DEC as required under current law.



John A. Sandor, Commissioner  
Alaska Department of Environmental Conservation

Alaska State Legislature  
House of Representatives

RECEIVED MAY 2 1991

INTERIM

3111 C Street  
Anchorage, Alaska 99503  
(907) 561-2032



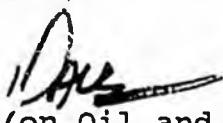
SESSION

P.O. Box V  
Juneau, Alaska 99811  
(907) 465-2995

Representative Dave Choquette

May 2, 1991

To: Representative Cliff Davidson  
Chair, Natural Resources Committee

From: Representative Dave Choquette   
Vice Chair, Special Committee on Oil and Gas

Re: Municipal Liability for Release of Hazardous Substances  
by Another Person

The Municipality of Anchorage has brought to my attention a crucial issue that will affect summer construction projects throughout the state unless promptly resolved. It is addressed in HB299. As AS 46.03.822(a)(1) is now written, municipalities and utilities may be held liable by the mere act of discovery of hazardous substances for the cleanup of these substances generated by or from a facility or vessel owned by another person.

During the summer months the municipalities provide essential services -- from the laying or relaying of water and gas lines to the laying of telephone and television cable -- that require deep excavation. In developed areas it is almost impossible to complete this excavation without discovering contamination caused by petroleum products. When the municipality or utility discovers the contamination in the right-of-way or easement, the municipality is required to halt further construction or repair, which breaches contractual obligations the munis owe to third parties; remove the contaminated soil only within the right-of-way; again begin construction or repair; and finally seek damages against the responsible party who caused the contamination in the first place. In the meanwhile the newly replaced soil is only subject to further recontamination by the surrounding soil. ★

The proposed legislation would do three things. It would remove strict liability for municipalities and utilities for: ★

★ ★

★ ★

- a. the costs or damages that result from the release of the hazardous substance into a right of way or easement, when that release is discovered as a result of excavation by the municipality or utility;
- b. the storage of the excavated material in the easement or right of way; and
- c. the reuse or replacement of the excavated material in the easement or right of way in or near the point of excavation.

None of these provisions would apply if the municipality or utility caused the release or threatened release by their negligence, recklessness, or intentional misconduct.

If this bill were to be adopted, the municipality or utility would still be responsible for reporting all suspected discoveries of hazardous substance spills to DEC. DEC would then be able to find the responsible parties who would embark on a complete cleanup of the hazardous substance instead of only a partial cleanup within a municipal, utility, or state right-of-way.

Thank you for your attention to this matter.



## BETHEL UTILITIES CORPORATION

3380 C Street, Suite 210  
Anchorage, Alaska 99503  
Phone: (907) 562-2500  
FAX: (907) 562-2502

May 4, 1990

The Honorable John Binkley  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

VIA FAX - 4:15 P.M.

Dear Senator Binkley:

Today, we received a call from Mr. Bill Huffman, the Assistant Enterprise Manager for the Municipality of Anchorage. He asked that we contact you regarding a development that places clean-up liability on a Utility or Municipality that discovers petroleum product, or other hazardous waste, even though such waste was not caused by them.

From time to time we are required to dig up the ground in Bethel, Alaska. According to AS 46.03.822, if in the course of performing our work we discover a petroleum waste product, we have the responsibility and liability to clean up that waste. If we caused the waste situation, such as dig up a fuel line or our equipment leaks, then it is our responsibility to clean it up. But, if we simply discover a waste situation, we should not be burdened with anything more than reporting it to the proper authorities.

It is our understanding that HB 220 on LUST (Leaking Underground Storage Tanks) and HB 567 are bills that can provide an exemption from liability created by AS 46.03.822 to utilities or municipalities to clean up hazardous waste discovered by them, unless the release of hazardous waste was caused by the actions of them.

We strongly urge you support any legislation that will limit our liability to clean up a hazardous waste discovery if we did not cause it. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T.S. Sterrett, Jr.', is written over a horizontal line.

