ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 8672

2876 SRES SB 503

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Table 4. Summary of Bioassay Results from Mid-Atlantic Bioassay Program[a]

Type of Drilling Mud	96-hr LC_{50} in ppm for Mysid Shrimp[b] Liquid Phase	Susp. Partic. Phase	Percent Survival of Hard Shell Clams Solid Phase (Controls)
1. Potassium/Polymer Mud	66,000[c] 58,000[d]	25,000[c] 70,900[d]	90(99)[c] 88(100)[d]
2. Lignosulfonate Seawater Mud	283,500 880,000	53,200 870,000	83(100)[e] 70(94)[e]
3. Lime Mud	393,000 >1,000,000	66,000 860,000	100(100) 94(100)
4. Non-dispersed Mud	>1,000,000 >1,000,000	>1,000,000 >1,000,000	100(100) 100(100)
5. Seawater Spud Mud	>1,000,000 >1,000,000	>1,000,000 >1,000,000	100(100) 100(100)
6. Seawater/Freshwater Gel Mud	>1,000,000 >1,000,000	>1,000,000 >1,000,000	100(100) 100(100)
7. Lightly Treated Lignosulfonate Freshwater/Seawater Mud	>1,000,000 >1,000,000	>1,000,000 >1,000,000	97(98) 100(100)
8. Lignosulfonate Freshwater Mud	>1,000,000 >1,000,000	506,000 >1,000,000	99(100) 99(100)

a-- Physical phases of drilling muds were extracted from a 1:4 mixture by volume of mud and syntnetic or natural seawater. Test organism for the liquid and suspended particulate phases was the mysid shrimp (Mysidopsis bahia), and for the solid phase was the hard shell clam (Mercenaria mercenaria). Protocol for testing was established by EPA Region II in conjunction with the Mid-Atlantic Operators.

b-- LC_{50} values are expressed as ppm and must be multiplied by 0.20 to obtained values for drilling mud used to formulate phases.

c-- These values were determined by Energy Resources Co., Cambridge, Massachusetts, 02138.

d-- These values were determined by Normandeau Associates, Inc., Bedford, New Hampshire.

e-- Statistically significant differences ($\alpha = 0.05$) in survival between clams exposed to the solids phase of mud and control sediment.

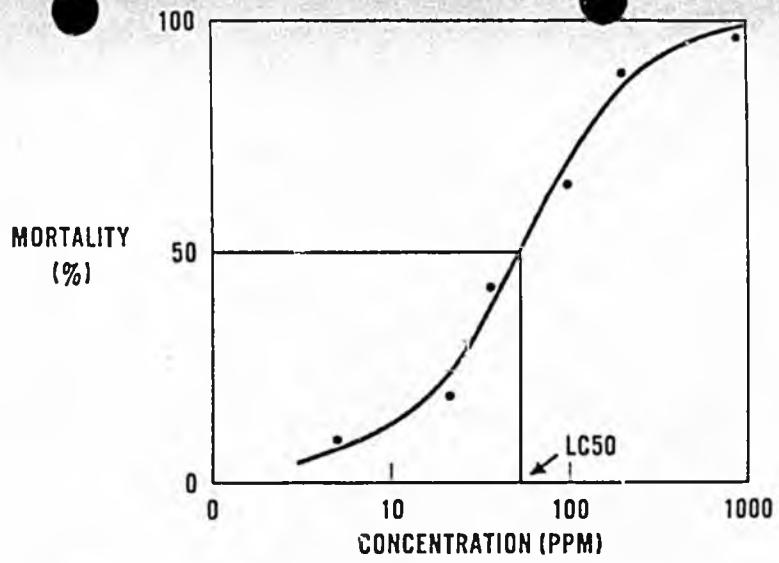

Fig. 1— MORTALITY (%) VS. CONCENTRATION (PPM)

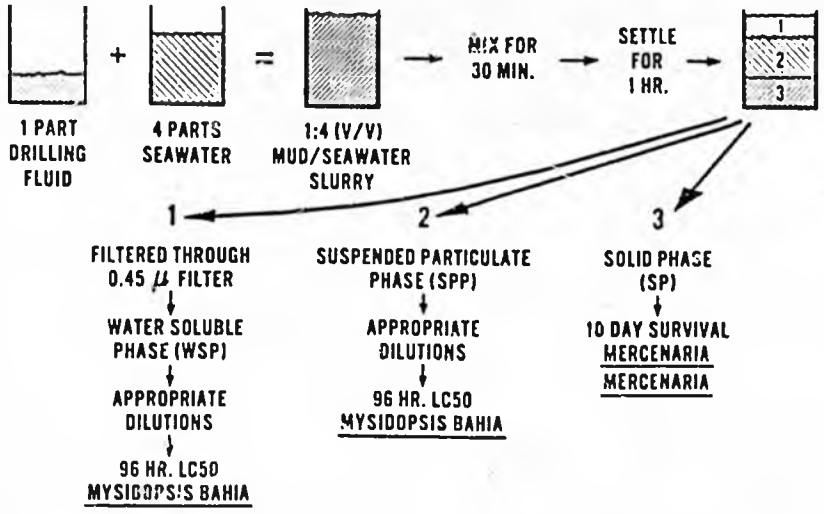

Fig 2— SCHEMATIC OF THREE PHASE BIOASSAY FOR DRILLING FLUIDS

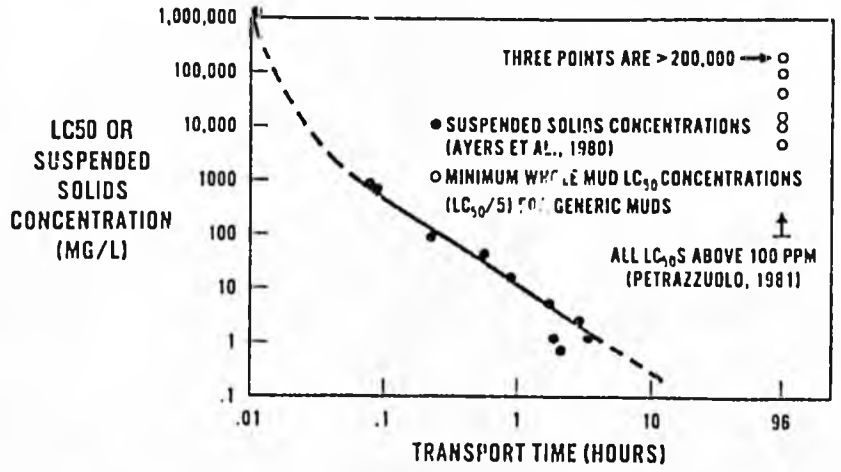

Fig 3— COMPARISON OF SUSPENDED SOLIDS CONCENTRATIONS (MEASURED DURING A HIGH RATE DISCHARGE STUDY - 1000 BBL/HR) AND 96-HOUR LC_{50}S

News Release

National Conference of State Legislatures

FOR IMMEDIATE RELEASE
April 26, 1982

CONTACT: Andrea Kailo
202/737-7004

EPA DELAYS IN WRITING REGS HAMPER STATE HAZARDOUS WASTE MANAGEMENT

Washington, D.C. -- State legislators today told members of a Senate panel that delays and modifications by the Environmental Protection Agency (EPA) in the promulgation of hazardous waste regulations are beginning to have major impacts on state hazardous waste management programs.

Testifying on behalf of the National Conference of State Legislatures (NCSL), Colorado Senate President Fred Anderson and Massachusetts Senator Carol Amick urged members of the Subcommittee on Environmental Pollution, now considering reauthorization of the Resource Conservation and Recovery Act (RCRA), to ensure that EPA develops a strong and technically sound federal program.

"While NCSL firmly believes that states should continue to have primary responsibility for hazardous waste management," Anderson said, "states find themselves highly dependent upon the federal government to complete technical studies and to promulgate hazardous waste management regulations which they are expected to use to frame state programs."

Although the states have responded to RCRA's requirements by enacting legislation consistent with the Act's objectives, the Colorado lawmaker observed that "EPA's delays and, of late, change of mind about promulgating regulations has prompted a 'wait and see' attitude among many state officials."

Citing problems encountered in his own state, Anderson explained that the Colorado legislature in 1980 updated existing solid waste siting legislation to include hazardous waste. "One of our main premises," the Senator observed, "was that an effective and comprehensive federal program existed." Since then, however

-more-

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EPA's delays and changes have not only raised questions about the state's autho. to enact rules, but have also altered parts of the federal program so that they no longer adequate to meet Colorado's goals.

Besides the effect on establishing waste management programs, "the states' success in siting new facilities will be in large part dependent on the extent to which the federal government aggressively implements the provisions of RCRA and the 'Superfund,'" Amick pointed out.

Noting that 25 states have enacted new siting statutes, the Massachusetts legislator asserted that "without a strong federal presence, state efforts to site new facilities may be severely hampered."

Amick suggested three areas in which to reinforce "the appropriate federal role in hazardous waste facility siting:

- Assessment of waste generation - "While states are devoting their dwindling staff and financial resources to conducting such assessments," the lawmaker said, "EPA has actually taken actions which will impede the states' work by not requiring hazardous waste generators to submit annual reports."
- Federal assistance for hazardous waste siting - States not only face the possible curtailment of funds for solid waste programs and a reduced funding level for hazardous waste management, but also an EPA decision to prohibit use of the remaining hazardous waste grants for solid waste management and facility siting, Amick explained.
- Implementation of RCRA - "Without a strong federal hazardous waste management program, states will experience serious problems in attempting to site new hazardous waste facilities, for the federal program serves in every instance as the underpinning for state programs," the Senator concluded.

The National Conference of State Legislatures is headquartered in Denver, Colorado, and has an Office of State-Federal Relations in Washington, D.C. As the official representative of the country's 7,500 state lawmakers and their staffs, it works to improve the quality and effectiveness of state legislatures, lobbies on their behalf at the federal level and fosters interstate communication and cooperation.

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11/19

HAZARDOUS WASTE UPDATE

Presented to the National Conference of State Legislatures
Science & Technology Committee, AOL
Oklahoma City
November 18 and 19, 1982

Recently, federal and state governments have been actively addressing the issue of hazardous waste. Presented below is a summary of recent activity on the federal and state level.

Federal Activity

The implementation of the Resources Conservation and Recovery Act of 1976 (RCRA) has been the subject of federal activity for the last six years. On July 26, 1982 (47 Fed. Reg. 32273) the U.S. Environmental Protection Agency (EPA) issued standards applicable to owners and operators of hazardous waste, treatment, storage and disposal facilities. These regulations contained the long-awaited permitting standards for land disposal facilities. These regulations apply to all (existing and new) landfills, surface impoundments, waste piles and land treatment units. The regulations consist primarily of two sets of performance standards. One is a set of design and operating standards for each of the four types of units mentioned above. The second is a single set of groundwater monitoring and response requirements.

The design and operating standards require use of liners to prevent leaching of contaminants. Landfills and piles are also required to have leachate collection and removal systems. Existing units are exempt from liner requirements.

The groundwater protection requirements establish a three-stage program to detect, evaluate, and if necessary, correct groundwater contamination during the active life of the unit plus a compliance period designated in the permit.

The first stage of the groundwater monitoring and response program is a detection monitoring program that requires installation of a monitoring system. The second stage is a compliance monitoring program that tracks the migration of hazardous constituents. The results of this monitoring system are compared against a groundwater protection standard. The third stage is a remedial program that is activated if the groundwater protection standard is violated.

These permit standards were the final component of the federal program necessary to start issuing states final authorization to operate

a federally approved RCRA program. Because a state may have interim authorization for two years after the effective date of these regulations, all states that intend to assume primacy must have received final authorization by January, 1985.

RCRA is currently up for reauthorization. A version of this bill passed the U.S. House of Representatives in September. (Cong. Rec. Vol. 128 No. 117 H. 6745, September 8, 1982). The Senate will consider their version of the bill during the lameduck session.

H.R. 6307, which has passed the House, amends RCRA by establishing a number of requirements that are stricter than current law. These amendments:

- Expand RCRA coverage by significantly reducing the "small generator" exemption from 1000/kilograms/month to 100 kilograms/month. This amendment would allow EPA to establish special regulations for those generators who produce between 100 and 1000 kgs/month. 65-70% produced by small generators

- Restrict the disposal of hazardous waste liquids in landfills and the injection of hazardous wastes into groundwater. cumulative effect

- Requires EPA to regulate industrial boilers that burn hazardous waste for energy recovery. ½ of haz. waste $16,000 annually cost per facility

- Requires permits for facility expansions of more than 10%. new permit or modified permit

- Requires EPA to study the types and quantities of hazardous waste now being discharged into public sewer systems. Also requires study of those types of hazardous wastes that are not suitable for disposal in landfills.

- Establishes a National Groundwater Commission to assess the impact of hazardous and solid waste on groundwater and determine the need for a national policy.

Amendments being considered by the Senate Environment and Public Works Committee include:

30 states have incentives for alternatives

- Prohibition of the land disposal of certain wastes if land disposal is not protective of human health and environment.

- The EPA must submit to Congress within two years a study characterizing the generators of hazardous waste in quantities less than 1000 kg/month. Within three years the EPA must set standards for wastes generated in quantities less than 1000 kg/month.

- Establish a program requiring mandatory inspection of hazardous waste facilities.

- Notification to EPA by facilities that blend hazardous waste to be used as a fuel as well as facilities that burn hazardous waste. The EPA must set standards for these facilities.

moving very slow

Another federal hazardous waste issue is implementation of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). Actual cleanup of hazardous waste sites has begun in some states and negotiations between federal and state governments for the cleanup of sites is underway in numerous states. Additionally, the CERCLA mandated list of 400 priority sites is scheduled to be released in December 1982.

$1.6 billion

CERCLA, among other things, requires that a study group be established to examine injuries and damages from hazardous waste as well as analyze and make recommendations on the legal remedies for these damages. The group's recommendations have great impact upon the states. The study group found that the present system for helping toxic pollution victims is inadequate. The group found that because of the complex nature of toxics litigation and the small dollar sums involved, many victims would not be compensated. Three major barriers to recovery that the group found were statutes of limitations, proof of causation, and apportionment of damages among multiple defendants. The group recommended a two-tiered approach to compensation. The first would be an administrative compensation remedy much like Workmen's Compensation boards that does not require a showing of fault. The second would keep intact existing state tort law, while incorporating recommendations to remove the barriers mentioned above. These recommendations include: establishing statutory strict liability for hazardous waste activities; changing statutes of limitations; and establish joint and several liability.

A number of criticisms of the report have surfaced. They include:

Clean up
moving very slow

- o problems inherent in complex litigation involving small sums are not unique to toxics litigation and therefore there is no need for special rules for this type of case;

- o a two-tiered approach that allows a party to recover in both an administrative proceeding and a tort action may lead to abuses;

- o liberalization of the rules of evidence to aid in recovery would be unfair to all parties;

- o the lack of justification for financing a compensation fund through fees; and

- o the unnecessary creation of large transaction costs and additional bureaucracy on the state and federal levels.

State Activity

A recent survey by NCSL indicates that there was a large amount of hazardous waste activity during the 1981 and 1982 state legislative sessions. State legislation prior to 1981 had focused on creating basic enabling legislation for a hazardous waste program. These programs often enabled the state agency to assume primacy to operate the federal hazardous waste program. Since 1980, however, many states have refined their legislation to respond to specific problems that have arisen during implementation of the basic hazardous waste program.

One area that has received attention is development of comprehensive procedures for siting new hazardous waste treatment, storage and disposal facilities. Recognizing that public opposition to the creation of new facilities may stymie efforts to develop safe hazardous waste management options, twenty-eight states have developed siting procedures. These procedures emphasize public involvement and acceptance of new facilities rather than overriding public concerns.

Another area of legislative concern is how to address past inadequate disposal practices. Discovery of abandoned hazardous waste sites or inactive sites has drawn attention to the dangers they pose to human health and the environment. CERCLA, which was discussed earlier, provides some money to remedy the most dangerous of these sites. In testimony before Congress, EPA officials have said that CERCLA funds

will address only 170 sites. At these sites CERCLA requires that states provide a share of the cleanup cost as well as the entire cost of long-term operation and maintenance. The state share ranges from 10 percent at privately owned sites to at least 50 percent at publicly owned sites. Thus, states face political and financial demands to share in the costs of cleaning up CERCLA sites as well as cleaning up sites not addressed by CERCLA.

