

HB

392



Alaska State Legislature

Representative Peggy Wilson

House District 2

Putting Alaska's Families First

MEMORANDUM

Date: January 31, 2006

To: Representative Kurt Olson and Representative Bill Thomas Co-Chairs
Community and Regional Affairs

From: Representative Peggy Wilson *PW*

Re: HB 392 – Regional Solid Waste Management Authorities

HB 392 will allow a community or group of communities to create a public corporation to deal with waste management. HB 392 is modeled after the port authority statutes and will authorize the formation of solid waste authorities for waste management.

I request that you schedule HB 392 for a hearing before Community and Regional Affairs Committee as soon as possible. Thank you for your consideration.

STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

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January 9, 2006

Representative Peggy Wilson
Alaska State Legislature
State Capitol, Room 108
Juneau, Alaska 99801

Re: Comments on Regional Solid Waste
Authority Legislation

Dear Representative Wilson:

This letter provides additional comments from the Department of Law regarding the proposed regional solid waste authority legislation, based on a joint review by the Departments of Law and Environmental Conservation. We appreciate the efforts that you and Alaska communities and organizations have undertaken to find solutions to challenging waste disposal issues.

The draft bill is crafted similar to other existing statutes, such as Alaska's port authority act. (AS 29.35.600, *et. seq.*) Please see our earlier comments. This comment letter focuses on the environmental regulation of facilities that would be constructed, operated or closed by Authorities established under the bill.

Based on the joint review between DEC and Law, we believe 46.03.100 (including its financial assurance requirements for municipal solid waste disposal facilities), as well as other applicable state and federal laws and regulations governing environmental matters for waste management and disposal facilities, would apply to an Authority's facility. It is our understanding that you and other supporters of the bill share this view, as well. If this is not the case, please advise me as soon as possible, as we would want to discuss this matter in greater detail and provide additional State input.

On a related point, the draft legislation states that the Authority may "regulate land use within the boundaries of the authority." See AS 29.35.820 (15)). This is very broad language, and very likely would lead to conflicts with

Representative Peggy Wilson
Re: Regional Solid Waste Authority Legislation

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other state laws or municipal ordinances that may involve land use regulation. Given this potential for conflicts, the legislature should consider whether it would be prudent to more explicitly define the scope of an Authority's power to regulate land use within the boundaries of the authority.

Further, proposed AS 29.35.870(a) states the following: "The real and personal property of an authority and its assets, income, and receipts are exempt from all taxes and special assessments of the state or a political subdivision of the state." The term "special assessment" is not defined in the legislation and could be interpreted quite broadly. The legislature should consider clarifying language that this term does not include fees charged by regulatory agencies.

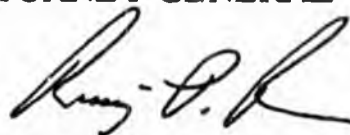
We have one other observation regarding the draft legislation. It currently provides that a liability of the regional waste authority can only be satisfied from the assets or revenue of the authority. "A creditor or other person does not have a right of action against the state or a municipality participating in an authority because of a debt, obligation, or liability of an authority." AS 29.35.850. There is some question as to whether this limitation would protect an individual member of an Authority from potential liability in circumstances where there is a hazardous release to the environment from a facility. See AS 46.03.822. Thus, the legislature should make clear, perhaps through hearing testimony and the legislative history for the bill, whether it intends for this legislation to protect individual members of an authority from recovery actions for such environmental releases. In raising this issue, we have not analyzed how the limitation on liability provision would be treated under federal law.

We hope you find these and our earlier comments helpful. Please do not hesitate to contact me if you need any additional assistance on this important piece of legislation.

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By:



Randall P. Ruaro
Legislative Liaison to the Attorney General

24-LS1227I
Bullock
2/13/06

CS FOR HOUSE BILL NO. 392()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE WILSON

A BILL

FOR AN ACT ENTITLED

1 **"An Act authorizing the establishment of regional solid waste management authorities;**
2 **relating to withdrawal from a port authority by a municipality; and providing for an**
3 **effective date."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 29.35.070(a) is amended to read:

6 (a) The assembly acting for the area outside all cities in the borough and the
7 council acting for the area in a city may regulate, fix, establish, and change the rates
8 and charges imposed for a utility service provided to the municipality or its inhabitants
9 by a utility that is not subject to regulation under AS 42.05 unless that utility is
10 exempted from regulation under AS 42.05.711(a), (d) - (k), [OR] (o), or (p), or is
11 exempted under regulations adopted under AS 42.05.810 from complying with all or
12 part of AS 42.05.141 - 42.05.721.

13 *** Sec. 2.** AS 29.35.610(b) is amended to read:

14 (b) If an authority ceases to exist, its assets shall be distributed to the

1 municipalities that were participating [PARTICIPATED] in the authority on the day
2 before the date of dissolution in proportion to the difference between their
3 contributions to the authority and any outstanding debt or obligation of that
4 municipality to the authority, provided that any obligation to bondholders then
5 outstanding shall first be satisfied in full.

6 * **Sec. 3.** AS 29.35.610 is amended by adding a new subsection to read:

7 (c) A municipality that is participating in an authority with one or more other
8 municipalities may withdraw from participation without dissolving the authority. The
9 contributions to the authority made by the withdrawing municipality remain the
10 property of the authority, and the municipality remains liable for obligations under any
11 agreement with the authority or other participating municipalities unless the agreement
12 is changed by the contractual parties. A municipality withdraws from participation in
13 an authority by repealing the ordinance adopted under AS 29.35.605(a)(2) or (b).

14 * **Sec. 4.** AS 29.35 is amended by adding new sections to read:

15 **Article 10. Regional Solid Waste Management Authorities.**

16 **Sec. 29.35.800. Purpose of authorities.** The purpose of a regional solid waste
17 management authority is to provide environmentally sound and cost-effective
18 management of solid waste, including storage, collection, transportation, separation,
19 processing, recycling, and disposal, to protect the public health, safety, and welfare;
20 improve the environment of the state; recover resources and energy; and prevent
21 pollution.

22 **Sec. 29.35.805. Establishment of regional solid waste management**
23 **authorities.** (a) A regional solid waste management authority may be created in one of
24 the following ways:

25 (1) the governing body of a municipality may, by ordinance, create a
26 regional solid waste management authority as a public corporation of the municipality;

27 (2) the governing bodies of two or more municipalities may, by
28 substantially identical ordinances adopted by each of the governing bodies, create a
29 regional solid waste management authority as a public corporation of the
30 municipalities.

31 (b) One or more municipalities may join an authority established under (a)(1)

1 or (2) of this section upon the adoption of substantially identical ordinances by the
2 governing bodies of each affected municipality.

3 (c) A regional solid waste management authority created under this section is
4 a body corporate and politic and an instrumentality of the municipality or
5 municipalities creating it but has a separate and independent legal existence.

6 (d) Creation of a regional solid waste management authority under
7 AS 29.35.800 - 29.35.925 is an exercise of a municipality's extraterritorial jurisdiction
8 under AS 29.35.020.

9 (e) The enabling ordinance by which a regional solid waste management
10 authority is established must specify the powers, boundaries, and limitations of the
11 regional solid waste management authority.

12 (f) An ordinance creating a regional solid waste management authority must
13 be approved by the voters of the municipality or municipalities participating in the
14 authority for the authority to be established.

15 (g) Nothing in AS 29.35.800 - 29.35.925 prevents a municipality or
16 municipalities from creating or participating in a public corporation, including a
17 regional solid waste management authority, in any form or manner not prohibited by
18 law. However, AS 29.35.800 - 29.35.925 only apply to and may only be used by a
19 regional solid waste management authority created under this section.

20 **Sec. 29.35.810. Dissolution of a regional solid waste management**
21 **authority.** (a) The enabling ordinance creating a regional solid waste management
22 authority must provide for the manner by which a regional solid waste management
23 authority may be dissolved.

24 (b) If an authority ceases to exist, its assets shall be distributed to each
25 municipality that was participating in the authority on the day before the date of
26 dissolution in proportion to the municipality's contribution to the authority less any
27 outstanding debt or obligation of that municipality to the authority. Any obligation to
28 bondholders then outstanding shall first be satisfied in full.

29 (c) A municipality that is participating in an authority with one or more other
30 municipalities may withdraw from participation without dissolving the authority. The
31 contributions to the authority made by the withdrawing municipality remain the

1 property of the authority, and the municipality remains liable for obligations under any
 2 agreement with the authority or other participating municipalities unless the agreement
 3 is changed by the contractual parties. A municipality withdraws from participation in
 4 an authority by repealing the ordinance adopted under AS 29.35.805(a)(2) or (b).

5 **Sec. 29.35.815. Municipal property.** (a) A municipality may transfer and
 6 otherwise convey or lease real property and improvements to real property to an
 7 authority for use by the authority for the purposes set out in the ordinance adopted
 8 under AS 29.35.805.

9 (b) A municipality may transfer and otherwise assign or lease personal
 10 property to an authority for use by the authority for the purposes set out in the
 11 ordinance adopted under AS 29.35.805.

12 **Sec. 29.35.820. Powers.** If provided in the enabling ordinance, an authority
 13 may

14 (1) sue and be sued;

15 (2) have a seal and alter it;

16 (3) acquire an interest in a project as necessary or appropriate to
 17 provide financing for the project, whether by purchase, gift, or lease;

18 (4) lease to others a project acquired by the authority on the terms and
 19 conditions the authority may consider advisable, including, without limitation,
 20 provisions for purchase or renewal;

21 (5) sell, by installment sale or otherwise, exchange, donate, convey, or
 22 encumber in any manner by mortgage or by creation of another security interest, real
 23 or personal property owned by it or in which it has an interest, including a project,
 24 when, in the judgment of the authority, the action is in furtherance of the authority's
 25 purposes;

26 (6) accept gifts, grants, or loans, under the terms and conditions
 27 imposed under the gift, grant, or loan, and enter into contracts, conveyances, or other
 28 transactions with a federal agency or an agency or instrumentality of the state, a
 29 municipality, a private organization, or another person;

30 (7) deposit or invest its funds, subject to agreements with bondholders;

31 (8) purchase or insure loans to finance the costs of projects;

- 1 (9) provide for security within the boundaries of the authority;
- 2 (10) enter into loan agreements for one or more projects on the terms
- 3 and conditions the authority considers advisable;
- 4 (11) acquire, manage, and operate projects the authority considers
- 5 necessary or appropriate to serve the authority's purposes;
- 6 (12) assist private lenders to make loans to finance the costs of projects
- 7 through loan commitments, short-term financing, or otherwise;
- 8 (13) charge fees or other forms of remuneration for the use or
- 9 possession of projects under the agreements described in this section; other
- 10 agreements relating to the projects, covenants, or representations made in bond
- 11 documents relating to the projects; or regulations of the authority relating to the
- 12 projects;
- 13 (14) exercise the powers of eminent domain and declaration of taking
- 14 within its physical boundaries under AS 29.35.030 to acquire land or materials for
- 15 authority purposes;
- 16 (15) regulate land use within the boundaries of the authority;
- 17 (16) defend and indemnify a current or former member of the board,
- 18 employee, or agent of the authority against all costs, expenses, judgments, and
- 19 liabilities, including attorney fees, incurred by or imposed on that person in connection
- 20 with a civil or criminal action in which the person is involved because of the person's
- 21 affiliation with the authority if the person acted in good faith on behalf of the authority
- 22 and within the scope of the person's official duties and powers;
- 23 (17) purchase insurance to protect and hold harmless its employees,
- 24 agents, and board members from an action, claim, or proceeding arising out of the
- 25 performance of, purported performance of, or failure to perform in good faith, duties
- 26 for the authority or arising out of employment with the authority and to hold them
- 27 harmless from expenses connected with the defense, settlement, or monetary
- 28 judgments from that action, claim, or proceeding; the purchase of insurance is subject
- 29 to the discretion of the board; insurance purchased under this paragraph is not
- 30 compensation to the insured person; and
- 31 (18) protect its assets, services, and employees by purchasing

1 insurance or providing for certain self-insurance retentions^(b) an authority shall also
2 maintain casualty, property, business interruption, marine, boiler and machinery,
3 pollution liability, and other insurance in amounts reasonably calculated to cover
4 potential claims against the authority or a municipality for bodily injury, death or
5 disability, and property damage that arises from or is related to authority operations
6 and activities.