Thomas S. Sterrett, Jr.  
Controller

cc: Mr. Harold Borrego, Pres. of Bethel Utilities Corp.  
Mr. Edward Tilbury, V.P. of Bethel Utilities Corp.  
Mr. Bill Huffman, Asst. Enterprise Manager, MOA

Alaska State Legislature  
House of Representatives



INTERIM

3111 C Street  
Anchorage, Alaska 99503  
(907) 561-2032

SESSION

P.O. Box V  
Juneau, Alaska 99811  
(907) 465-2995

Representative Dave Choquette

May 16, 1991

To: Representative Dave Donley  
Chair, House Judiciary Committee

From: Representative Dave Choquette *Dave*  
Vice Chair, Special Committee on Oil and Gas

Re: CSHB 299 (Oil and Gas) Municipal Liability for Release  
of Hazardous Substances by Another Person

The Municipality of Anchorage has brought to my attention a crucial issue that will affect summer construction projects throughout the state unless promptly resolved. It is addressed in HB299. As AS 46.03.822(a)(1) is now written, municipalities and utilities may be held liable by the mere act of discovery of hazardous substances for the cleanup of these substances generated by or from a facility or vessel owned by another person. At least one lawsuit has already been initiated against the Municipality on this issue.

During the summer months the municipalities provide essential services -- from the laying or relaying of water and gas lines to the laying of telephone and television cable -- that require deep excavation. In developed areas it is almost impossible to complete this excavation without discovering contamination caused by petroleum products. When the municipality or utility discovers the contamination in the right-of-way or easement, the municipality is required to halt further construction or repair, which breaches contractual obligations the munis owe to third parties; remove the contaminated soil only within the right-of-way; again begin construction or repair; and finally seek damages against the responsible party who caused the contamination in the first place. In the meanwhile the newly replaced soil is only subject to further recontamination by the surrounding soil.

★

★

★

★

★

The proposed legislation would do three things. It would remove strict liability for municipalities and utilities for:

- a. the costs or damages that result from the release of the hazardous substance into a right of way or easement, when that release is discovered as a result of excavation by the municipality or utility;
- b. the storage of the excavated material in the easement or right of way; and
- c. the reuse or replacement of the excavated material in the easement or right of way in or near the point of excavation.

None of these provisions would apply if the municipality or utility caused the release or threatened release by their negligence, recklessness, or intentional misconduct.

If this bill were to be adopted, the municipality or utility would only be released from strict liability for its discovery and storage within the right-of-way. They would still be responsible for reporting all suspected discoveries of hazardous substance spills to DEC, and taking the action DEC requires of them. Thank you for your attention to this matter.



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

### *Special Committee on Oil and Gas*

Bill Hudson - Chairman

Official Business

P.O. Box V  
State Capitol  
Juneau, Alaska 99811

May 16, 1991

The Honorable Dave Donley  
Chairman  
House Judiciary Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Dave:

HB 299, relating to municipal and utility liability for releases or threatened releases of hazardous substances was referred to your committee today from the House Resources Committee. I would like to take this opportunity to request a hearing on this bill as soon as possible.

Under current law, municipalities and utilities may be held strictly liable by the act of discovery of hazardous substances for the cleanup of these substances regardless of who spilled the substance. Contamination by petroleum products is common in developed areas for a number of reasons and it is almost impossible for municipalities and utilities to provide essential services that require deep excavation without encountering lengthy delays and damage claims from contractors as a result of the delays.

HB 299 would remove municipal or utility liability for hazardous substances discovered in the course of excavation provided that the contamination was not the result of negligence or misconduct by the utility or municipality.

Unless HB 299 passes the legislature this session, summer construction throughout the state will be affected and critical services offered by municipalities and utilities will be delayed. There are already a number of projects in the Anchorage area which are on hold for this very reason.

I appreciate your attention to my request and look forward to a public hearing on HB 299 soon.

Respectfully,

  
Bill Hudson  
Chairman, House Special Committee on Oil and Gas

# ANCHORAGE WATER & WASTEWATER UTILITY



Tom Fink,  
Mayor

3000 Arctic Boulevard  
Anchorage, Alaska 99503-3898  
(907)



Owned by the Municipality  
of Anchorage

May 16, 1991

Representative Dave Donley  
Chairman House Judiciary Committee  
Capitol, Room 122  
P.O. Box V  
Juneau, Alaska 99811

Re: HB-299

Dear Representative Donley:

The Municipality of Anchorage, Water & Wastewater Utility has been advised by our Legal Department that more information should be sent to the House Judiciary Committee before you meet on HB-299.