The NCSL survey found that states are financing this effort in a variety of ways. Possible financing techniques include general fund appropriations, bond issues, and taxing systems. Of the 31 states with some type of funding mechanism for cleanup, 19 are funded in part through fees on either the generator of hazardous waste or the owner/operator of the disposal facility, or both.

One potential problem with state fee systems is a preemption provision in Section 114(c) of CERCLA. This section prohibits the states from requiring any person "to contribute to any fund, the purpose of which is to pay compensation for claims for any costs of response or damages or claims which may be compensated" under CERCLA. Despite a favorable decision in the New Jersey Tax Court regarding the New Jersey Spill Compensation and Control Act (Exxon Corp. et al. v. Hunt et al., Docket Nos. SC303A-81, SC319A-81TC; Appealed May 7, 1982 N.J. Super. Ct. App. Div. A-3913-81T1), the legality of other states' funds are still in question. States have responded by simply requiring the state fund to be used in a manner not inconsistent with CERCLA. Another approach is to limit state funds to those uses not actually compensated for by CERCLA and/or for the cost-sharing requirements set up by CERCLA.

Other areas that have received legislative attention recently, are policies that encourage alternatives to land disposal of hazardous waste, laws that protect employees from dangerous substances in the workplace, and statutes that promote the safe handling and transport of hazardous materials.

At a recent workshop co-sponsored by NCSL, a number of hazardous materials transportation issues were identified by workshop participants. These issues include:

- lack of coordinated and effective emergency response planning and execution;
- lack of effective education and training for all parties involved in transporting hazardous materials;
- failure to adequately fund federal, state and local programs;

- poor compliance and enforcement procedures; and

- inability to coordinate state, federal and local hazardous materials regulations due to their number, complexity and format.

It is likely that during the next legislative session transportation issues as well as the others described above will undergo legislative consideration. For more information on this subject, contact Jon Steeler in the Denver office.

Kentucky 300 incidents past year
50% of trucks have some sort of safety defect.

MEMO

TO: [illegible]tye

FROM: Jim

RE: Hazardous Waste Regulations

DATE: March 3, 1983

BASIC ISSUE: Whether or not the Department of Environmental Conservation's regulations on hazardous waste are in accord with the statutes and intent of the Legislature.

BACKGROUND: In 1976, the Resource Conservation and Recovery Act (RCRA) was passed by the United States Congress. It places responsibility for controlling hazardous wastes on the Environmental Protection Agency. Individual states may take over this responsibility if they establish an approved hazardous waste program.

In order for the state to administer this program, the state must establish a hazardous waste program that equals or exceeds requirements established by EPA.

The main purpose of the 1980 legislation passed by the Alaska State Legislature was to allow the State of Alaska to qualify for interim authorization to regulate hazardous wastes.

A specific amendment was proposed and accepted by the Legislature which stated that the State's program shall be consistent with and substantially ecuivalent to the Federal Conservation and Recovery Act of 1976.

This language was inserted for two reasons: (1) to insure that the State's program would qualify for interim authorization from EPA and (2) to make sure the Department of Environmental Conservation did not go beyond the intent of the federal law.

Federal regulations take the approach of listing various substances. The State has taken the approach of controlling substances by their degree of toxicity, persistence and cancer causing potential. The department's rational for this approach was the mere listing of substances did not apply to the Alaskan situation.

In May, 1979, the U.S. Senate's Committee on Environment and Public Works issued a report to accompany legislation amending the Resource Conservation and Recovery Act. The committee report clearly stated that an "extensive regulatory program proposed by the Agency (EPA) could have a significant

economic impact on domestic oil and gas exploration and production activities. Therefore, regulations on these materials should not be promulgated until further information is developed to determine whether a sufficient degree of hazard exists to warrant additional regulations and whether existing State and Federal programs adequately control such hazards."

By trying to include drilling muds and fluids under the scope of the DEC regulations, they are violating the intent of the legislature when they stated that the regulations should be "consistent with and substantially equivalent to the Federal Conservation and Recovery Act of 1976."

Questions:

1. How do you interpret the language in the statute, "the state's program shall be consistent with and substantially equivalent to the Federal Conservation and Recovery Act of 1976?"

2. Are you familiar with the amendments to the Federal Conservation and Recovery Act done by the Senate Environment and Public Works Committee? Will these amendments affect your efforts in writing state regulations on hazardous waste?

3. Has your staff investigated the legislative intent of the Hazardous Waste statutes as enacted in 1981?

4. Would additional legislation clarifying the intent of the legislature be helpful to the Department?

5. What is the rational of the Department in possibly including drilling muds and fluids when the federal law explicitly excludes them until further information is gathered on their properties?

AMENDING THE SOLID WASTE DISPOSAL ACT

MAY 15 (legislative day, APRIL 9), 1979.—Ordered to be printed

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Mr. RANDOLPH, from the Committee on Environment and Public Works, submitted the following

REPORT

[To accompany S. 1156]

The Committee on Environment and Public Works, reports on original bill (S. 1156), to amend and reauthorize the Solid Waste Disposal Act and recommends that the bill do pass.

GENERAL STATEMENT

The disposal of wastes, especially hazardous wastes, is a worsening national problem. This is becoming only too apparent as the Love Canal story, and others like it, unfold. But the disposal of highly toxic waste is by no means the only serious waste disposal problem facing the Nation. As our population grows, so does the volume of solid waste. But this same growth in population is using land once distant from populated areas, making it increasingly difficult to find appropriate disposal sites.

The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, requires the Environmental Protection Agency to issue and enforce regulations governing the disposal of various solid wastes and hazardous wastes. In addition, the Act provides assistance to States, municipalities, and regional authorities to aid them in planning and managing disposal facilities which meet the standards of the Act.

Further, the Act sets standards for government procurement to encourage the purchase of recycled materials in order to decrease the volumes of waste streams and to make maximum use of recycled materials. In addition, the Act gives the Commerce Department authority to develop specifications and to promote markets for recycled materials and for exchange of valued materials which might otherwise be discarded as waste.

The reported bill, the "Solid Waste Disposal Act Amendments of 1979", authorized appropriations for the Environmental Protection Agency and the Department of Commerce to carry out the purposes of the Solid Waste Disposal Act. In addition, the bill as reported contains several amendments which constitute refinements or minor modifications of the statute or are perfecting in nature. The legislation essentially reauthorizes the existing program conducted by the Environmental Protection Agency. There are no new program directions other than increased authorizations for hazardous waste control.

Several amendments with significant policy implications are included in the bill, however, to bring the implementation of the Act closer to the original intent of the Congress.

Section-by-Section Summary

SOLID WASTE DISPOSAL ACT AMENDMENTS OF 1979

Section 2 amends two definitions. Paragraph (14) is amended to eliminate the existence of two definitions for the term "open dump" in the act by making use of the definition in section 4005(a). Paragraph (19 is amended to exclude those materials known as "home scrap" from the definition of recovered materials. Because this type of scrap is generated during the manufacturing process and normally is returned to the process during production, there is no need to establish incentives to recycle.

Section 3 amends section 2002(a) to allow the Administrator to delegate to other agencies the power to enforce solid waste disposal act regulations. This avoids duplication of compliance efforts.

Section 4 revises section 2006(b) and (c) to provide greater administrative flexibility in allocating funds while retaining and emphasis on technical assistance to States and local governments, and on funding for hazardous waste control.

Section 4(b) adds a new section 2006(d) requiring a minimum of 25 percent of the funds appropriated under the Solid Waste Disposal Act, up to the authorization limits in section 4008(a)(1), to be used for support of State and local solid waste planning and management activities in accordance with subtitle D. This, together with the annual increases in authorizations under section 4008(a)(1), manifests the Committee's strong intention that adequate support be provided for the foreseeable future for the local and State agencies that must carry out this Act. In addition, it is important that a significant portion of these funds be available to local governments and regional authorities. The so-called urban resource recovery program under section 4008 (a)(2) is not sufficient to meet the solid waste management planning needs of local governments.

Section 5 amends section 3001(b) to suspend subtitle C regulation with respect to drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas. This provision is discussed in detail later in this report.

tains a companion amendment requiring that court action on individual permits or on approval of State programs be held in the Federal circuit court for the circuit in which the affected party lives or does business or the State is located.

Section 17 gives the Administrator authority to subpoena records and compel testimony of witnesses in enforcement actions under the Solid Waste Disposal Act. This is drawn from similar authority in the Clean Air and Clean Water Acts.

Section 18 adds to section 8002 a special study of the degree of hazard and adequacy of existing regulatory programs associated with drilling fluids produced waters and other oil and gas exploration and production wastes. This study is discussed in detail later in this report.

Section 19 corrects a flaw in a reference in section 3(b) of the resource Conservation and Recovery Act.

Section 20 contains the authorizations for the Solid Waste Disposal Act.

EPA AUTHORIZATIONS

Section	Approved 1979 authorization level	Recommended level 1980	1981	1982
3011; Grants to States for implementation of hazardous waste program	25	30	35	40
4008 (a)(1); Grants for development and implementation of subtitle D solid waste management plans	40	20	25	30
4003 (a)(2); Grants to States and local governments for solid and hazardous waste management, resource recovery, resource conservation	15	13.95	15	15
4008 (e)(2); Grants to special communities	2.5	0	0	0
4009; Grants to rural communities	25	15	15	15
8002 (j)(5); Resource Conservation Committee	2	[1] 0	0	0
8002 (m); Special studies	8	[2] 0	0	0
2006; General authorization	42	[3] 80	80	80
Total	160.25	158.95	170	180
Department of Commerce authorization (under sec. 5002)		5	5	5
Total (DOC and EPA)		163.95	175	185

[1] Funds to support this committee have been taken from other categories.
[2] EPA indicates that all studies complete or currently under contract.
[3] The figure reflects budget amendment under review at OMB. Amendment includes $50,000,000 for 1st phase of abandoned/inactive site "discovery" and "investigation" activity and $10,000,000 for studies on "degree of hazard" in waste classification.

Drilling Fluids, Produced Waters, and Other Wastes Associated with the Exploration, Development and Production of Crude Oil or Natural Gas

The Committee considered recently proposed Environmental Protection Agency regulations for drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas implementing the Resource Conservation and Recovery Act. The Committee determined that the extensive regulatory program proposed by the Agency could have a significant economic impact on domestic oil and gas exploration and production activities. Therefore, regulations on these materials should not be promulgated until further information is developed to determine whether a sufficient degree of hazard exists to warrant additional regulations and whether existing State or Federal programs adequately control such hazards. The Act was amended accordingly.

Under the amendment, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas are subjected only to existing State or Federal regulatory programs in lieu of Subtitle C of the Resource Conservation and Recovery Act. This suspension of Subtitle C is applicable provided that existing State or Federal programs—for waste disposal sites that are to be closed—provide for the following information:

1. A mechanism to establish the location of such disposal sites, using surveying, platting, or other measures so as to assure that the site can be located in the future. For disposal sites for drilling fluids and associated wastes that are less than 200 lineal feet from the associated well, this requirement will not apply. The Committee's intent with this provision is that only those disposal sites which are not in close proximity to the associated well need to be specifically identified or located.

2. A chemical and physical analysis of a produced water and a composition of a drilling fluid suspected to contain a hazardous material with such information to be required prior to closure. For drilling fluids this composition could be obtained by determining the material used in the drilling operation from operating records. These two items will become part of the public record as specified in the applicable State or Federal program. These two items were included in the event corrective action would be necessary if the study, mandated in the amendment, recommended such action and Congress agreed that such action was needed. In the event that existing State or Federal programs do not contain or cannot be modified to include these two items, the Environmental Protection Agency should implement only the abovedescribed minimal requirements to obtain this information. However, the Committee expects the Environmental Protection Agency to fully utilize the existing State or Federal programs before developing its own program. Further, the Committee expects that existing State or Federal programs will be given a sufficient period of time to be modified in order to incorporate these requirements before the Environmental Protection Agency develops its own program.

The suspension of Subtitle C applies for at least 24 months and until the Congress acts affirmatively to endorse any proposed Environmental Protection Agency regulations. The Committee envisions the following process. The Environmental Protection Agency will conduct a 24 month study. Upon completion of the study the Environmental Protection Agency will submit the study and its findings to the jurisdictional Committees of Congress and begin a six month public involvement process under which the study and its conclusions will be analyzed. At the conclusion of this period the Administrator will decide whether hazardous waste regulations appear necessary, basing his decision on the study and the public involvement process. His decision, his justification, and any proposed regulations, if necessary, will be submitted to both Houses of Congress. The regulations will become effective only if each House acts, within 120 calendar days of continuous session of Congress, passing a resolution favoring such regulations.

The Act is also amended to define the study that the Environmental Protection Agency is mandated to execute. The thrust of the study is to determine the degree of hazard associated with these wastes, the adequacy of existing State and Federal regulatory programs to control and mitigate any hazards, potential changes to regulatory programs to improve control and mitigation of hazards; and the cost and impact of those changes on the exploration, development, and production of crude oil and natural gas. The Committee expects the Environmental Protection Agency to cooperate with and utilize the expertise of industry and State and Federal regulatory agencies, such as the Texas Railroad Commission and the United States Geological Survey, in executing this study. The Committee is requiring this study in order to assure that it will have an effective and sufficient factual basis upon which Congress can make any necessary decisions.

Rollcall Votes

Section 133 of the Legislative Reorganization Act of 1970 and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

There were two rollcall votes during the Committee's consideration of the bill. The results were announced at the time of the votes. The Committee ordered the bill reported by unanimous voice vote.

Evaluation of Regulatory Impacts

In compliance with paragraph 5 of Rule XXIX of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill:

The reported bill reduces the regulatory authority provided by existing law by suspending implementation of hazardous waste regulations for certain wastes, as discussed earlier in this report.

The bill has no impact on the personal privacy of individuals.

Cost of Legislation

Section 252(a)(1) of the Legislative Reorganization Act of 1970 requires publication in the report of the Committee's estimate of the costs of the reported legislation, together with estimates prepared by any Federal agency. The President's request for the programs under this legislation includes $62.146 million in the President's request to Congress, plus an additional sum of $92.0 million which was anticipated as this report was filed, for a total of $154.1 million.

This bill provides authorizations of $158.95 million for fiscal year 1980, $170 million for fiscal year 1981, and $180 million for fiscal year 1982.

Section 403 of the Congressional Budget and Impoundment requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office. That report follows:

Alaska State Legislature

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CHAIRMAN
ROBERT H. ZIEGLER, SR.
VICE-CHAIRMAN
DICK ELIASON - PAUL FISCHER
VIC FISCHER - BOB MULCAHY
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Senate

Committee on Resources

February 15, 1983

Mr. Richard Neve, Commissioner
Department of Environmental Conservation
Pouch O
Juneau, Alaska 99811

Dear Dick:

I just wanted to reiterate some of the points which we discussed at our meeting on February 3 regarding the Department's draft hazardous waste regulations.

As I stated in the meeting, I am most concerned about the treatment of drilling muds in the regulations. I again want to let you know that the Committee is very interested in exercising its authorities under AS 44.62.190 and 24.37.010 to review the proposed regulations at least 30 days before adoption.

Please continue to keep posted on your Department's plans or intended actions on this and other pertinant matters.

With warm regards.

Sincerely,

Bettye Fahrenkamp
Chairman

BF:rg

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M

June 22, 1981

SUBJECT: FCCSSB 29 -- Second draft

TO: Senator Bettye Fahrenkamp
Attn: Jim Palmer

FROM: John B. Chenoweth
Legislative Counsel

For the record, I want to observe that the handling of the definition and classification of "hazardous waste" in this version seems muddled. In AS 46.03.299(b), I wonder what "substantially equivalent to" the federal act adds; it certainly is incorrect gramatically. More significantly, a state hazardous waste has to meet the requirement of AS 46.-03.299(b)(2) (that is, it must appear on the federal list or meet the definition of hazardous waste under AS 46.03.900(31)). Accordingly, in AS 46.03.299(b)(2) it might be clearer if "(within the meaning of AS 46.03.900(31))" were omitted and the phrase added at the end of that paragraph such as ". . . waste is defined by the commissioner as hazardous under AS 46.03.900(31)."