7 **Sec. 29.35.825. Bonds of a regional solid waste management authority;**
8 **superior court jurisdiction.** (a) If authorized by the enabling ordinance, an authority
9 may borrow money and issue bonds on which the principal and interest are payable

10 (1) exclusively from the income and receipts of, or other money
11 derived from, the project financed with the proceeds of the bonds;

12 (2) exclusively from the income and receipts of, or other money
13 derived from, designated projects or other sources, whether they are financed, insured,
14 or guaranteed in whole or in part with the proceeds of the bonds; or

15 (3) from its income and receipts or a designated part or parts of them.

16 (b) All bonds shall be sold at public or private sale in the manner, for the price
17 or prices, and at the time or times the authority may determine.

18 (c) Before issuing bonds, an authority shall provide for consideration at least
19 sufficient, in the judgment of the authority, to

20 (1) pay the principal of and interest on the bonds as they become due;

21 (2) create and maintain the reserves for the payment that the authority
22 considers necessary or desirable; and

23 (3) meet all obligations in connection with the lease or agreement and
24 all costs necessary to service the bonds, unless the lease or agreement provides that the
25 obligations are to be met or costs are to be paid by a party other than the authority.

26 (d) Bonds shall be authorized by resolution of the authority and shall be dated
27 and mature as the resolution may provide, except that a bond may not mature more
28 than 40 years after the date of its issue. Bonds shall bear interest at the rate or rates, be
29 in the denominations, be in the form, either coupon or registered, carry the registration
30 privileges, be executed in the manner, be payable in the medium of payment, at the
31 place or places, and be subject to the terms of redemption that the resolution or a

1 subsequent resolution may provide.

2 (e) All bonds issued under this section, regardless of form or character, are
3 negotiable instruments for all the purposes of AS 45.01 - AS 45.08, AS 45.12,
4 AS 45.14, and AS 45.29 (Uniform Commercial Code).

5 (f) The superior court has jurisdiction to hear and determine suits, actions, or
6 proceedings relating to an authority, including suits, actions, or proceedings brought to
7 foreclose or otherwise enforce a mortgage, pledge, assignment, or security interest
8 brought by or for the benefit or security of a holder of the authority's bonds or by a
9 trustee for or other representative of the holders.

10 **Sec. 29.35.830. Bonds eligible for investment.** Bonds issued under
11 AS 29.35.825 are securities in which public officers and public bodies of the state and
12 its political subdivisions, insurance companies, trust companies, banks, investment
13 companies, executors, administrators, trustees, and other fiduciaries may properly and
14 legally invest funds, including capital in their control or belonging to them. The bonds
15 may be deposited with a state or municipal officer of an agency or political
16 subdivision of the state for any purpose for which the deposit of bonds of the state is
17 authorized by law.

18 **Sec. 29.35.835. Validity of pledge.** The pledge of revenue of an authority to
19 the payment of the principal or interest on bonds or notes of the authority is valid and
20 binding from the time the pledge is made, and the revenue is immediately subject to
21 the lien of the pledge without physical delivery or further act. The lien of a pledge is
22 valid and binding against all parties having claims of any kind against the authority
23 irrespective of whether those parties have notice of the lien of the pledge.

24 **Sec. 29.35.840. Credit of state or a municipality not pledged.** (a) The state
25 and municipalities participating in an authority are not liable for the debts of that
26 authority. Bonds issued under AS 29.35.825 are payable solely from the revenue of
27 the authority and do not constitute a

28 (1) debt, liability, or obligation of the state or a municipality; or

29 (2) pledge of the faith and credit of the state or a municipality.

30 (b) An authority may not pledge the credit or the taxing power of the state or
31 its municipalities. A bond issued under AS 29.35.825 must contain on its face a

1 statement that

2 (1) the authority is not obligated to pay it or the interest on it except
3 from the revenue pledged for it; and

4 (2) the faith and credit of the taxing power of the state or of a political
5 subdivision of the state is not pledged to the payment of it.

6 **Sec. 29.35.845. Pledges of the state and municipalities.** The state and
7 municipalities participating in an authority pledge to and agree with the holders of
8 bonds issued under AS 29.35.825 and with the federal agency, if any, that loans or
9 contributes funds for a project of the authority that the state and the municipalities
10 participating in the authority will not limit or alter the rights and powers vested in the
11 authority by its enabling ordinance or other law so that it is unable to fulfill the terms
12 of a contract made by it with those holders or that federal agency or in any way impair
13 the rights and remedies of those holders or that federal agency until the bonds,
14 together with the interest on them and interest on unpaid installments of interest, and
15 all costs and expenses in connection with an action or proceeding by or on behalf of
16 those holders or that federal agency, are fully met and discharged. An authority may
17 include this pledge and agreement of the state and the municipalities participating in
18 the authority, to the extent that it refers to holders of bonds of the authority, in a
19 contract with those holders, and to the extent that it relates to a federal agency, in a
20 contract with that federal agency.

21 **Sec. 29.35.850. Limitation of liability.** A liability incurred by an authority
22 shall be satisfied exclusively from the assets or revenue of the authority. A creditor or
23 other person does not have a right of action against the state or a municipality
24 participating in an authority because of a debt, obligation, or liability of an authority.

25 **Sec. 29.35.855. Limitation on personal liability.** A board member or
26 employee of an authority is not subject to personal liability or accountability because
27 of the execution or issuance of bonds.

28 **Sec. 29.35.860. Fidelity bond.** An authority shall obtain a fidelity bond in an
29 amount determined by the board for board members and each executive officer
30 responsible for accounts and finances of that authority. A fidelity bond must be in
31 effect during the entire tenure in office of the bonded person.

1 **Sec. 29.35.865. No taxing authority.** An authority may not levy an income or
2 other tax.

3 **Sec. 29.35.870. Exemption from taxation.** (a) An authority exercising the
4 powers granted by the enabling ordinance under AS 29.35.800 - 29.35.925 is in all
5 respects for the benefit of the people of the municipalities participating in the authority
6 and the people of the state in general, for their well-being and prosperity, and for the
7 improvement of their social and economic condition. The real and personal property of
8 an authority and its assets, income, and receipts are exempt from all taxes and special
9 assessments of the state or a political subdivision of the state.

10 (b) Bonds issued by the authority under AS 29.35.825 are issued for an
11 essential public and governmental purpose; therefore, the bonds, the interest and
12 income from them, and all fees, charges, funds, revenue, income, and other money
13 pledged or available to pay or secure the payment of the bonds or interest on them are
14 exempt from taxation except for inheritance, transfer, and estate taxes.

15 (c) Notwithstanding the provisions of (a) of this section, an authority and the
16 municipalities participating in the authority may enter into agreements under which
17 the authority agrees to pay the participating municipalities' payments in lieu of taxes
18 and special assessments on real and personal property of the authority that is within
19 the taxing jurisdiction of the municipality.

20 (d) Nothing in this section creates a tax exemption with respect to the interests
21 of a business enterprise or other person, other than the authority, in property, assets,
22 income, or receipts, whether or not financed under AS 29.35.800 - 29.35.925.

23 **Sec. 29.35.875. Administration of regional solid waste management**
24 **authorities; board.** (a) An authority shall be governed by a board of directors, which
25 shall exercise the powers of the authority. The enabling ordinance establishing the
26 authority under AS 29.35.805 must specify the number, qualifications, manner of
27 appointment or election, and terms of members of the board.

28 (b) The board shall appoint a chief executive officer of the authority, who
29 serves at the pleasure of the board. The board shall fix the compensation of the chief
30 executive officer.

31 **Sec. 29.35.880. Continuation of collective bargaining agreements;**

1 **application of AS 23.40.070 - 23.40.260.** (a) A collective bargaining agreement for
2 employees of the state or its political subdivisions who are transferred to an authority
3 under AS 29.35.800 - 29.35.925 remain in effect for the term of the agreement or one
4 year, whichever is longer, and are binding on the authority unless the parties agree to
5 the contrary before the agreement expires. A labor-management negotiation impasse
6 declared after a transfer of employees under this subsection but before the negotiation
7 of a new collective bargaining agreement shall be resolved as provided in the
8 collective bargaining agreement or, if the collective bargaining agreement does not
9 provide for a resolution, as provided in AS 23.40.070 - 23.40.260.

10 (b) Employees of the state or a political subdivision of the state transferred to
11 an authority shall retain, for one year following the date of transfer or for the duration
12 of a collective bargaining agreement transferred under (a) of this section, whichever is
13 greater, all rights of participation in fringe benefit programs available to the employees
14 on the day before the transfer, or in substantially equivalent programs.

15 (c) AS 23.40.070 - 23.40.260 apply to employees of an authority established
16 under AS 29.35.800 - 29.35.925 unless all municipalities participating in the authority
17 are exempt under sec. 4, ch. 113, SLA 1972.

18 **Sec. 29.35.885. Bylaws and regulations.** (a) A board shall adopt bylaws and
19 appropriate regulations consistent with the enabling ordinance to carry out its
20 functions and purposes.

21 (b) A board shall adopt bylaws as soon after the authority is established as
22 possible and may, from time to time, amend those bylaws. The bylaws may contain
23 any provision not in conflict with law for managing the business of the authority and
24 for conducting the affairs of the authority, including provisions relating to

25 (1) the time, place, and manner of calling, conducting, and giving
26 notice of meetings of the board and committees of the board, if any;

27 (2) the compensation of directors, if any;

28 (3) the appointment and authority of committees of the board, if any;

29 (4) the appointment, duties, compensation, and tenure of officers,
30 directors, the chief executive officer, and other employees, if any;

31 (5) procedures for adopting regulations;

1 (6) procedures for adopting bylaws;

2 (7) procedures for making annual reports and financial statements; and

3 (8) other matters for the conduct of business by the board.

4 **Sec. 29.35.890. Authority subject to public records and open meetings**
5 **laws.** An authority established under AS 29.35.805 is subject to AS 40.25.110 -
6 40.25.220 and to AS 44.62.310 and 44.62.312.

7 **Sec. 29.35.895. Annual report.** Within 90 days following the end of the fiscal
8 year of an authority, the board shall contribute to the mayor and governing body of
9 each municipality participating in the authority a report describing the operations and
10 financial condition of the authority during the preceding fiscal year. The report may
11 include suggestions for legislation relating to the structure, powers, or duties of the
12 authority or operation of facilities of the authority. The report must itemize the cost of
13 providing each category of service offered by the authority and the income generated
14 by each category.

15 **Sec. 29.35.900. Audits.** (a) The board shall have the financial records of an
16 authority audited annually by an independent certified public accountant.

17 (b) An authority shall make all of its financial records available to an auditor
18 appointed by a municipality participating in the authority for examination.

19 **Sec. 29.35.905. Remedies.** A holder of bonds or notes or coupons attached to
20 the bonds issued by an authority under AS 29.35.825, and a trustee under a trust
21 agreement or resolution authorizing the issuance of the bonds, except as restricted by a
22 trust agreement or resolution, either at law or in equity, may

23 (1) enforce all rights granted under AS 29.35.800 - 29.35.925, the trust
24 agreement or resolution, or another contract executed by the authority; and

25 (2) compel the performance of all duties of the authority required by
26 AS 29.35.800 - 29.35.925 or the trust agreement or resolution.

27 **Sec. 29.35.910. Claims.** In judicial and regulatory proceedings by and against
28 an authority, an authority and its board members and employees enjoy the same rights,
29 privileges, and immunities as a municipality and municipal officers.

30 **Sec. 29.35.915. Conflicting laws inapplicable.** If a provision of AS 29.35.800
31 - 29.35.925 conflicts with another provision of this title, the provision of AS 29.35.800

1 - 29.35.925 prevails.

2 **Sec. 29.35.920. Definitions.** In AS 29.35.800 - 29.35.925, unless the context
3 otherwise requires,

4 (1) "authority" means a regional solid waste management authority
5 established under AS 29.35.805;

6 (2) "board" means the board of directors of an authority;

7 (3) "bonds" includes bonds, bond anticipation notes, notes, refunding
8 bonds, or other forms of indebtedness of the authority;

9 (4) "bylaws" means the guidelines adopted by and amended by the
10 board from time to time under AS 29.35.300 - 29.35.925;

11 (5) "costs of projects" means all or any part of the aggregate costs
12 determined by an authority to be necessary to finance the construction or acquisition
13 of a project, including, without limitation, the cost of acquiring real property; the cost
14 of constructing buildings and improvements; the cost of financing the project,
15 including, without limitation, interest charges before, during, or after construction or
16 acquisition of the project; costs related to determining the feasibility of, planning,
17 design of, or engineering of the project and, to the extent determined necessary by the
18 authority, administrative expenses; the costs of machinery or equipment to be used in
19 the operation or rehabilitation of a solid waste management facility or operation; and
20 all other costs, charges, fees, and expenses that the authority determines necessary to
21 finance the construction or acquisition;

22 (6) "land" or "real property" means any interest in real property,
23 including tidal and submerged land, any right appurtenant to the interest, and, without
24 limitation, interests less than full title, such as easements, uses, leases, and licenses;

25 (7) "project" means a solid waste management facility, and
26 administrative facilities, including property necessary for solid waste management;

27 (8) "regulation" means a standard of general application or the
28 amendment, supplement, revision, or repeal of a standard adopted by an authority to
29 implement, interpret, or make specific the law enforced or administered by it or to
30 govern its procedure.