We have been asked why the Municipality of Anchorage thinks this legislation is necessary.

The MOA, AWWU has been advised by our attorneys that since the coverage of AS 46.03.822 Section 1(a) is so broad a substantial question arises. Would the MOA or its contractor be relieved of liability in the case where operations in an easement or right-of-way lead to the discovery of hazardous materials?

Our attorney's believe that a court would interpret the lead-in language, in Subsection (a): "Notwithstanding any other provision or rule of law and subject only to the defenses set out in ()....", very broadly. Because this language is so broad, adding the exception Section 2 (k) makes it clearer that a Municipality or Utility is not liable for costs or damages as a result of finding a release in a Municipal, State or Utility easement or right-cr-way.

We were asked what about the exemption provided in Subsection (b)? Why doesn't it solve the MOA's problem?

Subsection (b) of Section 46.03.822 puts the burden of proof back on the MOA to establish that a third party committed an intentional or negligent act. Rather than risk the possibility of aggravating a situation in which liability could be imposed, the MOA believes the action to take in such situations would be to simply discontinue work.

Page 2  
Representative Donley  
May 16, 1991

Most of our projects, although important to the community, do not justify continuing work in the face of very significant liability issues. It must be remembered that we are talking about "strict liability", and joint and several liability.

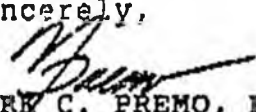
The only way to adequately address the issues raised by Subsection (b) is to enact an additional Subsection which would address the problem head-on.

Proving that a third party committed an intentional or negligent act is a burden that we simply do not want to and cannot undertake.

Copies of the sections mentioned in this writing are attached to make your review easier.

As was mentioned in my other memo of today's date, regarding the scheduling of this bill before your committee, I am available for any questions that may arise. Just telephone me at 786-5502 if I can be of further assistance. Once again, thank you and the House Judiciary Committee members for any support they can give the Municipality of Anchorage for HB-299.

Sincerely,

  
MARK C. PREMO, P.E.  
General Manager  
Anchorage Water & Wastewater Utility

cc: Joan Nockels, Assistant - Representative Choquette  
Will Gay, Executive Manager - Enterprise Activities MOA  
Mark Johnson, Legal Department - MOA  
Anne Williams, Executive Assistant - MOA

46.04.030, with crime guilty of 0,000 barrels or more; if release is less than 10,000

46.04.900;  
 given in AS 11.81.900;  
 11.81.900. (§ 3 ch 120  
 ch 266 SLA 1976; am  
 LA 1981; am § 112 ch  
 — 14 ch 59 SLA 1986;

amendments. — The 1990  
 wrote subsections (a) and  
 section (g); and repealed  
 (e) and (f).

release of hazardous  
 provision or rule of law  
 of this section and the  
 persons are strictly  
 persons or property,  
 the natural resources  
 costs of response,  
 provided by the state or a  
 release of a hazardous  
 substantial threat of  
 release:

release, the hazardous  
 release; this para-  
 consumer use;  
 facility, from which  
 causes the incurrence of

any hazardous sub-  
 which the hazardous  
 release, or a threat-  
 costs, of a hazard-

otherwise arranged  
 transporter for transport  
 owned or possessed  
 any other party or

entity, at any facility or vessel owned or operated by another party or entity and containing hazardous substances, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(5) any person who accepts or accepted any hazardous substances, other than refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.

(b) In an action to recover damages or costs, a person otherwise liable under this section is relieved from liability under this section if the person proves

(1) that the release or threatened release of the hazardous substance to which the damages relate occurred solely as a result of

(A) an act of war;

(B) except as provided under <sup>(OIL SPILL RESPONSE AND RECOVERY ACT)</sup> AS 46.03.823(c), an intentional or negligent act or omission of a third party, other than a party or its agents in privity of contract with, or employed by, the person, and that the person

(i) exercised due care with respect to the hazardous substance; and

(ii) took reasonable precautions against the act or omission of the third party and against the consequences of the act or omission; or

(C) an act of God; and

(2) in relation to (1)(B) or (C) of this subsection, that the person, within a reasonable period of time after the act occurred,

(A) discovered the release or threatened release of the hazardous substance; and

(B) began operations to contain and clean up the hazardous substance.

