

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2873 SRES SB 503

2873

the environment exists under conditions of improper management and concluded that "the Agency has not been able to find a way of determining de minimis quantities."

The provisions in paragraph (6) prohibiting classifying a substance as a hazardous wastes seems inconsistent with the purposes of this draft bill. If a material would be a hazardous waste four years from now it should be handled as a hazardous waste now. The comments made on Section 5 would apply here also.

SECTION 7

Paragraph (b) in Section 7 is identical to paragraph (b) in Section 6, except for subparagraph (b)(8). In addition, Section 7 does not become effective until June 30, 1988. The purpose of this section, its relationship to Section 6, and the effective date are not clear. It would appear that this section could be eliminated, or changes in subparagraph (b)(8) incorporated into Section 6. If this section is not eliminated, its purpose must be clarified.

SECTION 8 - MUNICIPAL REGULATION

The intent of this section is not clear. Municipalities under home rule or general law already have the authority to enact ordinances regulating the storage and disposal of hazardous wastes. The Municipality has already adopted ordinances regulating disposal of hazardous wastes into the sewer system and in landfills. The section may imply or be interpreted as not permitting municipalities to adopt regulations more stringent than those promulgated by the State of

Alaska or under RCRA. This could cause a major problem, since Anchorage in some cases already has ordinances more stringent than RCRA. For example, RCRA permits the disposal of hazardous wastes quantities less than 2,200 pounds per month in sanitary landfills; Anchorage already has an ordinance which prohibits the disposal of any quantities of hazardous wastes in local landfills. The purpose of this section needs to be clarified to assure that it does not interfere with a municipality's right to establish ordinances on hazardous wastes, where more stringent requirements are necessary to protect community health and welfare.

SECTION 9 - GATHERING CENTERS

The Municipality in general supports the concept of centralized Gathering Centers (also called transfer and storage facilities). However, there are several concerns with the way this section is drafted. It appears to be inconsistent with the provisions of ARTICLE 5A - DISPOSAL FACILITY SITE BOARD since the State would be directed to have a Gathering Center in operation within one year; ARTICLE 5A, however, provides for the Hazardous Waste Disposal Facility Site Board to not make a recommendation on locating such facilities until January 31, 1987. In addition, paragraph (c) of this section which prohibits the State from charging for deposits of less than 2,200 pounds per month could become a significant financial liability and policing problem. Most of the businesses in the Anchorage area generate less than 2,200 pounds per month of hazardous wastes. The number of potential depositors at a gathering center serving Anchorage alone could be more than 600 according to recent Anchorage question-

naire responses from small quantity generators. The language in the draft bill also implies that for sources generating greater than 2,200 pounds per month, the first 2,200 pounds could be deposited free. Such provisions could also discourage efforts towards recycling or the use of products less harmful to our environment.

Until a decision can be made on siting of a Gathering Center by the Hazardous Waste Disposal Facility Site Board, it is suggested that the current hazardous waste spring clean-up program conducted last year in Anchorage and Fairbanks and scheduled again this year, be continued and expanded. The Alaska Department of Environmental Conservation has indicated that this will be the last year of this program due to budget constraints. It is strongly recommended that this program be expanded to make it available on a more frequent basis in major population centers and to serve additional communities. The program has been extremely successful and deserves continued support and funding.

SECTION 10 - NOTICE TO LOCAL GOVERNMENTS AND COMMUNITIES

The scope of this section is too narrow to satisfy local governments need to know regarding hazardous wastes. The provision only provides for notification, with no requirements on when the notification is to occur and what information needs to be provided. In addition, this section does not cover notice for transportation of hazardous wastes into or through a community. The issue of transportation of large quantities of hazardous wastes and a communities right-to-know about such shipments has been the subject of significant controversy and needs to be addressed in this bill.

SECTION 11 - PUBLIC RECORDS

A local government, particularly agencies such as local fire and police departments, need to have access to information regarding hazardous wastes that may be classified as confidential. This information must be available prior to the occurrence of an emergency, as provided for in paragraph (c), so that adequate emergency response plans can be developed.

SECTION 12 - CIVIL REMEDIES AND PENALTIES

No comment.

SECTION 13 - DISPOSAL FACILITY SITE BOARD

The concept of a Hazardous Waste Disposal Facility Site Board is supported and the language in this provision seems to be very good. It is suggested that the Site Board be required to make recommendations on siting a Gathering Center (transfer and storage facilities) well before January 31, 1987. Providing such a facility sooner could have significant benefits and substantially lower costs for shipping hazardous wastes out of state.

SECTIONS 14, 15, 16, 17, 18 and 19

No comments.

JS:lc/3-21-84
HD3/SRCB503.1/2

The Citizen's Workshop on Hazardous Waste was held on Saturday, February 25 at UAA from 1-5 pm. Approximately 120 people attended the Workshop. Materials for the Workshop including the Agenda are attached to this report. As part of the workshop, participants were asked to break in to discussion groups to discuss and give recommendations on several questions on hazardous waste management in Anchorage. Approximately 30 people participated in this part of the conference. The discussion groups were limited in the amount of time allowed to discuss the questions because the panel presentations lasted longer than originally planned. These groups were facilitated by members of the League of Women Voters. There were 3 discussion groups.

The following is a summary of the concerns and ideas expressed in the three groups. It is broken into three sections; 1) Recommendations stated in all three groups, 2) recommendations stated in two of the groups, 3) points of interest.

Stated in All Three Groups

Education

Public education on hazardous waste is of utmost importance for both business and household waste:

- A) Identification of hazardous waste
- B) Waste Reduction
- C) Disposal of Hazardous Waste

Periodic Clean-ups

A spring Clean-up or dump day should be held periodically for household and small business waste.

Ordinances

There is a need for ordinances as opposed to regulations for the control of hazardous waste disposal.

Incentives

Incentives should be provided to businesses for waste reduction - recycling, exchanging, substituting, modifying processes and proper waste disposal. examples of incentives:

1. Tax incentives should be used for reduction or proper disposal
2. small business loans could be offered at a lower interest rate for reduction of hazardous waste

3. Businesses could have lower property taxes if they reduce or properly dispose of waste
4. Mill rates could be adjusted for business who use proper disposal methods
5. There could be subsidies for small businesses who could not afford to properly dispose of or manage wastes
6. An incentive for reduction is paying for your own hazardous waste disposal
7. Chamber of Commerce or Municipality of Anchorage awards could be given out to companies which reduced or properly disposed of waste

Labelling

Products should be labeled or the place of purchase should have information posted including:

- A) Identification of hazardous waste
- B) Disposal information

Siting

When determining the location or type of disposal, environmental, health, and safety precautions are the primary consideration

Transportation

Members of a community should be notified in advance if hazardous materials will be shipped through their town. Transportation precautions should be contingent on the degree of hazard of a waste.

STATED IN TWO OF THE GROUPS

Information

Hotline or toll free number for identification and disposal of hazardous waste is necessary for information purposes.

Disposal Alternatives

- The need for a year round collection site for household hazardous waste was stated
- The need for a year round collection site for small business hazardous waste was stated
- The need for a disposal facility in Alaska was expressed
- Some wastes might still have to be shipped out of state depending on the type of waste and the availability fo sufficient disposal methods

Who should pay

- Businesses should take more responsibility than households in disposing of wastes and paying the cost. The suggested method of payment was by user fee; the business pays according to quantity.
- Small business cooperatives were suggested as a way to reduce costs. Each business could be part owner in a disposal, recycling or exchange system.

Who should pay - continued

-Payment for household hazardous waste disposal should be through the solid waste bill

POINTS OF INTEREST - Ideas brought up in one group

Disposal Alternatives

-It was recommended that the municipality implement tertiary treatment in the sewer system

-Septic tank pumpers should be required to take contents to a sewer system that could treat these wastes

-Anchorage should invest in a profit making type of hazardous waste treatment or disposal rather than investing in land disposal

-Alaska needs more than one type of hazardous waste disposal facility but they should not be located in the same place nor operated by the same business

- There should not be a hazardous waste incinerator in the Anchorage bowl area

-More information is needed before determining the type or site of a hazardous waste facility

-No ocean dumping of hazardous waste

Monitoring

-It was recommended that waste oil be monitored before it is re-used

Inventory

-It was recommended that a more complete inventory be done on hazardous waste generated in Anchorage

Legislation

-A deposit legislation was recommended for tin and bottles and some hazardous waste in Anchorage

Education

-It was recommended that there be more research and education on hazardous substance alternatives for households and businesses

Source Separation

-Source separation of hazardous waste at the source was recommended for both business and households

Storage

-Businesses waste should not be stored for a long period of time

Who should Pay

-Taxes on disposal of hazardous waste should be levied at the manufacturer level rather than the local level

Transportation

-The Department of Transportation regulations should be enforced

-The public needs more education on transportation regulations and enforcement

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March 22, 1984

Senator Bettye Fahrenkamp
Chairperson, Senate Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

I sincerely appreciate the opportunity to comment on the Work Draft of CSSB 503 (Resources), dated 3/8/84. I am, indeed, interested in the establishment of a State hazardous waste management program, and have been following the issue with interest ever since 1981, when I worked on the enabling legislation for the State regulations.

Due to your short time frame, my comments will be general, rather than a line by line analysis of the bill. I support the proposed state regulations for management of hazardous wastes, and view your bill as a thinly veiled attempt to dismantle those regulations. In doing so, I fear you are trading the future health and well-being of the people of the state, to save industry from expending a small percentage of the profits they have already made from our resources.

Unlike yourself, I believe that people and/or businesses who generate toxic materials bear a definite responsibility to the public at large. For any State hazardous waste program to be truly meaningful, generators of hazardous materials must be held accountable for their actions. This is one reason why I support the regulations which have been developed by the State.

Another reason I support the regulations is that I believe they are fair to all parties involved. The process under which the State regulations were developed included input from a balance of representatives from industry, the military, State agencies, and public interests, to insure the formation of workable regulations. All parties had equal opportunity, during the process, to make their views known and get them accepted. This even-handed process was time-consuming, but presumably resulted in an acceptable compromise.

By introduction of SB 503, you seem to be attempting to make a mockery out of that process. In callous disregard for the health of the people of Alaska, you suggest implementing a program which, through it's failure at the Federal level, has already seriously damaged the health and homes of citizens in many communities throughout the lower 48. Your bill holds the Federal program up as some sort of standard of excellence, while, in

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truth, it has been grossly ineffective.

This is partially due to the listing/de-listing approach, which regulates only those substances on "the list", without the flexibility to deal with substances which are later proven to be toxic. It also throws decisions about what should and should not be listed into a political arena, allowing large companies to invest in expensive lobbying campaigns, in which the public can have no part. The State regulations, on the other hand, utilize a "degree of hazard" approach--setting simple standards for what is and is not to be regulated.

Of all the points of the State program, it is this "degree of hazard" approach which is key to the protection of the environment--and therefore, the health and livelihoods of the people--of Alaska. By not allowing the State to adopt regulations more stringent than the Federal program (Work Draft, CSSB 503(Resources), Page 2 Lines 15-20), you are ignoring the unique and delicate nature of the arctic environment, and making all references to "degree of hazard" in your bill totally meaningless.

As far as having the State pay for any testing required, I feel it appropriate that the burden of proof, and its cost, be borne by those who are coming in to the State to develop our resources, at a substantial corporate profit. Not only can they best afford to undertake the cost of the proof, but, as generators of the waste, they have a special obligation to help preserve the environment.

I view your combining the various issues embodied in this work draft as a pretense at compromise which, in truth, is merely an attempt to further delay implementation of meaningful State management of hazardous wastes. I would much prefer that each piece of legislation on different aspects of hazardous wastes (i.e., SB 498, Siting, Community Right-to-Know, etc.) be handled individually--both to allow for full discussion on the merits of each issue, and to prevent unwise tradeoffs for industry on one issue in order to protect the public's health on another.

However, lest the positive aspects of your "hodge-podge" slip by unmentioned, I do support the following concepts:

1) The amendment giving the State the authority to regulate the "transportation" of hazardous wastes (Page 2, Line 4);

2) Notification to local governments and communities--however, this should also specifically include direct notification to public safety officials (i.e., police, fire, etc.) who would be responsible for dealing with any emergencies involving mishandling of hazardous wastes. To be consistent, this clause should also include provisions for advance notification to local governments and communities for "transportation" of hazardous wastes (Page 6, Lines 16-24);

3) The Civil Remedies and ~~penalties~~ sections, as I assume the penalties specified are sufficient to obtain EPA approval for a state program; and

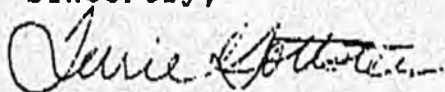
4) The concept of Disposal Facility Site Board--however, an amendment should be added to this section to give comments and testimony of communities within a given radius of a proposed disposal site greater weight than those of other parties. Your bill allows for comments by a local community, but does not designate what weight should be given to those comments.

I do not support the general concept of "gathering centers", as experience in other states has shown that these end up serving as an invitation to abuse--more often ending up as long-term dump sites, rather than merely serving as the temporary holding facilities for waste, which they are intended to be.

To summarize, I am appalled, though not surprised, at your "end run" attempt to dismantle the proposed State regulations, in favor of the weaker Federal regulations. And, frankly, I seriously question whose interests you are representing with this bill.

Once again, thank you for this opportunity to comment on the bill. I will continue to follow this issue with interest, and hope, in spite of our differences, you will continue to keep me apprised of its progress.

Sincerely,



Terrie Gottstein

cc: Governor Bill Sheffield
Commissioner Richard Neve
Other Senators



Senator Vic Fischer

Alaska State Legislature

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MEMORANDUM

TO: Senator Bettye Fahrenkamp

FROM: Senator Vic Fischer *Vic Fischer*

DATE: March 23, 1984

RE: Hazardous Wastes

Thank you for the opportunity to formally share my comments on the work draft of SB 503.

I appreciate the efforts that you and your staff have taken, I do have some difficulty with the overall approach. I'm not sure we gain much by combining the principal hazardous waste legislation introduced this session. Although the four bills discuss a common topic, they are at considerably different stages of development. The specific issues raised in the draft committee substitute can and should better be individually addressed.

