

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES,

1993-1994

1169

243



Alaska State Legislature

Please enter into the record my testimony to the House Finance Committee
 committee name
 committee on SB 17A, dated 2/22/94
 bill/subject

The right of an Alaskan to maintain a private nuisance action to protect his property is fundamental.

Please vote against SB 17A.

Signed: Ray Jennings by Dan Muller
 Testifier

Representing (Optional)
801 Lincoln St Sitka, AK 99835

Address
747-5295

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217 2nd Street, Suite 201
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**Alaska State Chamber of Commerce
HOUSE CS FOR CS FOR SENATE BILL NO. 178(JUD)**

"An Act Relating to Civil Nuisance Actions."

On behalf of the Alaska State Chamber of Commerce, we wish to go on record in support of SB 178, which deals with Civil Nuisance actions that are filed opposing projects which are legal and covered by existing laws or permits.

The compromise language before the committee today represents a narrowing of the bill to a limited group of permits; air permits, water permits and solid waste permits. These are permits in which there has been an extensive public hearing process and opportunity for people to object and sue the respective appropriate agency if they think the permit should not be issued.

In summary, the Alaska State Chamber of Commerce supports passage of House CS for CS for Senate Bill 178(JUD) and believes the passage will eliminate a large number of frivolous lawsuits and unnecessary litigation, and will create a more proactive business and development climate in Alaska.

Ref

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FACSIMILE: (907) 579-1888

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JAMES S. COCHRAN
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ROYAL ARON BARRON (1915-1916)
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W. S. MONAGHAN (1921-1928)
F. O. HASTAUGH (1928-1988)

JAMES P. CLARK
PAUL H. HOFFMAN
G. ELIZABETH QUINN
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VICTOR L. WILSON
ROBERT J. JUREK
WILLIAM E. GIBSON

ADMITTED IN WASHINGTON, D.C.
AND ALASKA

ADMITTED IN VIRGINIA
WASHINGTON, D.C. AND ALASKA
ALL OTHERS ADMITTED
IN ALASKA

M E M O R A N D U M

TO: Charles Cole, Attorney General
FROM: Jim Clark *[Signature]*
DATE: March 24, 1993
RE: Nuisance Legislation

I have asked Paulette to fax this on to you. The Alaska Forest Association (AFA) is working with the State Chamber to introduce and enact the attached legislation, assuming that you have no major problem with it. What we are seeing in the lower 48 are nuisance claims combined with class actions to create large lawsuits claiming damages for discharges authorized by federal and state permits. The definition of "nuisance" in the attached amendment is designed to preclude lawsuits against permitted discharges.

I have talked to Senator Miller and Representative Williams about introducing this as a Committee bill, but did not want to proceed if you had major problems. Could you please give me a call at your convenience.

original version by Jim Clark

Section 1: Amend AS 09.45.230 to read as follows:

AS 09.45.230. Action to abate or unjoin (PRIVATE) nuisance.
 (a) An action for an injunction or damages may be brought by the state or by a person whose property is injuriously affected or whose enjoyment of his or her property is lessened to abate a nuisance. A judgment in the action may enjoin or abate the nuisance as well as award damages.

(b) In an action brought under (a) the summons shall be served not less than 30 days nor more than 60 days before the date of trial. No continuance shall be granted for a longer period than seven days unless the plaintiff applying for the continuance gives an undertaking to the defendant, with sureties approved by the court conditioned to the payment of costs that may accrue to the defendant if judgment is rendered against the plaintiff.

(c) In this section

"nuisance" means an act, including a discharge or emission, occupation or structure that causes material annoyance, inconvenience or discomfort. An act, including a discharge or emission, occupation or structure that is licensed, permitted or otherwise authorized by law is not a nuisance; and

"state" includes political subdivisions of the state.

(d) No action may be maintained for nuisance or tortious interference with a person's interest in the use and enjoyment of real property except in conformance with the provisions of this section.

*Sec. 2. AS 09.45.230(a) and (c) apply to all actions in which no judgment has been entered as of the effective date of this Act.

*Sec. 3. This Act takes effect immediately under AS 01.10.070(e).

DESCRIPTION:

This bill would limit nuisance actions to those brought under this statute. This bill would also clarify the definition of "nuisance" to remove any doubt that permitted discharges and emissions are not nuisances. Finally, it would establish a relatively narrow time frame in which trial of nuisance actions could take place. This means that if a plaintiff obtains an injunction against the defendant, the plaintiff cannot drag out the case to the substantial economic hardship of the defendant.

Under the provisions of Sec. 2, the bill would apply to pending actions. Thus, current actions claiming that permitted facilities are nuisances would have to be dismissed.

END

April 5, 1993

To: Senate Judiciary Committee
Eighteenth Legislature
State of Alaska
Juneau, AK

From: Dr. Ronn E. Dick, Associate Professor
Natural Resources
801 Lincoln St.
Sitka, AK 99835

Dear Sirs:

I am writing as a concerned citizen and as a natural resource management professional to comment on Senate Bill No. 178, "An Act relating to civil nuisance actions."

My concerns are both procedural and substantive.

Procedurally, I am distressed by the fast track upon which this piece of legislation has been placed. The Bill was introduced on Wednesday, March 31 and only two working days later the hearings are being held. I have to wonder why this Bill has such priority and who has decided to assign it that priority. The time frame simply does not give anyone in the public or legislature to prepare for detailed consideration of the Bill's merit. In addition, no other legislative committee is scheduled to hold hearings on this Bill.

Substantively, I have even more serious concerns. On the face of it, this is an obvious, cynical and corrupt exercise of power by an elected representative of the people of Alaska who has decided to do the bidding of powerful, wealthy corporations. This legislation is in direct response to a lawsuit against Alaska Pulp Corporation because of its pollution of Sitka Sound and the effects of this pollution on the waterfront property owners in Sitka Sound. It is ironical that that the special interests of the two pulp mills in SE Alaska, especially Alaska Pulp Corporation (APC), benefit from this Bill. It is ironical because it is these pulp mills that complain the most about the influence of "special interests", on legislation.

Rather than get into the legal details and nuances of such a Legislative Act with respect to individual property rights and due process, I will focus my comments on the underlying principles of justice that this Act violates. Since this Act exempts any polluter from liability if they have the permission of the government to pollute (by virtue of statute or regulation, license or permit, or court order of decision), it is absolutely essential that the integrity of the "permission" process be untainted. The fact is that this permitting process is often lacking of integrity and often involves collusion between the permitting agencies and the polluters.

It is a fact that APC and the State of Alaska Department of Environmental Conservation (DEC) have had numerous private meetings to agree upon acceptable pollution standards. Generally, APC

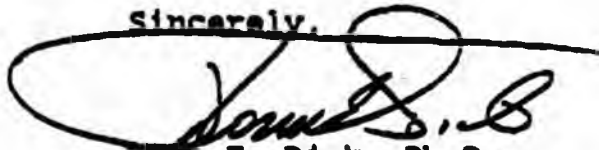
informu DEC about the current level of discharge of specific pollutants and DEC writes the standards so that those levels of discharge can be maintained.

It is a fact that DEC often fails to enforce violation of the standards or to enforce their own regulations. An excellent example of DEC's refusal to enforce their own regulations is DEC's 20+ year refusal to enforce Air Quality Regulation 18 AAC 50.110 Air Pollution Prohibited (Effective 5/26/1972). The Sitka Conservation Society filed an administrative appeal regarding the DEC's failure with respect to this regulation four years ago and the appeal was decided in favor of the Sitka Conservation Society in May of 1992. In short, this regulation placed the burden of proof on the polluter to prove that the pollution they create is NOT injurious to human health or welfare, animal or plant life, or PROPERTY, or which would unreasonably interfere with the enjoyment of life or property. DEC still has NEVER enforced this regulation in the past and has not enforced this regulation in spite of the appeal decision almost one year ago.

Now, the Alaska State Legislature is considering a Bill that would disenfranchise the public, the citizens of Alaska, from seeking legal redress when the State Government and corporations collude to circumvent the laws and regulations of the state.

Frankly, this legislation threatens the credibility of our State government and I believe is politically and socially destabilizing. It destroys checks and balances and leaves the citizens of Alaska without any acceptable means of protecting themselves from corporate excesses. This Act should not have been written in the first place. It most certainly should not receive the approval of the Senate Judiciary Committee.

Sincerely,



Ronn E. Dick, Ph.D.
Forest Resources

April ²¹/~~14~~, 1993

To: House Judiciary Committee
Eighteenth Legislature
State of Alaska
Juneau, AK

From: Dr. Ronn E. Dick, Associate Professor
Natural Resources
801 Lincoln St.
Sitka, AK 99835

Dear Sirs:

I am writing as a concerned citizen and as a natural resource management professional to comment on Senate Bill No. 178-House Bill 282, "An Act relating to civil nuisance actions."

I have very serious concerns. On the face of it, this is an obvious, cynical and corrupt exercise of power by an elected representative of the people of Alaska who has decided to do the bidding of powerful, wealthy corporations. This legislation is in direct response to a lawsuit against Alaska Pulp Corporation because of its pollution of Sitka Sound and the effects of this pollution on the waterfront property owners in Sitka Sound. It is ironical that that the special interests of the two pulp mills in SE Alaska, especially Alaska Pulp Corporation (APC), benefit from this Bill. It is ironical because it is these pulp mills that complain the most about the influence of "special interests", on legislation.

Rather than get into the legal details and nuances of such a Legislative Act with respect to individual property rights and due process, I will focus my comments on the underlying principles of justice that this Act violates. Since this Act exempts any polluter from liability if they have the permission of the government to pollute (by virtue of statute or regulation, license or permit, or court order of decision), it is absolutely essential that the integrity of the "permission" process be untainted. The fact is that this permitting process is often lacking of integrity and often involves collusion between the permitting agencies and the polluters.

It is a fact that APC and the State of Alaska Department of Environmental Conservation (DEC) have had numerous private meetings to agree upon acceptable pollution standards. Generally, APC informs DEC about the current level of discharge of specific pollutants and DEC writes the standards so that those levels of discharge can be maintained.

It is a fact that DEC often fails to enforce violation of the standards or to enforce their own regulations. An excellent example of DEC's refusal to enforce their own regulations is DEC's 20+ year refusal to enforce Air Quality Regulation 18 AAC 50.110 Air Pollution Prohibited (Effective 5/26/1972). The Sitka Conservation Society filed an administrative appeal regarding the DEC's failure with respect to this regulation four years ago and

*Am glad Mr. Clark
mentioned this regulation.*
10 of 2

quantity,



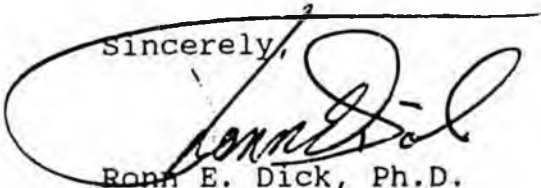
the appeal was decided in favor of the Sitka Conservation Society in May of 1992. In short, this regulation placed the burden of proof on the polluter to prove that the pollution they create is NOT injurious to human health or welfare, animal or plant life, or PROPERTY, or which would unreasonably interfere with the enjoyment of life or property. DEC still has NEVER enforced this regulation in the past and has not enforced this regulation in spite of the appeal decision almost one year ago.

In the April 20, 1993 (yesterday) Sitka Sentinel, it was reported that the EPA is considering a lawsuit against the DEC because the Alaska DEC has been too lenient with Alaska Pulp Corporation.

Now, the Alaska State Legislature is considering a Bill that would disenfranchise the public, the citizens of Alaska, from seeking legal redress when the State Government and corporations collude to circumvent the laws and regulations of the state.

Frankly, this legislation threatens the credibility of our State government and I believe is politically and socially destabilizing. It destroys checks and balances and leaves the citizens of Alaska without any acceptable means of protecting themselves from corporate excesses. This Act should not have been written in the first place. It most certainly should not receive the approval of the House Judiciary Committee.

