

HB

49

DATE: 4/26/91

FURTHER:

DATE TURNED INTO OFFICE: 5-8-91

Resources Committee considered HOUSE BILL NO. 49

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

and recommended:

replace with _____
 or adopt S CS HB 49 (Loc)
 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) _____

appropriation-no fiscal note

APPROVES PREVIOUS:
Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____
Previous FN 1/28/91 DEC

Governor's bill w/fiscal note

SIGNING DO PASS:

Jan Cook
Paul F. Z...
[Signature]

OTHER RECOMMENDATIONS:

Hoyd Jones (Do Pass)
Chair: Signature and Recommendation

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

TO: Rep. David Finkelstein, Chairman
Labor and Commerce Committee

FROM: Rep. Fran Ulmer

DATE: February 26, 1991

RE: HB 49

TBT 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 that has caused death and deformities in marine life. 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 it's sale is just one microgram per centimeter per day lower than the threshold that has since been established by the EPA and all other western states. As a result, many marine paints which meet the federal requirement are not allowed to be sold in Alaska. Fisherman and other boat owners are simply buying their paint out of state and using them "illegally" here. Stores that sell marine paint in Alaska are being penalized because of the prohibition on sale of paints that don't meet the lower (Alaska) threshold. 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. 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 prompt consideration.

District 4B — Juneau

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB49

Revision Date: _____ Department Affected: Environmental Conservation
 Title: Amending the definition of slow-leaching TBT-based marine antifouling paint BRU: Environmental Health
 Component: Palmer Laboratory
 Sponsor: Ulmer, Koponen

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- |
|---------|-----|-----|-----|-----|-----|-----|

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 *DD* Phone: 465-2696
 Division: Division of Environmental Health Date: Jan. 28, 1991
 Approved by Commissioner: *Mendenhall, A. John Sander*
 Agency: Department of Environmental Conservation Date: _____

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

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P.2d 3 (1974).

Whatever may be the outer boundaries of conduct prohibited by this section as defined by AS 46.03.900(19), it is beyond dispute that the emptying of a lagoon of raw sewage into a stream running through residential areas comes within the definition of the term "pollution." Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

Definitional language of AS 46.03.900(19) incorporated in this section. — See Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

Foreseeability requirement imposed. — By use of the word "potentially" in AS 46.03.900(19) in prohibiting potentially harmful alterations of water, this chapter prohibits acts which a reasonable person would foresee as creating a substantial risk of making water actually injurious to the statutorily protected interests. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

In "potentiality" cases, the state must hereafter prove that the threatened injury was foreseeable to a reasonable man in the position of the defendant at the time of the act or omission. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

The foreseeability requirement is no more than a narrowing construction. The supreme court imposes it only to give this chapter definite enough standards to survive on its face and in future cases. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

Effect of foreseeability requirement. — A foreseeability requirement assures

that fair notice is given to the defendant that his conduct is within the ambit of the statute. Such an element added to the definition of the offense also criminalizes only that conduct which is serious enough to warrant enforcement and conviction, thus discouraging discriminatory enforcement. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

Application of foreseeability requirement is prospective. — The supreme court could not find plain error in the district court's failure to anticipate and apply to defendant the narrowing construction of AS 46.03.900(19) and this section which it ordered for future cases. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

This section makes pollution a crime without mention of any administrative order. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

This section and AS 46.03.760 contemplate direct prosecution of pollution violations. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

The authorization for direct criminal prosecution is particularly clear since it constitutes an amendment of former law. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

The department was not required to exhaust the compliance-order procedure before instituting prosecution for pollution. Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

Former statutes created no crime of pollution. — See Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).

Sec. 46.03.715. Sale and use of TBT-based antifouling paint.

(a) Except as otherwise provided in this section, a person may not sell or use TBT-based marine antifouling paint or coating in the state, nor may a person sell, rent, or lease in the state, or import into the state, or use in state water, a vessel, fishing gear, or other item intended to be partially or completely submerged in water, if the vessel, gear, or item has been painted or treated with TBT-based marine antifouling paint or coating.

(b) TBT-based marine antifouling paint or coating need not be removed from fishing gear, or from a vessel or other item that was painted or treated before December 1, 1987, but the vessel, gear, or item may not be repainted or retreated with TBT-based marine antifouling paint or coating. Fish culture or capture nets treated with TBT-based marine antifouling coating before December 1, 1987, may not be used in state water on or after December 1, 1992.