However, as requested, I have reviewed the draft as proposed and prepared my comments to fit the context of the draft committee substitute, should you decide to pursue this course.

I believe that you and I, business and labor, environmental groups, health professionals, representatives of the fishing industry and native organizations, and others all agree that:

- (1) hazardous waste products providing a risk to human health and the environment are generated in Alaska;
- (2) unnecessary illness and disease and the poisoning of our environment through improper handling of hazardous waste should be avoided.
- (3) these hazardous wastes need to be properly and responsibly managed;
- (4) the Alaska environment and economic structure are significantly different from the industrial mix of the nation as a whole; and

The duty of the Legislature is to provide a body of law that builds upon these areas of agreement in a responsible, economic, and ethical manner. This, of course, was the intent of the original enabling legislation passed in 1981.

Over the 3 years since that measure was adopted, the Department of Environmental Conservation (DEC) has developed proposed state regulations specific to Alaskan needs. It is the proposed regulations, not the present U.S.

Resource Conservation and Recovery Act (RCRA), or the proposed and soon to be adopted amendments to RCRA, which best address the management of hazardous wastes in Alaska.

RCRA is not appropriate to Alaska for the following reasons:

- (1) The RCRA approach identifies about 360 toxic chemicals and 120 hazardous streams that must be regulated. However, very few of these substances are found in Alaska. The RCRA regulations are essentially irrelevant to Alaska.
- (2) The intent of the federal legislation is that new substances would be added to the original list, but no additional hazardous wastes have been included. In fact, a substance as toxic as dioxin, which, due to unregulated disposal, contaminated the town of Times Beach, Missouri is not included on this list.
- (3) The International Agency on the Research of Cancer (IARC), the National Institute for Occupational Safety and Health (NIOSH), and the U.S. Occupational Safety and Health Administration (OSHA) list thousands of substances that are known to have toxic effects. Furthermore, it is estimated that about 3,000 new chemical substances are introduced into the industrial environment each year. Very few of these substances are tested for their effect on human health and the environment.
- (4) The U.S. Environmental Protection Agency (EPA) officials and others admit that RCRA criteria used to evaluate whether or not a waste is hazardous are flawed. The RCRA characteristics of a hazardous waste must exceed accepted standards of ignitability, corrosivity, reactivity, and waste extraction procedures. In other words, only the "safety" characteristics, the ability for a waste to explode, ignite, and corrode are evaluated. The ability of a waste to cause cancer, birth defects, and other health risks are not considered.
- (5) The limitation which excludes the regulation of hazardous waste in quantities of less than 2200 lbs. (or even 220 lbs. and 400 lbs. as proposed respectively in federal and state regulations) was not based on a detailed evaluation of the risks associated with exempting the "small" quantity generators. Rather, it is a consideration of administrative convenience.
- (6) There is no need for the state to take over a program that the federal government will enforce on its own. The state should not take on a program that adds bureaucracy, expense, and responsibility, but is essentially controlled by regulations developed in Washington, D.C.

The proposed state regulations would provide a framework to responsibly and economically manage Alaska's hazardous waste. I support them for these reasons:

- (1) As opposed to identifying hazardous wastes through a list as in RCRA, the state proposed regulations use a "degree of hazard" criteria to determine if something is, in fact, hazardous. This

approach allows Alaska to identify and focus on our problems and not to simply accept an outdated irrelevant list of hazardous wastes.

- (2) The degree of hazard method qualifies the level of risk to the community associated with the hazardous waste. Where RCRA mandates certain handling and disposal procedures, the proposed state criteria provide much needed flexibility. For example, the degree of hazard method would identify some wastes as "moderate risks". These wastes can be handled safely and economically in state, and not be shipped out of state as required by RCRA. In this sense, RCRA overregulates.
- (3) The degree of hazard method includes both safety and health effects when determining whether or not waste is hazardous. This approach helps insure that Alaska's people and communities are protected from improper handling of hazardous wastes.
- (4) Liability and other insurance costs to business that generate hazardous wastes will also likely be reduced. The degree of hazard approach takes the guesswork out of whether or not a waste is hazardous. Responsible actions to prevent harmful exposures can be taken.

Accordingly, sections 4 and 5, and parts of 6, of the work draft (which would require that the state regulations be the same as the federal and prohibit use of the degree of hazard approach for four years) should be dropped. This issue is, of course, the heart of the matter. My position is in strong support of the proposed state regulations as the best means of addressing Alaska's needs.

My comments on other issues in the proposed committee substitute are as follows:

Page 2-3, Sec. 298 (b). This item proposes that testing for hazardous waste be paid for by the state. In general, this is not sound public and economic policy. Tests are legitimate business expenses that are tax deductible. However, if certain small businesses require assistance, it may be appropriate to provide help.

Page 5, Sec. 8. The ability of a municipality to establish its own hazardous waste regulations is provided in this section. Home rule provisions already allow municipalities to develop hazardous waste programs. As written, this section may prohibit municipalities from implementing programs that are more comprehensive or specialized than the state's program. In communities in Alaska and across the U.S., it has been at the local level where innovative and efficient methods to handle small quantities of hazardous waste have been initiated. This provision may inhibit local government from developing programs to adequately protect the public health and prevent the pollution of landfills and aquifers. Municipal solid waste and waste water treatment facilities are not equipped to handle hazardous waste.

Page 6, Sec. 9. This section proposes the establishment of state-run regional hazardous waste gathering centers. This concept is appealing, but probably needs to be more carefully developed. The siting of such a facility is politically, economically, and environmentally sensitive. Because of these complexities, I have proposed the creation of a hazardous waste disposal facility site board, which has been incorporated in this draft as Sec.13. Instead of "permanent" gathering centers, the institutionalizing of the spring clean-up, as sponsored by the state last year, may be a more appropriate way to address this problem. Clean-ups could be held several times a year and at locations throughout the state.

Page 6, Sec. 10. This section provides for localities to be notified of the storage or disposal of hazardous wastes. This is an important idea, but weakly presented. This section should require that the communities be notified of the transportation, as well as the storage and disposal of hazardous wastes. The notification procedure should include a specific time frame and require that DEC, local governing bodies, state and local public safety agencies should be recipients of the notification. The notice itself could be either the manifest or a material safety data sheet, but must include (a) chemical and common name of the hazardous waste, (b) quantity of the waste, (c) final and intermediate destinations of the waste, (d) proposed transportation route, (e) dates of departure and arrival to and from destinations, and (f) recommended emergency handling procedures.

Penalties. I am confused by the exemption of most of the law from the penalties sections, especially the civil penalties that are amended on the top of page 11. I would like to have this explained and also to have it reviewed by the Department of Law.

The minimization of hazardous waste is not adequately addressed in either the state or federal regulations. Our goal should be not only to manage hazardous wastes, but to reduce the quantities generated. To this end, I propose the development of a technical assistance program to assist business in decreasing the amount of hazardous waste that needs to be treated and disposed of through pilot projects, loan and grant programs, technical analysis of industrial processes, and waste recycling and exchange programs. I would be happy to pursue this in more detail with the work group if you agree that it's a concept that should be included.

To conclude, I believe that, if there are perceived problems with the proposed state's hazardous waste law and regulations, it would be far better to address them specifically than to discard the entire program. If particular generators of hazardous wastes -- miners, oil companies, or any other segment of our economy -- can demonstrate convincingly that they need an exemption or other special treatment, I would prefer to deal with that directly rather than to undermine all of the progress made in the last three years. In our efforts to reach our goals of a meaningful program to meet Alaska's unique needs, let us reform the developing state program, if necessary, with a rifle shot rather than a grenade.

I look forward to continued dialogue on this issue, perhaps the most important health and environment legislation before us this session.



THE ALASKA CHAPTER

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RICHARD M. PITTENGER
MANAGER

March 22, 1984

Senator Bettye Fahrenkamp
State of Alaska
Pouch V
State Capital
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Thank you for the opportunity to comment on the proposed Committee Substitute for SB503 currently before your committee.

Section 11.41.260: For clarification, does the definition of "reckless endangerment" encompass negligence? There are surely instances where a person is unaware that a substance is hazardous, and through his negligence cause limited damage; consequently, a Class C felony would be too stringent.

Section 46.03.298, para. 2: I would suggest that language be included to assure that other regulations that are developed are consistent with this chapter.

Section 46.03.298(b): Providing tests at no charge to the generator is a step in the right direction. My concern is that if a substance is found hazardous, what liability or costs will the generator incur.

Section 46.03.299, (b)(1): "Identifying the characteristics of hazardous wastes" should be deleted and replaced with "to adopt only".

Section 46.03.301 - Municipal Regulation: I would strongly recommend that the State regulations apply uniformly throughout the state. If municipalities and/or boroughs are allowed to enact separate regulations, even though they are "consistent" with SB503, there could be considerable problems with the transportation of hazardous wastes from one jurisdiction to another. I would substitute the following language: "Notwithstanding other provisions of law, a home rule, general law municipality or borough may not enact an ordinance nor adopt regulations different from the provisions of"

Section 46.03.309: Rather than provide notices each and every time a hazardous waste is stored or disposed of, I would recommend that an annual general notice be delivered, by the waste disposer or storage agent, to the government representatives.

Bettye Fahrenkamp
March 22, 1984
Page Two

Section 46.03.313 - Hazardous Waste Disposal Facility Site Board:
To provide a better balance on the board, I would recommend the following changes:

- (b) The board consists of 12 members appointed no later than October 1, 1984, by the governor as follows:
- (1) one member representing the department;
 - (2) one member representing the Office of the Governor;
 - (3) two members representing public interest environmental conservation organizations;
 - (4) two members representing public interest business-related organizations;
 - (5) two members representing the resources recovery industry;
 - (6) two members with demonstrated experience in the transportation and disposal of hazardous wastes;
 - (7) two members representing the general public, one of whom shall be from a rural area of the state and one of whom shall be from an urban area of the state.

Section 46.03.314 - Duties and Powers of the Board: Add (7) "the necessity for industry and business to establish a cost effective disposal facility".

Section 46.03.790(a) - Criminal Penalties: Substitute "willfully" for "negligently".

If you desire further comment on the State hazardous waste program, please contact me.

Sincerely,

ALASKA CHAPTER
ASSOCIATED GENERAL CONTRACTORS



William E. Schneider

WES/cc/85



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March 22, 1984

Senator Bettye M. Fahrenkamp
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Enclosed you will find Chevron's comments on proposed Resource Committee substitute for Senate Bill 503 dealing with hazardous waste. We certainly appreciate the opportunity to make these comments, and Chevron sincerely hopes that a successful and acceptable compromise can be reached on this legislation.

Should you have any questions regarding these comments, please contact me at 415-680-3035.

Very truly yours,

CHEVRON U.S.A. INC.

Marc D. Baud
for A. C. Moore

cc: Mr. R. E. Plummer
Mr. M. R. Brennan

CHEVRON'S COMMENTS ON PROPOSED RESOURCE
COMMITTEE SUBSTITUTE FOR SENATE BILL 503

General Comments

In general, Chevron believes it would be wise administrative policy to require the Department of Environmental Conservation (DEC) to adopt the regulations as promulgated by the Environmental Protection Agency (EPA) under Subchapter III of the Resource Conservation and Recovery Act of 1976 (RCRA) 42 U.S.C. 6921 - 6934. Since DEC has not had any experience in administering a hazardous waste program, it appears best to rely on the expertise developed in the EPA. Then, after four years experience, DEC will be sufficiently familiar with the administration of a hazardous waste program so that the promulgation of additional or alternative regulations may be appropriate.

Section 1.

This section is not required for approval of the state hazardous waste program by EPA. 40 C.F.R. 271.16 requires criminal penalties only for "knowing" acts. Insofar as it is not required for an approved hazardous waste program, Chevron recommends deleting it. In the alternative, if this provision is adopted, the term "reckless" should be defined to assure that it will require a mental culpability significantly greater than mere negligence.

Section 2.

40 C.F.R. § 271.16(d) sets forth certain enforcement requirements for an approved state program. It appears from the

legislation that the state has selected alternative (2) in 271.16(d). 40 C.F.R. 171.16(d)(2) has three specific requirements. Among those requirements, 40 C.F.R. 271.16(d)(2)(ii) requires assurance that the state enforcement agency (DEC) will "not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule or regulation." This provision should also be included in the legislation in order to assure compliance with EPA regulations.

Section 3.

No comment.

Section 4.

Chevron does not understand why the state legislation adopts federal law concerning hazardous waste by reference. Many of the provisions incorporated by reference are irrelevant to the development of the state program. Subsection (b), which requires the adoption of EPA regulations, is all that is required. However, it probably does no harm to adopt the federal statutes by reference.

Section 5.

Chevron does not believe that the Department should be required to adopt other regulations for the management of hazardous waste, if, at the end of four years, the federal regulations are appropriate. Proposed AS 46.03.298(a) could be interpreted as requiring DEC to adopt other regulations at the end of the four-year period. Chevron recommends that the provision read: "(a) The department may adopt . . ."

In addition, Chevron believes that subsection 2 of subsection (a) should read as follows: "(2) Other regulations for the management of hazardous waste." DEC should not be confined to rules which regulate "according to the degree of hazard presented by the waste." Rather, DEC should be free to adopt regulations it deems appropriate at that time.

Finally, Chevron believes subsection (b) should be deleted. Each company (and its respective customers) should be required to finance the testing of its own potential hazardous wastes.

Section 6.

Chevron believes that subsection (b)(1) should be changed to read: "(1) [~~identify~~] adopt the characteristics of hazardous waste . . ." It should be made clear that DEC is required to adopt the RCRA regulations for the first four years.

Subsection (c)(1) is unnecessary surplusage in view of .298(a)(2).

Section 7.

No comment.

Section 8.

Article X, Sec. 11 of the Alaska Constitution grants home rule municipalities authority to exercise all legislative powers not prohibited by law or charter. Because the state will have a comprehensive program, it is possible (although Chevron believes unlikely) court may infer that a home rule municipality is prohibited from legislating in the hazardous waste area.