Sincerely,



Ronn E. Dick, Ph.D.
Forest Resources



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

committee on SB 178, dated 4-21-93
bill/subject

Frivolous lawsuits where litigants have no liability, even when they find their allegations have no basis are blatantly unfair. Municipalities who have an inherent and profound commitment to their citizens and properly welcome public involvement need to be protected from individuals & organizations who initiate frivolous lawsuits at great expense of time, energy & dollars to the city at no potential cost to the litigants is not in the public interest.

Signed: DIXON, GRAY
Testifier
CITY OF BANGOR SITKA
Representing (Optional)
304 Lake St.
Address
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House - Judiciary
committee name

committee on SB 178/HB 282, dated 21 April 1993
bill/subject

The ~~government~~ ^{government} in America was set up to have checks and balances. Although it is not a perfect system, it seems to work. I am a little distressed at the idea of SB 178 which quickly went through committee & the Senate ^{which may be} an attempt to limit my right as an individual when I think big business or the govt has wronged me. The haste with which this bill is being pushed through leads me to believe legislators may have an agenda that may not be in my best interests. I do not think there has been a dearth of law suits by private individuals to warrant this bill being so hastily pushed through. I go on record against this bill.

Signed: Joe E. Edl

Testifier

Self

Representing (Optional)

P.O. Box 1673

Address

747-5354

Phone No.

Testimony

April 23, 1993
1pm Hearing

To the House Judiciary Committee,

I am absolutely against HB282 Civil Nuisance Actions because it takes away my rights as a citizen. This bill is directly aimed at the class action lawsuit being brought against APC. This is just another crooked path APC has taken when it feels pressure from Sitta's residents.

Please see this legislation as a barrier for justice and do not pass it.

Sincerely,

Andrea Thomas



Alaska State Legislature

Please enter into the record my testimony to the house judiciary
committee name
 committee on SB . 178 , dated April 21st
bill/subject

I am adamantly opposed to this bill. Bureaucracy do not operate with the greatest of ease or correctness. Our founding fathers of America recognized this and implemented a judicial system to address it. For the public to be denied access to the judicial system would be a travesty of the individuals right and duty as called for in the US. Constitution and bill of rights. How do you feel about Pt. Hope? Should it be ignored with no recourse? This issue is not reduced to nuclear or nuisance only it applies to all facets of our lives.

Signed: Cheryl Pritchard
Testifier
Self
Representing (Optional)
Box 6209
Address

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

committee on SB 178, dated 4-21-93
bill/subject

I am adamantly opposed to this ^{bill} ~~action~~ being contemplated by the legislature for many reasons, the main one being that I have an action filed that could be invalidated by the retroactive clause of this bill. It's much the same as changing the rules in the middle of the game. My suit was filed relying on statutes & ordinances as they are now on the books & I have spent thousands of dollars to fight the expansion of a non-conforming use that has been allowed by the "good ole" boys in Sitka.

You people are supposed to be a government of the people, by the people & for the people. This action takes the right of people away to protect their properties.

In closing, I would like to suggest that Mr Taylor go on a permanent elk hunting trip - maybe to Montana. There are a few good ole boys in Sitka that can report on where to ^{hunt} ~~look~~!

Signed: Alvin L. Nelson
Testifier

Representing (Optional)
PO. Box 1356 Sitka, AK 99835
Address
747-5030
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

committee on SB 178, dated 4-21-93
bill/subject

This bill would take away my rights as a citizen and I strongly oppose it.

Is the presumption that the state permitting process, "the DEC will perfectly protect the health & well being of all - that they will always put our well being ahead of industry profits? That they are entirely competent to determine

For us what constitutes well being? With this bill would the state assume entire responsibility for nuisances?

Must we ^{then} sue the state to get our rights? (Line 14) Note that court orders or decisions do not require public notice or inclusion. I have just heard that DEC without public knowledge is allowing in a consent decree with APC that dioxin-laden fly ash ^{from the mill} can be used in concrete construction in Sitka.

Signed: Notasha J. Colvin

Testifier

Self

Representing (Optional)

Box 2966 Sitka 99835

Address

747-8950

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary Committee
 committee name
 committee on Senate Bill 178, dated 4/21/93
 bill/subject

As a property owner and as an individual involved in the commercial fishing industry I have grave concerns regarding this bill. I would like to address the ramifications of the damage done to members of one industry resulting from the "legal" pollution produced by another industry. In this instance, the fishing industry stands to lose drastically, as do property owners, if the fish, shrimp or crab are found to be tainted. ~~We~~ ^{fishermen} have a 7 million dollar investment in the salmon hatchery in the immediate vicinity of the APC mill.

Last year fish prices were negatively affected by an article in ~~the~~ Consumers Report Magazine. What will be our recourse if (and this is certainly not a damage that can be anticipated + dealt with in a permit process) our fish are found to be contaminated by pollution (legal or otherwise).

Signed: Pat Kehoe

Testifier

self

Representing (Optional)

PO Box 1615 Sitka

Address

747-0543

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary Comm.
committee name

committee on SB 178, dated 4/21/93
bill/subject

Hello

My name is Don Muller. For the last 17 years I have been a businessperson here in Sitka. For two years before that I was a chemist at the APC pulp mill.

I have to admit that the pulp mill attorneys and executives are very clever. And very cunning. SB 178 is a very clever and cunning bill. And Robin Taylor, if he is not telling the truth, is also very clever for getting the bill as far as it has come. If he is telling the truth, he is simply a lackey for the mill. I suspect he is very clever.

But in a democracy, we expect more of our leaders. In a democracy, we expect more of industry executives who claim to be members of the small community in which they live. These people are all supposed to be more than just clever and cunning. In a democracy the rights of the individual are supposed to be as important, maybe more important, than the rights of a single industry, especially an industry that has a long, long history of violating laws and regulations.

The bill being considered today is obviously written because the pulp mill in Sitka doesn't like yet another right of an individual, yet another right of the community in which it is allowed to operate. The pulp mill wants to have its own rules. The pulp mill believes that the rights of the mill are more important than the rights of any individual or community.

I ask that you vote against this bill in the interests of democracy and the rights of the citizens of Alaska.

Signed: Don G. Muller
Testifier

Self
Representing (Optional)

Box 1092, Sitka
Address

747-6734
Phone No.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3718

House Majority Leader

To: Representative Brian Porter *Brian*
From: Representative Gail Phillips *Gail*
Date: April 16, 1993
Re: House Bill [REDACTED] (SB 178)

Please find attached comments on House Bil' 282 that I have received from Stephen F. Sorensen. I would like to have them included in the bill file. Thank you.



ALASKA MINERS ASSOCIATION, INC.

501 West Northern Lights Boulevard, Suite 203, Anchorage, Alaska 99503 fax: (907) 278-7997 telephone: (907) 276-0347

April 5, 1993

Honorable Robin Taylor
Chairman
Senate Judiciary Committee
Alaska State Legislature
Juneau, AK 99801-1182

Re: SB-178, Civil Nuisance Actions

On behalf of the Alaska Miners Association I wish to go on record in support of SB-178 which deals with civil nuisance suits that are filed opposing projects which are legal and covered by existing laws or permits. This bill is important for several reasons.

If an individual or company is conducting its business within the law, there should be nothing in statute that would encourage third parties to file nuisance suits against the activity.

This bill will remove one of the incentives for groups or individuals to file nuisance lawsuits. By removing the financial incentive, this bill should decrease the number of suits that are filed to merely harass and stall projects.

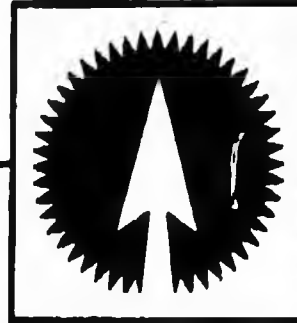
If fewer nuisance suits result, individual miners and companies will have one less artificial uncertainty when trying to develop a project.

Lastly, passage of this bill will provide additional tangible evidence to the international mining industry that Alaska truly wants mineral development and that the Alaska State Legislature is interested in removing the impediments to responsible mineral development.

Sincerely,

Steven C. Borell, P.E.
Executive Director

Alaska Forest Association, Inc.



111 STEDMAN SUITE 200
KETCHIKAN, ALASKA 99901-8599
Phone 907-226-8114
FAX 907-226-6920

**POSITION OF SUPPORT BY THE ALASKA FOREST ASSOCIATION
CONCERNING SB 178 RELATING TO CIVIL NUISANCE ACTIONS
FEBRUARY 15, 1993**

The Alaska Forest Association (AFA) supports the passage of SB 178 which deals with civil nuisance lawsuits which are filed against legal and permitted activities. This legislation is important due to the need to protect responsible industries which have completed the lengthy and costly permitting process.

It is good public policy to limit the ability of third parties to file litigation against projects which are legal and have valid permits. AFA believes that as long as an entity is within the guidelines of the permit which allows its activity, they should be protected from nuisance litigation. Without this protection, the permitting process is little more than a bureaucratic hurdle before entering the legal arena.

AFA supports the passage of this important legislation. We believe it exhibits the fact that Alaskans believe in the compatibility of jobs and the environment without excessive government.



HAINES FINANCIAL SERVICES

APR 15 RECD

April 12, 1993

Investments
Financial Planning
Real Estate Brokerage
Appraisals
Accounting
Bookkeeping
Consulting

Robin Taylor, Chairman
Senate Judiciary Committee
State Capitol, Rm. 30
Juneau, AK 99801-1182

RE: Senate Bill No. 178 - Limiting Private Property Rights

Dear Senator Taylor:

Each year government places further restrictions on the rights of private property owners. I'm opposed to this legislation (SB 178) since it will make it even more difficult for property owners to obtain relief from actions by others having a negative impact on privately held property. I believe this legislation to be unconstitutional as it severely limits the rights of private property owners to the quiet enjoyment of their property.

If the government has erred and the only option left is the courts, then **this right should not be restricted by government**. Serious impacts could render private property worthless or destroy one's constitutionally guaranteed right of quiet enjoyment. This bill would give government even more power over my property. Shame on you!

THE BILL OF RIGHTS ARTICLE V

"...nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation."

Sincerely,

Peter M. Enticknap

cc: Senator Rick Halford
Senator George Jacko
Senator Dave Donley
Senator Suzanne Little
Senaior Fred Zharoff
Rick Hunter, President, AK Association of Realtors

PETRO STAR INC.

CORPORATE OFFICE

Telephone: (907) 474-8210
Fax: (907) 474-9503

P.O. Box 61030
Fairbanks, Alaska 99706-1030

201 Arctic Slope Avenue #200
Anchorage, Alaska 99518
(907) 344-2661

April 7, 1993

**TESTIMONY OF STEPHEN T. LEWIS
IN SUPPORT OF S.B. 178**

I, Stephen T. Lewis, testify as follows in support of Senate Bill 178:

1. The existing array of environmental regulations already imposes substantial and comprehensive requirements on industry. Compliance with environmental regulations needs detailed and long-range planning and substantial economic investment. Industry needs the assurance that if it obtains appropriate environmental permits and complies with them, it cannot be sued simply because an individual alleges that his or her "personal enjoyment" is impaired by the permitted activity. The agencies already address the questions of whether property will be injuriously affected or the personal enjoyment of Alaskans will be affected when they make permitting determinations.

2. Environmental permitting issues are committed to the regulatory authorities because the agencies are better able than the courts to decide detailed technical questions and to perform the balancing of interests that permitting decisions can involve.

