

HB

128

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 128 (RES) am

Revision Date: _____
 Title: "An Act relating to the disposal of waste, giving the Alaska Oil and Gas..."
 Sponsor: Representative Williams
 Requestor: _____

Department Affected: Administration
 BRU: Alaska Oil and Gas Conservation Commission
 Component: Alaska Oil and Gas Conservation Commission
 COMPONENT SERIAL NO. 2010

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Economic Impact: Bill consolidates management of annular disposal under the Alaska Oil and Gas Conservation Commission (AOGCC). Currently, both AOGCC and the Department of Environmental Conservation have oversight of annular disposal. Bill will streamline permitting and reporting requirements under one agency.

Prepared by: David W. Johnston, Chairman, AOGCC
 Division: Alaska Oil and Gas Conservation Commission

Phone: (907) 279-1433
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 2/16/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSSSHB 128(RES) am

Revision Date: 3/21/95 Dept. Affected: Fish and Game
 Title: Waste disposal permit exemption BRU: Habitat and Restoration
 Component: Habitat
 Sponsor: Representative Williams
 Requester: Senate Resources COMPONENT SERIAL NO. 488

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Geron Bruce Phone: 485-6143
 Division: Commissioner's Office Date: 3/21/95
 Approved by Commissioner: [Signature] Date: 3-21-95
 Agency: Fish and Game

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FISCAL NOTE

No. 1

Bill V ion: CS SSHB 128(RES)

(H) Publish Date: 3/3/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: 3/1/95 Dept. Affected: Fish and Game
 Title: Waste disposal permit exemption BRU: Habitat and Restoration
 Component: Habitat
 Sponsor: Rep. Williams
 Requester: House Resources COMPONENT SERIAL NO. 486

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary)

This committee substitute better defines the scope of the exemptions. Most of the listed categories are covered by existing Corps of Engineers general or nationwide permits; others, such as roadside ditching could be addressed through an individual Corps of Engineers permit, if wetlands are involved. Not much is gained by keeping an essentially redundant ADEC permitting requirement. This committee substitute addresses the department's concerns.

Prepared by: Geran Bruce Phone: 465-6143
 Division: Commissioner's Office Date: 3/1/95
 Approved by Commissioner: Frankie De Date: 3.1.95
 Agency: _____

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COMMITTEE COPY

Rev 10/94; 03/95; 06/95

Mr. Kyle Brown
Discovery Drilling Inc.
Box 111165
Anchorage, Alaska 99511-1165

EB 2.3.1995

February 20, 1995

Representative Williams
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Williams,

I'm writing today to offer total support of pending HB 128. I feel that some background information is critical to understanding the value of this legislation.

Alaska Statute 46.03.100. states, in so many words, that all solid or liquid discharges to the lands or waters of the state shall procure a permit. This requirement has gone largely unenforced since its inception. Recently, pressure from a certain special interest group, has been brought to bear on A.D.E.C. to enforce this statute on a specific industry. This pressure brought into existence a proposed drilling wastewater permit (Permit No. 9540-DB001). The problems with this proposed permit are many;

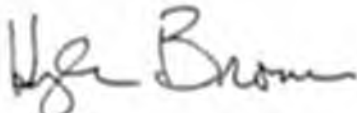
- The proposed permit targets a specific industry and ignores all others.
- The proposed permit is not based on any specific hazard. It is in response to a political need.
- The proposed permit shows a blatant lack of any cost benefit analysis.
- The proposed permit is far more complicated, expensive and burdensome than what should be required for operations with, as the permit states, "minimal environmental impact and no perceived risk to human health".
- The permit is unnecessary in light of the fact that there are already laws in effect that prohibit any pollution of state lands or waters that are enforced.
- A.D.E.C. representatives have verbally stated that the only affected parties will be the targeted group and that other drilling concerns (water well drillers etc.) need not be concerned about enforcement.
- The statute is far to broad. All discharges are included without regard to their size, source or harmless nature.

As a drilling contractor, we would be adversely affected by this permit, however our clients (engineering firms) and their clients would suffer the most from the unnecessary time delays, paperwork, monitoring and lab costs required by this permit, as they are the ones who would ultimately have to deal with these issues.

The proposed permit is clearly not representative of responsible government policy. I feel that HB 128 goes a long way to addressing the overly broad nature of the statute and concurrently deals with A.D.E.C.'s need to respond to the special interest group in question.

Thank you very much for your time in this matter. Please contact me at your convenience if you have any questions or if I can help in some other way to help with this issue.

Very Truly Yours,



Kyle Brown
Discovery Drilling Inc.

February 27, 1995

To: Representative Bill Williams

From: Anita Williams

Anita Williams

Subject: Support for HB-128

I want to thank you for taking the steps to introduce HB-128 concerning drilling wastes. Government has become so encumbered with useless rules and regulations that it is difficult to concentrate on the important issues and problems. By sponsoring this bill you are making an important statement that government need to focus its energies on solving real problems, not making rules and regulations just because it can.

Thank you for your efforts. Keep up the good work.

Post-It® brand fax transmittal form 7571		1 of pages 1
To: <i>Bill Williams</i>	From: <i>Anita Williams</i>	
Co: <i>Star House</i>	Ca:	
Dept:	Phone: <i>907-562-0709</i>	
Fax: <i>907-465-3793</i>	Fax: <i>907-563-7559</i>	

February 27, 1995

COOK INLET REGION, INC.

Honorable William K. Williams
Co-Chairman, House Resources Committee
State Capitol
Juneau, AK 99801-1182

VIA FAXCOM 907-465-3793

Dear Representative Williams:

I am writing to express my support for HB 128 which provides a statutory alternative to the General Permit (GP) for drilling wastes proposed by the Alaska Department of Environmental Conservation (ADEC). ADEC's proposed GP, which would selectively apply to the drilling industry, derives from the permitting requirements of AS 46.03.100 which requires a permit for any disposal of solid or liquid waste into the waters or onto the lands of the state. The proposed GP would create additional regulatory compliance burdens for drilling programs where no environmental problem has been shown to exist.

HB 128 adopts the reasonable approach of providing a general exemption for discharges which are incidental to drilling, trenching and construction activities and not directly discharged into waters of the state. It would remove the need for yet another permit that would do little, if anything, to protect the state's environment. By streamlining the permitting process, it would promote responsible resource development and would help ease the work load on state agencies charged with the administration of environmental permitting. HB 128 makes good sense for industry and government alike and I strongly support its passage.

Sincerely,

COOK INLET REGION, INC.



Thomas C. Crafford
Manager, Minerals and Coal

cc G. Booth
C. Marris
L. Kimball



February 17, 1995

EB 27 1995

Representative Bill Williams
Room 128
State Capitol
Juneau, AK 99811-1182

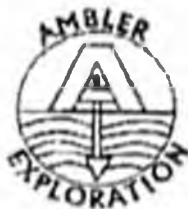
EB 27 1995

Dear Representative Williams:

This letter is written to express our support of your proposed HB 128 establishing an exemption to the requirement of obtaining a waste disposal permit for certain activities, etc. The proposed draft regulations by the DEC that is obviously directed at exploration drilling; it is onerous, ridiculous, and would be nothing more than one more "road block" for miners and mining companies. Your proposed bill would fix this dilemma. I applaud your actions.

