

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4282 SRES SB 375

Via Earl B. (ind)

Comments on House Bill No. 470

"An Act Relating to the Release of Oil and
Hazardous Substances; and Providing for an Effective Date

Sec. 46.08.005. PURPOSE. Does this bill include funds for the natural release of oil or hazardous substances into the environment? Natural releases include but are not limited to the following: 1) natural oil seepages; 2) natural gas seepages; 3) volcanic eruptions including the expulsion of gaseous compounds, thermal waters with various deleterious solutes, and volcanic fragments; 4) surface oxidation and weathering of metallic mineral deposits and thus release of elements and compounds to the air and surface waters; 5) subsurface oxidation and weathering of metallic mineral deposits thereby the release of elements and compounds to groundwater.

Sec. 46.08.010. FUND ESTABLISHED. Does the Commissioner of the Department of Environmental Conservation have the discretion to determine what constitutes an oil or hazardous waste "expenditure"? Can this money be utilized to "educate" the general public with respect to activities or industries that are involved in the utilization of natural resources?

Under Sec. 46.08.040, PURPOSES OF THE FUND, the Commissioner of DEC has unlimited discretion to "undertake plans, inspections, sampling, tests, investigations, etc," to clean up releases or THREATENED releases of oil or hazardous substances. As noted below under the definition of hazardous substances, this is a Carte Blanche to attempt to "control" all human as well as natural events that may be deleterious to man or beast in Alaska.

Sec. 46.08.050. RECORDS OF THE FUNDS. Recording only the income and expenses of the fund does not provide the Governor, the Legislature, or the general public with a guide to the effectiveness of the activities conducted thru the fund. A "Cost/Benefit Analysis" should be completed for any State expenditure and this analysis should be conducted at the rate of interest received from the Permanent Fund.

Sec. 46.08.060. REPORT TO THE LEGISLATURE. Any report to the legislature is meaningless without a Cost/Benefit Analysis as mentioned above.

Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. How are natural contaminants going to be segregated from man induced contaminants? How much of the "hazardous waste" represents a real and substantial threat to public health and how much may be induced into the environment by human versus other natural events?

Sec. 46.08.900. DEFINITIONS. The definition of hazardous substance is vague and open-ended. All elements of the Periodic Table are hazardous if ingested or absorbed by man or by "fish, animals, vegetation, etc." Conversely, animals (including man), and plants need a variety of elements to survive. Man receives these elements thru the food chain but also from areas in the earth's crust which contain anomalously high concentrations of these elements, the anomalies are called mineral deposits. Both the human and non-human natural depletion of a given mineral deposit will result in the release of elements to the environment that exceed levels necessary for normal biological activity

and may result in levels deleterious to some biological activity. The inclusion of all elements or minerals (a naturally occurring compound) in the definition of hazardous substance could do substantial damage to the Alaskan Mineral industries, as well as to all humans that depend on these mineral industries for the sustenance of civilization.

Sec. 46.09.050. PEACE OFFICERS. This section provides employees of DEC with police powers and can it be assumed that employees of DEC will have been formally trained accordingly?

Comments on H.B. 470

"An Act relating to the release of oil and hazardous substances; . . ."

The following comments are made in the context that both physical environment and economic environment are necessary and are important to man's high level of society.

As stated by John Wolfe in his book, "Mineral Resources, A World Review," 1984.

"In attacking the mineral industries, the preservationists ignore the tradeoffs. Without mining, there can be no civilization as we know it and the earth cannot support a population of seven to eight billion people. By piling regulation after regulation and tax after tax on one side of the balance, there has to be something stacked on the other side to keep things even. This something is price or inflation. In North America in 1960, every man thought an automobile was "right". In the future it will become a "privilege". A plethora of regulators and regulations constitute a major source of damage to the economic environment."

The purpose of the bill as stated, "to provide a readily available fund for the payment of the expenses incurred by the Department of Environmental Conservation in the protection of the environment of the State from the release of oil or hazardous substances," generally appears to be an approach for a safeguard to take action to prevent environmental catastrophes.

Several thoughts arise. Some are:

1. Where do private industries or operating government agencies mesh with the proposed program time-wise as they are involved in meeting their clean-up responsibilities?
2. How do any existing regulations pertinent to the topic coordinate with the proposed program?
3. Under what conditions and determined by whom does financial reimbursement for a "threatened release of oil or a hazard" become a fact?
4. In what way will regulations be proposed to assure that such meets the intent of the law? Too often we see regulations imposed that law makers state, "that is not the intent of the law".

Sec. 46.08.040 PURPOSES OF THE FUND (page 2). The purpose of the fund has been greatly expanded to what appears will be the creation of additional bureaucratic units for investigations, design, construction, administration, etc. This adds additional layers of expansion in the government agencies.

5. Sec. 46.08.900 DEFINITIONS (pages 4 and 5).

(2) "restoration of the environment to its former state".

This is impossible, although it can be made to be acceptable to surrounding conditions.

(7) "hazardous substance".

"(A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation or any part of the natural habitat in which fish, animals or wildlife may be found;"

As I interpret the above definition, it is a very general statement that could preclude any resource development involving use of water and land. As an example: Well publicized in the media are the problems existing with waste water quality with reference to placer mining. Regulations generated by using the foregoing definition could stop all placer mining operations, as well as other activities. At present, the multitude of regulations by EPA, DEC and Fish and Game would be further expanded by this bill and create greater bureaucratic expansion in the state.

To encourage resource development utilization and diversification of industry, it is essential that a clear definition be given of hazardous substances so that the possibility of misunderstandings are minimum, both by the private segment and by those drafting and enforcing regulations.

The continuous and constant badgering through regulations that are not realistic and balanced cause even the strongest of people in private industry, the people who are fundamental to our free enterprise system, to become frustrated, depressed and consider "walking away".

"(B) a substance defined as a hazardous substance under state or federal law or by regulations adopted under state or federal law".

Such definitions of regulations should be stated so that the public will know what factors are being dealt with.

All in all, if the bill is to proceed, it seems to me that HB 470 should be completely revamped to accomplish its stated objective of "funding", to define more clearly the factors and topics involved, to show the coordination of responsibilities with other agencies, to present pertinent existing regulations of other agencies, to indicate the increased number of regulations and personnel involved and how this bill gives a balance to physical environment and economic environment.

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Pouch O • Juneau, Alaska 99811

Bill Sheffield, Governor • Bill Ross, Commissioner

Alaska's Hazardous Waste Management Program

NOVEMBER 1985

OVERVIEW

Alaskans are becoming increasingly concerned about the problems that may result from improper disposal of hazardous waste. Many useful and convenient products found in Alaskan homes and businesses, such as pesticides, paint strippers, and stain removers, are potentially hazardous. Hazardous wastes can also be generated by commercial and manufacturing operations. If improperly handled, transported, or disposed, some hazardous wastes may cause severe environmental damage or health problems.

Fortunately, Alaska has avoided many of the waste problems of other states. Alaskans now have the opportunity to learn from the experience of others, and to develop a model hazardous waste program that will meet Alaska's unique needs and minimize the potential risks associated with hazardous waste. The Department of Environmental Conservation is conducting a six-point program to improve management of hazardous waste.

The Alaska Hazardous Waste Program began in July 1981 with enactment of Alaska's hazardous waste law (AS 46.03.299-314). In 1984, the Alaska Legislature amended and strengthened this law, expanding DEC's responsibilities and activities in hazardous waste management.

The goal of the Hazardous Waste Program is to protect the environment and the public health by minimizing the release of hazardous waste into Alaska's water, soil and air. The program is made up of several discrete elements, all of which are designed to help achieve this goal. The major program elements are described below, including a summary of the projects and activities currently in progress, and those planned for the future.

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AUTHORIZATION

The Resource Conservation and Recovery Act of 1976 (RCRA) is the federal hazardous waste law. RCRA gives the U.S. Environmental Protection Agency (EPA) authority to regulate the treatment, storage and disposal of hazardous waste. In Alaska, DEC and EPA jointly operate the hazardous waste management program through a cooperative agreement, including inspections and compliance reviews of EPA-regulated hazardous waste generators, transporters, treaters and storage facilities. DEC also drafts appropriate enforcement documents, reviews permit applications, assists EPA in drafting permits, and administers a medical monitoring and safety program.

EPA can authorize a state to conduct the RCRA program. DEC is now preparing to request authorization for this program as directed by the Alaska State Legislature in 1984 (AS 46.03.299). To assume this program DEC must

develop hazardous waste regulations which are at least as stringent as the federal regulations. The statute provides that the State regulations be adopted by July 1, 1986, and take effect July 1, 1987.

DEC is currently drafting regulations for State management of the Hazardous Waste Program. The regulations will be designed to track hazardous waste in Alaska from its initial generation to its ultimate disposal (the hazardous waste "manifest tracking system"). The regulations will cover hazardous waste, not otherwise exempted by law, that is generated in any month by a single generator, in an amount of 220 pounds or more, or 2.2 pounds if it is an acute hazardous waste. In addition, DEC has negotiated a contract to evaluate the appropriateness of identifying hazardous waste by such characteristics as toxicity, persistence and carcinogenicity.

These activities, along with DEC's cooperative efforts with EPA, continue to enhance the State's ability to conduct an authorized hazardous waste program. The major advantage of adopting State regulations and achieving EPA authorization is to provide the Alaskan public and industry with more direct and accessible assistance in controlling and managing hazardous waste in Alaska.

SPRING CLEANUP

DEC has sponsored a Spring Cleanup of hazardous waste for the past three years. DEC provides this service so that households and small businesses can properly dispose of their hazardous waste, such as some paints, pesticides and varnishes. In 1983, cleanups were held in Anchorage and Fairbanks. Juneau was added in 1984, and Kenai in 1985. Public response to this popular project has been enthusiastic. The amount of waste brought in for disposal during Cleanup has nearly doubled each year. In addition to providing proper disposal of hazardous waste, Spring Cleanup has provided DEC with information on the amount of waste generated in the State. The 1984 hazardous waste legislation (AS 46.03.309) established cleanup as a mandatory project of the Hazardous Waste Program.

Because public involvement has increased so dramatically and because testing and disposal costs have risen rapidly, funding for Spring Cleanup has become an issue. In 1985, the project was funded at \$85,000, but actual costs were much higher. The four municipalities where 1985 cleanups were conducted helped to pay some of the additional costs. Currently a study of the 1985 cleanup data is being conducted to help determine how best to collect and pay for disposal of wastes in future cleanups. DEC would like to be able to expand this service to more communities in the future, in response to the many requests that have been received from all areas of Alaska.

WASTE DISPOSAL STUDY

man

In order to begin the process to evaluate and select potential sites for hazardous waste management facilities in Alaska, a contractor is preparing an assessment of the most appropriate and feasible types of in-state facilities. DEC has contracted with Environmental Resource Management (ERM) to conduct an in-depth study on hazardous waste in Alaska. Included in this "Waste Disposal Study" will be: an inventory of reported hazardous waste in Alaska; a survey of reported hazardous waste generators; waste projections; a review of technologies available to recycle, treat or dispose of waste; transportation analysis; and needs analysis. This survey will be completed in January 1986, and DEC will publicize the results and make the report widely available. This will provide factual information for management of hazardous waste.

SITING OF HAZARDOUS WASTE MANAGEMENT FACILITIES

The 1984 hazardous waste legislation (AS 46.03.313 and 314) directs DEC to evaluate and select potential sites for hazardous waste management facilities within the State. Currently, Alaska's hazardous wastes are shipped out of state to an approved disposal facility in Oregon. Other disposal methods include on-site storage, neutralization, incineration and the DEC-sponsored Spring Cleanup for small quantity wastes. In evaluating and selecting potential in-state sites, DEC will consider many factors, including economic feasibility, intrinsic suitability, the risk and effect for residents and local communities, and consistency with existing and planned local land use.