3. Individuals that oppose development projects or complain that projects will affect their enjoyment of their property already are afforded ample opportunities to be heard in the regulatory permitting process, and they potentially can appeal agency

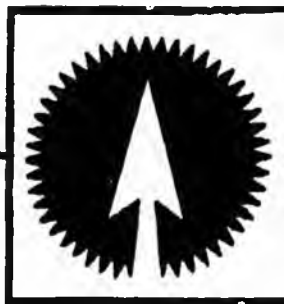
determinations. Private lawsuits raise issues that are substantially the same as those addressed in the permitting process. They waste the courts' time and unfairly allow private plaintiffs a "second bite at the apple" to shut down business activities.

4. There is no reason to believe that the courts make fairer or more accurate decisions than the permitting agencies. The adversary system employed by the courts is particularly ill-suited to address the complex technical and policy issues presented in the field of environmental regulation. "Nuisance" suits can pose a real danger that a court will erroneously shut down a project that the agencies have accurately determined to be a lawful and prudent use of resources.

5. Allowing "nuisance suits" to challenge permitting decisions undermines the regulatory process. The regulated community will have less respect for and less willingness to work with the agencies if agency determinations cannot provide the certainty necessary to prudent business planning. In effect, allowing individuals who are disappointed by the permit process to ignore agency determinations and file private nuisance lawsuits means that an agency determination that stops a project is binding, but one that allows a business to operate is provisional. This creates an impossible situation for orderly environmental regulation and for Alaska.

Respectfully submitted,


Stephen T. Lewis
Chairman, Petro Star Inc.



Statement of Support

Senate Bill 178 - Civil Nuisance Suits

The Alaska Forest Association is in full support of Senate Bill 178. Under current law, a business or individual can be sued under a "nuisance" action even if they are operating in compliance with applicable laws and permits. This bill would allow a nuisance suit to be brought only if the subject of the action is out of compliance with a law, regulation, permit or court order.

Resource development operations and other business entities are required to comply with an entire realm of laws, regulations and permits that are subject to public scrutiny. If the business is operating within these boundaries then they should not be subject to litigation under a nuisance suit.

The Alaska Forest Association urges passage of SB 178.

D R A F T: April 5, 1993

TESTIMONY OF DAVE MATTHEWS
FOR THE
ALASKA FOREST ASSOCIATION

My name is Dave Matthews. I am acting manager of the Alaska Forest Association (AFA). The AFA submits this testimony for the record. The AFA is a private, non-profit organization comprised of companies involved in Alaska's forest products industry on federal, state and private lands. The Association has 119 member companies which are directly involved in the industry. The AFA provides more than 4,000 direct, year-round jobs. The Association has 200 associate member companies which provide goods and services to Alaska timber industries.

Senate Bill 178 only makes common sense. If an agency has determined that an activity is in the public interest and issued a permit allowing it, why should anyone be able to sue the permit holder based on doing what is authorized by that permit? A permit should be a shield from nuisance lawsuits. Accordingly, the AFA strongly supports passage of Senate Bill 178.

Dave Matthews
Alaska Forest Association



APR 13 1993

April 13, 1993

The Honorable Robin Taylor
The State Senate, State of Alaska
Capitol Building, Room 30
Juneau, Alaska 99801

Re: Senate Bill 178/House Bill 282

Dear Senator Taylor:

Yesterday, the Senate Judiciary Committee heard testimony on Senate Bill 178, an act which would limit the ability of private landowners to bring lawsuits based upon nuisance. Due to a family emergency, I was unable to testify at the hearing. A companion Bill, HB 282, has also just been introduced.

Sealaska Corporation strongly supports some elements of the bill, but strongly opposes others. While I was not able to appear before the committee to pass along Sealaska's position on this bill personally, I want to take this opportunity to do so. A copy of Sealaska's comments on Senate Bill 178 is enclosed, and applies equally to HB 282.

These bills would narrow the definition of "nuisance" to mean "a substantial and unreasonable interference with the use of an enjoyment of real property, including water." By narrowing the definition of "nuisance", the bill would help eliminate lawsuits which are frivolous or brought merely to harass. Sealaska believes that lawsuits based on nuisance are only warranted if the interference with property rights is "substantial and unreasonable," and therefore supports Section 2 of the bill.

The bill also bars lawsuits based on nuisance when an activity is conducted pursuant to a government license or permit. Sealaska believes that this would undermine the rights of private property owners, and would limit their right to peaceably enjoy their property. As a matter of principle, Sealaska believes that if

Page Two
April 13, 1993

peaceably enjoy their property. As a matter of principle, Sealaska believes that if one property owner's activities substantially and unreasonably interfere with another property owner's enjoyment of his or her property, the property owner causing the interference should be liable. This belief is based on simple fairness, and the belief that the legislature should not favor the interests of one property owner over those of another. Sealaska, therefore, strongly opposes the remainder of SB 178 and HB 282. I have taken the liberty of enclosing a proposed revision that would change the definition as suggested by both bills, but which deletes the negative aspects. I offer this for your consideration.

Thank you for taking the time to review Sealaska's comments. If you have any questions, please do not hesitate to call.

Sincerely yours,

SEALASKA CORPORATION



Robert W. Loesch
Executive Vice President
Resource Management

RWL/bjw

**Municipality
of
Anchorage**



P.O. BOX 198850
ANCHORAGE, ALASKA 99519-8850
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**TOM FINK,
MAYOR**

OFFICE OF THE MUNICIPAL ATTORNEY

April 1, 1993

APR - 5 RECD

Senator Robin Taylor
Chair
Senata Judiciary Committee
State Capitol
Juneau, Alaska 99801

**SUBJECT: SB 172 Regarding Awarding of Attorneys Fees and Costs and
Civil Actions to Effectuate or Vindicate a Public Policy
of the State**

Dear Senator Taylor:

The Municipality of Anchorage is very interested in a bill addressing the subject raised in Senate Bill 172, attorneys fees in public interest litigation. In recent years the Municipality of Anchorage has incurred expenses relating to "public interest litigation" in situations where the public interest in avoiding unnecessary municipal legal expenses appears to outweigh the public interest allegedly served by the litigation.

In some situations the Municipality of Anchorage has taken a position asserting a good faith interpretation of the applicable statutes and been forced to defend that interpretation in court. After a successful defense of that interpretation the public interest litigant doctrine has been applied to preclude the Municipality from recovering attorneys fees in cases relating to issues of "public interest" unless the suit is declared frivolous by the court.

In some other situations the Municipality may defend a good faith interpretation of the applicable statutes only to find that that interpretation, however reasonable, is different than the interpretation utilized by the courts. Where the opposing party is a "public interest litigant" the Municipality may be required to pay full attorneys fees regardless of the economic resources of the "public interest" party.

As the costs of litigation increase, this potential liability for defending against any public interest litigation creates a strong motivation for government attorneys to use very restrictive interpretations of statutes when giving advice to legislative or

Senator Robin Taylor
April 1, 1993
Page 2

executive bodies. Where the public interest litigant doctrine creates a financial liability in the event of any challenge to an executive or legislative decision either in the form of attorneys expenses or liability for attorneys fees to the opposing party, and there is no possibility for compensation in the event of a successful defense of the government's position, the frankness and variety of options presented in legal advice offered to legislative and executive decision makers may be adversely affected.

The Anchorage Municipal Attorney strongly endorses the concept set out in Senate Bill 172. The bill could go even farther and, using the Federal Equal Access to Justice Act, 28 USC § 2412, as a pattern, could protect governmental entities from responsibility for full attorneys fees where the position of the government or governmental agency was substantially justified.

Sincerely,



Richard L. McVeigh
Municipal Attorney

ms:\ltr\mcveigh\house/dp

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 RICHARD A. FOULIN
 OF COUNSEL
 TASSIE M.K. HANNA
 ROGER W. DUBROCK*
 MARY V. BARNY

April 21, 1993

VIA TELEFAX
 465-3834

*ALASKA BAR

The Honorable Brian Porter
 Chairman, Judiciary Committee
 Alaska House of Representatives
 State Capitol
 Room 122
 Juneau, Alaska 99801-1182

Dear Representative Porter:

I write in connection with Senate Bill 178.

Four years ago I was appointed by Chief Judge H. Russel Holland and Superior Court Judge Brian Shortell to serve as the liaison for all of the plaintiffs involved in litigation arising out of the *EXXON VALDEZ* Oil Spill. The oil spill had a devastating impact on the lives of villagers, fishermen, landowners and businesses located from Prince William Sound to portions of the Alaska Peninsula (and even beyond to Bristol Bay and Southeast in terms of its impact on fish prices, including thousands of Anchorage and Kenai Peninsula residents). Because Exxon refused to pay the bulk of the damages suffered by the victims of the spill -- choosing instead to only settle with the state and federal governments -- eventually some four hundred lawsuits were filed by over 5,000 individual Alaska plaintiffs, including lawsuits representing the interests of several thousand additional Alaska citizens. Our most recent estimates show that litigation embracing some 29,000 Alaska citizens.

The proposed bill in Section 1 would bar an action if the alleged "act . . . is authorized by . . . a statute or regulation . . . a license, permit, or order issued by the state or federal government . . . or a court order or decision." Under Section 3, the Act would apply

The Honorable Brian Porter
April 21, 1993
Page 2


to any lawsuit where a final judgment has not yet been entered -- meaning it would retroactively affect all liabilities which arose prior to the Act and which have not yet been finally adjudicated by a court.

Without going into detail -- and putting aside the numerous ambiguities in the bill as currently redrafted -- Senate Bill 178 could potentially cut off substantial portions of the oil spill litigation. For example, the bill might well bar a court from inquiring into any allegation of Exxon or Alyeska negligence relating to tanker design, spill preparedness, contingency planning, vessel manning, crew qualifications, clean-up procedures and so forth -- to the extent such issues involve licenses, permits, agency orders or court orders. Recent expert damage reports put the total compensatory damages suffered by the plaintiffs arising from the spill at approximately \$2.6 billion. If the Legislature extinguishes \$2.6 billion in vested causes of action, it would expose the State of Alaska to \$2.6 billion in "just compensation" taking claims under Article I, Sec. 18 of the Alaska Constitution and the Fourteenth Amendment to the U. S. Constitution.

Given the potential ramifications of this bill on the rights of thousands of state citizens -- and on the state treasury -- we respectfully urge that S.B. 178 not be enacted as written, and that it be subjected to far greater debate and public hearing than has been available to date.

Sincerely,

SONOSKY, CHAMBERS, SACHSE,
MILLER & MUNSON

By:  Lloyd Benton Miller

LBM:alm
E:\DOCS\EXXON\LTRS\PORTER.LTR



Alliance for Juneau's Future, Inc.

POSITION OF THE ALLIANCE FOR JUNEAU'S FUTURE ON SB 178

The Alliance for Juneau's Future supports Senate Bill 178 for the following reasons:

If business and industry is to invest time and capital in Alaska, they need predictable and stable laws. As the situation stands now, Alaska has two potentially conflicting systems governing land use and pollution: the regulatory system administered by the executive branch of state government and the "nuisance" system which is controlled by the judicial system.

While it is far from perfect, the legislature has made a clear choice that the regulatory system should have primacy. The legislature should defend the authority of the system it has established. SB 178 would do just that.

Without the protection of SB 178, Alaska risks having the regulatory system usurped or superseded by a judicially created "nuisance" system. The resulting uncertainty in the law will surely drive business and industry away from our state.

SB 178 makes another much needed correction to our nuisance statutes. The traditional standard for nuisance suits developed through hundreds of years of the common law was that an interference had to be "substantial and unreasonable." Our statute, AS 09.45.230, has departed from the established standard and endorsed one that is much more subjective and personal. Again, the uncertainty of this standard is harmful to a stable legal environment.

SB 178 will reestablish the traditional common law nuisance standard of a requirement of "substantial and unreasonable" interference with property.

Uncertainty in the law is harmful to those who would develop Alaska resources and provide a stable economic future for our state. But beyond that, it is most harmful to the public's respect for government. SB 178 takes one small step to the legal stability we need.

The Alliance for Juneau's Future is an organization of approximately 600 Juneau residents who support reasonable economic development in the Juneau area and throughout Alaska.