Yours truly,

Richard A. Hughes, P. E.
Project Manager



AMBLER EXPLORATION INC.
CONTRACT DRILLING & EXPLORATION SERVICES

1310 W. INTERNATIONAL AIRPORT ROAD, UNIT D
ANCHORAGE, ALASKA 99518

TEL (907) 662-8263
FAX (907) 662-8264

February 27, 1995

William K. "Bill" Williams
House District 1
State Of Alaska
P.O. Box 6374
Ketchikan, Alaska 99901

Re: HB-128 (Drilling Wastes)

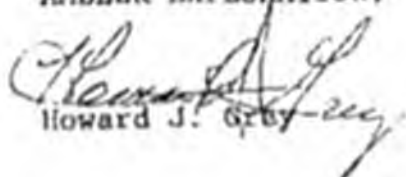
This letter is to acknowledge our support for HB-128 which resolves the issue of discharge from drilling operations. I understand this was initially raised to penalize or target a single operation. Your perseverance in helping to legitimize the permitting and regulatory process is appreciated.

Industry's faith in Alaska is at a low ebb with investment dollars continuing to go overseas where a more temperate investment climate prevails. We need to send a message that Alaska is not adverse to development of our natural resources and that we need to foster such development if we are to continue to provide employment opportunities, social programs and an acceptable lifestyle.

Again, thank you for your assistance.

Sincerely,

AMBLER EXPLORATION, INC.


Howard J. Gray

Howard J. Grey
1927 West 13th Avenue
Anchorage AK 99501
(907) 272-2617

February 27, 1995

Via Fax 907-465-3793
1 Page to Transmit

William K. "Bill" Williams
House District 1
State of Alaska
PO Box 6374
Ketchikan AK 99901

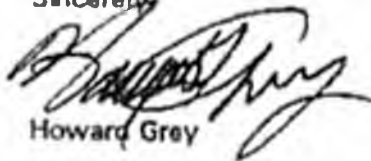
RE: HB-128 (Drilling Wastes)

Dear Representative Williams:

Thank you for introducing HB-128. This legislation will correct any misinterpretation with regard to permitting of drilling operations, for what amount to low volume discharges.

I appreciate your assistance in watching over the regulatory process.

Sincerely,



Howard Grey

HG:las

NANA/DYNATEC

1001 C. OLSON BOULEVARD, ANCHORAGE, ALASKA 99501
TELEPHONE 467-1960 4100



February 28, 1993

Honorable William K. Williams
Co-Chairman House Resources Committee
State Capitol
Juneau, AK 99801

Dear Rep. Williams:

This letter is to express support from both NANA and its subsidiary NANA/Dynatec for HB 129. This is a very viable alternative to the proposed general permit for incidental wastes from drilling programs. The proposed general permit would create additional regulations for programs in which no environmental problems have been shown to exist. The ADEC has a lot of real problems with which to deal and should be allowed to channel their efforts into things such as safe water, sewage disposal and land fills in communities and villages.

Thank you for your time and effort in sponsoring HB-129. It is a very reasonable and responsible approach to solve the present dilemma.

Sincerely,

Anita Williams
Senior Geologist

cc J. Rense
J. Schaffner

Postnet barcode for automated mail sorting	
To: William K. Williams	From: Anita Williams
Co: State House	By: NANA
Date: 02/28/93	Phone: 467-1960
Fax: 467-1960	Fax: 467-1960



Calista Corporation

601 W 5th Avenue Suite 200 • Anchorage AK 99501-2225 • (907) 279-5516 • FACSIMILE (907) 272-5060

MAR 02 1995

February 28th, 1995

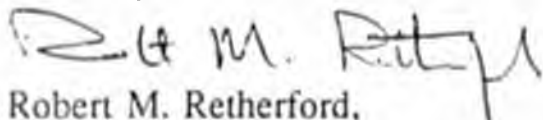
Representative Bill Williams
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK, 99801-1182

Representative Williams,

I support House Bill No. 128, specifically the language which exempts mineral trenching and drilling from additional regulation. Certain language proposed as part of the Alaska DEC permit process would have provided unnecessarily burdensome controls over activities such as the discharge of minor flows of diamond-drill circulation water. Drill sizes and water flows are very small compared to oil and gas drilling. Mineral-drill discharge consists of water, rock dust, and heavily diluted drill additives which are environmentally benign.

HB 128 adopts the reasonable approach of providing a general exemption for discharges which are incidental to drilling, trenching and construction activities and not directly discharged into waters of the state. It would remove the need for yet another permit that would do little, if anything, to protect the state's environment. By streamlining the permitting process, it would promote responsible resource development and would help ease the work load on state agencies charged with the administration of environmental permitting. HB 128 makes good sense for industry and government alike and I support its passage.

Sincerely,



Robert M. Retherford,
Senior Exploration Geologist



ASSOCIATED GENERAL CONTRACTORS of ALASKA

41-1-2014 P. 1
1-907-262-2444 • FAX 1-907-262-2445
1555 W. 4th Ave. Ste. 100 • Anchorage, Alaska 99501

MAR 06 1995

2-28-95

Fax 1-907-465-3793

To
Representative Bill Williams
State House of Representatives
Juneau

Subject: HB 128

"An Act establishing an exemption to the requirement of obtaining a waste disposal permit for certain activities that yield water and waste material discharges ancillary to those activities".

Dear Representative Williams:

This is to inform you that we are in full support of this bill in its present form. This bill will clarify those activities and provides a realistic base.

Thank you for action.

Sincerely,

Heinrich Springer
Exec. Director

Alaska Forest Association, Inc.



111 STEEDMAN SUITE 200
KETCHIKAN, ALASKA 99901-8688
Phone 907-225-8114
FAX 907-226-5920

POSITION PAPER ALASKA FOREST ASSOCIATION, INC.

COMMITTEE SUBSTITUTE FOR SPONSOR SUBSTITUTE FOR HOUSE BILL - 128
TITLE: "AN ACT RELATING TO DISPOSAL OF WASTES..."

The Alaska Forest Association, Inc. a statewide forest products trade and development association supports passage of Representative William's CS SSHB-128 for the following reasons:

- A. This bill tightens a regulation which was never intended to apply to miscellaneous cuttings or de minimus activities relating to a main permit.
- B. The fiscal gap is real. It's time to make it easier for the private sector to operate in Alaska.
- C. The act facilitates commerce within the state's core resource development industries.
- D. The act assists present and future forest products manufacturing firms to operate in Alaska - producing jobs and economic activity of value to the state.

For the above reasons we urge your passage of CS SSHB-128.