(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 December 1, 1987, see § 3, ch. 67, SLA applicable to the importation of TBT-based paint after June 13, 1987, and until 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

MEMORANDUM

STATE OF ALASKA


DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Health

TO: Kate Tesar
Legislative Assistant

DATE: March 19, 1990

PHONE: 465-2609

FROM: Douglas Donegan 
Director

SUBJECT: TBT Law

I have reviewed the proposed change to the definition of "slow-leaching TBT-based marine antifouling paint." Changing the definition to allow a release rate of 4.0 micrograms per square centimeter per day, will make the state definition consistent with that of the federal Environmental Protection Agency (EPA). Consistency with federal law will simplify enforcement of state law and reduce the number of potential violators.

Changing the definition to the national standard will also have the effect of making more TBT-based paints available to Alaskan vendors.

For your information, I am also attaching a current EPA list of TBT-based antifouling paints with their release rates.

Attachment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC 20460

OFFICE OF
PESTICIDES AND
TOXIC SUBSTANCES

TBT ANTIFOULANTS PAINTS

Certified Under QAPCA 1988

As of 2/1/90

| <u>COMPANY</u> | <u>EPA REGISTRATION NUMBER</u> | <u>PRODUCT NAME</u> | <u>AVERAGE RELEASE RATE ug/cm²/day</u> |
|--------------------------|------------------------------------|---|---|
| 1. Hempel | 10250-14* | Antifouling Nautic 7680-1212-Gray | 3.58 |
| 2. DeVoe | 39492-39** | Navicote 2000 Red Antifouling Paint MD 4540 | 0.0 |
| 3. Sigma Coatings | 11350-9** | 7293 Pilot LL Antifouling | 1.09 |
| 4. International Paint | 2693-127** | Intersmooth HiSol SPC AF Plum BFA 254 | 3.78 |
| 5. Chugoku Marine Paints | 48302-1** | AF Seaflo Z-100 | 4.0 |
| 6. Chugoku Marine Paints | 48302-6** | AF Seaflo Z-100LE | 3.1 |
| 7. Sigma Coating | 11350-25** | Sigmaplane 7284 HiBuild Antifouling Red Brown | 2.68 |
| 8. Ameron Coatings | 8120-48** | Amercoat 698 HS Antifouling Red | 3.17 |
| 9. Ameron Coatings | 8120-49** | Amercoat 635 Antifouling White | 3.93 |
| 10. M & T Chemicals | 5204-68** | Poly-Flo 2018 | 3.58 |
| 11. Nautical Coatings | 44891-6** | Sea Hawk Biocop 1230 Blue | 3.28 |

TBT ANTIFOULANTS PAINTS

Certified Under OAPCA 1988

As of 2/1/90

| <u>COMPANY</u> | <u>EPA REGISTRATION NUMBER</u> | <u>PRODUCT NAME</u> | <u>AVERAGE RELEASE RATE ug/cm²/day</u> |
|-----------------------------|------------------------------------|--|---|
| 12. M & T Chemicals, Inc. | 5204-IG* | Poly-Flo 4024 | 3.96 |
| 13. M & T Chemicals, Inc. | 5204-64* | Poly-Flo 201-A White | 3.07 |
| 14. Int. Nat. Paint | 2693-115** | Interlux Micron 33 | 2.11 |
| 15. Int. Nat. Paint | 2693-123** | Interswift Copolymer A/P Red BKA 007 | 2.78 |
| 16. Hempel Coatings | 10250-40** | Hempel's Antifouling Combic 7699-5111 Red | 0.80 |
| 17. ITW-Philadelphia Resins | 55363-5* | Classic Yacht Clear | 2.22 |
| 18. ITW-Philadelphia Resins | 55363-6* | Classic Yacht AF Coating Aersol | 3.04 |
| 19. Pro-Line Paint | 40238-9** | Antifouling Paint 1077 | 3.65 |
| 20. Rule Industries, Inc. | 7995-32** | KL990 Komposition Blue | 0.27 |
| 21. Rule Industries, Inc. | 7995-35** | U.S.M.C. | 0.41 |
| 22. Rule Industries, Inc. | 7995-36** | KL990 Graph-Cop | 0.39 |
| 23. Rule Industries, Inc. | 7995-38** | KL990 Graph-Cop | 1.77 |
| 24. Rule Industries, Inc. | 7995-39** | KL990 Graph-Cote | 0.88 |
| 25. Rule Industries, Inc. | 7995-41** | KL990 Komposition Brown | 0.26 |
| 26. Rule Industries, Inc. | 7995-43** | KL990 Super Epoxycop Red | 1.11 |
| 27. Rule Industries, Inc. | 7995-46** | 574 Super Sea Jacket | 0.37 |
| 28. Rule Industries, Inc. | 7995-47** | KL990 Super Epoxycop Blue | 0.44 |