Chuck Achberger
Executive Director

217 Second Street, Suite 201
Juneau, Alaska 99801
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FAX (907) 586-5515



POSITION PAPER

Senate Bill 178

The Alaska State Chamber of Commerce has endorsed Senate Bill 178 as necessary to provide a good business climate in Alaska as well as to enable private citizens, the State of Alaska, and local government to protect their property from unreasonable intrusions.

Alaska's present nuisance law allows a person to sue his neighbor if he believes that his "personal enjoyment" of his property is lessened by his neighbor's activities. This is a very individual and subjective standard by which to judge the neighbor's actions. What may lessen one person's "personal enjoyment" of his or her property may not bother anyone else. The neighbor should be found liable only if what he is doing would be a nuisance to nearly everyone else in the community. In other words, "personal enjoyment" should be a standard that reflects the entire community.

What Senate Bill No. 178 does is change the standard by which a nuisance would be judged from "injuriously affected" or "lessened personal enjoyment" to "substantial and unreasonable interference." This makes the determination of what constitutes a nuisance a reflection of how an entire community functions.

Senate Bill No. 178 would also significantly reduce nuisance law suits brought against businesses and operations complying with conditions of their respective permits, i.e., air emissions, water discharges, noise, etc.

The Alaska State Chamber of Commerce believes that Senate Bill 178 strikes that proper balance between private interests, private and public interests, and creates the level playing field that makes possible economic development in Alaska and the protection of the environment.

**WRITTEN TESTIMONY SUBMITTED
SB 178 CIVIL NUISANCE ACTIONS**

Municipality of Anchorage

Sealaska Corporation

Alaska Forest Association, Inc.

Alaska Miners Association, Inc.

Petro Star Inc.

Pete Ehrhardt, Attorney at Law

Sitka Sound Seafoods

Haines Financial Services

Dr. Ronn E. Dick, Sitka

Mary E. Forbes, Kodiak

Dave Katz, Ketchikan

Robert Ellis, Sitka

Don Muller, Sitka

COMMENTS ON HB 282

BY

JEFFERY D. TROUTT

BEFORE THE

HOUSE JUDICIARY COMMITTEE

APRIL 21, 1993

COMMENTS ON HB 282

BY

JEFFERY D. TROUTT

BEFORE THE

HOUSE JUDICIARY COMMITTEE

APRIL 21, 1993

COMMENTS ON HB 282

My name is Jeffery D. Troutt. I am an attorney with Birch, Horton, Bittner & Cherot here in Juneau. I appear today representing only myself to speak in opposition to HB 282, a bill that would abolish legitimate claims along with the occasional frivolous ones.

Like many of you, I am a conservative Republican. I co-founded my law school's chapter of the Federalist Society, and worked for the Free Congress Foundation in Washington, D.C. for over two years. Here in Alaska, I have remained active in support of conservative causes, and in Republican Party politics.

I provide you with this brief background in order to demonstrate to you that I have strong conservative and Republican credentials, and that I have earned battle scars in support of conservative principles. Having done this, I intend to testify that HB 282 runs contrary to conservative principles by diminishing private property rights we conservatives hold dear.

HB 282 increases the threshold harm to private property rights that a plaintiff must prove to prevail in an action. It does so by adopting a statutory definition of "nuisance" as "a substantial and unreasonable interference with the use or enjoyment of real property". Currently the term "nuisance" is not defined. AS 09.45.230 simply provides that a lawsuit may be brought by person "whose property is injuriously affected or whose personal enjoyment is lessened by a private nuisance".

The bill would also bar lawsuits to enjoin or abate a nuisance, or to obtain damages, if the activity complained of is done under color of law.

I support the new definition of "nuisance" because it will help prevent frivolous and vexatious litigation, and is in accord with the common law definition. However, I strongly oppose the ban on nuisance lawsuits because it would force

people who did not participate in, or receive benefits from, other peoples' private economic activities to bear the economic burden of those activities.

Nuisance law exists to protect the economic value of private property. It is a private cause of action brought by private plaintiffs to redress harm done to them by another's use of his or her property. Unfortunately, nuisance law can be abused by persons interested in impeding economic development. The problem, however, lies not in nuisance law itself, but in the increasing politicization of the judiciary, and the tendency of courts to substitute their judgment for that of the Legislative and Executive branches of government.

Banning lawsuits based on nuisance will not stop frivolous lawsuits or lawsuits meant to harass or delay economic development. There are plenty of theories of liability that plaintiffs who wish to bring such actions can use. To discourage frivolous lawsuits you should consider enacting legislation that will reduce the incentive to bring them. Examples would include tightening standing requirements and eliminating the exemption of public interest litigants from paying attorneys fees under Civil Rule 82.

In preparation for my testimony, I reviewed the Alaska Digest's listing of nuisance cases during the territorial and statehood periods. I found that there are only nine published decisions. Only two of them were decided since statehood, the most recent in 1973. Of the remaining seven, three were brought against bawdyhouses (establishments which presumably were not authorized by statute, permit, or court order).

While I do not know how many lawsuits based on nuisance have been brought at the superior and district court levels in recent years, the paucity of published decisions leads me to believe that nuisance lawsuits are not much of a nuisance at all. In fact, they appear to be brought infrequently. The proposed bill therefore seems to be to be the equivalent of using a howitzer to kill a flea.

When brought for legitimate reasons, lawsuits based on nuisance encourage the economically efficient use of property by forcing a person to consider the impact of his actions on other. They encourage activities that have a net economic benefit, and discourages activities that do not. To use a simplified example, a person may wish to engage in an activity on his property that has an economic value of \$100 to him, but which diminishes the value of his neighbor's property by \$1,000. The potential for nuisance liability will discourage him from undertaking the activity on his property — an activity which will produce a net loss in the overall economy.

If, however, the activity is worth \$2,000 to the property owner, he will still engage in the activity regardless of liability for nuisance. He will profit from the use of his property even if he must pay his neighbor \$1,000 for his loss. The economy will receive a net gain, and the neighbors will be compensated for their loss.

While we each have a right to use our property to compete and prosper in a free market, we have a corresponding responsibility to reimburse others if our actions diminishes the value of their property. That does not mean that an activity should not continue because others are harmed by it. It merely means that a person who profits by the activity should reimburse those who suffer from it. The mere fact that a person can obtain a government permit for an activity should not mean that his use of property is more important than his neighbors', or that he is free to trample on the rights of other property owners. Unfortunately, under HB 282, permit holders will be elevated to a special status above mere "property owners", and their neighbors will be required to subsidize the permitted activity. This is not only morally wrong, it is economically unsound.

The legislature, agencies, and courts do not always consider the impact of an activity on property values, nor should they. But if HB 282 becomes law, they will. The decision-making process will become even more politicized than it is today. Government will become more paternalistic, and the people of Alaska will become

even more dependent upon government to take care of them. In the end, government — not the market — will pick economic winners and losers, and determine the value of private property. I don't believe Government is equipped, or can be trusted, to make those decisions.

For these reasons, HB 282 is anti-competitive and anti-business. It is fundamentally flawed in that it would place the burden of economic activity that would otherwise be actionable in nuisance on people who neither caused nor benefited from the activity. This is at odds with principles of property rights and individual responsibility. HB 282 should not become law.

Ref

HB 282
TESTIMONY OF ROBERT W. LOESCHER
EXECUTIVE VICE PRESIDENT, SEALASKA CORPORATION
April 21, 1993

My name is Robert Loescher. I am Executive Vice-President Resource Management for Sealaska Corporation. Sealaska is one of 12 Regional Native Corporations and is the Regional Native Corporation for Southeast Alaska. Sealaska is the largest private landowner in Southeast Alaska.

I am here today to testify about HB 282. I understand that the Senate on Monday passed CSSB 178. In my testimony, I am assuming that the revisions in CSSB 178 have been incorporated into HB 282.

Last week I wrote to you expressing Sealaska's concerns about SB 178. I am pleased and wish to acknowledge that a number of Sealaska's concerns have been addressed in the Senate's Committee Substitute. For example, the Committee Substitute clarifies that a person must be in compliance with a permit or license in order to obtain immunity from suits based on nuisance.

Despite these changes, Sealaska still has significant concerns over whether the Bill represents good public policy. Our principle concern is that it attempts to eliminate frivolous lawsuits by banning all such lawsuits under certain circumstances. If the current HB 282 becomes law, legitimate claims based on nuisance will not be heard, and, as a result, property owners who have legitimate grievances will not be able to have their day in court. There are aspects of the Bill which Sealaska supports. In particular, Sealaska believes that it is good public policy to reduce frivolous lawsuits. Sealaska supports the proposed definition of "nuisance" as "substantial and unreasonable interference with the use or enjoyment of property . . ." This codifies the common law definition of nuisance and we believe will eliminate the majority of frivolous lawsuits.

Under the legislation passed by the Senate, only property owners in areas zoned as residential can sue for nuisance against a permit or license holder on the basis of "view, odor, or noise." Sealaska has two concerns about this. First, many Alaskans live in areas where there is no zoning. The Bill leaves rural Alaskans, and Alaskans who live in most native villages, with less protection than their urban counterparts. Sealaska opposes any legislation that will give these people second class property rights.

Second, the Bill only allows nuisance lawsuits based upon "view, odor, or noise." This is too narrow. The Bill would ban lawsuits based upon nuisance such as air or water pollution, or other types of damage not listed.

Sealaska is also concerned that the retroactive application of this Bill seems targeted at a specific lawsuit. While this does not affect Sealaska one way or the other, there are constitutional concerns. I appreciate the sponsor's belief that the Bill is constitutional and do not wish to make a judgment one way or the other. However, I do believe there are legitimate arguments on both sides and hope that the Committee weighs the arguments carefully.

Sealaska believes that the current Committee Substitute is an improvement over the original Bill. Sealaska supports the Bill's attempts to weed out frivolous lawsuits. However, it does so by banning valid lawsuits by property owners who have suffered economic loss because of another's activities. That Sealaska cannot support.

I have appreciated the Bill's sponsors' willingness to consider Sealaska's concerns, and this leads me to the conclusion that it is possible for the sponsors to achieve their objectives without harming legitimate individual private property rights.

On balance, and despite improvements, this Bill is flawed. However, it is not unredeemable, and a compromise that Sealaska supports is possible.

One such possible compromise would be a Committee Substitute that incorporates the statutory definition of "nuisance," but does not ban lawsuits based upon nuisance. This would give persons on both sides of the issues time to fashion compromise legislation that would address the sponsors' and other property owners' concerns.

Another possible compromise would be a Committee Substitute that bans suits for injunctive relief where a permit or license has been issued, but allows suits for monetary damages. This compromise would allow economic development which has been sanctioned by the State to go forward. Property owners who have been injured by that economic activity would be able to sue for the lost value of their property, but not to stop the activity.

In closing, I would like to state that Sealaska would be glad to work with this Committee and the Bill's sponsors to fashion legislation which would help eliminate frivolous lawsuits without diminishing legitimate property rights. I hope my comments have been useful to you. Please let me know if there is anything Sealaska can do to assist this Committee in working out a fair compromise.

Thank you very much.

HB 282
EXAMPLES

I would like to present you with a couple examples of how this Bill would operate to deprive property owners of legitimate rights.

Many owners of recreational cabins who depend upon a stream for water supply. Suppose a neighboring landowner obtained a permit to dredge the stream, and by so doing rendered the water unpotable. The cabin owner would suffer an economic loss which would not be actionable.

Now for an example close to my heart. Sealaska owns a large amount of timber in areas which, not surprisingly, are not zoned residential. It is conceivable that someone on land adjoining Sealaska's timberlands may be granted a permit to discharge chemicals into the air or water which could kill the timber. Even if Sealaska participated in a public hearing and opposed granting of the permit, it would be damaged financially by that activity. If this Bill became law, Sealaska could sustain millions of dollars of losses because of the pollution and would be unable to do anything about it.