DEC will pursue an aggressive public awareness campaign throughout the entire site selection process, and will actively encourage public involvement and participation. DEC will hold public hearings and will consider the testimony submitted at those hearings in any reports on management sites and facilities.

DEC has contracted for a study to analyze other states' siting regulations and recommend approaches appropriate to Alaska. Regulations on evaluation and selection of hazardous waste facilities and sites, including procedures for reviewing applications to operate such facilities, will be drafted. The regulations will be adopted by July 1, 1986.

As required in the statute, by July 1, 1987, DEC will submit to the governor and the legislature a preliminary report including proposals for siting, financing and operating hazardous waste management facilities in the State. By July 1, 1989, DEC will submit a final report identifying the sites selected and making recommendations on the previous proposals for financing and operating these facilities. A key issue to be addressed is what the State's role will be in developing and operating any site(s).

TRANSPORTATION NOTIFICATION

As hazardous wastes are transported to various destinations around the state, accidents can occur in which dangerous chemicals can be spilled. In recognition of this possibility, the 1984 hazardous waste legislation includes a section (AS 46.03.308) which requires prior notification of communities through which hazardous wastes will be transported. With the information in this notification, emer-

gency response teams confronted with an accident involving hazardous waste can determine the safest, most effective approach to rescue and cleanup efforts.

In accordance with the law, DEC will develop and manage the notification process. DEC has sent a letter to affected hazardous waste handlers and all mayors in Alaska soliciting their participation in the development of regulations covering transportation notification. Draft regulations are scheduled for early 1986, with a projected approval date of July 1986.

"SUPERFUND"

The "Superfund" Project is the common name for the investigative and "remedial" work being done under the federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). This program element deals with hazardous materials that have already been introduced into the environment due to past disposal practices. This is different from RCRA projects which are designed to prevent pollution in the present and future. If investigation shows that the public health or environment is threatened by improperly disposed hazardous waste, "Superfund" can pay for cleanup of those sites. Funds for cleanup can come from a number of sources, but the cost is generally charged to the responsible parties.

Over the past several years EPA has developed an inventory of suspected historical hazardous waste sites. This inventory comprises the Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS). EPA has prepared a list of approximately 100 potentially contaminated sites in Alaska. Roughly half of these sites are being investigated by the U.S. Department of Defense. DEC is investigating 28 of these sites, while EPA will study the rest. DEC and EPA work together under a cooperative agreement to conduct preliminary assessments, site investigations and followups. Site investigations may disclose actual contamination, causing the site(s) to be listed as a federal Superfund site. There are currently no federal Superfund sites in Alaska.

FOR FURTHER INFORMATION

Defense Dept. - Beginning looking at military sites

Contact DEC Hazardous Waste Program staff at any of the following offices:

Department of Environmental Conservation
Pouch O, Juneau, Alaska 99811
Phone: 465-2666

Department of Environmental Conservation
437 E Street, Suite 200
Anchorage, Alaska 99501
Phone: 274-2533

Department of Environmental Conservation
State Office Building
675 7th Avenue, Station K
Pouch 1601
Fairbanks, Alaska 99707
Phone: 452-1714

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BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
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VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA, 99811
(907) 465-4907

Senate Committee on Resources

TO: Senate Resource Committee Members February 5, 1986
FROM: Senate Resource Committee Staff *ME*
RE: SB 375 "An Act relating to the release of oil and hazardous substances; and providing for an effective date."

This bill is the Senate companion legislation to HB 470. The attached information which address HB 470 applies equally to SB 375 now. Additional information will be supplied prior to public hearing on SB 375.

HOUSE BILL NO. 470

An Act Relating to the Release of Oil and Hazardous Substances; and Providing for an Effective Date

Testimony presented by James M. Posey, ARCO Alaska, Inc. to the House Resources Committee, January 29, 1986.

Mr. Chairman and members of the committee, my name is Jim Posey. I am the Manager of Issues Advocacy. I have with me today Mr. Thomas R. Fink, the Environmental Conservation Manager.

We appreciate the opportunity to present this testimony today on this very important piece of legislation. ARCO Alaska, Inc., is a concerned corporate citizen and we consider environmental protection to be a paramount concern in our total activities and encourage environmental statutes that are based on scientific facts and urge that they be adopted and implemented in a sound and cost effective manner.

ARCO Alaska, Inc. has reviewed HB 470 and is of the opinion that it does little to enhance environmental protection, and it circumvents the normal appropriations process.

To the extent that legislators feel that the existing statutory framework should be changed to provide for an oil and hazardous spill fund, modification of existing AS 46, Chapter 04, would seem to be a more appropriate vehicle for expansion to include hazardous substances.

While we recognize that there may be a legitimate need to expand the existing statute to include hazardous substances requiring a spiller to clean those substances up and respond in damages, we do not feel that establishing a fund without adequate safeguards on its expenditures is a wise course or one that enhances environmental protection.

In this time of falling revenues to the State, it is not appropriate to establish a new special purpose fund that would siphon off general revenues that would escape the close scrutiny of the appropriations process.

Therefore, we do not believe that this legislation is necessary or fiscally responsible. Existing state and federal statutes, such as the Superfund (CERCLA), adequately address the environmental concerns for which this bill is intended.

DEC NEWS

PRESS RELEASE FROM THE PUBLIC INFORMATION OFFICE
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
POUCH O, JUNEAU, ALASKA 99811 (907) 465-2606

Bill Sheffield, Governor

Bill Ross, Commissioner

Joe Ferguson, Information Officer

FOR IMMEDIATE RELEASE

FEBRUARY 5, 1986

Department of Environmental Conservation Commissioner Bill Ross today outlined the State's hazardous waste program at a meeting of the Senate Resources Committee. The Commissioner said, "The State is moving into the lead on hazardous waste issues." Ross said that reasons for this were increased public concern and a series of actions directed in 1984 by the Legislature in Senate Bill 503. He said, "Though the primary regulatory authority for hazardous waste management is federal legislation, the State government's greater role in waste management will help ensure Alaskans are protected.

Ross said the State faces several key policy questions about hazardous waste management, including how much responsibility the State wants to take for the management of hazardous wastes; whether the State is willing to assume the associated costs; and whether hazardous waste can be properly disposed of without a State role. He said, "Federal statutes establish new liability for all generators of hazardous waste. The State and municipalities will be affected, along with large and small businesses. We need to consider how we can best manage this liability."

-MORE-

In his review of DEC's hazardous waste effort, Ross outlined a six point program that will fulfill the Legislature's directives. He said, "The goal is to protect the environment and public health by minimizing the release of hazardous waste into Alaska's land, air, and water. We are at a key point now: all elements of the program are under development."

The six point program described by the Commissioner includes both regulatory elements and assistance to waste generators, especially technical assistance related to waste disposal. Program elements include:

I. Resource Conservation and Recovery Act (RCRA) authorization--The State will apply for authorization to assume federal responsibilities for regulating hazardous waste storage, transportation, and disposal. The federal program includes a "manifest system", or mandatory recording and tracking of hazardous wastes.

II. Spring Cleanups--The Department will continue to sponsor a disposal program, as in the past three years, for unregulated generators -- particularly for households.

III. Waste Disposal Study--An analysis is currently being conducted of the volume and nature of hazardous wastes generated in Alaska. Resulting information is essential to future planning for proper disposal.

IV. Siting Facilities--The Legislature directed DEC to review the options for siting facilities for safe disposal of Alaska's hazardous wastes. These could be either private or state-operated facilities. The

Department's two tasks related to siting are developing regulations to govern sites and looking into selection of potential sites.

V. Transportation Notification--The 1984 legislative mandate provides for notification of communities when hazardous wastes are being transported through their local areas. DEC has started to develop regulations to implement this directive.

VI. Cleanup of Past Disposal Sites--DEC, EPA, and the U.S. Department of Defense are now investigating approximately 100 potentially contaminated sites in Alaska. These sites appear on a nationwide EPA inventory list of sites where hazardous wastes may have been improperly disposed of in the past. If the site investigations disclose actual contamination, sites could be listed for federal Superfund cleanup.

Commissioner Ross said that the major costs of the program to the State will appear in fiscal year 1988, but that the department is asking the Legislature for some additional funding this year. "The State's program is a comprehensive one. When effectively put in place and administered, it can accomplish adequate environmental and public health protection for Alaskans. The costs to accomplish this need to be fully discussed, because no one wants or should expect that we can manage such wastes "half-way." I am glad that the Senate Resources Committee is providing the initial forum to begin this discussion."

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[NOTE: A MORE COMPLETE SUMMARY OF THE SIX-POINT PROGRAM IS ATTACHED.]

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: 2/14/86

REQUEST

Bill/Resolution No. : HB 470
 Title : An Act Relating to the Release of Oil and Hazardous Substances
 Sponsor : Rep. Mike Davis
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Environmental Conservation
 BRU : Environmental Quality
 Components : Director's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		182.7	227.3	227.3		
TRAVEL		25.0	28.0	28.0		
CONTRACTUAL		48.5	53.5	53.5		
SUPPLIES		22.0	23.5	23.5		
EQUIPMENT		12.0	2.0	2.0		
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		290.2	334.3	334.3		

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND		290.2	334.3	334.3		
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

*5.0 FTE

FULL-TIME		4	4	4		
PART-TIME		2	2	2		
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : S.W. Hungerford
 Division : Environmental Quality

Phone : 465-2666
 Date : 2/14/86

Approved by Commissioner : Bill [Signature]
 Agency : Department of Environmental Conservation

Date : 2/14/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 470

In order to manage a program which responds to both immediate and long-term releases of oil and hazardous substances and make effective use of the fund created by this proposed legislation, several new positions would be required.

TOTAL
REQUIST

Funding for nine months is requested for FY 87

182.7

A. Program Management

1. A program person to develop regulations, negotiate contracts, initiate appropriate cost-recovery actions, coordinate training and report to the legislature.

2. A clerk/typist to provide clerical support and enter data into computer files.

Response Capability

1. Three environmental field officer positions to investigate reports of spilled materials, monitor cleanup activities, work with community government and safety agencies on plans for responding to local emergencies involving chemical spills/fires. The field officers would be assigned as follows: 1) one and one-half positions in Anchorage for the Southcentral Region; 2) one position in Fairbanks for the Northern Region; and 3) a half-time position in Juneau for the Southeast Region.

B. Support Costs

1. Travel funds of 5.0 per technical and field officer position management will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs.

25.0

2. Contractual funds of about 5.0 per position are required to pay office costs including telephones, Xeroxing, word processing, utilities, janitorial costs, printing and advertising costs and registration fees for training courses. An additional 20.0 is requested for use in contracting with approved laboratories for analyses of hazardous materials/wastes which are beyond the technical and safety limitations of the Department's laboratory.

48.5

3. Funds for office supplies amounting to about 1.5 are requested for each position; 2.0 is requested to replace expendable field sampling and safety supplies for each field officer; and 5.0 is requested to repair laboratory testing equipment and replace supplies.

22.0

Equipment funds of about 2.0 are requested for desks, chairs, partitions, bookshelves and similar items necessary to equip the office of each position.

12.0

290.2

Note: In the 1987 Budget, the agency also requested one additional position, funded by Federal Superfund (CERCLA) dollars, to manage contracts to perform investigations of sites where hazardous materials may have been inappropriately managed or disposed. This position would also negotiate for federal dollars to clean up sites which are eligible for the Superfund, to supplement the State monies in this response fund.