* TBT Only

** TBT and Cuprous Oxide

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ULMER

NAME: CYNTHIA FLOR
 TITLE: PETERSBURG SHIPWRIGHTS'S
 ADDRESS: BOX 4
 CITY: PETERSBURG ZIP: 99033
 PHONE: 772-4500

BILL NO: HB 49
 SUBJECT: TBT-BASED MARINE ANTIPOULING PAINT
 MESSAGE: AS BUSINESS MANAGER FOR PETERSBURG SHIPWRIGHT'S INC., WE STRONGLY
 OPPOSE PASSAGE OF HB49. CURRENTLY NO MAINTENANCE PRODUCTS ARE AVAILABLE IN THE
 STATE FOR ALUMINIUM BOATS. STATE AND FEDERAL REGULATIONS DIFFER, SO BOAT OWNERS
 ARE BUYING THE PRODUCTS IN WASHINGTON STATE ILLEGALLY.

FOHID: 15123423
 DATE: 91/02/14
 TIME: 12:34:23
 LIOMAME: PETERSBURG LTD

COPIES: REPRESENTATIVES SENATOR

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| TAYLOR | JONES |
| C.DAVIS | |
| FINKELSTEIN | |
| PARNELL | |
| IVAN | |
| DONLEY | |
| BRUCKMAN | |
| ZAWACKI | |

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ULMER

NAME: LUCILLE CLARK
 TITLE:
 ADDRESS: 525 B STREET
 CITY: ANCHORAGE ZIP: 99501
 PHONE: 277-3733

BILL NO:
 SUBJECT: 75 DAY LEGISLATIVE SESSION
 MESSAGE: I SUPPORT GOVERNOR HICKEL'S PROPOSED 75 DAY LEGISLATIVE SESSION.
 WOULD BE TO THE TAXPAYER'S BENEFIT.

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 DATE: 91/02/14
 TIME: 13:06:11
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COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

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| BAKER | BARNES | ADAMS |
| BOYER | BROWN | COLLINS |
| BRUCKMAN | CARNEY | COTTEN |
| CHOCQUETTE | DAVIDSON | DUNCAN |
| B.DAVIS | C.DAVIS | ELIASON |
| DONLEY | ELLIS | FAHRENKAMP |
| FINKELSTEIN | FOSTER | FISCHER |
| GONZALES | GRUENEERG | FRANK |
| OPUSSENDORF | HANLEY | HALFORD |
| HUDSON | IVAN | HOFFMAN |
| JACKO | KOPONEN | JONES |
| KUBINA | LARSON | KERTTULA |
| LEMAN | LINCOLN | MENARD |
| MACKIE | MACLEAN | PEARCE |
| MARTIN | M.A.MILLER | POURCHOT |
| M.W.MILLER | MOYER | RODEY |
| NAVARRE | PARNELL | SHULTZ |
| G.PHILLIPS | R.PHILLIPS | STURGULEWSKI |
| SHARP | TAYLOR | UEHLING |
| ZAWACKI | | ZHAROFF |

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 μg TBT (includes tributyltin and triphenyltin)/ cm^2 or an average daily release rate (average over weeks 3 through 5) of 4.0 μg TBT/ 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 μg / 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/EPA
Testing
method

MEMORANDUM

STATE OF ALASKA


DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Health

TO: Kate Tesar
Legislative Assistant

DATE: March 19, 1990

PHONE: 465-2609

FROM: Douglas Donegan 
Director

SUBJECT: TBT Law

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WASHINGTON, DC 20460

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TOXIC SUBSTANCES

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| 19. Pro-Line Paint | 40238-9** | Antifouling Paint 1077 | 3.65 |
| 20. Rule Industries, Inc. | 7995-32** | KL990 Komposition Blue | 0.27 |
| 21. Rule Industries, Inc. | 7995-35** | U.S.M.C. | 0.41 |
| 22. Rule Industries, Inc. | 7995-36** | KL990 Graph-Cop | 0.39 |
| 23. Rule Industries, Inc. | 7995-38** | KL990 Graph-Cop | 1.77 |
| 24. Rule Industries, Inc. | 7995-39** | KL990 Graph-Cote | 0.88 |
| 25. Rule Industries, Inc. | 7995-41** | KL990 Komposition Brown | 0.26 |
| 26. Rule Industries, Inc. | 7995-43** | KL990 Super Epoxycop Red | 1.11 |
| 27. Rule Industries, Inc. | 7995-46** | 574 Super Sea Jacket | 0.37 |
| 28. Rule Industries, Inc. | 7995-47** | KL990 Super Epoxycop Blue | 0.44 |