Denali Drilling

March 7, 1995

State of Alaska
Alaska Legislative Branch
Juneau, Alaska

Attn: Rep. Bill Williams

Ref: HB 128

Dear Rep. Williams:

Denali Drilling, Inc. is in total support of your sponsoring House Bill #128. This addendum to AS 46.03.100 will hopefully eliminate the ADEC's proposal for requiring a general permit for discharging non-contaminated drilling waste water by drilling contractors such as ourselves or the client's for whom we work.

If we can be of any help on this issue, please do not hesitate to contact our office.

Sincerely,
DENALI DRILLING, INC.

Ron Pichler
Vice President

RP:kh

February 24, 1995

Representative William K. Williams
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

MAR 01 1995

Re: CSSSHB-128

Dear Representative Williams:

I wish to go on record favoring CSSSHB-128. It benefits the State by clarifying the line of authority between the Alaska Oil & Gas Commission and the Department of Environmental Conservation. The apparent overlap between the two agencies has in the past resulted in some disagreement.

More importantly, it puts into law a logical and usual practice concerning the need for a permit for certain solid and liquid waste discharges.

Where such discharges are benign there should be no need for a permit. Unfortunately, the current law does not provide for an exception, and some individual State employees have required a permit. This bill, if enacted, should not only clarify the requirement, but would help advertise Alaska's invitation to explore for minerals and drill for water. Such industries would provide not only high paying jobs, but income to the State during the time oil revenues are falling.

Again, I favor passage of CSSSHB-128, and thank you for introducing the original bill.

Sincerely,



George R. Schmidt
2356 Sonstrom Drive
Anchorage, Ak 99517

Phone: 1-907-243-0644



ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX (907) 279-7997 Telephone (907) 276-0347

EB 27 1995

February 24, 1995

Honorable William Williams
Co-Chairman
House Natural Resources Committee
State Capitol
Juneau, AK 99801-1182

RE: CSSH-128(RES), Drilling Wastes

Dear Representative Williams,

On behalf of the Alaska Miners Association I wish to go on record in support of House Bill 128 dealing with discharge of drilling and other incidental wastes. This issue is very important for exploration, construction, landscaping, and any other commercial activity that results in disturbance of the ground.

This bill will correct a technicality in the existing statute and maintain the status quo regarding minimal discharges. Without the changes proposed in this bill, a special additional permit is required for any commercial activity that causes a surface disturbance. This would include water well drilling, mineral exploration drilling, construction foundations, landscaping, ditching, trenching and similar activities.

This is a prime example of an area where requirements exist that add to the permitting burdens for industry without providing any benefit. This is also the type of item that Governor Knowles has indicated he wants to see corrected. There is no evidence that there is a problem with these discharges. The status quo has worked for years without harm to the environment and changing the statute as proposed in this bill will keep the current practice in place.

Thank you for sponsoring this bill and we urge its rapid passage so the affected activities will not need to obtain a permit for the immediate future exploration and construction season.

Sincerely,

Steven C. Borell, P.E.
Executive Director

cc: Governor Tony Knowles

PAUL S. GLAVINOVICH
MINERALS CONSULTANT

PO Box 112016
Anchorage, Alaska 99511

Telephone
(907) 345-3646

February 24, 1995

Rep. Bill Williams, Chairman
House Resources Committee
Alaska State Legislature
Juneau, Alaska

Re: HB 128

Dear Representative Williams:

HB 128 will amend AS 46.03.100 to exempt certain activities associated with mineral exploration, construction, water well drilling and etc. from the requirement of obtaining a waste disposal permit. The activities so exempted represent no threat to environmental quality and had been ignored by DEC until 1994 when an environmental activist demanded this statute be enforced on all activities irrespective of environmental impact. DEC Southeastern Region's immediate and arbitrary response was extremely disruptive and had the potential to seriously delay, defer or cancel ongoing exploration activities.

I cannot believe that AS 46.03.100 was intended to include the minimal discharges associated with those activities addressed in your legislation. HB 128 corrects this oversight and provides very welcome regulatory relief with the attendant reduction in associated costs.

I strongly recommend the Committee's support for HB 128.

Sincerely,



Paul S. Glavinovich



AMERICAN ARCTIC CO.

P.O. BOX 61618 • FAIRBANKS, ALASKA • 99706 • PHONE (907) 451-4350 • FAX (907) 451-4356

FEB 16 1995

February 7, 1995

Representative Bill Williams
Co-Chairman, House Resources Committee

Dear Mr. Williams,

I whole heartedly support H.B. 128. I am a drilling contractor in Fairbanks, Alaska and understand the negative implications of selective enforcement of A.S. 46.03 100. The matter of permitting drilling waste water discharge is of great concern to me and others in the drilling fraternity in Alaska. H.B. 128 will help limit a statute written to broadly.

Sincerely,

Rocky MacDonald



ALASKA EARTH SCIENCES

February 27, 1995

Representative Bill Williams
Alaska State Legislature
State Capitol (MS 3100)
Juneau AK 99801-1182

Representative Williams,

I would like to express my support for House Bill No. 128, specifically the language which exempts mineral trenching and drilling from additional regulation. Certain language proposed as part of the Alaska DEC permit process would have provided unnecessarily burdensome controls over activities such as the discharge of minor flows of diamond-drill drilling water. Drill sizes and water flows are very small compared to oil and gas drilling, and in general mineral-drill discharge consists of water, rock dust, and heavily diluted drill additives which are environmentally benign.

As an active exploration geologist and a director of the Anchorage Branch of the Alaska Miners association, I will actively support regulations and procedures which will prevent, minimize, or reclaim unnecessary damage to the environment by mineral exploration or mining activities. I do, however, strongly object to overly complicated or burdensome regulation which serves no meaningful environmental purpose. In my opinion House Bill 128 forestalls potential regulation of this type.

Sincerely,

Toni K. Hinderman
Consulting Exploration Geologist



ON-LINE EXPLORATION SERVICES, INC.

11976 WILDERNESS DR. ANCHORAGE, AK 99516-2238
(907) 345-4815 (907) 345-1987 Fax

February 26, 1995

Rep. Bill Williams, Chairman
House Resources Committee
Alaska State Legislature
Juneau, Alaska 99801-1182

RE: IIB 128

Dear Representative Williams:

Thank you for introducing HB 128. IIB 128 will amend AS 46.03.100 to exempt certain activities associated with mineral exploration, well drilling or transportation from the requirements of obtaining a waste disposal permit. The activities listed in the bill create only minimal disturbances and are not a significant impact on the environment.

The State needs to encourage resource development, not require a permit for each stone overturned. Swift passage of the bill will affirm the State's commitment to encourage responsible resource development.

I wish to thank you and the Resource Committee for your efforts to ease unnecessary regulatory burdens and encourage the Committee's strong support for HB 128.

Sincerely,

Kevin P. Adler, P.E.
Vice President

★ 1975 *Serving Alaska for 20 years* 1995 ★

Resource Development Council

for Alaska, Inc.

