

HB

49

# Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

April 5, 1991

TO: Senator Drue Pearce, Chair  
Labor and Commerce Committee

FROM: Rep. Fran Ulmer

RE: HB 49 "An act amending the definition of slow-leaching TBT-based marine anti fouling paint."

I am requesting a hearing for this bill at your earliest convenience. HB 49 simply changes a testing standard for TBT based paint in order to conform with new federal regulations. In hearings before the House, no one has written or testified against the bill.

TBT is an ingredient widely used in marine paints to prevent the growth of barnacles and algae on boat hulls. It is also a highly toxic pesticide. In 1987 the legislature passed a bill and joined other west coast states in sharply reducing the amount of TBT in paint that can be sold in Alaska.

Unfortunately, the testing standard for TBT which "trips" the ban on its sale is just one microgram per centimeter per day lower than the tough standard that has since been established by the EPA and other western states. As a result, many marine paints which meet the federal requirement are not allowed to be sold in Alaska. The new bill would solve the problem by changing the level to be the same as federal standards.

Several organizations that lobbied strenuously for the lower standards in 1987, including the Pacific Fisheries Legislative Task Force, support matching the state's standards with the new federal level. Marine paint distributors and sellers say the bill will remove a significant hindrance to commerce. California, Oregon and Washington have all crafted their laws to meet the new EPA standards. The Task Force says the new standard still effectively curbs the threat to marine life, while allowing commerce to continue without undo restraint.

Thank you for your consideration.

District 4B — Juneau  
P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



### REPRESENTATIVE FRAN ULMER

MEMORANDUM

March 22, 1991

TO: All Members  
House of Representatives

FROM: Rep. Fran Ulmer

RE: HB 49 "An act amending the definition of slow-leaching TBT-based marine anti fouling paint."

I am requesting your support for this bill which simply changes a testing standard for TBT based paint in order to conform with new federal regulations. No one has written or testified against the bill.

TBT is an ingredient widely used in marine paints to prevent the growth of barnacles and algae on boat hulls. It is also a highly toxic pesticide. In 1987 the legislature passed a bill and joined other west coast states in sharply reducing the amount of TBT in paint that can be sold in Alaska.

Unfortunately, the testing standard for TBT which "trips" the ban on its sale is just one microgram per centimeter per day lower than the tough standard that has since been established by the EPA and other western states. As a result, many marine paints which meet the federal requirement are not allowed to be sold in Alaska. The new bill would solve the problem by changing the level to be the same as federal standards.

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Thank you for your consideration.

District 4B — Juneau

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FISCAL NOTE

No. 1

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Bill Version: HB 49

(H) Publish Date: 3/6/91

Revision Date: \_\_\_\_\_ Department Affected: Environmental Conservation

Title: Amending the definition of slow- BRU: Environmental Health

leaching TBT-based marine antifouling Component: Palmer Laboratory

Sponsor: Ulmer, Koponen paint

Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

6	5	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Douglas C. Donegan, Director *DCD* Phone: 465-2696

Division: Division of Environmental Health Date: Jan. 28, 1991

Approved by Commissioner: *Wendell, A. Scher Sande*

Agency: Department of Environmental Conservation Date: \_\_\_\_\_

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

ALASKA OPERATIONS OFFICE  
3200 HOSPITAL DRIVE, SUITE 101  
JUNEAU, ALASKA 99801

March 1, 1991

REPLY TO  
ATTN OF:

A00

The Honorable Fran Ulmer  
House of Representatives  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Ulmer:

We have reviewed HB 49, the legislation you have introduced for amending the definition of slow-leaching TBT-based marine antifouling paint. We are pleased that you have introduced this legislation and find it compatible with Environmental Protection Agency's (EPA) tributyltin (TBT) leach out standard/release rate of 4.0 micrograms per square centimeter per day at steady state conditions, cited in the federal call-in notice of July 29, 1986.

We understand the need and endorse this legislation. When enacted, it will correct the current discrepancy of two differing yet allowable TBT release rates in Alaska, and achieve a uniform standard that fully meets federal stringency requirements. Such legislation fosters flexibility and greater consistency with regard to cooperative state and federal regulatory control of commercially available and viable marine pesticide products.

Thank you for the opportunity to provide comment on this important piece of legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Torok".

Steven A. Torok, Chief  
State Operations Section

ULMLTR.GCB

# Petersburg Shipwrights, Inc.

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Drydocking • Construction • Repair

1000 Nordic Drive • Box 378

Petersburg, Alaska 99833

(907) 772-3596

February 28, 1991

To all Legislators:

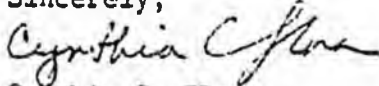
As a service industry concerned with the maintenance of marine vessels, we are strongly in favor of passage of HB49. Our customers with aluminum vessels have had no form of antifouling protection for their boats since Alaska passed their bill restricting the use of TBT. The growth that results from lack of annual maintenance can cause serious damage in the form of "pitting".