Position Title Clerk Typist III			No. of Positions One	Range/Step R A	Borg. Unit GII	Gov. LAG	Approv.	Disapp.																																															
Time Status Full Time	Full Months 12	RP Number	Location Juneau	Election District																																																			
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**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Water Quality Management

FY 87

Page 4 of 8
Revised Date _____

Position Title: Environmental Field Officer III			No. of Positions: One	Range/Step: 18 A	Div. Unit: 3011	Class:	Appeal:	Disapp.:																																				
Time Status: Perm. Part Time	Staff Months: 6	RP Number:	Location: Juneau	Division District:	Log:																																							
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**Request For
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Agency Environmental Conservation
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 Component Southeast Region

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Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Borg. Unit GGH	Gov. 126	Approv.	Disapp.
Time Status Full Time	Staff Months 12	RP Number	Location Anchorage		Election District			
Type of Expenditure			Justification					
			This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.					
Amount			We expect to fill this position on October 1, 1986.					
			Funding for nine months has been requested for FY 87.					
Type of Expenditure								
1			2					
3								
Salary			20.1					
Benefits			8.3					
Premium Pay								
Other								
Total Personal Services			36.4					
Travel			5.0					
Contractual			5.0					
Commodities			3.5					
Equipment			2.0					
Other								
Total Cost			51.9					
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004					
			I-A Receipts 1005					
			Program Receipts 1020					
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**Request For
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 BRU Environmental Quality
 Component Northern Region

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PROPOSED AMENDMENT TO HOUSE BILL NO. 470

The amendment, a copy of which is attached, will facilitate the goals of clearing up oil and hazardous substances in Alaska. A key factor in achieving this goal will be the participation of responsible, experienced Alaskan companies in the business of managing and eliminating hazardous substances in Alaska. As everyone is aware, this area has very serious problems of undefined and substantial liability exposure. Even more problematic is the fact that liability insurance simply is not available. Established Alaskan firms, nevertheless, will enter into the business if they can receive broad indemnification protection from the entities which created the hazardous substances (e.g., oil and mining companies, government agencies).

Under the present state of the law, however, such Alaskan companies are deterred from entering the business because of an ambiguity in A.S. 45.45.900 (copy attached). That statute makes void certain indemnification agreements in "construction contracts," and leaves the definition of such contracts extremely broad and ambiguous. For example, a hazardous substance clean-up contract typically would involve erection of a clean-up facility and excavation of materials on behalf of the owner. This conceivably could be construed as a "construction contract" and therefore void the protection of an indemnification provision from the owner.

The proposed amendment will remove this cloud of uncertainty and allow responsible Alaska companies the opportunity to enter into this business. The result will be an effective waste management and clean-up program by the private sector in Alaska.

SCH:sj
(19/12)

TEXT OF PROPOSED AMENDMENT TO H.B. 470

A.S. 45.45.900 is amended by adding at the end thereof the following language:

" , or a provision, clause, covenant, or agreement of indemnification respecting the handling, containment or cleanup of oil or hazardous substances as defined in A.S. 46."

(B) a person repairing his own or a family member's motor vehicle:
 (4) "repair" or "repairs" means the improvement, adjustment, replacement, examination, diagnosis, maintenance, servicing, removal or installation of any component or part of a motor vehicle, but does not include towing or the supply of motor fuel to a motor vehicle. (§ 1 ch 146 SLA 1976; am § 21 ch 144 SLA 1977)

Effect of amendment. — The 1977 amendment, in paragraph (2), substituted AS 28.10.240 for "AS 28.10.650," "under AS 28.10" for "with the Department of Public Safety under AS 28.10.040," and "jurisdiction for state."

Article 10. Miscellaneous.

Section

45. Indemnification agreements contra to public policy

Sec. 45.45.900. Indemnification agreements contra to public policy. A provision, clause, covenant, or agreement contained in, collateral to, or affecting any construction contract which purports to indemnify the promisee against liability for damages for (1) death or bodily injury to persons, (2) injury to property, (3) design defects or (4) any other loss, damage or expense arising under (1), (2), or (3) of this section from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to the promisee, is against public policy and is void and unenforceable; however, this provision does not affect the validity of any insurance contract, workers' compensation or agreement issued by an insurer subject to the provisions of AS 21. 3 ch 155 SLA 1975; am 4 ch 94 SLA 1980

Effect of amendment. — The 1980 amendment substituted "workers' compensation" for "workmen's" near the end of the section. Editor's note. This section derives from former AS 31.47.010, which was redesignated as AS 45.45.900 by the 1980 amendment.

Chapter 50. Competitive Practices and Regulation of Competition.

Article

- 1. Trademarks (§§ 45.50.010 — 45.50.060)
- 2. Log Brands (§§ 45.50.210 — 45.50.325)
- 3. Authorship (§§ 45.50.330 — 45.50.460)
- 4. Fair Trade Practices and Consumer Protection (§§ 45.50.471 — 45.50.591)
- 5. Monopolies, Restraint of Trade (§§ 45.50.592 — 45.50.660)
- 6. Deceptive Advertising of Civil Defense Aids (§§ 45. 0600 — 45.50.0606)
- 7-12. Reserved
- 13. Alaska Gasoline Products Leasing Act (§§ 45.50.800 — 45.50.850)
- 14. Reserved
- 15. Miscellaneous (§§ 45.50.900)

HAZARDOUS SUBSTANCES MANAGEMENT:
LAWS, REGULATIONS, AND ENFORCEMENT
IN THE FAIRBANKS NORTH STAR BOROUGH

DRAFT

prepared by
Marlis Williams

for the
Fairbanks North Star Borough
Environmental Services Division

July, 1985

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EXECUTIVE SUMMARY

Since 1983, the Fairbanks North Star Borough has been studying the issue of hazardous materials management in the Fairbanks area. An initial report, prepared in 1984 by the Mayor's Commission on Hazardous Materials, recommended, among other things, that the Borough require all users, generators, or handlers of large quantities of hazardous substances within the Borough to obtain an annual permit prior to being allowed to conduct such activities. This recommendation was made by the commission after a limited investigation revealed an apparent gap in applicable regulations.

Borough staff therefore developed a draft ordinance intended to establish such a permit program. However, testimony received during a public hearing on the ordinance, held by the Borough's Pollution Control Commission, indicated that there were adequate regulations already existing, but currently unenforced due to a lack of funding. Because of the conflicting opinions regarding existing laws and regulations, it was decided to conduct a more in depth legal review of this subject. This report is a compilation of that review.

The report begins with an overview of the regulatory framework governing the phases of handling, storing, transporting, and disposing of hazardous substances in the Fairbanks North Star Borough (FNSB), and then discusses definitional difficulties. Applicable laws and regulations are described and an attempt is made to assess these laws and regulations in terms of enforcement levels for each of the four mentioned phases.

It is concluded that the combination of existing regulations with the Alaska Department of Environmental Conservation's proposed regulatory network is probably sufficient, except for definitional gaps of what comprises a "hazardous substance"; but that for transportation routing or storage siting and permitting, Borough level rule-making and enforcement control may be indicated.

ISSUES

Do existing federal, state, and local laws and regulations governing hazardous substances management, as they apply to the Fairbanks North Star Borough, adequately cover the hazardous management phases of handling, storage, transportation, and disposal?

Are existing federal, state, and local laws and regulations now in place being adequately enforced?

BRIEF ANSWERS

Yes. It appears that sufficient laws and regulations exist to cover these four hazardous substances management phases. RCRA¹ covers the handling, transportation, and disposal of hazardous wastes. HMTA shares transportation jurisdiction with RCRA, but more broadly, covers all hazardous substances. OSHA provides for work-related handling and storage regulation. Under CERCLA, the clean-up of any accidental spill or unauthorized disposal must be paid for by the responsible party. State and local fire and building codes govern storage and handling phases of hazardous materials. Therefore, rather than adding an additional comprehensive layer of regulations at the Borough level, the need for local controls particularly in the areas of storage siting/permitting and transportation routing, should be expressed as pockets reserved for local rule-making within a uniform state-wide scheme of hazardous substances management.

No. While this report reflects only limited investigation into enforcement levels of existing hazardous substances management laws and regulations, it appears that, at this time, enforcement lags in all four phases. RCRA's regulatory agency, the U.S. Environmental Protection Agency (EPA), is thinly staffed in Alaska. The Alaska Department of Environmental Conservation (ADEC) is in the process of assuming regulatory control, but does not expect completion until 1987. The Alaska Department of Labor is responsible for OSHA enforcement, but their focus is limited to employee safety. Both state and local fire marshals cite shortages of funding, training, and staffing, and lack of clear-cut standards, as reasons for insufficient enforcement. Since the Alaska Transportation Commission (ATC) was disbanded in 1984, enforcement of regulations under HMTA has dwindled to one state trooper assigned by the Department of Public Safety (DPS) to hazardous materials transportation regulatory enforcement. ADEC is responsible for the transport and disposal of hazardous wastes only. (Obviously, even with full enforcement, much would depend on whether the transporter labeled his load a hazardous material or a hazardous waste.) Because of lack in enforcement, there is no "negative incentive" within the Borough to make it unprofitable for companies and individuals to engage in illegal and dangerous activities involving hazardous substances.

¹ Full names and citations for federal laws will be included in the discussion portion of this report.

OVERVIEW

	STORAGE	HANDLING	TRANSPORT	DISPOSAL
FEDERAL	RCRA OSHA CERCLA	RCRA OSHA CERCLA	RCRA OSHA CERCLA HMTA	RCRA OSHA CERCLA
STATE	EPA/ADEC (if waste) USDOT (if work-related) Fire marshall (if complaint)	Same as Storage	DPS (if "substances") ADEC (if "waste")	ADEC
LOCAL	*possible need for local storage permitting	*need for clearer fire code standards	*adopt federal amendments *possible need for local routing	
OTHER	1)*generally, clearer definition of "hazardous substances" needed 2)*visible & well-funded emergency response system			

RCRA	HMTA	OSHA	CERCLA	Building & Fire Codes
Handling	Transport	Handling	Spills/Unauthorized	Handling
Storage		Storage	Disposal	Storage
Transport				
Disposal				
Wastes	substances	substances	substances	substances
EPA/(ADEC)	USDOT/DPS ADEC (if "waste")	OSHA/USDOT	EPA/(ADEC)	DPS/Fire Marshals

TESTIMONY FOR SENATE RESOURCE COMMITTEE
HEARING ON HAZARDOUS MATERIALS 2/5/86 1:30 p.m.

GOOD AFTERNOON! MY NAME IS HEATHER STOCKARD, AND I AM DIRECTOR OF ENVIRONMENTAL SERVICES FOR THE FAIRBANKS NORTH STAR BOROUGH. I WOULD LIKE TO ADDRESS YOU TODAY ON SEVERAL ITEMS OF CONCERN TO THE BOROUGH IN THE AREA OF HAZARDOUS MATERIALS.