31 **Sec. 29.35.925. Short title.** AS 29.35.800 - 29.35.925 may be cited as the

1 Regional Solid Waste Management Authority Act.

2 * Sec. 5. AS 42.05.711 is amended by adding a new subsection to read:

3 (p) a regional solid waste management authority established under
4 AS 29.35.800 - 29.35.925 is exempt from regulation under this chapter, except that a
5 solid waste management authority is subject to this chapter if it directly competes with
6 a utility subject to this chapter.

7 * Sec. 6. AS 44.85.410(3) is amended to read:

8 (3) "municipal bond" means a bond or note or evidence of debt that
9 constitutes

10 (A) a general obligation bond that is a direct and general
11 obligation of a political subdivision of the state, all the taxable property within
12 which is subject to taxation to pay the bond, note, or evidence of debt, and the
13 interest without limitation, as to rate or amount generally to the extent
14 permitted by law or to avoid a default as provided for second class cities under
15 AS 29.45.590;

16 (B) a revenue bond, except a revenue bond for electrical
17 generation purposes other than diesel-powered generation, issued by a
18 municipality, a solid waste management authority, or a port authority that
19 pledges the revenue of a revenue-producing capital improvement and that is
20 payable solely from the revenue of the revenue-producing capital
21 improvement;

22 (C) a general obligation bond or revenue bond combined or
23 additionally secured;

24 (D) a bond of a borough issued as a general obligation of a
25 service area under AS 29.47.440 or former AS 29.58.340; or

26 (E) an obligation of a municipality secured only by

27 (i) special assessments on benefited property;

28 (ii) tax increments and a letter of credit or equal
29 security; or

30 (iii) a lease for equipment or building improvements if
31 the state is not a lessee;

1

* Sec. 7. Sections 2 and 3 of this Act take effect immediately under AS 01.10.070(c).



DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT
Office of the Commissioner

Frank H. Murkowski, Governor
William C. Noll, Commissioner

HOUSE COMMUNITY & REGIONAL AFFAIRS

HB 392

"An Act authorizing the establishment of regional solid waste management authorities."

Comments on behalf of DCCED & Division of Community Advocacy
Cindy Roberts – DCCED Liaison to the Denali Commission

The DCCED is very pleased to support HB 392, introduced by Representative Wilson.

Solid waste management issues are not the specific assignment of the Department of Commerce, Community & Economic Development, but are a key element in the commercial, human and environmental health of Alaska's rural communities.

Solid waste management is one of the most under-funded elements in the health infrastructure of our state. Water and sewer projects over the last 15 years have benefited from heightened awareness and priority. In the competition for agency dollars, water and sewer nearly always comes first. Communities are left to their own solutions to deal with packaging, construction debris, and household garbage. Because of the HIGH investment required to establish even a small landfill, there are unpermitted dumps all over the state. Our dumps are as geographically spread as our population. There are few, if any, economies of scale to address this issue.

This legislation is a timely and appropriate first step in the creation of site-specific solutions sponsored and controlled by the affected communities. The authority framework allows communities to join together to acquire the land, the equipment, and the operational manpower to handle waste in fiscally sustainable and environmentally responsible way.

As the State assists its coastal communities to develop economic and physical infrastructure to enhance the fisheries industry, the solid waste issue lurks not quite out-of-sight, but below the radar. These forces connect when a newly-extended runway services a turboprop aircraft taking prime fish to market. The mandated separation of runways and landfills (and the bird traffic that garbage attracts) cannot be accomplished in many locations.

The authority structure can assist communities to bond for the equipment that will eliminate bird and animal issues. Even better, the multi-community authority can help finance cost-share for connecting roads to share a facility between communities, resulting in improved economies of scale and improved operating procedures. In Southeast Alaska and other regions of the state, the authority option will reduce the export of dollars as well as trash. Alaskans can handle the process and retain the jobs that trash disposal represents.

For public health reasons, environmental reasons, and purely commercial reasons, this legislation is a very good idea.

ALASKA STATE LEGISLATURE



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REPRESENTATIVE PEGGY WILSON
HOUSE DISTRICT 2

SPONSOR STATEMENT

HB 392

"Solid Waste Management Authorities."

HB 392 will allow a community or group of communities to create a public corporation to deal with waste management. HB 392 is modeled after the port authority statutes and will authorize the formation of solid waste authorities for waste management.

Over the last decade in Southeast Alaska landfills, waste-to-energy plants and incinerators have closed. The cheapest and quickest alternative for any one community has been to ship municipal solid waste (MSW) by barge and rail to super landfills in the continental U.S. Lack of available and suitable land near existing communities and high costs to develop a landfill have prevented any one community from taking on this task itself. HB 392 would allow a group of communities to come together and form an authority for waste management. Working together they will be able to accomplish what one community working alone is unable to do.

Recycling and municipal waste collection is expensive with southeast communities paying between \$77/ton and \$220/ton to ship recyclables to markets and MSW to landfills, while the cost per ton for disposal in Anchorage is only \$40/ton. Presently, communities in Southeast Alaska, excluding Juneau, are shipping 23,000 tons of municipal waste out of state each year. Other Southeast communities have landfills nearing capacity, while many small communities have improper or un-permitted dumps.

Communities cooperating as a single entity can produce a regional solution to deal with the MSW. The authority's regional facility could include a Materials Recovery Facility (recycling) on the front end and a state-of-the-art landfill. Other options may include thermal reduction (waste to energy), space for composting, and space for treating oily soils.

While the compelling reasons to develop this authority are focused around the Southeast Region this bill applies to any municipality or group of governing bodies in Alaska.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 392
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Solid Waste Management Authority RDU Comm Assist & Ec Dev (405)
 Component Community Advocacy
 Sponsor Wilson
 Requester Community & Regional Affairs Component No. 2703

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation amends Title 29 to provide for the establishment of regional solid waste management authorities by one or more municipalities. It would not create a fiscal impact on the operations of the department.

Prepared by: Mike Black, Director Phone 907.269.4578
 Division Community Advocacy Date/Time 2/7/06 5:57 PM
 Approved by: William C. Noll, Commissioner Date 2/7/2006
 Agency Commerce, Community, and Economic Development

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 392
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Dept of Environmental Conservation
 Title Regional solid waste management authorities RDU Environmental Health
 Component Solid Waste
 Sponsor Representative Peggy Wilson
 Requester House Community and Regional Affairs Component No. 2344

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This legislation will have no fiscal impact on DEC.

Prepared by: Kristin Ryan, Director
 Division: Environmental Health
 Approved by: Kurt Fredriksson
 Agency: Department of Environmental Conservation

Phone: (907) 269-7644
 Date/Time: 2/6/06 4:48 PM
 Date: 2/7/2006

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MEMORANDUM

January 30, 2006

SUBJECT: Sectional analysis of HB 392 (Work Order No. 24-LS1227\F)

TO: Representative Peggy Wilson
Attn: Becky Rooney

FROM: *Donald M. Bullock Jr.*
Donald M. Bullock Jr.
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Amends AS 29.35.070(a) by adding a reference to AS 42.05.711(p) that would be added by sec. 3 of the bill.

Section 2. Amends AS 29.35 by adding article 10, secs. 29.35.800 - 29.35.925, relating to regional solid waste management authorities.

Sec. 29.35.800. States the purpose of regional solid waste management authorities.

Sec. 29.35.805. Provides that a single municipality or two or more municipalities may create a regional solid waste management authority ("authority") by ordinance or ordinances. Allows a municipality to join an established authority. Provides that an authority is a body corporate and politic and an instrumentality of the municipality or municipalities that created it, but has a separate and independent legal existence from the municipality or municipalities. States that the creation of an authority is an exercise of a municipality's extraterritorial jurisdiction. Requires that the ordinance or ordinances creating the authority must specify the powers, boundaries, and limitations of the authority. Requires that voters in a creating municipality approve the authority. Limits the application of AS 29.35.800 - 29.35.925 to an authority created under this section.

Sec. 29.35.810. Requires that an ordinance creating an authority provide for the manner for dissolving an authority. States that the assets of a dissolved authority be distributed to a participating municipality in proportion to a municipality's contribution, less any liability owed to the authority. Distribution may only occur after outstanding bond liability has been satisfied.

Sec. 29.35.815. Authorizes a municipality to transfer real and personal property or leases to the authority.

Sec. 29.35.820. Lists the powers an authority may exercise, provided the powers are included in the enabling ordinance.

Sec. 29.35.825. Provides that an authority created with appropriate powers may issue bonds and borrow money. States that the principal and interest are payable from the revenue received by the authority. Lists requirements for authorizing and selling bonds and planning for the payment of bond debt. Sets jurisdiction in the superior court for issues relating to an authority's obligations.

Sec. 29.35.825. States that an authority's bonds are eligible investments for entities listed.

Sec. 29.35.835. States that the pledge of revenue for the payment of debt is binding from the time the pledge is made and provides for a lien on revenue.

Sec. 29.35.840. States that the state and municipalities participating in an authority are not liable for the debts of an authority and that the debt is payable solely from the authority's revenue.

Sec. 29.35.845. Provides that the state and participating municipalities commit to not interfere with the ability of an authority to meet its debt obligation.

Sec. 29.35.850. Limits the satisfaction of the liability of an authority to the assets or revenue of the authority.

Sec. 29.35.855. Limits the liability of a board member or employee because of the execution or issuance of bonds.

Sec. 29.35.860. Requires an authority to obtain a fidelity bond for board members and executives responsible for accounts and finances.

Sec. 29.35.865. Prohibits an authority from levying any tax.

Sec. 29.35.870. Exempts an authority and its bonds from state and municipal taxes. Provides that an authority and a participating municipality may negotiate for payments in lieu of taxes.

Sec. 29.35.875. Provides for the authority to be administered by a board that shall appoint a chief executive officer.

Sec. 29.35.880. Provides that a collective bargaining agreement for state or municipal employees transferred to the authority shall remain in effect for a fixed period of time and allows the employees to retain certain rights of participation in

fringe benefit programs. Provides that AS 23.40.070 - 23.40.260 apply to the authority's employees unless all participating municipalities are exempt.

Sec. 29.35.885. Requires the board to adopt bylaws and regulations and lists subjects that must be included in the bylaws and regulations.

Sec. 29.35.890. States that the authority is subject to public records and open meeting laws.

Sec. 29.35.895. Requires the authority to distribute an annual report to the mayor and governing body of each municipality participating in the authority and lists subjects that may be included in the report.

Sec. 29.35.900. Requires an annual audit by an independent certified public accountant and requires the authority to make its records available to an auditor for a municipality participating in the authority.

Sec. 29.35.905. Provides the authority for a holder of bonds, notes, or coupons, or a trustee to enforce rights their rights and compel performance of the authority's duties.

Sec. 29.35.910. Provides that an authority, its board members, and its employees enjoy the same rights, privileges, and immunities as a municipality and municipal officers in judicial and regulatory proceedings.

Sec. 29.35.915. Provides that the statutes in the legislation prevail if in conflict with other statutes in AS 29.

Sec. 29.35.920. Defines terms used in provisions that would be enacted by sec. 2 of the bill.

Sec. 29.35.925. States the short title for the Act.

Section 3. Amends AS 42.05.711 by adding a new subsection to exempt the authority from regulation by the Regulatory Commission of Alaska unless the authority directly competes with a regulated utility.

Section 4. Amends AS 44.85.410(3) by including a revenue bond issued by the authority within the definition of "municipal bond."

If I may be of further assistance, please advise.

**Testimony of Deputy Commissioner Dan Easton
House Community and Regional Affairs Committee
House Bill 392 (authorizing the establishment of regional solid waste
management authorities)
February 9, 2006**

Mr. Chairman, I'm Dan Easton, Deputy Commissioner of the Department of Environmental Conservation (DEC).

