

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982

1661 SJ SB 11 - SB 29

JAY S. HAMMOND  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 28, 1981

The Honorable Patrick Rodey  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Dear Senator <sup>Pat</sup>Rodey:

In reply to your letter concerning sunset of several regulatory boards, I'd like to furnish you the following information.

From the Governor's perspective, the Collection Agency Board (AS 08.24.011) is a board that might well be terminated, and the Governor does not intend to introduce legislation or take any effort to see that that particular board is continued in force after June 30, 1980. As for the Guide Licensing and Control Board (AS 08.54.010), the Governor is very much interested in seeing that this board is continued and has drafted legislation making some amendments to the statutes relating to the Guide Licensing and Control Board. This particular piece of legislation should be in completed form relatively soon and will be ready for introduction. As to the Board of Governors of the Alaska Bar Association (AS 08.08.040), the Governor believes that it is appropriate that this board be continued. As you may be aware, there has been some discussion in the past as to whether or not there should be a lay person on the board; this is ~~is~~ the Legislature to determine. Certainly it is appropriate that the board be continued. As to the Board of Welding Examiners (AS 08.99.010), the Governor will not be submitting legislation for the continuation of this board.

I would be pleased to discuss this with further, should you wish.

Sincerely,

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

Keith W. Specking  
Legislative Assistant  
to the Governor

JAY S. HAMMOND  
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Keith W. Specking  
Legislative Assistant  
to the Governor

# ALASKA BAR ASSOCIATION

PO BOX 279

ANCHORAGE, ALASKA 99510

AREA CODE 907.272-7469

RANDALL P. BURNS EXECUTIVE DIRECTOR

MARVIN S. FRANKEL DISCIPLINARY ADMINISTRATOR AND BAR COUNSEL

## OFFICERS

WILLIAM B. ROZELL  
PRESIDENT  
JUNEAU

KAREN L. HUNT  
PRESIDENT-ELECT  
ANCHORAGE

STANLEY T. FISCHER  
VICE PRESIDENT  
KODIAK

HUGH G. WADE  
SECRETARY  
ANCHORAGE

ELIZABETH P. KENNEDY  
TREASURER  
ANCHORAGE

## BOARD MEMBERS

WILLIAM P. BRYSON

STANLEY T. FISCHER

KAREN L. HUNT

ELIZABETH P. KENNEDY

EDWARD G. KING

JONATHAN H. LINK

WILLIAM B. ROZELL

RICHARD D. SAVELL

HUGH G. WADE

January 7, 1981

The Honorable  
Patrick M. Rodey  
Alaska State Senate  
State Capitol Building  
Pouch V  
Juneau, Alaska 99811

Dear Senator Rodey:

The enclosed is the material the Alaska Bar Association prepared last year in response to the House Judiciary Committee's request for information concerning the Bar's functions and activities. Kevin Bruce, who has seen this material, asked that you be provided with a copy. While the majority of the information provided is still useful, please realize that the Association has undergone a number of substantial changes over the last year and the information does not clearly reflect what I would characterize as the recent advances made by the Association.

Specifically, the Board of Governors of the Alaska Bar Association worked to guarantee that complaints against attorneys are, whenever possible, much more quickly processed. In addition, the Board has gone on record as not opposing a controlled audit of its confidential records by the Legislature. Further, the Board is continually refining its admissions processes and, in light of recent "liberalizing" decisions by the Alaska Supreme Court in this area, the Board is reviewing a number of residency issues that are integral to the Bar as we know it. These are matters which the Association dealt with throughout 1980, and the impact of those decisions and changes are not reflected in the statistics compiled by the Bar staff for the House Judiciary's sunset review of the Association.

Patrick M. Rodey

- 2 -

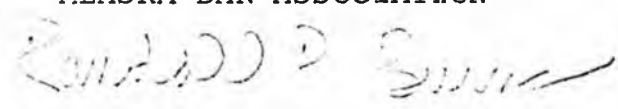
January 7, 1981

I enjoyed meeting Mr. Bruce, and look forward to assisting you and your staff during the upcoming legislative session.

On behalf of the Board of Governors, I would like to thank you for the time you took to meet with some of the Board members in early December, and I know that your words have left the Board feeling confident that the Association shall emerge from this session with the sun overhead.

Respectfully,

ALASKA BAR ASSOCIATION



Randall P. Burns  
Executive Director

wj

Enclosure

CC: Board of Governors  
Marvin S. Frankel, Bar Counsel



Official Business

# Alaska State Legislature

## Senate

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

January 19, 1981

Mr. Randall P. Burns  
Executive Director  
Alaska Bar Association  
P.O. Box 279  
Anchorage, AK 99510

Dear Randall;

Thank you for forwarding the material previously prepared for the 1980 House Judiciary Committee. I'm sure it will be helpful to the committee in its deliberations.

Senator Rodey has assured me that Senate Bill 11 will be a priority item in his committee, so I'm sure we will be speaking soon.

Thanks again.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kevin Bruce".

Kevin Bruce  
Committee Aid

KB/ds



# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Judiciary Comm  
Pouch V  
State Capitol  
Juneau, Alaska 99811

Official Business

March 12, 1980

The Honorable Terry Gardiner  
Speaker of the House  
Alaska State Legislature  
Pouch Y, State Capitol  
Juneau, Alaska 99811

Dear Mr. Speaker:

In compliance with AS 44.66.010 - 060 and referral by the Speaker of the House on January 15, 1980, the House Judiciary Committee has conducted a review of the Alaska Bar Association. By letter of July 31, 1979, the Speaker had notified the Committee of the forthcoming referral, thereby permitting advance work to be done during the interim between legislative sessions.

The Alaska Bar Association has taken the position "that it is not a State agency, and that it is not subject to the Sunset review process." The Association refused the Legislative Auditor access to some of its records; therefore, no performance audit has been conducted.

On November 7, 1979 the Committee requested information on 87 points; by letter of January 30, 1980 and a 71-page booklet, The Alaska Bar Association, February 1980, the Association answered completely 73 of the 87 points. Another 13 points were addressed by the Alaska Bar Association, but were not answered completely because of stated lack of adequate or feasibly retrievable information. On one point, a request for a copy of the card index on discipline, the Alaska Bar Association refused to reply, stating that it could not release this confidential information to the House Judiciary Committee.

In addition to receiving testimony during interim hearings, the Committee held 2 hearings to receive public testimony in Juneau. Also, 2 teleconference hearings were held to obtain testimony from Anchorage, Fairbanks, Kodiak, Valdez, Ketchikan, Sitka and Nome. Written testimony was received from 6 persons and the Kenai Peninsula

Bar Association. Oral testimony was received from about 15 persons. Witnesses included the president, president-elect, two former presidents, and three members of the present Board of Governors of the Association; the Ombudsman, and a number of attorneys.

The Alaska Supreme Court has delegated to the Association the responsibility for admissions and discipline, and by statute the Association may propose court rules or rule changes. All attorneys practicing in Alaska are required to be members of the Association, and to pay dues (now \$130.00 per year). Statutory authority is AS 08.08.010 - 250, commonly called the Integrated Bar Act, and some members of the Bar seem to feel that authority also resides in the inherent power of the Alaska Supreme Court.

The Committee found that the Association is conducting a number of worthwhile activities. Unfortunately, it is not clear that most of these are benefiting the general public, as opposed to Association members. (If, as it claims, the Association is not a State agency, it would be under no obligation to benefit the general public.)

In some ways one of the most disturbing revelations was the extent to which attorneys form a closed corporation. The Association comprises all attorneys in the State, <sup>NU</sup> only its members may practice law, it is in charge of admissions to the Bar and of discipline of its members, it nominates the three attorneys who sit on the Judicial Council, which in turn sends judgeship nominees to the Governor, judges must themselves be attorneys, and the Association furnishes nine members of the Board of Directors of Alaska Legal Services Corporation. Only in the disciplinary hearing and attorney fee review committees is there any lay presence. There seems to be at present no provision for the exercise of supervisory responsibility by the elected representatives of the people. The position of the Court System on the Alaska Bar Association sunset is included as an appendix to this report.

The Committee received more complaints and more testimony on the subject of Bar examinations than on any other subject related to the Alaska Bar Association. A major defect in the administration of the Alaska examination is that it is prepared and graded by persons who, while skilled attorneys, are amateurs in testing. Professionalism is needed in both the preparation and grading of the

examination to ensure that the examination will score persons only on relevant factors. The training of the preparers and graders should be financed by the income derived each year from the administration of the bar examination (about \$16,000 anticipated in 1980, not including the costs of any litigation which may arise from the examination).

There appears to be no discrimination against women in the Alaska Bar Association. Alaska has one of the highest percentages of women lawyers in the United States and, specifically, the highest percentage of women on its Board of Governors. In fact, the president of the Alaska Bar Association is a woman.

Although no apparent preference for non-minorities is shown, there is a disparity in the numbers of minorities versus non-minorities in the Alaska Bar Association. Ethnic minorities are poorly represented in the Alaska Bar Association. Present membership from these ethnic groups is as follows:

Alaska Native	5
Black	4
Asian-American	2
Hispanic	1

To the best of our knowledge, 12 Native people have been admitted to the Alaska Bar since Statehood. The only reliable statistics available are those reflecting current membership. Because the problem of low representation of minorities in the Alaska Bar Association has not been addressed adequately in the past, reasons for this situation cannot be determined at this time.

The Judiciary Committee recognizes that the percentage of minorities failing the Alaska bar examination, compared with the percentage of non-minority persons failing, is disproportionately high. The Committee believes that this disparity may be caused in part by cultural factors.

The Committee does not believe that the Alaska Bar Association intends to discriminate against minorities. The Committee commends the Board of Governors' Legal Educational Opportunities Committee for its work in gathering statistics regarding minorities in the Alaska Bar Association. The Committee urges the Board of Governors to

continue this work so that accurate minority pass rates may be established.

The Committee urges the Board of Governors to develop a program which will speak to the statistics reflecting minority representation in the Alaska Bar Association and the apparently low percentage of minority and non-minority individuals who pass the bar examination.

The Committee urges the Board of Governors to be aware of the disparity in minority participation in the bar and to direct its Committee of Bar Examiners to continually scrutinize the preparation and grading of the examination for possible cultural biases.

The Committee urges the Board of Governors to look into establishing some other criteria for evaluating an individual's competency to practice law in the State.

When, after completion of testimony, the Committee began its deliberations, the diversity of opinion was clearly evident. Apparently no one believed that the Alaska Bar Association should be extended for the maximum four years. Some members wanted to treat attorneys like other professionals, with a board to handle admissions and discipline; others preferred to make the Supreme Court directly responsible for those functions; and a third group preferred a short extension together with appropriate statute changes. The last viewpoint was finally adopted.

Findings required by AS 44.66.050(d) follow:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;

Finding: The Alaska Bar Association is intended to address the need for admission and discipline of attorneys in the State.

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;

Finding: The objectives are to upgrade the Bar in terms of education, competence, and

professionalism of its members, and to perform some services for the general public.

(3) an identification of any other programs having similar, conflicting or duplicate objectives;

Finding: There are no other programs having similar or conflicting objectives.

(4) an assessment of alternative methods of achieving the purposes of the program;

Finding: The responsibilities could be turned over to the Supreme Court or to a professional board in the Division of Occupational Licensing. The Committee has considered these alternatives but believes that they are not feasible at this time.

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level;

Finding: The Association could not be eliminated unless some other agency were responsible for the functions.

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts;

Finding: The extension of the Association for one year will permit time for a more thorough review and there is no duplication of other efforts.

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest;

Finding: Information which would improve the performance of the Association is included in

other portions of this report or in legislation to be introduced by the House Judiciary Committee.

The House Judiciary Committee finds that:

- (1) The Alaska Bar Association should be extended until June 30, 1981.
- (2) Statutory changes are needed in the public interest. The Committee will propose a bill incorporating these changes.

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Charles H. Parr, Chairman

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Nels A. Anderson, Jr.

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Ramona L. Barnes

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Fred E. Brown

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Thelma Bucoldt

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Hugh Malone

---

Terry Martin

---

Patrick M. O'Connell

---

Randy Phillips



Official Business

# Alaska State Legislature

## Senate

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### JOINT MEETING OF SENATE & HOUSE JUDICIARY COMMITTEES

Monday, February 16, 1981

#### A G E N D A

#### CALL TO ORDER

SB 11 "An Act continuing the existence of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

- William B. Rozell, President  
Alaska Bar Association

Brief overview of the Alaska Bar Association Board of Governors' activities.