Chevron is concerned about this provision, and believes it should be made clear that a municipality cannot prohibit the transportation, storage, etc., of hazardous waste within its boundaries. If this is not done, municipalities may well adopt a balkinist attitude concerning hazardous waste, thus complicating the state's ability to effectively regulate hazardous waste.

Section 9.

Chevron believes that subsection (c) of this section should be deleted. Each generator of hazardous waste should be required to pay the cost of dealing with its own hazardous waste.

Section 10.

Chevron is concerned that this provision might be interpreted to require public notice (and perhaps a hearing) for each instance where hazardous waste is stored or disposed. Chevron believes that the provision should be changed to require public notice only for each permit application for a storage or disposal site.

Section 11.

No comment.

Section 12.

40 C.F.R. § 271.16(a) sets forth the remedies that state agencies enforcing the hazardous waste program must have. 40 C.F.R. § 271.16(a)(2) requires that an agency be able to "sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of prior revocation of the

permit . . ." This provision should be included in AS 46.03.312(a) as a new subsection.

Section 13.

Chevron does not believe that the creation of this Board is necessary in view of DEC's responsibilities to enforce the hazardous waste program. See, e.g. AS 46.03.302. In addition, since the Board is not required to make its report before January of 1987, Chevron is concerned that the Department of Environmental Conservation will take the position that no hazardous waste facilities may be permitted under AS 46.03.302 until the Board makes its report. Therefore, Chevron proposes that either (a) the Board be required to make its report by January of 1985 or 1986 at the latest; or (b) that it be made explicit that DEC is authorized to permit hazardous waste disposal sites pursuant to AS 46.03.302 prior to the time the Board makes its report.

In addition, Chevron believes that the make up of the Board should include two members representing public interest business-related organizations. These representatives would provide input on the considerations of a broad spectrum of Alaska industry.

Finally, Chevron believes that the factors listed in proposed AS 46.03.314(a) should include the necessity for industry to have disposal sites in Alaska in order to continue operations. Chevron concurs that the environmental considerations set forth in the six factors already present in the proposed subsection (a) are important. The Board should also

be instructed that it is necessary that it find at least some disposal sites for industry to continue operations.

Section 14.

With the exception of the change in the second line of AS 46.03.760(a), the proposed changes are unrelated to the management of hazardous waste, and Chevron recommends the deletion of the other changes from the bill. Furthermore, Chevron fully believes that the penalties provided in that statute are already sufficient to deter noncompliance with environmental statutes. Punitive damages are unnecessary and should be disallowed. This is the clear intent of the present AS 46.03.760(b). In addition, it seems odd that punitive damages would be available for noncompliance with environmental conservation regulations outside of the area of hazardous waste, but would not be available in the hazardous waste area. Chevron believes that punitive damages are unnecessary in either area.

Section 15.

As stated above, Chevron believes that punitive damages are unnecessary. Accordingly, section 15 of the bill should be deleted.

Section 16.

Penalties for negligence are not required for approval of a hazardous waste program by the Environmental Protection Agency. Chevron therefore believes that the change in subsection (a) of AS 46.03.790, which allows conviction for a merely negligent act, should be deleted. Chevron concurs in the

addition of subsection (e) to AS 46.03.790, as that is required by the EPA regulations. 40 C.F.R. § 271.16(a)(3)(ii).

Section 17.

No comment.

Section 18.

Chevron believes that Sec. 5 of the Act, which allows the DEC to adopt other regulations than those promulgated by the EPA under RCRA, should not be effective until four years after the date on which the Environmental Protection Agency actually approves the state hazardous waste program. The state should have four years of experience operating under EPA's hazardous waste program before it proceeds to adopt regulations on its own.

Section 19.

No comment.



Alaska Health Project

417 West Eighth Avenue — P. O. Box 10-1037, Anchorage, Alaska 99510 — (907) 276-2864

March 20, 1984

Senator Bettye Fahrenkamp
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

RE: CS for SB 503

Dear Senator Fahrenkamp and Resource members:

I appreciate the Resources Committee's efforts to resolve the controversial issue of hazardous waste in Alaska. It is quite a task. The creation of a work group comprised of all Alaskan interests is especially appealing. The success of the right-to-know legislation (SB79) was a direct result of a similar workgroup. I am optimistic that the CSSB 503 workgroup can formulate a bill that most everyone can live with.

By combining various pieces of proposed hazardous materials legislation into a single bill, as you have done with CSSB 503, you underscore the need for us all to consider the overall hazardous materials picture and not single issues. Yet, it is my hope that this bill (503) will not overshadow the need for continued discussion on key elements of a thorough hazardous waste program. Only then, can a truly comprehensive and workable plan be developed for Alaska. There are many sections outlined in CSSB 503 that still need to be discussed and perhaps amended.

The following is a list of some of my concerns:

1. Article 5, Section 46.03 313 Hazardous Waste Facility Site Board Part (b) should be amended to include at least one labor representative with knowledge and experience in the hazardous waste field.

Article 5, Section 46.03 317 Report of Site and Facility Recommendations Line 17 should be amended to read not later than January 1, 1986.

The issue of hazardous waste facility siting should not be delayed. Central to any hazardous waste management plan are facilities properly designed and operated to dispose, treat, store and recycle these dangerous wastes.

Above all, the board should be directed to consider alternatives to land disposal of hazardous wastes. The board should be guided by the premise that generators, wherever possible, be required to reduce or eliminate their production of hazardous wastes. Only then will we begin to mitigate our present and future waste problems in Alaska.

MAR 23 1984

2. Section 10 46.03 309 Notice to Local Communities should be amended to include notification to fire and police and emergency medical personnel who typically are the first responders to hazardous materials emergencies.

A new section should be added requiring employers to notify the department prior to transporting hazardous materials intended for disposal and/or storage. The department should then notify each affected community along the shipping route. A simple telephone call to the fire, police or responsible agency would be sufficient.

3. Section 9 46.03 306 Gathering Centers should be amended by substituting the phrase "Hazardous Waste Spring Clean-up Program" where the words "gathering center" now exist.

In recent years the spring clean-up programs in Anchorage and Fairbanks have been supported enthusiastically by local businesses, the community, and local government. It is the only currently existing hazardous waste program that actually attacks the problem at the source. This program should be continued. It will need state financial support if it is to survive.

It would be a bit premature, and perhaps costly, to develop regional gathering centers prior to reviewing the Siting Board's Recommendations. Until the board's recommendations are available, I feel the spring clean-up approach will continue to receive wide public support. People are now expecting it to take place.

4. Paragraph C of the Section 9 should be amended to read all persons partaking in the spring clean-up program shall be assessed a user fee dependant upon the toxicity and the volume of the wastes submitted for disposal.

The fees should be used to create a Technical Training and Assistance fund available to hazardous waste generators wishing to develop methods to reduce and/or eliminate their hazardous wastes.

Finally, Section 4 46.03 298 reveals the true debate at hand - whether the state should adopt the federal program, the Resource Conservation and Recovery Act (RCRA) by reference or dovetail the proposed state hazardous waste regulations (Title 18, Chapter 62) into RCRA as they have been designed.

CSSB 503 currently forces the state to adopt RCRA by reference. Forcing the state to adopt RCRA thereby preventing the development of Alaska specific regulations counters the growing national trend in the area of hazardous waste management. EPA now encourages states to adopt their own hazardous waste regulations to fit their own specific needs. EPA directs states to use RCRA only as a foundation upon which to build a comprehensive state-specific program.

Given the loopholes in RCRA it seems ludicrous for any state to adopt the federal program by reference. Recent EPA statistics highlight the inadequacies of the federal program and its failure to regulate the estimated 150 million metric tons of hazardous waste generated in the United States.

- * Less than 25% of the 60,000 firms that identified themselves to the agency (EPA) as hazardous waste generators were, in fact, subject to the EPA's regulations.
- * Less than 60% of the treatment, storage, and disposal facilities listed with the agency managed their hazardous wastes in a regulated process during 1981.
- * Businesses generating less than 2200 pounds of hazardous waste per month are currently exempt from RCRA regulations and may dispose of their wastes in facilities which are not designed for such activity (the states proposed regulations reduces the volume limit to 400 pounds. U.S. Congress is considering a 220 pound level).
- * Currently, to be a hazardous waste under RCRA the waste must exhibit the characteristic a hazardous waste or be listed by name. None of the RCRA characteristic tests - ignitability, corrosivity, reactivity, or extraction procedure toxicity - identify wastes on the basis of organic toxicity and carcinogenicity.
- * The present EPA list of hazardous wastes is approximately 370 chemicals long. Today, there are well over 60,000 toxic chemicals available for use. In fact, vinyl chloride, known to cause angiosarcoma, a rare liver cancer, and dioxin are unregulated by RCRA.
- * RCRA does not mandate that facilities that treat, store, and dispose of hazardous waste be regularly inspected.
- * The federal program does not regulate hazardous wastes that are mixed with oil to be burned as fuel in boilers, incinerators, etc. Investigations reveal that generators will blend their hazardous waste with waste oil in order to circumvent the regulations.

The list of loopholes presented above is by no means complete. Perhaps the most glaring inadequacy of the federal program is its failure to require generators to identify the toxic and carcinogenic properties of their wastes (extraction procedure toxicity is a limited toxicity test designed to simulate how a waste leaches in a landfill. It does not assess the toxicity of a waste. Further, it covers only 14 chemicals under the present federal program. The states proposed program amends this list to include approximately 27 chemicals. The states' list is more realistic).

Senator Bettye Fahrenkamp
March 20, 1984
Page 4

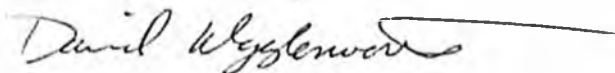
In short, RCRA manages wastes not by their degree of hazard, but by the volume generated (2200 lbs.) and whether it is included in a pre-determined list of chemicals. This scheme avoids confronting the real issue - the toxicity of a waste.

It is my hope that the work group and the Senate Resources Committee will dovetail the Alaska Department of Environmental Conservation's degree of hazard approach (which addresses toxicity, carcinogenicity, and persistence) into the framework of the federal program. Other states such as Washington, California, and Oregon are and have developed a similar approach. The approach is well-founded and represents a clear understanding of the problems with the federal program. Waiting 4 more years to consider the degree of hazard approach (as CSSB 503 suggests) will only allow the idea to sink further into the quagmire of politics and drilling muds. How long can Alaskans continue to excuse themselves by saying that "time is on our side?"

It is estimated that Alaska generates 400 tons of hazardous waste each year (JRB Report 1981). A recent 1984 study of hazardous waste generated in Anchorage suggests that Anchorage alone could be producing as much as 400 tons of hazardous waste annually. It appears from these figures that "time" is taking its own course.

Thank you for allowing me to comment on CSSB 503. Across the country communities and states are now paying the price for neglecting their hazardous waste problems. By acting now Alaska can develop a model program which fills the gaps apparent in the federal program. This unique opportunity should not and must not be wasted. I hope that the Resources Committee will agree.

Yours sincerely,



David Wigglesworth
Occupational/Environmental
Health Specialist

cc: Lennie Boston
Representative Clocksin
Mary Core
Senator Eliason
Senator Paul Fischer
Senator Vic Fischer
Ray Gallespie
Mick Hotrum
Senator Josephson
Steve Kadish
Senator Kerttula

Senator Moss
Senator Mulcahy
Commissioner Neve
Jim Palmer
Representative Ringstad
Roland Shanks
Governor William Sheffield
John Shively
Jim Sweeney
Senator Ziegler

3/27/84

Marilyn Heiman
7821 Lotus Drive
Anchorage Alaska 99502

Senator Bettye Fahrenkamp
Alaska State Legislature
Pouch V
Juneau Alaska 99811

Dear Senator Fahrenkamp,

Thank you for your interest and concern on the hazardous waste issues facing Alaskans. The working draft of SB503 seems to address many of these issues in a positive way, but the draft's approach presents some problems that I would like to share with you.

Each of the issues in the draft; siting, community right to know, the state's program, and disposal are very complex and can not be combined into one bill. By combining the legislation, important sections of each bill are lost. There is no question that these issues must be addressed separately to ensure safe and cost effective implementation and enforcement in the area of hazardous waste management.

The most important part of the state's program, the degree of hazard approach, has been clouded in an attempt to combine these bills. It is important for reasons of safety and health that we do not postpone implementation of the state's program as it exists.

It is common knowledge that the federal program, RCRA, is not preventing hazardous waste mismanagement in Alaska and in the lower 48. The degree of hazard approach is an effective way to decrease unnecessary contamination. The argument that we have to have regulations that are equivalent to the federal regulations does not hold much credibility. EPA approved the degree of hazard approach in the state of Washington and it is working effectively there. In addition, the amendments to RCRA contain changes that are similar to the degree of hazard approach.

The costs to oil companies are high but it does not mean these costs are unwarranted. Their cost analysis does not look at the long term in terms of health and clean up costs. The regulations could save them money in the future RCRA certainly does'nt do that for anyone.

I agree with you that we need to subsidize small business because they are unable to handle the entire costs involved with testing and disposal under the state's program or new RCRA (quantity exclusion of 220 lbs/mo.)

Helping small businesses with testing costs is appropriate since these costs are one time costs. The state should be careful not to compete with private business in providing testing. A partial subsidy may be a more workable solution.

State subsidies for small business disposal costs, on the other hand, is not an effective way to deal with the problem. If disposal is cheap or free, businesses will have an incentive to dispose of waste rather than reducing waste (recycling, substituting, exchanging, changing processes etc.) Instead of subsidizing disposal, why not subsidize businesses which reduce wastes. If we are going to provide assistance, it should be assistance that can help prevent health and environmental problems rather than increase them.

In closing, I would like to stress again that each bill is important and essential to the health and well being of all Alaskans. I would like to have the opportunity to comment on each bill seperately. This combination of the bills tends to lose the perspective of a hazardous waste management program which is both preventive and effective.

Thank you very much for the opportunity to comment on your draft.