(c) For purposes of (b)(1)(B) of this section, a third party or an agent of a third party is in privity of contract with the person who is otherwise liable, if the third party or its agent and the person are parties to a land contract, deed, or other instrument transferring title or possession of the real property on which the facility in question is located, unless that property was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and the person establishes that the person has satisfied the requirements of (b)(1)(B) of this section and establishes that

(1) at the time the person acquired the facility the person did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(2) the person is a governmental entity that acquired the facility by escheat, or through another involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation;

**ANCHORAGE WATER & WASTEWATER UTILITY**



Tom Fink,  
Mayor

3000 Arctic Boulevard  
Anchorage, Alaska 99503-3898  
(907)



Owned by the Municipality  
of Anchorage

May 16, 1991

Representative Dave Donley  
Chairman House Judiciary Committee  
Capitol, Room 122  
P.O. Box V  
Juneau, Alaska 99811

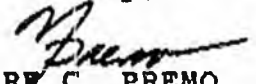
Re: HB-299

Dear Representative Donley:

The Municipality of Anchorage, Water & Wastewater Utility was informed this morning that HB-299 titled "An Act relating to municipal and utility liability for releases or threatened releases of hazardous substances" was passed out of the House Resources Committee at 8:00 AM. We understand that this bill has now been referred to your committee.

We would appreciate prompt scheduling of this bill before your committee. If a teleconference is scheduled, along with your committee meeting, I will do my best to attend here in Anchorage and be available for any questions your committee may have. Please notify me when and if a teleconference will be scheduled. Thank you for any support you can give to the Municipality of Anchorage for HB-299.

Sincerely,

  
MARK C. PREMO, P.E.  
General Manager  
Anchorage Water & Wastewater Utility

cc: Joan Nockels, Assistant - Representative Choquette  
Will Gay, Executive Manager - Enterprise Activities - MOA  
Mark Johnson, Legal Department - MOA  
Anne Williams, Executive Assistant - MOA

# DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

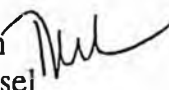
240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

## MEMORANDUM

December 13, 1991

**SUBJECT:** Municipal Liability for Releases of Hazardous Substances Found During Excavation (HB 299)

**TO:** Representative Dave Choquette

**FROM:** Terri Lauterbach   
Legislative Counsel

You have submitted a draft copy of a Memorandum of Agreement (MOA) between the Municipality of Anchorage and the Department of Environmental Conservation and have asked whether that agreement would accomplish the purposes of CSHB 299(O&G).

In my opinion, the MOA would not achieve the same effect as passage of CSHB 299(O&G) for two reasons:

(1) the MOA is only an agreement between Anchorage and DEC; it would not affect any other municipality or any utility that is involved in construction projects;

(2) the MOA only lays out procedures to be followed by Anchorage when it finds or suspects contamination; it does not relieve Anchorage of liability for discovered contamination.

## DISCUSSION

The first reason the MOA does not achieve the same effect as CSHB 299(O&G) is because the MOA relates only to Anchorage while CSHB 299(O&G) relates to every municipality and every utility in the state. No matter what the MOA accomplishes for Anchorage, it does absolutely nothing for any other municipality or for any utility.

The second reason the MOA does not achieve the same effect as CSHB 299(O&G) is because there is no agreement in the MOA to relieve Anchorage of any liability for discovered releases. On page 8 of the MOA, DEC specifically "reserves the right to take further action when necessary as provided for in Title 46 of the Alaska

Represent  
December 13, 1991  
Page 2  
ative Dave Choquette

Statutes." This could include holding Anchorage responsible for damages from contaminated soils discovered on their rights of way.

All the MOA really does is lay out some procedures for Anchorage to follow during construction. If Anchorage follows these procedures, DEC agrees to help Anchorage identify other parties who may be responsible for the original contamination. However, DEC does not agree that Anchorage will not also be held to be a responsible party. DEC should not be faulted for this. Since liability for releases is set by statute under AS 46.03.822, DEC does not have authority to waive Anchorage's liability in a MOA. Only a statutory amendment to AS 46.03.822 can relieve Anchorage from strict liability.