SB 29 "An Act relating to nuclear materials."

Adoption of Committee Substitute.

RECESS

DISCIPLINARY BOARDS

Pres  
Pres elect } SUPERVISES BAR COUNCIL

FEE ARBITRATION COMMITTEE  
COMMITTEE MAKE-UP?

CONCILIATION BOARD

LEGISLATIVE AUDIT

- Bar Council  
Background  
- Fees Brown  
BAR HISTORY

OMBUDSMAN  
"STATE INSTRUMENTALITY"

LIKENSE FEES

down

owers. Most importantly, it sets out who may practice law in Alaska (A.S. 08.08.210), makes unlawful practice a misdemeanor (A.S. 08.08.230) and provides for Supreme Court review of disciplinary proceedings of the Alaska Bar Association. (A.S. 08.08.220) A.S. 08.08.205 and .207 is an attempt by the legislature to allow certain persons who have not graduated from an accredited law school to take the bar examination and be admitted to practice in Alaska. These particular sections, lowering bar admission standards, have never been approved by the Supreme Court, and are probably an invalid attempt by the legislature to invade the matter of bar admissions - a matter which is within the jurisdiction of the Alaska Supreme Court.

I. A. ALASKA SUPREME COURT:

The Alaska Supreme Court has the inherent power over the practice of law, and the suspension and disbarment of attorneys. In re McKay, 416 P.2d 823 (Alaska 1964) was the vehicle for the court to set forth its inherent power and displace the legislature's power over the practice of law in Alaska. Until McKay, the legislature controlled the practice of law and the Board of Governors had jurisdiction over attorney activities. (See 08.08.220) The Supreme Court now makes all determinations relevant to qualifications of attorney practice.

From time to time, the legislature interferes in the practice of law in Alaska. Attempts are made from time to time to enact legislation amending the Bar Act, requiring that non-lawyers be on the Board of Governors, or admitting the wife of one of the legislators to the practice of law. These generally do not succeed, although in 1976, the legislature enacted a law allowing substituted education in lieu of graduation from an ABA-approved law school. (A.S. 08.08.205-207) This law has never been implemented.

Over the years, the Bar Rules have been developed to set forth the relationship between the Court and the Bar Association. In 1976, a severe confrontation occurred over the right to take the bar exam. In Application of Sullivan, 551 P.2d 531 (June 14, 1976), the Court (in a 3-2 decision with a strong dissent) allowed an applicant who had filed late to take the bar examination, reasoning that the court had the inherent power to do so, and there were special circumstances in the case. As recognized by the dissent, the decision was directly contrary to a previous decision of the court two years before with respect to another applicant, and, more importantly, was directly contrary to the Bar Rules, and the relationship between the Bar Association and the Court as set forth in Bar Rule 60(b), which requires rule amendments to be approved by the Board of Governors prior to being adopted by the Supreme Court.

B. TRIAL COURTS:

The Superior Court is the trial court of general jurisdiction. It, and the Supreme Court, are created by the Alaska Constitution,

JAY S. HAMMOND  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 28, 1981

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Alaska State Senate  
Pouch V  
Juneau, AK 99811

Dear <sup>Pat:</sup> ~~Senator~~ Rodey:

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Sincerely,

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Keith W. Specking  
Legislative Assistant  
to the Governor

S

B

29

COMMITTEE REPORT  
SENATE

1/29/81

FURTHER: None

Date: February 17, 1981

Mr. President:

The Committee on JUDICIARY has had SB 29  
nuclear materials

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for SB 29 "An Act relating to nuclear materials."  same title
- new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_  
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\_\_\_\_\_  
CHAIRMAN

COMMITTEE REPORT  
SENATE

FURTHER: Judiciary

4/18/79

Date: 5-12-80

Mr. President:

HEALTH, EDUCATION &  
SOCIAL SERVICES

The Committee on SOCIAL SERVICES has had SB 209

prohibiting the disposal of nuclear waste material

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

\_\_\_\_\_

*Collette*

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*Ben ...*

\_\_\_\_\_

CHAIRMAN

*20 P. 15*

By SENATE RESOURCES COMMITTEE

To: \_\_\_\_\_ SENATE BILL No. SB 29

To: \_\_\_\_\_ HOUSE BILL No. \_\_\_\_\_

PAGE: 1            LINE: 27

Add new section 2

\*Sec. 2 AS 18.45 is amended by adding a new section to read:

Sec. 18.45.027. TRANSPORTATION OF NUCLEAR WASTE MATERIAL.

The transportation of nuclear waste material in the state, except for purposes of disposal outside the state, is prohibited.

Add new section 3

\*Sec. 3 AS 46.03.250 is amended to read:

Sec. 46.03.250. AUTHORITY. The department shall adopt regulations establishing standards governing the discharge of low level radiation [RADIONUCLIDES] to the air, water, land and subsurface of the state.

Add new section 4

\*Sec. 4 AS 46.03.260 is amended to read:

Sec. 46.03.260. USE OF ATOMIC RADIATION. A person who conducts an operation which results in the discharge of low level radiation [RADIONUCLIDES] to the air, water, land or subsurface land of the state must obtain a permit from the department before commencing the discharge.

RENUMBER ALL SUBSEQUENT SECTIONS IN THE BILL ACCORDINGLY

## AMENDMENT TO S.B. 29

## SECTION \_\_\_\_\_

Notwithstanding any other provision of law, nothing in Sections 1-6 of this bill shall apply to the exploration for, or the extraction and milling operations of uranium ore.

## EXPLANATION

The legislation in its present form will adversely affect the future of uranium mining industry in the State of Alaska in several respects. This amendment merely insures that no ambiguity in the law will be read so as to preclude the growth of a uranium mining industry in the state. Without an express exemption for the operation of uranium mines and mills, the sections in the bill that govern nuclear fuel production facilities could be read to apply to uranium milling operations, thus imposing onerous burdens on the mineral extraction portion of the industry. Similarly, uranium mill tailings are subject to special rules under the federal Solid Waste Disposal Act. However, S.B. 29 in its present form imposes a dual regulatory system by regulating low level nuclear waste and hazardous wastes. Uranium tailings will most likely be low level nuclear waste. Without clarification the uranium extraction industry will be subject to two duplicative sets of rules.

By SENATE RESOURCES COMMITTEETo: \_\_\_\_\_ SENATE BILL No. SB 29

To: \_\_\_\_\_ HOUSE BILL No. \_\_\_\_\_

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RENUMBER ALL SUBSEQUENT SECTIONS IN THE BILL ACCORDINGLY

A M E N D M E N T

OFFERED IN THE SENATE:

BY: JUDICIARY

TO: \_\_\_\_\_ SENATE BILL No. SB 29

HOUSE BILL No. \_\_\_\_\_

PAGE: \_\_\_\_\_

LINE: \_\_\_\_\_

Page 1, line 13:

After "Conservation" insert "to construct the facility on land designated by the legislature under (b) of this section".

Page 1, after line 13:

Insert

"(b) The legislature shall designate by law the land in the state on which a nuclear fuel production, utilization, reprocessing or disposal facility may be located."

Page 1, line 14:


Change "(b)" to "(c)"

394-72270-1

\$3.95/V-270

A NUCLEAR PLANT ACCIDENT COULD KILL 50,000 PEOPLE,  
DAMAGE \$17 BILLION WORTH OF PROPERTY OVER A 600,000  
SQUARE MILE AREA, & INFLECT AN UNTOLD NUMBER OF  
INJURIES & GENETIC MUTATIONS—& IT COULD HAPPEN TODAY!

THE  
**SILENT  
BOMB**



**A GUIDE TO THE NUCLEAR  
ENERGY CONTROVERSY**

EDITED BY  
**PETER FAULKNER.**

WITH A FOREWORD BY  
**PAUL R. EHRLICH**

**THE SILENT BOMB**

EDITED BY  
**PETER FAULKNER**



V-270  
VINTAGE

5B29

JIM BOREMAN

2/24/81



"MAYBE ONE OF THESE DAYS I OUGHTA START THINKING ABOUT GETTING A LITTER BOX."

SBZ9

# Nuke safeguard: a good proposal

2/25/81  
Among the worries Alaskans ought not face in this perilous world is the fear of accident resulting from use of nuclear power. Sometimes geographical isolation and sparse population are blessings in disguise; in this case Alaska is fortunate to afford the luxury of insulation from the nuclear power dilemma.

That's why many will applaud the action of the state senate Monday to seek a ban on construction of nuclear reactors and on storage or transportation of nuclear waste in the state.

The ban would not be absolute. Medical and research uses for low-level radioactive materials would be permitted, if state-approved guidelines are maintained. Nuclear projects, moreover, could be undertaken — but only with prior approval of the legislature and the state Department of Environmental Conservation.

But such requirements force the debate into the public forum where it belongs — and before nuclear facilities are in place. Citizens must reserve the right to express their attitudes toward nuclear industry through the political process before the industry arrives.

Americans elsewhere may be forced — against their best instincts, we suspect — to embrace increased use of nuclear power over the next few decades. Surviving the 20th Century in peace and security may require running the terrible risk of letting the nuclear genie out of its bottle, despite the real fears many people feel in the wake of the Three Mile Island disaster.

But Alaska is blessed with tremendous fossil-fuel reserves and hydroelectric power potential — easily enough to serve the state's power needs without need for nuclear power. The senate's action is a commonsense reflection of that fact, and we can only hope the Alaska House of Representatives follows suit without delay.

SB 29

# Bill banning nuclear activity passes Senate

2/23/81  
JUNEAU (AP)—The Senate voted today to ban nuclear fuel facilities in Alaska, as well as the storage or disposal of high-level nuclear waste, unless specifically authorized by the Legislature.

The legislation (CSSB29), approved by a unanimous vote, also would prohibit transportation of high-level nuclear waste in the state, except when transporting the waste outside Alaska for disposal.

Under the bill, a nuclear fuel production facility or waste disposal facility could not be built in Alaska unless the Legislature specifically designated, by law, a site for the facility. In addition, a facility would be required to obtain a permit from the Department of Environmental Conservation.

The bill also stipulates that regulations adopted by the department

governing issuance of a permit would have to be approved by both the municipality with jurisdiction over the proposed facility and the governor.

The bill differentiates between high-level and low-level nuclear waste. The measure directs DEC to adopt regulations defining low-level radiation and establishing standards for the discharge of low-level radiation and other nuclear waste material which does not constitute a threat to public health and which may be stored or disposed in the state.

The department also would be required, under the bill, to establish procedures for the storage and disposal of radioactive materials used in medicine, education or scientific research, which are not considered high-level waste.

The bill sponsored by Senate President Jalmar Kerttula, D-Palmer, now goes to the House.

SB29

# Senate passes nuclear ban bill

Our Juneau bureau

JUNEAU — The Alaska Senate voted unanimously Monday to ban construction of nuclear reactors and high-level nuclear waste or storage sites in the state unless the projects are approved in advance by the full legislature.

The bill, which now goes to the state House, also would prohibit transportation of high-level nuclear waste material within Alaska, except for the purpose of disposing of the waste outside the state.

The bill (CSSB29) says a "nuclear fuel production, utilization, reprocessing or disposal facility" can't be built unless the legislature has passed a law designating a site for the facility.

The bill also would require a nuclear facility to obtain a permit from the state Department of Environmental Conservation (DEC) Municipalities containing a potential site and



the governor also would have to approve any such permit, according to the measure, which passed the Senate 18-0.

But under the bill, prior legislative approval wouldn't be necessary for transportation of such low level radioactive material as used in medicine, education or scientific research, providing the materials are stored and disposed of according to state regulations.

The measure would order the DEC to set those standards — defining "nuclear waste material which does not constitute a threat to public health or

2/24/81  
safety" and setting procedures for storage and disposal of the low level materials.

Sen. Pat Rodey, D-Anchorage, said he has received as much mail on the nuclear measure as on any other bill, and that he felt there "is much public concern" over dealing with radioactive materials.