Sincerely,

Marilyn Heiman

Marilyn Heiman

cc:

Honorable Governor Sheffield
Senator Ziegler
Senator Eliason
Senator Paul Fischer
Senator Vic Fischer
Senator Mulcahy
Senator Sturgulewski
Senator Joe Josephson
Senator Jay Kerttula
Representative Ringstad
Commissioner Neve, DEC
John Shively
Lennie Boston

Alaska Oil and Gas Association



505 W. Northern Lights Boulevard
Suite 219
Anchorage, Alaska 99503-2553
(907) 272-1481

March 23, 1984

The Honorable Bettye Fahrenkamp, Chairman
Senate Committee on Resources
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Thank you for the opportunity to comment on the proposed committee substitute for SB 503.

Members of the Alaska Oil and Gas Association have reviewed the draft, and our suggestions for modification are enclosed.

I would be happy to discuss these comments with you or your staff at any time.

Very truly yours,

A handwritten signature in cursive script that reads 'Tom Brooks'. The signature is written in dark ink and includes a small flourish at the end.

TOM BROOKS

TB:tp3:167

Enclosure

MAR 26 1984

lein
3/8/86

Original sponsor: Resources Committee

1 IN THE SENATE BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 503 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

9 ~~* Section 1. AS 11.41 is amended by adding a new section to article 2~~
10 ~~to read:~~

11 ~~Sec. 11.41.260. RECKLESS ENDANGERMENT WITH HAZARDOUS WASTE. (a)~~

12 ~~A person commits the crime of reckless endangerment with hazardous~~
13 ~~waste if the person recklessly engages in conduct involving storing,~~
14 ~~transportation, or disposal of hazardous waste that creates a substan-~~
15 ~~tial risk of serious physical injury to another person.~~

16 ~~(b) For purposes of this section, "hazardous waste" is defined~~
17 ~~as any substance subject to regulation as a hazardous waste under~~
18 ~~AS 46.03.250 - 46.03.312.~~

19 ~~(c) Reckless endangerment with hazardous waste is a class C~~
20 ~~felony.~~

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

22 Sec. 46.03.295. DUTIES OF THE DEPARTMENT. The department shall

23 (1) investigate and respond in writing to a complaint filed
24 by a person in accordance with 42 U.S.C. 6901 - 6987;

25 (2) provide public notice and a public comment period of
26 not less than 30 days for a proposed settlement of a department en-
27 forcement action; and

28 (3) inform the public of the dangers of hazardous wastes
29 and of the provisions of AS 46.03.295 - 46.03.312.

We recommend that Section 1, which adds AS 11.41.260, entitled "Reckless Endangerment with Hazardous Waste" be deleted. This section is not required or authorized by federal law regarding penalties for hazardous waste violations. If this section is not deleted, we recommend that the state define "reckless". Secondly, the penalty under this section should be, at a maximum, a class A misdemeanor, rather than a felony.

1 * Sec. 3. AS 46.03.296(b) is amended to read:

2 (b) The department shall adopt regulations in accordance with
3 the Administrative Procedure Act (AS 44.62) for the treatment, stor-
4 age, transportation, and disposal of hazardous wastes to ensure the
5 protection of human health, livestock, wildlife, property, and the
6 environment.

7 * Sec. 4. AS 46.03 is amended by adding a new section to read:

8 REGULATIONS

9 Sec. 46.03.298. FEDERAL HAZARDOUS WASTE LAWS ADOPTED BY REFER-
10 Pursuant to 42 U.S.C. 6921-6934, the authority to implement state hazardous
11 ENCE. (a) ~~42 U.S.C. 6921-6934 (Subchapter III of the Resource~~
12 ~~Conservation and Recovery Act of 1976) is adopted by reference as a~~
13 ~~part of this chapter.~~

14 (b) The department shall adopt by reference and shall enforce
15 regulations relating to hazardous waste management adopted by the
16 federal government under 42 U.S.C. 6921 - 6934.

17 (c) The department may not adopt regulations relating to
18 hazardous waste

19 (1) that are more stringent than federal regulations
20 adopted by reference under (b) of this section; and

21 (2) except as required under this chapter.

22 * Sec. 5. AS 46.03.298 is repealed and reenacted to read:

23 Sec. 46.03.298. HAZARDOUS WASTE REGULATIONS. (a) The depart-
24 ment shall ~~adopt~~

25 ^{may adopt}

26 (1) ^{by} reference and shall enforce regulations relating to
27 hazardous waste management adopted by the federal government under 42
28 U.S.C. 6921 - ^{as amended} 6934, or

29 (2) ^{may develop and adopt} other regulations which are consistent with
the provisions of this chapter,
that may include regulation according to the degree of hazard pre-
sented by the wastes.

(b) If a regulation adopted under this section requires testing

State adoption of federal laws is unnecessary and may, in fact, result in conflicting
statutes. For example, 42 U.S.C. 6928, which would be incorporated here, provides
a comprehensive scheme for civil and criminal penalties, as does AS 46.03.312,
AS 46.03.768 and AS 46.03.790. Additionally, other sections of 42 U.S.C. 6921 -
6934 may not be appropriate for state adoption. In light of these concerns, and
the inclusion of other sections of this bill which would accomplish the same
objective, Section 46.03.298 (a) should be modified as shown.

If it is retained, we would point out that "Subchapter III" should be "Subtitle C".

1 ~~to determine whether a substance is a hazardous waste, the department~~
 2 ~~shall provide the testing without charge to the generator of the~~
 3 ~~substance.~~

4 * Sec. 6. AS 46.03.299 is repealed and reenacted to read:

5 Sec. 46.03.299. CONTROL OF HAZARDOUS WASTES. (a) The depart-
 6 ment shall facilitate coordination with federal, state, and local
 7 agencies in adopting regulations under the Administrative Procedure
 8 Act (AS 44.62) for a comprehensive state hazardous waste program
 9 consistent with 42 U.S.C. 6901 - 6987 and regulations adopted under
 10 those sections by the Environmental Protection Agency.

11 (b) The department shall

12 (1) ^{adopt only,} ~~identify the characteristics of hazardous wastes,~~ as
 13 identified in regulations of the Environmental Protection Agency
 14 adopted under 42 U.S.C. 6921(b):

15 ~~(2) establish~~

16 (A) the characteristics of hazardous wastes;
 17 (B) ~~(A)~~ criteria for listing hazardous wastes;
 18 (C) ~~(B)~~ requirements for ^{encouraging the use, re-use, recycling and} hazardous waste ~~that is used,~~
 19 ~~re-used, recycled, or reclaimed;~~ and
 20 (D) ~~(C)~~ exclusions;

21 (3) adopt as a preliminary list the lists of hazardous
 22 wastes identified by the Environmental Protection Agency in regula-
 23 tions adopted under 42 U.S.C. 6921(b);

24 (4) identify the sources of hazardous wastes listed under
 25 (3) of this subsection or enumerated under (c) of this section;

26 (5) qualify the department to receive authorization from
 27 the administrator of the Environmental Protection Agency to administer
 28 and enforce a hazardous waste program in accordance with 42 U.S.C.
 29 6901 - 6987;

 (6) determine the amount of a hazardous waste that is so

1 small as to not present a hazard to public health, livestock, fish,
2 wildlife, and the environment of the state when disposed of;

3 (7) adopt preliminary requirements for hazardous waste
4 produced by small quantity generators as specified under 42 U.S.C.
5 6921 - 6922;

6 (8) adopt, in accordance with 42 U.S.C. 6924, procedures by
7 which the public shall have opportunity to review and comment on
8 issuance of hazardous waste disposal permits by the department.

9 (c) Four years after the date on which the Environmental Protec-
10 tion Agency approves the state hazardous waste program, the department
11 may

12 (1) develop new regulations for the control of hazardous
13 wastes; and

14 (2) enumerate specific hazardous wastes, within the meaning
15 of AS 46.03.900(32), subject to the provisions of AS 46.03.302 and
16 46.03.305; however, the department may not list as hazardous a waste
17 that has not been listed as a hazardous waste by the United States
18 Environmental Protection Agency under 42 U.S.C. 6921, unless the
19 commissioner first determines by a specific written finding that the waste is hazardous as defined
20 in this chapter.

21 * Sec. 7. AS 46.03.299(b) is repealed and reenacted to read:

22 (b) The department shall

23 (1) identify the characteristics of hazardous wastes, as
24 identified in regulations of the Environmental Protection Agency
25 adopted under 42 U.S.C. 6921(b);

26 (2) establish

27 (A) criteria for listing hazardous wastes;

28 (B) requirements for ~~hazardous waste that is used,~~
29 ~~re-used, recycled, or reclaimed,~~ and
reclamation of hazardous wastes;
encouraging the use, re-use, recycling and

(C) exclusions;

(3) adopt as a preliminary list the lists of hazardous wastes identified by the Environmental Protection Agency in regulations adopted under 42 U.S.C. 6921(b);

(4) identify the sources of hazardous wastes listed under (3) of this subsection or enumerated under (c) of this section;

(5) qualify the department to receive authorization from the administrator of the Environmental Protection Agency to administer and enforce a hazardous waste program in accordance with 42 U.S.C. 6901 - 6987;

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

(7) adopt preliminary requirements for hazardous waste produced by small quantity generators as specified under 42 U.S.C. 6921 - 6922;

(8) adopt, in accordance with 42 U.S.C. 6924,

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

(B) procedures by which the public shall have opportunity to

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

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

(9) Insert new section (9)

~~Sec. 8. AF 46.03 is amended by adding a new section to read:~~

~~Sec. 46.03.301. MUNICIPAL REGULATION. Notwithstanding other provisions of law, a home-rule or general-law municipality may enact an ordinance consistent with the provisions of AF 46.03.295~~

(9) 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 by a specific written finding that the waste is hazardous as defined in this chapter.

~~46.03.312 regulating the storage and disposal of hazardous wastes. A borough may regulate the storage and disposal of hazardous wastes statewide or in the borough area outside cities.~~

* Sec. 9. AS 46.03 is amended by adding a new section to read:

COLLECTION AND STORAGE

Sec. 46.03.306. ~~GATHERING CENTERS.~~ (a) Not later than one year after the effective date of this section the department shall establish and operate regional hazardous waste ^{collection and storage} ~~gathering~~ centers for the ^{management} ~~collection~~ of hazardous wastes that are to be prepared for shipment to a federally approved hazardous waste disposal site.

(b) The commissioner by contract may transfer the operation or ownership of ^{collection and storage} ~~gathering~~ centers to suitable private parties at not less than fair market value.

(c) ^{A small quantity generator of hazardous waste may not be charged for deposits of hazardous waste at a collection and storage center.} ~~A generator of hazardous wastes may not be charged for deposits of less than 2,200 pounds per month at a gathering center.~~

* Sec. 10. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.309. NOTICE TO LOCAL GOVERNMENTS AND COMMUNITIES.

(a) The department shall notify the following persons or agencies in each community in which a person intends to store or dispose of a hazardous waste:

(1) a representative of the local elected governing body;

and

(2) the state and local public safety agencies with jurisdiction over the site at which the waste is to be stored or disposed of.

(b) Insert new section (b)

* Sec. 11. AS 46.03.311 is amended to read:

Sec. 46.03.311. PUBLIC RECORDS. (a) Permits, permit applications, records, reports, and information and documentation obtained under AS 46.03.295 - 46.03.318 [AS 46.03.302 - 46.03.308] are available to the public for inspection and copying. However, upon a showing

(b) If a storage or disposal site is permitted under this chapter, a general notice of intention to periodically store or dispose of hazardous waste may be made to the representatives under section (a)(1) and (2) of the above. Such notice shall be valid for a period not to exceed one year.

1 satisfactory to the commissioner that a record, report, permit, appli-
2 cation, or information would, if made public, divulge methods or
3 processes entitled to protection as trade secrets, the commissioner
4 shall treat the record, report, permit, application, or information as
5 confidential.

6 (b) Information that is confidential may be transmitted under a
7 continuing restriction of confidentiality to other officers^{or} employ-
8 ees, ~~or authorized representatives~~ of the state or of the United
9 States if

10 (1) the person responsible for furnishing the record,
11 report, permit, application, or information to which such information
12 pertains is informed at least two weeks before the transmittal, except
13 that information obtained under AS 46.03.295 - 46.03.318 shall be made
14 available under a claim of confidentiality to the Environmental Pro-
15 tection Agency upon request of the agency; and

16 (2) the information has been acquired by the department
17 under the provisions of AS 46.03.295 - 46.03.318 [AS 46.03.296 -
18 46.03.311].

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

22 * Sec. 12. AS 46.03 is amended by adding a new section to article 5 to
23 read:

24 Sec. 46.03.312. CIVIL REMEDIES AND PENALTIES. (a) In the
25 enforcement of AS 46.03.295 - 46.03.311 the department may

26 (1) petition the superior court for injunctive relief to
27 restrain a person from engaging in an unauthorized activity that ~~to~~
28 ~~constitutes an imminent and substantial endangerment to~~
29 ~~endangering or damaging~~ the public health or the environment;

(2) assess a civil fine under (b) of this section; or

The language proposed is consistent with federal law.

1 (3) bring an action in the superior court seeking civil
2 penalties under (b) of this section.

3 (b) A violation of a provision of AS 46.03.295 - 46.03.311 is
4 punishable by a civil fine of not less than \$10,000 and not more than
5 \$100,000 for the first day of the offense, and a civil fine of not
6 more than \$10,000 per day for each day the offense continues.

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

8 ARTICLE 5A. DISPOSAL FACILITY SITE BOARD.

9 Sec. 46.03.313. HAZARDOUS WASTE DISPOSAL FACILITY SITE BOARD.

10 (a) The Hazardous Waste Disposal Facility Site Board is created in
11 the department.

12 (b) The board consists of 12 members appointed not later than
13 October 1, 1984, by the governor as follows:

- 14 (1) one member representing the department;
- 15 (2) one member representing the Office of the Governor;
- 16 (3) two members representing public interest environmental

17 conservation organizations;

- 18 (4) two members representing the oil and gas industry;
- 19 (5) two members with expertise in public health matters

20 related to the transportation and disposal of hazardous wastes;

- 21 (6) four members ^{who are elected officials} representing the general public, two of

22 whom shall be from rural areas of the state and two of whom shall be
23 from urban areas of the state.