I appreciate the opportunity to speak in support of HB 392 dealing with regional solid waste management authorities.

In some ways, Alaska's solid waste management situation is unique – a point illustrated by comparing us to the State of Washington.

Washington has a population of over 6 million with all of its municipal solid waste going to 21 regional disposal facilities.

Alaska, with its population of around 640 thousand, has over 200 different disposal facilities (some of which are out of state).

Compared to Washington, we have about one tenth of the population and ten times the number of solid waste disposal sites.

The difference is that Washington, with its transportation infrastructure and ability to move solid waste, has large solid waste facilities that serve all municipalities within a region. Alaska tends to have one disposal facility per community.

From DEC's environmental and human health perspective, we support development of regional solid waste management systems that serve a number of communities over individual systems serving a single community.

Larger solid waste facilities are able to take advantage of economies of scale and are generally better funded, better operated, and less apt to cause environmental or health problems than smaller facilities.

Alaska has the following regional solid waste management systems:

- Anchorage Regional Landfill;
- Matanuska-Susitna Borough Central Landfill (Palmer);
- Kenai Peninsula Borough Central Landfill (Soldotna);
- Fairbanks Northstar Borough Landfill;
- Oxbow Landfill (North Slope Borough - Deadhorse);
- Kodiak Island Borough Landfill;
- Denali Borough Landfill (Healy);
- Copper Basin Sanitation Landfill (Glennallen);
- Bristol Bay Borough Landfill (Naknek); and
- Tok Landfill.

We encourage development of other regional solid waste management systems where they make sense.

By providing communities with the opportunity to band together to form regional solid waste authorities, we hope that HB 392 will foster development of new regional solid waste management systems in Alaska.

We are not experts on many of the Title 29 authorities, legal and financial matters in this bill.

We do, however, support the intended effect of this bill to further development of regional solid waste management systems in Alaska.

We urge your support for HB 392.



Southeast Conference

P.O. Box 21989 Juneau Alaska 99802-1989 Tel. (907) 463-3445 Fax (907) 463-5670

Nov 9, 2005

Cindy Roberts
Denali Commission
510 L Street, Ste 410
Anchorage, Alaska 99501

Re: Final Report for Grant #156-05 – Solid Waste Entity Formation (\$19,000)

Dear Cindy,

With this letter, I am submitting a final work product. I will summarize the work done under this grant.

I am pleased to report that we accomplished more than we intended with this grant. Not only did we research solid waste entities in the Lower-48, review Alaskan statutes and provide templates for all regions of Alaska, but, through a state representative, have helped draft legislation that would create and authorize Solid Waste Management Authorities in Alaska. This legislation is to be introduced in the 2006 Alaska State Legislature.

As of September 30, 2005, we had expended 100% of the grant funds.

Here are some of the highlights during the grant period:

- Work began in mid-2005 with SEC staff and board, its Environment Committee and contractor Ecology and Environment, Inc.
- SEC maintained an active role in this work, with weekly conference calls and updates from the contractor. This information then was relayed to the board and committees.
- The contractor interviewed dozens of representatives from state government, federal government, consulting businesses and solid waste authorities.
- We developed a matrix and white paper to look at entity formation options for Alaska.
- We had an independent attorney review the white paper and matrix.
- We developed a template for communities and regions in Alaska to use.
- We drafted legislation for a Solid Waste Management Authority
- We gave presentations at the SEC annual Meeting on Sept. 26 in Wrangell. Speakers were contractor Dick Smith on the solid waste report; Rollo Pool, on solid waste entities; and Kake Tribal Corp. general manager Duff Mitchell on its waste-to-energy option (plasma arc).
- We met twice with Waste Management, Inc. which operates the landfill in Juneau.

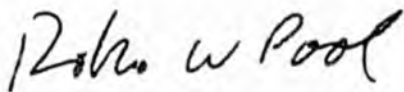
- We gave presentations to the Juneau Rotary Club and to the Juneau Economic Development Council on solid waste, recycling and other issues.

Our solid waste work in the regional continues to garner interest by the media. During the life of this grant, we updated reporters in Haines, Sitka, Juneau, Wrangell, Ketchikan, and Petersburg. State and federal officials are engaged in discussion of regional solid waste plans. The governor supports an effort to keep Southeast Alaska communities from shipping these wastes from Alaska.

We are enthused with the work to date and encouraged with the number of communities expressing interest for consideration as a regional site and with the support at state and federal levels. Again, we appreciate the support from the Denali Commission for this grant.

Should you have any questions, please do not hesitate to contact me, by mail, phone or email: rollo@seconference.org.

Sincerely Yours,



Rollo Pool
Executive Director



Southeast Conference

P.O. Box 21989 Juneau Alaska 99802-1989 Tel. (907) 463-3445 Fax (907) 463-5670

Alaska Solid Waste Entity Formation

A Look at Options to Coordinate
Transfer, Handling and Disposal of Solid Wastes
In Alaskan Communities



Contractors

Ecology & Environment, Inc.
Cedarbrook Consulting

for

Southeast Conference

P.O. Box 21989
Juneau, AK 99802
Telephone: (907) 463-3445
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Oct 31, 2005

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SUMMARY

SOLID WASTE ENTITY FORMATION FRAMEWORK

Over the last decade in Southeast Alaska, landfills and waste-to-energy plants and incinerators have closed. The cheapest and quickest alternative for any community has been to ship municipal solid waste (MSW) by barge and rail to super landfills in the Continental US. Lack of available and suitable land near existing communities and high costs to develop a landfill have prevented any community from taking on this task itself.

Southeast Alaska is an isolated area of 70,000 residents living in more than 25 communities scattered over an area comprising 20 million acres – roughly half the size of Washington State. This area is dependent on barge, airline and ferry service to connect it with the contiguous 48 states and British Columbia. Recycling and municipal waste collection is expensive with some communities paying over \$100-200/ton to ship recyclables to markets and MSW to landfills, while the cost per ton for disposal in Anchorage is \$40/ton.

Presently, communities in Southeast Alaska are shipping 23,000 tons of municipal waste each year out of state – some as far as 1,100 miles. Other Southeast communities have landfills nearing capacity, while many small communities have improper or unpermitted dumps.

Southeast Conference feels that its communities, cooperating as a single entity, can produce a regional solution to deal with MSW. The goal is to recycle more, save communities money over current costs, and produce jobs in the region. At a minimum, a regional facility, should it happen, will include recycling (Materials Recovery Facility) on the front end and a state-of-the-art landfill. Other options may include thermal reduction (waste-to-energy) and space for composting and for treating oily soils.

In the last 15 months, SEC has begun work under two Solid Waste grants from the federal government. One is to do a report that looks at solid waste handling options in Southeast Alaska - especially those communities that ship waste to the Lower-48. This report will be done in late November 2005, and it will list options (including a regional landfill and recycling center) and potential sites. Several communities (Petersburg, Wrangell, Thorne Bay, Sitka and Kake) are interested in being considered as a future site.

A second grant from the Denali Commission, which is the subject of this report, has helped determine what kind of legal entity is needed for communities to move and process municipal solid waste and to operate a regional landfill.

Through a grant from the Denali Commission, Southeast Conference hired consultants and a law firm to study regional solid waste handling in other states, to review state statutes and to offer advice on entity formations.

There are two primary legal vehicles to move, process and dispose of solid waste. One is a Joint Government Agreement, for which there is existing statutory authority. Another option, and likely to be more preferable, is a Solid Waste Management Authority. Draft legislation has been prepared for the 2006 Alaska legislature. The legislation would be applicable to other regions or to a group of communities elsewhere in Alaska.

SEC STUDY METHODOLOGY

A Solid Waste Entity Matrix (Attachment #1) was developed by Ecology & Environment, Inc. (E&E) to provide basic information regarding a range of different business operations and management structures including For-Profit Corporation, Nonprofit Corporation, Limited Liability Company, Cooperative Corporation, Partnership, Federation and Commission, Authority and Joint Government Agreement. The two most common entities encountered in E&E's research for solid waste management structures and those most appropriate for Southeast Alaska are the Authority model and, by contract, with a Joint Government Agreement.

Under AS 29.35.010 and Article X and Section 13 of the Alaska Constitution, all municipalities have the power to enter into an agreement, including an agreement for cooperative or joint administration, for any function of power, including management of solid waste. Unincorporated areas do not have this ability, and, therefore, some of the very smallest communities in Southeast Alaska would not be able to enter into Joint Government agreements. However these small communities could contract for services provided by an entity created by a Joint Government Agreement.

JOINT GOVERNMENT AGREEMENT

E&E developed a template for a Joint Government Agreement (Attachment # 2) that would establish a regional solid waste authority. This template provides language for the typical sections found in Joint Government Agreements and identifies those areas needed further development by the participating communities. Additionally this template can easily be modified for use in establishing any type of joint government agreement. In the process of developing the template for a Joint Government Agreement, E&E developed an outline for a Joint Government Agreement (Attachment #3) and an outline for an Authority Created Under a Joint Government Agreement (Attachment #4). Both "outline" documents identify the general elements to be incorporated in a Joint Government Agreement and into an authority and provide another set of criteria to use in establishing a Joint Government Agreement.

AUTHORITY

For the purposes of the discussion, the term "authority" has been used generically to mean an "entity with administrative powers."

The second most common entity formed to manage solid waste is an Authority established in statute. Alaska statutes currently provide for Port Authorities (AS 29.35.600) and Regional Resource Development Authorities (AS 30.13). Both of these authorities are for transportation purposes only and cannot be used for solid waste. There are no solid waste authorities or general authorities that can be used for solid waste issues in Alaska statutes.

E&E found that a solid waste management entity (authority) established via a Joint Government Agreement as a viable method for consideration by SE Conference because a statutorily created Authority is more cumbersome to create.

Southeast Conference retained Baxter Bruce & Sullivan to provide legal review and analysis of the matrix and outline documents prepared by E&E. They did not review the template for a Joint Government Agreement as it had not been completed. Their conclusion is that a statutorily established authority is the most attractive option, unless there is some political opposition to enabling legislation that would allow communities to form solid waste authorities just as they form port authorities.

STATUTORY CHANGE

A statutorily authorized Solid Waste Authority in Alaska will require passage of enabling legislation. One of the uniform features of most statutorily-created Solid Waste Authorities reviewed is that, in each participating community, elected officials and voters approve of its participation.

Using the Port Authority Statute as a model, E&E created a draft solid-waste statute. (Southeast Conference has submitted it to Rep. Peggy Wilson who has sent it to the Alaska Department of Law for review.)

E&E developed a template for a Regional Solid Waste Management Authority modifying the Port Authority statute (AS 29.35.600) by eliminating the requirements for development and plan approval at various points in the process. The Regional Resource Development Authority requires, among other elements, a petition be submitted and approved by the administration, a vote of the people and at least 3 board members be appointed by the governor.

Through the office of Rep. Peggy Wilson (District 2 – Wrangell) and the Legislative Affairs Agency, draft legislation has been created and is attached (attachment # 6).

MEMORANDUM

To: Rollo Pool, Southeast Conference
From: Stephanie Pingree, Ecology & Environment, Inc.
CC: Mary Siroky, Cedarbrook Consulting
Date: June 2, 2005
Re: Solid Waste Regional Entity Project

In response to Southeast Conference's March 2005 request for proposals (RFP) and subsequent conversation with you, Ecology and Environment, Inc. (E & E) has developed the attached matrix outlining regional entities that may be used in dealing with regional solid waste issues in Southeast Alaska. The matrix was developed through reviewing websites of regional solid waste organizations throughout the United States, interviewing executive directors or planners of select solid waste entities, and review of Alaska statutes. This information is intended to provide Southeast Conference with basic information regarding operations and management of different business structures. It does not provide all restrictions or requirements for operations. Although the matrix has had limited review by E & E's legal team, a full review by an attorney and/or accountant should be performed before moving forward with any of the entities outlined in this memorandum or attached matrix.

After review of regional solid waste entity websites provided by Southeast Conference, as well as others identified by E & E, multiple business structures were identified as potentially viable to address Southeast Alaska's regional solid waste needs. These organizations include the following: for-profit corporation, non-profit corporation, limited liability company, cooperative corporation, partnership, authority, joint government agreements, federation, and commission. Each of these entities is discussed below. The two most common entities encountered in E & E's research of solid waste entities include solid waste authorities and joint government agreements. Both structures are discussed in more detail below.