Alaska has no commercial nuclear reactors, but Senate President Jay Kerttula, D-Palmer and prime sponsor of the Senate nuclear bill, said state officials are looking into any possible nuclear storage by the military in the state.

The Hanford nuclear disposal site in Washington state currently handles much of the nation's nuclear waste, but under a new Washington law, no more nuclear waste can be sent into that state after July 1 unless a compact is signed between Washington and the state shipping the materials.

SB29

# Nuke safeguard: a good proposal

2/25/81

Among the worries Alaskans ought not face in this perilous world is the fear of accident resulting from use of nuclear power. Sometimes geographical isolation and sparse population are blessings in disguise; in this case Alaska is fortunate to afford the luxury of insulation from the nuclear power dilemma.

That's why many will applaud the action of the state senate Monday to seek a ban on construction of nuclear reactors and on storage or transportation of nuclear waste in the state.

The ban would not be absolute. Medical and research uses for low-level radioactive materials would be permitted, if state-approved guidelines are maintained. Nuclear projects, moreover, could be undertaken — but only with prior approval of the legislature and the state Department of Environmental Conservation.

But such requirements force the debate into the public forum where it belongs — and *before* nuclear facilities are in place. Citizens must reserve the right to express their attitudes toward nuclear industry through the political process before the industry arrives.

Americans elsewhere may be forced — against their best instincts, we suspect — to embrace increased use of nuclear power over the next few decades. Surviving the 20th Century in peace and security may require running the terrible risk of letting the nuclear genie out of its bottle, despite the real fears many people feel in the wake of the Three Mile Island disaster.

But Alaska is blessed with tremendous fossil-fuel reserves and hydroelectric power potential — easily enough to serve the state's power needs without need for nuclear power. The senate's action is a commonsense reflection of that fact, and we can only hope the Alaska House of Representatives follows suit without delay.

SB 29

# Bill banning nuclear activity passes Senate

2/23/81

JUNEAU (AP)—The Senate voted today to ban nuclear fuel facilities in Alaska, as well as the storage or disposal of high-level nuclear waste, unless specifically authorized by the Legislature.

The legislation (CSSB29), approved by a unanimous vote, also would prohibit transportation of high-level nuclear waste in the state, except when transporting the waste outside Alaska for disposal.

Under the bill, a nuclear fuel production facility or waste disposal facility could not be built in Alaska unless the Legislature specifically designated, by law, a site for the facility. In addition, a facility would be required to obtain a permit from the Department of Environmental Conservation.

The bill also stipulates that regulations adopted by the department

governing issuance of a permit would have to be approved by both the municipality with jurisdiction over the proposed facility and the governor.

The bill differentiates between high-level and low-level nuclear waste. The measure directs DEC to adopt regulations defining low-level radiation and establishing standards for the discharge of low-level radiation and other nuclear waste material which does not constitute a threat to public health and which may be stored or disposed in the state.

The department also would be required, under the bill, to establish procedures for the storage and disposal of radioactive materials used in medicine, education or scientific research, which are not considered high-level waste.

The bill sponsored by Senate President Jalmar Kerttula, D-Palmer, now goes to the House.

5629

# Senate passes nuclear ban bill

Our Juneau bureau

JUNEAU — The Alaska Senate voted unanimously Monday to ban construction of nuclear reactors and high-level nuclear waste or storage sites in the state unless the projects are approved in advance by the full legislature.

The bill, which now goes to the state House, also would prohibit transportation of high-level nuclear waste material within Alaska, except for the purpose of disposing of the waste outside the state.

The bill (CSSB29) says a "nuclear fuel production, utilization, reprocessing or disposal facility" can't be built unless the legislature has passed a law designating a site for the facility.

The bill also would require a nuclear facility to obtain a permit from the state Department of Environmental Conservation (DEC). Municipalities containing a potential site and



the governor also would have to approve any such permit, according to the measure, which passed the Senate 18-0.

But under the bill, prior legislative approval wouldn't be necessary for transportation of such low level radioactive material as used in medicine, education or scientific research, providing the materials are stored and disposed of according to state regulations.

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2/24/81  
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Alaska has no commercial nuclear reactors, but Senate President Jay Kerttula, D-Palmer and prime sponsor of the Senate nuclear bill, said state officials are looking into any possible nuclear storage by the military in the state.

The Hanford nuclear disposal site in Washington state currently handles much of the nation's nuclear waste, but under a new Washington law, no more nuclear waste can be sent into that state after July 1 unless a compact is signed between Washington and the state shipping the materials.

Introduced: 1/13/81  
Referred: Resources and  
Judiciary

1 IN THE SENATE

BY KERTTULA

2 SENATE BILL NO. 29

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 . A BILL

6 For an Act entitled: "An Act relating to nuclear materials."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 18.45.025 is amended to read:

9 Sec. 18.45.025. FACILITIES SITING PERMIT REQUIRED. (a) A [NO]  
10 person may not construct a nuclear fuel production facility, utiliza-  
11 tion facility, reprocessing facility, or nuclear waste disposal facility  
12 in the state unless he has first obtained a permit from the Department  
13 of Environmental Conservation.

14 (b) The Department of Environmental Conservation shall adopt  
15 regulations governing the issuance of [THESE] permits required by (a)  
16 of this section. However, a [; HOWEVER, NO] permit may not be issued  
17 until

18 [(1) THE LEGISLATURE HAS APPROVED THE REGULATIONS BY A CON-  
19 CURRENT RESOLUTION CONCURRED IN BY A MAJORITY OF THE MEMBERS OF EACH  
20 HOUSE;]

21 (2) the municipality [LOCAL GOVERNMENT] with jurisdiction  
22 over the proposed facility site has approved the permit; and

23 [(3) THE LEGISLATURE HAS APPROVED THE PERMIT BY A CONCURRENT  
24 RESOLUTION CONCURRED IN BY A MAJORITY OF THE MEMBERS OF EACH HOUSE;  
25 AND] UNLESS IT IS LOCATED IN WILLOW.

26 (4) the governor has approved the permit.

27 \* Sec. 2. AS 46.03 is amended by adding a new section to read:

28 Sec. 46.03.843. STORAGE AND DISPOSAL OF HIGH LEVEL NUCLEAR WASTE  
29 MATERIAL. (a) The storage and disposal of high level nuclear waste

1 material in the state is prohibited.

2 (b) For purposes of this section, "high level nuclear waste  
3 material"

4 (1) means

5 (A) nuclear waste materials produced by nuclear power  
6 plants; and

7 (B) material of a kind or quantity which, when stored  
8 or disposed, would constitute a threat to the health or safety of  
9 the public, as determined by the department under AS 46.03.250 by  
10 regulation;

11 (2) does not include radioactive materials used in medicine,  
12 education, or scientific research which are stored or disposed of in  
13 conformity with procedures established by the department by regulation.  
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Official Business

# Alaska State Legislature

## Senate

Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99511

### MEMORANDUM

DATE: February 2, 1981  
TO: Senate Judiciary Members  
FROM: Kevin K. Bruce, Committee Aid  
RE: SB 29

Please find enclosed the following material for hearings on SB 29, "An Act relating to nuclear materials":

- A.) SB 29
- B.) Amendments by Senate Resources Committee
- C.) Testimony by Department of Environmental Conservation on SB 29
- D.) Background material on SB 269 and HB 511, introduced last legislature.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Testimony on SB-29  
Relating to the Disposal of Radioactive Wastes'

January 28, 1981

The Department of Environmental Conservation welcomes the opportunity to review and comment on SB-29, relating to the disposal of radioactive wastes in Alaska. We support this bill, and would like to request your consideration of several additions which would clarify portions of other statutes which have overlapping and conflicting requirements on disposal of radioactive wastes.

As written, SB-29 will accomplish two things. First, it will eliminate certain aspects of the currently existing Alaska Statute 18.45.025 which would be found to be unconstitutional under the terms of a recent state supreme court decision. These changes would take the legislature out of the formal process of reviewing and approving regulations and permits relating to the disposal of nuclear wastes. However, the Department would still have to obtain local government and governor approval to either activity. These conditions are retained from the present AS 18.45.025, and are supported by the Department as desirable preconditions for issuing permits for high level nuclear activities.

The second thing accomplished by the bill will be to prohibit the disposal of high level wastes. The Committee should be aware that this is probably pre-empted by federal law, but it would not hurt anything to retain this provision. It would clearly state the legislature's intent that these highly toxic wastes should not be disposed of in Alaska.

While the Department is supporting of the current provisions of the bill, the Committee should be aware that AS 46.03.250 and AS 46.03.260 also cover the adoption of regulations and issuance of permits for disposal of radioactive wastes. In an effort to clarify the jurisdiction of each statute, the Department recommends that a slight housekeeping amendment be added to these two statutes to make them apply only to low level radioactive wastes. These statutes would then read as follows:

AS 46.03.250 is amended to read:

Sec. 46.03.250. AUTHORITY. The department shall adopt regulations establishing standards governing the discharge of low level radiation [RADIONUCLIDES] to the air, water, land, and subsurface of the state.

AS 46.03.260 is amended to read:

Sec. 46.03.260. USE OF ATOMIC RADIATION. A person who conducts an operation which results in the discharge of low level radiation [RADIONUCLIDES] to the air, water, land or subsurface land of the state must obtain a permit from the department before commencing the discharge.

With these changes, the Alaska Statutes relating to radioactive waste disposal will be made compatible with recent court decisions, and portions of present statutes which overlap in their jurisdiction will be corrected.

The Department thanks the Committee for consideration of our comments, and we would be glad to respond to any questions or provide any additional information which might be requested.

Last session two measures (SB 269 and SJR 34) were introduced in the Senate. HB 511 was introduced in the House. These bills concerned nuclear materials.

SB 269 was considered by the Health, Education and Social Services Committee. A committee substitute replaced the original bill and this substitute was passed out of committee. It was further referred to the Senate Judiciary Committee. The Judiciary Committee had the bill under consideration when the session ended.

SB 269 is similar to the current bill SB 29.

Attached for you information is the pertinent background material relative to SB 269 and HB 511.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907.465.3800

LEGISLATIVE AFFAIRS AGENCY


MEMORANDUM

April 4, 1980

SUBJECT: CSSB 269, relating to nuclear wastes

TO: Senator Glenn Hackney, Chairman  
Senate Health, Education and Social Services  
Committee

FROM: John B. Chenoweth  
Legislative Counsel



There was some confusion concerning instructions to complete the second redraft of this committee substitute. While the department's "position paper" wanted a ban only on "high level nuclear wastes" from nuclear power plants, your committee's actual request was limited to "high level nuclear wastes", presumably from any source. I do not know how to quantify "high level" with precision. Not wanting to tie to a figure expressed in terms of measurements that delight physicists and trouble legislators, I have suggested language in the draft that leaves the determination (other than as to wastes from nuclear plants) to an administrative agency. I note that, at 18 AAC 85, the Department of Environmental Conservation has already defined permissible disposable nuclear wastes.

The bill draft also makes clear that the prohibition is not intended to preclude storage and disposal of quantities of nuclear wastes generally used in education, research and medicine.

JBC:ljb

Enclosure

COMMITTEE REPORT  
SENATE

FURTHER: Judiciary

4/18/79

Date: 5-12-80

Mr. President:

HEALTH, EDUCATION &  
SOCIAL SERVICES

The Committee on SOCIAL SERVICES has had SB 209  
prohibiting the disposal of nuclear waste material

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

C. Curtis  
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Ben Gooden  
CHAIRMAN  
50119

# STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

JAY S. HAMMOND, GOVERNOR

POUCH Q - JUNEAU 99811

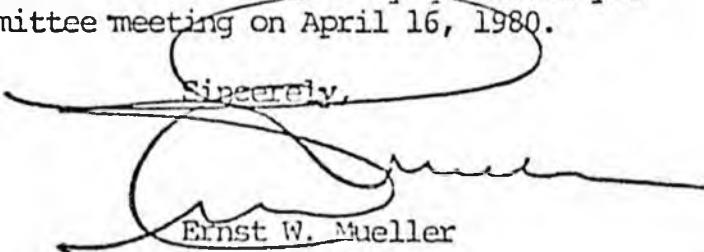
April 15, 1980

The Honorable Glenn Hackney  
Chairman  
Senate Health & Social  
Services Committee  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Hackney:

The Alaska Department of Environmental Conservation would like to submit the following comments and recommendations on SB 269 concerning the disposal of nuclear wastes in Alaska. We support this bill and the several minor changes which have been recommended. We would be more than willing to present these comments and answer any questions you might have at the 3:00 pm Committee meeting on April 16, 1980.