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary Committee
committee name
 committee on S.B. 178, dated 4/5/93
bill/subject

Hello: My name is DON MULLER. I have been a businessman in Sitka for the last 17 years. For two years before that I was a chemist at the APC mill.

Just yesterday I returned from Cambodia where I spent the last two months working on an education project for a relief agency. If I may, I would like to draw an analogy between what I saw there and SB 178.

As you all know, Cambodia has been involved with civil war and unrest for the last 25 years. As you also know, much of this has been the result of the genocidal Khmer Rouge

Signed: Don Muller (DON MULLER)
Testifier

Self
Representing (Optional)

Box 1042 Sitka
Address

747-8808, 747-6734
Phone No.

and their ultra-extreme policies. In April of 1991, after tremendous international effort, a peace accord was signed by the parties involved. This resulted in tremendous optimism internationally and, of course, among the Khmer people. Democracy, it appeared, would soon come to Cambodia. The people would finally have their country back.

It soon became apparent, however, that the Khmer Rouge thought differently. And they expressed this very simply, as they always have: anything in the peace accords that they didn't agree with, they simply went around it; if a particular agreement didn't please them at a particular time, they simply ignored it and operated by their own rules. Their own ~~own~~ concerns were more important than the concerns of the country.

SB 178 is obviously being considered because the pulp mill doesn't like the existing rules. The pulp mill, represented by Robin Taylor and Jim Clark, wants to write its own rules, especially since the mill might be in violation

of the existing rules. According to the pulp mill, the rights of the mill are more important than the rights of the community it operates in.

I ask that you vote against SB 178 in the interests of democracy and the the rights of the citizens of Alaska.



APR 15 RECD

Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary
 committee name
Civil Nuisance
 committee on SB 178 Actions, dated April, 1993
 bill/subject

I am opposed to SB 178. Though I do not condone frivolous lawsuits, I do not think the right of property owners to file nuisance suits should be taken away. This could be a costly mistake for the State of Alaska. By denying due process to property owners, the bill could be interpreted as constituting a "taking" of personal property rights by the State of Alaska. The state would then be liable to private property owners should they incur damage to their property as a result of state permitted activities. The Federal Government has not taken this risk. Why should the State of Alaska take it for the benefit of a few

citizen? Also, the possible costs the state could incur from the above scenario is contradictory to this legislature's goal to cut General Fund Spending. SB 178 is also bad public policy. The Citizens Oversight Council on Oil and Other Hazardous Substances (a committee created by this legislature) has concluded that the integrity of the state's permitting process is already in question. Passage of SB 178 would further degrade this process. Lastly, SB 178 is difficult to understand, very ambiguous and would affect many other existing Alaska statutes. This bill should not pass.
 Thank you for the opportunity to testify.

Signed: Mary E Forbes

Testifier

Kodiak Audubon ~~Soc~~ Society

Representing (Optional)

418 Mill Bay Rd Kodiak AK 99615

Address

486-2685

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the

Senate Judiciary
committee name

committee on

SB 118 / SCR 4
bill/subject

dated

4/12/93

Addition to verbal testimony

The effect of both of these measures would be to remove an essential check and balance of our miraculous democracy - it would tilt the playing field in favor of big business, big government and the rich, and deprive common citizens of access to the courts.

Signed:

Dave Katz

Testifier

Tongass Conservation Society

Representing (Optional)

PO Box 3377

Address

Ketchikan, AK

Phone No.

225-5827



Alaska State Legislature

Please enter into the record my testimony to the Senate Judiciary Committee
 committee name
 committee on SB178 , dated 5 April 93
 bill/subject

I am against passage of SB178. This bill appears to be directed to relieving Alaska Pulp Corporation from its many years of imposition of its pollution on private property owners in Sitka. I speak to this bill in terms of its impact in Sitka but realize the effects would be state wide.

1. This bill would allow the mill to continue polluting and prevent victims of the pollution from relief in court even if the ~~pollution~~ permits continue to be violated.

2- This bill would be a "taking of private property rights and would likely make the state liable for damage to private property resulting from permitted operations.

3- SB178 ignores the fact that the public has not been sufficiently included in the permitting process.

4- SB178 uses permits to immunize polluters from liability.

Signed: Robert Bellio
 Testifier

Sitka Property Owner

Representing (Optional)

Box 2966 Sitka

Address

747-8950

Phone No.

EPA: State Too Easy On APC Mill in Sitka

By EBEN PUNDERSON
Sentinel Staff Writer

The Environmental Protection Agency has objected to the terms of enforcement actions and air pollution control measures laid out in an agreement between Alaska Pulp Corp. and the Department of Environmental Conservation on the grounds they are too lenient.

DEC filed the operating permit without making the changes which the federal agency had suggested during the public comment period, despite notification by the EPA that failure to incorporate its suggestions into the consent decree could result in a lawsuit against the mill.

EPA's public comments in regard to the APC-DEC consent decree list three areas where the federal authorities feel the state regulatory agency should take a harder line. These are:

— assessment of non-compliance penalties. EPA says DEC should impose higher penalties on the mill — in the range of \$2 million to \$3 million — for exceeding emission limits. EPA says the fines should be assessed based upon the economic benefits which they say the mill has enjoyed by postponing the installation of pollution control equipment.

— the schedule for installing a mist elimination system to bring the mill's

chemical recovery boilers into compliance. EPA recommends that the consent decree be changed to require the mill to install the equipment in two years rather than the four years allowed by DEC.

— the methods proposed by DEC for determining whether APC will exceed ambient air quality standards, as required by the consent decree. EPA says the methods which DEC has allowed the mill to use for collecting data do not comply with the EPA Guideline on Air Quality Models.

DEC's Southeast Regional Air Program Coordinator Jim Baumgartner said EPA's comments came as a surprise to him because he was under the impression that the issues the agency raised had been resolved.

"We thought we had outlined a tack that would be suitable to EPA, so we were a little surprised when they requested we take a much harder line," said Baumgartner.

EPA's mention of a lawsuit was interpreted by Baumgartner as a threat. The comments, written by Air Compliance and Permitting Section Chief Ann Pontius, of EPA's Region 10, list the agency's enforcement options, one of which is "the filing of a judicial case in federal court to assess and collect noncompliance penalties."

"The letter was written in a way that threatens to throw their weight around," said Baumgartner.

But a senior EPA environmental engineer who has been working on the APC project, Chris James, said that a lawsuit would be the last and most severe of several tiers of enforcement measures, which start with a notice of violation.

James said that at this point a lawsuit is not imminent and the agency is currently evaluating what action it will take, if any.

"There's the potential that we may decide, in talking with the state, that, given the situation and other issues that APC is investing in, for example on the water quality side, what (DEC) decides to do is not exactly what we want but is the best they could do under the circumstances," said James.

However, James mentioned that EPA considers the Sitka mill to be one of the highest priority (pollution) sources in the region, and one purpose of its comments was to convey to the state EPA's level of concern.

"We wanted to make it clear to the state that we consider these issues to be serious, and we wanted to lay out all the options available to us to address the violations that exist," said James.

For its part, DEC claims that the EPA's suggestion that it levy steeper fines against the mill would be a form of "double jeopardy."

In his response to EPA, Baumgartner states that a penalty structure already exists for exceeding the power boiler sulfur dioxide limits and particulate matter limits laid out in the Compliance Order by Consent.

DEC says the mill has paid \$7,000 in penalties since the order went into effect. Imposing more penalties at this time would thus be a "double payment," and would be "contrary to the intent, if not the letter, of the existing order, and possibly illegal," the response states.

As for the "gravity" fines and fines to penalize APC for the alleged economic benefits of non-compliance, DEC says it has already proposed \$4 million worth of penalties.

However, this fine will be waived if APC "meets the final milestone for installing new controls for each recovery system," states Baumgartner's response. "We feel that these proposed penalties are in line with those suggested by EPA, even if not collected up front," the response states.

EPA's allegation that the mill can install the required mist elimination system in two years, rather than four, is countered by DEC's claim that economic considerations must be considered in addition to technical feasibility when establishing a compliance schedule.

APC spokesman Rollo Pool said the mill demonstrated to DEC that it could not purchase and install the equipment in two years without causing detrimental economic effects.

"We have proven to DEC that we cannot afford to do it (in two years). If it were not for the financial situation we could do it quicker," said Pool.

Pool said a soft pulp market is to blame, as well as upcoming expendi-

SITKA Daily SENTINEL
4/20/93

tures to bring the mill into compliance with new federal water quality standards.

James said he was aware of the economic constraints, but pointed to other mills which have installed the same equipment in two years, such as Ketchikan Pulp Co.

He also argued against favoring one mill over the others. "APC's competitors have been required to put on controls, and we felt that APC was enjoying an economic advantage by not having to expend this capital when their competitors have already done so," said James.

The mist eliminators are required to bring the mill into compliance with federal opacity and particulate standards. Pontius' letter states that, since these standards are federal, EPA will keep an eye on APC's compliance status, and "appropriate enforcement action will be considered by EPA if it is not taken by DEC."

In response to the letter's assertion that APC's proposed methods for air monitoring are inadequate, DEC says that APC has met the federal requirements, and also that EPA's model for measuring air quality is inappropriate for the mill because it overpredicts up to 10 times more emissions from the mill than what is actually recorded by the Heart Lake monitoring site. That site was selected because it was predicted to have the highest ambient impacts from mill emissions.

To address this problem, EPA suggested that an array of monitors be installed to develop a site-specific model. DEC decided this would not be necessary, as the Heart Lake data is "well below health-based standards," and the financial cost to the mill would be great.

EPA's James said his agency does not regard lightly the terms of DEC's consent decree, but expressed hope that the state would address the issues EPA has raised.

"It's always our hope that the state addresses these issues at the state level and we don't have to get involved in a formal legal action against the source. That was the congressional intent in establishing the Clean Air Act. But at the same time we have an oversight role, and we do carry that out," said James.

LETTERS TO THE EDITOR

Alaska Pulp

Dear Editor: I am writing this letter concerning the class action suit filed against Alaska Pulp Corporation of Sitka, Alaska.

In the Sitka Sentinel, March 2, 1992, it states that "some Sitka residents have filed a class-action suit against Alaska Pulp Corp., claiming the mill recklessly polluted the community, damaging the quality of life of waterfront property owners." It further states that "it seeks an undetermined amount of damages on behalf of environmental activist Larry Edwards and about 150 owners of waterfront property they claim is affected by mill pollution."

I have lived in Sitka for 46 years, having moved here when I was 22-years-old. I also live on waterfront property.

This past year I have enjoyed a weekly bridge session with several of my longtime friends, among them two close friends, who live on the beach close to the mill. We have observed pods of whales for months at a time in the area, as well as seals and sea lions. Seals have come in large groups and can be counted in the hundreds. In fact many of us have remarked that we have not seen as much wildlife in years as we have seen this year.

I have lived in Sitka before and after the pulp mill was built. I, and many others, can say the town is better now. Concerning the air, it is a well-known fact here that the smoke coming from wood stoves, particularly in the hospital, school and Swan Lake District, can be seen and smelled for miles. The pulp mill should not be blamed for all the air pollution. In this same newspaper article it is stated that "mill officials have spent nearly \$100 million on pollution control since 1968 and report operating expenses of the equipment total \$12 million a year." Nothing as far as I know has been spent on cleaning up the wood smoke problem.

One of my late husband's favorite places to fish, before and after the pulp mill, was Long Island. After his death our family set up a James Reeder Long Island Memorial Scholarship Fund at Sheldon Jackson College to be used for a student majoring in fisheries.

I think we should support the pulp mill and its endeavors to run a clean, efficient plant. I also believe the "150 owners of waterfront property" should put their name where the public can know who they are. To date I can find only one.