24 (c) The ^{board} ~~governor~~ shall ^{elect} ~~designate~~ the chairperson of the board.

25 (d) The department shall provide administrative and clerical
26 services to the board.

27 Sec. 46.03.314. DUTIES AND POWERS OF THE BOARD. (a) The board
28 shall evaluate and ^{recommend} ~~select~~ ^{potential state} ~~potential~~ sites for hazardous waste disposal
29 facilities, ~~in the state~~. In evaluating and ^{recommending} ~~selecting~~ sites for

1 state hazardous waste

2 disposal facilities, the board shall consider at least the following:
3 factors:

4 (1) economic feasibility, including proximity to concen-
5 trations of generators of the types of hazardous wastes likely to be
6 proposed and permitted for disposal;

7 (2) intrinsic suitability of the sites;

8 (3) federal and state pollution control and environmental
9 protection rules;

10 (4) the risk and effect for local residents, units of
11 government, and the local public health, safety, and welfare, includ-
12 ing such dangers as an accidental release of wastes during transporta-
13 tion to a facility or at a facility, water, air, and land pollution,
14 and fire or explosion;

15 (5) the consistency of a facility with, and its effect on,
16 existing and planned local land use and development; local laws,
17 ordinances, and permits; and local public facilities and services; and

18 (6) the adverse effects of a facility at the site on agri-
19 culture and natural resources and opportunities to mitigate or elimi-
20 nate the adverse effects by stipulations, conditions, and requirements
21 relating to the design and operation of a disposal facility at the
22 proposed site; and

23 (b) ^{(7) insert new section (7)} The board shall hold public hearings in each election dis-
24 trict in which a potential hazardous waste disposal facility site is
25 located. The board shall give reasonable public notice of the time,
26 date and place of each public hearing at least 30 days before the
27 hearing. The public shall be afforded an opportunity at each hearing
28 to submit written and oral testimony concerning a potential site. The
29 board shall consider the testimony submitted at public hearings when
it develops recommendations to be submitted in its report under

(7) the necessity for industry and business to have disposal sites in state
in order to continue operations.

1 AS 46.03.317.

2 (c) For purposes of this section, "intrinsic suitability" of a
3 site means that, based on existing data on the inherent and natural
4 attributes, physical features, and location of the site, there is no
5 known reason why a waste disposal facility that may be located in the
6 site could not reasonably be expected to qualify for a permit under
7 AS 46.03.302.

8 Sec. 46.03.315. MEETINGS OF THE BOARD. The board shall meet at
9 the call of the chairperson and at other times as agreed by the mem-
10 bers. The board shall hold its first meeting not later than
11 January 31, 1985.

12 Sec. 46.03.316. COMPENSATION. A board member may not receive a
13 salary for performing official duties of the board, but is entitled to
14 per diem and travel expenses as provided for other boards and commis-
15 sions.

16 Sec. 46.03.317. REPORT OF SITE AND FACILITY RECOMMENDATIONS.
17 Not later than January 31, 1987, the board shall submit to the gover-
18 nor and the legislature a report that includes recommendations for

19 (1) the siting of ^{state} hazardous waste disposal facilities in
20 the state;

21 (2) the methods of financing and operating the facilities;
22 and

23 (3) the types of facilities that should be constructed,
24 such as chemical processing facilities, incineration facilities, and
25 transfer and storage facilities.

26 Sec. 46.03.318. DEFINITION. For purposes of AS 46.03.313 -
27 46.03.317, "board" means the Hazardous Waste Disposal Facility Site
28 Board.

29 * Sec. 14. AS 46.03.760(a) is amended to read:

1 (a) A person who violates or causes or permits to be violated a
 2 provision of this chapter, other than AS 46.03.295 - 46.03.311, or
 3 AS 46.04, or a regulation, a lawful order of the department, or a
 4 permit, approval, or acceptance, or term or condition of a permit,
 5 approval, or acceptance issued under this chapter or AS 46.04 is
 6 liable, in a civil action, to the state for a sum to be assessed by
 7 the court of not less than \$500 nor more than \$100,000 for the initial
 8 violation, nor more than ~~\$10,000~~ ~~+\$5,000~~ for each day thereafter on
 9 which the violation continues, and which shall reflect, when applica-
 10 ble,

11 (1) reasonable compensation in the nature of liquidated
 12 damages for any adverse environmental effects caused by the violation,
 13 which shall be determined by the court according to the toxicity,
 14 degradability and dispersal characteristics of the substance dis-
 15 charged, the sensitivity of the receiving environment, and the degree
 16 to which the discharge degrades existing environmental quality;

17 (2) reasonable costs incurred by the state in detection,
 18 investigation, and attempted correction of the violation; [AND]

19 (3) the economic savings realized by the person in not
 20 complying with the requirement for which a violation is charged; and

21 ~~(4) the need for an enhanced civil penalty to deter future~~
 22 ~~noncompliance.~~

23 * Sec. 15. AS 46.03.760(b) is amended to read:
 24 ~~(b) Except as determined by the court under (a)(4) of this~~
 25 ~~section, actions [ACTIONS] under this section may not be used for~~
 26 ~~punitive purposes, and sums assessed by the court must be compensatory~~
 27 ~~and remedial in nature.~~

28 * Sec. 16. AS 46.03.790 is amended to read:
 29 Sec. 46.03.790. CRIMINAL PENALTIES. (a) Except as provided in

The purpose of Section 14 is to allow for necessary penalties under AS 46.03.295-46.03.311.
 It is inappropriate to suggest additional changes which do not accomplish this purpose.

1 (d) - (f) of this section, a [A] person who negligently violates [OR
2 WHO CAUSES OR PERMITS A VIOLATION OF] a provision of this chapter or
3 AS 46.04, or of a regulation, lawful order of the department, or
4 permit, approval, or acceptance, or term or condition of a permit,
5 approval, or acceptance issued under this chapter or AS 46.04 is
6 guilty of a class B misdemeanor.

7 (b) Except as provided in (d) - (f) of this section, a [A]
8 person who knowingly [WILFULLY] violates a provision of this chapter
9 or AS 46.04, or of a regulation, lawful order of the department, or
10 permit, approval, or acceptance, or a term or condition of a permit,
11 approval, or acceptance issued under this chapter or AS 46.04 is
12 guilty of a class A misdemeanor.

13 (c) Each day on which a violation described in [(a) OF (b) OF]
14 this section occurs is considered a separate violation.

15 (d) Notwithstanding (a) and (b) of this section, a [A] person
16 ^{knowingly} who fails to provide or falsely states information required under
17 AS 46.03.755 or AS 46.04 is guilty of a misdemeanor and, upon conviction,
18 is punishable by a fine of not more than \$25,000, or by imprisonment
19 for not more than one year, or by both. Each unlawful act
20 constitutes a separate offense.

21 (e) Notwithstanding (a) and (b) of this section, a person who
22 knowingly (1) transports any hazardous waste to a facility without a
23 permit required under AS 46.03.250 - 46.03.311; (2) treats, stores, or
24 disposes of hazardous waste without a permit required under AS 46.-
25 03.250 - 46.03.311; or (3) makes a false statement or representation
26 in an application, label, manifest, record, report, permit, or other
27 document filed, maintained, or used for purposes of compliance with
28 the hazardous waste provisions of AS 46.03.250 - 46.03.311 or regulations
29 adopted under those provisions, is punishable by a fine of net

1 more than \$10,000 per day or by imprisonment for not more than one
2 year, or both.

3 (f) Notwithstanding the penalty provisions of (a) - (e) of this
4 section, a defendant that is an organization is, upon conviction of a
5 violation of any of the provisions listed in this section, subject to
6 the penalties set out in AS 12.55.035(c).

7 * Sec. 17. AS 46.03.313 - 46.03.318 are repealed June 30, 1988.

8 * Sec. 18. Section 5 of this Act takes effect four years after the
9 the state's hazardous waste regulations.
effective date of ~~secs. 1, 4, 6, and 8~~ ~~17~~ of this Act.

10 * Sec. 19. Section 7 of this Act takes effect June 30, 1988.
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Getting RCRA under control

The Environmental Protection Agency says it plans to issue this month a number of technical regulations and standards on hazardous waste. These will form part of a program the agency says will bring its administration of the Resource Conservation and Recovery Act (RCRA) under control. But industry, state governments and environmentalists have adopted a wait-and-see attitude. Although the EPA has issued numerous regulations since Nov. 17, 1980, when the act took effect, some of the most-important are still hanging fire, and the act's final shape is in doubt.

Moreover, that doubt is now being compounded with confusion. Industry and environmentalists alike, unhappy with much of what they already see,

Despite many regulations, the shape of RCRA's policies remain in doubt

have challenged numerous regulations and are involved with EPA in lengthy negotiations over the way those regulations should ultimately read. The states, which administer RCRA, are finding their efforts hobbled because promised federal aid has not materialized.

Into the fray. With an election coming up, Congress is likely to get into the fray—particularly since RCRA must be reauthorized by Sept. 30, the end of the fiscal year. The House Energy and Commerce Committee has passed amendments that would tighten RCRA and force the EPA to implement the entire act on a specified timetable.

Top EPA officials say that their agency has adjusted to the change from the Carter to the Reagan Administration and that they are making progress in implementing the act. They have gone numerous times to Capitol Hill, armed with statistics and schedules that show, from the agency's point of view, a clear stream of regulatory progress. These officials also say that most of the technical standards are already in effect, and that those that are not soon will be—including definitions of hazardous waste, and standards for the design and

operation of hazardous-waste landfills.

The chemical industry, for its part, is doing its best to cope with the confusion. Companies are generally complying with regulations already issued, while awaiting the outcome of negotiations with EPA on 27 of the more technical issues (*see p. 28*) in what has become known as *Shell Oil vs. EPA*. The industry, hoping that the regulations will be issued soon in their final form, is almost unanimous in its support of EPA. The Chemical Manufacturers Assn. maintains that the agency "has been doing a responsible and conscientious job addressing the issues," calling the pace of development, "necessarily slow." The delays, says the association, result from "the difficulty and complexity of achieving the goals prescribed by the act, and not from lack of statutory authority or from lack of diligence on EPA's part."

Money shortage. The opinions of state environmental officials vary widely both on the act and on the way it is being implemented by EPA. But most agree that there is not enough money available to fund their programs for enforcement and issuing permits. Says Norman H. Nosenchuck, director of solid waste for New York's Dept. of Environmental Conservation: "States are now faced with the grim prospect of attempting to carry out urgently needed, federally mandated programs with decreasing federal financial support."

While RCRA allows states to obtain "authorization" to implement their own versions of the act, more and more states are coming to the conclusion that, in the face of federal budget cutbacks, they may not have the money or manpower to do so. Money is not the only problem for the state agencies, however. Constantly changing RCRA regulations and delays in releasing some of the most important rules have brought additional difficulties, and some states are about to cease trying to enforce RCRA, a move that would force EPA to implement the act by itself.

Environmental groups, on the other hand, see all this delay as an attempt by EPA to render the act impotent. "Since the change of administrations in

1981," says Kristine L. Hall, attorney for the Environmental Defense Fund, "it has become regrettably clear we are no longer moving forward in protecting health and the environment from mismanagement of hazardous waste."

But there are some who feel the act is having a positive effect. "RCRA is working surprisingly well," says James A. Rogers, formerly chief attorney for EPA's air, water and solid waste section, and now an attorney with Skadden, Arps, Slate, Meagher & Flom in Washington. He bases his case on the simple assertion that "no one is going to court." Rather, says Rogers, people are willing to negotiate their differences. He feels industry and environmentalists have, over the past 10 years, learned valuable lessons from the complexities of the Clean Air Act and the

EPA's Gorsuch feels political pressures



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Florio wants to tighten the screws.

lean Water Act. "They have found that you can litigate for years and, because the courts generally don't rule on arcane technical matters, you wind up negotiating anyway."

through negotiation. So far, the chemical industry seems to agree. "We have made progress through negotiations between industry and government," says H. Dreith of Shell Oil's environmental affairs department. Shell is one of 15 petitioners—including Dow Chemical, the Chemical Manufacturers Assn., and the Environmental Defense Fund—that are negotiating with EPA. The Shell Oil case developed in response to EPA's standards, promulgated May 19, 1980, that cover operations that produce and transport hazardous waste. The industrial petitioners in the Shell negotiations have identified 24 points in those regulations that they want specifically addressed by EPA, while EDF has named three issues it wants clarified.

"At one time there were 27 recognized serious points of contention," says Dreith. "That has been trimmed to five, and negotiations are under way on those." The act is very comprehensive in its approach to hazardous wastes, he says, "but there has been a big problem

dealing with the language of the laws—in some cases we've had to put out our own interpretations of just what the law is supposed to do and not do."

The Chemical Manufacturers Assn. has taken a conciliatory view of the way EPA has been implementing RCRA. Philip A. Palmer, head of CMA's RCRA Regulatory Task Group and Du Pont's top hazardous waste consultant, says that when the act was passed few states had regulations for hazardous waste, and that the early state laws were not as comprehensive as those EPA must now adopt under RCRA.

The process at the federal level, says Palmer, began without good models, and the agency was faced with the difficult task of defining such fundamental terms as "hazardous" and "solid waste." Further, he says: "It is clear that the initial statutory deadlines for promulgation of RCRA regulations were unrealistic." But, he adds, "the EPA has made commendable progress, especially during the last three years."

'Playing catch-up.' Despite this record of progress, says Rita Lavelle, EPA's new assistant administrator for hazardous waste, it is still easy to attack the agency. "We're playing catch-up in the RCRA arena, so it would appear that we're disorganized and disjointed." She blames EPA's "uphill battle" on the Carter Administration which, she says, waited until the end of its four years to issue several "ill-conceived" hazardous waste rules. "The regulations promulgated at the end of 1980 were thrown out as a Band-aid to the public to show that something had been done with RCRA," says Lavelle. "But, boy, talk about a midnight dump. Those regulations contained a lot of 'thou-shalt-not' rhetoric, but very little on what one can do to manage hazardous waste."