JBC:ljb

Enclosure

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

POSITION STATEMENT ON HAZARDOUS WASTES AND THE NEED FOR ITS CONTROL IN ALASKA

May, 1981

For much of this legislative session, there have been discussions and hearings on the need for hazardous waste control in the state. Several bills are being considered at this time, and the outcome of these bills may have a profound effect on Alaska's future and well being of its environmental quality. The Department of Environmental Conservation strongly supports the passage of a hazardous waste bill this session, which is necessary if hazardous wastes are to be kept as a minimal environmental problem in the state.

PRESENT SITUATION

1. Up to now there has been little state effort in the control of hazardous wastes in Alaska. Until last year, the Department had no one working full time in this area. However, concerns from the Alaskan public and from industry have been raised over special waste disposal sites, military wastes, PCB disposal, and varying amounts of a wide variety of hazardous substances in common use. This trend is expected to accelerate as the Alaskan public becomes more aware of hazardous waste problems.

   As examples, a recent inventory completed by the department indicates that there are over 520,000 gallons of PCB's (polychlorinated-biphenols) awaiting disposal. This is a highly toxic substance which is prohibitively expensive to ship out of state for disposal. In addition, there are indications that over 3,900 tons of other hazardous wastes may be generated per year in Alaska. However, only 2-4 tons (or 23 shipments) over the past two years have been disposed of in the closest approved disposal site in Oregon. Also, there may be as much as 21,000 tons of military wastes generated per year, in addition to a wide variety of wastes being stored and awaiting disposal by the military (3,700 tons) and unknown amounts by industry and the Alaskan public. Finally, there are several disposal sites which have been used in previous years which need further evaluation, to assure that they are not creating undesirable environmental effects from the hazardous wastes desposited there.

2. There is no facility available in the state which can adequately dispose of hazardous wastes, nor are there any storage facilities in which small quantities of wastes may be stored prior to shipment for out-of-state disposal.

3. The federal Resource Conservation and Recovery Act, passed in 1976, is now in effect but applies only to some 50 industrial sources and 10 transporters in the state. It will not provide for technical assistance to the public and industry, field surveillance, or development of practical storage and disposal capability. It also will not provide coverage of generators of smaller quantities of wastes which may, combined, cause public health problems, nor will it allow for creating site-specific or innovative control methods geared to the particular difficulties of doing business in Alaska.

4. While at this time there is not a large amount of hazardous wastes generated in Alaska compared to other states, future development such as refinery construction, petrochemical development and smelting will likely result in a substantial increase of these wastes and the increased potential for environmental problems.

5. At present there are no safeguards, and no agency is directly involved, in assuring the safe storage of hazardous materials, particularly long-term storage. It is suspected that there are substantial quantities of hazardous materials which are stored throughout the state, principally because there is no economical or practical way of disposal.

6. There is no legal or practical way available in which the general public may dispose of small quantities of hazardous wastes, nor at present is there widespread understanding or information available on how to handle these substances safely.

7. There will be a federal presence in the state to enforce the federal Resource Conservation and Recovery Act on large sources of hazardous wastes, but only if the state does not take an active involvement. Any federal program will not, however, provide solutions to the special small-user problems of the state, nor will it not provide any realistic solutions for handling or disposing of hazardous waste appropriate for Alaska.

RECOMMENDATIONS

1. Passage of a hazardous waste control bill is a must, so that

   A. Authority is available to establish an effective statewide effort in the control and safe handling of hazardous substances.

B. Resources are available so that the Alaskan public can find out and be provided assistance in how to handle and dispose of hazardous wastes safely. The establishment of practical and effective standards is a first necessary step for controlling hazardous substances in Alaska.

C. Public awareness on the safe methods of handling and disposing of hazardous substances is needed. This could be accomplished through widespread distribution of public information and the availability of technical assistance for the resolving of problems as they arise.

2. The first steps must be started now: (1) to determine what is needed for the safe handling and disposing of Alaska's hazardous wastes, and (2) to begin the design of a storage/transportation/disposal system which will keep this potentially serious environmental concern from becoming a problem.

RECOMMENDATIONS: POSITION STATEMENT ON HCS CSSB-29

In its working draft form, the bill is close to providing the needed authorities for the department to establish a comprehensive and practical approach to hazardous waste control in the state. The Department's review and recommendations on this bill are as follows:

1. NUCLEAR FACILITIES, RADIOACTIVE MATERIAL DISPOSAL

There is currently strong statutory authority on the permitting of facilities using or disposing of high level nuclear substances. What is needed is a delineation of that authority to allow disposal of low level wastes generated in hospitals, research and industry, and to adapt existing law to the ALIVE decision. Senator Kerttula's bill, CSSB-29, would have dealt with these problems most effectively. The draft of the current bill, HCS CSSB-29, has incorporated a section which prohibits outright the construction of any nuclear facility in the state. It would prohibit any facility handling high level nuclear substances. This provision has backup sections, however, if the outright prohibition section is ruled unconstitutional which, according to the Attorney General, is likely. These backup sections are very similar to Senator Kerttula's bill which would place very stringent conditions on any nuclear facility.

The Department views any facility which would use high level radioactive substances with the utmost concern, and the safeguards presented in the alternative sections of the bill should adequately safeguard the public as well as the environmental quality of the state. It would require prior legislative approval of any lands to be used for these facilities, plus local government approval, plus approval by the Governor. It has the added benefit of likely surviving a challenge on constitutional grounds.

As a consequence, the Department recommends deletion of the outright prohibition on nuclear facilities, because it is not likely to be constitutional and adds unnecessary complication to the bill's structure. The legislature, of course, will have to decide how it wants to deal with this aspect of the legislation.

The provisions of the bill relating to low level radioactive waste disposal are appropriate to protect the public against unsafe practices in the handling and disposal of these substances. The Department concurs in these provisions. The provisions clearly allow for the safe disposal within state of these materials, which in the long run will be needed to support the current beneficial users of these substances in the medical, research and industrial communities. The amount of low level radioactive substances in Alaska is extremely small, probably less than one cubic meter and generated mostly from the medical uses. As of last year, there were 36 licenses of the Nuclear Regulatory Commission in Alaska. Only nine used unsealed materials which could result in low level wastes for disposal.

2. HAZARDOUS WASTES

The last portion of the proposed bill would provide the department with the needed authority to control the generation, handling, transportation, storage, treatment and disposal of hazardous materials. This clear authority is lacking in current statutes. While some modifications are recommended to make this portion of the bill truly effective to respond to the state's hazardous waste concerns, the Department strongly supports the provisions included in the May 4, 1981 working draft of the House Judiciary Committee.

The approach mandated by the bill is to establish a statewide hazardous waste control program consistent with the provisions of the federal Resource Conservation and Recovery Act, and which will enable the Department to assume administration of the federal program. The Department is in favor of this approach, which will enable the state to eliminate the presence of the federal U.S. Environmental Protection Agency in directly controlling hazardous waste practices in Alaska. Not only will the Department be able to ensure that federal safeguards are carried out, but also industry and the general public will be provided the availability of state assistance in solving and handling their problems as they become identified. This will not be the case with a federally run program.

The Department is strongly in support of the federal approach to the control of hazardous wastes and intends to use it in developing its criteria and standards, most of which are applicable to Alaska. However, there are areas in which Alaska's own unique problems may require additional efforts:

A. The quantity of hazardous wastes subject to regulation may likely be smaller than the 1,000 kg/month cutoff set by the federal government. This will undergo a very careful evaluation by the Department, in cooperation with the public including industry, in establishing effective quantity limits.

B. Public awareness and technical assistance, which are not provided for by the U.S. Environmental Protection Agency, will be necessities in Alaska to effect practical disposal.

C. Instate disposal at storage least of some volumes and levels of wastes may be necessary in Alaska, but no adequate facilities exist at present. This is particularly important if Alaska industry and the economy are to have orderly and environmentally safe development. Current prohibitively expensive transportation costs may preclude effective disposal as long as no instate disposal capability is present.

D. Establishment of proper handling and storage of hazardous materials, which at the present time is not being regulated or safeguarded by any agency.

The May 4, 1981 working draft of HCS CSSB 29 will provide for these approaches, and the Department will provide recommendations to the House Judiciary Committee to modify the bill, to enable effective control programs to be established which will be appropriate to Alaska's specific conditions.

Section 3

RECOMMENDED STATE PROGRAM FOR HAZARDOUS WASTE CONTROL

As can be seen by the inventory, there are hazardous wastes being generated and disposed of in Alaska. However, there is not widespread understanding or appreciation of how these wastes need to be handled, and what precautions need to be taken to assure their proper disposal in an environmentally sound and safe manner.

A state hazardous waste control program is therefore necessary for insuring a safe and proper handling of hazardous waste: Such a program would:

1. Rely on out-of-state faculties for final disposal storage, with establishment of instate transfer stations (central collection facilities) at various locations throughout the state. Safeguards for proper storage and transportation of hazardous waste would be developed.

2. Develop and maintain a manifest (cradle to grave) system which would track all hazardous waste shipments from the point of generation through transportation to final storage, treatment, or disposal site. This tracking system is needed to protect the public from illegal dumping and to control hazardous waste management in our state.

3. Prohibit disposal of even small quantities of hazardous waste into landfills, unless the landfills meet the necessary design requirements and incorporate adequate safeguards, and the waste is properly contained.

4. Provide technical assistance to:

   A. Business on:

      a. disposal of hazardous waste.

      b. methods to reduce the amount of waste generated at the source and recycling the waste that is produced whenever feasible.

      c. best available technology treatment and processes and on labeling, placarding and manifest requirements.

   B. General Public on:

      a. what a hazardous waste is and how to handle, transport, store or dispose of hazardous waste.

   C. All Interested Parties on:

      a. all cleanup and response operations

      b. any questions on hazardous waste, and all information or disclosures on improper management, through a toll-free telephone number throughout the Stae.

5. Locate and investigate all suspected abandoned and current disposal sites for the presence of hazardous waste.

6. Develop a monitoring program to mitigate and detect inappropriate disposal and contamination, including field inspections and surveillance.

7. Implement immediate clean-up programs at those sites which are identified as posing imminent danger to the public health and environment.

8. Establish guidelines for storage/transfer stations.

9. Encourage intermediate storage of waste at transfer stations until shipment can be made or recycling can be performed.

10. Develop and implement regulations for the safe transport of hazardous waste which would include a manifest system, placarding, and labeling all hazardous waste shipments. Also require all transporters to be responsible for cleaning up hazardous waste spills from their shipments and contact ADEC or USCG immediately when such spills occur.

11. Develop a hazardous waste safety course for transporters. Successful completion would be required before transport or hazardous waste.

12. Reinforce DOT regulations on shipments of hazardous waste.

13. Require all hazardous waste handlers to notify the state on each waste transaction. This would include all generators, transporters, and treatment, storage, transfer, and disposal facility operators. Perform field inspections and technical assistance to help individuals in notification.

14. Establish criteria for management and for treatment, storage, and disposal in permitted facilities.

15. Establish a public awareness and education program, to promote a better understanding of hazardous waste and its disposal, and encourage reporting of suspected improper hazardous waste disposal. Encourage the public to use the Department of Environmental Conservation for any questions on home use and disposal of hazardous waste.

16. Obtain adequate safety equipment and develop programs and procedures for emergency response and cleanup, establish a toll free number for information and reporting, and train DEC personnel in hazardous waste handling.

17. Promote incentives for recycling of hazardous waste and provide technical assistance to businesses on waste reduction, exchange and recycling.

18. Develop guidelines for storage of hazardous material similar to those for hazardous waste.

To establish and maintain this recommended program, one full-time person in each Department's three regional field offices will be needed. In addition, two full-time technical personnel are required in the central office, to develop regulations, guidelines, procedures, training programs, and provide a technical resource to the regions as well as industry and the general public. Because the central office positions are already accounted for in the Department's FY-82 Budget request, the only additional resources needed would be for the three field officers.

secretaries ?

SECTION 4

RESOURCES NEEDED TO ESTABLISH A RESPONSIVE STATE HAZARDOUS WASTE CONTROL PROGRAM

TO BE ADDED LATER.

SECTION 5

EFFECT OF THE FEDERAL HAZARDOUS WASTE CONTROL PROGRAM

The 1976 Resource Conservation and Recovery Act (RCRA) places the primary responsibility for controlling hazardous wastes on the states. If the states relinquish this responsibility, then EPA is mandated to take over the States program. State programs and guidelines must equal or exceed those established by EPA. EPA has already established their regulations (summarized in Appendix IX) which:

1. Affect all hazardous waste disposal facilities. However, there are none in Alaska at the present.

2. Only cover facilities which generate, treat, or store over 2,200 pounds of wastes per month, and the transporters which handle those wastes. However, most Alaskan facilities do not generate or handle this large an amount of material, and only about 50 of the largest industrial facilities and 10 transporters are likely to be regulated. There are also an unknown amount of military and federal facilities.

Because EPA does not, have any personnel in the state to carry out the federal program, and may not in the future, it is likely to be operated in the following manner:

1. Most if not all questions, decisions and paperwork concerning the program will be handled by the EPA Region X office in Seattle.

2. Virtually no technical assistance or direction for those being regulated will be available from EPA, particularly because there is only one person assigned to the two states of Alaska and Oregon. This is likely to lead to inadequate disposal practices, fragmented information on how to properly treat, transport, store or dispose of hazardous substances, and general misunderstanding of hazardous waste requirements.

3. The affected facilities and transporters will be required to submit their compliance documents to Seattle using national forms and guidelines, which often are not applicable to specific conditions and usually result in an undue reporting burden.

ADVANTAGES TO ASSUMING CONTROL OF FEDERAL REQUIREMENTS:

As described above and discussed in previous sections, most of Alaska's hazardous waste users and handlers will not be covered by the federal program. Consequently the federal program by itself will not assure adequate control or provide the safeguards needed to assure that proper disposal means are used. If the state established the recommended program, including the necessary resources as described in the previous section, then the federal program controls could also be carried out without the need for any additional resources. This would eliminate the direct presence of EPA in the program, at the same time enable the state to simplify the federal requirements and make them more understandable to the regulated industry, and to set standards more applicable to Alaskan conditions.

There also are federal grant funds available to the state if portions of the federal program are taken over by the state. A total of $258,000 was allocated for Alaska for FY-81, and more is likely available pending justification of need.

DISADVANTAGES TO ASSUMING CONTROL OF FEDERAL REQUIREMENTS:

The major disadvantage to assuming control of the federal requirements is that the state's hazardous waste control effort will then come under EPA's review, guidance and grant conditions. This will be no problem as long as EPA is realistic and practical in their requirements. As has been shown in many of the other federal environmental programs, EPA has not always been reasonable.

EPA has indicated that there will be some flexibility in establishing many of the requirements within each state, particularly in the manifest system for transporters. Consequently, there is a strong likelihood that federal requirements can be made more meaningful and less burdensome through a state-operated program. Care would have to be taken, however, to only become involved with the federal program portions which can be made responsive to Alaska's needs. All other portions of the federal program should otherwise remain with EPA.

Another disadvantage is if the state established a hazardous waste control program to only cover the federal requirements. This would not accomplish control of the real hazardous waste problems in the state, would make the state program too vulnerable to carrying out inappropriate requirements of EPA, and would be a very limited and ineffective means for trying to establish meaningful control. While even in this instance the state would be able to offer more responsive assistance to the regulatd sources, there would be very little else accomplished that would not otherwise be covered by an EPA-run program.

RECOMMENDATION:

Provided that the state establishes a responsive hazardous waste control program as recommended in the previous sections, then the needed statutory authority as well as the resources will be available to also carry out the federal requirements. It is recommended that under this circumstance the state proceed to integrate the federal requirements into its program as it is developed. This should be done in a careful, step-by-step manner, to make certain that the federal requirements are made responsive to Alaskan needs.

It is very probable that not all of the federal requirements will be appropriate for state assumption. Those which are not should be left with EPA. Also, if at any time it becomes apparent that the state is not being allowed the needed flexibility by EPA to run a responsive program, then at that time the state should back out of conducting the federal program and fund its own program effort.