Following a steady stream of customer complaints about the lack of alternatives, I contacted several of the major marine coating manufacturers about a year ago and inquired as to whether or not they were going to ever come up with a product that would meet the State of Alaska's TBT leachate rate. They all answered NO, that the lowest they would go would be the leachate rate required by Federal law.

The difference between State and Federal laws is very small yet the negative impact on owners of aluminum vessels is quite large. Many owners out of desperation bought paint in Washington where it was sold legally until just recently when it fell under restricted pesticide control.

Let's have conformity of law! Please pass HB49.

Sincerely,



Cynthia C. Flora

Business Manager

Petersburg Shipwrights, Inc.

submissions are currently deficient. Many submissions did not include raw data (instrument readings), adequate information on instrument calibration, or sufficient data on blanks and controls. The descriptions of leaching and analytical methodologies were incomplete. Information needed to demonstrate that proper environmental controls (pH, temperature, and salinity) were maintained were not included in most submissions. In some cases, samples were stored beyond the period specified by the ASTM/EPA method; however, storage stability data were not submitted.

At this time no release rate studies have been validated. Registrants were informed in an Agency letter dated August 12, 1988, that additional data/information were required to be submitted before any decisions regarding specific release rates can be made.

In addition to the above deficiencies, many of the submitted studies did not adhere to the ASTM/EPA method specification that the TBT concentration in the measuring tank not exceed 50 ppb. This restriction was imposed to eliminate the possibility of autoinhibition of TBT release from the paint film. EPA and the ASTM committee suspect that the 50 ppb restriction may be too conservative. Testing is being initiated at EPA's Environmental Chemistry Laboratory (ECL) in Bay St. Louis, Mississippi, to determine the true autoinhibitory threshold.

After the ECL test results are available and the registrants respond to the above Notice, the Agency will reevaluate each study. If it is determined that the measuring tank concentration did not exceed the true autoinhibitory threshold and if the Agency finds that the registrant has supplied the additional data/information necessary to validate his submission, the Agency will use the study for regulatory purposes.

#### B. Release Rate Restriction

The proposed restrictions in the Preliminary Determination specified that no TBT antifouling paint could be sold or distributed which exceeds the short-term cumulative release (cumulative release over the first 14 days of the ASTM/EPA test) of 168  $\mu\text{g}$  TBT (includes tributyltin and triphenyltin)/ $\text{cm}^2$  or an average daily release rate (average over weeks 3 through 5) of 4.0  $\mu\text{g}$  TBT/ $\text{cm}^2$ /day. The proposed short-term cumulative release restriction was indexed to the average release rate restriction (3  $\times$  the average release rate over 14 days).

The short-term cumulative release was intended to reflect the initial surge of TBT release when a freshly painted vessel is first placed in the water. It was calculated by summing the time weighted release for each sampling over the first 14 days of the test. The time weighted release was calculated by multiplying the rate of TBT release for a given sampling time by the preceding length of time between sampling times. The average release rate reflects the long-term TBT release pattern that is established after the initial surge. It is defined as a simple average of the release rates measured over a certain number of weeks.

In the Preliminary Determination, release rate values were normalized to adjust for variation between testing facilities and the average daily release rate was defined as the mean of individual release rates over weeks 3 through 5. The Agency received numerous comments from TBT registrants and the FIFRA Scientific Advisory Panel regarding this analysis of the release rate data. Most commenters felt that the proposed release rate restrictions should be adjusted to account for the variability of the test method but that normalization was not an appropriate means of accounting for variability.

The standard test paint data were the only data common to all registrants and as such were used to evaluate the variability of the ASTM/EPA release rate method. Additional standard test paint data and information on testing procedures from individual testing facilities submitted after the Preliminary Determination was issued, were included in the Agency's analysis of the method's variability. It was not possible to establish that variation among testing facilities was attributable to systematic error, as was previously assumed. Variation associated with testing facilities is now assumed to represent a component of method variance. Normalization is not appropriate under these circumstances, and the Agency agrees that release rate data should not be normalized. The available data could not be analyzed by standard statistical procedures because sampling was unbalanced (a wide variation in the number of samples per laboratory). The Agency could only perform a qualitative analysis of the method's variability. It was determined that most of the variability was associated with testing among different laboratories and sampling over time within a given test. Variation between replicate cylinders and between replicate runs was low by comparison.

The Agency has determined that, due to the incomplete nature of the release rate data submissions and the uncertainty over autoinhibition, it would be inappropriate at this time to try to quantify the variability associated with the EPA/ASTM method. The Agency is unable to determine whether the high variance of the results is attributable solely to the inherent variability of the method or to possible improper conduct of the release rate studies. It would also be inappropriate to determine a release rate restriction which attempts to account for this variability based solely on the current data base.

For the present the Agency is keeping the Special Review open on the issue of release rates and is deferring to the interim release rate restriction (4  $\mu\text{g}/\text{cm}^2$ /day) and certification program established by OAPCA. Products will be certified on the basis of the average daily release rate calculated from validated release rate studies conducted according to the current draft ASTM/EPA method. Any new release rate data submission or resubmission (such as those required by the Agency's August 12, 1988 letter) will be reviewed and a determination regarding certification reached within 90 days of the Agency's receipt of such data.