The regulations expected from EPA this month include long-awaited standards for new and existing landfill sites and incinerators and rules for issuing permits for new hazardous-waste facilities and expansion of those already existing. Definitions of what constitutes solid waste are to be issued about the same time. Lavelle says these rules will be a great improvement on those issued under the Carter Administration.

Less optimistic. The House Energy and Commerce Committee, however, is not so optimistic. While it is considering legislation to reauthorize the act, the committee would like to tighten the regulatory screws a little. In April, at hearings of the House subcommittee on Commerce, Transportation and Tourism, chaired by Representative James J.

Florio (D., N.J.), witnesses from environmental groups, state governments, universities and some industries made clear their concern about the way EPA is implementing the act—and about some of its loopholes.

On May 11, Florio's subcommittee recommended a number of amendments, most of which have been passed by the full Energy and Commerce Committee. These would: reduce to 100 from 1,000 kilograms/month the amount of waste a "small generator" would be allowed to produce before being required to comply with RCRA regulations; tighten regulations governing disposal of hazardous liquids in landfills; regulate industrial boilers that burn fuel containing hazardous wastes; limit the time allowed EPA to issue landfill-site permits to four years; and create a national groundwater commission to assess the relationship between groundwater contamination and hazardous wastes.

Election politicking. Some members of the chemical industry see Florio's hearings and subcommittee amendments as so much election-year politicking. "What data, what problems warranted

States applying the act are hobbled by a lack of Washington funding

these amendments?" one industry lobbyist asks, contending that no one presented the subcommittee hearing with data or facts that would support these amendments. He believes that the amendments may only cause further delay in the act's implementation.

For small chemical companies, though, the Florio subcommittee's package could result in more than just delays. "The small-generator exemption could pose a lot of problems for our companies," says Ronald A. Lang, executive director of the Synthetic Organic Chemical Manufacturers Assn. He warns that almost every chemical company, no matter how small, would fall under the proposed RCRA amendment, with all the cost that would entail. "This means we now have to pay a lot of attention to [Florio's] RCRA reauthorization bill," says Lang.

Some states, moving ahead with their own RCRA regulations, have already taken action against the small generator of hazardous waste because they fear future dumpsite problems. California, for instance, allows no exemptions at all; Louisiana has acted in a similar way. "Yes, we are very concerned



EPA's Lavelle blames Carter's limes for delays.

about this stuff going to municipal landfills," says William B. DeVille, director of policy development for Louisiana's Office of Environmental Affairs. "That is why we don't provide small generators of hazardous waste any exemptions"—even though state law would allow exemptions to be made.

Not the roadside. Tennessee, on the other hand, does allow exemptions, seeing the situation much as does the Synthetic Organic Chemical group's Lang. "I think you'd have more problems if you tried to include the small generators in the regulatory network," says T. Dwight Hinch, chief of policy development and planning with Tennessee's Solid Waste Management Div. Hinch points out that it is better to have small quantities of such waste going to municipal landfills than being dumped along the roadside.

Aside from the flap over what Florio and some environmentalists view as "loopholes" in RCRA regulations, nothing has been more irritating to industry than EPA's inconsistency in implementing many of the regulations. The agency's recent 360-degree spin over the disposal of liquid hazardous wastes—first

lifting the RCRA ban, then imposing it once again—has not helped its credibility.

The issue underscores the effect of a series of missteps by EPA. "What the agency up to this point did not understand," says one industry lawyer, "is that every time the agency sneezes, the marketplace catches cold." Consistency,

'Playing catch-up' gives EPA the look of being disorganized and disjointed

he says, is must come if industry is to cope with RCRA, and that is one thing that so far the EPA has managed to avoid. "With the very lengthy and complex regulations and frequent notes in the Federal Register amending them," says this lawyer, "giving advice on the status of RCRA regulations is like working with the morning racing form."

While EPA has yet to issue final landfill regulations, with or without provisions for liquid wastes, the issue could be rendered moot by a *de facto* prohibition on the industry of new landfills—

Talks continue with EPA

Disputes over implementation of the Resource Conservation and Recovery Act, unlike those arising out of some of its forerunners in the field of environmental control and protection, are being settled by negotiations with the Environmental Protection Administration, rather than by litigation in the courts. For the chemical processing industries, the most substantial and wide-ranging series of negotiations under way so far are what has come to be known as "Shell vs. EPA"—which developed in response to a set of standards, applicable to generators and transporters of hazardous-waste material, that EPA promulgated May 19, 1980.

The proceedings have found 38 parties—including Dow Chemical, the Chemical Manufacturers Assn., and the Environmental Defense Fund—locked in lengthy talks with EPA officials over 27 separate issues. Among the most important are:

■ **Recycle/reuse.** EPA's original definition of "solid waste"—and the resulting regulations proposed by the agency—gave EPA authority to regulate the recycling and reuse of hazardous waste.

Industry is arguing that the rules inhibit the recycling and reuse of waste—both of which it considers a better practice than disposal—and has challenged EPA regulations. Court action by industry is on hold until EPA issues a new regulation. "The new rule will answer a lot of specific industry concerns," says Lisa K. Friedman, EPA's attorney in charge of RCRA proceedings. Tied to the rule will be EPA's program of regulations covering burning hazardous wastes in boilers, at present not regulated under RCRA.

■ **Listing wastes.** Industry is challenging EPA rules that allow the agency to classify as hazardous any waste that contains any of the toxic chemicals listed in RCRA regulations. This, industry petitioners say, allows a "presumption of toxicity," and places an unfair burden of proof on industry. The absence of a *de minimis* standard, they claim, makes it extremely difficult to dispose of sludges containing trace amounts of listed hazardous chemicals. Last Nov. 12, industry proposed changes in the criteria for a substance to be listed as hazardous, and EPA is apparently giv-

ing these proposals its consideration. Companies have already endorsed EPA's new-mixture rule, in effect since late last year, that allows companies to overlook small amounts of hazardous waste mixed with nonhazardous materials in wastewater-treatment facilities.

■ **Generic listings.** Industry petitioners challenge EPA's authority to list solid wastes by classes or generic types, saying that the agency's authority is limited to reviewing particular waste streams. EPA says "editorial" changes in the rule will resolve the dispute.

■ **Delisting.** The dispute over the process of removing chemicals from the list of hazardous wastes is regarded as settled by industry petitioners. Because EPA has yet to publish a new rule, no one will discuss the settlement.

■ **Degree of hazard.** Industry had wanted EPA to adopt a hazardous-waste classification system based on the "degree of hazard" of the chemical involved, but it is no longer pushing the issue. According to court documents, industry petitioners now believe that "the agency has effectively conceded that it must consider the degree of hazard associated with particular wastes and waste disposal practices."

■ **Incidental accumulation.** New EPA rules have resolved this dispute. The



y aims to beef up RCRA enforcement.

and even of new incinerators. "We have a tremendous need for disposal facilities, especially commercial incinerators and landfills," says Tennessee's Hinch. "Right now we have neither."

Borderline wastes. Ferro Corp. (Cleveland) also sees the lack of dumpsites as a growing problem. "And we feel it is going to continue to grow as regulations tighten and wastes which are borderline, but leaning toward what one might call hazardous, are classified as hazardous," says Lowell E. Snodgrass, Ferro's director of safety and health. As a result, he says, "we're out on the front lines right now, trying to push the states to be consistent with federal regulations in their site selection and permitting, and to be able to use condemnation proceedings, the right of eminent domain, in these procedures."

FMC Corp. (Chicago) is another company that's trying to deal with the squeeze. "It depends upon what part of the country you're in," says Neil Elphick, the company's director of environmental planning. "The way to cope is through the expenditure of money. If you have a waste that's 500 or 1,000 miles from the nearest licensed and ac-

ceptable waste-disposal site, then you spend the money to transport it that distance. It's unsatisfactory," he says, "but we have not yet been driven to the point of attempting to establish our own waste-disposal site."

Ferro's Snodgrass agrees that the situation is still unsettled. "There are still some fly-by-nighters who don't use the

'EPA doesn't seem to realize that every time it sneezes, the marketplace catches cold'

[hazardous-waste disposal] system, who are skirting the system," he says. "There are some smaller companies who close their eyes to the risk they encounter by not following through with the waste-handler very, very carefully." It is within that transportation link, Snodgrass says, that most abuses, such as not labeling wastes as hazardous, are to be found. "But these are the small minority," he adds.

Special treatment. Although labeling is mandatory for any waste that contains any substance on the EPA's hazardous

decided that sludge should be regulated until it is out of a tank. "Products in a container and sludge develops," says dman. "We consider that a the question was: 'When is it And we've resolved that.'" on has not been resolved for poundments, however. EPA that sinks to the bottom of mpoundment is a hazardous lustry is challenging that Friedman says the argument ropped if other surface-im- issues are resolved.

scillites. Industry used to say e impoundments holding haz- ste and discharging it into waters should be regulated n Water Act (National Pollu- rge-Elimination System) per- CRA. In 1980, however, Con- sed amendments requiring lation for storage and treat- a impoundment, and NPDES when the waste is dis- to waterways.

tatus standards. Industry contended that EPA could hazardous-waste facilities to m-status standards until sites d final RCRA permits. Legis- ed in 1980 reinforced agency

authority, prompting companies to drop the issue.

■ **Extraction procedure.** EPA has suspended negotiations on this issue until its land-disposal regulations have been completed. Industry wants special testing procedures at landfills that contain only one kind of waste, rather than the complex test procedures proposed by the agency for municipal and industrial facilities that handle many kinds of hazardous and nonhazardous wastes.

■ **Short-term storage.** Wastes stored by generators at a facility for disposal away from that facility, and wastes stored for later disposal on-site, were at first treated differently under RCRA regulations. An EPA rule issued Nov. 19, 1980, requires that both kinds of wastes be placed in a regulated facility within 90 days. Previously, only wastes destined for on-site disposal had to be placed in such a facility within 90 days—a cause for industry complaint.

■ **Small accumulations.** Regulations covering storage of small accumulations of waste in temporary containers are also under dispute. Industry believes EPA's current tough standards are not needed and hopes that new standards, which may be approved soon, will make it easier for companies to use small containers for short-term storage.

■ **Groundwater monitoring.** Industry objected to the installation of wells to monitor groundwater around waste facilities, but now that the deadline for installation has passed, the issue is moot and the wells are in. Groundwater monitoring and other remaining issues are held up because EPA experts are under court order to publish other (land disposal) regulations first.

■ **Closure and post-closure.** An EPA regulation of Jan. 12, 1981, has rendered this issue moot. Until then, EPA required that hazardous wastes be disposed of, or treated, either 90 days after a site received its last load of waste or after the approval of a shutdown plan. The new rules allow a period of grace if the facility "has the capacity to receive additional waste and there is a reasonable likelihood that a person other than the owner or operator will recommence operation of the site."

■ **Surface impoundments.** Corporate petitioners contended that EPA regulations failed to distinguish between existing and new facilities, while arbitrarily imposing inflexible cover-and-close requirements. Most of these contentions have been resolved through an "agreement in principle," which none of the parties will discuss because of continuing negotiations.

list, there are materials not on that list that might deserve special treatment too. "Many people believe that if a substance is not on the RCRA hazardous-waste list they have no legal exposure," says a Washington attorney. "But most manufacturers realize, when they are dealing with substances that are at least as toxic as the listed wastes, they should treat them as such to avoid civil lawsuits."

While it is virtually impossible to assess the amount of waste going into landfills unlabeled or improperly labeled, perhaps the biggest unknown quantity in the whole RCRA question is the volume of hazardous waste burned in industrial boilers. Because this burned waste is being put to a "beneficial use," it is not covered by RCRA

EPA wants to negotiate but is prepared to take companies to court if need be

regulation. Florio's subcommittee would change that, and in this he has the support of the Hazardous Waste Treatment Council, a group of waste-treatment firms. "The scope of this is truly enormous," says Richard M. Hall, attorney for the group. "Some EPA officials have estimated that tens of thousands of boilers may be burning hazardous waste." The hazardous-waste group also sees the possibility of problems in disposing of residue from industrial boilers burning hazardous waste. The group says that such residue is also hazardous and should be treated accordingly.

Anguished cries. While EPA has caused cries of anguish from all quarters for the stutter-step way it has issued RCRA regulations, it is the agency's capability and willingness to enforce those regulations that has caused the most heated debate on Capitol Hill. And as critical elections near, the enforcement issue could cause the Administration some of its most serious political problems. Florio says simply that lately EPA's enforcement effort has been "virtually nonexistent," and points out that from March to December 1980, during the Carter Administration, EPA referred 43 RCRA enforcement cases to the Justice Dept. for prosecution. Throughout 1981, the first year of the Reagan Administration, EPA referred no more than five such cases, says Florio, adding that no cases were sent to Justice during the first three months of 1982.

At EPA, however, they see it differ-

ently. "We feel we are meeting the congressional mandates of RCRA," says Rita Lavelle of the agency's hazardous waste department. "And we feel we are meeting them within the framework of relevant objectives put forth by President Reagan." Despite what such critics as Florio say, Lavelle claims the Administration's policies on hazardous waste enforcement are working out well. She stresses EPA support for voluntary cleanup agreements with companies, as opposed to lengthy litigation. "Industry has the talent and expertise to protect the environment. We need their help. Our best success stories are those in which we have cooperated with industry," says Lavelle.

Nonetheless, the absence of a "body count" on the Justice Dept. court docket is weighing heavily on EPA. Gorsuch has admitted as much, and the agency may be out to improve its record. "There's going to be a line drawn," says Robert M. Perry, EPA's new associate administrator for legal and enforcement counsel. "It will be clear that if you go beyond the line, there's going to be a court case." **Lack of communication.** The problem over the past year, Perry says, has been in a lack of communication between headquarters and regional offices over how to negotiate with companies. Perry insists that the Reagan Administration's approach "does not mean we're going to sit and negotiate all day." He says that some regional officials misunderstood the intent of the agency's enforcement policy and stopped preparing for litigation when entering negotiations with a company. That practice has ended, Perry says. "You've got to have the possibility of litigation to have meaningful negotiations. We want to make that clear to the regulated community. We are ready to go to court if necessary."