For-Profit Corporation

For-profit corporations are established under Alaska Statutes (AS) 10.06 and can be established for any lawful purpose. A For-Profit Corporation is owned by anyone who owns stock. Votes in the corporation are divided by shares, which could lead to unequal voting between shareholders. In addition, there are obvious tax disadvantages associated with for-profit corporations.

Nonprofit Corporation

Nonprofit corporations are established under AS 10.20 and can be established for any lawful purpose including commercial or industrial purposes. A nonprofit corporation is owned by its members. Management of the corporation is through a Board of Directors elected by its members and voting is usually one vote per member unless otherwise stated in the articles or bylaws. There can be one or more classes of members as set out in the bylaws. Nonprofit corporations, in general, are able to receive grant funds. Municipalities would be able to issue bonds to finance the projects of a nonprofit

corporation but the nonprofit corporation is not likely to be able to issue bonds on its own. This illustrates the main disadvantage of the nonprofit corporation; its abilities are limited in comparison to other entities that are created for purely public purposes.

Limited Liability Company

Limited Liability Companies (LLC) are established under AS 10.50 and can be established for any lawful purpose. It is owned by members who must own interest in the company. Voting and profit distribution is established through the operating agreement. As with for-profit corporations, there is the potential disadvantage for tax purposes. In addition, LLCs are not generally eligible for grant funding although not specifically excluded.

Cooperative Corporation

A Cooperative Corporation is established under AS 10.15 and can be established for any lawful purpose except as specified in Alaska law. Solid waste entities are not identified as excluded from cooperative organization. A Board of Directors manages a cooperative and membership is based on ownership of shares of membership stock or payment of a membership fee as set out in the articles. Each member has one vote unless the bylaws authorize voting according to actual, estimated, or potential patronage, or a combination of these approaches.

Partnership

Limited Partnerships are established under AS 32.11 and Limited Liability Partnerships are established under AS 32.06. Limited partnerships have one or more general partners, who control the business and are liable for debts and obligations of the partnership, and one or more limited partners, who are not as involved and who have limited liability such as a shareholder in a corporation. It is assumed that all members of the solid waste regional organization would like to be actively involved and therefore this option was not further evaluated.

Limited Liability Partnerships are similar to a general partnership except normally a partner does not have personal liability for the negligence of another partner. Professionals, such as accountants and lawyers, generally use this business structure. For both a Limited Liability Partnership and a Limited Partnership, tax liability flows directly through to the owners and the entity itself is not taxed. Because of these restrictions, both types of partnerships were not investigated any further.

Federation and Commission

Federation and Commission organization and operation are not specifically addressed in Alaska statutes. In addition, examples of either type of organization managing solid waste on a regional basis were not found.

Generally speaking, a federation is a league or union of states, groups or people arranged with a strong central authority within a limited region. However, the members of the federation commonly retain various rights and powers to act independently of the federation. One solid waste federation, Federation of New York Solid Waste

Association, is an umbrella organization for multiple solid waste associations in New York State. It serves as a professional organization and does not own, operate, or manage any solid waste facilities.

A commission is a body of persons acting under lawful authority to perform certain public services. It is commonly used by single jurisdictions to transfer the accomplishment of a specific public function to a new organization. For example, the Federal Commission was established by Congress to regulate interstate and international communications by radio, television, wire, satellite and cable within the United States.

Authority

Alaska statutes allow for Port Authorities (AS 29.35.600) and Regional Resource Development Authorities (AS 30.13). Both of these authorities can be established for transportation purposes only. Solid waste authorities or general authorities that can be used for solid waste issues are not specifically addressed in Alaska statutes. It is possible that the "Port Authority" statute could be used as the mechanism to establish an entity responsible for shipping solid waste around Southeast Alaska; AS 29.35.600 states that Port Authorities can be created for "transportation related commerce within the territory of the authority". A Port Authority requires parallel ordinances in each participating community as well as approval by the voters of each community.

Solid Waste Authorities are used extensively throughout the country to address both local and regional solid waste needs. E & E researched regional Solid Waste Authorities throughout the country to identify their management and operation. Below are some examples of how regional solid waste authorities are operating.

The Revised Code of Ohio, Title III, Chapter 343, created solid waste management districts. The Solid Waste Authority of Central Ohio was created under this law. They are one of 52 solid waste districts in the state. The Solid Waste Authority runs the landfill, encourages recycling through education programs, and finds new uses for recyclables but does not pick up the trash curbside. The authority is a government body that answers to a 9 member Board of Trustees. The authority has the power to levy taxes and issue bonds, if needed.

The Coastal Regional Solid Waste Management Authority in North Carolina was formed in 1990 through an agreement between three counties. In 1989, the state legislature adopted General Statutes of North Carolina 153A-22 which authorizes and set forth the process for creating Solid Waste Management Authorities. Each participating county adopted a resolution to form the Coastal Regional Solid Waste Management Authority. The authority's purpose is to provide an environmentally sound, cost effective system of solid waste disposal for the citizens of the three member counties. The organization is a public authority, governed by a 7 member Board of Directors representing the member counties. Seats, and votes, on the board were assigned by population and ensuring that no one county had the majority of the board members. The organization operates four facilities including an administrative office, landfill, and two transfer stations. Participating members are responsible for collection of waste. The organization is

funded through an initial bond that financed all capital and tipping fees for operation and repaying bond.

Joint Government Agreements

Under AS 29.35.010 and Article X, Section 13 of the Alaska Constitution, all municipalities have the power to enter into an agreement, including an agreement for cooperative or joint administration of any function of power with a municipality, the state, or the United States. This power is not allowed for unincorporated areas, therefore not all communities in Southeast Alaska would be allowed to enter into these agreements without changes to the Alaska statutes or utility service areas of neighboring municipalities.

E & E identified many agencies that operate through some form of a joint government agreement. Examples of how a few of these organizations operate and are managed are discussed below.

The Land of Sky Regional Council in North Carolina was set up by the legislature to address multiple regional issues, one of which is solid waste. It is made up of local government agencies (4 counties and 15 municipalities). A Board of Directors comprised of representatives from each of the government agencies in addition to other representatives, such as community and industry representatives manage the regional council. Each board member is a voting member. The regional council provides recycling, household hazardous waste disposal, and educational activities. Each of the member governments operates their own solid waste activities such as transportation, pick-up, and disposal individually. According to a representative at the organization, the regional council was not able to operate as a regional government due to past experience not being able to cooperate on regional issues and failure to ensure equitable issues among members.

The Bluestem Solid Waste Agency is another example of a regional government agency representing six counties and participating cities in Iowa. The agency operates recycling center, pollution prevention center, etc. and provides assistance to participating members; landfills are publicly owned and not a part of the agency. The agency was developed through legislation that allows for government agencies to join together. A Board of Directors made up of elected officials from participating governments manages the organization. The organization is funded primarily from tipping fees.

The Solid Waste Authority of Salinas is a joint power agency set up by California statutes allowing for local governments to join together addressing common issues in their communities. The organization owns and operates a common landfill and the participating cities are in charge of pick-up and transportation to that landfill. The management of the organization is through a board representing member cities and unincorporated areas. Voting rights are distributed based on the population of the member organization. The organization's operation is funded through grants and tipping charges.

Conclusion

A solid waste authority or agency formed through specific language addressing solid waste authorities in state statutes or formed through a joint government agreement is the most common type of regional solid waste organization found through our research. Joint government agreements are currently permitted under Alaska statutes and could be used to form a regional solid waste authority or agency in Southeast Alaska. The management, ownership, voting power, and ability to issue bonds could be set out in a memorandum of agreement signed by all participating governments. The formation of a solid waste authority or agency in this manner would require no changes to the current statutes. Changes to Alaska statutes would be required if a solid waste authority was to be set up by the legislature as was done in the Ohio and North Carolina examples above.

Att.

Solid Waste Entity Matrix
Southeast Conference, June 2005

	For Profit Corporation AS 10.06¹, et seq.	Non-Profit Corporation AS 10.20², et seq.	Limited Liability Company AS 10.03³, et seq.	Cooperative Corporation AS 10.15⁴, et seq.	Joint Government Agreements⁵	Authority AS 29.35.600 and AS 30.13.010⁶
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	For Profit Corporation AS 10.06 ¹ , <i>et seq.</i>	Non-Profit Corporation AS 10.20 ² , <i>et seq.</i>	Limited Liability Company AS 10.50 ³ , <i>et seq.</i>	Cooperative Corporation AS 10.15 ⁴ , <i>et seq.</i>	Joint Government Agreements ⁵	Authority AS 29.35.600 and AS 30.13.010 ⁶
Purpose	Any lawful purpose.	Any lawful purpose including commercial or industrial.	Any lawful purpose.	Any lawful purpose, except banking or insurance or the furnishing of electric or telephone service.	For cooperative or joint administration of any function or power of the municipality.	Port Authority – Provide for the development of a port or ports for transportation related commerce within the territory of the authority. It is possible that for just the transportation portion of a regional solid waste authority that this statute could be used. Regional Resource Development Authority – improvement, establishment, and development of facilities in its district for transportation purposes in connection with natural resource enterprises
Ownership	Anyone who owns stock.	Members.	Members who own interests.		Can be specified in agreement.	Members.
Management	Board of Directors elected by shareholders.	Board of Directors elected by members.	Manager, all members, or Board of Directors as stated in the articles of organization.	Board of Directors	Can be specified in agreement.	Board of Directors appointed or elected as specified in ordinance.

	For Profit Corporation AS 10.06 ¹ , <i>et seq.</i>	Non-Profit Corporation AS 10.20 ² , <i>et seq.</i>	Limited Liability Company AS 10.50 ³ , <i>et seq.</i>	Cooperative Corporation AS 10.15 ⁴ , <i>et seq.</i>	Joint Government Agreements ⁵	Authority AS 29.35.600 and AS 30.13.010 ⁶
Membership	Shareholders.	May have one or more classes of members.	Membership gained by acquiring interest.	Based on ownership of a share of membership stock or payment of a membership fee as set forth in the articles.	Borough, and 1 st or 2 nd class city. Unincorporated areas not eligible.	Participating municipalities/organizations.
When Members Can Join	Anytime.	Anytime.	Anytime.	Anytime.	Can be specified in agreement.	Port Authority – One or more municipalities may join upon adoption of parallel ordinances by governing bodies of each affected municipality.
Voting	Equal vote per share within class; Number of shares based on consideration paid money, other property, or services. Could lead to unequal voting rights between shareholders.	One vote per member, usually, but can be varied in the articles or bylaws.	As per operating agreement.	Each member has one vote except bylaws may authorize voting according to actual, estimated or potential patronage, or a combination of these plans of voting. Shares of stock may not be given voting power except in specific instances.	Can be specified in agreement.	

	For Profit Corporation AS 10.06 ¹ , <i>et seq.</i>	Non-Profit Corporation AS 10.20 ² , <i>et seq.</i>	Limited Liability Company AS 10.50 ³ , <i>et seq.</i>	Cooperative Corporation AS 10.15 ⁴ , <i>et seq.</i>	Joint Government Agreements⁵	Authority AS 29.35.600 and AS 30.13.010 ⁶
Liability of Owners	Limited Liability of Owners.	Limited Liability of Owners.	Limited Liability of Owners.	Member is not liable for the debts in an amount exceeding the sum remaining unpaid on the member's subscription for shares of the cooperative, and the sum remaining unpaid on the member's membership fee if a fee is required.	Not specified.	Port Authority – Liability incurred shall be satisfied exclusively from the assets and revenue of the authority. Creditor does not have a right of action against the municipality participating in the authority. - Board member or employee of authority is not subject to personal liability or accountability because of execution or issuance of bonds.
Profit Distribution	Based on shares, but there can be different types of shares with different rights.	Not allowed to issue stock or pay dividends to members or officers.	As specified in Operating Agreement.	A cooperative organized with capital stock may pay a dividend on capital stock authorized by its articles if its capital is not impaired and would not be impaired by the payment.	Not specified.	