Sincerely,



Ernst W. Mueller  
Commissioner

Enclosure

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

REVIEW OF SB-269  
AN ACT PROHIBITING THE DISPOSAL OF NUCLEAR WASTE MATERIAL

Submitted to the  
Senate Health, Education and Social Services Committee

SB 269 makes changes in the current Alaska Statutes 18.45.025 FACILITIES SITING PERMIT REQUIRED, to prohibit the siting of any facilities which would allow the storage or disposal of radioactive waste materials within the State of Alaska. The Department strongly supports this legislation, particularly as it relates to the disposal of highly radioactive waste materials from nuclear power plants.

Wastes from nuclear power generating facilities require extremely long storage times before their radioactivity is reduced to safe levels. These wastes are difficult to contain in a safe manner, require extremely expensive containment technology which up to now has not proven reliable for long-term storage. While wastes from existing plants in other states will require some form of disposal method, Alaska should not become a dumping ground for these wastes. SB 267 would prohibit this from occurring, except in the unlikely event of federal preemption.

In supporting this legislation, we understand that a change has been or is going to be made in the legislation to expressly prohibit only the disposal of high level radioactive wastes from nuclear power plants. We support this change, because the disposal of small amounts of low level radioactive wastes generated from medical, laboratory and industrial facilities can be accomplished without creating a hazard to public health and the environment. Many of these low-level wastes cause no danger to the public if they are disposed in a safe and environmentally sound manner. Therefore, the existing authority to establish regulations under AS 46.03.250 should be adequate to assure proper handling and safe disposal of the low-level radioactive waste materials presently being generated in Alaska.

We thank you for the opportunity to comment on this legislation.

# STATE OF ALASKA

JAY S. HAMMOND, Governor

## DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

POUCH H-06-JUNEAU 99811

POUCH H-06-JUNEAU 99811

April 15, 1980

The Honorable Glenn Hackney  
Chairman  
Health, Education  
and Social Services Committee  
Alaska State Senate  
Pouch "V", State Capitol Building  
Juneau, Alaska 99811

Document # 79-80

Dear Senator Hackney:

Sid Heidersdorf, Radiological Physicist for the Division of Public Health, is out of town this week and therefore unable to testify at the Wednesday hearing on CSSB 269. He has asked that I convey his concerns regarding this bill to you for consideration by your committee.

We are pleased to note that the Committee Substitute for Senate Bill 269 allows the storage and disposal of nuclear waste resulting from medicine, scientific research and education. We have a few additional concerns we feel should be weighed by the committee in their deliberations on this bill.

### Consideration No. 1

Section 18.45.025 removes nuclear waste disposal facilities from the permit requirements listing. At some time in the future, if disposal requirements from medical, scientific and educational sources become great enough, a waste disposal facility may be required within the state for wastes generated from these sources. In that event, any such facility should be required to receive a permit from the Department of Environmental Conservation.

### Consideration No. 2

Section 18.45.027 prohibits the transportation of nuclear waste material in the state except for purposes of disposal outside the state. It is suggested that the prohibition should be directed against high level nuclear waste materials since there may be necessity to transport low level wastes from medical, scientific and educational sources. The State has regulations covering the transportation of nuclear materials (18 AAC 85.320).

### Consideration No. 3

Section 18.45.029(b)(1)(B) seems to add to the potential for confusion

over the term "high level nuclear material" rather than to clarify the definition as intended. For example, low level wastes from medical, research and educational uses, when improperly stored or disposed of, could be "material of a kind or quantity which .... would constitute a threat to the health or safety of the public....". Safe disposal of radioactive wastes is already covered by regulation in 13 AAC 85.270 - 310.

Recommendations

1. In Section 18.45.025, retain the requirement for a permit for the siting of a nuclear waste disposal facility.
2. In Section 18.45.029, delete subpart (1) (B) since it does not appear to add clarity to the definition of "high level nuclear material" and rephrase 18.45.029 (1) (A) to read "nuclear waste material produced by nuclear power plants and nuclear fuel processing facilities".
3. A preferable alternative to Recommendations 1 and 2 is to delete Section 18.45.029 in its entirety and rephrase Section 18.45.027 as follows:

Section 18.45.027. TRANSPORTATION, STORAGE AND DISPOSAL OF NUCLEAR WASTE MATERIAL. The transportation, except for purposes of disposal outside the state, storage and disposal of high level nuclear waste material from nuclear power plants or nuclear fuel processing facilities is prohibited.

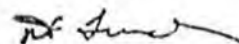
Such phrasing would be consistent with the continued use of low level nuclear materials for medical, scientific or educational purposes and would eliminate the need for defining "high level nuclear waste".

Department's Position

The Department of Health and Social Services is neutral on CSSB No. 269 if these recommendations are incorporated in the final draft.

Thank you for the opportunity to present Mr. Heidersdorf's testimony to you in this letter. He will be back in his office Monday, April 21st and will be able to provide you or your committee members with any additional information you may require.

Sincerely,



Dean F. Tirador, M.D.  
Director  
Division of Public Health

DFT/md

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

*opinion*

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

(907) 465-3686

April 15, 1980

The Honorable Glenn Hackney  
Alaska State Legislature  
Senate  
Pouch V  
Juneau, Alaska 99811

Re: Nuclear Waste Transportation  
Our file J-66-606-80

Dear Senator Hackney:

On April 4, you requested this department's views on whether the State of Alaska could prohibit the Federal Government from utilizing state road to transport nuclear waste for disposal within the state. The state of the law in this matter is fluid, and we cannot give a definitive answer.

Many states, and local governments, have enacted legislation prohibiting or restricting the transportation of radioactive wastes across their roads. ~~In response, the Federal Department of Transportation has proposed regulations which, if enacted, would preempt states from imposing outright prohibitions on nuclear waste transport, at least on federal aid highways,~~ although states would be allowed a voice in particular routing decisions. A copy of these regulations is enclosed. Several states are actively protesting these

regulations, and are contemplating litigation in the event that they are adopted -- on the grounds that the regulations are statutorily and constitutionally unauthorized.

Absent the adoption of these regulations, the state probably could prohibit private carriers from transporting nuclear wastes across state roads. A different problem exists with respect to transportation by the Federal Government and its instrumentalities. Unless a specific statutory waiver could be found, direct federal transport would be immune from state regulation. Hancock v. Train, 426 U.S. 167 (1976). Congress has waived federal sovereign immunity with respect to solid waste activities in section 6001 of the Resource Conservation Recovery Act of 1976 (P.L. 94-950). The applicability of that waiver to nuclear waste transportation by the Federal Government would be questioned under section 1006(a) of the Act, which provides that:

Nothing in this Act shall be construed to apply to (or to authorize any state, interstate, or local authority to regulate) any activity or substance which is subject to the . . . Atomic Energy Act of 1954 (42 U.S.C. 2011 and following) except to the extent that such application (or regulation) is not inconsistent with the requirements of such acts.

As implemented, the regulation of the transportation of nuclear wastes is governed not by the Atomic Energy Act, but rather by the Hazardous Materials Transportation Act.

49 U.S.C. § 1801 et seq. Thus, the exceptions to the sovereign immunity waiver contained in the Resource Conservation and Recovery Act, at least potentially, may not include the transportation of nuclear waste materials. However, because sovereign immunity waivers are strictly construed in favor of the Federal Government (Hancock v. Train, supra) the argument may be a difficult one to make. \*/

As I hope this letter indicates, the subject of the permissible scope of state regulation with respect to nuclear power involves an accommodation of several major federal regulatory programs, and ongoing federal agency activities. Certainly, 42 U.S.C. § 2021 -- the state cooperation section of the Atomic Energy Act -- has certain preemptive effects. For example, it has been held that states may not prohibit the construction of a nuclear plant for reasons premised on radioactivity hazards, although it may deny siting approval on other environmental or land use grounds. See Northern States Power Co. v. State of Minnesota, 447 F.2d 1143 (8th Cir. 1971); United States v. City of New York, \_\_\_ F. Supp. \_\_\_, 12 ERC 1600 (SDNY, December 26, 1978); Pacific Legal Foundation v. California State Energy Comm'n,

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\*/ The sovereign immunity waiver in the Clean Air Act (sec. 118: P.L. 95-95) may also be applicable, to the extent that transportation of nuclear waste poses a threat of atmospheric radioactive release.

The Honorable Glenn Hackney

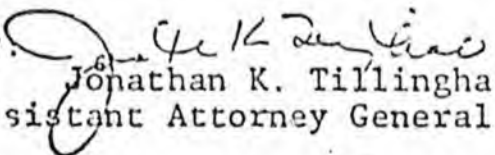
April 15, 1980  
Page 4.

\_\_\_ F. Supp. \_\_\_ 12 ERC 1899 (S.D. Cal., March 6, 1979).

The extent to which this rationale is applicable to direct regulation of nuclear waste disposal activities is unclear. Because it is unsettled, many state and local governments have chosen to legislate in this area. Moreover, it is my understanding the Nuclear Regulatory Commission has taken a cooperative attitude in this respect -- although the Department of Transportation, as noted previously, may differ. In sum, it does not appear from initial review that there exists any clear legal obstacle at this time which would override the public interest which would be served by state nuclear power regulation.

Sincerely,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:   
Jonathan K. Tillinghast  
Assistant Attorney General

JKT:d1m

Enc.

cc: Ernst W. Mueller, w/enc.  
Commissioner  
Department of Environmental  
Conservation

POSITION PAPER / Department of Health & Social Services

POSITION PAPER

SENATE BILL NO. 269

"An Act prohibiting the disposal of nuclear waste material."

Senate Bill No. 269 prohibits the storage and disposal of nuclear waste material in Alaska. This prohibition is without qualification as to quantity, origin, and kind.

Alaska has approximately 35 licensed users of radioactive materials. Since Alaska is not an Agreement State under the Atomic Energy Act, the Department of Health and Social Services does not have jurisdiction over these sources. They are licensed and controlled by the United States Nuclear Regulatory Commission.

Presently, nuclear waste material in some form or other is either stored and/or disposed of in Alaska. It is estimated that from eight to ten of the facilities licensed in the State by the Nuclear Regulatory Commission use unsealed sources which require some storage and disposal following use.

Unsealed sources, as differentiated from sealed sources, are those not encapsulated in a container. Unsealed sources, kept in openable bottles or other containers, are necessary in research and nuclear medicine so they can be used in various laboratory procedures or in medical practice by ingestion, inhalation or injection. This use results in various kinds of radioactive wastes. Facilities presently using unsealed sources are four hospitals located in Juneau, Anchorage, and Fairbanks. Unsealed sources are also frequently used in private, Federal, and State research and/or educational facilities carrying out activities such as those conducted by the NOAA Auke Bay Fisheries Laboratory, U.S. Geological Survey, and the University of Alaska Institutes of Marine Science and Arctic Biology. Some of these unsealed sources may also be used in industrial applications--for example, activities related to the oil industry.

Radioactive wastes are in the form of liquids, contaminated laboratory articles, biological samples, and such items as towels and clothing. Generally these would be stored in liquid-tight barrels, on site, in an area with limited and controlled access. Storage is necessary until materials can be shipped to a licensed radioactive waste disposal site, such as the one in Rickland, Washington. Alaska does not have an approved waste disposal site, and the present low volume of such waste has not yet caused a problem for users in Alaska.

Presently, hospitals in Alaska store radioactive waste until it has decayed to very low levels (near background). The material is then either incinerated or disposed of in sanitary sewerage systems according to regulations established by the Nuclear Regulatory Commission.

This Bill, if passed as presently worded, will eliminate the use of unsealed radioactive sources in Alaska--a situation which will have a harmful impact on the delivery of medical services and research activities within the State. Accordingly, the following changes in wording are recommended:

Line 12: Leave in the phrase "OR NUCLEAR WASTE DISPOSAL FACILITY".

Lines 26-28: Section 18.45.027. DISPOSAL OF NUCLEAR WASTE MATERIAL. The disposal of high levels of nuclear waste material in the State from nuclear power plants is prohibited.