Perry, however, says that to carry out this redefined policy the agency will by the fall have beefed up its criminal investigation staff to 20 investigators and four lawyers from the present five investigators and two lawyers. Field technicians and some lawyers have been sent to the Federal Law Enforcement Training Center near Brunswick, Ga., to learn basic criminal-investigation techniques. Further, the agency has signed



Nosenchuck of New York. States may quit RCRA.

a memorandum of agreement with the Federal Bureau of Investigation under which the bureau will handle up to 30 environmental investigations a year. "We're really committed to the enforcement program," Perry says. "Believe me, if we can't get voluntary compliance, we'll move in with every tool we've got."

More with less. And EPA may have to do just that, according to Norman Nosenchuck of New York State's Environmental Conservation Dept. "The states are not effectively picking up where the federal enforcement effort leaves off," says Nosenchuck, who is also president of the Assn. of State and Territorial Solid Waste Management Officials. He says that many states organized their initial RCRA enforcement efforts while counting on 75% federal funding. "But that funding never materialized," says Nosenchuck, "and states are being asked to do more with less." And he cites an EPA proposal for a 16% cut in state funding for fiscal 1983.

Nosenchuck says bluntly that New York and nine other states are considering withdrawing from the federal RCRA program. "It's a good law," he says, "but it needs to be funded properly." That funding, he adds, may have to come in the form of new state fees and taxes on the chemical industry. □



Alaska Environmental Lobby, Inc.

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907-586-2345

March 23, 1984

Senator Bettye Fahrenkamp
State Capitol, Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp;

Thank you for the opportunity to comment on the provisions in the Resources Committee substitute for SB-503, an act relating to hazardous wastes. We appreciate the process you have initiated involving the formation of a private/public work group, in addition to your invitation for comments. Your efforts demonstrate concern for the complexity and serious implications of this issue.

Recognizing that Alaska has many businesses producing relatively small quantities of hazardous wastes, legislation must address the issue of currently unregulated disposal of hazardous wastes by small producers and the aggregate effect they have. The federal regulations to be adopted under SB-503 are seriously deficient and do not adequately address the hazardous waste problem in Alaska. And as you are aware, these outdated federal regulations are going to be reauthorized in a much more comprehensive form this year. We see little value in adopting obsolete regulations.

The effect of a substance on the environment and people is the ultimate concern of regulating agencies and businesses alike. Listing substances that are known to be hazardous under federal regulations is a slow bureaucratic process that cannot possibly keep up with the 3000 new substances being introduced each year by industry. And only a limited number of the listed hazardous substances are used by Alaska businesses.

We suggest that the testing procedures be adopted to provide a standard against which all substances can be measured for hazardous properties. Characteristics to test for should include reactivity, ignitability, and corrosivity found in federal regulations and persistence, carcinogenicity, and toxicity found in the proposed ADEC regulations. If a business knows what wastes it produces, it can easily determine if it will be regulated prior to any capital investment. The second-guessing inherent in the listing process would be eliminated.

We also feel that hazardous wastes should be regulated according to their degree of hazard. Why should a producer of a substance that has minimal impact be regulated the same as a producer of a substance that presents

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER, SIERRA CLUB
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ARCTIC AUDUBON SOCIETY • DENALI CITIZENS' COUNCIL • FRIENDS OF THE EARTH
JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY • KENAI AUDUBON SOCIETY
KODIAK AUDUBON SOCIETY • LYNN CANAL CONSERVATION • NORTHERN ALASKA ENVIRONMENTAL CENTER
SITKA CONSERVATION SOCIETY • SOUTHEAST ALASKA CONSERVATION COUNCIL


a serious hazard? The degree of hazard concept would allow the State to direct its' attention where it is needed the most. Procedures could be implemented to re-use waste, treat waste to reduce its' hazardous properties, or contain extremely hazardous waste according to the degree of hazard it presents.

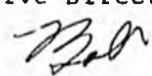
An exclusion for drilling muds used during exploration and development of crude oil is not justified from an environmental standpoint. The decision to regulate should be based on the character of the substance. If drilling muds are truly safe then they will not be regulated. What public policy rationale can possibly justify a blanket exclusion for this industry?

The Alaska Department of Environmental Conservation has already drafted extensive regulations that meet most of Alaska's hazardous waste problems. Senate Bill 503 would specifically prohibit the adoption of DEC's comprehensive program. The four year delay in promulgation of any new regulations, after EPA authorization of the state program, unacceptably undermines a sensible solution to the hazardous waste dilemma in Alaska. A solution already formulated in conjunction with extensive public hearings.

We feel the first step toward a useful hazardous waste program in Alaska is adoption of DEC regulations as a minimum. The Alaska environmental community is seeking to establish a hazardous waste program adequate to protect Alaskans and we are willing to work with you toward that end.

Sincerely,


Jay Nelson
Executive Director


Bob Sizemore
Volunteer Lobbyist

MARICOR

M E M O R A N D U M

To Sam Padgett
From Manager Cargo Services
Date March 30, 1984
Subject Senate Bill No. 503

SENATE BILL # 503

"An act relating to hazardous waste; and providing for an effective date."

Senate Bill 503 calls for amendments to Alaska Statutes, which provide for extremely redundant practices. Although I agree with Section 1, Amendment to AS 11.41, Reckless endangerment with hazardous waste, the remainder of the Bill only calls for administration, enforcement and control which repeat those of the E.P.A. and the D.O.T.

The Environmental Protection Agency has designed regulations to cover packing, labeling, marking and storage of hazardous waste. For example, CFR 40 Part 761.40 thru 761.60 adopts requirements for marking, storage for polychlorinated byphenyls (PCB). If the State of Alaska also adopts regulations for hazardous wastes (PCB is a hazardous waste), it would be nearly impossible to provide more stringent controls than those listed in the CFR 40. Use of specification containers 5, 5B or 17C for PCB's is more than safe and secure for conditions incident to normal transportation. If CFR 40 Regulations are adhered to there is virtually no danger of exposure of the commodity to the environment. The CFR 40 Part 761.65 also provides regulations in order to protect the commodity from contacting the environment during storage and disposal of PCB's.

Under Section 4 of SB 503 addition of A Section (46.03.298) that is only adoption of Federal Laws. Section 4 (c) relates that the State may not adopt regulations that are more stringent than Federal Regulations. If this is so, why, if we are concerned about protecting against release of hazardous waste to the environment, would we adopt less stringent regulations, or ask the shipper and carrier to duplicate requirements already in effect.

Sam Padgett

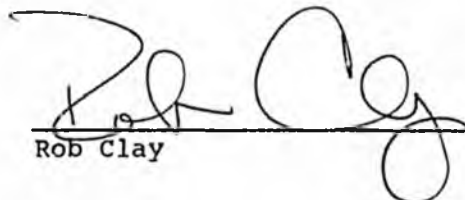
Page 2

Under Section 8 the Bill allows for a municipal to adopt an ordinance consistent with AS 46.03.295 thru 46.03.312 regulating storage and disposal of hazardous wastes. Now we must comply with Federal, State and Municipal Regulations, an impossibility if we are to provide transportation on a timely basis.

Transportation of hazardous wastes is governed by the CRF 49. The addition of State permits, records, labeling, marking and transportation under this Bill will cause an unjustified economic burden on the carrier. As the carrier must follow all Federal Regulations, duplication of State Regulations will force the carrier to pass extra costs to the consumer, or to refuse to transport the commodity, the ramifications to Bush Alaska are obvious.

In summary the extra redundant regulations will adversely effect the residents of Bush Alaska. As a carrier we cannot possibly comply with three sets of rules, possibly conflicting, as well as document all phases of storage and transportation in triplicate without passing a considerable cost on to the consumer.

I have attached a copy of my HB handling procedures, I think you will see the Regulations provide for safety to the environment except in the case of gross negligence.


Rob Clay

RC:bh



ALASKA
PUBLIC HEALTH ASSOCIATION

PO BOX 4 · 1825 ANCHORAGE AK 99509

Alaska Public Health Association

Resolution In Support Of Proposed Adoption Of Hazardous Waste Regulations

Recognizing that Alaska industries and businesses currently generate at least 400 tons per year of hazardous waste as defined by the federal Resource Conservation and Recovery Act (RCRA).

Noting that the federal RCRA regulations do not appear adequate to protect the quality of Alaska's environment and public health;

Noting that the quantities of hazardous waste that is currently not regulated by the federal RCRA regulations (less than 2200 pounds per month per generator) will be disposed of in unsecure disposal sites (i.e. municipal landfills, dumps or the generators property) and that possible exposure to the public and environment cannot be adequately contained at these disposal sites.

Realizing that the proposed Alaska hazardous waste regulations had generally lowered the quantity of hazardous waste that is regulated from 2200 pounds per month to 400 pounds per month per generator;

Recognizing that the Alaska proposed regulations determines a waste to be hazardous using the additional waste characteristics of toxicity, persistence (halogenated hydrocarbons and polycyclic aromatic hydrocarbons) and carcinogenicity, which are currently not in the federal regulations;

Recognizing that the proposed Alaska regulations degree of hazard approach of defining hazardous waste provides a systematic framework for dealing with complex hazardous waste issues;

Recognizing that the near term costs of properly managing waste by the generator is at least 100 times less than long term cost of remedial clean up borne by society as a whole (not taking into account the cost of affecting the public health).

Recognizing that the Alaska State Legislature intended in Chapter 93 SLM 1981 that the Department of Environmental Conservation develop a hazardous waste program to meet the needs of Alaska and to adequately protect its environment in the future;

Urges the Department of Environmental Conservation to adopt without any significant changes the proposed hazardous waste regulations and program.

MEMORANDUM

To Steve

TO: Senator Bettye Farenkamp

FROM: Anita Burke-Reinhart *ABR*

DATE: March 23, 1984

RE: Proposed Hazardous Waste Legislation SB 503

Initially, let me thank you for the opportunity to address my comments to you on the proposed substitute for SB 503.

It is admirable of you and your staff to have taken the effort to comprehensively address the needs of Alaska's hazardous waste management program. Although, I have some strong concerns I would like to share with you regarding this "combination" approach. Hazardous waste management has long been a process of steps, each being as carefully scrutinized for its appropriateness as its predecessor. Whereas the four bills discussed are all relevant and vital to an appropriate waste management framework, they should remain succinct and individually represented throughout the legislative process. I recommend that each of the issues outlined in the combined bill be dealt with on an individual basis.

As per your request I have taken the opportunity to utilize the proposed draft and comment on what we obviously agree to be the major components of the hazardous waste management program best suited to the State of Alaska.

In 1981, the state of Alaska began to address the severity of indiscriminate disposal of hazardous wastes with the passage of SB 29. It recognized that the state could and would better address its needs with a state managed and operated program. It was here that the basic concerns and needs of the program were outlined. This legislation, that you, business and labor, environmentalists, health professionals, the native community and the general public heartily supported, recognized these common concerns:

- 1). hazardous waste is generated in the state of Alaska.
- 2). this generation and lack of disposal alternatives and a management program threaten to endanger human health and the cleanliness of our environment.
- 3). that the state of Alaska must design a program to meet the specific needs of hazardous waste generators in the state, "that will ensure the protection of human health, livestock, wildlife, property, and the environment."

page two

It is my impression that the intent of SB 29 was to meet the specific needs of the generator of hazardous waste in the state of

Alaska. It is self evident that the industrial development and economic forecasts for the growth of this state as well as the environmental structure offer a scenario that is succinctly different from any other location in the lower forty eight or the world. In recognition of this, the Department of Environmental Conservation began to design a program to meet the needs of this diverse and growing state.

During the past three years the Department of Environmental Conservation has drafted an Alaskan approach to the hazardous waste problem we have here in Alaska. The program has successfully met the review of the public, local government and federal government. Oddly enough the program the state has opted for is indeed the preferred approach of the major industrial complexes of the U.S when RCRA was initially drafted (see enclosed article). Yet, it is the same industrial complex that now comes out against such an approach.

It is for the following reasons that I continue to support the proposed state management program over RCRA or its proposed ammendments as the best alternative for the unique situation we face here in Alaska:

- 1). The RCRA approach is one that requires the EPA to identify and list each particular by product that it deems potentially hazardous to the safety of human health and the environment. Although, the regulations were legislated in 1976 it wasn't until 1980, four years later, that the first list of regulated by products were promulgated. This approach cuurrently identifies 368 toxic chemicals and 120 toxic waste streams that must be regulated. Very few of these by products address or identify the unique hazardous by products that are found in Alaska. RCRA does not identify Alaska's problem.
- 2). It was intended by the federal program to add any and all additional by products to the list. Not one addition has been made since the release of the initial list in 1980. The city of Times Beach was contaminated by dioxin, this by product is not on the list.
- 3). Under the Agency's present regulations to be a hazardous waste, a waste must exhibit a characteristic of hazardous waste or be listed by name.
. None of the characteristics of hazardous waste promulgated so far - ignitability, corrosivity, reactivity, or extraction procedure toxicity - identifies wastes on the basis of organic toxicity. In addition, EPA's listing process has been virtually stalled for several years.
- 4). Due to the 2,200 pound exclusion limit set by RCRA, it is estimated by the Office of Technology and Assesment that up to four million metric tons (one billion gallons) of hazardous waste are escaping effective control due to this exemption. This includes a majority of the waste being generated in Alaska and recognizes the impact small quantity generators have on the overall problem.

page three

- 5). If the state were to opt for a program restricted to the mandates of RCRA it would be yet another unnecessary expenditure of state revenues. It makes little sense for the state to take over the program that the Federal Government is required to implement regardless. The state should not take on the additional expense, bureaucracy and duties of a program that is essentially out of their control and dictated by the folks in Washington D.C..