	For Profit Corporation AS 10.06 ¹ , <i>et seq.</i>	Non-Profit Corporation AS 10.20 ² , <i>et seq.</i>	Limited Liability Company AS 10.50 ³ , <i>et seq.</i>	Cooperative Corporation AS 10.15 ⁴ , <i>et seq.</i>	Joint Government Agreements ⁵	Authority AS 29.35.600 and AS 30.13.010 ⁶
Ability to Receive Funds	Less practical.	Can receive grants and loans.	Less practical.	Less practical.	Once formed is could have only those powers of taxation as one or more of the participating governing bodies and only as specifically provided in the agreement proposing creation of the joint government agreement. Is likely to be able to issue bonds.	Port Authority - Can accept grants and loans. If authorized by ordinance, can borrow money and issue bonds.
Requires Federal or State Statute/Regulation Change	No.	No.	No.	No.	No.	Yes.
Legally Mandated Minimum Staffing Requirements	No.	No.	No.	Requires in-state agent.	No.	Board appoints chief executive officer.
Exempt from Federal Income Tax	Not generally.	May qualify but more difficult. Usually 501(c)(3) charitable or 501(c)(4) social welfare exemptions.	Not generally.		Not specified.	

	For Profit Corporation AS 10.06 ¹ , <i>et seq.</i>	Non-Profit Corporation AS 10.20 ² , <i>et seq.</i>	Limited Liability Company AS 10.50 ³ , <i>et seq.</i>	Cooperative Corporation AS 10.15 ⁴ , <i>et seq.</i>	Joint Government Agreements ⁵	Authority AS 29.35.600 and AS 30.13.010 ⁶
Exempt from State Income Tax	No.	No, unless operating solely for religious, charitable, etc. purposes.	Not generally.		Not specified.	Yes (AS 29.35.670)
Regulated Time and Cost to Form Entity	\$150 filing of articles fee.	\$50 filing of articles fee.	\$150 filing fee.	Biennial fee of \$100.	No regulated cost. Time needed to draft MOA agreeable to all parties.	Not only requires parallel ordinances but also a vote of the citizens of each participating community which takes time and is costly
Formation	Filing of Articles of Incorporation with the State.	Three or more persons may act as incorporators of a non-profit corporation by signing and filing articles of incorporation.	Filing of Articles of Organization with the State.	Three or more persons may act as incorporators of a cooperative by filing articles.	Formed through appropriate action by ordinance, resolution, or otherwise pursuant to the law of the participating governing bodies.	Port Authority – (1) Municipality creates by ordinance as a public corporation of the municipality, (2) Two or more municipalities create by parallel ordinances adopted by each of the governing bodies as a public corporation of the municipalities.

¹ AS 10.06 – Alaska Corporations Code

² AS 10.20 – Alaska Nonprofit Corporation Act

³ AS 10.50 – Alaska Revised Limited Liability Company Act

⁴ AS 10.15 – Alaska Cooperative Corporation Act

⁵ AS 29.35.010 and Article X, Section 13 of the Alaska Constitution

⁶ AS 29.35.600 – Port Authorities; AS 30.13.010 - Regional Resource Development Authorities

JOINT GOVERNMENT AGREEMENT TEMPLATE

INSTRUCTIONS

The Joint Government Agreement Template is designed as a template for the development of a solid waste regional authority. The template can easily be modified for use in the establishment of any type of Joint Government Agreement. Below is a list of sections where template users may consider different options.

- Intent of the Parties- determine if all the issues leading up to the formation of a joint government agreement are captured. For joint government agreements dealing with different issues insure that all the reasons for formation are listed here.
- Membership – consider who is to be a member. A joint government authority can provide services to entities that are not members via contracts.
- Board – determine if board membership results in a one to one ratio of membership on the board. Should board members be members of the participating local government or should local government authorities appoint them?
- Terms of Office – is three years an appropriate term of office? Does this match the terms of office of local government officials? One-year terms of office are common.
- Executive Director – determine if there are additions or deletions to the list of responsibilities for the Executive Director. For joint government agreements dealing with different issues this may differ dramatically.
- Meetings – should the board meet more or less often than quarterly? Determine if travel and per diem costs of board members are to be paid by the authority?

- Powers of an Authority- review the list or responsibilities of the regional solid waste authority and determine if this is complete. For joint governmental agreements dealing with different issues this list will need to be modified.
- Duration of the Agreement – is 15 years long enough? Too long? For joint governmental agreements dealing with different issues the duration of the agreement may be much different.
- Disposition of Authority Assets and Liabilities Upon Termination - if an authority does not have assets this section may not be needed.

JOINT GOVERNMENT AGREEMENT TEMPLATE

Italics represent information that may need to be added as a final agreement is drafted as appropriate.

1. DEFINITIONS

- a. "Agreement" means this Joint Government Agreement.
- b. "Contract Date" means the date of this Agreement.
- c. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste any enter the environment or be emitted into the air or discharged into any waters, including groundwaters.
- d. "Landfill" means a disposal facility or part of a disposal facility where waste is placed in or on land, which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.
- e. "Party" or "Parties" means the municipalities, cities or local government as the context or usage of the term any require.
- f. "Solid Waste Management" means purposefully, systematic, control of generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.
- g. "State" means the State of Alaska and all of its appropriate administrative, contracting and regulatory departments and offices.
- h. "Unit of Local Government" means a Unified Home Rule Municipalities, Home Rule Borough, 2nd Class Borough, 1st and 2nd class city
- i. Define technical and scientific terms used in the agreement.

2. INTENT OF THE PARTIES

- a. The Parties are concerned that relying on shipping solid waste outside of the state reduces the communities control over costs.
- b. The Parties believe that by working together to manage solid waste on a regional basis the cost of solid waste disposal for all communities in Southeast Alaska will be reduced.
- c. Additionally the Parties believe that it is in the best interest of all the communities in Southeast Alaska that there are landfill disposal options available, regionally, to the communities of Southeast Alaska.

3. PARTIES/AUTHORITIES

- a. This agreement authorizes the establishment of an authority that will plan for, develop and manage a regional solid waste transportation system and potentially plan, purchase the land for, develop, construct and operate a regional solid waste disposal (landfill) facility.
- b. Each of the Parties (LIST PARTIES HERE)
 - i. CITY AND BOROUGH OF JUNEAU ("Juneau"), a unified home rule municipality;
 - ii. CITY AND BOROUGH OF SITKA ("Sitka"), a unified home rule municipality;
 - iii. CITY OF KAKE ("Kake"), a 1st class city; and C
 - iv. CITY OF THORNE BAY ("Thorne Bay"), a 2nd class city.

Add additional communities as necessary

- c. Each of the Parties to this Agreement is a local government entity functioning within the State of Alaska.
- d. The Parties have the authority to enter in this agreement pursuant to section 29.35.010 (13) of the Alaska Statutes and Article X, section 13 of the Alaska Constitution which states that all municipalities have the power to enter into an agreement, including an agreement for cooperative or joint administration of any function or power with a municipality, the state, or the United States.
- e. Each of the Parties to this Agreement has the power, in addition to other powers which are common to each of them, to undertake and perform: solid waste planning and program management, including collection services and siting; the development, construction, and operation of solid waste facilities, including recovery of recyclable and compostable materials; and the transfer and disposal of solid waste generated within each of the Parties jurisdictional boundaries. *Each of the participating parties will need to check their municipal ordinances to insure they have the powers talked about in this paragraph. The state in Sec 29.35.050 grants a municipality the ability to assume these powers by ordinance but there is the possibility that some communities have not taken on these powers.*

4. ESTABLISHMENT OF THE AUTHORITY:

- a. There is established an Authority which shall be a public entity separate from the Parties to this agreement.
- b. The name of the Authority shall be the SOUTHEAST ALASKA REGIONAL SOLID WASTE MANAGEMENT AUTHORITY.
- c. The boundaries of the authority shall encompass the territorial jurisdiction of the members of the authority.

5. MEMBERSHIP; BOARD; DELEGATES

- a. Each Party signing on to this agreement shall become a member of the regional solid waste management authority. There after any unit of local government may join the authority by

agreeing to the provisions of this agreement and by being admitted by unanimous vote of the existing members.

- b. All the rights and privileges of membership in a regional solid waste management authority shall be exercised on behalf of the member units of local government by a board composed of delegate to the authority who shall be appointed by and shall serve at the pleasure of the governing boards of their respective units of local government.
- c. A vacancy on the board shall be filled by appointment by the governing board of the unit of local government having the original appointment.

6. MEMBERSHIP

- a. The authority shall be governed by a Board of Directors composed of a representative from each of the participating communities and two representatives from the City and Borough of Juneau who have a population twice as large as any other participating community.
- b. For the transaction of business, a quorum consists of one greater than half the members.

7. TERMS OF OFFICE, ALTERNATES, OFFICERS

- a. The term of office of each member of the Authority Board shall be three (3) years and shall not exceed the term of the elective office, which the member holds
- b. Each Party may, in addition to their respective regular appointments, appoint one or more elected officials who will serve as alternate appointees and members of the Authority Board and each such alternate appointee and member shall be empowered to cast votes in the absence of a regular appointee and member or in the event of a disqualification to vote because of conflict of interest. Each alternate appointed shall be a member of the governing of body of the Party making such appointment.
- c. At its first meeting and thereafter at the first meeting of every third year, the Board of Directors shall elect a President, Vice-President, and such officers as the Authority Board find appropriate, to the serve the Authority Board for a term of three (3) years unless sooner terminated at the pleasure of the Authority Board. In the event the officer so elected ceases to be a Director, the resulting vacancy shall be filled at the next regular meeting of the Authority Board held following the occurrence of the vacancy. In the absence or inability of the President to act, the Vice-President shall act as President. The President, or in the absence of the President, the Vice-President, shall preside at and conduct all Authority Board meetings.

8. EXECUTIVE DIRECTOR

- a. The Authority Board shall select an Executive Director to serve at its pleasure. The Executive Director shall be responsible to the Authority Board for the proper and efficient administration of the Authority as may be placed in the Executive Director's charge, or under the Executive Director's jurisdiction or control, pursuant to the provision of this Agreement, or any ordinance, resolution, or order of the Authority Board. In addition to the powers and duties provided, the Executive Director shall have the power to:
 - i. Plan, organize and direct all Authority activities under the policy direction of the Authority Board.

- ii. Enforce strict compliance with the approved annual budget and approve only expenditures authorized in the approved budget.
- iii. Hire and manage such staff as necessary to carry out the provisions of this agreement;
- iv. Make recommendations to and request of the governing board concerning all the matters, which are to be performed, done or carried out by the Authority Board.
- v. Have charge of, handle or access to any property of the Authority, and shall make an annual inventory of all Authority property.
- vi. Make all books and records of the Authority in the Executive Director's hands open to inspection at all reasonable times by members of the Authority Board or their representatives.

9. ORGANIZATION OF THE AUTHORITY

- a. The governing board of a regional solid waste management authority shall hold an initial organizational meeting at such time and place as agreed upon by its members units of local governments and shall elect a chair and any other officers that the charter may specify of the delegates deem advisable.
- b. The authority shall then adopt by laws for the conduct of its business.

10. MEETINGS

- a. The Authority Board shall meet a minimum of 4 times a calendar year, one of which will be face to face. The Authority Board may provide for allowances for members or alternates to attend meetings.

11. CHARTER.

- a. The charter of a regional solid waste management authority shall:
 - i. Set out the method of determining the financial support that will be given to the authority by each member unit of local government.
 - ii. Establish a method for amending the charter, and for dissolving the authority and liquidation of assets and liabilities.
 - iii. Contain rules for the conduct of the authority business and any other matter pertaining to the organization, powers, and functioning of the authority that the member units of local government deem appropriate.

12. POWERS OF AN AUTHORITY. The charter may confer on the regional solid waste management authority any or all of the following powers:

- a. To apply for, accept, receive, and disburse funds and grants made available to it by the state or any agency thereof, the United States of America or any agency thereof, any unit of local government whether or not a member of the authority, any private or civic agency, and any persons, firms or corporations.