The changes recommended above are suggested only to protect the use of radioactive materials in nuclear medicine facilities, research, and education. It is recognized that the prohibition of the disposal of high level waste from nuclear power plants may directly affect future State policy and the interest of other State agencies. This matter of State policy regarding disposal of high level waste has ramifications far beyond the authority of this Department, and consequently is not addressed by this position paper.

With the above recommended changes, the Department of Health and Social Services takes a neutral stand on Senate Bill No. 269.

Recommended by:

Dean F. Tirador  
Dean F. Tirador, M.D.  
Director, Division  
of Public Health

Date:

17 Nov 50

Approved by:

Helen D. Beirne  
Helen D. Beirne  
Commissioner

Date:

3/20/50

DEPARTMENT OF HEALTH & SOCIAL SERVICES

# STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

2000  
MAR 18 1980  
JAY S. IRVING, GOVERNOR

POUCH 0 - JUNEAU 99811

The Honorable J. M. Kerttula  
Senator  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Kerttula:

The Department recently completed an analysis of House Bill 511 relating to the disposal of hazardous wastes. Because of your interest in hazardous wastes, we have enclosed a copy for your information. The bill will need some changes if we are to develop a reasonable hazardous waste disposal program, and our analysis makes recommendations on how that might occur.

There have been indications in the past several weeks that the House Resources Committee expects to schedule this bill for hearings. We are working with committee's staff in drafting a substitute bill in preparation for those hearings. This should occur soon, and we will keep you informed on this effort.

Sincerely yours,

*C. Deming Cowles*

C. Deming Cowles  
Deputy Commissioner

# ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## ANALYSIS OF HB 511, AN ACT RELATING TO THE DISPOSAL OF HAZARDOUS WASTE

### I. SUMMARY OF BILL

The department interprets the intent of HB 511 to mean that the Legislature wishes to protect the lands and people of the state from the potential dangers of hazardous waste disposal rather than the use or generation of hazardous materials. The bill delegates to the Alaska Department of Environmental Conservation (ADEC) the power to adopt regulations for the safe, proper disposal of hazardous waste so as to protect the health, safety and welfare of the public and the quality of the environment. However, it grants this power with reservations, since the bill also prohibits the disposal of hazardous waste in Alaska unless processing renders the wastes harmless.

### B. ANALYSIS

The department's interpretation of HB 511 takes into account the numerous examples of illness, death, and mutations throughout the continental United States that have been traced directly to disposal sites for hazardous wastes. The department further assumes that the intent is not to halt the use or generation of hazardous substances except in certain instances, because such a ban would hinder economic development. As the Alaska economy diversifies the possibility exists that more industries and corporations which generate hazardous waste will be attracted to and wish to locate in the state.

#### 1. Positive Aspects of the Bill

HB 511 is the first attempt to grant specific Legislative authority to handle and manage hazardous wastes in Alaska. Currently the Alaska Statutes authorize ADEC to adopt regulations concerning collection and disposal of garbage, refuse, and other discarded solid waste materials from industrial, commercial, agricultural and community activities or operations. It is under this broad statutory authority that ADEC has assumed responsibility for establishing a hazardous waste management program. Specific legislative authorization would, however, clarify the state's role and responsibility in hazardous waste management.

Specifically, the following aspects of the bill are necessary for a coordinated hazardous waste management program.

- (a) Section 20 authorizes the department to adopt regulations for the disposal of hazardous wastes. This power, however, is limited by Section 10, which bans all disposal of hazardous waste in the state. The materials considered below are examples of wastes which the department presumes could be regulated under the bill.

While uranium is not presently being mined in Alaska, at least one earlier mine and continuing explorations present evidence that Alaska has the potential for large-scale uranium mining. The large amounts of waste rock and overburden contain potentially hazardous radioactive materials, either directly through radon escape or indirectly through leachate. From a practical standpoint, this overburden would have to remain in Alaska.

Waste oil is considered by the Environmental Protection Agency to be hazardous. In fact, it is singled out for special treatment because the use of waste oils for dust suppression or incineration has been known to cause serious environmental effects. However, waste oil is heavily utilized as a dust suppressant on roads throughout Alaska. The only State requirement to its use in such a manner is that the user obtain a department permit under 18 AAC 75.010-060. The use of waste oil in this manner may be considered illegal by EPA once their final hazardous waste regulations are promulgated this Spring and Summer.

Because of Alaska's increasing involvement in petroleum production, the number of oil spills has been increasing yearly. In 1979 alone there were four major oil spills - the M/V Lee Wang Zin near Ketchikan, the M/V Ryuyu Maru off the Pribiloffs, the Cordova Chugach Cannery, and the Atigun Pass spill. Oil spilled from these four incidents alone totalled over 632,000 gallons. Much of this oil went directly into the environment; the remainder has or is being cleaned up. While EPA does not consider oily wastes as hazardous, Alaska does consider them special enough to warrant specific legislation, AS 30.25.120.(c). Also, Section 30.25.061(c) of HB 205, "An Act Relating to the Prevention and Control of Oil Pollution" deals with the disposal of oil spill clean-up materials. When not handled correctly these wastes pose a hazard for individuals and the environment. Bulky, difficult and expensive to transport, and a cause of localized air pollution if burned and water pollution if leachate forms, oily wastes cannot be shipped out of state nor simply left in a stored condition with no future plan for disposal.

In the above situations the conditions under which disposal will be allowed must be clarified. If section 10 were deleted or modified, Section 20 would give the department the authority to clarify these conditions and would then provide the sound basis for a management program geared to Alaskan conditions.

- (b) If Section 10 were deleted or modified, Section 20 would be the start of obtaining the required authority should the department decide that assumption of the federally-mandated hazardous waste program is in the best interest of the state.

In 1976 the Resource Conservation and Recovery Act (RCRA) was passed by Congress. One of the main goals of the Act was prevention of pollution caused by the disposal of hazardous wastes, the primary means for achievement being a manifest system. The manifest, similar to a bill of lading and signed by all persons in contact with the wastes, would be filed with the responsible state or federal agency. In this way a waste could be traced from generation to final disposal.

Congress stressed that states should assume responsibility for their own hazardous waste management program. Funds were appropriated for hazardous waste inventories, economic analyses of additional state resources needed under program adoption, analyses of the effect on industries, and planning. If a state did not assume responsibility, EPA would be required to manage hazardous wastes in that state.

Alaska is considering whether or not to assume all or part of the RCRA-mandated program or allow the Environmental Protection Agency to assume responsibility. Some of the points to consider are additional staff and paperwork necessary for program implementation, need for the State to have control over these wastes versus leaving control in federal hands, and the economic feasibility and preferences of industrial generators regarding state or federal jurisdiction. While federal money is available for program planning and start-up, the program must be completely state-funded within a few years. The department plans to make its decision in Fall, 1980.

While the authority given this department in HB 511 would probably be sufficient for interim authorization, full authorization by EPA will be dependent on the passage of complete legislative program authority as well as numerous requirements promulgated as regulations. Not only would a section on the state's authority to write regulations for specified aspects of hazardous waste management be needed, the bill should be changed to reflect the shortcomings and considerations discussed below.

## **2. Shortcomings of the Bill**

The bill as written has several deficiencies;

- a. Sections 10 and 20 are conflicting. Whereas Section 10 prohibits disposal of hazardous waste in Alaska, Section 20 authorizes ADEC to write regulations for the safe disposal of hazardous waste. Since some hazardous wastes may need disposal in state, the Legislature should remove the conflict.

- b. The bill defines hazardous waste so broadly that it is vague. The definition of hazardous wastes, taken from the Resource Conservation and Recovery Act, is adequate, however, RCRA further authorizes the Environmental Protection Agency to refine the definition by listing hazardous wastes. While the department could use Sec. 20 to identify hazardous wastes, the bill does not specifically give the department that authority.
- c. Banning hazardous waste disposal alone will not guarantee protection. Transportation and storage of hazardous wastes are potentially as damaging as disposal. Even should Section 10 stand as written, hazardous waste will need to be stored prior to processing or transporting. Again, the department could use Sec. 20 to guarantee proper treatment, storage, and transportation methods, but the bill does not explicitly grant this authority.
- d. Section 30 singles out corporations for special punishment for a violation of any hazardous waste requirement. However, the potential of contamination from improper hazardous waste handling is as great from individuals as from corporations. Penalties should either come under existing penalty provisions in AS 46.03 or be generalized so as to cover everyone.
- e. A slight point in Section 10 is that once a hazardous waste is processed to remove its harmful qualities, it is no longer hazardous. Therefore this qualifying phrase in the section is unnecessary.

### 3. Considerations

- a. At this time the status of hazardous waste in Alaska is unknown. The department recently began a inventory of hazardous waste types and amounts, generators, disposal sites, transporters, processors, and handling methods in order to determine what controls Alaska should have. This would include evaluating whether Alaska needs a disposal site and what alternatives are available for disposal of hazardous wastes. Once these results are available the Legislature will be in a position to know what legislation would protect the people and lands of the State.
- b. Many states are reacting to improper and unsafe hazardous waste disposal practices by prohibiting all disposal or by prohibiting disposal of out-of-state generated hazardous wastes. As the Alaskan economy diversifies, there will be the probability of attracting more industries and corporations that potentially generate hazardous waste. The Legislature should consider the possibility that Washington, which is the destination of most Alaskan transportable hazardous wastes, might not accept Alaskan hazardous waste in the future.

- c. The term "processed" is undefined; its definition will clarify the distinction between processing or treatment and disposal.

### C. RECOMMENDATIONS

Hazardous waste generation is often a necessary part of industrial development. Since economic diversification is a prime goal of the state, limiting or banning the disposal of hazardous waste could limit the number and types of industries wishing to locate in Alaska.

Even with limited industrial activity, however, a total ban on hazardous waste disposal would be inappropriate. Hazardous wastes are generated by medical facilities, by automobiles and other vehicles, by utilities and other facilities. However, the state must guarantee that when such wastes are generated that disposal and storage does not threaten or harm its people or environment. To do this HB 511 should be modified to take into account why and how hazardous wastes are generated and by whom.

As currently drafted, House Bill-511 would modify Alaska Statutes relating to the Department of Health and Social Services. Because the intent of this legislation is for the Department of Environmental Conservation to carry out hazardous wastes control efforts, we recommend that this proposed legislation be integrated into Alaska Statutes 46.03, which relates to the Department of Environmental as follows:

1. AS 46.03.020(10) be amended to add the following

(I) "Proper handling, transportation, treatment, storage, disposal, and control of hazardous wastes from the time of initial generation to final disposition."

2. The title of Article 6 be amended to read as follows:

"Article 6. Pesticide and hazardous solid waste control"

3. A new section AS 46.03.340 be added as follows:

"46.03.340. HAZARDOUS WASTE CLASSIFICATION, REPORTING. (a)

The department shall classify hazardous wastes and their sources. Classifications made under this subsection may be for the state as a whole or to substate areas.

(b) the department may require a person generating, handling, or possessing hazardous solid wastes to submit reports containing information concerning location, amounts, and types of hazardous wastes.

4. A new section AS 46.03.350 is added to read as follows:

"46.03.350. HAZARDOUS SOLID WASTE REGULATIONS. The department shall adopt hazardous waste control regulations to provide for the disposal of hazardous wastes to protect the public health, livestock, wildlife, and the environment from any adverse effects. Such regulations may include requirements

for the handling, treatment, storage, and disposal of hazardous wastes, containerization, labeling and reporting."

5. AS 46.03.826 DEFINITIONS be amended to add the following:

( ) "Generation" means the act or process of producing hazardous waste.

( ) "Hazardous Waste" means a waste or combination of wastes which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or increase in serious, irreversable, or incom-  
passitating reversible illness or propose a substantial present or potential hazard to human health or environment when improperly disposed."

# The Drift of Things

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## Membership Comments Requested on Disposal of High-Level Radioactive Waste

The Government, Energy, and Minerals (GEM) Committee of the Society of Mining Engineers reviewed the following policy statement on disposal of high-level radioactive waste. This statement was adopted by the Association of Engineering Geologists with the request that SME-AIME endorse and publicize the statement.