SECTION 6

REVIEW OF LEGISLATION

The Department has general overall authority for the "control, prevention and abatement of air, water, or land or subsurface land pollution," but does not have any specific authority concerning hazardous waste control. The Department of Law recently indicated that the general authority would enable the Department to establish a comprehensive hazardous waste control program. However, the Department of Law also indicated that it may be advisable to obtain specific legislative authority so that there is no mistaking of the legislature's intent in the control of hazardous wastes. Because of the importance of this program, and because the Department has not had much previous involvement in the control of hazardous wastes, specific legislation is recommended.

RECOMMENDED LEGISLATION (Appendix VIII)

A. Hazardous Waste Control:

Specific authority, as drafted by the Department of Law last Legislative session as a substitute for HB-511 is recommended so that all facets of hazardous waste generation, transportation and disposal are covered. This authority would also provide the Department with necessary authority for assuming responsibility for the federal requirements under the Resource Conservation and Recovery Act. Example: AS 46.03.020(10)(H) would be added to read; "operation, handling, transportation,treatment,storage and disposal of hazardous waste; and safe handling and storage of hazardous material."

B. Permitting: High-Level Radioactive Facilities

AS 18.45.025 provides authority for the department to issue permits for the disposal of radioactive wastes, provided that certain conditions were met. However, several of these conditions have been found unconstitutional under the terms of a recent state supreme court decision and are therefore recommended to be deleted. In addition, this statute is recommended to apply only to high level radioactive wastes, since low level wastes are covered under AS 46.03.250-260 as discussed below.

C. Permitting: Low-level Radioactive wastes

AS 46.03.250-260 prohibits the disposal of any radioactive wastes in the state, unless the department has issued a permit allowing the activity. Because AS 18.45.025 already covers high level wastes, AS 46.03.250-260 are recommended to be changed to only apply to low level radioactive wastes so as to avoid duplication.

Amendment

Page 9, line 1

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

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

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

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

(C) etc.

SOHIO

SUGGESTED AMENDMENTS, CSSB-29

1. Hazardous materials deletion

Page 7, line 25, delete "and safe handling and storage of hazardous materials."

2. Reference to landfill.

Page 7, line 29, amend section to read:

Sec. 46.03.296. DISPOSAL OF HAZARDOUS WASTES. (a) It is unlawful to dispose of hazardous wastes in any landfill in the state unless:

3. Defining universe of hazardous wastes.

Option 1: Page 8, line 20 through 25, delete subsections (3), (4) and (5), replacing with:

(3) adopt Part 261, Identification and Listing of Hazardous Wastes, as contained in regulations published under the Resource Conservation and Recovery Act of 1976.

Option 2: Same lines, add the words, "consistent with the Federal Resource Conservation and Recovery Act of 1976 (P.L. 94-580, 42 U.S.C. 6901-6987)." to each item, (3), (4) and (5).

4. Page 9, line 1: substitute words "generates" for "produces" and "treats" for "processes".

This makes wording consistent with RCRA. Same word changes should be made in following sections, elsewhere in bill.

5. Page 10, line 9: Definitions should be made consistent with RCRA.

ATLANTIC RICHFIELD COMPANY COMMENTS ON

THE HAZARDOUS WASTE PROVISIONS OF

HCS CS SB 29

The purpose of this legislation is to enable the Alaska Department of Environmental Conservation to develop a State hazardous waste program which will be approvable by EPA, thereby permitting the State of Alaska to administer its own program in lieu of the Federal program.

Atlantic Richfield supports State administration of Federal environmental programs. We have opposed this particular legislation, however, because:

1. The program it establishes does not meet the Federal statutory requirements for approval.

2. This legislation will need significant amendments in the future to meet such Federal requirements.

3. Since in our opinion, this program will not be Federally approvable, this legislation will impose duplicate and overlapping requirements on all those who generate and handle hazardous wastes and create another bureaucracy for the regulated community.

There are hazardous waste regulations in effect in Alaska at this time administered by EPA, effective on November 19, 1980. We do not want another program unless it will qualify as a replacement for the Federal program now in effect.

Rather than continue to oppose this bill, we would like to recommend that the regulatory provisions of this legislation not go into effect until interim or final EPA authorization has been granted to the State Department of Environmental Conservation. That would allow the ADEC to begin to establish a program without placing an undue burden on those who will be regulated.

A simple statement such as the following might be appropriate:

The regulatory provisions of this program will not go into effect until interim or final EPA authorization has been obtained by the ADEC.

Marathon

In its present form HCS CSSB 29 could apply to many oil field wastes. One such waste would be excess drilling fluid. Another example would be the water which is produced from the formation along with the oil. Discharge of both of these materials is already controlled under permits issued by either the state or federal government.

Regulations to implement the Resource Conservation and Recovery Act (RCRA) were promulgated by the United States Environmental Protection Agency in May of 1980. During development of these regulations there was some question as to their applicability to drilling fluids and produced waters associated with the exploration and production of oil and gas. To clarify the matter, in the Solid Waste Disposal Act Amendments of 1980, Congress directed the Environmental Protection Agency to specfically exclude these materials. Congress also directed the EPA to conduct research to determine if drilling fluids and produced waters do present any hazard to the environment. The results of this study will be reported back to Congress, at which time it will be determined what hazardous material regulations, if any, should apply to these wastes. Since this information is not yet available, and in order to be consistent with the federal hazardous waste program, HCS CSSB 29 should contain the exclusions provided for in the federal legislation and regulations. These exclusions could be inserted in Section 16 of the proposed bill under the definition of "hazardous material." The wording specifically for the exemption of produced waters, and drilling fluids should be as follows:

"The following wastes are not hazardous materials: drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy."

Attached is page 33120 of the Federal Register Vol. 45, No. 98 which contains the "Exclusions" section of the federal RCRA regulations.

in Subpart D is first added to the solid waste.

(3) In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in Subpart C.

(c) Unless and until it meets the criteria of paragraph (d):

(1) A hazardous waste will remain a hazardous waste.

(2) Any solid waste generated from the treatment, storage or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate (but not including precipitation run-off), is a hazardous waste.

(d) Any solid waste described in paragraph (c) of this section is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in Subpart C.

(2) In the case of a waste which is a listed waste under Subpart D, contains a waste listed under Subpart D or is derived from a waste listed in Subpart D, it also has been excluded from paragraph (c) under §§ 260.20 and 260.22 of this Chapter.

§ 261.4 Exclusions.

(a) *Materials which are not solid wastes.* The following materials are not solid wastes for the purpose of this Part:

(1) (i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. [Comment: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.]

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(b) *Solid wastes which are not hazardous wastes.* The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels.)

(2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

§ 261.5 Special requirements for hazardous waste generated by small quantity generators.

(a) Except as otherwise provided in this section, if a person generates, in a calendar month, a total of less than 1000 kilograms of hazardous wastes (those) wastes are not subject to regulation under Parts 262 through 265 and Parts 122 through 124 of this Chapter, and the notification requirements of Section 3010 of RCRA.

(b) If a person whose waste has been excluded from regulation under paragraph (a) of this Section accumulates hazardous wastes in quantities greater than 1000 kilograms, those accumulated wastes are subject to regulation under Parts 262 through 265 and Parts 122 through 124 of this Chapter, and the notification requirements of Section 3010 of RCRA.

(c) If a person generates in a calendar month or accumulates at any time any of the following hazardous wastes in quantities greater than set forth below, those wastes are subject to regulation under Parts 262 through 265 and Parts 122 through 124 of this Chapter, and the notification requirements of Section 3010 of RCRA:

(1) One kilogram of any commercial product or manufacturing chemical intermediate having the generic name listed in § 261.33(e).

(2) One kilogram of any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in § 261.33(e).

(3) Any containers identified in § 261.33(c) that are larger than 20 liters in capacity.

(4) 10 kilograms of inner liners from containers identified under § 261.33(c).

(5) 100 kilograms of any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in § 261.33(e).

(d) In order for hazardous waste to be excluded from regulation under this section, the generator must comply with § 262.11 of this Chapter. He must also either treat or dispose of the waste in an on-site facility, or ensure delivery to an off-site treatment, storage or disposal facility, either of which is:

(1) Permitted by EPA under Part 122 of this Chapter, or by a State with a hazardous waste management program authorized under Part 123 of this Chapter;

(2) In interim status under Parts 122 and 265 of this Chapter; or,

(3) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(e) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in Subpart C.

§ 261.6 Special requirements for hazardous waste which is used, re-used, recycled or reclaimed.

(a) Except as otherwise provided in paragraph (b) of this section, a hazardous waste which meets either of the following criteria is not subject to regulation under Parts 262 through 265 or Parts 122 through 124 of this Chapter and is not subject to the notification requirements of Section 3010 of RCRA until such time as the Administrator promulgates regulations to the contrary:

(1) It is being beneficially used or re-used or legitimately recycled or reclaimed.

(2) It is being accumulated, stored or physically, chemically or biologically treated prior to beneficial use or re-use or legitimate recycling or reclamation.

(b) A hazardous waste which is a sludge, or which is listed in Subpart D, or which contains one or more hazardous wastes listed in Subpart D, and which is transported or stored prior

Marathon

In its present form, HCS CSSB 29 provides that the department may exempt from permitting requirements a person who generates or handles small quantities of hazardous waste. A set, small generator exclusion should be established in the bill for the following reasons:

1. a permitting and transportation manifesting system for small generators could affect many small businesses and individuals and would thus be impossible to enforce,

2. such a system could place an unnecessary paper work burden on small businesses and individuals solely at the discretion of the department,

3. regulations could be established for disposal, transportation, etc. of small quantities of hazardous wastes without the need for a permit or manifest system, and

4. the department could better serve the needs of the public by concentrating upon educating the small generator on hazardous waste handling and disposal rather than imposing a cumbersome manifest and permit system on them.

To be consistent with federal regulations on transportation, storage, and disposal of hazardous wastes, the small generator exclusion should be set at 1,000 kilograms (approximately five 55 gallon drums) per month. This exclusion could be placed in HCS CSSB 29 as follows:

Sec. 46.03.350. HAZARDOUS WASTE PERMITS. (a) No person may generate, process, transport, store, or dispose of a hazardous waste listed by the department under AS 46.03. 340 (2) without a permit and without preparing and providing reports, including manifests which may be required by the department.

(b) A person who generates, processes, transports, stores, or disposes of less than 1,000 kilograms of hazardous wastes per calendar month shall be exempted from the permitting, reporting, and manifesting requirements established in (a) of this section. Such person shall comply with regulations established by the department under AS 46.03.020 (10)(H) so as to not present a hazard to the public health, or to the livestock, fish, wildlife, or environment of the state.

2,200 LBS

Marathon Oil Company Testimony on House Committee Substitute for Committee Substitute for Senate Bill 29

Recently, concern has been expressed over possible hazardous waste problems resulting from development of an in-state petrochemical industry. Concern has also been voiced that nuclear wastes from the "Lower 48" may be disposed in Alaska. In response to these concerns, legislation has been introduced in both the House and Senate. Apparently, HCS CSSB 29 represents an attempt by the House Resources Committee to combine three bills dealing with control of hazardous materials (SB 239); transportation, storage, and disposal of hazardous wastes and nuclear materials (HB 72); and control of nuclear materials (SB 29).

Management of hazardous wastes and control of nuclear materials involve two entirely different areas of expertise and, in our opinion, should not be addressed in the same bill. For this reason, our specific comments on the proposed legislation will be presented in two sections.

Nuclear Materials

Section 18.45.130 (b) of HCS CSSB 29 would require a transporter of low level nuclear wastes to obtain a permit and comply with a manifest/record keeping system implemented by the Department of Environmental Conservation. An example of how this would apply to oil industry operations would be in the transportation of radioactive scale which forms naturally in well tubing and oil field separation equipment. This material must occasionally be removed and is often sent to a laboratory for analysis. Transportation of radioactive materials, such as this scale, is already strictly regulated under the hazardous materials transportation regulations of the federal Department of Transportation. These regulations establish specific packing, labeling, manifesting, and transportation requirements for all hazardous materials. Under the federal regulations, materials with a specific activity of 2 nanocuries per gram or less are not classed as radioactive material. However, under the proposed bill, transportation of the same material would require the permit and extensive record keeping mentioned above.

Section 46.03.260 of the proposed bill would require a person who conducts an operation resulting in any discharge of low level radiation to obtain a permit before commencing the discharge. Two of the oil field operations which would be affected by this section are well logging operations and radioactive tracer surveys in production and water injection wells.

In well logging operations, instruments are lowered into the well to obtain information about the producing formation and other geological zones. Some common logging instruments utilize sealed gamma ray or neutron sources. When in use these devices emit radiation into the geological formations, but do not release any radioactive material. Since the source is completely sealed, no radiation remains in the formation when the

instrument is removed from the well. Radioactive tracer surveys involve the injection of radioactive materials into the well to determine the flow rate into the formation and the variation of flowrates between the zones. Common elements used in these surveys include Iridium 192 and Iodine. Both of these elements are extremely low level radiation sources and have half-lives of 75 days and 8 days, respectively. Use of both of these materials is controlled and permitted under a license issued by the United States Nuclear Regulatory Commission. The license specifies terms and conditions for storage, transportation, and leak testing of radioactive materials and equipment, and establishes training requirements for personnel. HCS CSSB 29 would require the operator to obtain an additional permit each time this equipment is used.

This bill would have a pervasive effect upon the oil industry, and many other industries as well, because of the all inclusive definition of low level nuclear wastes. According to section 18.45.170 and section 11. AS 46.03.900 a low level nuclear waste would be any radioactive waste which emits less than 10 nanocuries per gram. The definition establishes no lower limit for radioactive activity and therefore would include all radioactive wastes no matter how innocuous. Under the present definition disposal of a smoke detector or a wrist watch with a luminous dial would be considered low level nuclear waste disposal. It would also follow that use of an ultraviolet lamp would be an operation which results in the discharge of low level radiation.

It would seem obvious that the definition of low level nuclear waste should contain a lower limit. For consistency with the federal transportation regulations a value of 2 nanocuries per gram of material should be set as the lower limit in this definition.

Despite the fact that each of the previously mentioned areas is already adequately controlled by federal regulations, section 46.03.250 of the proposed bill gives authority to the Department of Environmental Conservation to govern these activities. This section also gives the Deparment of Environmental Conservation the discretion to determine what levels of radioactivity would constitute a threat to public health. It is difficult to understand how the Department of Environmental Conservation would have a greater level of expertise in nuclear science and nuclear waste management than both the U.S. Nuclear Regulatory Commission and the Department of Transportation Hazardous Materials Office. How would the department be more qualified than these other agencies to define the levels of radioactivity which would constitute a threat to public health? If, on the other hand, the Department of Environmental Conservation simply adopts the present federal regulations, what is the need for establishing a state permitting and regulatory system?

Hazardous Wastes

The second portion of HCS CSSB 29 would add a new chapter to AS 46 which would apply to transportation and disposal of extremely hazardous and hazardous wastes. Normally, Marathon Oil Company would not be directly

affected by legislation concerning extremely hazardous wastes. For this reason we will confine our comments to only those sections dealing with hazardous wastes.

A specific point of concern with the proposed legislation is the definition of hazardous wastes contained in section 46.32.070. Without changing the meaning of the definition, we will extract a portion of it to demonstrate why it causes us concern. "Hazardous waste means a waste...which...may pose a...potential hazard to human health, livestock, wildlife, property, or the environment when improperly disposed of." We submit that the definition is entirely too broad and, based upon characteristics which "...may pose a potential hazard...", almost any waste could be classified as hazardous.

In its present form the legislation could apply to many oil field wastes. One such waste would be excess drilling fluid. Another example would be the water which is produced from the formation along with the oil. Discharge of both of these materials is already controlled under permits issued by either the state or federal government.

Regulations to implement the Resource Conservation and Recovery Act (RCRA) were promulgated by the United States Environmental Protection Agency in May of 1980. During development of these regulations there was some question as to their applicability to drilling fluids and produced waters. To clarify the matter, a provision was placed in the regulations to specifically exclude these materials. Congress has directed the Environmental Protection Agency to conduct research to determine if drilling fluids and produced waters do present any hazard to the environment. The results of this study will be reported back to Congress, at which time it will be determined what hazardous material regulations, if any, should apply to these wastes. Since this information is not yet available, HCS CSSB 29 should include a provision requiring that the resulting state regulations not be more stringent than the federal regulations. Failing that, the bill should contain the exact exclusion as the federal regulations. This exclusion reads:

> "The following solid wastes are not hazardous wastes:
> drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy."