- b. To employ personnel.
- c. To contract with consultants.
- d. To contract with the United States of America or any agency or instrumentality thereof, the state or any agency, instrumentality, political subdivision, or municipality thereof, or any private corporation, partnership, association, or individual, providing for the acquisition, construction, improvement, enlargement, operation or maintenance of any solid waste management facility, or providing for any solid waste management services.
- e. To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules and policies in connection with the performance of its functions and duties.
- f. To establish suitable offices at such place as it may determine either by the authority alone or through appropriate cost-sharing arrangements with any unit of local government or other persons.
- g. To study, plan, design, construct, operate, acquire, lease, and improve systems and facilities, including systems and facilities for waste reduction, materials recovery, recycling, resource recovery, land filling, transportation, household hazardous waste management, disposal and public education regarding solid waste management in order to provide environmentally sound, cost effective management of solid waste including storage, collection, transporting, separation, processing, recycling, and disposal of solid waste in order to protect the public health, safety, and welfare; to enhance the environment for the people of the state, recover resources and energy which have the potential for further use.
- h. To locate solid waste facilities, including ancillary support facilities as the authority may see fit.
- i. To assume any responsibility for disposal and management of solid waste imposed by law on any member unit of local government.
- j. To operate such facilities together with any person, firm, corporation, the State, any entity of the State, or any unit of local government as appropriate and otherwise permitted;
- k. To set and collect fees and charges as is reasonable to offset operating costs, debt service and capital reserve requirements of the authority.
- l. To apply to the appropriate agencies of the State, the United State of America or any state therefore, and to any other appropriate agency for such permits, licenses, certificates or approvals as may be necessary, to construct, maintain, and operate projects in accordance with such permits licenses, or approvals in the same manner as any other person or operating unit of any other person.
- m. To employ engineers, architects, attorneys, real estate agents, appraisers, financial advisories and such other consultants and employees as may be required in the judgment of the authority, to fix and pay their compensation from funds available to the authority.
- n. To acquire property located within the territorial jurisdiction of any member unit of local government by eminent domain pursuant to authorities granted local governments.

- o. To do all things necessary, convenient or desirable to carry out the purposes and to exercise the powers granted to the authority.
 - p. To sue and be sued, and name and plead and be impleaded.
 - q. To receive, administer, and comply with the conditions and requirements respecting any gift grant or donation of any property or money.
 - r. To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof.
 - s. To sell, lease, exchange, transfer, or otherwise dispose of, or grant options for any such purposes with respect to any real or personal property or interest therein.
 - t. To pledge, assign, mortgage, or otherwise grant a security interest in any real or personal property or interest therein, including the right and power to pledge, assign, or otherwise grant security interest in any money, rents, charges, or other revenues and any proceeds derived by an authority from any and all sources.
 - u. To issue revenue bonds of the authority and enter into other financial arrangements to finance solid waste management activities, including but not limited to systems and facilities for waste reduction, materials recovery, recycling, resources recovery, landfill, ash management, and disposal and for support facilities, to refund any revenue bonds or notes issued by the authority, whether or not in advance of maturity or realistic redemption date, or to provide funds for other corporate purposes of the authority.
 - v. With the approval of any unit of local government, to use officers, employees, agents, and facilities of the unit of local government for such purposes and upon such terms as may be mutually agreeable.
 - w. To develop and make data, plans, information, surveys, and studies of solid waste management facilities within the territorial jurisdiction of the members of the authority, to prepare and make recommendations in regard thereto.
 - x. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.
- 13. LONG TERM CONTRACT PERMITTED BY AND WITH THE AUTHORITY**
- a. To the extent authorized in its by laws, the Authority may enter into long-term and continuing contracts, not to exceed a term of 60 years, with member or other units of local government for the acquisition, construction, improvement, enlargement, operation, or maintenance of any solid waste management facility or for solid waste management or transportation services.
 - b. Contracts entered into by an authority may include, but are not limited to, provisions for:
 - i. Payment by the members of the Authority and other units of local government of a fee or other charge by the Authority to accept, dispose of or transport solid waste.

- ii. Periodic adjustments to the fee or other charges to be paid by each member of the authority and such other units of local government.
- iii. Warranties from the members of the Authority and such other units of local government with the respect to the quantity of solid waste to be transported or delivered to the authority and warranties relating to the content or quality of solid waste.

14. APPLICABLE REGULATIONS

- a. An authority created by this agreement shall comply with all applicable federal and state laws, regulations, rules, including specifically those enacted or adopted for the management of solid waste or for the protection of the environment or public health.
- b. *Identify any local government ordinances that maybe applicable.*

15. APPROVAL AND PERMIT REQUIREMENTS

- a. *List all approvals and permit requirements being required.*
- b. *This is only applicable if constructing or operating a landfill.*

16. DEDICATIONS AND RESERVATIONS

- a. Provide a statement of all reservations or dedications of lands, if applicable.
- b. List any other reservations the parties have agreed to.

17. DURATION OF THE AGREEMENT –TERM AND WITHDRAWAL

- a. This agreement shall be effective when signed by each Party and shall continue for so long as may be necessary to carry out the purpose of this Agreement or until terminated by mutual consent of the governing bodies of all Parties, whichever is earlier; provided, however that:
 - i. A Party to this Agreement may not withdraw from the Authority for a period of 15 years after execution of this Agreement. After the 15-year period, a Party may withdraw from this Agreement by majority vote of the governing body, giving to the other Parties one year's written notice of such intention to withdraw, so long as all revenue bonds or other forms of indebtedness shall have been paid or adequate provisions of such payment shall have been made. The Party withdrawing from the Agreement will retain its fair share of financial liability for closure and post closure and site remediation costs based on the tons of material it has contributed to the Authorities solid waste system and as determined by the Authority in its sole discretion and such determination of the Authority shall be binding on the Parties. The Party withdrawing shall be afforded the same rights and ability to use Authority facilities and services as any other governmental jurisdiction, which is not a member of the Authority.
 - ii. Upon receipt of a Party's one-year notice of intention to withdraw, the members who will be remaining in the Authority shall meet and prepare appropriate amendments to this Agreement to reflect the changed membership status. Such amendments shall become effective upon the effective date of the Party's withdrawal.

- iii. This Agreement cannot be amended in any way to the detriment of the holders of any revenue bonds or other forms of indebtedness, which are outstanding in accordance with any resolution adopted by the Authority.
- b. This Agreement shall remain in effect until terminated by mutual consent of all the governing bodies of all Parties to this Agreement. The resolution to terminate must be passed by a majority vote of each governing board of each of the Parties to this Agreement.

18. DISPOSITION OF AUTHORITY ASSETS AND LIABILITIES UPON TERMINATION:

- i. In the event of termination of the Authority where there is a successor public entity which will carry on the activities of the Authority and assume its assets, liabilities, obligations, and funds, including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations, the assets and liabilities of the Authority shall be transferred to the successor public entity.
- ii. If there is no successor public entity which could carry on any of the activities of the Authority or assume any of its assets, liabilities, obligations, and funds, including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations, the assets and liabilities shall be returned in proportion to the contribution of each Party during the term of the agreement. If bonds are issued or large capital projects, such as closure construction are initiated during the term of this agreement, then in no event shall the exercise of the powers granted be terminated until all bonds issued and the associated interest have been paid or provision for such payments have been made.
- iii. If there is a successor public entity which would undertake some of the functions of the Authority and assume some of its assets, liabilities, obligation, and funds including any interest earned on deposits, remaining upon termination of the Authority and after payment of all obligations, the assets and liabilities shall be allocated by the governing board between the successor public entity and the Parties.

19. AMMENDMENTS.

- a. This Agreement may be amended by affirmative vote of the governing bodies of each Party.

20. ENFORCMENT

- a. This agreement shall be enforceable, unless lawfully terminated or cancelled by any Party to the Agreement or any Party's successor notwithstanding any subsequent changes in applicable law adopted by the Parties that alters or amends the laws, ordinances, resolutions rules or policies frozen by the Agreement.

21. LIMINATION OF LIABILITY

- a. The debts, liabilities or obligations of the Authority do not constitute debts, liabilities or obligation of the Parties and the Authority shall hold the Parties harmless and shall indemnify the Parties from any claim or loss that may arise as a result of the Authority's ownership and

maintenance of the landfill assets or the Authority's performance of any of its duties or powers described in this agreement.

- b. No officer, agent or employee of any Party shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

22. HOLD HARMLESS CLAUSE

- a. If the parties agree, the agreement should contain a clause holding each other harmless from liability from damages, injury or death that may arise from the direct or indirect operations of the parties carrying out the terms of the agreement.

23. SEVERABILITY CLAUSE

- a. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this agreement.

24. MERGER CLAUSE

- a. This agreement constitutes the entire contract between the Parties, and this Agreement shall not be changed except in writing signed by all the parties.

25. PUBLIC NOTICE

- a. *If public notice is required by local ordinance of any of the participating local governments add that language.*

26. STATEMENT OF INCORPORATION BY REFERENCE

- a. *Identify any documents related to the Agreement and being incorporated by reference into this agreement*
- b. *Include lists of conditions, schedules of completion, imposition of dedications, impact fees and development plans and specifications.*

27. SUBSIDIARY OF COLLATERAL AGREEMENTS

- a. *Identify additional agreements relating to the project from any nonparty agencies or persons.*

OUTLINE FOR A JOINT GOVERNMENT AGREEMENT

Joint Government Agreements permit local governments to join in providing constituent services. In the Joint Government Agreement, the roles and responsibilities of the participating local governments are established. The agreement details the "who," "what," "when," and "where" of the activity to be undertaken together. The following outlines the general elements to be incorporated into a Joint Government Agreement.

1. DEFINITIONS
 - a. List all technical terms used in the agreement.
 - b. Define technical and scientific terms used in the agreement.
2. PARTIES/AUTHORITIES
 - a. Provide an explanation of the need for the agreement and what it is going to provide, be broad to allow for flexibility as the project evolves.
 - i. Solid waste transportation, pickup, landfill construction and operation, recycling as appropriate.
 - b. List the parties who are participating in the agreement.
 - c. List the parties' authorities to enter into the agreement.
 - d. Cite legal authorities used to enter into the agreement, such as state authorizations. AS 29.35.010 and Article X, Section 13 Alaska Constitution.
3. PROPERTY
 - a. Identify any property to be purchased.
 - b. Identify any property to be shared.
4. INTENT OF THE PARTIES
 - a. Clearly state that the parties are bound by the agreement.
5. RECITATION OF CONTRACTURAL TERMS
 - a. Clearly recite the terms of the duties and obligations each party receives from the other.
 - b. Clearly recite the terms of the duties and obligations that each party is providing to each other.
6. PUBLIC NOTICE
 - a. Identify if a public hearing is required.
 - b. State the date of the hearing ¹.
7. APPLICABLE REGULATIONS
 - a. Identify any state regulations that the project will be subject to ².
 - b. Identify any local government ordinances.
8. APPROVAL AND PERMIT REQUIREMENTS
 - a. List all approvals being required.
 - b. List permit requirements.
9. DEDICATIONS AND RESERVATIONS
 - a. Provide a statement of all reservations or dedications of lands, if applicable.
 - b. List any other reservations the parties have agreed to.

¹ This would be a requirement under the ordinances of one of the participating local governments as there is no requirement in the state statute.

² For this project this is the pertinent sections of 18 AAC 60

10. DURATION OF THE AGREEMENT
 - a. Identify a termination date for the project as a whole.
 - b. Identify commencement and completion dates for various phases as applicable.
 - c. Include a statement that the termination date can be extended by mutual agreement and that commencement and completion dates can be extended at the discretion of the parties.
11. AMMENDMENTS, CANCELLATIONS OR TERMINATION
 - a. Identify the conditions by which the agreement can be amended, canceled or otherwise terminated.
 - b. Note that parties can only terminate the agreement under the circumstances spelled out in the agreement
12. PERIODIC REVIEW
 - a. Provide for periodic reviews in order to determine compliance with the agreement.
 - b. Specify who is responsible for reviews.
 - c. Identify procedures for dealing with situations in which minor and major noncompliance issues are discovered.
13. REMEDIES
 - a. Identify remedies for breach on the part of any party to the agreement.
14. ENFORCMENT
 - a. Specify that the agreement shall be enforceable, unless lawfully terminated or cancelled by any party to the agreement or any party's successor notwithstanding any subsequent changes in applicable law adopted by the parties that alters or amends the laws, ordinances, resolutions rules or policies frozen by the agreement.
15. HOLD HARMLESS CLAUSE
 - a. If the parties agree, the agreement should contain a clause holding each other harmless from liability from damages, injury or death that may arise from the direct or indirect operations of the parties carrying out the terms of the agreement.
16. INSURANCE BONDS
 - a. Identify any insurance coverage required and/or secured by any party of the agreement affecting any aspect of the project.
 - b. Identify existing bonds in detail, as well as bonds required by the agreement.
 - c. Cite applicable ordinances related to bond requirements.
17. SEVERABILITY CLAUSE
 - a. Identify the provisions of the agreement that are severable, if there are any.
 - b. Identify any severability limitations.
18. MERGER CLAUSE
 - a. Specify that the terms of the agreement as stated in the written document are a final and complete expression of the parties' intentions.
19. STATEMENT OF INCORPORATION BY REFERENCE
 - a. Identify all documents related to the agreement and incorporated into the agreement by reference.
 - b. Include lists of conditions, schedules of completion, imposition of dedications, impact fees and development plans and specifications.
20. COOPERATION
 - a. Identify the extent to which the parties will cooperate in their efforts to carry out the terms of the agreement.