121 West Fireweed Lane, Suite 250, Anchorage, Alaska 99503-2035
Phone: 907/276-8700 Fax 276-3887

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Decky L. Gay

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Governor Tony Knowles

RDC Comments on HB 128 February 27, 1995

The Resource Development Council supports HB 128, "An Act relating to the disposal of wastes: giving the Alaska Oil and Gas Conservation Commission authority to regulate disposal in the annular space of an oil or gas well of drilling mud, cuttings, and nonhazardous drilling operation wastes, and exempting the disposal of those wastes from the requirement of a waste disposal permit issued by the Department of Environmental Conservation; and establishing an exemption from the requirement of obtaining a waste disposal permit from the Department of Environmental Conservation for certain activities that yield solid and liquid waste material discharges and cooling water discharges."

The Resource Development Council is a long-time proponent of providing a regulatory regime within the State of Alaska that ensures environmental protection while at the same time providing regulations that are realistic and necessary.

RDC supports HB 128, which would provide a general exemption for discharges which are incidental to activities such as mineral drilling and trenching, well drilling, or road and facility construction.

RDC is a statewide, membership-funded, non-profit, pro-development organization working on behalf of Alaska's basic industries, including oil and gas, mining, timber, fishing and tourism. RDC's membership includes the aforementioned industries, as well as the sectors which support those industries, such as construction, labor and other technical service providers, individuals, Native corporations, communities and a wide variety of Alaska interests.

Providing a general exemption for incidental discharges, not a point source, allows for environmental protection while reducing the regulatory burden on industries already complying with multiple regulatory and environmental permits and standards.

RDC comments on HB 128

February 24, 1995

Under existing law there are no provisions for an exemption regardless of how minimal or benign the deposit may be. Incidental discharge regulations may be administered inconsistently given changes in department personnel and political agendas. Providing the exemption in statute restores the status quo which has worked for years without harm to the environment and ensures that this exemption will not be at risk in the future.

It's important for the State to provide regulatory incentives to resource development activities. The industries which will be affected by this discharge exemption are vital to the economy of Alaska.

RDC believes HB 128 sends a refreshing message to Alaska's resource development community that the State of Alaska is cognizant of the burdensome nature and potential economic hardships environmental regulations can impose upon resource projects and to the private development sector in general.

RDC commends Representative Williams for a bill that makes good environmental, regulatory and economic sense. RDC hopes this bill is passed expeditiously by the Nineteenth Alaska State Legislature.

Thank you for the opportunity to submit comments on HB 128.

TESTIMONY OF THE
ALASKA OIL AND GAS ASSOCIATION
ON
CSSSHB 128 (Res) am, WASTE DISPOSAL PERMIT EXEMPTION
BEFORE THE
SENATE RESOURCES COMMITTEE
MARCH 22, 1995

Good afternoon. My name is Chris Phillips. I am Manager of Operations Engineering for Prudhoe Bay with BP Exploration (Alaska), Inc. I am here today representing the Alaska Oil and Gas Association as Chairman of the AOGA AOGCC Task Force.

The Alaska Oil and Gas Association (AOGA) is a trade association whose 18 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

AOGA supports the intent behind Sections 1 and 2 of the bill. Those sections relate to the regulation of the disposal of nonhazardous drilling operation wastes through the annulus of wells associated with the exploration and production of oil or gas. They would effectively transfer jurisdiction from the Alaska Department of Environmental Conservation to the Alaska Oil and Gas Conservation Commission. This adjustment of regulatory authority makes eminent sense. The Alaska Oil and Gas Conservation Commission is the regulatory agency with the greatest knowledge and experience with regard to regulating oil and gas operations in general, and with well-related disposal operations in particular. The Commission already regulates these

Alaska Oil and Gas Association
Testimony on CSSSHB 128 (Res) am
March 22, 1995
Page 2

wells for conservation and correlative rights purposes, has authority over underground injection operations, and has an established arrangement for working with the EPA. Thus, transfer of the jurisdiction will promote regulatory efficiency and effectiveness.

Section 3 of the bill creates certain exemptions from the permitting requirements of AS 46.03.100 (a). Although this section is not focussed on the oil and gas industry, it is relevant to our industry because the proposed new subparagraph AS 46.03.100(f)(1)(B) would create an exemption for certain discharges that arise from facility and road construction and maintenance, which are activities associated with oil and gas development. Although AOGA supports this exemption, its main concern is that, as stated, the statute could be interpreted as creating new permitting requirements. Thus, AOGA recommends that the Senate make two clarifying amendments to Section 3.

First, we recommend deletion of the lead-in phrase to the proposed new section (f), which reads "Except as to discharges arising out of exploration and development drilling for oil and gas resources..." This language is unnecessary because the exempted activities are specifically stated in the bill. In the absence of any clear import, there is a danger that the language could be construed as creating a new permitting requirement.

Alaska Oil and Gas Association
Testimony on CSSSHB 128 (Res) am
March 22, 1995
Page 3

Second, we recommend that language be added to make it explicit that the proviso in the proposed new subparagraph (f)(1)(B), which states that "the exemption provided under this subparagraph does not relieve a person from obtaining a permit under (a) of this section," is not interpreted as expanding the scope of permitting requirements under AS 46.03.100(a). This clarification can be simply effected by adding language such as the following on page 3, line 15 and 16 - "the exemption provided under this subparagraph does not relieve a person from obtaining a permit otherwise required under (a) of this section."

In combination, these two amendments would make clear that Section 3 of the bill creates exemptions only, and no new permitting requirements.

Thank you for the opportunity to comment.

Page 3 of 3

Alaska Oil & Gas Association

121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503



907/272-1481



907/279-8114

Judy Brady, Executive Director - Marilyn Crockett, Assistant Executive Director - Ardie Gray, Public Affairs Manager - Thomas Rockhill, Administrator - Tamara Sheffield, Support Secretary

Date: 3/21 Total # of pages including cover sheet: 4
To: Annette Kreitzer
Company: _____
From: Ardie

MESSAGE: _____

If problems occur during transmission call 907/272-1481

(31) "oil and grease" means oil and grease as defined by the procedure used under 18 AAC 70.020(c);

(32) "pH" means the negative logarithm of the hydrogen-ion concentration, expressed as moles per liter: $pH = -\log_{10} (H^+)$;

(33) "point source" means a discernible, confined, and discrete conveyance, including a pipe, ditch, channel, tunnel, conduit, well, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged;

(34) "pollution" means the contamination or altering of state land or water in a manner that creates a nuisance or makes land or water unclean, noxious, impure, or unfit so that it is actually or potentially harmful, detrimental, or injurious to

(A) public health, safety, or welfare;

(B) domestic, commercial, industrial, or recreational use; or

(C) livestock, wildlife, or aquatic life;

(35) "residues" means floating solids, debris, sludge deposits, foam, scum, or any other material or substance remaining in a water body as a result of direct or nearby human activity;