FIRST, THOUGH, I WOULD LIKE TO BRING TO YOUR ATTENTION THE SIX RESOLUTIONS PASSED IN NOVEMBER BY THE ALASKA MUNICIPAL LEAGUE RELATING TO HAZARDOUS MATERIALS. WITHOUT SPENDING A GREAT DEAL OF TIME ON THIS SUBJECT, I WOULD JUST LIKE TO MENTION THAT THESE RESOLUTIONS SUMMARIZE MANY OF OUR CONCERNS IN THIS AREA. THESE RESOLUTIONS ARE:

A RESOLUTION SUPPORTING ADOPTION AND ENFORCEMENT OF HAZARDOUS MATERIAL TRANSPORTATION LEAD AGENCY AND REGULATIONS;

A RESOLUTION SUPPORTING STATE ASSUMPTION OF THE HAZARDOUS WASTE PROGRAM AND REQUESTING ADEQUATE FUNDING LEVEL;

A RESOLUTION REGARDING HAZARDOUS WASTE SITE INVESTIGATIONS AND A STATE HAZARDOUS SUBSTANCES RESPONSE FUND;

A RESOLUTION REQUESTING THAT THE LEGISLATURE AND GOVERNOR FULLY FUND THE ANNUAL HAZARDOUS WASTE CLEANUP PROGRAM SPONSORED BY THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION;

A RESOLUTION SUPPORTING STATEWIDE HAZARDOUS MATERIAL DISCLOSURE LEGISLATION; AND

A RESOLUTION SUPPORTING THE EXPANSION OF THE ADEC SOLID WASTE MATCHING GRANT PROGRAM.

IN MY TESTIMONY, I WOULD LIKE TO ADDRESS FURTHER THE AREAS OF: ANNUAL HAZARDOUS MATERIALS CLEANUP, HAZARDOUS SUBSTANCE RESPONSE FUND, AND HAZARDOUS MATERIALS DISCLOSURE LEGISLATION.

THE ANNUAL HAZARDOUS MATERIALS CLEANUP PROGRAM HAS PROVIDED A REASONABLE MEANS FOR COMMUNITIES TO DEAL WITH THE PROBLEM OF DISPOSING OF SMALL QUANTITIES OF HAZARDOUS MATERIALS. IN THE PAST THIS PROGRAM HAS BEEN FUNDED BY THE LEGISLATURE AND SERVED HOUSEHOLDS, SMALL BUSINESSES, AND GOVERNMENT AGENCIES. IN RECENT YEARS, HOWEVER, FUNDING LEVELS HAVE NOT BEEN ADEQUATE, AND THE MUNICIPALITIES HAVE BEEN ASKED TO CONTRIBUTE FUNDS TOWARD THE COST OF THIS CLEANUP. WE SUPPORT THE CONTINUATION OF THIS PROGRAM, AND ASK THAT THE LEGISLATURE FULLY FUND THIS PROGRAM.

THIS YEAR, ADEC PROPOSES TO RESTRICT THE SCOPE OF THIS PROGRAM TO HOUSEHOLDS ONLY, AND MAKE NO PROVISIONS FOR SMALL BUSINESSES AND GOVERNMENT AGENCIES. WE FEEL THAT THESE RESTRICTIONS IGNORE AN EXISTING PROBLEM, AND THAT CONSISTENT PROGRAM GUIDELINES SHOULD BE ESTABLISHED AND ADHERED TO. IF THE LEGISLATURE FEELS THAT A FINANCIAL CONTRIBUTION FROM THE MUNICIPALITIES IS NECESSARY, THE LOCAL GOVERNMENTS NEED TO BE ALERTED TO THAT FACT A MINIMUM OF FOURTEEN MONTHS IN ADVANCE SO THAT A REQUEST FOR FUNDS MAY BE INCLUDED IN THE NORMAL BUDGET PROCESS.

IF THE STATE MAKES THE DECISION NOT TO PROVIDE SERVICE FOR BUSINESSES OR GOVERNMENT AGENCIES, A NUMBER OF ORGANIZATIONS, INCLUDING VARIOUS STATE AGENCIES WILL BE LEFT WITH A PROBLEM THEY ARE NOT PREPARED TO COPE WITH. FOR THIS REASON, WE WOULD ENCOURAGE THE STATE TO FACILITATE HAZARDOUS MATERIAL COLLECTION ON A FEE BASIS FOR SMALL QUANTITY GENERATORS AND GOVERNMENT AGENCIES, IF OTHER ALTERNATIVES ARE NOT AVAILABLE.

REGARDING THE OIL AND HAZARDOUS SUBSTANCE RESPONSE FUND, WE SUPPORT THE ADOPTION OF SB 375 OR OTHER LEGISLATION COMPARABLE TO HB 470. THIS LEGISLATION WOULD BE OF GREAT BENEFIT TO THE STATE AND MUNICIPALITIES IN DEALING WITH SITUATIONS WHICH CURRENTLY

"FALL THROUGH THE CRACKS" OF EXISTING PROGRAMS. MY ONLY COMMENT ON THIS LEGISLATION IS THAT WE WOULD LIKE TO SEE ADDITIONAL CLARIFICATION OF PROVISIONS WHICH WOULD ALLOW FOR REIMBURSEMENT TO LOCAL EMERGENCY RESPONSE AGENCIES FOR EXPENSES INCURRED IN THE EMERGENCY CLEANUP OF A HAZARDOUS SUBSTANCE. IT IS THESE LOCAL AGENCIES THAT ARE MOST LIKELY TO DEAL WITH SPILLS, AS MORE OFTEN THAN NOT, EMERGENCIES DO NOT OCCUR MONDAY THROUGH FRIDAY FROM 8 TO 4:30.

THE BOROUGH ALSO SUPPORTS THE ADOPTION OF ENABLING LEGISLATION WHICH WOULD ALLOW MUNICIPALITIES TO ENACT HAZARDOUS MATERIALS DISCLOSURES REGULATIONS OR COMMUNITY RIGHT-TO-KNOW REGULATIONS. LAST SUMMER, THE BOROUGH FUNDED AN OVERVIEW STUDY OF THE EXISTING STATE, FEDERAL, AND LOCAL REGULATIONS DEALING WITH HAZARDOUS MATERIALS. THIS STUDY FOUND SUBSTANTIAL GAPS IN EXISTING LAWS DEALING WITH HAZARDOUS MATERIALS STORAGE AND HANDLING, AS WELL AS DEFICIENCIES IN THE ENFORCEMENT OF LAWS RELATING TO TRANSPORTATION OF HAZARDOUS MATERIALS. WHILE HANDLING AND STORAGE REGULATIONS MAY BEST BE HANDLED ON A LOCAL LEVEL WITH SOME STATE DIRECTION TO ENSURE CONSISTENCY, THE BOROUGH WOULD SUPPORT ADDITIONAL FUNDING FOR THE DEPARTMENT OF PUBLIC SAFETY TO ALLOW FOR ADEQUATE ENFORCEMENT OF EXISTING LAWS AND REGULATIONS DEALING WITH THESE CONCERNS.

IN SUMMARY, THERE IS CURRENTLY NO ONE AGENCY WHICH HAS RESPONSIBILITY FOR HAZARDOUS MATERIALS CONCERNS. WE WOULD SUPPORT A MINIMUM NUMBER OF AGENCIES BEING INVOLVED IN THESE ISSUES TO ALLOW FOR MAXIMUM EFFICIENCY AND COMMUNICATION. WE ALSO FEEL THAT RESPONSIBILITY FOR HAZARDOUS MATERIALS FUNCTIONS SHOULD BE CLEARLY DELINEATED. FOR EXAMPLE, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHOULD BE RESPONSIBLE FOR LONG-TERM CLEANUP PROJECTS, SITING OF HAZARDOUS WASTE FACILITIES, AND OVERALL MANAGEMENT OF HAZARDOUS WASTES. THE DEPARTMENT OF PUBLIC SAFETY SHOULD BE RESPONSIBLE FOR ENFORCEMENT OF RELATED LAWS, COORDINATION OF EMERGENCY RESPONSE WITH LOCAL AGENCIES, TRANSPORTATION RELATED

ISSUES, STORAGE AND HANDLING ISSUES, AND COORDINATION OF STANDARDIZED TRAINING FOR RESPONSE TEAMS.

THE AREA OF HAZARDOUS MATERIALS AND WASTE IS ONE OF EXTREME IMPORTANCE TO THE FAIRBANKS NORTH STAR BOROUGH. I APPRECIATE THE OPPORTUNITY TO COMMENT ON THESE SUBJECTS TODAY.

THANK YOU.

DISCUSSION

A report concerning laws governing hazardous substances management, must necessarily begin with the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 USC Section 6901 et seq. (1976 & Supp. V 1981). RCRA is Congress's primary effort to confront the problem of hazardous substances management. However, other federal laws are also available. In the area of hazardous substances transport, the Hazardous Materials Transportation Act ("HMTA"), 49 USC Section 1801 et seq. (1976 Supp. V 1981) is of the most importance. Further relevant federal laws include the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "Superfund"), 42 USC Section 6901 et. seq. (Supp. V. 1981), and the Occupational Safety and Health Act of 1974 ("OSHA"), _____ USC ____ ().

In order to keep this report to a manageable scope, discussion of federal hazardous substances management regulations, other than the federal laws mentioned above, are excluded. Thus, this report does not discuss the Clean Air and Clean Water Acts, the Safe Drinking Water Act, or the Toxic Substances Control Act, although any of these laws could be vehicles for hazardous substances management. For general discussion, see Epstein, Hazardous Wastes in America (1982). A specific bibliography containing references to legal journal articles and congressional material concerning hazardous materials is contained in Danner, Federal Regulations of Non-nuclear Hazardous Wastes, 46:3 Law and Contemp. Probl. 285 (1983). A copy of that bibliography is included in Appendix B in this report.

Definitions

The law uses interchangeably the terms; hazardous "waste", "materials", and "substances". It must be known what chemicals and compounds are considered hazardous in order to properly understand who has control jurisdiction over the substances' handling, storage, transport, and disposal within the Borough. Conversely, the handlers, storers, transporters, and disposers must know what is being controlled. Thus, a clear definition of a "hazardous substance" is needed, but is as yet to be provided. Nor is there a clear differentiation between "waste" and "substance".

EPA regulations found in 40 CFR Part 261 and patterned after the general definition of the "hazardous" waste contained in Section 3001 of the RCRA of 1976, states that a substance will be considered a hazardous waste if it meets any of the following criteria:

1. The waste exhibits any of the characteristics of a hazardous waste, i.e., ignitability, corrosivity, reactivity, or extraction procedure toxicity.
2. The waste is listed by EPA as a hazardous waste, or as a mixture of solid waste and a listed hazardous waste. (The burden of proof is placed on the generator to show the listed waste is not hazardous).

3. The waste is a sludge, spill residue, ash, emission control dust or leachate generated from the treatment, storage, or disposal of the hazardous waste.

Furthermore, EPA has compiled additional lists which categorize hundreds of wastes as hazardous, acutely hazardous or toxic.

Hazardous Substances Management Laws and Regulations

Resource Conservation and Recovery Act (RCRA)

Enacted in 1976, RCRA's primary purpose is to promote the recycling and the environmentally safe collection and disposal of solid waste (Section 6902 (c)). Utilizing its rule-making authority under RCRA, the Environmental Protection Agency has generated an elaborate, complicated, and confusing set of regulations binding states and private industry.

RCRA was designed to deal with the problems of existing and future waste manufacture, transportation, use, storage, and disposal. The Act attempts to lay out its comprehensive waste management program with the assumption that the states would ultimately be delegated the administrative, financing, and enforcement responsibilities for the program.

Under EPA regulations, waste generators must determine whether or not a waste appears on the EPA list of materials which are considered hazardous wastes, or must test the waste to determine if the material has any of the "hazardous waste" specified characteristics (40 CFR Part 262.11). If so, the waste generated comes under RCRA and the generator, transporter, storer, or disposer must comply with RCRA regulations. Once a generator has determined that the material is, in fact, a "hazardous waste", the RCRA hazardous waste regulations require a "cradle to grave" tracking system that follows the waste through transportation, storage, and disposal.