-----  
I hope you find this discussion helpful in understanding the relevant issues. Please let me know if I can be of further assistance.

TML:lmb:mi  
91-315.lmb

HAZARDOUS MATERIALS IMPACT  
ON  
DOT/PF CENTRAL REGION PROJECTS

DRAFT

The following are typical projects which have encountered hazardous materials during design development.

1. Boniface Parkway - Tudor to Debarr
2. Sterling Highway MP79-94
3. Eagle River Highland Drive
4. Raspberry Road
5. Minnesota/International Airport Road Interchange
6. Old Seward Highway Dowling to Huffman
7. Anchor River Intersection
8. AIA Ramp Reconstruction
9. DeArmoun/Rabbit Creek Interchange

Hazardous materials can be expected on almost all major projects which are located within established developed areas.

The consequence of encountering hazardous materials during project development is dependent upon when the identification occurs. If the material is identified during design development, the associated costs and delays can be managed and to some extent controlled. If, however, the material is identified during construction when you have contract obligations, the cost and schedule impacts are more difficult to manage. It is, therefore, essential to adopt a process which assures early identification of potential hazardous materials sites and audits those sites in a systematic manner.

The range of impacts we have experienced include delays of up to several years in project delivery, added costs for material disposal and complicated right-of-way procurement requiring litigation to accomplish resolution.

Attached are outlines and checklists developed by AASHTO for use as a guide for dealing with hazardous waste during project development.