(36) "secondary recreation" means recreation activities in which water use is incidental, accidental, or sensory; it includes fishing, boating, camping, hunting, hiking, and vacationing;

(37) "sediment" means solid material of organic or mineral origin that is transported by, suspended in, or deposited from water; it includes chemical and biochemical precipitates and organic material such as humus;

(38) "sheen" means an iridescent appearance on the water surface;

(39) "sodium adsorption ratio (SAR)" means the estimated degree to which sodium from a given water will be adsorbed in soil, as proposed by the U.S. Salinity Laboratory, U.S. Department of Agriculture, "Handbook 60"; it is expressed as the quotient of the sodium ion concentration and the square root of half the sum of the calcium and magnesium ion concentrations:

$$\frac{(Na^+)}{\sqrt{\frac{(Ca^{++}) + (Mg^{++})}{2}}}$$

(40) "spawning" means the process of producing, emitting, or depositing eggs, sperm, seed, germ, larvae, young, or juveniles, especially in large numbers, by aquatic life;

(41) "thermocline" means a layer of water between a warmer, surface zone and a colder, deep-water zone in a thermally stratified body of water, in which water temperature decreases rapidly with depth;

Alaska State Legislature

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Representative William K. Williams

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SPONSOR STATEMENT

CS SSHB 128 (RES)

The current language of AS 46.03.100 requires a permit for any disposal of solid or liquid waste into the waters or onto the land of the state. Under the existing law there is no provision for an exemption regardless of how minimal or benign the deposit may be.

Until recently, the Alaska Department of Environmental Conservation (ADEC) treated negligible discharges as if there were a minimal exemption in the statute. Presently, the department is in the process of considering a general permit that would apply to "mine drilling exploration, water well drilling and monitoring well drilling" (Proposed permit #9540-DB001). It is not apparent that the department is contemplating regulations that would apply to other industries which would be affected if the current law was followed to the letter.

CS SSHB 128(RES) would provide in statute a general exemption for discharges which are incidental to activities such as mineral drilling and trenching, well drilling, or road and facility construction when the discharge is not directly into the surface waters of the state. This would restore the status quo which has worked for years without harm to the environment.

CS SSHB 128(RES) also eliminates current dual jurisdiction over the disposal of oil field drilling wastes into the annular space of wells in the oil fields. Currently, both ADEC and the Alaska Oil & Gas Conservation Commission (AOGCC) regulate this activity. In 1992, the Interstate Oil & Gas Compact Commission recommended that the regulation of annular disposal be consolidated under the AOGCC. Sections 1 & 2 of CS SSHB 128(RES) would accomplish that goal.

CS SSHB 128(RES) is an important step in reaching the oft-repeated goal of minimizing unnecessary regulatory burdens on Alaska's resource development industries. I urge its speedy passage.

**CS SSHB 128(RES) am
Waste Disposal
Permit Exemption**

Sectional Analysis

Section 1 of the bill amends AS 31.05.030(e) to give authority to the Alaska Oil & Gas Conservation Commission to regulate annular pumping.

Section 2 of the bill amends AS 46.03.100(d) to exclude annular pumping from the permitting authority granted to the Department of Environmental Conservation by AS 46.03.100(a).

Section 3 of the bill adds a new subsection to AS 46.03.100 establishing an exemption from the requirement of obtaining a permit for the incidental discharge of solid and liquid waste materials and certain water discharges arising from mineral drilling, trenching, and ditching; landscaping; water well drilling, geophysical drilling and coal bed methane drilling; and certain construction activities within the state.

To qualify for the exemption, the discharge must be incidental to the activity and the activity must not produce a discharge from a point source directly into the surface waters of the state.

Under this bill, bilge pumping is exempt providing it conforms to current U.S. Coast Guard standards. Engine cooling water discharges are also exempted by the bill.

NOTES TO DECISIONS

Quoted in *State v. Anderson*, 749 P.2d
1342 (Alaska 1988).

Sec. 46.03.100. Waste disposal permit. (a) A person who conducts an operation that results in the disposal of solid or liquid waste material or heated process or cooling water into the waters or onto the land of the state shall procure a permit from the department before disposing of the waste material or water. The permit shall be obtained for direct disposal and for disposal into publicly operated sewerage systems.

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

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

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

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

(c) This section does not apply to a person discharging only domestic sewage into a sewerage system.

(d) This section does not apply to injection projects permitted under AS 31.05.030(h).

(e) A person who applies for a solid waste permit under this section shall demonstrate to the satisfaction of the commissioner that the applicant has reasonably considered all solid waste management options and that the permit would be consistent with the practices and priorities established under AS 46.06.021. (§ 3 ch 120 SLA 1971; am § 3 ch 220 SLA 1976; am § 9 ch 93 SLA 1981; am § 4 ch 91 SLA 1984; am § 3 ch 88 SLA 1990)

Revisor's notes. — Subsections (b) and (c) were formerly (c) and (b), respectively. Relettered in 1987.

Cross references. — For further requirements for persons submitting proof of financial ability under this section, see AS 46.03.833.

Effect of amendments. — The 1990 amendment added subsection (e).

Opinions of attorney general. — This section confers upon the Department of Environmental Conservation permit authority over dredge or fill activities, including residential subdivisions, within

wetlands, estuaries, and inland and coastal marshes periodically inundated by discernible bodies of fresh or salt water upland from the mean high tide line to the extent of the aquatic or salt water vegetation line. November 13, 1975 Op. Att'y Gen.

Dredge or fill activities in coastal and fresh water wetlands shoreward to the aquatic vegetation line do result in the disposal of solid waste material into the waters of the state within the meaning of this section and thus, to the extent that these activities are of a commercial or in-

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Facsimile Cover Sheet

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Date: 24/02/95

**Pages including this
cover page:** 8

Comments: Enclosed are the few pages from the Interstate Oil and Gas Compact Commission's report on Alaska's Oil and Gas Waste Management programs. The recommendation concerning annular disposal is on page 11, Recommendation I.9.

I bring a copy of the entire document with me. See you next week.

ALASKA STATE REVIEW

**IOGCC/EPA STATE REVIEW OF OIL AND GAS EXPLORATION
AND PRODUCTION WASTE MANAGEMENT REGULATORY PROGRAMS**



**A PROJECT OF THE
Interstate Oil and Gas Compact Commission**

DECEMBER 1992

INTRODUCTION

This report contains the findings and recommendations of a six-person team appointed by the Interstate Oil and Gas Compact Commission (IOGCC) to review components of the regulatory programs of the state of Alaska that pertain to the management of wastes derived from the exploration and production (E&P) of crude oil and natural gas. The review was coordinated by the IOGCC in cooperation with the United States Environmental Protection Agency (EPA) and other interest groups.