Eileen G. Reeder, Sitka

LETTERS TO THE EDITOR

Supports APC

Dear Editor: I am concerned about the class-action suit filed against Alaska Pulp Corp. of Sitka.

What a beautiful country we live in! Wooded islands and streams emptying into Silver Bay. There is a small stream about 500 feet from my home and on these waters beautiful wild ducks come to gather in flocks for their journey both north and south; sometimes for a prolonged stay.

Yes, I have lived on the beach at Thimbleberry Bay, a beautiful natural harbor, since 1965. I prefer this location above any other that I know of. This property was purchased previous to the start-up of the mill and has not changed. We have seals, whales and porpoises in our waters and what a pleasure it is for me to watch them frolic and invite the boat people to a race!

There is also a fish hatchery just a mile or so farther up the bay from the Alaska Pulp mill. On the hills above the mill there are beautiful trees, and lakes where fishermen enjoy catching fish. A very interesting hike for these fishermen.

I am one of the "Older People," 90 years of age, who has in the past years enjoyed both the hiking to the above lakes and fishing on our boat, Tierra, in the area across the bay from our home and all along the Eastern Channel.

Now I enjoy a walk every day, weather permitting, up my road to the mail box. It is a good quarter mile hike uphill, among beautiful trees, and in clear, invigorating air. It is unbelievable the height and beauty of the trees that I have enjoyed since I have lived here these 27 years.

Since the mill has come to Sitka the town has grown from 3,500 to 8,700 people; new streets and many beautiful homes have been built. There are new stores that offer everything from food to clothing, furniture, fuel oil and most necessities of life. Also appearing is tourism, an airport for the large planes, and a bridge connecting Mt. Edgecumbe to Sitka.

Many boats are owned here from big seiners, trollers, pleasure crafts down to canoes, rowboats, kayaks, and dingies and many of the owners I have heard say they enjoy the Sitka area as one of their favorite places. This is a beautiful, scenic, clean air, wild and natural town to live in and I want it to stay as it is, with the Alaska Pulp mill here, as they make it possible for all to have a better quality of life.

Harriet Stein, Sitka

LETTERS TO THE EDITOR

Supports APC

Dear Editor: Since I have lived and enjoyed my beach property on Thimbleberry Bay since 1948, I would like to evidence my disbelief that anyone could consider their property polluted by Alaska Pulp Corp. as Larry Edwards' class action suit indicates.

My three sons, all their friends, and now their children, as well as numerous visitors from out of town, over the years have enjoyed this property for swimming, fishing, boating and just enjoying the beauty and clear air. My sons and grandchildren are healthy.

In the early years of Alaska Lumber and Pulp Corp. there was enough pollution to cause less marine plant-life on the beach. Since the mill has put in their treatment plants, an area taking up nearly as much land as the mill itself, all marine life is now prevalent. I

believe the liquor they are now releasing is benefiting the marine life. This is evidenced by Silver Bay teeming with whales, porpoises, seals, ouer, etc.

For my hobby business in seaweed and shells, I know most of the beaches around Sitka. At Herring Cove shoreline, a bay adjacent to the mill, I get some of my finest and best seaweed.

I would like to ask Larry Edwards, and other people so critical of our Sitka mill, why they settled and bought homes in this area? They purchased their property after the mill was established and there has been nothing but improvements since then.

I agree with Eileen Reeder's letter that the 150 owners of waterfront property "should put their name where the public can know who they are." I have called many waterfront property owners and fail to find any of the 150 who wish to sue the mill. Who are they?

We wish people would not harass us in our beautiful area and allow us to have the quality of life we now have.

Mary Richards Sarvela, Sitka

LETTERS TO THE EDITOR

Supports APC

Dear Editor: This letter concerns the class action suit filed against Alaska Pulp Corp. of Sitka.

The Sitka Sentinel March 2 article states "Some Sitka residents have filed a class-action suit against Alaska Pulp Corp., claiming the mill recklessly polluted the community, damaging the quality of life of waterfront property owners" and that it seeks "an undetermined amount of damages on behalf of environmental activist Larry Edwards and about 150 owners of waterfront property they claim is affected by mill pollution."

I have lived on waterfront property close to the mill for 34 years and have enjoyed every minute of it! Being right on the water has given my family and me many hours of pleasure watching the whales, seals, otter, birds and deer and once in awhile a Canadian goose drops by for lunch on our lawn. We feel fortunate to live so close to so much wildlife.

Prior to this time we lived in Washington for 16 years near Mt. Rainier where we enjoyed an abundance of wildlife and clean air. However, driving in the Tacoma area you can expe-

rience what polluted air is really like.

I have not experienced any air and water pollution of any great magnitude in Sitka, like some people like to have you believe.

My family and I and friends have spent many enjoyable hours here on the bay, swimming, water skiing, boating and picnicking. When friends and relatives come up to visit from the Lower 48 usually their first words are how clean the air is and what wonderful water we have. APC has bent over backwards to keep it that way. They are always willing to help our community in many activities that helps the youth and Sitka citizens. It has never been their intention to pollute.

I resent the implications that are being given about this being a place with "dirty water and dirty air." I believe the quality of life much improved for the people of Sitka since APC came to town and that we should do all what we can to support them in their efforts to maintain and run a clean, efficient plant.

Who are these 150 waterfront people? I also do not know who they are.

This will always be "home," and where I intend to spend the rest of my life.

Verle Kramer, Sitka

LETTERS TO THE EDITOR

More APC Support

Dear Editor: It was with sadness and mixed emotions when I read in the Ketchikan Daily News about another effort by the preservationists to force the Alaska Pulp Corp. to close their doors.

These people will stop at no end to not only close the life blood of Sitka, but eventually the fisheries and any other development.

Where is the silent majority? It is past time to stand up for your future. We in Ketchikan, a short time ago, were forced to have an advisory election (in regard to the U.S. Navy acoustic submarine testing facility). We, the silent majority, mobilized and more than proved the "antis" wrong.

In looking at these same people, it is readily evident that their only interest is to stop any development, whether it be the Tongass National Forest, Glacier Bay, sport fishing, etc.

I can remember when, in 1956, Sitka was just a small fishing village, in conjunction with some assistance from the government at Japonski Island. Look at Sitka today. Sure tourism is great and hopefully fishing will continue to be good, but face it, who can survive on a few months' employment?

Look what Alaska Pulp Corp. has done for the people of Sitka, let alone Sitka itself.

That bale of pulp that Alaska Pulp Corp. produces provides many dollars, not only in direct payroll wages for the employees, but taxes (to operate the City of Sitka, schools, etc.) and those of us employed on the fringes, such as, but not limited to, long-shoremen, tug boat operators, marine pilots, government officials, customs, immigrations, U.S. Coast Guard, Forest Service employees, loggers, teachers, etc. Then take a look at the domino effect of each dollar paid out in wages, and calculate where they go. Such as the grocery clerks, gas station attendants, clothing and hardware store personnel, city and borough employees.

I own several hundred feet of waterfront property in Sitka — will someone show me the so-called pollution?

I was born and raised in Everett, Wash., where there were four pulp mills — the smelly kind — but these mills meant a prosperous community. I believe there is now one mill, the others are closed, along with a lot of unemployment. These closures were the result of declining market conditions and fortunately there are other jobs available in that area, but not in Sitka. If and when the mill locks the door, where is the future of the mill employees and yours? Who is going to buy your homes? Where do you go for employment?

It is time for the often silent majority affected by the environmentalist actions to speak out.

Cliff R. Taro, Ketchikan

LETTERS TO THE EDITOR

Supports APC

Dear Editor: Some months ago, I don't recall when (time flies when ...), I was driving out Sawmill Creek Road along Silver Bay on one of those rare, clear, sunny days that are so beautiful it takes your breath away.

I was on my way to the Alaska Pulp Corp. mill, a customer where for the last 12 years or so I have called at the cafeteria every Tuesday at about 1:30 p.m. As I rounded the last turn to where I could see the mill I was struck by how much it had changed since I was employed there in the late '60s. The buildings were painted and in good repair, the grounds were neat and clean and, most of all, there was little, if any, odor. The old pall of smoke and fumes that used to hang over the mill were gone except for a few plumes of steam over a couple of buildings and the main stacks. My thoughts at the time were that the mill management should be congratulated on the great clean up job they were doing.

So you can imagine my surprise when, as I went into the cafeteria, I was told about some idiots who had chained themselves to the barge dock ramp in protest of something. My comment at that time, was, "drop the ramp and let's see how far they can swim in their chains."

I live on Mome Island just west of the entrance to Silver Bay. I have commuted daily, rain or shine/snow or blow since 1969. I know whereof I speak when I say there have been major improvements in air and water quality. I see the changes daily. I can't remember when I last noticed any odor from the mill. The water, which on occasion was stained by red liquor, is now clear and clean. The number of logs floating around is greatly reduced to the loss of the firewood cutters.

Fishing is the best I have seen since I moved there and there are more whales, sea lions, mink, otter and other wildlife than ever.

Now, I suppose you could argue that the mill would not have spent the money to clean up without community pressure. By the same token, everyone in our community is dragged kicking and screaming into civilized behavior by that same pressure. So imagine yourself walking down the street in your Sunday best. Perhaps you had just taken a bath and found an old pair of long underwear you had thought you had lost. You're pretty proud of yourself, feeling good and looking for a little recognition. Instead, some "Mrs. Olsen" type (remember those ridiculous TV commercials) tells you that you have ring-around-the-collar. I think you would tell Mrs. Olsen (or Larry-the-lip) to go pound sand.

I hope everyone understands the point I am trying to make. But for the brain dead my point is: 1) let's give credit where and when it is due, 2) let's stop the confrontation-style politics that only enriches some lawyer, and 3) let's try to find a forum, other than the courts, to resolve the issue; if there is one.

I don't understand Larry's agenda. I would like to think he means well but I suspect his motives. He owns a lot on Galanken Island where he has built a tarpaper shack that is black and ugly. I would hope it is not representative of the condition of soul. I have to look at it every day and consider it visual pollution. Perhaps I could find 150 anonymous individuals to enter a class action suit to require him to either paint it or remove it.

Tom Preuss, Sitka

Sitka Assembly to Face Decision On APC Suit

By WILL SWAGEL
Sentinel Staff Writer

3/31/72
The City and Borough of Sitka, along with state and federal agencies, will probably have to decide at some point whether they want to participate in the class action suit lodged by a Sitka resident against Alaska Pulp Corp., City Attorney Theron Cole told City and Borough Assembly members at a work session Monday.

The suit by Larry Edwards alleges that waterfront property owners are adversely affected by the APC mill's discharges into Silver Bay.

City officials noted that most of the waterfront in the area mentioned by the suit is owned by the city, state and local governments.

Cole told the Assembly the city probably would be given the chance to "opt out" of the suit, which seeks compensatory and punitive damages that plaintiff attorneys say could amount to millions of dollars. The suit was filed February in Superior Court in Juneau.

Edwards is the only plaintiff so far, but his complaint states that another 150 owners of shoreline property also may be considered members of the affected class.

Assembly members said they probably would wish to go for the opt out provision, but Assembly member Pete Hallgren noted that various governments' large holdings might put them in a position to control the lawsuit.

Hallgren, who owns and lives on

Brest Island near Galankin Island, said he probably would opt out as an individual. Mayor Dan Keck said he believed the city would not want to participate in a suit against the mill.

Cole stressed that it was yet very early in the suit and the city should wait for correspondence from the court that the identification of class members is under way.

Cole was asked to talk to federal and state officials to gauge their intentions.

He was also asked, after a question from a reporter, to research conflict of interest questions for Assembly members who own waterfront property, as do Hallgren and Assembly member Frank Richards.

Assembly member Dan Hackett, an APC engineer, said he would not vote on the matter since he works for the mill, but he would participate in at least some of the discussions.

Environmental activist Nancy Hope said Assembly members should not opt out of the suit without considering the views of people who might support the legal action. She said, for instance, money gained from the suit could be used to mitigate pollution.