However, since the "specific characteristics" definition of what is and is not a hazardous waste is hazy under RCRA and EPA regulations, there exists a gap at the very beginning, in that some wastes, which should be, are not included in this regulation. Moreover, the initial decision of whether or not to comply with RCRA is largely left with the waste generator. If the generator decides the "waste" is really not a "waste", but a material of economic viability, it falls outside the RCRA and EPA controls, at least until there is an incident. A waste "generator" is broadly defined under RCRA regulations as any person whose act or process produces hazardous waste, or whose act first causes a hazardous waste to be subject to regulation (40 CFR Part 260.10).

The authority to regulate storage and disposal of hazardous waste is found in Sections 3004 and 3005 of RCRA. These sections

are general and brief, providing merely the basis for broad regulatory discretion by the EPA and qualified state agencies. EPA regulations require that all storage (temporary or long term) and disposal facilities apply for a permit. Relevant exemptions include transporters storing manifested wastes for less than 10 days (40 CFR Part 264.1), or generators with on-site accumulations of hazardous waste for up to 90 days (40 CFR Part 122.23). RCRA provides further for EPA on-site inspections, and for civil and criminal enforcement mechanisms, including immediate injunctions and orders to eliminate existing hazards.

Subtitle C of RCRA requires EPA to promulgate criteria for identifying the characteristics of hazardous waste (Section 6901), and to establish standards applicable to waste generators (Section 6926), transporters (Section 6923), and owners and operators of hazardous waste treatment, storage, and disposal facilities (Section 6924). RCRA also requires EPA to promulgate regulations requiring "[each] person owning or operating a facility for treatment, storage, or disposal of hazardous waste identified and listed" under Subtitle C to have a permit (Section 6925). RCRA requires EPA to promulgate guidelines to assist states in the development of hazardous waste programs and further provides that EPA may authorize a state to administer and enforce a hazardous waste program pursuant to Subtitle C (Section 6926).

Under Subtitle C, Alaska is to develop a hazardous waste management program for approval by EPA. Alaska must demonstrate compliance with the following RCRA regulations in order to assume responsibility for administering the program without EPA intervention:

Section 3003: Identification of listing of hazardous waste criteria are set forth for EPA to identify and list hazardous wastes, taking into account such characteristics as toxicity, persistence and degradability in nature, potential for accumulation in tissues, flammability, corrosiveness and reactivity.

Sections 3002 and 3003: Standards for generators and transporters - RCRA requires that these regulations include requirements for records keeping, labeling, packaging, transportation and use of a manifest tracking system.

Section 3004: Standards for owners/operators of treatment, storage, and disposal facilities - these standards are to include requirements for record-keeping, compliance with a manifest system, operation procedures, siting and facility construction criteria, emergency response contingency plans, and additional qualifications as to ownership, continuity of operation, training of personnel and financial responsibility.

Section 3005: Permit procedures for treatment, storage and

disposal (TSD) facilities now in existence and for any future facilities - existing facilities have to file for a permit, but can continue operations until such time as a final decision is made on their permit application.

Section 3006: State authorization - if a state wants to administer its own hazardous waste management program, it must apply to EPA for interim and final authorization to do so. To qualify for interim authorization, which would allow the state to administer an EPA-approved program for two years, the state must have a program "substantially equivalent" to the federal program in place within 90 days of issuance of the final regulations. During this two year period, the state can upgrade its program to qualify for final authorization, making certain that it remains "equivalent" to the federal program, is consistent with federal/state programs applicable in other states, and provides adequate enforcement of compliance with RCRA requirements.

Section 3009: Relationship to state laws - this section preempts any state or local requirements which are less stringent than the federal regulations in effect for hazardous waste management.

State hazardous waste program requirements are outlined in 40 CFR Part 123.31 to 123.39. Alaska's waste management statute, A.S. 46.03.299, requires the Alaska Department of Environmental Conservation (ADEC) to establish a hazardous waste program "substantially equivalent to" RCRA, to establish criteria to identify the characteristics of hazardous waste, to enumerate specific hazardous wastes and identify the sources, and to determine maximum acceptable (non-hazardous) levels of hazardous waste and to exempt such small-time generators, transporters, storers, and disposers from ADEC provisions.

A.S. 46.03 also provides that no person may transport, store, or dispose of a hazardous waste "unless that person first secures a permit from ADEC and submits to ADEC any reports or manifests that ADEC may require for handling the hazardous waste." Currently, there are no active hazardous waste disposal sites in Alaska. All hazardous waste is either treated on-site or transported to a commercial disposal facility in the lower 48. ADEC regulates hazardous waste transport (but not the everyday inter- and intra-state transport of hazardous materials). ADEC is currently conducting a study designed to locate a site for an Alaska disposal facility by 1987.

Pursuant to this Chapter and to 18 AAC Chapter 75, promulgated thereunder, ADEC must also be notified of any hazardous substance discharge at or from a hazardous waste storage or disposal facility, and must receive interim and final clean-up reports. Violators are subject to criminal and civil penalties. Local control is not preempted, so long as it is as stringent as or

more stringent than the state requirements of 18 AAC Chapter 75.

ADEC has worked on the adoption of a comprehensive hazardous waste management program since 1981; basically, the mechanism for uniform state enforcement of hazardous waste management laws and regulations is in place. However, implementation of such a uniform state program is still in the developmental process and as yet unsanctioned by the EPA. Until these regulations have been finalized and adopted, and then approved by EPA, it is that agency that will be responsible for the enforcement of RCRA regulations in Alaska, including the right to inspect facilities, and the duty to cite violators of RCRA's record-keeping, reporting and labeling requirements. The ADEC target date for adoption of proposed regulations is July, 1986, and for the beginning of ADEC enforcement is July, 1987.

In summary, RCRA-mandated regulations are very comprehensive and provide excellent coverage in all phases of hazardous waste management. However, these regulations cover wastes only, not hazardous materials. Additionally, EPA is currently the enforcement agency for these regulations in Alaska, and the lack of a strong EPA presence in the state results in limited enforcement of the RCRA requirements. ADEC is currently moving to adopt and enforce their own regulations. But such enforcement is not scheduled to begin for almost two years, with the level of enforcement undoubtedly dependent on budgetary considerations.

Hazardous Materials Transportation Act (HMTA)

Although transportation is generally defined broadly to include several modes, the focus of this report will be on truck movement alone, since that is the main area of concern in the Fairbanks area. Section 3003 of RCRA requires that EPA, after consulting with the U.S. Department of Transportation (USDOT) and the states, promulgate regulations and establish standards applicable to the transport of hazardous waste. The standards must include record-keeping, labeling, manifests, and delivery to only licensed disposal facilities. EPA must coordinate with USDOT and make its regulations "consistent with" the requirements of the Hazardous Materials Transportation Act (HMTA). HMTA is a primary federal law which applies to the transportation of hazardous materials. This law also authorizes the Secretary of Transportation to designate hazardous materials, and to promulgate regulations governing the transport and handling of such materials.

Regulations promulgated under HMTA are found in 49 CFR Parts 171 to 177. The general requirements specify that a hazardous material may not be transported unless it is "properly classed, described, packaged, marked, and labeled" as required under the regulations. Notification and reports of certain hazardous materials incidents is also required. The regulations further contain hazardous materials tables which designate individual materials according to hazard class, and specify packaging,

labeling, and transportation requirements for each substance.

Succeeding parts of the HMTA regulations have special operating, handling, and loading requirements for different shipping modes, including via highway. HMTA establishes a central system for reporting of transportation accidents. The 1974 Transportation Safety Act contains a title devoted to hazardous materials transportation which provides for the designation and listing of hazardous materials and the establishment of handling criteria. USDOT's hazardous materials regulations apply to carriers, shippers, and container manufacturers, and include special loading and unloading requirements for certain substances, including explosive and non-explosive materials, flammable liquids, flammable solids, and compressed gases. In addition, regulations for managing accident situations involving each of these types of substances are specified.

The HMTA highway regulations also incorporate by reference additional regulations originally promulgated under the Department of Transportation Act, 49 USC 1655 (). These regulations include rules for driving, maintenance, and inspection of motor vehicles in general, and for driving and parking those vehicles carrying hazardous materials (49 CFR Parts 392-397). Failure to comply with these requirements can result in substantial civil penalties or criminal fines, imprisonment or both (RCRA, Section 6928).

Thus, a substantial body of federal requirements applies to the transportation of hazardous materials. Federally, EPA and USDOT have joint jurisdiction over the transportation of hazardous substances. This double jurisdiction, however, does not appear to translate into extra vigorous enforcement here in Alaska. The Federal Highway Administration's Bureau of Motor Carrier Safety is the main enforcement body for those hazardous materials regulations specific to highway transportation. The Federal Highway Administration (FHWA) is divided into 10 regions. The state of Alaska is part of Region X, headquartered in Portland, Oregon. The FHWA investigator for Alaska works from a satellite office in Anchorage. This investigator inspects vehicles all over the state to determine compliance with the hazardous materials regulations. There is a priority work program through which inspections are scheduled only when non-compliance is suspected.

By state law, Alaskan transporters are required to obtain permits or licenses to haul hazardous materials shipments. State troopers are authorized to stop and inspect vehicles carrying hazardous materials, to check manifests and/or cargoes for violations. Labelling and containerization are regulated as well, with placarding requirements used to identify the category of the hazard for emergency personnel (18 AAC Chapter 75).

Locally, the Alaska Department of Public Safety (DPS) has only one state trooper in the Fairbanks North Star Borough assigned to the enforcement task of 13 AAC 04.250(a). ADEC is in charge of the transport of hazardous waste and is not involved in the regulation of hazardous materials transportation. Alaska has incorporated some of the USDOT materials transportation rules into its own regulations. 3 AAC 62 adopts Title 49 of the Federal Motor Carrier Safety regulations. These 1978 regulations were adopted in Alaska in 1980. However, they were adopted without amendments and are therefore outdated. According to 17 AAC 02.40, hazardous materials transportation must comply with federal Interstate Commerce Commission (ICC) regulations (49 CFR).

Alaska's public safety regulations also include rules for vehicles transporting hazardous materials or compressed gas fuel (13 AAC 04.250). These rules state that a person moving a vehicle transporting an explosive or flammable liquid, a compressed gas, or other hazardous material upon a highway or vehicular way or area shall comply with the applicable regulations of the United States Department of Transportation. The federal regulations apply to any movement, regardless of the distance of the movement (13 AAC 04.250(a)). In addition to incorporating the USDOT rules, the Alaska regulations require shippers to notify the state troopers at least 24 hours in advance of the intent to transport explosives, flammables, or other hazardous materials on a highway or vehicular area, and to obtain permission from the troopers before the transport (13 AAC 04.250 (b)). However, the pre-notification requirement is not enforced. Transporters of hazardous materials may voluntarily call the Department of Public Safety as a courtesy to notify it of a future shipment, but there is no established procedure to ensure that advance notification is done.

Therefore, unless a violation is flagrant and obvious, it appears that a transporter of hazardous materials need only to label his load something other than "hazardous waste" in order to be fairly assured that no local or state enforcement, of the ample hazardous substances transportation laws and regulations currently in place under HMTA, will interfere with the movement of his cargo.