Section 46.32.020 of the proposed chapter provides the Department of Environmental Conservation with the authority to adopt regulations for the disposal of hazardous wastes. Presumably these regulations would be similar to the Resource Conservation and Recovery Act (RCRA) regulations which were promulgated after more than five years of intensive research and study by the EPA. Identification and classification of hazardous wastes alone required years of research, vast resources of man power, and millions and millions of dollars. Yet the authority for just such a massive program is granted to the Department of Environmental Conservation by a mere five lines in section 46.32.050 of the proposed bill. Additionally, section 46.32.040 requires the department to establish and implement a system to

record by manifest the movement of hazardous waste in excess of 1,000 kilograms per month within the state. This program would be identical to the manifest and record keeping requirements established by the federal RCRA regulations.

The federal hazardous waste (RCRA) regulations promulated in May of 1980 consist of more than 500 pages which are constantly being revised and supplemented. The Department of Transportation's hazardous material transportation regulations promulgated in September of 1978 contain 1,050 pages which are also being revised regularly. Is this the type of system you would want to establish in Alaska? Hazardous waste regulation is an extremely complex area that, to accomplish the stated goals, would require extensive expertise, research, and funding. A state hazardous waste program, to be nearly as effective as the federal program, would require a huge increase in the staff and budget requirements of the Department of Environmental Conservation. If the objective of this legislation is only to allow the department to adopt the program established by EPA, we fail to see the need or benefit to the state. In addition, such action definitely would not be in keeping with the philosophy of eliminating duplicative and burdensome regulations and permits.

The proponents of this bill would have you believe that all sorts of hazardous waste "nightmares" may result in Alaska if this bill is not passed. That is just not true. The lack of this bill and state hazardous waste regulations does not mean hazardous waste disposal will be unregulated. In fact, hazardous wastes are regulated quite stringently. The recent RCRA regulations are some of the most comprehensive regulations ever promulgated by a federal agency. They will provide more than adequate protection from hazardous waste storage, transporation, and disposal in Alaska.

ATLANTIC RICHFIELD COMPANY COMMENTS ON THE HAZARDOUS WASTE PORTION OF THE HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL 29

May 29, 1981

The purpose of proposed provisions on hazardous wastes is apparently to enable the Alaska Department of Environmental Conservation to develop a state hazardous waste program which will be approvable by EPA, thereby permitting the State of Alaska to administer its own program in lieu of the Federal program.

Atlantic Richfield supports state administration of Federal environmental programs.

Atlantic Richfield opposes the May 28 revision of the hazardous waste portion of this bill, however, because:

1. The program it establishes does not meet the Federal statutory requirements for approval.

2. This legislation will need significant amendments in the future to meet such Federal requirements.

3. Because this program will not be Federally approvable, this legislation will impose duplicate and overlapping requirements on all those who generate and handle hazardous wastes and create another bureaucracy for the regulated community.

I would like to point out that hazardous waste regulations apply to virtually all industrial, commercial and community

activities - for example, tanning and electroplating operations, boat yards, dry cleaners, laboratories at schools and hospitals, service stations.

The program this bill would establish does not meet the four prerequisites for "final" authorization under the Federal Resource Conservation and Recovery Act ("RCRA"). The four prerequisites are:

1. It must be equivalent to the Federal program (§ 3006(b)).

2. It must be consistent with the programs applicable in other states (§ 3006 (b)).

3. It must provide for adequate enforcement. (§ 3006 (b)).

4. It must insure public participation in all aspects of the state hazardous waste program, including enforcement (§ 7004 (b)).

The state enabling legislation must provide legal authority:

- to list at least the same wastes as EPA and to establish criteria for identifying wastes,

- to implement the Federally mandated manifest system,

- to require permits for treatment, storage or disposal facilities,

- to require reporting and/or recordkeeping by generators and transporters,

- to establish permit conditions, schedules of compliance, permits by rule, emergency permits,

- to require monitoring at treament, storage or disposal facilities,

- to modify or terminate permits,

- to protect confidential information,

- to provide for public participation in the development, implementation and enforcement of the state program,

- to enter, inspect, copy records and take samples at all facilities which handle hazardous wastes,

- to restrain unauthorized activity by administrative cease and desist order or by seeking injunctive relief in state court,

- to establish criminal penalties for the same violations subject to criminal sanction under RCRA,

- to provide civil penalties for each day of violation.

These are merely broad categories of requirements. The details are contained in the massive and complicated Federal regulations. This legislation addresses some of these requirements adequately, some inadequately, and some are not addressed at all.

There are hazardous waste regulations in effect for Alaska at this time. They are administered by EPA and became effective on November 19, 1980. We do not want another program unless it will qualify as a replacement for the Federal program now in effect.

There is no urgent need to pass enabling legislation during this session of the legislature. The ADEC cannot effectively develop an approvable state program until the complete Federal program is finalized. No one knows what the final Federal program will look like for several reasons:

1. EPA has not promulgated all parts of the program. For example, the regulations respecting landfills, land farming and surface impoundments were proposed on February 5, 1981. EPA will accept comments up until August 1981. Final regulations will not be promulgated until next year. The State cannot apply for final authorization to administer this important aspect of the program until those regulations are promulgated. As a practical matter, it will take the ADEC many months following promulgation to develop consistent and equivalent state regulations. Only then can it apply to EPA for authorizaton.

2. The Federal program is on Vice President Bush's regulatory reform "hit" list, and the OMB is reviewing the Federal hazardous waste regulations. The Administration has stated that the program will be amended to recognize the varying degrees of risk posed by different wastes.

3. The Federal program is being litigated and judicial resolution of the issues before the court will change the Federal program which the state program must be equivalent to and consistent with.

Finally, this bill does not address the most critical aspect of hazardous waste management - the availability of permitted facilities to handle the wastes which will be identified as hazardous. The ADEC should assess the need for new hazardous

waste facilities in the state and identify those areas of the state where such facilities should be located. The hazardous waste management program will fail if there are inadequate treatment and disposal facilties in the State.

Therefore, Atlantic Richfield urges the legislature to develop legislation which will provide the statutory framework for an EPA approvable program. This bill, it its present form, does not meet the major criteria. We have commented on various drafts of this bill. Some changes have been made but the changes are not adequate.

We will continue to provide assistance in drafting adequate enabling legislation.

SOHIO

SOHIO ALASKA PETROLEUM COMPANY

OFFICE CORRESPONDENCE

TO: Tim Bradner

DATE: May 28, 1981

FROM: Debra Borah

CC NO: 32,377

SUBJECT: Phone Discussion with Joan DiNal, Arco, Legal Department, L.A.

YOUR REF:

This memo summarizes most of Joan DiNal's comments from our May 27, 1981 phone conversation.

* Her assessement of the situation was:

  1. This piece of legislation will not qualify the State for Federal Authorization ("It's a disaster"). Although the term "consistent" has been added to the legislation, "substantially equivalent" should be added as well.

  2. There is no need to rush the Alaska Program because EPA is not delegating authority for permits for probably another year and a half.

  3. The State should consider planning and siting of facilities, and determine where the needs are and where the best locations would be. This is not mentioned in the legislation.

  4. If the State is still intent on this, some changes will have to be made.

* It was her impression that Legislative Services does not want to give ADEC "carte blanche" in their handling of this issue.

* We discussed why the State did not just amend existing Chapter 3, instead of creating a new Chapter 32. Apparently, Mike Ford had some confusion on the best way to accomplish this. He thought it would interfere with existing hazardous substances language. This goes back to the need to clearly distinguish between hazardous wastes, materials and substances. They are not the same thing and should not be used interchangeably.

* We both agree that the present legislation on the books is sufficient for the State to apply for "Interim" Authorization. Note that Tom Hanna has stated that the Attorney General's Office had arrived at the same determination. Tom however wanted to draft more specific legislation.

* Sec. 46.03.020. (10) is from existing statute, Chapter 3, and reads:

  "The Department may
  (10) Adopt regulations necessary to effectuate the purposes of this chapter, including, by way of example and not limitation, regulations providing for...(lettered topics from A through H)."

This legislation proposes to add an (I) for hazardous wastes and materials. Joan suggested alternative wording something similar to the following to take advantage of Chapter 3 and streamline the legislation:

> "(I) identification and listing of hazardous wastes establishment of requirements for hazardous waste generators, transporters and owner/operators of treatment, storage and disposal facilities, establishment of performance standards for hazardous waste facilities-provided that these are created to be substantially equivalent to and consistent with Subtitle C of the Resource Conservation and Recovery Act, as amended".

I like this approach. It gives enough guidance and yet allows the State considerable flexibility for writing regulations.

* Sohio currently has "Interim Status" as a hazardous waste storage facility. When and if the State takes over the program, anything we already have received under the Federal Program should be honored. Joan made this point and it is a valid concern. However, I felt it could be adequately addressed when the regulations are drafted.

* By way of retaining this legislation in Chapter 3, Joan suggested creating Article 3A to follow the water regulations. I agree with this approach. I understand more recently however from Tom Hanna that the Commissioner does not like letters, therefore, Tom is recommending adding hazardous wastes to "Article 5, Radiation". I prefer Joan's idea, but I don't know how important an issue this is.

* Joan made the case to Kertulla that the Federal Program 1) is in a state of flux 2) is under litigation 3) is not complete because the regulations are not all written and 4) is undergoing scrutiny for possible regulatory reform. She therefore suggested that the State wait until all these wrinkles are ironed out before attempting to develop a program of their own. And again, the State can not yet receive permitting authority for land disposal.

* Joan would like to take Sections 3001-5 of RCRA, drop out some words and scissor the language into Chapter 3 someplace.

* To provide more specifically for excluding drilling muds, Joan wanted to add somewhere; the State may not identify as a hazardous waste any waste which has been specifically suspended from regulation by EPA until such time as EPA changes the regulation.

We ended our discussion with the following list of options in the order of decreasing priority:

1. Get this legislation scrapped and work with ADEC to introduce polished legislation next session that will facilitate the State receiving Federal approval.

2. Attempt to introduce substitute legislation probably if the bill goes to Free Conference Committee and

3. Fix this bill up as much as possible just in case the above 2 items do not occur.

I have been working on item 3 while endorsing item 1. From my discussion with Tom Hanna, I understand that ADEC is pushing for this bill to pass this session because of funding considerations for this fiscal year. I personally do not feel this is adequate considering all the details yet to be worked out in the bill. If hazardous wastes are a major concern of the State they should be granted the manpower required to research the existing Federal program and draft acceptable legislation and regulations.

Please call if you have any questions regarding the above.

DeB

Deb Borah
Environmental Scientist

DB/kg

cc: RVShafer
A Prezyna
File 453

SOHIO

SOHIO ALASKA PETROLEUM COMPANY

Law Department

OFFICE CORRESPONDENCE

TO: Debra Borah
Environment Scientist

DATE: May 28, 1981

FROM: Ann E. Prezyna
Attorney

CC NO:

SUBJECT: Proposed AS 46.32.050

YOUR REF:

In accordance with your verbal request of 5/27/81, I have reviewed the wording of proposed AS 46.32.050 (HCS CSSB 29, Judiciary draft dated 5/21/81, beginning at page 9, line 22). As presently drafted, the state's version of the public records requirement differs from that contained in RCRA. I will explain the differences below, but leave it to your and Tim's judgment to decide whether these differences warrant our taking a position on the subject at tomorrow's legislative hearing on the state's hazardous waste bill.

The federal provisions are limited to records, reports, documents, and information. 42 U.S.C. 6927(b). The state provisions also cover permit applications and permits. AS 46.32.050(a). Therefore, to the extent that the state legislation permits the confidential treatment of permit applications and permits, it is broader than its federal counterpart.

Page 9, line 26 of the Judiciary Committee draft authorizes the confidential treatment of permit applications, permits, records, and information. Therefore, to the extent that the state legislation does not authorize the confidential treatment of documents, it is narrower than the federal legislation.

Before a record, etc. may be afforded confidentiality, the state legislation requires a showing that its release to the public would disclose methods or processes entitled to protection as trade secrets. Page 9, lines 25 - 29. The federal legislation is broader than the state's in this regard; it affords confidential treatment to all or part of a record, etc. if its release would disclose information entitled to protection under 18 U.S.C. 1905. 18 U.S.C. 1905 protects information concerned or related to the trade secrets, processes, operations, style of work, or apparatus of any person, firm, partnership, corporation, or association.

The provisions of the federal law relating to the disclosure of confidential information are narrower than the provisions of proposed AS 46.32.050(b) and (c). Subsection (b) provides that confidential information may be disclosed to other officers, employees, and authorized representatives of the state or of the United States. The federal law limits disclosure to other officers, employees, or authorized representatives of the United States concerned with carrying out RCRA and to Congressional committees. The federal

law also authorizes disclosure in any proceeding under RCRA when relevant. AS 46.32.050(c) enables DEC to release confidential information in emergency situations, presumably without other restrictions (unless other restrictions are imposed by some other law).

AEP:clw

cc: Tim Bradner

SOHIO

SOHIO ALASKA PETROLEUM COMPANY

ATTACHMENT 2 IS NOT READY YET Deb

OFFICE CORRESPONDENCE

TO: Tim Bradner

DATE: May 22, 1981

FROM: Deb Borah

CC NO: 32,367

SUBJECT: Progress Report:
State Hazardous Waste Legislation

YOUR REF:

This report summarizes the current status of items pertaining to the Judiciary Committee's Work Draft of proposed State Hazardous Waste Legislation: HCS CSSB 29. There are several assumptions that have been made as follows:

1. The State has developed a strong interest in regulating hazardous wastes. Therefore, in spite of industry opposition, some type of legislation will eventually be passed which will allow ADEC to develop appropriate regulations. In other words, it will be very difficult to dissuade the State from passing hazardous waste legislation.

2. Since there is no State hazardous waste program in existence, the State is unbelievably optimistic regarding receiving Federal approval in the near future. Considerable work will be required to write regulations that will meet Federal approval guidelines. Industry's most valuable contribution will be in terms of the detailed drafting of the regulations.

3. Although Federal approval may be a long way off, the State has every right to regulate hazardous waste, and even more stingently than the Federal program. This could put industry in the very undesirable position of having to comply with two sets of regulations.

4. This proposed legislation is providing a vehicle for educating lawmakers, regulators, industry and the general public about hazardous waste regulation. The result of this effort will hopefully be apparent when the State regulations are drafted. There are numerous misconceptions being clarified as work on this legislation progresses. By taking advantage of this opportunity to increase the awareness of the Federal program, the regulation making effort at the State level should be enhanced.

5. Since the legislation will provide guidance for developing regulations, every reasonable effort should be made to make this legislation palatable to industry. Actually, a major goal of working on this legislation is to develop a strong rapport with the ADEC so that our contribution to drafting regulations is solicited.

Regarding the legislation directly, there are two major concerns that have been sufficiently resolved to be acceptable. The first is with the "universe of hazardous wastes" that the ADEC intends to regulate. Under Federal regulations, drilling muds and produced waters are presently exempted from consideration as hazardous wastes. Otherwise, the mud pits and produced water wells would be subject to exhaustive paperwork requirements, including the need for permits. These are excellent reasons for desiring the same exclusion under the State program. In response to this particular concern, ADEC has stated that it fully intends to regulate the same universe of hazardous wastes as the Federal program. The only deviation would be perhaps reducing the small quantity exemption from the current Federal limit. The main point is that ADEC has verbally stated that it will not identify as a hazardous waste what the Federal program does not identify as hazardous. This was a major breakthrough for industry.

The second major concern is fairly close to the first and pertains to the State program being "consistent" enough with the Federal program to receive approval. Otherwise, industry will be faced with the cumbersome task of complying with dual agency regulations. ADEC has indicated their desire to basically adopt and administer the Federal program with the option of regulating smaller quantities. The appropriate wording regarding "consistency" and "qualification" has been incorporated under Sec. 46.32.020. (1) and (2), pages 8 and 9, Work Draft-HCS CSSB 29. The inclusion of this wording has eased the concern over this issue.

The above two issues were paramount in making this legislation acceptable to industry. Further clarity and definition should definitely be attempted later at the regulation making level.