* TBT Only

** TBT and Cuprous Oxide

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ULMER

NAME: CYNTHIA FLOR
 TITLE: PETERSBURG SHIPWRIGHTS'S
 ADDRESS: BOX 4
 CITY: PETERSBURG ZIP: 99833
 PHONE: 772-4500
 BILL NO: HB 49

SUBJECT: TBT-BASED MARINE ANTIFOULING PAINT
 MESSAGE: AS BUSINESS MANAGER FOR PETERSBURG SHIPWRIGHT'S INC., WE STRONGLY
 OPPOSE PASSAGE OF HB49. CURRENTLY NO MAINTENANCE PRODUCTS ARE AVAILABLE IN THE
 STATE FOR ALUMINIUM BOATS. STATE AND FEDERAL REGULATIONS DIFFER, SO BOAT OWNERS
 ARE BUYING THE PRODUCTS IN WASHINGTON STATE ILLEGALLY.

POMID: 15123423
 DATE: 91/02/14
 TIME: 12:34:23
 LIO: NAME: PETERSBURG LIO

COPIES: REPRESENTATIVES SENATOR

TAYLOR JONES
 C.DAVIS
 FINKELSTEIN
 PARNELL
 IVAN
 DONLEY
 BRUCKMAN
 ZAWACKI

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE ULMER

NAME: LUCILLE CLARK
 TITLE:
 ADDRESS: 525 B STREET
 CITY: ANCHORAGE ZIP: 99501
 PHONE: 277-3733
 BILL NO:

SUBJECT: 75 DAY LEGISLATIVE SESSION
 MESSAGE: I SUPPORT GOVERNOR HICKEL'S PROPOSED 75 DAY LEGISLATIVE SESSION.
 WOULD BE TO THE TAXPAYER'S BENEFIT.

POMID: 03130611
 DATE: 91/02/14
 TIME: 13:06:11
 LIO: NAME: ANCHORAGE LIO

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

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|-------------|------------|--------------|
| BAKER | BARNES | ADAMS |
| BOYER | BROWN | COLLINS |
| BRUCKMAN | CARNEY | COTTEN |
| CHOCQUETTE | DAVIDSON | DUNCAN |
| B.DAVIS | C.DAVIS | ELIASON |
| DONLEY | ELLIS | FAHRENKAMP |
| FINKELSTEIN | FOSTER | FISCHER |
| GONZALES | GRUENBERG | FRANK |
| GRUSSENDORF | HANLEY | HALFORD |
| HUDSON | IVAN | HOFFMAN |
| JACKO | KOPONEN | JONES |
| KUBINA | LARSON | KERTTULA |
| LEMAN | LINCOLN | MENARD |
| MACKIE | MACLEAN | PEARCE |
| MARTIN | M.A.MILLER | POURCHOT |
| H.W.MILLER | MOYER | RODEY |
| NAVARRE | PARNELL | SHULTZ |
| G.PHILLIPS | R.PHILLIPS | STURGULEWSKI |
| SHARP | TAYLOR | UEHLING |
| ZAWACKI | | ZHAROFF |

Petersburg Shipwrights, Inc.

Drydocking • Construction • Repair

1000 Nordic Drive • Box 378
Petersburg, Alaska 99833
(907) 772-3596

February 28, 1991

To all Legislators:

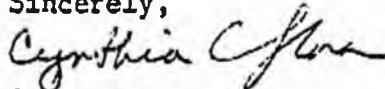
As a service industry concerned with the maintenance of marine vessels, we are strongly in favor of passage of HB49. Our customers with aluminum vessels have had no form of antifouling protection for their boats since Alaska passed their bill restricting the use of TBT. The growth that results from lack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



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:

AOO

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,

Steven A. Torok, Chief
State Operations Section

ULMLTR.GCB

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1974).

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P.2d 3 (1974).