Keck said the public would have a chance to testify at hearings when the issue comes up for a decision and that the Assembly would listen to all opinions.

"That's one of the miserable jobs you get when you're elected," Keck joked.

LETTERS TO THE EDITOR

Supports APC

Dear Editor: This is my first letter to the editor in the 46 years I have lived in Sitka, but I feel compelled to write concerning the class-action suit against Alaska Pulp Corporation. I believe I am one of the silent majority and think it is time to speak out. I have lived, worked and retired here in this beautiful town and am a waterfront property owner.

The comments that I have heard about Sitka is that it is "a beautiful place and they want to keep it that way." This is true. However, it was not as beautiful before the APC came to town. I lived here before and after APC. At the time I came to town there was a mill right in the heart of the city, the Columbia Lumber Company. This mill belched smoke and ashes all day long in downtown Sitka on Lincoln Street. The sewer ran directly into Crescent Harbor from the homes along Lincoln Street and the smell was potent. We had mostly dirt roads that were filled with mud most of the time. Any car would rust out in a few years. At this time our meat came in frozen. The fruits and vegetables arrived about once a month and were not in very good shape on arrival. When we had a heavy rain the water would be brown. The only way to Mt. Edgecumbe was by ferry boat. We had few paved streets. There were two narrow dirt roads to Old Sitka and the site of the present APC. We had few harbor regulations. Dogs ran loose in packs and made a mess of the storefronts. We had no undertaker.

Then APC came to town. Things changed!

One of the first things APC did was purchase a good portion of the Lakeview property and proceed to build homes for the incoming employees. They built the mill 10 miles south of town, away from the population. The building of the mill enabled many of the fishermen here out of work in the wintertime to have jobs. New people came to town, businesses expanded, new schools were built and with the additional tax revenues the city was able to improve the schools, the police department, the fire department, sidewalks and paved roads. Two hospitals have been built as well as several churches. We have a bridge to Mt. Edgecumbe and an airport. Our water and electricity vastly improved. The city was able to secure more funding from federal and state to build a highway leading to the mill and one to

Old Sitka. The mill downtown disappeared and in its place we now have the Centennial Building and park along the harbor. An undertaker also came to town!

I believe that the changes that have been made since APC came to Sitka have all been for the good and that we should do all that we can to help them stay in business. The bottom line is Sitka needs a good economic base in order to sustain our present quality of life.

Inez E. Snowden, Sitka

Mill Support

Dear Editor: As a waterfront resident and landowner, I wish to state that I agree with the comments made over the past couple of weeks by various waterfront owners. I have lived in Jamestown Bay for over 27 years and do not agree with the lawsuit filed by Mr. Larry Edwards and 150 concerned waterfront residents against the Alaska Pulp Corporation.

It was a lot of fun this past fall and winter to watch the whales as they went back and forth into Silver Bay, to watch the salmon jumping in front of our house and to see the eagles in the trees.

I feel that Alaska Pulp has done an outstanding job of pollution control and applaud the work that they continue to do.

Roger D. Higley, Sitka

Supports APC

Dear Editor: This is in regard to the class-action suit, brought on by Mr. Larry Edwards against the Alaska Pulp Corporation, and it is also my first letter to the editor. The various letters in your paper voice concern that this drastic action creates the false impression that the quality of life in Sitka has been degraded and property values lowered. According to Mr. Edwards' statement, "150 waterfront property owners have suffered this damage."

I agree with the letter writers' concerns that the statements of Mr. Edwards are in error. I have lived on Jamestown Bay for 47 years and still enjoy the scenery and the ducks and herons feeding along the shore. Also the otters regular visits and seals and sea lion accompanying the spring herring ritual. As to the water, it looks clean to me as does the beach. As to smell, I haven't detected any odor other than occasional wood-stove smoke in years.

I have a further greater concern and that is the economic health of Sitka. I have just returned from visiting 17 towns in Alaska. During January and February, as state president of the Pioneers of Alaska, and with no offense to the gracious residents of the other towns, I am so proud and happy to return to Sitka with its beautiful setting — the healthy downtown business district, with its well-kept buildings, landscaping and economy.

Economy: this, to me, brings up my real reason of concern of the suit against the pulp mill and that it is a thinly disguised effort to close the mill. The recent Tongass bill was meant to do just that; by starving the mill for logs. Now the apparent strategy is to sue the mill to death.

I know there are people in Sitka who don't like the mill, for one reason or another, and that is their privilege, but I would like to remind all of our most recent citizens that the year before the mill went on the tax roll, the millage rate was 16 mills on our property taxes. However, with the added 55 million value of the mill on the books, the millage dropped to 5 mills. If the mill is closed and its value is deleted from the tax rolls, it is reasonable to assume our taxes would at least triple, possibly more from the domino effect of failed businesses and defaulted mortgages.

I ask, is the pulp mill so bad that we must risk such an economic disaster?

Joe Ashby, Sitka

4/8/92

SITKA SENTINEL

Supports APC

Dear Editor: Beautiful, beautiful Sitka! What a joy it is to return from time to time to see all the great progress Sitka continues to make.

Having read the negative reporting recently in the Anchorage Times I can't believe they were reporting the Sitka I have known for almost 50 years.

I first saw Sitka when it was a small fishing village; the military had pulled out and the town was not too prosperous. We were excited when the Bureau of Indian Affairs school moved to Mt. Edgecumbe in February 1947. These few new jobs meant more financial stability to Sitka.

I recall the concerted effort of the Chamber of Commerce and the "city fathers" to secure the pulp mill, as well as the airport.

I saw this small fishing village become a progressive community.

My husband owned property in Sitka long before I appeared on the scene, and we still own some property on Halibut Point Road where we have a fantastic view of the ocean and the many islands.

I recall reading one article in the Anchorage Times concerning the contamination and pollution at the Verstovia School. Our property is very near the school, and the only pollution I have detected has been the smell of wood burning — the latest was on April 5, 1992. On that day I could see for miles in every direction of breathtaking pristine beauty.

There was air and water pollution when the mill first went into production. They certainly have made great strides in solving those problems.

Just to mention some of the benefits I have seen due to the mill's operation are, but not limited to:

1. City office expanded from a cubby-hole in the Lutheran Church building with only a handful of employees to its expanded size with numerous employees.

2. An extended paved road system with sidewalks.

3. Hundreds of new homes. Their tax valuation adds to the city's financial base. Sitka now enjoys a very good bond rating.

4. There were only a few cars, a couple of taxis, and the transfer truck — used to deliver groceries and caskets to the cemetery.

5. Dr. Charteris and Dr. Hodgins (dentist) were the medical staff. Babies were born in the old Salvation Army Home.

6. The Sitka Sentinel was a half-page weekly. The owner-publisher-reporter and his wife rode their bikes to work.

If the pulp mill is forced to close and Sitka reverts to the small fishing village of the past, how many of those who have moved there since the construction of the mill and who oppose it will remain and shoulder the higher taxes to support Sitka? If they think there is pollution here, they should move to Anchorage.

I wonder how many days, if any, the pollution level exceeds the U.S. standards.

Citizens of Sitka, wake up! Think and act! — Don't let outsiders and the Cheechakos control your destiny.

Helen L. Dolenc, Palmer

Class Action Suit Filed Against APC

Sitka Daily Sentinel
March 2, 1992

By Sentinel Staff and the Associated Press

Some Sitka residents have filed a class-action suit against Alaska Pulp Corp., claiming the mill recklessly polluted the community, damaging the quality of life of waterfront property owners.

The suit was filed Friday in Juneau Superior Court by four law firms — two from Alaska, one from Washington, D.C., and another from Vermont.

It seeks an undetermined amount of damages on behalf of environmental activist Larry Edwards and about 150 owners of waterfront property they claim is affected by mill pollution.

"As of this date, other than collecting fines from APC, no remedial action has been undertaken by state or federal regulators," Washington, D.C., lawyer Terrance Reed was quoted by the Associated Press.

"The regulatory inaction in the face of pollution of this magnitude and persistence is certainly why some members of the community feel frustrated," Reed said.

The suit not only seeks money but also demands the mill change its way

of handling pollution. It asks that Alaska Pulp be ordered to install a water recycling system so its more than 40 million gallons of daily industrial waste water does not end up in Sitka's Silver Bay. The mill operates primary and secondary treatment of its waste water.

The plaintiffs did not make any prior announcement of their suit in Sitka, and first word of it was made over the weekend in The Anchorage Times, a daily newspaper that is a subsidiary of an oilfield service firm, and which has been outspokenly critical of the Sitka pulp mill.

Alaska Pulp spokesman Rollo Pool said he and other mill officials are confused by the timing of the suit — when the company's pollution controls are the best they have ever been and the amount of pollution the least.

"It seems to us that the timing doesn't seem to jibe as to what's happening in our environment," he told the Sentinel today.

Regulators have fined the company more than \$1.3 million since 1986, the Associated Press said.

Mill officials have spent nearly \$100 million on pollution control since 1968 and report operating expenses of the equipment totaling \$12 million a year.

Pool said today the company had not received a copy of the suit and could not yet comment on any particulars.

The Associated Press said Sitka lawyer James McGowan, who also represents the plaintiffs, said he has been approached for years by people who wanted to find some way to stop the mill from polluting the community.

"It's impossible to live in this town and not notice the dirty water and dirty air," he was quoted. McGowan was out of town and not available for comment to the Sentinel today. Edwards was also unavailable for comment to the Sentinel.

Reed is doing most of the scientific work for the lawsuit, said Pete Ehrhardt, a former Sitka attorney now practicing in Soldotna and the second Alaska attorney on the case, with McGowan. Ehrhardt said his firm recently won a \$50 million settlement in the 1987 Cook Inlet oil spill and presently represents a "substantial" number of litigants in the 1989 Exxon spill in Prince William Sound. The Vermont attorney, Pete Langrock, has particular expertise in suing other pulp mills, said Ehrhardt.

Ehrhardt said he did not expect the case to come to trial for at least a year.

Greg Kellogg, regional chief of water compliance for the U.S. Environmental Protection Agency, and Ron Flinn, acting supervisor of the Southeast Regional Office of the Alaska Department of Environmental Conservation, said they had not seen the suit.

"Until I see this thing I shouldn't even say a word," Kellogg said. "We'd be anxious to see it."

The suit has been planned for more than a year, Edwards was quoted by the Associated Press. Edwards, one of the mill's most outspoken critics, said he agreed to represent the class — waterfront property owners — to prevent others from facing the financial liability if the suit fails.

Alaska law allows the defendant to recover legal fees from the plaintiff of a failed class-action suit.

"I realize that I'm at risk," Edwards said. "The other class members would not be. I feel the case is exceptionally strong, and I feel it's something that should be done."

March 26, 1992

Mr. Thad Poulson
Editor - Daily Sitka Sentinel
112 Barracks St.
Sitka, Alaska 99835

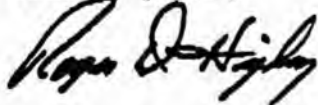
Dear Mr. Poulson,

As a waterfront resident and landowner, I wish to state that I agree with the comments made over the past couple of weeks by various waterfront owners. I have lived in Jamestown Bay for over 27 years and do not agree with the lawsuit filed by Mr. Edwards and 150 concerned waterfront residences against the Alaska Pulp Corporation.

It was a lot of fun this past fall and winter to watch the whales as they went back and forth into Silver Bay, to watch the salmon jumping in front of our house and to see the Eagles in the trees.

I feel that Alaska Pulp has done an outstanding job of pollution control and applaud the work that they continue to do.