There are several remaining areas of the proposed legislation that are somewhat ambiguous or misleading. These are not major issues, but if reworded would make industry more comfortable with the legislation. Any gains in these areas with minimal effort should at least be attempted. These changes make the legislation more technically correct in terms of what ADEC intends to do. At the informal verbal level there exists a good working relationship with ADEC. However, since changing personnel have a large impact on this type of arrangement, it is better to have the legislation delineated clearly up front to reflect exactly what ADEC wants to do.

It is in this area that recent effort has been concentrated. Several discussions have been held with Tom Hanna, ADEC, and a lot of progress has been made. The changes in the most recent Work Draft reflect this effort and several other changes are still being contemplated. Attachment I is a summary of the information exchanged during discussions with Tom Hanna.

As you and I discussed, we will continue to refine HCS CSSB 29 and prepare comments to introduce at whatever point is appropriate, up to and including the free conference committee. Some of these comments may not appear to change the legislation to any great extent. However, considerable feedback is being provided to ADEC and all of this work will be valuable when the regulations are drafted.

I hope this information has been beneficial for your purposes. I will continue to discuss items with Tom Hanna and hopefully the result will be legislation that is at least somewhat more acceptable than what was originally proposed. Your effort in this area has been greatly appreciated, not only by myself, but also by Tom Hanna. If I can provide additional assistance, please let me know.

Debra Borah
Environmental Scientist

cc: R. V. Shafer
A. Prezyna

DB/kg

SUMMARY OF HCS CSSB-29 WORKING DRAFT

PROPOSED ACT RELATING TO THE DISPOSAL OF

RADIOACTIVE AND HAZARDOUS WASTE

May 11, 1981

HCS CSSB-29 is being considered in the current legislative session, to provide for the control of radioactive and hazardous waste. The Bill also includes provisions relating to construction of nuclear facilities. The following presents a section-by-section summary of the Bill as follows:

I. HIGH LEVEL FACILITIES AND WASTES

Section 1: As 18.45.100 prohibits construction of high level nuclear facilities.

Section 2: AS 18.45.110 modifies currently existing preconstruction review statutes for any high level radioactive waste facility; includes the requirement for the Legislature to designate by law any land to be used for this purpose, and defines financial responsibilities for long term effects from a disposal facility

Section 3: AS 18.45.110 (a) is presented as an alternative, if Section 1 of the Bill is found unconstitutional. This alternate section would require that nuclear facilities obtain a department permit prior to any construction.

Section 4: AS 18.45.110 (b) is presented as an alternative, if Section 1 of the Bill is found unconstitutional. This section would require the Legislature to designate by law any lands to be used for nuclear facilities.

Section 5: AS 18.45.120(a) is presented as an alternative, if Section 1 of the Bill is found to be unconstitutional. This section would require operators of nuclear facilities to show long term financial responsibility for any adverse environmental effects caused by their facility.

Section 6:

A. AS 18.45 130 allows the transportation of radioactive waste only for disposal out-of-state, or for disposal in an approved in-state facility.

B. AS 18.45.140 requires the storage and disposal of high level wastes to be done in a safe manner.

C. AS 18.45.150 places long term financial responsibility on the operator for waste disposal.

D. AS 18.45.160 provides for high level radioactive waste violations to be treated as a Class C felony, with penalties of up to $50,000 for each offense.

E. AS 18.45.170 includes the definitions by which high level wastes and low level wastes are defined.

II. LOW LEVEL WASTES

Section 7: Includes modification to the existing AS 46.03.250, to have this section relate to only low level radioactive waste.

Section 8: Includes modification to the existing AS 46.03.260, to have the section apply to only low level radioactive wastes.

Section 9: Includes the definitions applicable to AS 46.03.250-260 for high level and low level radioactive waste.

III. HAZARDOUS WASTES

Section 10: An additional subparagraph is added to AS 46.03.020(10) to provide regulatory authority for the handling, transportation, treatment, storage and disposal of hazardous wastes, as well as the safe handling and storage of hazardous materials.

Section 11:

A. AS 46.32.010 requires that hazardous wastes be processed to remove their harmful properties by the best available technology, with the remainder disposed of in a safe manner as defined by regulation.

B. AS 46.32.020 provides the department authority to establish criteria for identifying characteristics of hazardous wastes, and to list those hazardous wastes to be subject to regulations. It also requires that the department develop a program which is consistent with and assumes responsibility for federal programs under the Resource Conservation and Recovery Act.

C. AS 46.32.030 would require those persons generating, processing, transporting, storing or disposing of hazardous wastes to obtain a permit, and to provide reports which may be required by the department.

D. AS 46.32.020 specifies penalities associated with hazardous waste violations.

E. AS 46.32.050 specifies the definitions for the hazardous waste portion of the bill.

Section 12: Repeals AS 18.45.010 - 18.45.080.

Section 13: Identifies all sections of the bill as going into effect immediately except for Sections 3-5 and 10-11.

Section 14: Makes Section 3-5 effective if Section 1 is ruled invalid by court decision.

Section 15: Sections 10-11 go into effect as of July 1, 1981.

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION X
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

REPLY TO ATTN OF: M/S 533

Tom Hanna, Chief
Air and Solid Waste Management
Alaska Department of Environmental Conservation
State of Alaska
Pouch O
Juneau, Alaska 99801

Dear Mr. Hanna:

Pursuant to your inquiry, Section 3006 of the Resource Conservation and Recovery Act establishes the statutory requirements for interim authorization. In order for a state to receive interim authorization, it must submit to EPA evidence that shows the States' program is in existance and that the existing state program is substantially equivalent to the Federal Program. If the States' enabling legislation were to include a condition that it does not become effective until EPA grants interim authorization, it is difficult to imagine how this statutory requirement would be met. Additionally, it would be difficult for the State to demonstrate that their hazardous waste program would be adequately staffed and enforced unless the enabling legislation and the implementing rules and regulations were in effect at the time of application. We would further question whether State law would allow the adoption of rules and regulations if the enabling legislation were not in effect.

Sincerely,

Kenneth D. Feigner, Chief
Waste Management Branch

cc: Dave Hanline

1 of 1

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

January 28, 1981

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

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

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

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

AS 46.03.250 is amended to read:

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

AS 46.03.260 is amended to read:

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

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

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

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

REVIEW OF HAZARDOUS WASTE DISPOSAL AND CONTROL IN ALASKA JANUARY , 1981

SUMMARY

Up to now there have been no detailed hazardous waste controls defined or put into effect in Alaska. Such wastes have been treated as a special category of solid wastes, and have come under only general review guidelines during the review and issuance of Solid Waste Disposal permits, and periodically have come under field surveillance by Department regional personnel as spills are detected. In the past few years, however, hazardous waste disposal and handling have come under much public scrutiny because of the adverse and often long-term nature of the substances. This report evaluates the extent of hazardous wastes in the state, the options and need for control measures to be established, and the effect that federal legislation may have in Alaska.

The report is organized in the following sections:

INVENTORY

Three preliminary inventories of hazardous wastes in Alaska have been started:

1. Environmental Protection Agency-under RCRA
2. Environmental Protection Agency-done by Field Investigation Team
3. Department of Environmental Conservation Inventory

THE EPA inventory under RCRA

Several months ago, EPA contacted 329 organizations and companies in Alaska which may be producers of hazardous wastes. Of those only 45 responded back to EPA (see "Notifiers", Appendix I).

Although EPA did not collect information in volumes of waste generated, disposed, transported, treated or stored at each facility, they did identify the types of wastes handled. The following is a brief sumary of that information. More details are given in Appendix III.:

Of the 45 companies which responded:

36 are involved with generation

28 with treatment, storage and disposal (TSD)

13 with transportation

(there are some overlaps because 36 companies are involved in more than one of these activities)

Seventy-five different types of waste streams were identified:

Five are associated with petroleum refining

8 are acute hazardous wastes

53 are toxic hazardous wastes

9 are nonspecific hazardous wastes

Of the remaining organizations and companies contacted, EPA "suspects" that approximately 59 may be major producers of hazardous wastes (see "Non-notifiers" Appendix II), and the status of the other 225 is unknown.

EPA - Field Investigation Team

July through September, 1980, a field investigation team from EPA visited 17 sites in Alaska which were suspected of improper management of hazardous wastes (Appendix IV). A visual inspection was performed at all sites. Twelve of these were not thought to be of "imminent danger" to the public or environment. The other 5 underwent an extensive sampling program by EPA. The final results and comments about the whole investigation of these sites will not be available until the end of February.

Department of Environmental Conservation

The Department of Environmental Conservation inventory was started this year. Approximately 75 sites were evaluated: 13 were landfill storage sites, 33 were generators, and 29 sites contained PCBs. (Appendix V) Although there are no legal sites for the disposal of hazardous waste in the state, it is suspected that a large number of facilities may be disposing of hazardous wastes into the environment. An example is the Tesoro Refinery (Kenai) which was discovered to be dispersing approximately 70,000 gallons of heavy oily tank bottoms onto the land without adequate safeguards.

Several of the sites evaluated by DEC are classified as abandoned disposal sites. a. Chichikof (mine)

1. Sodium cyanide (20#) 30 gal. drum

b. North Beaver Falls (mine)

1. Potassium Amylxanthate (1#) 30 gal. drum
2. Sodium Ethylxanthate (#) 30 gal. drum
3. Ferrous Sulfate (#1) 30 gal. block

c. Big Hurrah River (mine)

1. Sodium cyanide (20#) 30 gal. drum

There are a number of suspected sites throughout the state which have not yet been located or investigated. Likely sites include: old military installations, oil exploration sites, cannerie and mining sites.

Summary

These inventories are not complete; however, efforts are continuing to gather more information. There has been some difficulty in obtaining this information because of the uncooperative attitudes that small businesses, industry and the military have had towards releasing this type of information, and because of the lack of understanding by industry and the military of RCRA guidelines and of the meaning or definition of hazardous wastes. The information gathered thus far indicates that perhaps 75-100 sites are suspected of containing hazardous wastes, and that further investigations are warranted.

Hazardous wastes are those wastes having characteristics of toxicity, ignitability, corrosivity, and reactivity. The list and more explicit definitions of these characteristics are given in Appendix VI.

Of concern to the Department of Environmental Conservation is that only 22 shipments of hazardous waste have been received by the closest secure landfill (Chem-Security in Oregon) in the past two years. Some of these shipments, for example, are: 10 drums of PCB sent by Sohio; some drums of toxic Phenol sent by Alaska Fish & Game; and some lead oxide waste sent by Mare Enterprises. It is assumed that this is a small percentage of the hazardous waste in this state requiring disposal.

HAZARDOUS WASTE

PROBLEMS AND CONTROL OPTIONS

A. DISPOSAL AND CONTROL OPTIONS

1. There are presently no adequate disposal facilities in the state. The options we have are:

   a. Establish a secure landfill and solid waste incinerator solely for the in-state disposal of hazardous waste. These facilities would likely cause some public controversy, but such facilities would provide for state-of-the-art disposal, cheaper and more convenient dumping, decrease in unwanted dumping, and a safer environment for all.

   b. Establish suitable sanitary landfills capable of handling hazardous wastes, as well as their usual variety of municipal refuse. It is not yet possible to accomodate both solid and large quantities of hazardous wastes in one facility in Alaska.

   c. Rely on out-of-state disposal, with establishment of in-state transfer stations (central collection storage facility) at various locations within the state and sufficient safegards for storage and transportation.

   Recommendation: Item c. Item a, if industry will underwrite the operation.

2. There are a number of small businesses producing limited quantities of waste materials. These quantities are too small to be regulated under RCRA. However, because of the number of businesses and the potential accumulation of large quantities of waste, this area needs to be specifically addressed. A spill or disposal of even small amounts of some hazardous wastes may be very dangerous.

   a. Prohibit disposal of even small quantities of hazardous wastes into landfills, unless landfills meet the necessary requirements for adequate safeguards.

   b. Provide technical assistance to small businesses to help them correctly dispose of their wastes.

   c. Have levels of hazardous waste discharge into sanitary landfills set at 1 kg/month per generator, and for acute toxic waste set at 50 grams/month per generator.

   Recommendation: Items a, b, and c.

3. Improper disposal of hazardous waste, past and present.

   a. Investigate and locate all old and current disposal sites for presence of hazardous wastes.

   b. Develop monitoring programs to detect inappropriate disposal and/or contamination.

c. Implement clean up programs.

d. Enforcement.

Recommendation: Items a, b, c, d.

B. STORAGE OF HAZARDOUS WASTE

1. There are currently no control guidelines on storage of hazardous wastes in the state.

a. Establish guidelines for storage/transfer stations.

Recommendation: Item a.

2. Not enough storage facilities to handle all the hazardous wastes generated.

a. Encourage intermediate storage of waste at transfer stations until they can be shipped outside.

b. Technical assistance to reduce waste at the source where possible.

Recommendation: Item a. and b.

C. TRANSPORTATION

1. No control over the transport or liability of transporters for spills or improper management of hazardous wastes.

a. Develop and implement regulations for the safe transport of hazardous wastes.

b. Develop and implement a manifest system which would track the material from generator through transportation to final disposal (cradle to grave, system, see Appendix VII).

c. Require transporter to be responsible for clean-up of spills and notification to DEC or USCG in the event of spills. Setup effective statewide telecommunication system and require cleanup of wastes from spills.

d. Safety course for transporters- successful completion required for registration to carry hazardous wastes.

e. Placarding and labeling of hazardous wastes shipments.

Recommendation: Items a,b,c,d and e.

2. There is a higher liability to transport hazardous wastes in liquid state.

a. Require recycling of hazardous liquid waste whenever feasible. This will be accomplished through a Waste Exchange newsletter and various incentives to promote recycling.

b. Require that acute hazardous liquid waste be solidified prior to transpo[illegible] unless it can be recycled as [illegible]iquid.

c. Reinforce DOT regulations on shipment of hazardous liquids.

Recommendation: Item a, b, and c.

D. GENERATORS

1. Identify hazardous waste generators in the state.

a. Mandatory notification

b. Perform field inspections and technical assistance

Recommendation: Item a. and b.

2. Control disposal and storage locations used by hazardous waste generators.

a. Manifest system

b. Perform field inspections and technical assistance

Recommendation: Item a. and b.

3. Control improperly managed on-site disposal

a. Establish criteria for correct on-site disposal

b. Provide technical assistance on proper methods of on-site disposal

Recommendation: items a. and b.

E. TREATMENT

1. There is no control over disposal methods and no requirement that best available technology be used. Therefore, there are no assurances that after treatment the waste will no longer be hazardous.

a. Set required standards for hazardous waste treatment methods & facility operations

b. Provide technical assistance to facilities upgrading to the required best available technology

c. Enforce required standards, if necessary

Recommendation: Items a, b, and c.

F. PUBLIC EDUCATION

1. The general public doesn't understand what hazardous wastes are, why or how they are produced, or the problems they cause when improperly managed or disposed.

a. Set up public awareness and education program.

b. Encourage reporting of suspected improper management and disposal.

c. Develop statewide communication system for spills and general information.

Recommendation: Items a, b, and c.

G. EMERGENCY RESPONSE/SAFETY

1. We do not have a program adequately respondirg to emergency spills or problems associated with hazardous waste clean up.

a. Develop guidelines and procedures for emergency response and clean-up.

b. Train state and federal personnel on emergency preparedness.

c. Obtain adequate safety equipment.

d. Provide technical assistance to regional offices and industries relating to emergency preparedness.

e. Promote private response programs

Recommendation: Items a, b, c, d, and e.

H. RESOURCE RECOVERY

1. A large number of recyclable hazardous wastes are probably not being recycled.

a. Develop waste exchange newsletter.

b. Provide technical assistance to both generators and recyclers.

c. Investigate incentives for recycling of hazardous wastes.

Recommendation: Items a, b and c.

I. HAZARDOUS MATERIAL

1. There are no regulations on the storage of hazardous materials. — definition

Note: If hazardous material discharge from containers because of improper handling, storage or transportation then resulting material becomes a hazardous wste and can cause detrimental health problems an environmental effects.

a. Set up guidelines similar to those for hazardous waste.

b. Provide technical assistance.

c. Require spill contingency plans & diking requirements

Recommendation: Items a,b, and c.