Theoretically, Alaska regulates hazardous materials transport by substantially relying on the adoption of USDOT rules, which appear to be quite sufficient, with two notable exceptions. One of these exceptions concerns the routing of hazardous materials through populated areas. Federal Department of Transportation regulations concerning the routing of hazardous materials are limited to restricting travel routes away from heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys (49 CFR Part 397.9). This may not be sufficient in the Fairbanks area. One solution to this problem has been to form a subcommittee of the technical group involved in coordinating local transportation planning (FMATS Technical

Committee) whose purpose is to regularly review and designate appropriate routes for hazardous materials transportation within the community. The other concern is the updating of the adopted regulations, as mentioned above. The regulations need to be amended to say "as amended" in order to incorporate subsequent changes in the federal regulations.²

The Alaska Department of Public Safety (DPS) has principal enforcement authority for the regulation of the transportation of hazardous materials. Formerly, DPS utilized the troopers stationed at the highway weight stations to enforce these regulations. However, since the Alaska Department of Commerce (DOC) assumed scalehouse duties, these efforts have ceased. DOC has neither authorization nor expertise for such inspections. Thus, the sole DPS-trained enforcement officer, who inspects pursuant to 5 AAC 62, acknowledges that he can only respond to complaints or obvious and flagrant violations.³

There appears to be very little concern to-date in Fairbanks that almost nothing has been done to enforce hazardous substances transport laws since the Alaska Transportation Commission was disbanded. Senator Joe Josephson of Anchorage, concerned about railroad transport of hazardous materials through populated Anchorage areas, is currently making a push in Juneau for state (ADEC) enforcement, in order to reduce this problem in Anchorage. There are no such efforts in Fairbanks.^{4,5} Given the potential for disaster in this phase of hazardous materials management, the lack of enforcement in this area should be of grave concern to the Fairbanks North Star Borough and the state alike.

It is concluded that the HMTA regulations provide excellent coverage of the transportation of hazardous materials. However, there is inadequate enforcement of these regulations, both statewide and locally. Because of the lack of enforcement there is no guarantee that shippers are abiding by the HMTA regulations.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

While "handling" can be thought of as a function of transport,

² Conversation with Dick Jackson, Community Safety Director, Fairbanks North Star Borough.

³ Conversation with Ellis Armstrong, Alaska State Troopers.

⁴ Conversation with Mark Boyer, State Senator Bettye Fahrenkamp's office.

⁵ Conversation with Dick Jackson, Community Safety Director, Fairbanks North Star Borough.

storage, and disposal of hazardous substances, and while the laws governing "handling" are therefore necessarily incorporated in laws governing those activities, CERCLA covers the "handling" phase of hazardous materials management. CERCLA, commonly known as the "Superfund" legislation, is intended to pay immediately for clean-up response when hazardous materials are released into the environment. Under CERCLA, the definition of hazardous substances is broadened beyond the definition prescribed in the Clean Water Act. The federal government is authorized to recoup its expenses from the responsible party. In a case where this responsible party is unknown or unwilling to act, states are required to pay for 10% of the cost of clean-up at privately owned sites and for 50% at publicly owned sites. States must also assume 10% of the long-term operation and management costs. Additionally, states must assure that a disposal site is available for waste which will be removed during a clean-up operation.

Thus, RCRA (preventive measures for safe future disposal of hazardous waste) and CERCLA (clean-up of existing spills or improper disposal of hazardous substances which upon illegal discharge becomes waste) form the basis of current federal authority to regulate disposal of non-nuclear hazardous waste.

CERCLA provides authority for emergency responses to releases of hazardous wastes from inactive sites, spills, etc., and establishes liability for those responsible for releasing such hazardous waste into the environment. This liability can include costs incurred by the government in clean-up and removal of the hazardous substances, and in natural resource restoration. If those responsible for a release are unable or unwilling to pay, the federal or state government may file a claim against the fund to recoup clean-up costs. Thus, the fund serves as only a supplement for those instances in which responsible parties cannot be identified or held liable. CERCLA's standard of liability has been determined by the courts to be one of strict liability (absence of fault does not matter). Federal or state government, or any other harmed person, may recover response costs from generators and transporters of hazardous substances, and from owners and operators of disposal areas.

Article 2 of Chapter 75 of the Alaska Administrative Code contains Alaska's regulations governing reporting, clean-up and disposal of discharges of hazardous substances. Under these regulations, any discharge of a hazardous substance must be immediately reported to ADEC (18 AAC 75.080). These regulations also require the parties responsible for the discharge to dispose of the material using methods approved by one of ADEC's regional supervisors (18 AAC 75.140). However, at this time ADEC refers enforcement of CERCLA programs to EPA, pursuant to 40 CFR Part 300.⁶

⁶ Conversation with Jeff Mach, Alaska Department of Environmental Conservation, Northern Regional Office.

Alaska's emergency response laws generally place primary responsibility on local authority. In order to supplement federal and state plans for preventing and responding to spills of hazardous substances, emergency preparedness personnel within the Fairbanks North Star Borough are currently developing their own hazardous materials emergency response system. This is a cooperative effort between the Borough, the City of Fairbanks, the University of Alaska, and state and local fire departments.

Occupational Safety and Health Act (OSHA)

The Occupational Safety and Health Act is concerned with employee safety in the workplace and in work-related operations. It authorizes the Occupational Safety and Health Administration (OSHA) to set up standards for occupational hazards, including hazards associated with the handling of hazardous substances.

A hazard communications rule, published in the November 25, 1983 Federal Register, requires employers to inform workers of the presence of hazardous chemicals in the workplace and to train the workers in proper protection methods. However, this law applies only to chemical manufacturers and importers, who must comply with OSHA standards by May, 1986 (29 CFR Part 1910, Subpart Z).

The Alaska Health and Safety Act (A.S. 18.60.010 et seq.) states that it is "necessary to undertake a program to reduce the incidence of work-related accidents and health hazards in the state"... [which] impose a substantial burden upon, and are a hindrance to, the people of the state." To accomplish this program, an employer is required to maintain records, inspect for and report the causes and prevention of occupational illnesses and injuries, and to "furnish to each of his employees ... a place of employment . . . free from recognized hazards ... " (A.S. 18.60.075(a)(4)). Under this act, the Alaska Department of Labor (DOL) is charged with the rule-making tasks.

DOL may enter work areas to inspect and investigate at any reasonable time (A.S. 18.60.083). However, to be in compliance with the extensive protection that Alaskans are afforded under the Alaska Constitution (Article I, Sections 14 & 22), the agency must obtain a search warrant before inspecting and investigating business premises for violations.⁸ The state is not responsible for every violation of this statute. However, once an inspection has been undertaken, and a violation discovered, the state then has the duty to enforce safety provisions thereunder.

⁷ Conversation with Dorman Steele, Community Safety Office, Fairbanks North Star Borough.

⁸ Woods & Rohde, Inc. v. State Department of Labor, 565 P.2d 138 (Alaska 1977).

⁹ Wallace v. State, 557 P.2d 1120 (Alaska 1976).

Further, if the inspection reveals a violation of this Employee Health and Safety Title, the department must issue a citation to the employer (Section 18.60.091), and is authorized to impose a civil penalty for non-compliance (Section 18.60.095), subject to court review if the employer objects in a timely fashion (Section 18.60.093 (d)). Finally, under A.S.18.60.096., the department may "issue orders restraining a particular condition or practice in any place of employment that constitutes danger which could reasonably be expected to immediately cause death or serious harm", until the condition or practice is avoided, corrected, or removed. The state attorney general can seek an injunction in superior court to enforce a restraining order issued under this section.

The author of this report was unable to ascertain the current level of DOL enforcement activity. However, it appears that because some Borough concerns are generated by potentially illegal storage of hazardous substances in the Borough or in Borough-bordering work-related areas, the DOL, under Alaska Health and Safety Act jurisdiction, could possibly be enlisted as a potent enforcement tool.

Building and Fire Codes

The State of Alaska has adopted various sections of the 1979 Uniform Building Code (13 AAC 50.020), and the 1979 Uniform Fire Code (13 AAC 50.025). The state fire marshal's office can enforce violations of these codes when found. Pursuant to Title 70 of the Alaska statutes, the fire marshal's office may enter any building in order to inspect the property or abate a fire hazard and may require the owner of a commercial building or public property to abate a fire hazard which exists in violation of law or regulations. Further, the Department of Public Safety is authorized by Alaska Administrative Code to adopt rules and regulations of the fire and building codes in order to protect life and property from fire and explosion, by establishing minimum standards for

... fire detection and life safety criteria and commercial, industrial, business, institutional, and other public buildings ... [and] any activity in which combustible or explosive materials are stored or handled in commercial quantities ... (A.S.18.70.080)

Enforcement of the regulations adopted by the Department of Public Safety are vested in that department, and in the fire chief of each city fire department, as well as in all state peace officers (A.S. 18.70.090). Thus, the fire chief in each city can enforce state fire standards independently of any delegation by the fire marshal's office.

¹⁰ State v. Jennings, 585 P2d 248 (1976).

However, enforcement of statewide fire and building codes does not currently appear to be an effective mechanism by which the state has addressed the issue of public protection from hazardous materials mismanagement. Enforcement is reported to be hampered by vague standards, insufficient training, and lack of manpower.^{11,12} Inspections are done on a complaint or occupancy rating, rather than a routine basis. Pursuant to A.S. 18.70.080, and to 18 AAC 50.010.027, all buildings are classified as to the occupancy ratings pursuant to the Uniform Building Code of 1979. It is this rating list that the state fire marshal's office uses to prioritize its inspection resources.¹³

In sum, enforcement of the Uniform Building and Fire Codes is thin, and reactive rather than preventive. Further, when Alaska adopted the 1979 Uniform Fire Code, hazardous substances storage permitting was specifically excepted, presumably because at that time, the state did not feel that this state fire marshal's office has the expertise to issue such permits (13 AAC 50.025). Adoption of this previously omitted section of the fire code is now needed.¹⁴ Additionally, there is a vagueness problem in that the fire code states simply that materials be stored in a "safe manner." There are no enunciated standards of what is to be considered "safe". Under 13 AAC 50.070 (9), a reasonably prudent person's standard is to be applied. Because of this ambiguity, the fire marshal's office is less likely to pursue code violation cases as vigorously as they might if there was a greater certainty in their actions being upheld in a court of law.

Other Laws Governing Hazardous Substances

Besides the statutes and administrative regulations discussed, common-law and judge-made law governs specific cases and can create a basis for liability as an alternate to local rule-making. The Borough can choose to sue one or more of the known offenders. Common law can be an important tool for remedying hazardous substances problems. The most useful common-law doctrines include nuisance, and strict liability for abnormally dangerous activities. In a negligence action, the key would be the reasonableness of the act under the circumstances and the foreseeability of a particular harmful result. (Obviously, the more hazardous a particular substance, the more a reasonable person would do to protect others.) Remedies may include compensation for harm done, and/or injunctions to prevent further

11 Conversation with Jay Morris, City of Fairbanks Fire Department.

12 Conversation with Edith Curry, State Fire Marshal's Office.

13 Ibid.

14 Conversation with Ernie Misewicz, State Fire Marshal's Office.

anticipated harm. Attorneys' fees would likely be awarded as well, under a "private attorney general" theory, because a positive result would be beneficial to an entire class of people (presumably all Borough residents).

However, this remedy is more reactive, then preventive. While it may establish liability after a hazardous material incident, it does very little to prevent such an incident from occurring. Thus, in terms of the protection of public health and safety, it would not be nearly as effective as properly enforced laws and regulations.

CONCLUSION

The State of Alaska recognizes the need to regulate the management of hazardous substances, and has its own or has adopted federal laws regulating such materials. Included in these laws are definitions of "hazardous wastes" and "hazardous materials", authority for state planning and management activities, permit and licensing procedures for disposal and storage facilities, transportation regulations, and manifest systems for tracking hazardous wastes and materials, and emergency response activities.

On the federal level, several comprehensive laws cover every phase of hazardous substances management. RCRA controls hazardous waste from cradle (generation) to grave (disposal); HMTA controls the transport of hazardous substances; OSHA the storage and handling of hazardous substances at the workplace or in work-related operations; and CERCLA, accidental spills or unauthorized disposal of hazardous substances. Sanctions are provided by every one of the laws reviewed.