BASIS FOR THE REVIEW: The primary basis for the Alaska review is the EPA/IOCC Study of State Regulation of Oil and Gas Exploration and Production Waste, hereinafter, referred to as the "IOGCC Guidance" or "IOGCC Guidelines". The review team evaluated Alaska's E&P waste regulatory programs against the guidelines and criteria listed in the IOGCC Guidance. However, the review team also had some latitude to make inquiries, findings, and recommendations beyond the specific guidelines and criteria contained in the IOGCC Guidance. These outside comments are identified as such in the report. The Guidance deals only with E&P waste identified as exempt from Subtitle C of the Resource Conservation and Recovery Act (RCRA). Since the potential exists for non-exempt waste to be commingled with exempt waste at E&P sites, steps should be taken to prevent such mixing. This issue is not the subject of this report.

The ultimate purpose of the review was to identify strengths and recommend improvements for the state's E&P waste regulatory programs. Because it is not intended to be a detailed review of the effectiveness of Alaska's E&P waste program, the review did not include an evaluation of site-specific case studies or environmental data. The review (and the criteria upon which it is based) is more of an evaluation of whether the state has certain elements of an E&P waste regulatory program than it is a determination of the extent of which the Alaska program is protective of human health and the environment.

Ground rules for the Alaska review were established by an IOGCC steering committee comprised of state environmental and oil and gas regulatory officials, representatives of industry and environmental organizations, and officials of interested federal agencies. Members of the review team, official observers of the reviews, rules of participation, and guidelines for preparation of the draft and final reports were approved by the steering committee.

CONTENTS OF THE REVIEW: A questionnaire (see Appendix B), based primarily on criteria listed in the IOGCC Guidance, was developed by the steering committee and used as a focal point for the Alaska review. The questionnaire touched only briefly on E&P waste management issues that were not addressed in the administrative and technical criteria of the IOGCC Guidance. Those practices and issues excluded are:

- Technical requirements for injection wells regulated under the federal Safe Drinking Water Act (SDWA);
- Effluent limitations for discharges to surface waters regulated under federal Clean Water Act's National Pollutant Discharge Elimination System (NPDES) permits;
- Monitoring and regulation of naturally occurring radioactive materials (NORM) in oil field wastes; and
- Air emission from oil field wastes or waste management facilities.

Questions concerning injection wells and NPDES-permitted discharges were limited, both in the questionnaire and during the in-state review, to how the regulatory programs for those practices interface with other E&P waste management practices.

The review team focused its evaluation on Alaska's regulatory requirements for onsite disposal of drilling and production wastes and offsite treatment and disposal facilities. The review addressed management of those wastes in onsite pits, one-time land application, burial, roadspreading, commercial drilling mud pits, commercial soil farms, surface facilities at commercial disposal wells, solid waste landfills, and crude oil and tank bottom reclamation plants.

Statutory and administrative components of the Alaska programs, including staffing and funding levels and enforcement activities, were assessed against applicable criteria in the IOGCC Guidance. How Alaska's programs interface with federal programs applicable to E&P wastes was also reviewed.

REVIEW TEAM MEMBERSHIP: The review team chosen for the Alaska review included: Mr. William R. Bryson (review team chairman), State of Kansas, Corporation Commission; Mr. James E. Erb, Commonwealth of Pennsylvania, Department of Environmental Resources; Ms. Patti Saunders, Alaska Center for the Environment; Mr. Michael Stottner, State of California, Department of Conservation, Division of Oil & Gas; Mr. Bob Lipchak, ARCO-Alaska, Inc.; and Ms. Janie Nelson, State of Wyoming, Oil and Gas Conservation Commission. Observers included: Mr. Curt Eilo, EPA Region 10; Mr. Bill Hochholser, U.S. Department of Energy, Office of Fossil Energy; Mr. David Lowe, BP Exploration; and Mr. Jim Roderick, Public Awareness Committee for the Environment-Cook Inlet Vigil. Others present included Mr. Jerry R. Simmons, IOGCC staff; Ms. Bronda Craiger, IOGCC staff; Mr. Dennis Ruddy, U.S. Environmental Protection Agency, Office of Solid Waste; and Mr. M.G. "Marty" Mafford, IOGCC contractor.

WHERE AND HOW THE REVIEW WAS CONDUCTED: The Alaska review was conducted in Anchorage, Alaska at the Alaska Oil and Gas Conservation Commission (AOGCC) offices on July 13-17, 1992. Mr. David Johnston, Oil and Gas Conservation Commission Commissioner was responsible for AOGCC staff's responses to the questionnaire and review panel questions, and provided members of his staff as necessary during the review process. Mr. Glenn Miller, Alaska Department of Environmental Conservation (DEC) was responsible for DEC staff's responses to the questionnaire and review panel questions, and provided members of his staff as necessary during the review process.

The review was conducted by discussing the answers in the questionnaire provided to the review team by AOGCC, DEC and DNR. Prior to beginning each section of the questionnaire, the appropriate staff member would give an overview of the topic to be discussed (i.e., permitting, enforcement, technical requirements, etc.). Each review team member was responsible for leading the questioning and ensuing discussion for particular topics. Observers were also permitted to ask questions throughout the review. At the end of each day, the review team and observers identified issues raised during the daily sessions.

The review team prepared a list of findings and areas of concern. On Friday, July 17, 1992, an exit interview was conducted with each agency to inform them of the review team's preliminary findings, including positive aspects and areas of concern.

Each review team member was assigned one or more sections to prepare into draft report. The review panel met again on September 21-25, 1992, to complete the draft report. Once completed, the draft report was distributed for review and comment to all participants in the review, including the Alaska regulatory officials and review observers. The review panel met on November 8-10, 1992 to consider all comments and to prepare a final report.

The review team reached consensus on most of the findings and recommendations contained herein. In areas where consensus was not achieved, appropriate entries have been made in the report.

OIL AND GAS PRODUCTION AND WASTE MANAGEMENT IN THE STATE OF ALASKA

The first commercial oil production occurred in the Katalla field in the Gulf of Alaska, which was discovered in 1902. The field was abandoned in 1933, after processing 154,000 barrels of oil, when the refinery burned. Modern day production began with the discovery of the Swanson River field on the Kona Peninsula in 1957 (Cook Inlet Area) and the Prudhoe Bay field in 1967 (North Slope Area).

The State of Alaska owns 30 percent of the land in the state. This includes all of the North Slope oil fields, as well as most of the Cook Inlet fields. Thus, the State of Alaska is involved in oil and gas exploration and production waste management both as a regulatory agency and as a landowner.

In 1991 Alaska produced 16.4 million barrels of oil from the Cook Inlet fields and 685 million barrels from the North Slope fields. Cook Inlet production peaked at 83 million barrels in 1970 and the North Slope peaked at 744 million barrels in 1988. The North Slope fields produced a peak of 2.1 trillion cubic feet (tcf) of natural gas in 1991; all but 248 billion cubic feet (bcf) was reinjected to maintain pressure and improve ultimate recovery. All gas produced is utilized or returned to the reservoir on the North Slope, as there are no pipelines carrying gas to other markets. North Slope gas production started with the Barrow field which was discovered in 1949. Cook Inlet gas production began from Swanson River in 1958 and peaked at 311 bcf in 1990. The 1991 production was 308 bcf. Gas from the Cook Inlet Area goes to Anchorage, Kenai and other South Central Alaska communities. It is also used to produce ammonia and urea as well as being exported as LNG to Japan. Alaska currently has 1,572 producing oil wells and 108 producing gas wells. Currently, Alaskan oil fields produce nearly 25 percent of domestic production.