MEMORANDUM State of Alaska

TO: Ernst W. Mueller, Commissioner
Department of Environmental Conservation

DATE: November 19, 1980

FILE NO: J-66-128-81

TELEPHONE NO: 465-3680

FROM: WILSON L. CONDON
ATTORNEY GENERAL

By: Ann E. Prezyna
Ann E. Prezyna
Assistant Attorney General

SUBJECT: Review of legal authority for meeting federal solid waste control requirements

By memorandum date July 2, 1980, you have asked this office to review the applicable law to determine whether or not your department has the legal authority to carry out the requirements of the federal Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6901 et seq. In particular, you have asked whether your department has the authority to (1) prohibit the establishment of new open dumps and require that existing open dumps be closed or upgraded (citing 40 CFR 256.20) and (2) meet the federal requirements for interim authorization for hazardous waste management (citing 40 CFR 260 and 261).

My conclusion regarding your first question is that the department has the authority to prohibit establishment of new open dumps and to require that existing open dumps be closed or upgraded. My analysis follows.

AS 46.30.710 provides that:
No person may pollute or add to the pollution of the air, land, subsurface land or water of the state.

AS 46.03.900 defines pollution to mean:

> the contamination or altering of waters, land or subsurface land of the state in a manner which creates a nuisance or makes waters, land or subsurface land unclean, or noxious, or impure, or unfit so that they are actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, or recreational use, or to livestock, wild animals, bird, fish, or other aquatic life.

Under the provisions of AS 46.03.020, the commission may adopt regulations necessary to effectuate the policy set forth in AS 46.03.710. AS 46.03.020 provides, in part, that the department may:

> (10) adopt regulations necessary to effectuate the purposes of this chapter, including, by way of example and not limitation, regulations providing for

(A) control, prevention and abatement of air, water, or land or subsurface land pollution: . . .

(E) collection and disposal of garbage, refuse, and other discarded solid materials from industrial, commercial, agricultural and community activities or operations: . . .

(H) such other purposes as may be required for the implementation of the policy declared in § 10 of this chapter.

It is my opinion that under this broad grant of authority, the commissioner may promulgate regulations prohibiting the establishment of new open dumps.

It is also my opinion that the department currently has the authority to require that existing open dumps be closed or upgraded. Indeed, acting under the authority of AS 46.03.760 and 18 AAC 60, the department has previously succeeded in closing existing open dumps or getting them upgraded. A more detailed analysis describing the applicable investigatory and enforcement powers available to the department in this regard is set forth below in response to your question on the authority of the department to meet the federal requirements for interim authorization.

Based on the following analysis, my conclusion regarding the second question is that the department has the authority to meet the federal requirements for interim authorization for hazardous waste management. Some of the federal requirements are already conferred by existing legislation, such as the requirement that the department have the authority to assess or bring suit for civil and criminal penalties of at least $1,000 per day for any solid waste control program violation. Other federal requirements -- such as the requirement that the department institute a manifest system for tracking hazardous wastes -- can be met only by the promulgation of regulations which specifically address these requirements. However, even though it is my opinion that the existing broad grant of authority given to DEC by statute enables you to promulgate regulations creating a sweeping hazardous waste and solid waste disposal program, I would caution you to first sound out the legislature to determine whether it is politically preferable to secure specific legislation creating such a state program.

The regulatory requirements for interim authorization for Phase I of the federal program are set forth at 40 CFR 123(f).

In my analysis of these requirements, I have followed the guidelines provided by the U.S. Environmental Protection Agency in its RCRA State Interim Authorization Guidance Manual (dated 6/25/80).

The model format for the attorney general's statement for interim authorization Phase I is set out in the EPA manual at 2.3-4 to 2.3-12 and has nine parts. For purposes of my analysis, I have reformulated each of these nine parts into a series of questions. My answers to these questions formed the basis of my opinion that the state can meet federal solid waste control requirements. Please note that only those questions not denoted by an asterisk must be answered affirmately to qualify the state for Phase I interim authorization. Stated another way, a negative answer to any asterisked question cannot, under federal law, result in the denial of Phase I interim authorization. The questions are the following:

* * *

I. INDENTIFICATION AND LISTING

Can the state control hazardous waste generated, transported, treated, stored, and disposed of in the state? Can the state define hazardous waste to include all substances controlled under federal law?

II. STANDARDS FOR GENERATORS OF HAZARDOUS WASTE.*

A. Can the state apply standards to all generators of hazardous waste?

B. Can the state require generators to determine whether their waste is hazardous?

C. Can the state require generators to comply with storage and recordkeeping requirements?

D. Can the state require generators which accumulate waste for shipment to meet certain safety and health standards?

E. Can the state mandate international shipping requirements?

F. Can the state require generator-transporters to use a manifest system? Can the state require that intra- and interstate shipments be designated for delivery? Can the state require that intra-state shipments be delivered only to authorized facilities?

G. Can the state set the following manifest system requirements?

1. A requirement for identification of the generator, the transporter, the recipient and the waste?

2. A requirement that the manifest accompany all transported waste?

3. A requirement that a shipment not delivered to a designated facility be identified and reported by the generator?

4. A equirement for notification of an undelivered inter ate shipment to the state designated for receipt?

III. CAN THE STATE SET STANDARDS FOR TRANSPORTERS OF HAZARDOUS WASTE?

A. Can the state apply standards to all transporters?

B. Can the state establish recordkeeping requirements?

C. Can the state require the use of a manifest system?

D. Can the state require that a manifest accompany transported waste?

E. Can the state set notification and cleanup requirements for wastes discharged in transport?

IV. CAN THE STATE SET STANDARDS FOR STORAGE, TREATMENT, AND DISPOSAL FACILITIES? CAN THE STATE PROVIDE THAT NO FACILITY MAY OPERATE UNLESS THE FACILITY COMPLIES WITH CERTAIN STANDARDS, INCLUDING,

A. A requirement for the prevention of accidental release? A requirement for emergency procedures in the case of accidental release?

B. Closure requirements? Post-closure requirements?

C. Groundwater monitoring?

D. Security?

E. Training of personnel?

F. Inspection? Monitoring? Recordkeeping? Reporting?

G. Compliance with manifest system requirements? Notification requirements?*

H. Other standards as required by federal law?

V. DOES THE STATE HAVE POWERS OF INSPECTION?

VI. DOES THE STATE HAVE ENFORCEMENT AUTHORITY?

A. May the state issue an emergency order or seek a court

order restraining any person from engaging in unauthorized activity which endangers or causes damage to public health or the environment?

B. Does the state have the authority to sue to enjoin a threatened or continuing violation of a program requirement?

C. Does the state have the authority to assess, or bring suit for, civil penalties of at least $1,000 per day for any program violation, or seek criminal remedies including fines of at least $1,000 per day for any program violation?

VII. PUBLIC PARTICIPATION IN THE ENFORCEMENT PROCESS.

Does the state provide for public participation in the enforcement process?

A. Is there authority which allows intervention as of right in any civil or administrative action under VI by any citizen who has an interest or may be adversely affected?

OR

B. Are there assurances that the state will:

1. Investigate and provide written response to citizen complaints?

2. Not oppose intervention by any citizen where permissive intervention is authorized?

3. Publish and provide 30 days for public comment on any proposed settlement of a state enforcement action?

III. AUTHORITY TO SHARE INFORMATION WITH EPA UPON REQUEST AND WITHOUT RESTRICTION?

IX. AUTHORITY OVER INDIAN LANDS (if sought)?

* * *

The first four parts address the ability of the state to control solid waste by setting standards for the generators, transporters, and disposers of solid waste. Because the powers of the department are stated in very broad terms, it is my opinion that the department has the authority to meet all of the federal requirements set forth in Parts I-IV. Specifically, AS 46.03.020 provides as follows:

Powers of the department. The department may

(1) enter into contracts necessary or convenient to carry out the functions, powers and duties of the department;

(2) review and appraise programs and activities of state departments and agencies in light of the policy set out in § 10 of this chapter for the purpose of determining the extent to which the programs and activities are contributing to the achievement of that policy and to make recommendations to the departments and agencies, including but not limited to, environmental guidelines;

(3) consult with and cooperate with
(A) officials and representatives of any nonprofit corporation or organization in the state;

(B) persons, organizations and groups, public and private, using, served by, interested in or concerned with the environment of the state;

(4) appear and participate in proceedings before any state or federal regulatory agency involving or affecting the purposes of the department;

(5) undertake studies, inquires, surveys or analyses it may consider essential to the accomplishment of the purposes of the department; these activities may be carried out by the personnel of the department or in cooperation with public or private agencies, including educational, civic and research organizations, colleges, universities, institutes and foundations;

(6) at reasonable times enter and inspect with the consent of the owner or occupier any property or premises to investigate either actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with a regulation which may be promulgated under §§ 20-40 of this chapter; information relating to secret processes or methods of manufacture discovered during investigation is confidential;

(7) conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books and documents by the issuance of a subpoena;

(8) advise and cooperate with municipal, regional and other local agencies and officials in the state, to carry out the purposes of this chapter;

(9) act as the official agency of the state in all matters affecting the purposes of the department under federal laws now or hereafter enacted;

(10) adopt regulations necessary to effectuate the purposes of this chapter, including, by way of example and not limitation, regulations providing for

(A) control, prevention and abatement of air, water, or land or subsurface land pollution;

(B) safeguard standards for petroleum and natural gas pipeline construction, operation, modification, or alteration;

(C) protection of public water supplies by establishing minimum drinking water standards, and standards for the construction, improvement, and maintenance of public water supply systems;

(D) collection and disposal of sewage and industrial waste;

(E) collection and disposal of garbage, refuse, and other discarded solid materials from industrial, commercial, agricultural and community activities or operations;

(F) control of radiation sources to prohibit and prevent unnecessary radiation;

(G) control of pesticides;

(H) such other purposes as may be required for the implementation of the policy declared in § 10 of this chapter;

(11) after consultation with other state agencies and local government officials, identify and propose for addition or deletion, by regulation, other licenses, permits or authorizations for which the provisions of ch. 30 [ch.35] of this title are applicable, and report annually to the legislature the permits which have been included or deleted.

The constitutionality of this sweeping delegation of authority to the department to do, in essence, all things necessary "to conserve, improve and protect . . . [the] natural resources and environment [of the state] and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being" has been upheld by the state supreme court. AS 46.03.010; Stock

v. State, 526 P.2d 3 (Alaska 1974). Therefore, I have concluded that each of the questions stated in Parts I-IV can be responded to in the affirmative. However, the department will have to adopt regulations, pursuant to AS 46.03.020(10)(A) and (D)-(H), to implement the requirements of Parts I-IV as the state does not yet have a solid waste control program along these lines.

The remaining Parts V-VII deal generally with the ability of the state to enforce the solid waste standards established under Parts I-IV.

Part V requires that the state have powers of inspection. AS 46.03.020(6) provides in part that the department may "at reasonable times enter and inspect with the consent of the owner or occupier any property or premises to investigate either actual or suspected sources of pollution or contamination to ascertain compliance or noncompliance with a regulation which may be promulgated under 20-40 of this chapter." In addition, AS 46.03.860 authorizes the department to "seek search warrants for the purpose of investigating actual or suspected sources of pollution or contamination to ascertain compliance or noncompliance with this chapter or a regulation promulgated under this chapter." It is my opinion that this statutory authorization satisfies the federal requirement.

Part VI addresses the ability of the state to enjoin violations and to impose civil or criminal sanctions. Administratively, AS 46.-03.820(a) enables the department to issue an emergency order restraining a person from engaging in unauthorized activity which endangers or causes damage to public health or the environment. If an emergency order is not immediately complied with, then the attorney general, upon request of the commissioner, must seek court enforcement of the order. AS 46.03.820(d).

Similarly, AS 46.03.850 authorizes the department to issue a compliance order when a person is violating or is about to violate a provision of AS 46.03 or a regulation, lawful order, permit, certificate, or a term or condition of a permit or certificate issued by the department under AS 46.03. Regulations prescribing the procedure to be followed in the issuance of compliance orders are set forth at 11 AAC 95. Compliance orders are enforceable by the attorney general. AS 46.03.850(f); AS 46.03.950(a). Once a solid waste program is set forth in department regulations, then AS 46.03.850 will provide a means by which the department may administratively enforce its program requirements. In

addition, AS 46.03.765 authorizes the state to sue to enjoin a threatened or continuing violation of a program requirement.

Regarding the ability of the state to undertake a civil action for damages, AS 46.03.760 authorizes the state to bring suit for civil penalties in the amount of $500 to $100,000 for an initial violation of a provision of AS 46.03 or a regulation, lawful order, permit, certificate, or term or condition of a permit or certificate issued under AS 46.03. Continuing violations are subject to assessments of up to $5,000 a day. Therefore, once a solid waste program is set forth in department regulations, AS 46.03.760 will provide the means by which the department may seek civil penalties for program violations. Similarly, AS 46.03.790 will provide the means by which the state may seek criminal penalties for program violations of up to $25,000. For purposes of section 790, each day on which a violation occurs is considered a separate violation.

Both AS 46.03.760 and AS 46.03.790 have been found to be constitutional by the Alaska Supreme Court. Stock v. State, 536 P.2d 3 (Alaska 1974) (decided before the 1976 amendment of these sections.)

However, in that decision the Alaska Supreme Court imposed a foreseeability requirement, as a narrowing construction on the definition of pollution contained in AS 46.03.900. The relevant portion of that decision states:

> We hold that by use of the word "potentially" the statute prohibits acts which a reasonable person would foresee as creating a substantial risk of making water actually injurious to the statutorily protected interests. . . . Thus, in "potentiality" cases [i.e., cases involving potential as opposed to actual harm], the state must hereafter prove that the threatened injury was foreseeable to a reasonable man in the position of the defendant at the time of the act or omission.

526 P.2d at 10-11. (Bracketed portion added.)

In addition, the Stock decision holds that the department is not required to exhaust administrative (e.g., compliance order) proceedings before instituting court action against a defendant for a polution violation, notwithstanding the fact that the same violation serves as the basis for both the administrative and the court action. Id. at 13 ff. Therefore, both judicial and administrative remedies may be pursued simultaneously.

Thus, it is my opinion that the state has enforcement authority sufficient to meet the federal requirements of Part VI.

Part VII requires that the state provide for public participation in the enforcement process. 18 AAC 15.010 et seq. are the regulations which govern the administrative procedures of the department in ruling on applications for various permits and written approvals. If a solid waste program were implemented by the department and made subject to these administrative procedures, as is likely to occur, then the provisions of 18 AAC 15.200 et seq. would apply. The provisions of 18 AAC 15.200 et seq. allow any person to request an adjudicatory hearing to contest a decision made under 18 AAC 80 (i.e., a decision to approve or disapprove an application for a permit or written approval as specified under 18 AAC 15.010). A hearing will be granted if the request discloses that the requestor would be adversely affected by the department's decision, that the requestor has raised a genuine issue of fact material to the decision, and that the procedural requirements of 18 AAC 15.200 have been met. 18 AAC 15.220. In addition, 18 AAC 15.220 allows intervention in these administrative hearing proceedings by other interested parties.

The federal requirement set forth in Part VI, however, must be satisfied in one of two ways. Either there must be authority which allows intervention as of right in any civil or administrative action under Part VI by any citizen who has an interest or may be adversely affected, or, alternatively, there must be assurances that the state will investigate and provide written response to citizen complaints, assurances that the state will not oppose intervention by any citizen where permissive intervention is authorized, and assurances that the state will publish and provide 30 days for public comment on any proposed settlement of a state enforcement action.

Currently, there is no law or policy which enables an interested party to participate in administrative enforcement proceedings. However, court rules applicable to civil enforcement proceedings do provide a mechanism for both permissive intervention and intervention as of right. Specifically, Civil Rule 24 provides in part as follows:

> (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the

> applicant's interest is adequately represented by existing parties.
>
> (b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its disrection the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Based on the above analysis, it is my opinion that there is insufficient state authority to allow intervention as of right in all civil and administrative actions listed under Part VI. However, it is also my opinion that the department can provide assurances that it will

1. investigate and provide written response to citizen complaints,

2. not oppose intervention by any citizen where permissive intervention is authorized, and

3. publish and provide 30 days for public comment on any proposed settlement of a state enforcement action.

These assurances may best be made in the context of regulations implementing a solid waste control program for the state. Thus, it is my opinion that the state can adequately provide for public participation in the enforcement process.