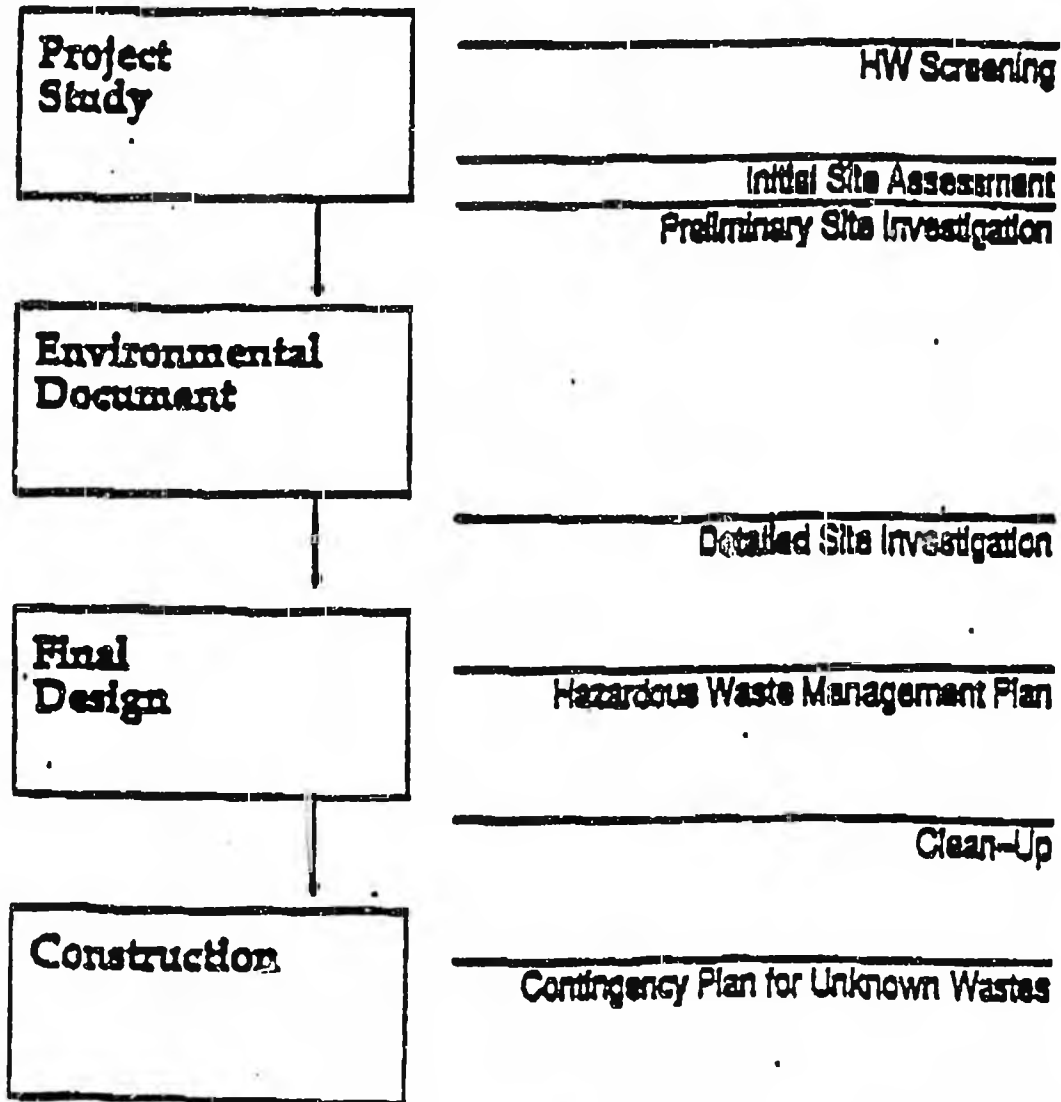
Attachments

**DRAFT**

K-2.2B

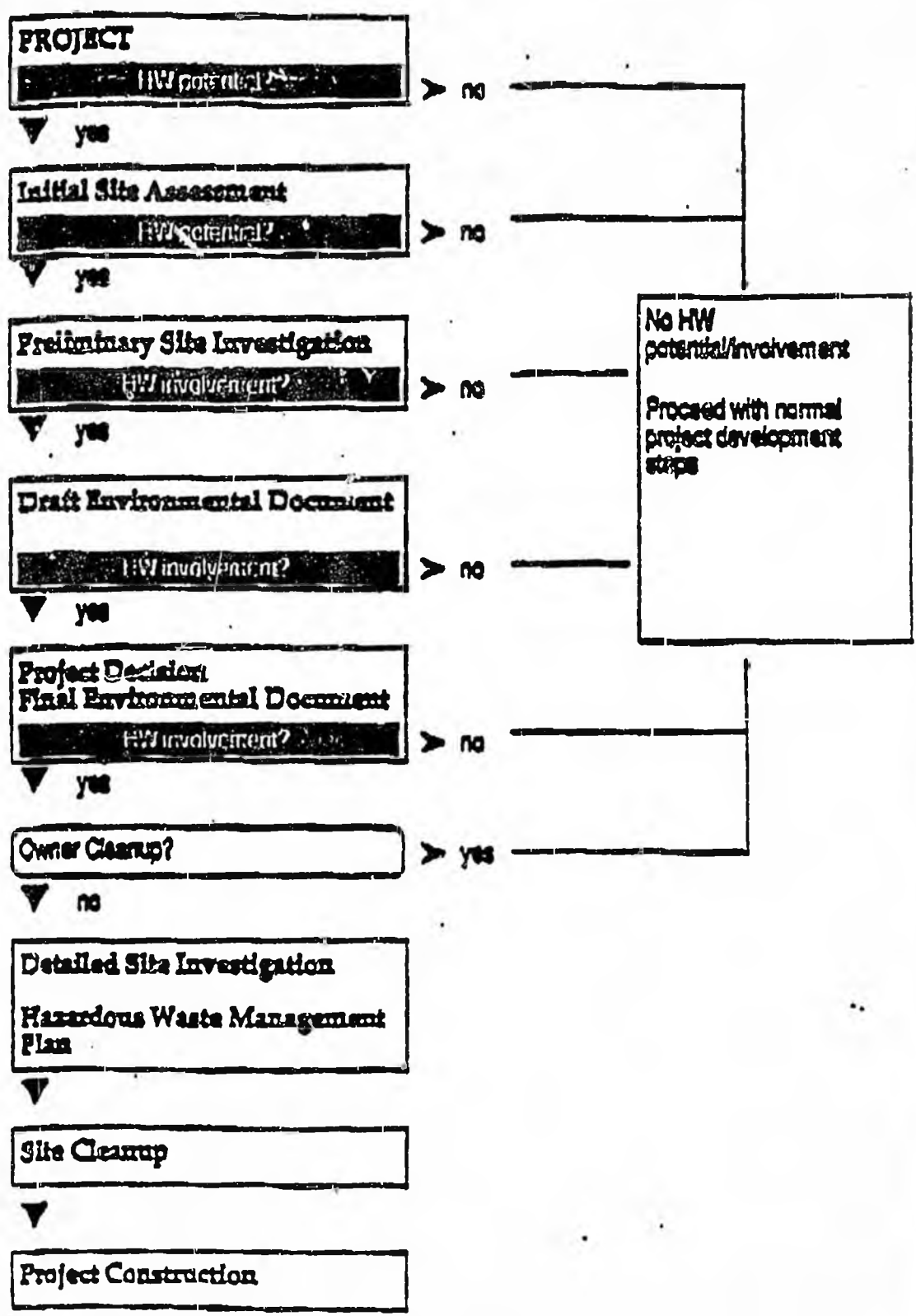
**FIGURE 1**

# PROJECT DEVELOPMENT/HAZARDOUS WASTE STEPS



H-2.23  
FIGURE 2

# STEPS IN HAZARDOUS WASTE PROCESS



K-2.28

FIGURE 3

**INITIAL SITE ASSESSMENT (ISA) CHECKLIST**

**Project Information**  
 District \_\_\_\_\_ County \_\_\_\_\_ Route \_\_\_\_\_ Postmile \_\_\_\_\_  
 Description \_\_\_\_\_

Does the project have potential hazardous waste involvement?

**Screening Criteria**

1. Project features: New R/W? \_\_\_\_\_ Excavation? \_\_\_\_\_ Relocate utilities? \_\_\_\_\_

2. Land Use History and Development Setting \_\_\_\_\_ (rural/urban)  
 Current land uses \_\_\_\_\_  
 Previous land uses \_\_\_\_\_  
 Adjacent land uses \_\_\_\_\_

(Industrial, Light Industry, Commercial, Agriculture, Housing, Other -- LIST)

3. In-house records review \_\_\_\_\_

4. Any known hazardous waste sites in vicinity? \_\_\_\_\_ (If yes, identify & explain)

(If no HW potential determined, sign here otherwise survey project as necessary to supplement screening information)

**Optional Records**  
 County Assessor \_\_\_\_\_ Fire Dept. \_\_\_\_\_ Sanborn Ins. \_\_\_\_\_ Other \_\_\_\_\_

(Take photos of sites or sketch on back of ISA)

**Visual Inspection** \_\_\_\_\_ date \_\_\_\_\_

Storage Structures	Contaminations	Potential asbestos-containing materials
Underground tanks _____	Surface staining _____	Buildings _____
Surface tanks _____	Oil sheen _____	Sprayed-on fireproofing _____