Some regulatory gaps do exist. The definition of "hazardous substances", "wastes", and "materials" is confusing and vague and should be tightened. Fire code standards likewise are too vague and need tightening. State transportation regulations, which reference federal regulations, need to include amendments to those federal regulations since adoption, to incorporate subsequent legislation. Routing of hazardous materials is almost fully unregulated and would lend itself to local regulation. The same is true for permitting or siting of storage facilities. Other than these gaps, there appear to be in place ample laws and regulations governing hazardous substances management.

Enforcement, however, is less pervasive. The U.S. Environmental Protection Agency (EPA) and the Alaska Department of Environmental Conservation (ADEC) watch over disposal, and ADEC accepts responsibility for the transport of hazardous wastes. Hazardous materials transport, however, is thinly enforced within the Fairbanks North Star Borough by one Alaska Department of Public Safety (DPS) trooper trained in this type of enforcement. If work-related, the Alaska Department of Labor (DOL) will inspect and enforce employee safety-related OSHA regulations relative to storage and handling of hazardous substances. OSHA requires that employees be informed of the hazard of such substances and trained in their handling. State and local fire marshals are responsible for enforcement of fire and building codes, but lack firm guidelines, funding, training and staffing to do a preventive rather than a merely reactive enforcement job.

Yet, enforcement of hazardous substances laws and regulations is vital because such laws and regulations will only be useful and will only gain public support when the public is assured that illegal actions taken by some hazardous substances handlers will not be condoned by the government. Strict enforcement of the existing laws is necessary to provide "negative incentives" to make it unprofitable for a company

or an individual to engage in illegal actions. Obviously the optimal situation would be to place all enforcement powers for the enforcement of hazardous substances management in one state agency.

ADEC is in the process of taking over a comprehensive hazardous waste management program from EPA. Completion of this task will provide state control over any substance characterized as a hazardous waste. A crucial part of implementing such regulations is an agreement of which state or local agency is to cover which activity, and the creation of a viable inspection and enforcement process using a sufficient number of trained personnel. The laws and regulations largely do exist. Until bite is put into them, little progress toward greater public safety from the dangers of hazardous substances can be expected.

Meanwhile, local clean-up and emergency response efforts already address hazardous substance spills from improper handling, storage, transport and disposal of hazardous substances. These efforts should be continued, and should be highly visible and well funded.

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Resource Conservation and Recovery Act (RCRA), 42 USC Section 6901 et seq. (1976 & Supp. V 1981)

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Department of Transportation Act, 49 USC Section 1655 ()

Hazardous Materials Transportation Act (HMTA), 49 USC Section 1801 et seq. (1976 & Supp. V 1981)

Occupational Safety and Health Act of 1974 (OSHA), _____ USC _____ ()

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49 CFR 100-189 ('Hazardous substances' defined)

40 CFR 261,262 ('Hazardous waste' defined)

40 CFR 260.10 ('Waste generator' defined)

40 CFR 264 (EPA permitting of waste storage and disposal facilities - transporters)

40 CFR 122 (EPA permitting of waste storage and disposal facilities - generators)

40 CFR 123.31 to 123.39 (State hazardous waste management program requirements outlined)

49 CFR 171 to 177 (HMTA regulations pertaining to transport of hazardous materials)

49 CFR 390-397 (USDOT regulations pertaining to public transport of hazardous materials)

40 CFR 300 (Authorizes state environmental agencies to defer to EPA enforcement of CERCLA programs)

29 CFR 1910, Subpart Z (OSHA)

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- A.S. 46.03.299 (charges ADEC with establishing a hazardous waste management program)
- A.S. 46.03.302(a) (ADEC is to issue permits for transport, storage, and disposal of hazardous waste)
- A.S. 46.03.020 (10) (A)
- A.S. 46.03.755
- A.S. 18.60. et seq. (Alaska Health and Safety Act)
- A.S. 18.70.080 (DPS may inspect for and abate fire hazards)

ADMINISTRATIVE CODE:

- 13 AAC4.250 (DPS enforcement authority of and incorporation of USDOT regulations into Alaska public safety regulations)
- 18 AAC Chapter 75 (ADEC has authority to control clean-up of discharges of hazardous wastes)
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- Alaska Constitution, art. I, Sections 14 and 22
- Uniform Building Code of 1979
- Uniform Fire Code of 1979

APPENDICES

APPENDIX A

JUNE/JULY 1985 INTERVIEWS
CONDUCTED WITH:

Ellis Armstrong, Alaska Department of Public Safety

Mark Boyer, State Senator Bettye Fahrenkamp's Office

Edith Curry, State Fire Marshal's Office

Dick Jackson, Fairbanks North Star Borough, Division of Community
Safety

Jeff Mach, Alaska Department of Environmental Conservation, Northern
Regional Office

Ernie Misewicz, State Fire Marshal's Office

Jay Morris, City of Fairbanks Fire Department

Jim Nuddell, formerly of Alaska Transportation Commission

Dorman Steele, Fairbanks North Star Borough, Division of Community
Safety

**REPORT
FROM
MAYOR'S COMMISSION
ON
HAZARDOUS MATERIALS**

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- Appendix L Hazardous Material Permit Program Package
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- Appendix M Senate Bill 26
- Appendix N Hazardous Material References in 1979
Uniform Fire Code
- Appendix O Memorandum Re. Development Near Railroad
Industrial Area
- Appendix P Map of Railroad Industrial Area with
Safety Buffer Zone
- Appendix Q Minority Report

THE MAYOR'S COMMISSION

On May 28, 1983 in the early morning hours, a patrolman discovered a vapor cloud rising from a truck tanker. Appropriate agencies were notified for emergency response. It was found that the tank was loaded with concentrated hydrochloric acid, a strong corrosive agent. Residents and workers were evacuated from the area threatened by the vapor cloud while emergency responders from several agencies and public works personnel controlled the vapor cloud and ground-spill, and eventually emptied the leaking tanker. The incident itself caused no injuries and no residual environmental or material damage; however, the duration of the incident was greatly extended by the lack of necessary equipment to transfer the acid to a safe tanker. In recognition of the potential severity of this incident and some of the problems which surfaced as a result of it, Mayor Bill Allen of the Fairbanks North Star Borough appointed a "Blue Ribbon" Commission to study hazardous materials in the Borough. (Appendices A and B)

The Mayor charged the Commission with four specific tasks:

1. Inventory hazardous materials present and being transported within the Borough;
2. Evaluate the resources on hand and determine if any more are needed to mitigate the effects of incidents involving these materials;
3. Identify agencies involved in hazardous materials or incidents arising from them including enforcement;
4. Recommend specific actions to make the use, storage, and transportation of hazardous materials within the Borough safer for the population.

The Commission held meetings June through December of 1983. Regular Commission members did some individual research and data collection, especially in inventory and regulation review. Other individuals were invited to participate by the Mayor, and specialists in technical areas of interest were invited to provide input to the Commission. The State Commissioners of those State Departments which deal with hazardous materials were invited by the Mayor to meet with some of the Hazardous Material Commission members for a mutual briefing and information gathering session. The work of the Mayor's Commission was facilitated by Robert Cavanaugh, FNSB Division of Emergency Services.

BACKGROUND

Like many light industrial/residential communities, Fairbanks has experienced a slow, steady increase in materials which are potentially hazardous to the environment, to the health of workers and residents, and to the facilities or equipment involved in storage or transfer of these materials. The mining and construction industries have a tremendous demand for explosives which are transported and stored within the Borough. The growing population is escalating its dependence on non-solid fuels causing a great increase in liquid and gaseous fuel transport and storage in the Borough. The infant agricultural industry is beginning to bring more bulk quantities of potentially hazardous materials into the Borough. Support services for oil and gas development require bulk storage and transport of many products which are not normally associated with a community profile such as Fairbanks'. The local military bases continue to transport and store within the Borough all the materials necessary for support of their total activity. And finally, the consumers, businesses, schools, health agencies and other institutions are utilizing the many products on the market which, in quantity, can be extremely hazardous. Hazardous materials are not new to Fairbanks, nor are incidents involving the storage, transportation and use of them (Appendices C and D). Several factors make hazardous materials of more concern now than in the past: the population density and the resultant potential impact of an incident; the sheer increase in volume and variety of materials in the Borough; and the lack of knowledge and control of these substances. The fact that the Fairbanks North Star Borough has not had a serious hazardous materials incident resulting in loss of life, significant property loss or environmental quality damage is largely a matter of luck and the activities of individual agencies working on their own to address perceived needs within their own domain.

Dialogue on some hazardous material concerns was initiated through the efforts of the FNSB Emergency Services Office and the Interior Fire Chiefs in 1982. Members of interested agencies and institutions in the community, especially in emergency service and education, gathered for a series of meetings in which resources were inventoried for mutual access, some specialists were identified for possible inclusion in a Borough-wide hazardous response team, and discussion was generated on the advisability of establishment of a team and van for Borough-wide response through the Division of Emergency Services. Another special concern of the group was the accumulation of hazardous materials within the schools and at the University. As a result of this stimulus, concerned school district staff worked with fire department officials in each school jurisdiction to inventory hazardous materials within each building, identify materials for disposal and make recommendations for safer storage

and handling of those materials to be kept on site. On completion of this the University of Alaska contracted a private firm to dispose of all the unwanted materials from all schools within the community. Also in the summer of 1982 the Borough Environmental Services Division arranged for a gathering and disposal center of unknown or unwanted potentially hazardous materials for the public. These were the first truly coordinated efforts in the community related to the control of hazardous materials.

On the State level there appears to be a significant increase in concern about hazardous materials. The current legislature enacted a bill protecting the rights and safety of workers handling hazardous materials (Appendix E) and is considering several others. The State Department of Environmental Conservation has proposed a new set of regulations for the control of hazardous waste, and the Department of Public Safety has continued to train its personnel and commit them to enforcement of existing regulations as resources permit. On the State level as on the local level, there appears to be such a multiplicity of responsibility as to render nearly impossible the tasks of smooth, efficient planning and control of hazardous materials and incidents relating to them (Appendix F).

Throughout the nation individuals and agencies are recognizing the necessity for actively addressing hazardous materials concerns. The utter magnitude and complexity of the problem prohibit a single solution approach.

More than a quarter million individual shipments of hazardous materials move through the nation's transportation network each day by all modes: rail, highway, air, pipeline, and water. A study by the Department of Transportation predicts that total traffic in hazardous materials will increase by 100 percent within 12 years. It is estimated that hazardous materials currently constitute 20 percent of all goods shipped by all modes within the United States. More than 200,000 bulk shipments, of acids, corrosives, gases, pesticides, and other hazardous materials and wastes are in transit within this country each day. In the U.S. and Canada there are approximately 200,000 companies that one way or another are involved in the manufacturing, packaging, shipping, and transportation of hazardous materials (Hazardous Materials Emergencies Response and Control; J.R. Cushman, 1983; Technomic Publishing Co.)

Public safety, environmental, consumer, health, labor, and industrial organizations have begun to address the problem. As

with local and state situations, education is the first step, followed by joint commitment, resolution and action.

INVENTORY

In developing an inventory of hazardous materials, the first task was to adopt a standard definition of hazardous materials which all members could access, use and apply to other concerns. The Commission adopted the Title 49 of the Code of Federal Regulations definition and classification system for hazardous materials (Appendix G). All references to hazardous materials throughout this document will assume that definition and classification. Members of the Commission were charged with developing an inventory of hazardous materials within their domains. The Fairbanks Fire Department was able to supply an inventory from inspections of known hazardous material suppliers/storers. The University provided the Commission with its inventory gathered as a result of the chemical clean-up done in 1982. Eielson Air Force Base provided a list of hazardous materials which are transported by rail, highway and non-military air systems. The Alaska Railroad provided computer print-outs of compiled way-bills and was able to combine the data to give daily transit figures. These lists were compared to other known inventories, such as in the schools and in private merchandizing and were then pooled to give a Borough-wide inventory.