Part VIII requires that the department have authority to share information with EPA upon request and without restriction. The ability of DEC to share information with EPA is governed by the provisions of AS 09.25.110-120 and 18 AAC 10.010-180.

AS 09.25.110 provides as follows:

> Inspection and copies of public records. Unless specifically provided otherwise the books, records, papers, files, accounts, writings, and transactions of all agencies and departments are public records and are open to inspection by the public under reasonable rules during regular office hours. The public officer having the custody of public records shall give on request and payment of costs a certified copy of the public record.

AS 09.25.120 further clarifies the public's right to inspect and copy public records. In part, that statute excepts from public inspection and copying any record required to be kept confidential by a federal law or regulation or by state law. Other than the confidentiality provisions of AS 46.03.180, which relates to the control of air quality, and of AS 46.03.020(6), which relates to secret processes or methods of manufacture discovered during investigation, there is no other state law applicable to DEC which provides an exception within the meaning of AS 09.25.110-120.

18 AAC 10.010 et seq. are the department's regulations on freedom of information. These regulations set forth the department's policy on disclosure of department records and provide procedures for obtaining such information. Specifically, 18 AAC 10.010 provides:

> Policy on Disclosure of Department Records. (a) It is the policy of the department to give full access to documents in the public domain and to provide copies of such information in an expeditious manner. It is also the department's policy to facilitate the public's participation in the affairs of the agency which was created to serve them and the public interest in matters of the environment. It is the purpose of this chapter to ensure that requests for information are handled in a timely, reasonable and responsive manner while at the same time protecting people's right to privacy.
>
> (b) All department records are available to the public unless they are exempt by law.
>
> (c) All nonexempt records of the department will be made available for public disclosure upon request, regardless of whether any justification or need for those records has been shown.

Thus, the department is required by state law to share information wiht EPA upon request unless specifically provided otherwise. Therefore, it is my opinion that the requirements of Part VIII have been satisfied at this time.

The last part, IX, requires the state to set out the basis of its authority over Indian lands, if sought. I suggest that if you choose, as a matter of policy, to assert authority over Indian lands, that this question be turned over to Deborah Vogt, our in-house authority on Indian laws, for resolution.

If I can be of additional assistance on this matter, particularly with respect to drafting specific legislation or additional regulations, do not hesitate to call.

FINAL

COMMENTS OF THE
ALASKA OIL AND GAS ASSOCIATION
ON
ALASKA'S DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DRAFT HAZARDOUS WASTE MANAGEMENT REGULATIONS
January 28, 1983

1. 18 AAC 62.010 Definition of Hazardous Waste

COMMENTS:

This definition of a hazardous waste appears to be a two-part definition. The first part identifies the material which is considered a waste, and the second part identifies the characteristics of that material which make it hazardous. In addition to including waste identified in 40 CFR 261.2, the definition of a waste appears to include byproducts, since it specifically includes those materials which are the result of a commercial or industrial activity which was not undertaken for the purpose of producing or generating those materials. Unavoidable byproducts that are marketable should not be classified as "wastes" just because the process is not "for the purpose of producing" them. For example, gold is a byproduct of copper refining and would be classified as a waste from a copper smelter under this definition. The point to be made here is that an industrial byproduct should not be classified as a waste until there is an intent to discard.

Using the term "waste" in the definition of hazardous waste is very confusing. We suggest the state refer to wastes as solid wastes defined by 18 AAC 60 "Solid Waste Management Regulations."

Defining wastes as solid wastes allows a single definition applicable to both 18 AAC 60 and 18 AAC 62 regulations. The respective regulation could then define what portion of the State's solid wastes are hazardous and non-hazardous.

RECOMMENDATIONS:

Rewrite 18 AAC 62.010 as: "A waste is hazardous waste and subject to the provisions of this chapter if: (1) It is not excluded from regulation as a hazardous waste under Section 62.130; and (2) It exhibits any of the characteristics described in this chapter; or (3) It is listed in Appendices I and II of this chapter and it exceeds the quantities established in this chapter."

Change the title of section 62.010 to Applicability.

2. 18 AAC 62.020 Lists of Hazardous Wastes and 18 AAC 62.030 Hazardous Waste Sources

COMMENTS:

Sections 62.020 and 62.030 should be combined into a single section. Doing this would allow all the listing information to be incorporated together for easy access by the user.

The State should prepare a justification for re-arranging the chemical products listed at 40 CFR 261.33(e) and (f) into Appendix II "Discarded Chemical Products" found in this draft regulation.

3. 18 AAC 62.040 Discarded Chemical Products

COMMENTS:

The first sentence of this section could be deleted because reference to 40 CFR 261.33(e) and (f) existing as of July 1, 1982 was made in section 62.020.

In addition to lowering the small quantity generator exclusion for acutely toxic wastes, which in the federal regulations is 100 kg (40 CFR 261.5), this section expands the universe of chemicals which could become hazardous wastes. The regulation should exclude any legitimate use, reuse, recycling or reclamation as we do not believe that this regulation should regulate the "intended" use of a chemical material. Rather this regulation should only concern itself with regulating chemical materials intended to be discarded as is stated in the second sentence of this section.

RECOMMENDATIONS:

The first and third sentences should be deleted from this section.

The last two sentences should begin "If a person generates as a waste ...". If the phrase as a waste is not added, these sentences appear to apply to the amount of chemical manufactured rather than to the amount which is discarded.

We also recommend breaking this section up into sub-sections titled (a) Hazardous Chemical Products and (b) Acutely Hazardous Chemical Products.

4. 18 AAC 62.050 Characteristics of Toxicity

(a) This section would classify a waste as hazardous based upon animal testing of oral or aquatic toxicity.

COMMENTS:

First, the section calls for the use of "procedures established by (e) of this section". These procedures have not yet been published

and we have no way of evaluating their validity. In any event, the use of any methods which have not received review by a standard setting organization (such as the ASTM) is questionable. In order to have validity, test methods must be subjected to widespread testing and use. This type of validation study often leads to refinement of test methods which otherwise would have yielded erroneous results. A proper determination of whether a waste is hazardous or not is critically important to this program, and therefore the test methods to make the determination are also critical.

Second, the section says a waste will be considered hazardous if it "has an aquatic (fish) LC_{50} of less than (emphasis added) 1,000 mg/l or an oral (rat) LD_{50} of less than 5,000 mg/kg". These are extremely stringent levels on which to base the hazard determination, and we see no justification for their use. The USEPA's RCRA regulations specify that an oral (rat) LD_{50} of 50 mg/kg will cause the waste to be considered hazardous (40 CFR 261.11). That means that Alaska's regulations will be 100 times more stringent than the USEPA's. It should be noted that the federal RCRA regulations do not use LD_{50} and LC_{50} acute toxicity test results in the same sense as the ignitability, corrosivety, reactivity and EP-toxic characteristic tests. Rather, these toxicity test results are used as a listing criteria for assisting the EPA Administrator in determining whether a given waste should be added to one of the hazardous waste lists at 261.33(e) and (f). In addition, aquatic toxicity test results are not included in the Federal RCRA listing procedure. The federal program realized the limitations of using toxicity data to characterize a waste as hazardous. Therefore, RCRA adopted a listing approach to hazardous waste which uses among other things toxicity test results (LC_{50} and LD_{50}) as listing criteria.

In addition, this approach does not conform to Alaska's hazardous waste statutory requirements under which this program is being developed. The enabling legislation calls for ADEC's regulations to be "consistent with or substantially equivalent to" the federal program, and provides that before a waste may be listed as hazardous waste in the state regulations that is not also listed as a hazardous waste by the United States Environmental Protection Agency under 42 U.S.C. 6921, the Commissioner of ADEC must first determine that the waste is hazardous as defined by the state statute (AS 46.03.299(b)).

The proposed rules for Alaska are much more stringent than the Federal standards without explaining why.

Third, the section allows a waste generator to use the procedures of paragraphs (b)-(d), if the generator "has knowledge of each significant constituent of the waste and its concentration . . .". The section goes on to state that "significant" constituents include any substance listed in the NIOSH Registry with one of the LC_{50} or LD_{50} values in Table 2 or in 40 CFR §117.3 (reportable quantities of hazardous materials). The problems with this approach are numerous - a few are listed below.

1. It should be pointed out that the waste example given in 62.050(c) is extremely naive. To obtain knowledge of each significant constituent (i.e., Aldrin - .01%, Diuron - 1%, Benzene - 4%, Phenol - 2%, Cyclohexane - 5%, Water - 87%) used in this example, would impose a tremendous analytical burden upon the generator. Let's analyze this waste characterization example first assuming very little knowledge of the constituents or percent of constituents in that waste and second assuming we know the constituents in the waste but not the relative percent.

   Under the first assumption the waste must be analyzed for all X, A, B, C and D constituents as defined by Table 2. For simplicity's sake let's only consider X category wastes listed in Appendix II. There are 24 X category constituents listed in Appendix II. The X category wastes alone would require the generator to analyze this waste for all 24 constituents. When analytical sampling of a waste is performed it is always prudent to take repetitive and representative samples. In our situation let's assume two samples of this waste are analyzed for the 24 X category constituents. The total analytical cost to identify and determine relative percentages of the the X category wastes would be approximately $3,000. After completing the analytical work the combined totals would then be inserted into the EC equation for % constituent X. While this example only concerns itself with X category constituents listed in Appendix II it applies equally as well to the A, B, C and D category constituents. In addition, this example did not concern itself with the thousands of X, A, B, C, and D category constituents which could be found in the NIOSH registry.

   Under the second assumption, the generator must analyze this waste to determine relative percentages of each constituent. Determining relative percentages alone could cost the generator approximately $2,500 (this is for X, A, B, C and D components). The point to be made is that while the degree of hazard (EC) approach is an apparent attempt to overcome some of ADEC's perceived shortcomings with the federal program, it presently is not a realistic approach to the problem. As was found at the federal level and hopefully illustrated here, the amount of analytical testing required to implement a degree of hazard approach is extremely difficult to perform and would be prohibitively expensive.

2. The 1980 NIOSH Registry lists 168,096 chemical substances, many of which have an LD_{50} or LC_{50} listed. To use this listing in order to decide what to look for in a waste analysis would be nearly impossible. One would have to look at each listing and see if it was within the toxicity range of concern. You would then end up with thousands of chemicals to analyze the waste for. As stated above this would be extremely costly to the generator.

3. Many common substances which are normally not considered to be toxic are listed in the NIOSH Registry and are within the ranges given in Table 2. For instance, salt (NaCl) has an LD_{50} of 3,000 mg/kg. Sodium bicarbonate (baking soda) has an LD_{50} of 4,420 mg/kg. This means each of these substances would be in the D range, and if they comprise more than 10% of a waste, the waste could be hazardous.

   If a bakery accidently used too much salt or baking soda and ruined a batch of bread dough weighing 400 lbs., under this section the bakery would be required to determine the amount of salt and baking soda in the bad batch before disposing. This is another example of the potential problems with this type of constituent approach. A short, and by no means conclusive, list of other materials which could be considered hazardous under this section are:

Material	Toxicity from the NIOSH Registry
Salt	LD_{50} = 3,000 mg/kg
Baking Soda	LD_{50} = 4,420 "
Vitamin A	LD_{50} = 2,000 "
Nutmeg Oil	LD_{50} = 2,620 "
Cinnamon Bark Oil	LD_{50} = 3,400 "
Citric Acid	TLm^{96} = 100 - 1,000ppm
Caffeine	LD_{50} = 192 mg/kg

4. The system may not include many substances which <u>are</u> normally considered hazardous. This may happen because the NIOSH Registry includes many different types of toxicity tests, only four of which are included in Table 2. Thus, if a material has only been tested on mice or dogs, it will not be included as hazardous in this system, forcing the generator to conduct bioassays in accordance with paragraph (e).

5. The data included in the NIOSH Registry is itself of questionable validity. There is quite a bit of controversy over how it was derived and what it really means.

(b) Toxic Categories

This section sets out "toxic categories" based on the toxicity of constituents in a waste.

COMMENTS:

The table in this section is the basis for beginning a determination of whether a waste is hazardous. A waste could be hazardous if it has constituents with an aquatic LC_{50} of up to 1,000 ppm, an oral LD_{50} of up to 5,000 mg/kg, an inhalation LC_{50} of up to 200mg/l, or a dermal LD_{50} of up to 2,000 mg/kg. In comparison, the EPA's limits on these parameters are; no aquatic LC_{50}, an oral LD_{50} of

up to 50 mg/kg, inhalation LC_{50} of 2 mg/l, and dermal LD_{50} of 200 mg/kg (40 CFR 261.11). In each case the Alaska limits are 100 times more stringent than those of EPA. Clearly this does not conform to the requirements of Alaska's enabling statute which provides that the state's hazardous waste program be "consistent with and substantially equivalent to" the federal program or otherwise be justified by the commissioner (AS 46.03.299(b)). Also, this approach would regulate many innocuous substances that should not be considered hazardous.

It is totally inappropriate to use the hazardous determination of the toxicity test which yields the most stringent result. This ignores the fact, for instance, that an inhalation test has no bearing on a waste discharged which may enter a waterway. The toxicity test applied must reflect the actual disposal situation.

(c) Equivalent Concentrations (E.C.)

This section calls for an addition of the percentages of different constituents, weighted for their degree of toxicity.

COMMENTS:

The system proposed is an overly simplistic scheme whose validity has not been established. In AOGA's review of toxicity information relative to these regulations, no studies were found which showed that toxicity can be determined by this type of additive approach. As has been requested in past comments, ADEC should present the data and studies supporting this Equivalent Concentration equation. The point to be addressed is whether or not the E.C. test coresponds to an acute toxicity test with any degree of reliability.

The equivalent concentration approach recognizes that different wastes have different degrees of hazard. However, the problems mentioned earlier in our comments concerning the E.C. equation would require that a very extensive research program be implemented to verify the equation.

Consider the following example: a department store has a few bags of water softener salt that with age solidified and must be discarded. Since salt has an LD_{50} less than 5,000 mg/kg, it is in the D category. Applying the equivalent concentration formula, we get an E.C. as follows:

$$E.C. = 0\% \times \frac{0\%B}{100} + \frac{0\%C}{1{,}000} + \frac{100\%D}{10{,}000} = .01\%$$

Going to the hazardous waste graph, we find that the quantity of salt requiring disposal at an EPA approved landfill looks to be a little less than 400# per month or batch. Assuming the bags of water softener salt weigh 50#/each, the department store would be required to dispose of the salt at an EPA approved hazardous waste facility if they had over 8 bags. Costs to ship 400 pounds to Arlington, Oregon plus disposal costs will be approximately $3,000 (assumes no consolidation).

The questions that must be asked are: Will the management of the department store know of these regulations concerning disposal of water softener salt? Does the E.C. equation accurately indicate the hazard to human health and the environment caused by waste materials?

(d) Use of Bioassy Information

This section allows a waste generator to run bioassays on a waste rather than using the method of b-d above.

COMMENTS:

Because of the problems outlined above, the use of bioassay information would probably be required. Without having seen the bioassay test methods, which we understand have not yet been established by ADEC, we cannot comment directly on them.

As was mentioned in AOGA's comments on the May, 1982 draft, the U.S. EPA is also concerned about testing protocals for acute toxicity tests. Defining the testing protocal for the State's acute toxicity test is required if they are to be used as a characteristic test.

RECOMMENDATION:

AOGA strongly recommends that the testing protocals of the bioassay test be reviewed by the Hazardous Waste Advisory Work Group (HWAWG) before the hazardous waste management regulations are issued for public comment. Doing this will provide ADEC with a much needed outside review of the test procedures before submittal for public comment. Until an agreed upon test procedure is available, Section 62.050 should be deleted from the requirements of this section.

5. 18 AAC 62.060 Characteristics of Persistence

COMMENTS:

We are assuming that ADEC is attempting to address persistent materials which are leachable and upon leaching cause harm to the environment. A material may be persistent and still not cause harm to the environment or public health.

For instance, asphalt, rubber tires, roof shingles, certain plastics and other similar materials may be regulated as hazardous under this section. For a persistent material to be of concern to any hazardous waste regulation, that material must be leachable and the components of the leachate represent a potential harm to human health or the environment.

There seems to be a discrepancy between this section and the definition of persistence on page 34.