Before presentation to the SME-AIME Board of Directors for endorsement, the GEM Committee requests input from the membership. Address comments to GEM Committee, c/o Claude L. Crowley, Society of Mining Engineers, Caller No. D, Littleton, CO 80127.

### Association of Engineering Geologists Policy Statement on Disposal of High-Level Radioactive Waste

Adopted by the AEG Board of Directors  
June 27, 1980

It is the position of the Association of Engineering Geologists that radioactive nuclear wastes can be safely isolated and disposed of by deep underground burial in secure geological environments. The scientific and technical means to locate and define the boundaries of these environments and to achieve such safe disposal is well developed and increasing. Sufficient criteria have now been established to permit responsible selection of candidate sites. A sense of urgency regarding safe disposal of nuclear wastes prevails and it can and must be satisfied.

The waste is dangerous over a long period of time and many people have been so conditioned in this concept that they tend to react emotionally rather than objectively when radioactive waste is mentioned. This has resulted in a call to cease construction of nuclear power plants and passage of laws to prohibit the disposal of nuclear waste.

Nuclear waste has been produced from civil and military activity. This accumulated waste must be disposed of soon because present temporary storage facilities are not designed for permanent separation of the waste from the biosphere.

One of the methods of isolation of the waste is deep burial in specially excavated spaces in structurally adequate bedrock where ground water is absent or will not return to the biosphere carrying with it waste materials and where erosion will not expose the waste during its radioactive lifetime. To these conditions is added a requirement for a location such that future societies will most probably never expose the waste inadvertently. The location and demonstration of the feasible, acceptable character of such sites is a geological problem. It can be solved by the investigative and analytical methods now available within the geological professions.

Repository sites should be strategically located, as far as geological and subsurface conditions permit, with respect to the regional distribution of nuclear facilities. Each site should be selected only on the basis of a progressive sequence of comprehensive investigations.

Primary considerations in the selection of each repository site must be long-term geological integrity of the host rock through natural retardation of radionuclide travel and amenability to simple, proven, and reliable methods of engineered design and construction. Safe disposal sites can be found in several types of rock. Technologies exist to ensure selection of disposal sites in these geologic media which can provide long-term integrity without harmful effects due to migration of radioactive materials to the biosphere.

Each disposal site should be selected and developed cooperatively by governmental entities, private industry and academic researchers. Full and open disclosure must be an integral part of the entire process to assure the protection of the health, welfare and safety of the public. The selection process should proceed with all deliberate speed.

Original sponsor: Kerttula

1 IN THE SENATE

BY THE FREE CONFERENCE COMMITTEE

2 FREE CONFERENCE CS FOR SENATE BILL NO. 29

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to hazardous wastes and to nuclear  
7 and radioactive facilities and materials; and providing  
8 for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 18.45.025 is amended to read:

11 Sec. 18.45.025. FACILITIES SITING PERMIT REQUIRED. (a) A [NO]  
12 person may not construct a nuclear fuel production facility, utiliza-  
13 tion facility, reprocessing facility, or nuclear waste disposal facility  
14 in the state unless he has first obtained a permit from the Department  
15 of Environmental Conservation to construct the facility on land desig-  
16 nated by the legislature under (b) of this section.

17 (b) The legislature shall designate by law the land in the state  
18 on which a nuclear fuel production, nuclear utilization, nuclear repro-  
19 cessing, or nuclear waste disposal facility may be located. In desig-  
20 nating the land in the state on which a nuclear fuel production, nuclear  
21 utilization, nuclear reprocessing, or nuclear waste disposal facility  
22 may be located, the legislature shall act to protect the public health  
23 and safety.

24 (c) The Department of Environmental Conservation shall adopt  
25 regulations governing the issuance of [THESE] permits required by (a)  
26 of this section. However, a [; HOWEVER, NO] permit may not be issued  
27 until

28 [(1) THE LEGISLATURE HAS APPROVED THE REGULATIONS BY A CON-  
29 CURRENT RESOLUTION CONCURRED IN BY A MAJORITY OF THE MEMBERS OF EACH

1 HOUSE;]

2 (2) the municipality [LOCAL GOVERNMENT] with jurisdiction  
3 over the proposed facility site has approved the permit; and

4 [(3) THE LEGISLATURE HAS APPROVED THE PERMIT BY A CONCURRENT  
5 RESOLUTION CONCURRED IN BY A MAJORITY OF THE MEMBERS OF EACH HOUSE;  
6 AND]

7 (4) the governor has approved the permit.

8 \* Sec. 2. AS 18.45 is amended by adding a new section to read:

9 Sec. 18.45.027. TRANSPORTATION OF NUCLEAR WASTE MATERIAL. (a)  
10 The transportation of high level nuclear waste material, except for  
11 purposes of disposal outside the state, is prohibited.

12 (b) For purposes of this section, "high level nuclear waste  
13 material"

14 (1) means

15 (A) nuclear waste materials produced by nuclear power  
16 plants; and

17 (B) material of a kind or quantity which, when stored  
18 or disposed, would constitute a threat to the health or safety of  
19 the public, as determined by the Department of Environmental  
20 Conservation under AS 46.03.250 by regulation;

21 (2) does not include radioactive materials used in medicine,  
22 education, or scientific research which are stored or disposed of in  
23 conformity with procedures established by the Department of Environmen-  
24 tal Conservation by regulation adopted under AS 46.03.250(3).

25 \* Sec. 3. AS 18.45.080 is amended by adding new paragraphs to read:

26 (7) "nuclear fuel production facility" means a facility that  
27 purifies radioactive mineral concentrates and fabricates fissionable  
28 material to be used for producing energy in a nuclear reactor;

29 (8) "nuclear utilization facility" means an apparatus,

1 device, or equipment in which nuclear fission is sustained in a self-  
2 supporting and controlled chain reaction; the term does not include an  
3 apparatus, device, or equipment used exclusively for educational,  
4 medical, or research purposes.

5 \* Sec. 4. AS 18.45 is amended by adding a new section to read:

6 Sec. 18.45.090. EXEMPTION. The provisions of this chapter do not  
7 apply to permit an agency or officer of the state to regulate the  
8 exploration for or the extraction and milling of uranium ore.

9 \* Sec. 5. AS 46.03.250 is amended to read:

10 Sec. 46.03.250. AUTHORITY. The department shall adopt regula-  
11 tions

12 (1) establishing standards governing the discharge of low  
13 level radioactive materials [RADIONUCLIDES] to the air, water, land,  
14 and subsurface land of the state;

15 (2) establishing safeguards for radioactive waste materials  
16 that do not constitute a threat to public health or safety and that may  
17 be stored or disposed in the state; and

18 (3) establishing procedures for the storage and disposal of  
19 radioactive materials used in medicine, education, instruments, indus-  
20 trial testing, or scientific research.

21 \* Sec. 6. AS 46.03.260 is amended to read:

22 Sec. 46.03.260. USE OF RADIOACTIVE MATERIALS [ATOMIC RADIATION].  
23 A person who conducts an operation which results in the discharge of  
24 low level radioactive materials [RADIONUCLIDES] to the air, water, land  
25 or subsurface land of the state must obtain a permit from the depart-  
26 ment before commencing the discharge.

27 \* Sec. 7. AS 46.03.900 is amended by adding a new paragraph to read:

28 (30) "low level radioactive materials" means a radioactive  
29 waste other than

1 (A) used nuclear reactor fuel;

2 (B) waste produced during the reprocessing of used  
3 nuclear reactor fuel; and

4 (C) elements having an atomic number greater than 92  
5 and containing 10 or more nanocuries per gram.

6 \* Sec. 8. AS 46.03.020(10) is amended by adding a new subparagraph to  
7 read:

8 (I) handling, transportation, treatment, storage, and  
9 disposal of hazardous wastes;

10 \* Sec. 9. AS 46.03.100 is amended by adding a new subsection to read:

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

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

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

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

23 \* Sec. 10. AS 46.03 is amended by adding new sections to read:

24 ARTICLE 5. RADIATION AND HAZARDOUS WASTE PROTECTION.

25 Sec. 46.03.296. DISPOSAL OF HAZARDOUS WASTES. (a) It is unlawful  
26 to dispose of hazardous wastes in the state unless ~~\_\_\_\_\_~~

27 (1) the waste has been treated and <sup>MAY BE</sup> disposed of in a manner  
28 that uses the maximum degree of reduction of the harmful qualities of a  
29 hazardous waste which is subject to this chapter and which the depart-

1 ment, on a case-by-case basis, determines is achievable for the hazar-  
2 dous waste by application of production processes and available methods,  
3 systems and techniques, taking into account energy, environmental, and  
4 economic impacts and other costs; and

5 (2) the waste is disposed of in a manner that will ensure  
6 the protection of human health, livestock, wildlife, property, and the  
7 environment.

8 (b) The department shall adopt regulations in accordance with the  
9 Administrative Procedure Act (AS 44.62) for the treatment, storage, and  
10 disposal of hazardous wastes to ensure the protection of human health,  
11 livestock, wildlife, property, and the environment.

12 Sec. 46.03.299. CONTROL OF HAZARDOUS WASTES. (a) The department  
13 shall, by regulations adopted under the Administrative Procedure Act  
14 (AS 44.62), establish a state hazardous waste program.

15 (b) The state hazardous waste program shall, consistent with and  
16 substantially equivalent to the Federal Conservation and Recovery Act  
17 of 1976 (P.L. 94-580, 42 U.S.C. 6901 - 6987),

18 (1) establish criteria to identify the characteristics of  
19 hazardous wastes;

20 (2) enumerate specific hazardous wastes (within the meaning  
21 of AS 46.03.900(31)) subject to the provisions of AS 46.03.302 and  
22 46.03.305; however, the department may not list as hazardous a waste  
23 that has not been listed as a hazardous waste by the United States  
24 Environmental Protection Agency under 42 U.S.C. 6921, unless the  
25 commissioner first determines that the waste is hazardous as defined in  
26 this chapter;

27 (3) identify the sources of hazardous wastes enumerated  
28 under (2) of this subsection;

29 (4) qualify the department to receive authorization from the

1 administrator of the Environmental Protection Agency to administer and  
2 enforce a hazardous waste program in accordance with the Federal  
3 Resource Conservation and Recovery Act;

4 (5) determine the amount of a hazardous waste that is so  
5 small as to not present a hazard to public health, livestock, fish,  
6 wildlife, and the environment of the state when disposed of;

7 (6) exempt a person who generates, treats, transports,  
8 stores, or disposes of a hazardous waste from the provisions of this  
9 chapter if the quantity of the hazardous waste is less than the amount  
10 identified in (5) of this section; and

11 (7) establish

12 (A) criteria for identifying appropriate hazardous  
13 waste disposal site locations;

14 (B) procedures by which the public shall have opportu-  
15 nity to

16 (i) participate in hazardous waste disposal site  
17 locations; and

18 (ii) review and comment on issuance of hazardous  
19 waste disposal permits by the department.

20 Sec. 46.03.302. HAZARDOUS WASTE PERMIT. (a) A person may not  
21 treat, transport, store, or dispose of a hazardous waste as defined by  
22 the department by regulation unless that person first secures a permit  
23 from the department and submits to the department any reports or mani-  
24 fests that the department may require for handling the hazardous wastes.

25 (b) A person who generates hazardous waste is not required to  
26 obtain a permit under (a) of this section unless the person also treats,  
27 transports, stores, or disposes of the hazardous waste.

28 Sec. 46.03.305. HAZARDOUS WASTE REPORTS AND MANIFESTS. A person  
29 who generates hazardous wastes shall submit to the department reports

1 or manifests that the department may require for handling the hazardous  
2 wastes.

3 Sec. 46.03.308. TRANSPORTATION OF HAZARDOUS WASTES. Hazardous  
4 wastes may not be transported to a hazardous waste disposal site unless  
5 the wastes are accompanied by a report or manifest which the department  
6 may require for handling hazardous wastes.

7 Sec. 46.03.311. PUBLIC RECORDS. (a) Permits, permit applica-  
8 tions, records, reports, and information and documentation obtained  
9 under AS 46.03.302 - 46.03.308 are available to the public for in-  
10 spection and copying. However, upon a showing satisfactory to the  
11 commissioner that a record, report, permit, application, or information  
12 would, if made public, divulge methods or processes entitled to protec-  
13 tion as trade secrets, the commissioner shall treat the record, report,  
14 permit, application, or information as confidential.