Sincerely yours,



Roger D. Higley
P. O. Box 1082
Sitka, Alaska 99835

copy to: Frank Roppel
Alaska Pulp Corporation

April 7, 1992
514 Halibut Pt. Rd.
Sitka, AK 99835

Alaska Pulp Corporation
4600 Sawmill Creek Road
Sitka, AK 99835

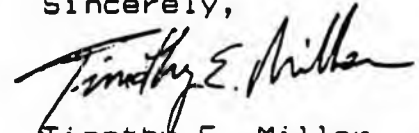
Dear Sirs:

Thank you for sponsoring the listing of churches in our local newspaper each Friday. This is a very generous thing for you to do. We appreciate your concern for our community and its churches.

Please know that we, here at First Baptist Church, pray for the pulp mill and its success on a regular basis. We are fully aware of the impact our community would suffer if the mill were ever closed. We are praying that we will never see the lay-offs, unemployment, closing of businesses dependent on pulp mill employed customers, and the decrease of the larger Sitka tax base. We are praying that petty environmentalists will stop harassing you with never-ending, unnecessary lawsuits and appeals. You shouldn't have to spend so much money defending yourself against groundless charges.

If there is ever anything more we can do to help you, please let me know. Thank you again for the church listing in the newspaper.

Sincerely,



Timothy E. Miller
Pastor
First Baptist Church

Testimony for Senate Bill 178
House Finance

Feb. 14, 1994

Rep. Eileen MacLean & Finance Committee:

I am sick and tired of listening to environmentalists and liberal legislators whine that the world is coming to an end and that business needs more restrictive legislation. Grow up and pass this bill. I support SB 178.

Russell WRIGHT
Russell Wright
2603 Sunnyside Creek Ave
Sitka, AK 99835

Testimony for Senate Bill 178
House Finance Committee

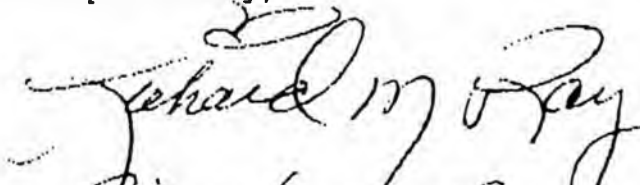
Feb. 14, 1994

Rep. Eileen Maclean:

This is a good bill for Alaska. In this day of declining oil revenue, we need to support other reasonable resource development. We need to ensure our companies and municipalities that if they are operating within the limits of their permits that they will be free from harassment by frivolous lawsuits. Alaska needs more legislation that supports business and sound, reasonable development.

Please distribute my comments to the committee.

Respectfully,


RICHARD W. RAY
309 Seward St. #3
Sitka, Alaska
99838

Testimony for Senate Bill 178
House Finance Committee

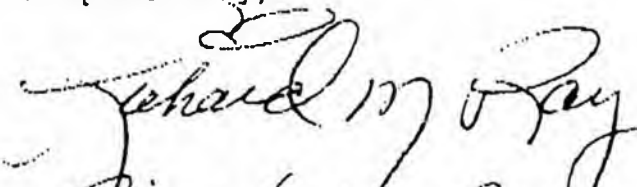
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Please distribute my comments to the committee.

Respectfully,


Richard W. Ray
309 Seward St. #3
Sitka, Alaska
99838


Testimony for SB 178
House Finance Committee

Feb. 14, 1994

Rep. Eileen Maclean:

This bill (SB 178) is pro-commerce, pro-jobs, pro-community. I like it and support it.

Truly,


PAT O'BRIEN
PO Box 2276
SITKA, AK 99835

Testimony for Senate Bill 178
Nuisance Bill
House Finance Committee

Feb. 15, 1994

Rep. Eileen MacLean, Ron Larson & Finance Committee:

I support SB 178. Please pass it.

Truly,

Ed Miller

ED MILLER

Box 2933

SITKA, AK 99835

Testimony for Senate Bill 178
House Finance Committee

2/14/94

Rep. Eileen MacLean:

This bill has been labeled bad because it helps Alaska industries. If it does, this is much needed support. Our industries are being legislated to death. I strongly support SB 178.

This bill will benefit any permit holder. Therefore, it will help many small businesses survive or get started, as well as being helpful to fish processors, pulp mills, aquaculture farms, oil and gas businesses, miners, and even cities that operate under air and water permits.

Sincerely,



Norman J. Richards
204 Blueberry Lane
Sitka, AK 99835

Please distribute my comments to the committee.

Testimony for Senate Bill 178
House Finance

Feb. 14, 1994

Rep. Eileen MacLean & Finance Committee:

I am sick and tired of listening to environmentalists and some legislators whine that the world is coming to an end and that business needs more restrictive legislation. Pass this bill. I support SB 178.

Don Best
DON BEST
2221 HPR
SITKA, AK 99835

Testimony for Senate Bill 178

Nuisance Bill
House Finance Committee

Feb. 15, 1994

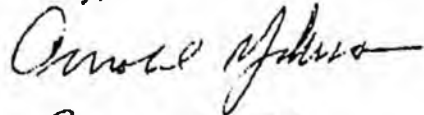
Rep. Eileen MacLean, Ron Larson & Finance Committee:

I support SB 178. Please pass it.

No changes. No amendments. No delays.

Arnold Johnson

Truly,



Box 1131

Sitka, Ak. 99835

Testimony for Senate Bill 178
House Finance Committee

2/14/94

Rep. Eileen MacLean:

'This has been labeled as a b.' that helps the pulp mills. If it does, so what? Both our pulp mills have been legislated to death. I support SB 178. If you look at the bill, you will see that it does more than support our mills. It is good for fish processors, aquaculture, oil and gas, mining, even cities that operate under permits.

Arthur D. Hackett
1875 Sawmill Creek Rd
Sitka, AK 99835
(907) 747-6657

ARTHUR D. HACKETT

Testimony for Senate Bill 178
House Finance

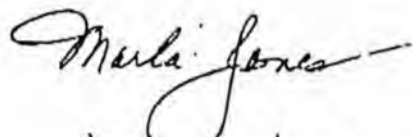
February 14, 1994

Finance Committee:

I am sick of hearing environmental extremists and way-out legislators crying that good things will come to Alaska if the legislature delivers more restrictive legislation. Who believes that? Industry in this state has its hands tied.

Pass this bill. I support SB 178.

Truly,



MARLA JONES

P.O. Box 1638

Wrangell AK 99929

Seley

Corporation

P.O. Box 5380 • Ketchikan, Alaska 99901

February 14, 1994

POSITION OF SUPPORT BY SELEY CORPORATION
AND SEABORNE LUMBER COMPANY CONCERNING SB 178
RELATING TO CIVIL NUISANCE ACTIONS

I am Steve Seley, Jr., President of Seley Corporation and Seaborne Lumber Company. I own timber harvest and manufacture operations based in Ketchikan, Alaska. I support the passage of SB 178 dealing with civil nuisance lawsuits.

Like many other responsible businesses in Ketchikan, we make every effort to insure that we have applied for and have received all necessary permits to conduct our activities. Once granted, we operate within the guidelines of that permit. It is extremely important that SB 178 is passed to protect our business and all others who follow the same operating practice from civil nuisance lawsuits.

Without this legislation, the permitting process and compliance with the permit stipulations and applicable laws affords business little or no protection from frivolous actions taken by others willing to go to any extreme to limit or preclude timber harvest and manufacture activity.

Respectfully submitted,



Steve Seley, Jr.
President



ALASKA + WOMEN IN TIMBER

111 STEDMAN ST.
KETCHIKAN, ALASKA 99901
907-225-6114

February 15, 1994

Testimony of Sandi Meske in Support of SB 178

On behalf of Alaska Women in Timber I would like to go on record in support of the proposed House Finance Committee Substitute to SB 178.

Under current law, a person may bring a nuisance lawsuit if they simply feel their "personal enjoyment" of their property is lessened. This bill protects an individual or company from a nuisance lawsuit based on an air emission or water or solid waste discharge if they have a valid permit and are operating in accordance with the permit.

There are many stringent laws regulating air, water and solid waste discharges. If a company has gone through the lengthy process to obtain a permit and is following the rules of the permit, they should be allowed to operate without fear of continued lawsuit.

This bill makes sense.

I ask for swift passage of SB 178.

Thank you.

Sandi Meske

Testimony for Senate Bill 178

**Nuisance Bill
House Finance**

February 14, 1994

Rep. Bileen MacLean, Rep. Ron Larson & Finance Committee:

I support SB 178. Period.

Sincerely,

Carl R. Alsop

CARL R. ALSOP

Box 1789

Wenatchee WA 98879

Testimony for Senate Bill 178

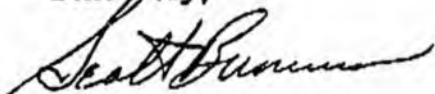
**Nuisance Bill
House Finance**

February 14, 1994

Rep. Eileen MacLean, Rep. Ron Larson & Finance Committee:

I support SB 178. Period.

Sincerely,



Scott Buness

P.O. Box 2351

Wrensburg, AL

99929

Testimony for Senate Bill 178

**Nuisance Bill
House Finance**

February 14, 1994

Rep. Bileen MacLean, Rep. Ron Larson & Finance Committee:

I support SB 178. Period.

Sincerely,

Christopher Versteeg
Box 1877
Wrangell, AK. 99929

Testimony for Senate Bill 178

**Nuisance Bill
House Finance**

February 14, 1994

Rep. Eileen MacLean, Rep. Ron Larson & Finance Committee:

I support SB 178. Period.

Sincerely,

Shelley Versteege
Shelley M. Versteege

Box 1877

Wrangell, AK. 99929

Testimony for Senate Bill 178
House Finance Committee

2/14/94

Rep. Eileen MacLean:

This has been labeled bad because it is a bill that helps Alaska industries. If it does, so what? Our industries have been legislated to death. I support SB 178.

If you look at the bill, you will see that it's good for fish processors, pulp mills, aquaculture, oil and gas, mining, even cities that operate under air and water permits.

Truly,

Please distribute my comments to the committee.

Jeni L. Olson

Jeni Olson
PO Box 1254
Wrangell AK
99929

Testimony for Senate Bill 178
House Finance

February 14, 1994

Finance Committee:

I am sick of hearing environmental extremists and way-out legislators crying that good things will come to Alaska if the legislature delivers more restrictive legislation. Who believes that? Industry in this state has its hands tied.

Pass this bill. I support SB 178.

Truly,

Robert Bushelier
Robert Bushelier
Box 1363
Wrangell, AK 99929

Testimony for Senate Bill 178
House Finance

Feb. 14, 1994

Representatives E. MacLean, Ron Larson:

Sitka has just lost 400 high-paying jobs because of excessive environmental regulation. These regulations have driven up the cost of doing business to the point that foreign competition has a big advantage over our companies. Our state government and federal government have done enough to hinder commerce in our state. We have done enough to lock up lands from development. We have to support commerce in Alaska. I support SB 178. Please pass it.

Respectfully,

Rodney D. Hamilton
P.O. Box 608
Wrangell, AK 99929

Testimony for Senate Bill 178
Nuisance Bill
House Finance

February 14, 1994

Rep. Eileen MacLean, Rep. Ron Larson & Finance Committee:

I support SB 178. Period.

Sincerely,

Ken Davidson Jr
P.O. Box 156
Wrens, AR
72382

Testimony for Senate Bill 178

**Nuisance Bill
House Finance**

February 14, 1994

Rep. Eileen MacLean, Rep. Ron Larson & Finance Committee:

I support SB 178. Period.

Sincerely,

David C. Olive

Box 1261

Wrangell, ak, 99929

Testimony for Senate Bill 178
House Finance

Feb. 14, 1994

Representatives E. MacLean, Ron Larson:

Sitka has just lost 400 high-paying jobs because of excessive environmental regulation. These regulations have driven up the cost of doing business to the point that foreign competition has a big advantage over our companies. Our state government and federal government have done enough to hinder commerce in our state. We have done enough to lock up lands from development. We have to support commerce in Alaska. I support SB 178. Please pass it.

Respectfully,



Robert P. Skymanski

P.O. Box 252

Wrangell AK 99929