21. SUBSIDIARY OF COLLATERAL AGREEMENTS

- a. Identify additional agreements relating to the project from any nonparty agencies or persons.

OUTLINE FOR AN AUTHORITY CREATED UNDER A JOINT GOVERNMENT AGREEMENT

The following outline's the elements to be incorporated in an agreement establishing a new authority, if needed, to oversee the tasks and responsibilities established in the Joint Government Agreement.

1. **PURPOSE** - describe what the authority is to do i.e. provide regional solid waste transportation, solid waste pickup, landfill construction and operation and or recycling as appropriate. Be flexible in description to allow for some evolution of the project.
2. **ESTABLISHMENT OF THE AUTHORITY** - clearly state that the authority is being established - AS 29.35.010 and Article X, Section 13 Alaska Constitution.
3. **MEMBERSHIP** - describe the membership of the governing body and how members join.
 - a. Decide if there is to be a critical mass clause that states that no parties are bound unless and until at least "X" other potential parties also join in.
 - b. Are there to be alternate roles such as non voting member, customers
 - c. Describe who can't participate.
4. **VOTES** - determine how many votes each member/community will have. Determine if each community will have one vote or if communities with larger populations and thus a greater contribution of solid waste will have more than one vote. Determine if the community hosting the landfill, if there is one, will have more than one vote.
5. **QUORUM** - determine what constitutes a quorum for conducting business.
6. **TERMS OF OFFICE** - determine the length of each member's term in office.
7. **ALTERNATES** - describe how many and how they are to be empowered.
8. **OFFICERS OF THE AUTHORITY BOARD** - describe who the officers are, how they are elected and what their responsibilities are.
9. **MEETINGS** - determine how often and where meetings of the authority are to occur.
10. **POWERS AND FUNCTIONS**- describe the powers given to the authority such as:
 - a. Acquisition, assumption and management of facilities, such as a landfill and solid waste transportation system.
 - b. Planning, construction of facilities such as a landfill
 - c. Preparation of plans,
 - d. Establishment of rates, fees, charges and surcharges,
 - e. Granting of franchises, concession, licenses and other rights and entitlements,
 - f. Exercise of power of eminent domain to acquire and dispose of property if applicable,
 - g. Ability to apply for and receive grants,
 - h. Ability to issue revenue bonds or other obligations,
 - i. Ability to adopt by-laws,
 - j. Ability to obtain permits.
 - k. Describe what the entity cannot do.
11. **ASSUMPTION OF PROGRAM RESPONSIBILITIES** - explain if the authority is taking responsibility for management of any assets.
12. **BUDGETS** - describe the budgetary process for the authority.
13. **RATES** - describe the process of rate setting if applicable. Determine if the landfill host community receives any benefits when rates are set.
14. **LIMITATION OF LIABILITY** - state that the debts, liabilities or obligations of the authority do not constitute the debts, liabilities or obligations of the communities participating. Discuss the liability of waste transporters, if transporters, are not the authority.

15. **LAND USE RESTRICTIONS** - describe any land use issues associated with actions of the authority, if applicable.
16. **TERMS AND WITHDRAWAL** – describe the terms of the authority and how a party can withdraw if possible.
17. **TERMINATION OF THE AUTHORITY** - describe how and when the authority can be terminated.
18. **DISPOSITION OF AUTHORITY ASSESSTS AND LIABILITIES UPON TERMINATION** – describe what happens to holdings and obligations when the authority is terminated.
19. **AMENDMENTS** - describe how the agreement can be amended.
20. **RESTRICTIONS OF AUTHORITY** – describe if this agreement restricts or alters any of the parties' authorities.
21. **DEFINTIONS** – define all the terms used in the agreement.
22. **EFFECTIVE DATE**- establish the date the agreement becomes effective.

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MEMORANDUM

TO: Rollo Pool, Executive Director, Southeast Conference

FROM: David A. Lawrence

SUBJECT: Legal Review – Solid Waste Regional Entity Project

DATE: July 20, 2005

Southeast Conference ("SEC") retained this law firm to provide legal review and analysis of several issues related to the formation of a new entity to plan and provide solid waste transportation, processing, recycling, and disposal services in Southeast Alaska, which also could be a model for similar organizations elsewhere in the State. This Memorandum constitutes our report to SEC.

First, it discusses the choice of form for the entity, building upon the work already performed by Ecology & Environment, Inc. ("E&E"). Second, it discusses two outlines related to a joint government agreement. Third, it discusses the possible need for statutory or regulatory changes to accommodate the recommended form(s) for the new organization. Finally, it renders an opinion on the potential legal liability of members of the new solid waste entity.

We appreciate the opportunity to work with SEC in this important project, and would be pleased to provide additional assistance in any way we can in future phases of this and other regional development initiatives.

Scope and Assumptions

We have reviewed the documents provided by SEC on this topic, including the June 2, 2005, memorandum from Stephanie Pingree of E&E and the attached Entity Matrix

("E&E Memo"), and the outlines for an agency created under a joint government agreement and for a joint government agreement. In addition, we have reviewed Alaska statutes and case law related to key issues, including: liability of participants, owners, or members of various types of entities; the ability of unorganized or unincorporated government entities to participate in joint government agreements; and existing statutes for entities such as port authorities. We have not attempted to replicate the work already done by E&E, such as a survey of approaches taken in other parts of the country to coordinate solid waste programs on a regional basis.

We have assumed for purposes of our analysis that the primary participants in a new solid waste entity will be local units of government, and not private businesses or other non-government entities. A parallel assumption is that new entity needs to be qualified to receive a variety of state and federal grants to fund the planning and implementation of new solid waste transportation, treatment, and disposal projects. We also have assumed that the potential range of activities for a regional solid waste entity are very broad, and that one of its purposes will be to explore the feasibility of a wide range of coordinated services that could be provided both to its members and to non-members. Finally, we have assumed that services related to solid waste could be provided by the new entity to members and non-members under separate service contracts.

Choice of Entity

The choice of form for a new organization is highly dependant on the nature of the participants, their reasons for associating, and the activities they plan to pursue. The E&E matrix sets out some of the many considerations that underlie the choice. We believe that the overall recommendations of E&E as discussed in the E&E Memo are correct, though we have additional thoughts and concerns on the topic.

Business Corporation. This is not the recommended form for several reasons, including taxability of income, disqualification for grants, and the general requirement that returns must be proportional to dollar investment. If the participants were primarily private parties involved in the solid waste industry for profit, this would a possible form to use, though even then an LLC would be the better choice.

Nonprofit Corporation. Nonprofits are often used for charitable, educational and community purposes, but typically not for carrying out proprietary government functions such as solid waste collection and disposal. It may not qualify for tax exempt status (which is a very separate issue from non-profit status under state law), and if such an entity did not qualify, it would have the same tax drawback as a business corporation without the advantage of being well-designed to raise capital through issuing equity and

debt instruments. Since the new entity may be supported partly with debt financing, this is not an attractive choice.

Limited Liability Company. If the participants in the enterprise were going to be primarily private parties and not government entities, we would recommend this form. The reason is that it provides the liability shield of a corporation with the pass through taxation feature of a partnership (avoiding company-level taxes and allowing tax exempt members to avoid all income taxes). It also provides the maximum freedom to those forming the company to specify who invests, controls, and shares in any distributions. For example, there an LLC provides the flexibility to have different percentages of initial funding, voting control, and entitlement to distributions, in whatever way works best for the members. The members can manage the company themselves or through one or more managers who may or may not be members. However, if the solid waste entity is not in business for profit and wants to qualify for government grants to the maximum extent possible, this would not be the best choice.

Cooperative Corporation. The cooperative form has most of the good and bad points of the LLC. One advantage may be that if a cooperative is formed, it may be possible to get at least limited funding from the federal government for forming and operating the cooperative. This appeared to be a strong consideration of SEC in using this form for the new intertie entity. Two disadvantages are a requirement that every member be allowed an equal vote, even if their sizes, investments, and purchases of services are very different, and the requirement that to be a member one must contract for services from the cooperative. While it may be that eventually all of the communities in Southeast will purchase services from a solid waste entity, at first there will be few, if any, services, so many communities would be barred from membership, which could detract from their interest in participating at all.

General Partnership. This option was not discussed in the E&E Memo. From a legal standpoint, it would be very similar to an agency created by contract, which was discussed by E&E. The advantage is great flexibility regarding ownership and sharing of benefits. There are, however, two significant drawbacks. The first is that typically all of the members are also co-equal managers of the daily operations, so there is a potential lack of focused management. The second is that it provides no liability protection to the members for claims and liabilities of the partnership – there is joint and several liability. In a worst case this means that if there are ten partners and nine are insolvent, the tenth is liable for 100% of the partnership obligations. This concern is discussed further below under the Joint Government Agreement section.

Limited Partnership. The benefits and detriments for this form of organization are similar to the LLC. It has the additional drawback, however, of the unlimited liability

of the one or more general partners. That is why the general partner of an LP is typically a corporation formed to serve as the general partner, so its corporate status protects its ultimate owners from liability for the organizations debts. The E&E Memo observes that most participants will not be satisfied with the necessarily passive management role of the limited partners, though that may not turn out to be true if their main concern is having an entity to provide them services. If the job is being done well, they may not feel a strong need to have a major management role. On the other hand, it is not likely that they will want to take on the significant liability of a general partner in order to play the managing role of a general partner. That is why an LLC would be the better choice between the two. As discussed above, however, unless the solid waste entity will have significant non-government members, the LLC form is not the best choice either.

Federation and Commission. As described in the E&E Memo, a federation is essentially like a port authority, with specific enabling legislation and purposes. We do not view it as a materially different option. From the brief discussions, it appears that E&E viewed a commission to be something like the Federal Communications Commission. SEC is undoubtedly familiar with a variety of governmental agencies with regulatory and rulemaking powers. There already is an Alaska agency which oversees solid waste, DEC, yet it is not constituted to undertake the kinds of initiatives and projects envisioned by the SEC for solid waste in the region. Therefore, we do not believe a commission as described in the E&E Memo is advisable for the solid waste entity.

Joint Government Agreement. While we agree for the most part with the E&E discussion of the joint government agreement option, we do not believe it is as good a form as the use of an authority created under specific enabling legislation. We note E&E's concern about the potential difficulty of having an unincorporated municipality involved in ownership and control. However, this may not be the problem it first appears because an unorganized or unincorporated government entity, while not specifically mentioned in AS 29.35.010, may be considered "local government" under Art. X, Sec. 13 of the Alaska Constitution. There are, though, two other serious concerns we have about using a joint government agreement. First, a non-government entity could not be a party to the agreement because, under both the statute and Constitution, this kind of agreement may only be made among government units (while the enabling legislation for an authority could allow for participation of at least a minority number of non-government units). The second reason is that a joint government agreement, absent some special legislation, will not provide limitations on liability of the parties for the liabilities and debts of the entity. The legal status of a joint agreement is akin to a general partnership. The parties by agreeing among themselves that they will limit their liability cannot bind or curtail the right of third parties, be they creditors, persons injured at a solid waste disposal site, or landowners whose groundwater is claimed to be contaminated by

operation of a solid waste facility. While there are some statutory limitations on liability exposure of government subdivisions, such as those found in AS 9.65.070, the activities of a solid waste entity would for the most part not come under the scope of that protection. As a consequence, other than operating to minimize risk and maintaining generous insurance coverage, the municipal parties could all be jointly and severally liable for the entity's debts and obligations. Since there are many potential large liabilities in operating solid waste facilities, including pollution fines, personal injuries, property damage, service contract violations, and employment-related claims, we believe participating units of government will be better served, and will be more eager to participate, if they did not take on unlimited liability. This seems to be more important than the advantage of not requiring new legislation, though it is a judgment call to be made by the potential participants.

Authority. The E&E Memo did not find any drawbacks for the use of a statutorily constituted authority serving as the solid waste entity, other than the obvious point that it would require new legislation. The existing legislation for other kinds of authorities is far too limiting to be used for a solid waste entity. Since there are good statutory models to follow, unless there is some particular political opposition to enabling legislation that would all

Anticipated Participants via Teleconference

Wrangell LIO
Petersburg LIO
Anchorage LIO
Sitka LIO

Various participants via the bridge.