15 (b) Information that is confidential may be transmitted under a  
16 continuing restriction of confidentiality to other officers, employees,  
17 or authorized representatives of the state or of the United States if

18 (1) the person responsible for furnishing the record,  
19 report, permit, application, or information to which such information  
20 pertains is informed at least two weeks before the transmittal; and

21 (2) the information has been acquired by the department  
22 under the provisions of AS 46.03.296 - 46.03.311.

23 (c) The provisions of this section do not limit the department's  
24 authority to release confidential information during emergency situa-  
25 tions.

26 \* Sec. 11. AS 46.03.790(a) is amended to read:

27 (a) A person who violates or who causes or permits a violation of  
28 a provision of this chapter or AS 46.04, or of a regulation, lawful  
29 order of the department, or permit, approval, or acceptance, or term or

1 condition of a permit, approval, or acceptance issued under this  
2 chapter or AS 46.04 is guilty of a class B misdemeanor [VIOLATION].

3 \* Sec. 12. AS 46.03.790(b) is amended to read:

4 (b) A person who wilfully violates a provision of this chapter,  
5 or of a regulation, lawful order of the department, or permit, approval,  
6 or acceptance, or term or condition of a permit, approval, or accep-  
7 tance issued under this chapter or AS 46.04 is guilty of a class A  
8 misdemeanor.

9 \* Sec. 13. AS 46.03 is amended by adding new sections to read:

10 Sec. 46.03.830. PROOF OF FINANCIAL RESPONSIBILITY REQUIRED FOR  
11 PETROCHEMICAL FACILITY OR HAZARDOUS WASTE DISPOSAL SITE OPERATION. (a)  
12 A person may not operate a petrochemical facility or a hazardous waste  
13 disposal site unless the person has furnished proof to the commissioner  
14 of financial ability to control a hazardous waste that will be used in,  
15 produced by, or disposed of at the facility or the site. Proof of  
16 financial responsibility shall include responsibility for the hazardous  
17 waste after the facility or site is closed, and may be demonstrated by  
18 self-insurance, insurance, surety, or guarantee, under regulations  
19 issued by the department.

20 (b) Acceptance of proof of financial responsibility under this  
21 section expires

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

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

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

27 Sec. 46.03.833. COMPLIANCE WITH FINANCIAL RESPONSIBILITY REQUIRE-  
28 MENTS. (a) A person whose proof of financial responsibility is  
29 accepted by the department under AS 46.03.830 or under 46.03.100(c)

1 shall notify the department at least 90 days before the effective date  
2 of a change, expiration, or cancellation in the surety bond, guarantee,  
3 or insurance agreement. Application for renewal of acceptance of proof  
4 of financial responsibility under AS 46.03.830 or 46.03.100(c) must be  
5 filed at least 90 days before the date of expiration.

6 (b) The department, after notice and hearing, may revoke accept-  
7 ance of proof of financial responsibility if it determines that

8 (1) acceptance was procured by fraud or misrepresentation;  
9 or

10 (2) a change of circumstance has occurred that warrants  
11 revocation under regulations issued by the department.

12 \* Sec. 14. AS 46.03.900 is amended by adding new paragraphs to read:

13 (30) "dispose" has the same meaning as the term "disposal" is  
14 defined in 42 U.S.C. 6903(3);

15 (31) "hazardous waste" means a waste or combination of wastes  
16 which because of quantity, concentration, or physical, chemical, or  
17 infectious characteristics may

18 (A) cause, or significantly contribute to, an increase  
19 in mortality or an increase in serious irreversible or [incapaci-  
20 tating] reversible illness; or

21 (B) pose a substantial [present or potential] hazard to  
22 human health or the environment when improperly managed, treated,  
23 stored, transported, or disposed of;

24 (32) "manifest" means the form used for identifying the  
25 quantity, composition, origin, routing, and destination of a hazardous  
26 waste when the hazardous waste is transported;

27 (33) "storage" means the containment of hazardous waste,  
28 either on a temporary basis or for a period of years, in a manner that  
29 does not constitute disposal of the hazardous waste;

1 (34) "treat" has the same meaning as the term "treatment" is  
2 defined in 42 U.S.C. 6903(27).

3 \* Sec. 15. This Act takes effect July 1, 1981.  
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AMEND SECTION 18.45.160(4)

(4) "Nuclear fuel production facility" means a facility that purifies radioactive mineral concentrates and fabricates fissionable material to be used in for producing energy in a nuclear reactor; however, nothing in this act shall apply to a facility that mills and refines uranium ore.

EXPLANATION

Ensures that the definition of nuclear fuel production facility applies only to a uranium enrichment plant. The present language could be construed as to include a uranium mill and such facilities are an essential part of any uranium operation.

SIDNEY HEIDERSDORF

DEPT HEALTH & SOCIAL SERVICES

3019

SB79

TESTIFY

DEBBIE

BEAR

1. DEPT. OF EN. CON.

DEMMING COLES #2600

2. KERTTULA

CONTRACTED ✓

3. ROLAND STARKS

586-2345

4. ELIZABETH QUADRE

LEG. OF WOMEN VOTERS

586-3340

(SITE DIRECTION FOR REGS FROM)  
LEGISLATURE

5. TOM ANNA (SP)

COMMISSIONER MUELLER

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 9, 1981

SUBJECT: Nuclear material  
(CSSB 29 (Judiciary))

TO: Senator Patrick M. Rodey, Chairman  
Senate Judiciary Committee

FROM: John B. Chenoweth  
Legislative Counsel

May I ask:

(1) You prohibit transportation of nuclear waste material for disposal in-state, authorizing only transportation to points outside the state. (AS 18.45.027, added by \* Sec. 2.) Yet, you authorize construction of in-state nuclear waste disposal facilities under certain circumstances. How does the waste material legally get to these in-state facilities to be disposed of? How does this mesh with AS 46.03.843, precluding disposal of high-level wastes but appearing to permit disposal of low-level wastes? How do hospitals and labs legally handle disposal of wastes if this becomes law?

(2) How does AS 46.03.843(b)(1)(B), wherein the Department of Environmental Conservation may determine when something constitutes a threat to the health or safety of the public under AS 46.03.250 (presumably these are, under the definition, "high-level" wastes), mesh with the new language of amended AS 46.03.250 which authorizes regulations concerning low-level radiation? Are high-level radiation and low-level radiation mutually exclusive?

This bill is obviously in need of more work.

JBC:ljb

Enclosure

A M E N D M E N T

OFFERED IN THE SENATE:

By: JUDICIARY

To: \_\_\_\_\_ SENATE BILL No. SB 29

HOUSE BILL No. \_\_\_\_\_

PAGE: \_\_\_\_\_

LINE: \_\_\_\_\_

Page 1, line 13:

After "Conservation" insert "to construct the facility on land designated by the legislature under (b) of this section".

Page 1, after line 13:

Insert

"(b) The legislature shall designate by law the land in the state on which a nuclear fuel production, utilization, reprocessing or disposal facility may be located."

Page 1, line 14:

Change "(b)" to "(c)"



Official Business

# Alaska State Legislature

Senate

Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

SUMMARY OF JOINT SENATE-HOUSE HEARING  
OF  
FEBRUARY 16, 1981

Room 116, State Capitol - Juneau, Alaska

Legislation before Committee:

SB 11 "An Act continuing the existence of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

CSSB 29 "An Act relating to nuclear materials."

The joint meeting of the House and Senate Judiciary Committees was called to order by Chairman Rodey at 2:05 p.m., and was co-chaired by Representative Miller.

Senate members present were: Senators Rodey, Ray, Parr, and Hohman. Senator Bennett was absent.

An overview of the Alaska Bar Association was presented by William B. Rozell, President, Alaska Bar Association. Among those items discussed were the Fee Arbitration Committee, Conciliation Panels, Continuing Legal Education Commission, and the Sunset Review.

The Chair then heard questions from the floor and general discussion concerning Bar Association activities.

CSSB 29, scheduled for hearing, was deferred until a future date.

Hearing no objections, Chairman Rodey adjourned the meeting at 3:15 p.m.

STATE OF ALASKA  
THE LEGISLATURE  
LEGISLATIVE AFFAIRS AGENCY

FOUCH • STATE CAPITAL  
JUNEAU ALASKA 99801  
907 465 1001

MEMORANDUM

February 9, 1981

SUBJECT: Nuclear material  
(CSSE 29 (Judiciary))

TO: Senator Patrick M. Rodey, Chairman  
Senate Judiciary Committee

FROM: John B. Chensveth  
Legislative Counsel 1837

May I ask:

*How Waste*

(1) You prohibit transportation of nuclear waste material for disposal in-state, authorizing only transportation to points outside the state. (AS 18.45.027, added by \* Sec. 2.) Yet, you authorize construction of in-state nuclear waste disposal facilities under certain circumstances. How does the waste material legally get to these in-state facilities to be disposed of? How does this mesh with AS 46.03.843, precluding disposal of high-level wastes but appearing to permit disposal of low-level wastes? How do hospitals and labs legally handle disposal of wastes if this becomes law?

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This bill is obviously in need of more work.

JBC:ljb

enclosure

NUCLEAR WASTE POLICY ACT OF 1980  
PL 96-573

RECEIVED

FEB 09 1981

SHORT TITLE

SECTION 1. This Act may be cited as the "Low-Level Radioactive Waste Policy Act".

DEFINITIONS

SEC. 2. As used in this Act—

(1) The term "disposal" means the long-term isolation of low-level radioactive waste pursuant to requirements established by the Nuclear Regulatory Commission under applicable law.

(2) The term "low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11 e. (2) of the Atomic Energy Act of 1954.

(3) The term "State" means any State of the United States, the District of Columbia, and, subject to the provisions of Public Law 98-205, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(4) For purposes of this Act the term "atomic energy defense activities of the Secretary" includes those activities and facilities of the Department of Energy carrying out the function of (i) Naval reactors development and propulsion, (ii) weapons activities, verification and control technology, (iii) defense materials production, (iv) inertial confinement fusion, (v) defense waste management and (vi) defense nuclear materials, (vii) defense security and safeguards, (all as included in the Department of Energy appropriations account in any fiscal year for atomic energy defense activities).

GENERAL PROVISIONS

SEC. 3(a). Compacts established under this Act or actions taken under such compacts shall not be applicable to the transportation, management, or disposal of low-level radioactive waste from atomic energy defense activities of the Secretary or Federal research and development activities.

(b) Any facility established or operated exclusively for the disposal of low-level radioactive waste produced by atomic energy defense activities of the Secretary or Federal research and development activities shall not be subject to compacts established under this Act or actions taken under such compacts.

LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

SEC. 4. (a) (1) It is the policy of the Federal Government that—

(A) each State is responsible for providing for the availability of capacity either within or outside the State for the disposal of low-level radioactive waste generated within its borders except for waste generated as a result of defense activities of the Secretary or Federal research and development activities; and

(B) low-level radioactive waste can be

most safely and efficiently managed on a regional basis.

(2)(A) To carry out the policy set forth in paragraph (1), the States may enter into such compacts as may be necessary to provide for the establishment and operation of regional disposal facilities for low-level radioactive waste.

(B) A compact entered into under subparagraph (A) shall not take effect until the Congress has by law consented to the compact. Each such compact shall provide that every 5 years after the compact has taken effect the Congress may by law withdraw its consent. After January 1, 1986, any such compact may restrict the use of the regional disposal facilities under the compact to the disposal of low-level radioactive waste generated within the region.

(b)(1) In order to assist the States in carrying out the policy set forth in subsection (a)(1), the Secretary shall prepare and submit to Congress and to each of the States within 120 days after the date of the enactment of this Act a report which—

(A) defines the disposal capacity needed for present and future low-level radioactive waste on a regional basis;

(B) defines the status of all commercial low-level radioactive waste disposal sites and includes an evaluation of the license status of each such site, the state of operation of each site, including operating history, an analysis of the adequacy of disposal technology employed at each site to contain low-level radioactive wastes for their hazardous lifetimes, and such recommendations as the Secretary considers appropriate to assure protection of the public health and safety from wastes transported to such sites;

(C) evaluates the transportation requirements on a regional basis and in comparison with performance of present transportation practices for the shipment of low-level radioactive wastes, including an inventory of types and quantities of low-level wastes, and evaluation of shipment requirements for each type of waste and an evaluation of the ability of generators, shippers, and carriers to meet such requirements; and

(D) evaluates the capability of the low-level radioactive waste disposal facilities owned and operated by the Department of Energy to provide interim storage for commercially generated low-level waste and estimates the costs associated with such interim storage.