The average daily release rate will now be calculated as the non-normalized mean of all release rate measurements during weeks 3 through 10. In the Preliminary Determination the average daily release rate was defined as the average of release rates measured over weeks 3 through 5. However, examination of the standard paint release rate data indicated that individual release rate measurements made during week 6 and beyond were equivalent to those made during weeks 3 through 5. Release rate measurements beyond 10 weeks may be required for paints with atypical patterns of TBT release over time. The additional measurements included in the calculation of the average release rate are expected to increase accuracy.

The Agency will consider release rate levels again when additional environmental monitoring data are available and the release rate method is improved. The Agency has already identified certain procedures within the method as potential sources of variability and has initiated experimentation to determine how the release rate method can be improved. This testing is further discussed in Unit VII. When the research is completed, the Agency may decide to replace the current OAPCA release rate restriction

7/8/88  
Testing  
method

(c) Notwithstanding other provisions of this section, slow-leaching TBT-based marine antifouling paint may be imported into and sold in the state. A slow-leaching TBT-based marine antifouling paint may be applied in the state only to aluminum vessel hulls and lower outboard drive units. Aluminum vessel hulls and lower outboard drive units to which a slow-leaching TBT-based marine antifouling paint has been applied may be imported into and sold, rented, leased, or used in the state.

(d) This section does not apply to

- (1) a vessel of the United States government;
- (2) a foreign vessel in state water fewer than 90 consecutive days;

or

- (3) a vessel of 4,000 gross tons or more.

(e) In this section

(1) "slow-leaching TBT-based marine antifouling paint" means a TBT-based marine antifouling paint, but not a coating or other treatment, that has a measured release rate equal to or less than 3.0 micrograms per square centimeter per day at steady state conditions determined under the U.S. Environmental Protection Agency testing procedure, as outlined in the agency's call-in notice of July 29, 1986, on tributyltin in antifouling paints under 7 U.S.C. 136 — 136y (the Federal Insecticide, Fungicide, and Rodenticide Act);

(2) "TBT-based marine antifouling paint or coating" means a paint, coating, or treatment that contains tributyltin, or a triorganotin compound used as a substitute for tributyltin, and that is intended to control fouling organisms in a fresh water or marine environment;

(3) "vessel" means watercraft used or capable of being used as a means of transportation on water, including

- (A) aircraft equipped to land on water; and
- (B) barges. (§ 2 ch 67 SLA 1987)

**Cross references.** — For provisions applicable to the importation of TBT-based paint after June 13, 1987, and until December 1, 1987, see § 3, ch. 67, SLA 1987 in the Temporary and Special Acts.

**Sec. 46.03.720. Construction and operation of certain facilities prohibited.** (a) A person may not construct, extend, install or operate a sewerage system or treatment works, or any part of a sewerage system or treatment works, until plans for it are submitted to the department for review and the department approves them in writing and issues a written permit.

(b) A person may not construct, extend, install or operate a public water supply system, or any part of a public water supply system, until plans for it are submitted to the department for review and the department approves them in writing.

(c) The department may waive the requirements of this section. (§ 3 ch 120 SLA 1971; am § 7 ch 220 SLA 1976)

*change  
to  
4.0*

SENATE COMMITTEE REPORT

DATE: 3/27/91

FURTHER: Resources

DATE TURNED INTO OFFICE: \_\_\_\_\_

L&C Committee considered HOUSE BILL NO. 49

"An Act amending the definition of slow-leaching TBT-based marine antifouling paint."

and recommended:

- replace with \_\_\_\_\_ s CS HB 49 (L&C)
- or adopt \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- \_\_\_\_\_ letter of intent adopted

- same title
- new title
- technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

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

zero fiscal note(s) DEC/1-28-91

appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:

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

zero fiscal note(s) DEC/1-28-91

Governor's bill w/fiscal note

SIGNING DO/PASS:

*Keith Halford*  
*Devin Collins*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

OTHER RECOMMENDATIONS:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Paul Pearce - 10 Pass*  
 Chair: Signature and Recommendation

# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Eliason  
Senator Rick Halford  
Senator Jay Kerttula



WHILE IN JUNEAU  
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## SENATE LABOR AND COMMERCE COMMITTEE

TO: Tamara Cook, Director  
Legal Services Division

FROM: Rod Mourant, Legislative Aide  
Senate Labor & Commerce Committee

A handwritten signature in cursive script that reads "Rod".

DATE: April 24, 1991

RE: HB 49

Working from House Bill 49, draft 7-LS0432\A, please create a committee substitute with the following changes:

- 1) Ln 6 - following "or less than" delete (4.0 [3.0] micrograms per square centimeter per day at steady state conditions determined).
- 2) Ln 6 - following "or less than" insert the comparable federal standard adopted.

This cs was adopted in L&C today and we would like to read across to HESS on Friday, April 26th.