No information about reserves was provided to the review team; however, production from Cook Inlet fields is expected to decline from approximately 39,000 barrels per day (b/d) in 1992 to 17,000 b/d in the year 2000. The North Slope fields will decline from 1,700,000 b/d in 1992 to an estimated 100,000 b/d in the year 2016, depending on the economic limits of the fields, and assuming no other discoveries are made and developed.

Alaska currently has 613 injection wells, of which 34 are Class II disposal wells and 579 are enhanced recovery (EOR) wells. Twenty-four disposal wells were active at the end of 1991, injecting 125,683,277 barrels of produced water in that year. In 1991, approximately 830,193,000 barrels were reinjected into producing formations through EOR wells. In addition, 999,700 barrels of fluid associated with North Slope operations were disposed of into Class I non-hazardous/industrial wells at Pad 3. Data on volumes of waste disposed into reserve pits or through permitted NPDES

discharges were not made available to the review team. Volumes were also not available for burial and landfilling practices on the North Slope, although the volume was characterized as a "small amount."

Major sources of groundwater are from alluvial deposits in the Kona Peninsula (Cook Inlet). On the North Slope, no fresh groundwater zones have been identified in oil and gas fields. The Swanson River field is located in a federal wildlife refuge on the Kona Peninsula. Only a small portion of Alaska's oil and gas production activities are conducted on privately owned lands.

E&P waste management practices in Alaska have been changing in the last few years. Over the past five years, the industry-state relationship on the North Slope has matured into a more cooperative, proactive and open approach to solving problems. This relationship has been possible because of the small number of operators, all of whom are major oil companies that have adequate multidisciplinary personnel resources to deal with Alaska environmental regulations and problems.

The acceptability of some longstanding practices has been rethought by industry, state and federal agencies. New technologies for waste treatment and disposal are being developed. As these new technologies come on line, old practices are being phased out. For instance, on the North Slope, muds, cuttings and some associated waste are now being ground and injected, replacing above ground reserve pits, which have in the past been the primary method of disposal. Also, prior to 1988, the general practice was to discharge the liquid fraction in the pits (consisting of snow melt and some free liquids in the wastes) to the adjacent tundra. This practice was conducted pursuant to DEC wastewater permits, but without federal NPDES permits. These liquids are now disposed of in injection wells.

Although not prohibited by regulation, above-grade pits, tundra discharges and roadspreeding of pit liquids have not been authorized on the North Slope since 1988. The use of reserve pits for E&P waste management continues on the Kona Peninsula, although roadspreeding of pit liquids was discontinued in 1988, as it was on the North Slope.

Non-commercial E&P waste management facilities such as tank batteries, reserve pits and EOR/disposal wells are used in both the North Slope and Cook Inlet Areas. Neither producing area has commercial E&P waste management facilities, nor are there any roadspreeding or landfarming operations.

EPA and DEC have signed a Memorandum of Agreement pursuant to which DEC conducts certain aspects of the RCRA hazardous waste program in Alaska. Alaska does not have RCRA Subtitle C primacy. EPA also retains authority for the Clean Water Act's NPDES wastewater discharge program, while DEC manages a state water quality program.

FINDING 1.7.

Consistent with IOGCC Guideline 3.1, Title 46 of Alaska Statutes sets forth DEC's programs for environmental protection. AS 46.03.010 is a declaration of the state's policy to protect the environment and the health and welfare of the people of Alaska.

FINDING 1.8.

The declaration of policy in AS 46.03.010 is an outstanding example of the goal statement called for by IOGCC Guideline 3.2.

DEC administers the following technical criteria relevant to:

- | | |
|-------------------|---|
| 18 AAC Chapter 50 | Air quality control |
| 18 AAC Chapter 60 | Solid waste management |
| 18 AAC Chapter 62 | Wastewater disposal |
| 18 AAC Chapter 70 | Water quality standards |
| 18 AAC Chapter 72 | Hazardous waste |
| 18 AAC Chapter 75 | Oil and hazardous substance pollution control |
| 18 AAC Chapter 80 | Drinking water standards |
| 18 AAC Chapter 85 | Radiation protection |

FINDING 1.9.

Annular disposal of wastes is regulated by DEC's wastewater program, while injection of wastes through tubing into Class II wells is controlled by AOGCC.

RECOMMENDATION 1.9.

To maximize efficient and effective use of resources, especially in light of fiscal and staffing shortfalls, and to take advantage of existing technical expertise, AOGCC and DEC should consider unifying administration of the annular disposal and UIC programs under AOGCC using an MOU or other such delegation. (IOGCC Guidance 3.1.e.)

Issue Paper

Minor Discharge and Disposal Regulatory Issues

A.H. Clough- DCED- DED

8 September, 1994

Background:

The Alaska Department of Environmental Conservation (ADEC) has recently changed how it regulates incidental discharges from mineral related drilling. This occurred during the spring of 1994 in response to AJ Mine opponents complaints to the SE Region of ADEC.

The crux of this regulatory issue is 18 AAC 72.500. This statute is under the nondomestic wastewater section of the Alaska Administrative Code. The code, under 18 AAC 72.500, cites restrictions on nondomestic wastewater disposal. It states; "A person who disposes of nondomestic wastewater into or onto land, surface water, or groundwater in Alaska must have a permit issued by the department (ADEC) for that disposal."

The Waste Disposal Permit process is provided under Sec. 46.03.100. Waste Disposal Permit; (a) "A person who conducts an operation that results in the disposal of a solid or liquid waste material or heated process or cooling water into the waters or onto the land of the state shall procure a permit from the department before disposing of the waste material or water. The permit shall be obtained for direct disposal and for disposal into publicly operated sewerage systems." It is important to note that under 46.03.100 both liquid and solid waste discharge and disposal is to be regulated.

Until these issues were raised by AJ mine opponents various activities which resulted in minor discharges of either solid or liquid waste were treated as insignificant by ADEC and ignored. Examples of such diminutive activities include; mineral drilling, marine bilge pumping, roadway construction and maintenance, along with other routine construction and maintenance activities.

The scope of these disposal issues were discussed in detail with ADEC in Juneau on several occasions. Participating in discussions were ADEC, the Department of Commerce and Economic Development (DCED), the Division of Governmental Coordination (DGC), and the Department of Law (DoL). The Department of Law maintained that under the statute (18 AAC 72.500) no diminutive exemption existed

and that ADEC must require a permit for all discharges, no matter how minor or insignificant. However, DoL allowed that a "0" discharge situation did not require a permit.