(2) In carrying out this subsection, the Secretary shall consult with the Governors of the States, the Nuclear Regulatory Commission, the Environmental Protection Agency, the United States Geological Survey, and the Secretary of Transportation, and such other agencies and departments as he finds appropriate.

The long title of the act is amended to read as follows:

"To set forth a Federal policy for the disposal of low-level radioactive wastes, and for other purposes."

# *League of Women Voters of Alaska*

8926 Birch Lane  
Juneau, Alaska 99801  
February 4, 1981

The Honorable Pat Rodey, Chairman  
Senate Judiciary Committee  
Alaska Legislature  
Juneau, Alaska 99811

Re: Senate Bill 29 (Nuclear Materials)

Dear Senator Rodey and Members of the Committee:

The League of Women Voters of Alaska supports enactment of Senate Bill 29, including proposed new AS 46.03.843 (prohibiting in-state storage of high level nuclear waste material).

The League of Women Voters of the United States (LWVUS) has developed numerous positions relating to natural resources and the environment. Among these is a position on energy, including a policy that reliance on nuclear fission should not be increased, and that special attention must be given to solving waste disposal and other health and safety problems associated with this energy source. A copy of the full text of the LWVUS position on energy can be provided if the Committee so desires.

The League has given special attention to the problems of nuclear (including low-level radioactive) waste disposal. At the national level, the League lobbied for nuclear waste legislation that would assign the states a significant role in the federal-state interaction leading to decisions on nuclear waste disposal. The problem is one which must be resolved, and on an environmentally sound, site specific basis, using a decision process that affords ample opportunity for citizen participation.

The Honorable Pat Rodey  
February 4, 1981  
Page Two

We note that the present statute as amended by SB 29 will afford opportunities for meaningful citizen participation: first, when the regulations to be issued by the Department have been drafted and are out for public review and comment; and second, when municipalities hold their public hearings in order to develop the municipality's position regarding a permit for a specific proposed facility site. We invite the Committee's attention, however, to the draft uniform procedural regulations (now out for public comment) resulting from the Governor's Permit Reform Project. Under these regulations, the Department will decide whether these facility permits are Class I or Class II permits. Class I permits can be issued without any public notice. Probably nuclear waste disposal facility permits (even for low-level radioactive waste facilities) should be Class II permits.

We do ask that the Committee consider incorporating into the legislative history, as guidance to the Department of Environmental Conservation when drafting its facility siting permit regulations, the League's "Criteria for Evaluating Suitability of Storage or Disposal Sites for Hazardous and Nuclear (Including Low-Level Radioactive) Waste." A copy of these criteria is attached as Exhibit A. Presumably the only nuclear waste storage facilities which could be permitted (under the legislation as written) would be for storage of low-level radioactive wastes, and the League's "criteria" apply to those facilities as well.

We invite the Committee's attention to proposed new AS 18.45.027, which was amended into SB 29 on January 29 in the Senate Resources Committee (Senate Journal, page 140). That proposed section would read:

"The transportation of nuclear waste material in the state, except for purposes of disposal outside the state, is prohibited."

We question whether it was not the intention to prohibit in-state transportation of high-level nuclear waste material in the state, rather than to prohibit the transportation of all nuclear waste material. We are concerned that the wording adopted in the Senate Resources Committee amendment may

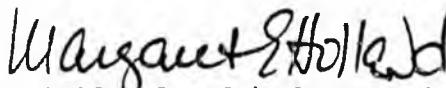
The Honorable Pat Rodey  
February 4, 1981  
Page Three

unintentionally prohibit all in-state transport of even those low-level radioactive materials used in medicine, education or scientific research, which presumably should be taken away from the Alaskan institutions or hospitals where they have been used and stored in a suitably permitted Alaskan disposal facility for low-level radioactive wastes.

We are leaving with the Committee one copy of the "Nuclear Waste Primer," published by the League of Women Voters Education Fund. It provides more information than the title implies, and may be of some help to Committee members or staff.

Thank you for considering our comments.

Sincerely yours,

A handwritten signature in cursive script that reads "Margaret Holland".

Margaret Holland, Chief Lobbyist,  
League of Women Voters of Alaska

## Criteria for Evaluating Suitability of Storage or Disposal Sites for Hazardous and Nuclear (including Low Level Radioactive) Waste

*These criteria, developed in April 1980, are an arrangement of national Environmental Quality and Land Use positions to help Leagues judge both the process employed in site determination and the suitability of a proposed site.*

To ensure safe disposal:

- No disposal or storage sites shall be located in natural hazard areas such as floodplains, areas with high seismic or volcanic activity, areas of unstable geologic, ice or snow formations, or areas subject to extensive damage from hurricanes.
- There should be an examination of alternative sites, methods of storage and methods of treatment.
- Both on and off site monitoring for contamination of ground and surface waters and soils are of the utmost importance.
- Containers should be designed to prevent leakage of the material stored or disposed of.
- When containers are stored there should be regular inspections for possible leakage.

Siting of waste disposal or storage facilities should not take place in areas of critical concern, which include:

- Drinking water supply sources such as reservoirs and other storage facilities and sole source aquifers and watersheds.
- Fragile land areas such as shorelines of rivers, lakes and streams; estuaries and bays or wetlands.
- Where there are rare or valuable ecosystems or geologic formations, significant wildlife habitat or unique scenic or historic areas.
- Areas with significant renewable resource value, such as prime agricultural lands, aquifer or aquifer recharge areas, significant grazing and forest lands.

The waste siting decision-making process should provide for:

- Ample and effective public participation, including adequate funding for such participation.
- Economic, social and environmental impacts statements so that both decision makers and the public have information on which to base a decision. Secondary land use demands, in addition to the actual site, should be considered — roads, sewers, water, etc.
- Site selection in conformance with any adopted comprehensive plan — an example would be an adopted Coastal Zone Management Plan.
- Participation and review by all governmental levels to assure conformance with comprehensive plans at each level of government.
- Procedures for mediation of intergovernmental conflicts.

Exhibit A

NOTE REGARDING THE FOLLOWING FRAME ON MICROFILM:

COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES  
IN ALASKA STATE ARCHIVES. TITLE PAGE ONLY HAS  
BEEN FILMED.

*"A NUCLEAR WASTE PRIMER"*  
*League of Women Voters*  
*Education fund.*

League of Women Voters Education Fund

**NUCLEAR  
WASTE  
PRIMER**

**A**

Amendment

Page 9, line 1

Sec. 46.03.299. CONTROL OF HAZARDOUS WASTES. The department shall, by regulations adopted under the Administrative Procedure Act (AS 44.62), establish a state hazardous waste program; the state hazardous waste program shall

(1) consistent with and substantially equivalent to the Federal Conservation and Recovery Act of 1976 (P.L. 94-580, 42 U.S.A. 6901-6987),

(A) establish criteria to identify the characteristics of hazardous wastes;

(B) enumerate specific hazardous wastes (within the meaning of AS 46.03.900(31) subject to the provisions of AS 46.03.302 and 46.03.305; however, the department may not list as hazardous a waste that has not been listed as a hazardous waste by the United States Environmental Protection Agency under 42 U.S.C. 6921, unless the commissioner first determines that the waste poses a ~~substantial~~ threat to the public health and welfare; and

(C) etc.

MAKES THE DETERMINATION

that the waste ~~is~~

FCC REPORT RE: CHSSB 29

Letter of Intent

In passing this Free Conference Committee report it is the intention of the legislature that the Department of Environmental Conservation shall not administer the Hazardous Waste program such that either private citizens or businesses are required to obtain permits from both the Federal and State governments for the same activity.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

*opinion*

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

(907) 465-3686

April 15, 1980

The Honorable Glenn Hackney  
Alaska State Legislature  
Senate  
Pouch V  
Juneau, Alaska 99811

Re: Nuclear Waste Transportation  
Our file J-66-606-80

Dear Senator Hackney:

On April 4, you requested this department's views on whether the State of Alaska could prohibit the Federal Government from utilizing state roads to transport nuclear waste for disposal within the state. The state of the law in this matter is fluid, and we cannot give a definitive answer.

Many states, and local governments, have enacted legislation prohibiting or restricting the transportation of radioactive wastes across their roads. ~~In response, the Federal Department of Transportation has proposed regulations which, if enacted, would preempt states from imposing outright prohibitions on nuclear waste transport, at least on federal aid highways,~~ although states would be allowed a voice in particular routing decisions. A copy of these regulations is enclosed. Several states are actively protesting these

regulations, and are contemplating litigation in the event that they are adopted -- on the grounds that the regulations are statutorily and constitutionally unauthorized.

Absent the adoption of these regulations, the state probably could prohibit private carriers from transporting nuclear wastes across state roads. A different problem exists with respect to transportation by the Federal Government and its instrumentalities. Unless a specific statutory waiver could be found, direct federal transport would be immune from state regulation. Hancock v. Train, 426 U.S. 167 (1976). Congress has waived federal sovereign immunity with respect to solid waste activities in section 6001 of the Resource Conservation Recovery Act of 1976 (P.L. 94-950). The applicability of that waiver to nuclear waste transportation by the Federal Government would be questioned under section 1006(a) of the Act, which provides that:

Nothing in this Act shall be construed to apply to (or to authorize any state, interstate, or local authority to regulate) any activity or substance which is subject to the . . . Atomic Energy Act of 1954 (42 U.S.C. 2011 and following) except to the extent that such application (or regulation) is not inconsistent with the requirements of such acts.

As implemented, the regulation of the transportation of nuclear wastes is governed not by the Atomic Energy Act, but rather by the Hazardous Materials Transportation Act.

49 U.S.C. § 1801 et seq. Thus, the exceptions to the sovereign immunity waiver contained in the Resource Conservation and Recovery Act, at least potentially, may not include the transportation of nuclear waste materials. However, because sovereign immunity waivers are strictly construed in favor of the Federal Government (Hancock v. Train, supra) the argument may be a difficult one to make. \*/

As I hope this letter indicates, the subject of the permissible scope of state regulation with respect to nuclear power involves an accommodation of several major federal regulatory programs, and ongoing federal agency activities. Certainly, 42 U.S.C. § 2021 -- the state cooperation section of the Atomic Energy Act -- has certain preemptive effects. For example, it has been held that states may not prohibit the construction of a nuclear plant for reasons premised on radioactivity hazards, although it may deny siting approval on other environmental or land use grounds. See Northern States Power Co. v. State of Minnesota, 447 F.2d 1143 (8th Cir. 1971); United States v. City of New York, \_\_\_ F. Supp. \_\_\_, 12 ERC 1600 (SDNY, December 26, 1978); Pacific Legal Foundation v. California State Energy Comm'n,

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\*/ The sovereign immunity waiver in the Clean Air Act (sec. 118: P.L. 95-95) may also be applicable, to the extent that transportation of nuclear waste poses a threat of atmospheric radioactive release.

The Honorable Glenn Hackney

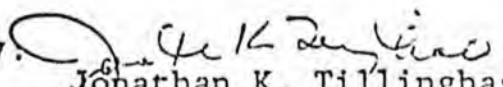
April 15, 1980  
Page 4.

\_\_\_ F. Supp. \_\_\_ 12 ERC 1899 (S.D. Cal., March 6, 1979).

The extent to which this rationale is applicable to direct regulation of nuclear waste disposal activities is unclear. Because it is unsettled, many state and local governments have chosen to legislate in this area. Moreover, it is my understanding the Nuclear Regulatory Commission has taken a cooperative attitude in this respect -- although the Department of Transportation, as noted previously, may differ. In sum, it does not appear from initial review that there exists any clear legal obstacle at this time which would override the public interest which would be served by state nuclear power regulation.

Sincerely,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:   
Jonathan K. Tillinghast  
Assistant Attorney General

JKT:d1m

Enc.

cc: Ernst W. Mueller, w/enc.  
Commissioner  
Department of Environmental  
Conservation