Whatever may be the outer boundaries of conduct prohibited by this section as defined by AS 46.03.900(19), it is beyond dispute that the emptying of a lagoon of raw sewage into a stream running through residential areas comes within the definition of the term "pollution." *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

Definitional language of AS 46.03.900(19) incorporated in this section. — See *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

Foreseeability requirement imposed. — By use of the word "potentially" in AS 46.03.900(19) in prohibiting potentially harmful alterations of water, this chapter prohibits acts which a reasonable person would foresee as creating a substantial risk of making water actually injurious to the statutorily protected interests. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

In "potentially" cases, the state must hereafter prove that the threatened injury was foreseeable to a reasonable man in the position of the defendant at the time of the act or omission. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

The foreseeability requirement is no more than a narrowing construction. The supreme court imposes it only to give this chapter definite enough standards to survive on its face and in future cases. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

Effect of foreseeability requirement. — A foreseeability requirement assures

that fair notice is given to the defendant that his conduct is within the ambit of the statute. Such an element added to the definition of the offense, also criminalizes only that conduct which is serious enough to warrant enforcement and conviction, thus discouraging discriminatory enforcement. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

Application of foreseeability requirement is prospective. — The supreme court could not find plain error in the district court's failure to anticipate and apply to defendant the narrowing construction of AS 46.03.900(19) and this section which it ordered for future cases. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

This section makes pollution a crime without mention of any administrative order. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

This section and AS 46.03.760 contemplate direct prosecution of pollution violations. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

The authorization for direct criminal prosecution is particularly clear since it constitutes an amendment of former law. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

The department was not required to exhaust the compliance-order procedure before instituting prosecution for pollution. *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

Former statutes created no crime of pollution. — See *Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974).*

Sec. 46.03.715. Sale and use of TBT-based antifouling paint.

(a) Except as otherwise provided in this section, a person may not sell or use TBT-based marine antifouling paint or coating in the state, nor may a person sell, rent, or lease in the state, or import into the state, or use in state water, a vessel, fishing gear, or other item intended to be partially or completely submerged in water, if the vessel, gear, or item has been painted or treated with TBT-based marine antifouling paint or coating.

(b) TBT-based marine antifouling paint or coating need not be removed from fishing gear, or from a vessel or other item that was painted or treated before December 1, 1987, but the vessel, gear, or item may not be repainted or retreated with TBT-based marine antifouling paint or coating. Fish culture or capture nets treated with TBT-based marine antifouling coating before December 1, 1987, may not be used in state water on or after December 1, 1992.

(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)

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FISCAL NOTE

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

BILL NO. HB49

Revision Date: _____ Department Affected: Environmental Conservation
 Title: Amending the definition of slow-leaching TBT-based marine antifouling paint BRU: Environmental Health
 Component: Palmer Laboratory
 Sponsor: Ulmer, Koponen
 Requestor: _____ COMPONENT SERIAL NO.

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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- |
| REVENUE | -0- | -0- | -0- | -0- | -0- | -0- |

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 *DD* Phone: 465-2696
 Division: Division of Environmental Health Date: Jan. 28, 1991
 Approved by Commissioner: *Menderson-Snell, A. John Smith*
 Agency: Department of Environmental Conservation Date: _____

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

MEMORANDUM

April 25, 1991

TO: Senator Lloyd Jones, Chair
Senate Resources 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



Recycled Paper

Alaska State Legislature

1991



REPRESENTATIVE FRAN ULMER

FOR IMMEDIATE RELEASE

March 25, 1991
Contact: Barnaby Dow
465-4947

MARINE PAINT BILL PASSES HOUSE

(JUNEAU) - Boat owners would find more types of marine paint on store shelves under a bill passed by the House of Representatives on Monday. The vote was 40 to 0. HB 49, sponsored by Juneau Representative Fran Ulmer, changes state testing standards restricting the uses of TBT-based paints in order to conform with tough new federal standards.

TBT is an ingredient widely used in marine paints to prevent the growth of barnacles and algae on boat hulls. It is used widely on aluminum hulled craft. TBT 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.

However, the testing standard for TBT which "trips" the ban on its sale is just one microgram per centimeter 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 cannot be sold in Alaska. The new bill would solve the problem by changing the level to match the federal standard.

(OVER)

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)/ cm^2 or an average daily release rate (average over weeks 3 through 5) of $4.0 \mu\text{g TBT}/\text{cm}^2/\text{day}$. 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 ($4 \mu\text{g}/\text{cm}^2/\text{day}$) 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

27/EPA
Testing
method