The state management framework outlined by the DEC has designed an approach that will economically and responsibly address the specific needs of the hazardous waste problems we face in Alaska. It is with a professional and educated commitment that I support the proposed state program. Following are some of the major highlights of the program that support my commitment:

- 1). The state program proposes to address the identification of hazardous by the " degree of hazard " they represent to our environment. This approach determines the actual degree of hazard a particular by product, regardless of its name, poses to human health and the environment

. This allows each generator to rate its by product on a scale of quantity generated and the composition of its waste to determine the degree of their individual problem. The state has determined thresholds at which it has been scientifically proven that a by product is harmless. Rather than relying on an outdated and irrelevant

list, the state is allowing each by product to be measured against the standard it has determined to be acceptable. The bioassay system of testing utilized in the state, as an example of one of the identified methods of testing, has been used by the scientific community since the 1930's as an indicator for environmental pollution

and is the method utilized by the EPA to identify new toxicants.

- 2). The state program also includes tests for organic toxicity not addressed in RCRA. The state includes testing for toxicity, persistence, carcinogenicity, ignitability, corrosivity, reactivity as well as a Waste Extraction Procedure characteristic. The EPA and Congressional reports have found that the lack of these testing approaches and the limitation of merely listing a waste have severely undermined the original intent of RCRA.

- 3). The state program also addresses the needs of the small quantity generator

by reducing the limit of quantity exclusion. The state program would regulate the generation of 400 lbs. per month or batch (approximately one 55 gallon drum). Although, the Federal regulations may reduce that criteria to 220 lbs.. The fear that this will place an unnecessarily cumbersome burden on the small quantity generator is not necessarily well founded.

page four

- 3.) cont. Quantity of generation is not the only criteria that determines whether a particular by product is regulated. The toxicity of the waste is also a criteria. As well, the state program has gone one step further and designed a waste management framework for those wastes known as "Moderate Risk Wastes". It is perceived that the framework will have the much needed flexibility that RCRA is lacking for the small generator. The moderate risk wastes can be safely and economically handled within the state and therefore avoid the costly alternative of shipping the waste out of state.
- 4). Finally, the state program serves the needs of the state of Alaska by recognizing the changing pattern of growth that has faced Alaska for the past 25 years. By designing a flexible and manageable program for Alaska we find ourselves with a program that meets the needs of a flexible, growing economy and industrial base.

In addressing the particular mandates of the proposed legislation, Sections four, five and six specifically require that any state managed program be limited to the mandates of the federal RCRA approach and delay the degree of hazard approach for four years. Due to the observations listed above and my extensive background in the management and identification of hazardous waste problems in other states, I must support the removal of any reference to limiting the state program to the mandates of RCRA. I remain committed to the process on line for the state and continue strong support for the proposed state regulations as they are currently drafted.

With reference to the other mandates of the legislation I have several comments and will address them as they pertain to each section of the proposed legislation.

Page 2 and 3, Section 298.2b It is irresponsible for the state to blindly accept responsibility for the payment of testing to determine the toxicity of the waste. I envision the Department being bombarded with waste sample after waste sample, testing everything from household water systems to prank samples. As well, tests are legitimate business expenses that can be written off. Morally, I feel that as a tax payer I do not wish to see the states money, our money, be used for the benefit of a generator that originally made money creating the problem.

Page 5, Section 301

Municipalities already have the home rule provision "given" to them in this section. The remainder of the section limits the Municipality to the provisions of RCRA. It is at the local level that the issue of household hazardous waste production and small business generation has been most effectively addressed. This section eliminates that option for Alaska and severely undermines any plans that current Alaska municipalities have for abating the problem of toxics in their landfills and water systems.

page five

Page 6, Section 309

This section allows for the design and development of regional gathering centers. This is an attractive concept but, I believe it needs a much more in depth approach than that which is outlined here. Currently, the state has no criteria for the transportation, storage or disposal of hazardous waste. As well, a public input and education process should be developed. I suggest that instead of permanent gathering centers that a fiscal support system be designed to institute the DEC's "Spring Clean-Up" on a regional basis and at least four times per year.

PENALTIES I do not think that the intent of SB 498 was correctly transferred in this legislation. This change in Alaska code is vital to any program in the State. I would like to see this explained in greater detail and to have a report of compliance and effectiveness presented by the Department of Law.

Again, let me thank you for this opportunity. May I suggest that rather than scraping three years of hard work and monies spent on the current proposed regulations, we address any problems with the current program as it is implemented and amend it as necessary to meet the ever changing needs of the state. If a particular generator feels that the regulations severely hamper their operations in this state and that an exemption is necessary let us utilize the steps available to address each request individually. As well, let us be reminded that the regulations as they stand allow each generator to exempt themselves from regulation by not producing a hazardous by product or utilizing the available technologies to limit and recycle their production. I feel it is a little extravagant and unnecessary to blast three years of hard work out of the water for political reasons and not address the needs of human safety and environmental protection on a responsible and scientifically supported platform. If we must, let us alter the existing program to meet Alaska's unique needs and not crawl back to the abyss of the Federal bureaucracy.

I look forward to seeing you and continuing to work together to address what is becoming one of the most important pieces of legislation to face the state on the environmental and human safety front.



ALASKA PUBLIC HEALTH ASSOCIATION

P.O. BOX 4 - 1825 ANCHORAGE, AK. 99509

Great public support exists for the State of Alaska to establish a strong, viable program to control toxic substances and hazardous wastes. Current efforts to establish a hazardous waste program through State legislation represent several years of combined work by labor, business, industry, public interest groups, and government agencies. The draft Committee Substitute for Senate Bill 503 by the Resources Committee represents an attempt to combine several related pieces of legislation in a compromise bill. The Alaska Public Health Association has several comments on the work draft dated 3/8/84 that we hope will be helpful in reaching an acceptable compromise version.

1) The inclusion of Section 11.41.260, Reckless Endangerment With Hazardous Waste; and Article 5A, Disposal Facility Site Board, starting with Section 46.03.313, represent the incorporation of parts of SB 498 and SB 450 and should be fully supported, although there appears to be no obvious necessity of combining all three bills.

2) Section 46.03.298 will prevent the State from adopting regulations relating to hazardous wastes that are more stringent than federal regulations. It would seem not to be in the State's best interests to tie State options so restrictively to the cumbersome federal Resource Conservation and Recovery Act of 1976, which is generally held to be ineffective in controlling hazardous waste problems in the lower 48 states.

In recognition of the great opportunity that Alaska has now to prevent the hazardous waste problems that have plagued many of the lower 48 states, Department of Environmental Conservation for the past two years, has been developing regulations under a "degree of hazard" approach. The 1981 proposed Dow-Shell Group Petrochemical Feasibility Study and the subsequent review of that proposal by an interagency task force of State of Alaska Departments highlighted the need for a different approach to controlling hazardous waste in Alaska than other states. In addition, the Alaska Public Health Association convened a special Health Congress to evaluate health hazards and potential risks associated with petrochemical development. Fourteen of the world's most prominent experts in the evaluation of health affects related to major petrochemical industrial development attended, representing a cross-section of environmentalist and industry expertise. Consistent with recommendations made by the Dow-Shell Group scientists and the Interagency State Task Force Report, the experts who participated in the Alaska Public Health Association Health Congress, which included a Moot Science Court, unanimously agreed that the State of Alaska was in a position to develop its legislation to prevent future problems.

The "degree of hazard" approach is consistent with State goals to develop its natural resources, provide industry development, develop jobs and economical benefits, and protect health and the environment. The burdens of adopting fragmented and piecemeal federal regulations with their many loopholes, inordinant bureaucratic inefficiencies, scientific and technologic obsolescence, and excessive costs can be avoided.

Enactment of the proposed Committee Substitute for Senate Bill 503 will stop this degree of hazard approach and lock the State into the federal Resource Conservation and Recovery Act of 1976. By requiring that DEC may not adopt regulations more stringent than federal regulations, the legislation will remove State options to develop a flexible and more reasonable approach to hazardous waste control. It will be difficult under federal regulations to deal with both major industrial development as well as the numerous small hazardous waste generators in the State.

The constant development of new knowledge is enabling ever greater application of efficient, cost-effective technology to hazardous waste control. State regulations should be flexible in order to utilize new technology and minimize impediments to resource development. By tying State regulations to federal regulations, this flexibility will be lost. ALPHA urges that the Committee consider adoption of language which would insure this flexibility to the State by supporting the degree of hazard management approach.

3. There may be an internal conflict in the present draft of the bill between Section 46.03.298, Federal Hazardous Waste Law; Adopted By Reference; and Section 46.03.298, Hazardous Waste Regulations. The first section requires that the Department not adopt regulations more stringent than federal regulations. The second section allows the development of regulations for the management of hazardous waste according to the degree of hazard presented by the waste. Development of regulations according to the degree of hazard should be supported. However, it would appear that these two Sections conflicts with each other as federal regulations do not allow degree of hazard evaluation.

4. Under Section 46.03.298, Hazardous Waste Regulations, subheading (b) states that if a regulation adopted under this section requires testing to determine whether a substance is a hazardous waste, the Department shall provide the testing without charge to the generator of the substance. ALPHA urges the committee to examine this provision with great care. One effective approach to the regulation of hazardous waste has been to place squarely the responsibility on the generator. If the generator must pay for his hazardous wastes, the generator has a strong economic incentive to reduce or eliminate their production.

5. Section 46.03.299, Control of Hazardous Wastes, subheading (c) would prohibit the State from developing new regulations for the control of hazardous waste for four years from the date on which the EPA approves the state hazardous waste program, a process which in itself could take 1-2 years. Subheading (c)(2) again would prohibit the Department from listing as hazardous a waste that has not been listed by the U.S. EPA unless the commissioner first determines that the waste is hazardous as defined in this chapter. It is unclear by reading the chapter how the Commissioner can make a determination that a waste is hazardous. In addition, this Section would appear to conflict with Section 46.03.298 subheading (c) that would prohibit the Department from adopting regulations more stringent than federal regulations. A four year delay seems unnecessary in view of widespread public support and a development process that has been going on for two years already.

6. Section 46.03.301, Municipal Regulation, appears to prohibit local municipalities or local governmental units from adopting hazardous waste programs more restrictive than State legislation. Local municipalities may find themselves unable to respond to hazardous waste problems particularly from small generators, if restricted to programs no more stringent than federal regulations adopted under the Resource Conservation and Recovery Act of 1976, and restrictively adopted by this legislation under Section 46.03.298 (c).

7. Section 46.03.311, Public Records, Section (a) allows the Commissioner to treat records, reports, permits, applications, or information as confidential. However, the wording is unclear as to whether or not an entire document would be confidential if only a part of the document was determined to be proprietary information; or if only the proprietary information can be treated as confidential. It would seem desirable that the Commissioner should be able to make a determination that only information which is proprietary be kept confidential, not the whole report.

8. Section 46.03.306, Gathering Centers, provides that a generator of hazardous waste may not be charged for deposits of less than 2,200 pounds per month at a gathering center. This provision would again appear to remove responsibility from the generators to reduce or to eliminate the production of hazardous waste material. ALPHA urges that the amount be lowered substantially or that this provision be eliminated altogether.

The Dow-Shell Group industry representatives; experts who attended the Alaska Public Health Association Health Congress in May 1981; experts in various State and federal, agencies; and private organizations all have stated that modern technology exists to control hazardous waste problems. The State can develop legislation that will allow profitable economic development of State resources and prevent future hazardous waste problems. Federal legislation has proved to be ineffective in dealing with many hazardous waste problems occurring nationally. ALPHA urges the committee to avoid restricting the options of State government by tying State hazardous waste legislation restrictively to the Resource and Recovery Act of 1976.

In summary the Committee Substitute for Senate Bill 503 would appear to be a major retreat from the efforts conducted during the past two and one-half years to establish a comprehensive hazardous waste program in Alaska. Alaska currently does not produce large volumes of hazardous waste. Therefore, a great opportunity exists to prevent future problems with hazardous waste by establishing a comprehensive and flexible program. This opportunity seems to be recognized by the public, which has shown past strong support for the development of a comprehensive program for hazardous waste control and management in the State of Alaska.



Official Business

Alaska State Legislature

Senate

RESOURCES COMMITTEE

MEMORANDUM

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senate Resources Committee Members

FROM: Jim Palmer
Committee Staff

DATE: January 26, 1981

RE: SB 29 "An Act Relating to Nuclear Materials"

The Chairman has called for a hearing on SB 29 "An Act Relating to Nuclear Materials" at 1:30 PM on Wednesday, January 28. This measure was introduced by Senator Kerttula and was referred to the Resources and Judiciary Committees.

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

DEPT. OF ENVIRONMENTAL CONSERVATION

copy
MAR 18 1980

W. S. HAMMOND, GOVERNOR

10 - 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. Leming Cowles

C. Leming Cowles
Deputy Commissioner

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

A. 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 Pitigun 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 instate, 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 wastes 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 incapacitating reversible illness or propose a substantial present or potential hazard to human health or environment when improperly disposed."

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

Date: 17 Mar 80

Approved by: Helen D. Beirne
 Helen D. Beirne
 Commissioner

Date: 3/20/80

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,

*/ 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

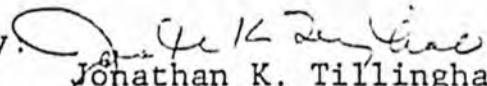
April 15, 1980
Page 4.

___ 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

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

JAY S. HAMMOND, Governor

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 18 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.

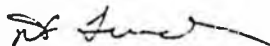
Such phrasing would be consistent with the continued use of low level nuclear materials for medical, scientific or educational purposes and would eliminate the need for defining "high level nuclear waste".

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

DEPT. OF ENVIRONMENTAL CONSERVATION

JAY S. HAMMOND, GOVERNOR

POUCH 0 - JUNEAU 99811

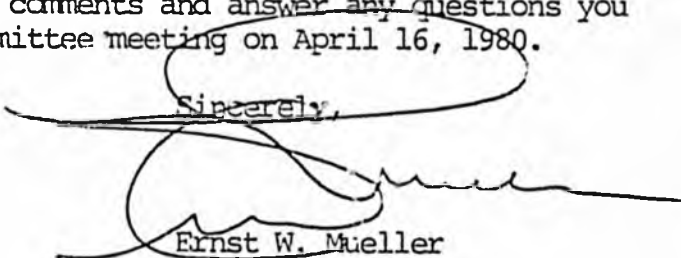
April 15, 1980

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
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