Sumps _____	Ceils _____	Pipe wrap _____
Drums _____	Vegetation damage _____	Friable tile _____
Transformers _____	Other _____	Acoustical plaster _____
Landfill _____		
Other _____		
Site(s) _____	Site(s) _____	Site(s) _____

**Comments** \_\_\_\_\_ **Conducted by:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# HOUSE COMMITTEE REPORT

(7)

Date Referred: April 24, 1991

FURTHER REFERRALS:

Resources  
Judiciary  
Finance

Date of Committee Action: 4-29-91

The HOUSE SPECIAL COMMITTEE ON OIL AND GAS Committee considered:

HB 299

HOUSE BILL NO. 299

MUNICIPAL LIABILITY/HAZARDOUS SUBSTANCES

"An Act relating to municipal and utility liability for releases or threatened releases of hazardous substances."

**RECOMMENDATIONS:**

be replaced with \_\_\_\_\_

CS HB 299

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>			<input checked="" type="checkbox"/>
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				

*[Signature]*  
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 299

Revision Date: \_\_\_\_\_  
 Title: Municipal and utility liability for  
release of hazardous substances  
 Sponsor: House Oil & Gas Comm.  
 Requestor: House Oil & Gas Comm.

Department Affected: DEC  
 BRU: Environmental Quality  
 Component: E.Q. Projects

COMPONENT SERIAL NO. 

1	1	0	1	1	6
---	---	---	---	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Janice Adair  
 Division: Commissioner's Office

Phone: 465-2600  
 Date: 4/30/91

Approved by Commissioner:   
 Agency: Dept. of Environmental Conservation

Date: 4/30/91