Thus far, the only activity which ADEC has chosen to enforce this statute on is drilling by mining companies. Furthermore, this requirement has only been selectively applied to Echo Bay Alaska's AJ project. Even more disturbing, contemporaneous with the development of this issue, at a construction site adjacent to the ADEC Juneau office significant drilling, blasting, pile driving, and other excavations which clearly had significant discharge and disposal of both liquid and solid waste were ongoing. The similarities of these activities to the mineral related drilling by Echo Bay was noted to ADEC. Nevertheless, no effort was made by ADEC personnel to require a permit for the adjacent construction activities. This selective enforcement of statute and regulation is an example of government at its worst. Such actions are against equal protection under the law doctrine and clearly contrary to good public policy. That such a duality of enforcement has developed readily demonstrates that something is fundamentally wrong with the strict application of the statute along with subordinate regulation and enforcement.

Mining companies, or others, may claim exemption from the statute and regulation by maintaining "0" discharge during drilling. However, total "0" discharge is likely rarely obtained; due to leaking of drill string joints, fluids lost during core retrieval and such. Further, it is doubtful that construction related excavations could be considered for a "0" discharge exemption from 18 AAC 72.500.

As indicated, this statute and regulation are not being applied to any other interest such as marine bilge pumps along with construction and maintenance activities. This is not just a mining issue. Clearly, any activity which results in the discharge of solid or liquid waste are at issue. The only statutory exemption is for domestic wastewater. It is not certain whether the domestic exemption would be applied to the drilling of domestic water wells or not.

Issue:

Various construction, mining related, marine related, and other routine activities clearly result in relatively small discharge and disposal of solid and liquid waste to land and/ or waters of the state. These waste fall into three main categories: either water (usually on-site derived with or without any suspended solids or additives), on-site derived soil, and on-site derived rock. Further, the clean fill material commonly used for various construction purposes represents a similar discharge/ disposal situation under the current statute. In

essence it is not possible to drill a hole, excavate a trench, or pump a bilge without some level of discharge and disposal. Such discharged and disposed materials are typically of locally derived natural materials, are non-toxic, and any additives are benign (for example, the common polymer additive used in mineral related drilling is approved by the US EPA for potable water well drilling). These diminutive discharge and disposal practices present no significant environmental hazard. In recognition of these situations such discharges and disposals have not previously been regulated.

Discussion:

The enforcement undertaken by ADEC on this issue is highly selective. SE Region indicated that unless a complaint is lodged, such as the case with the AJ Mine opponents, that ADEC will not go looking for compliance or violations: an arbitrary "don't ask- don't tell" type policy. This policy is clearly evident by the total disregard of the discharges related to the construction site adjacent to ADEC headquarters. Contemporaneous with the "don't ask- don't tell" policy ADEC indicated they would be investigating the development of a general permit or other similar mechanism to deal with the regulation of minor discharges. Work is apparently being done by ADEC on the development of a General Permit. However, neither DCED or industry representatives have been asked to participate in the GP development at this time. Therefore, the status of the General Permit project is unknown.

Clearly, the current selective enforcement policy of ADEC is not acceptable. Three viable options seem available concerning resolution of the discharge permit issue.

First, individual or project wide permits could be sought by mining companies (or any other activity which results in a discharge) as the need arises. This is not a workable situation. In addition to the time required by any applicant to apply for and receive such permits, the staff time, costs and commitment by ADEC could be much better utilized on more pressing issues. Requiring and enforcing such restrictions could effectively delay any and all activities which discharge. The "0" discharge argument could be advanced, but as already indicated actual "0" discharge is nearly impossible to attain in a field situation: especially in the case of any excavations.

Secondly, a general permit could be developed by ADEC and then used to allow diminutive activities. This represents an improvement over the project permitting but still requires development of the GP as well as a permitting process for diminutive activities. A GP may be a workable system but it still represents another layer of bureaucracy

and regulatory interference which is likely not necessary. As with individual and project wide permits, a GP still requires significant staff time and effort to regulate and enforce activities which clearly do not need such scrutiny. For these reasons a general permit approach is not favored. Nevertheless, the development and implementation of a general permit may be useful as an interim measure awaiting a statutory change.

Finally, statutory change could be granted to eliminate the problem. Such a statutory approach is the most desirable "fix" although it will undoubtedly require a concerted effort to move the necessary legislation through the Alaska legislature and the Governor. The statutory fix represents the best way to eliminate the problem. A statutory change would be envisioned to define diminutive activities along with allowable exemptions. This would eliminate the subjectiveness of the current system, not result in expanded or redirected bureaucracy thus responding in a positive manner to industry, government, and citizen needs. All this can be accomplished without adding additional bureaucracy and layers of permitting process. Finally, the statutory changes can clearly define activities which do require additional oversight as well as those which clearly do not.

Recommendations:

Pursuing a statutory change is the preferred course of action. A statutory change is recommended for several reasons. First of all, maintaining the status quo is simply not workable. It places any activity which requires a discharge/ disposal open to litigation by project opponents. The second option, that of a general permit, represents a great improvement over the current situation still requires a permitting process for insignificant activities and does not represent either a business, government, or public friendly system. The statutory change results in fixing the problem, allowing certainty of activities, and brings all the stake holders into the issue. Such statutory changes should be actively sought during the 19th Legislature.

ALASKA MINERALS COMMISSION

1995 REPORT TO THE GOVERNOR AND ALASKA STATE LEGISLATURE

DIMINUTIVE DISCHARGES

FINDING: The Alaska Department of Environmental Conservation (ADEC) has recently begun selective enforcement on the mining industry of a regulation relating to disposal of nondomestic wastewater. This regulation applies to a broad spectrum of routine activities in Alaska which result in small discharges of solid or liquid waste, such as drilling, blasting, construction and earth excavations, and marine bilge-pumping. ADEC regulatory action is being conducted under 18 AAC 72.500, which states (in part) "a person who disposes of nondomestic wastewater into or onto land, surfacewater, or groundwater in Alaska must have a permit issued by the Department (ADEC) for that disposal." Regulations detailed through 72.500 are promulgated under AS 46.03.100, which specifies that both liquid and solid waste are to be regulated.

Clearly, this regulatory language is so broad as to include most outdoor activities in the State. The Department of Law has maintained that no exemptions are allowed and that ADEC must require a permit for all discharges, regardless of the source, type, or insignificance of the discharge. To date, ADEC has chosen only to require a permit for selected mineral drilling activities. This selective enforcement of a bad regulation is an example of government at its worst.

THE COMMISSION RECOMMENDS THAT:

- 14. The Alaska Legislature should amend AS 46.03.100 to exempt diminutive activities, including mineral drilling, certain construction activities, and marine bilge-pumping from requiring a Waste Disposal Permit. Specifically, mineral drilling in which the only discharges are ground-up rock, water, and biodegradable additives, (which are EPA approved for water-well drilling), should be exempted.*