The list does not include locations of materials, and in most cases it does not include quantities. It was determined by the Commission that the quantities and locations of the materials vary greatly with seasonal demand. The list does not include private supplies, commercial supplies of materials outside of the City of Fairbanks, unknown hazardous materials within the City or small retail quantities of hazardous materials which are known but are impractical to inventory such as pharmaceuticals, small laboratories, retail hardware, sporting, home and garden supplies

The inventory is divided into two parts: a basic identification by hazard class, including product name, descriptor and DOT identification number (Appendix H); and an estimated daily transit and storage inventory (Appendix I). Some items are listed twice in the product list due to cross classification. Estimating rail volume and air volume of bulk shipments is relatively easy due to the limited number of companies involved. Estimating truck volume over the highway, on the other hand, is very difficult due to the number of carriers, relative lack of control and the variety of products carried. When compared to other communities in the nation, Fairbanks has a distinct advantage in potential maintenance of hazardous material inventory records due to limited rail and air bulk traffic. With only two incoming truck routes, maintenance of highway hazardous

material traffic is possible if it were a priority. It is the opinion of the Commission that maintenance of a highway traffic inventory in and of itself is not a necessary or effective use of resources, as the problem can be approached from many other, more effective angles.

In light of difficulties the Commission encountered in putting together a complete inventory, the Commission recommends that a system needs to be established to maintain inventories of hazardous materials within the Borough, and that this be tied into a proposed permit system and include at least an annual update by the Borough's Environmental Services Division. Emergency services agencies must also be kept up to date on available information.

RESOURCES

Using the DOT identification number, the guide for emergency response for each inventoried substance was studied. The following is a general list of materials, techniques and/or resources needed to control different kinds of accidents involving the substances on the inventory. Different materials under different accident conditions would, of course, require different combinations of resources and/or techniques. It must be understood that the following list does not include materials necessary for clean-up and restoration except for emergency needs and personnel.

Notification and Dispatch--includes an easily accessed system for notification, coordination and dispatch of emergency responders and appropriate agencies.

As most of the emergency responders and concerned agencies in the Borough have separate phone notification systems and have separate dispatch centers, there is currently no available system for coordination of multi-agency response, the singular exception being the sharing of a mutual aid frequency by most area fire departments. In light of this lack of coordination, the Commission recommends the development of an easily accessed Borough-wide computerized system for notification, dispatch and coordination of all emergency incidents.

Command and Control--includes procedures for orderly, efficient incident management ranging from a small single unit response to a major multi-agency disaster.

While the Emergency Services Division does have a well-developed disaster plan, the Commission has discovered an example of what appears to be a confusing multiplicity of state agencies which are responsible for various facets of hazardous material incident response and control (see Appendix F). The Commission strongly recommends that the Mayor seek to have this

situation corrected.

Fire Suppression--includes equipment and trained personnel available for prevention of, or suppression of major and/or multiple fires resulting from explosion or spread of flammable material.

Through the Fairbanks Areawide Mutual Aid Pact, most of the firefighting equipment and personnel resources in the Borough are available for major incidents. Such resources appear to be adequate at their current levels and are continuously being upgraded to meet developing needs through planned acquisitions (Appendix J).

Emergency Medical Resources--need to be adequate in capacity, supplies, and training to deal with hazardous material incidents occurring in either densely or sparsely populated areas.

To date, hospital and emergency services mass casualty drills have been effective in maintaining operational readiness on a mass scale. Development of the coordinated non-areawide Borough ambulance services and centralized dispatch will facilitate effective utilization of all emergency medical services in case of major emergency.

Evacuation and/or Isolation Procedures--need to be ready for activation to include an area at least one half mile in all directions including (and especially in) the most populated parts of the Borough.

As evidenced by the hydrochloric acid spill incident, emergency agencies currently rely on inadequate sirens, and the effort is severely hampered by poor public education and practical difficulties in coordination of evacuation with radio and television stations. The Commission strongly endorses the proposed new warning siren system to cover populated areas outside of the cities of Fairbanks and North Pole, as well as within them. Furthermore, the Commission recommends the printing of a clear, concise set of evacuation procedures in the telephone directories .

Full Protective Clothing--provides protection to prevent vapors, liquids and solids from coming in contact with the skin. Such clothing includes helmets, self-contained breathing apparatus, coats, pants, rubber boots and gloves customarily worn by firefighters.

Fire departments routinely provide such protective clothing for their personnel.

Special Protective Clothing--clothing specially designed to protect against a specific hazard, such as a vinyl or rubber acid suit necessary for handling very corrosive or toxic materials.

(See below).

Extinguishing agents--needed agents include water, dry chemical agents, carbon dioxide, foam and dry sand.

(See below).

Containment/Diking materials--large quantities of nonporous materials for diking, blocking storm drains and controlling run-off. Sometimes in conjunction with diking, sand, non-combustible absorbent material or specialized materials are needed, and if properly used can facilitate later clean-up.

(See below).

Leak-controlling Devices--includes sealant materials, cannister repair kits, containment drums, non-reactive transfer pump, fittings and tank.

(See below).

Monitoring Devices--includes flammable gas detectors, radiological monitoring equipment, poisonous gas detectors, weather and wind monitoring equipment.

(See below).

Clean-up--includes removal or neutralizing material or resulting by-products including water run-off, contaminated soil, equipment and clothing. Clean-up by emergency response agencies normally includes only those measures designed to protect everyone involved from further contamination and does not include environmental restoration.

A complete list of specialized materials needed to provide the above functions has been compiled (Appendix K). While many fire departments and separate agencies have some of this equipment, there is no central, available repository of all such equipment. Many departments have deployed the equipment throughout their facilities to meet their own needs, not the needs of a Borough-wide hazardous material response team. In light of this, the Commission recommends that the Mayor support the efforts of the Emergency Services Division to procure and completely equip a hazardous material response vehicle.

Furthermore, the Commission strongly recommends that some mechanism be established within the Borough to regularly continue the review of hazardous material resources and concerns. This would best be accomplished by an existing board or regular commission.

The Commission has adopted the philosophy that principal responsibility for hazardous materials must be borne by the suppliers and users. To achieve this: The Commission recommends that the Borough adopt and fund a system through the Environmental Services Division (Appendix L) requiring users, generators, and handlers of large quantities or specifically

dangerous materials to secure a permit (not to include regular fuel distributors). Such permits should be contingent upon a requirement for training of personnel, posting of safety and incident procedures in house and with the Environmental Services Division, maintaining a current inventory of materials with the Environmental Services Division, and having on hand the necessary materials/equipment to handle incidents including emergency material transfer to safe storage. Containment/control equipment should be available in-house or by contract with a local company/agency which specializes in such activities. Users/handlers should be allowed to have no more of these materials on hand than they can handle safely. To assure distribution of hazardous material information to appropriate agencies, the Environmental Services Division will pass related permit information to the Emergency Services Division which will be responsible for its dissemination.

With the acknowledgement that even in the safest and most prepared environment, accidents may happen and that in an emergency the most valuable resources available are the volunteers and experts alike who will commit themselves to the tasks at hand, The Commission recommends that the Mayor support Senate Bill 26, commonly known as the "Good Samaritan" bill for hazardous material responders (Appendix M)

AGENCY INVOLVEMENT

The Commission interviewed representatives from the state agencies and studied regulations which have a significant role in the control of hazardous materials and their transit within the state. In studying the state agencies the Commission found the following:

Department of Environmental Conservation

At the request of the Commissioner of the Alaska Department of Environmental Conservation (ADEC), members of the Hazardous Materials commission reviewed the proposed regulations of hazardous waste. The regulations as proposed would close many of the gaps existing in the federal regulations in regard to such substances as dioxin, and the allowable quantities of many substances are lower than in federal regulation. It has been noted by the Commission that implementation of the regulations has been postponed until December, 1984, and that they are undergoing revision. The regulations as originally proposed have excellent provisions for monitoring waste. The Commission supports the regulations as proposed and recommends that the Mayor endorse them and the necessary resources to enforce them.

Alaska Transportation Commission

The Commission examined "The Motor Carrier Safety Regulations 3AAC 62" section on highway transportation of hazardous materials. It was discovered that these regulations, which duplicate Title 49 of the Code of Federal Regulations, were developed in 1978 and finally adopted in 1980; while current for 1978, they do not include a provision for subsequent federal revision. Since 1978 there have been such substantial changes in the federal code that an interstate carrier can be meeting federal standards and breaking Alaskan law at the same time. It should also be noted that all training of public safety and emergency response personnel is based on the current revised federal code. Due to the obvious chaos created by different standards as well as severe potential for antiquation in an area which changes constantly with new technology and products, the Commission strongly recommends that the Mayor support revision of 3AAC 62 to include "Title 49 of the Code of Federal Regulations as amended," thereby allowing updates as necessary.

The Commission briefly reviewed state and federal regulations on interstate air, water, and rail transportation. These were thought to be generally adequate with the exception that the limiting quantities specified are larger than those which would be desirable for local regulation. It was the consensus of the Commission that any changes in these regulations would be impractical since the federal level promulgates these regulations. Local control of these substances can come through permitting.

Department of Public Safety

The Commission studied the role of the Alaska Department of Public Safety in relation to hazardous materials both in enforcement of State transportation and storage regulations. The transportation regulations all fall within the "Motor Carrier Safety Regulations" for which the Alaska State Troopers have the principal enforcement responsibility and authority. Most inspection and enforcement of 3AAC 62, outdated as it may be, occurred by the Troopers at the weigh stations until recently when the Department of Commerce assumed responsibility for the weigh-ins. Since staff of the Department of Commerce do not have the authority to enforce public safety regulations, nor do they have specific training in inspection procedures related to hazardous material requirements, there is no REGULAR on-going program or commitment of staff specifically designated for enforcement of such regulations. Alaska State Troopers are called in when Commerce or other individuals witness gross violations, and troopers may randomly inspect trucks; however due to personnel cut-backs, such activities fall far short of the need, and in the opinion of several individuals interviewed, it is only a matter of time until safety violations result in a hazardous materials incident. It is the consensus of the

Commission that the trucking industry must be expected to comply with hazardous material safety regulations and to this end it strongly recommends that the Mayor endorse efforts at the State level to restore adequate Trooper personnel for the purpose of regular, on-going truck inspections and enforcement of hazardous material regulations.

While the inspection and enforcement of transportation regulations falls under the purview of the Troopers, the inspection and enforcement of building regulations falls under the State Fire Marshal's Office. Prior to 1979 the State had adopted as its code the 1970 Uniform Building Code which did not specifically address the special emergency needs for storage of hazardous materials. Many facilities in the Borough and State were built during this period. In 1979 the State adopted major portions of the Uniform Fire Code under 13AAC 50.025 (Appendix N). Most facilities built under the previous codes were grandfathered in when the newer regulations were promulgated; however there has been some case-by-case reevaluation and upgrading of standards. The State codes are coming up for revision again this year and there are indications that the revised Uniform Fire Code will be adopted. Under State statute the Fire Marshal's Office is empowered to enforce violations of Code when it finds them, but as in the case of the Troopers and vehicle violations, it is necessary to have personnel out in the field doing inspections to assure compliance with regulations. In addition to inspection and enforcement of codes, the Fire Marshal's Office has many other assigned duties, several of which enjoy a higher priority. Because of these other demands, the staff cannot even say with confidence that the codes are adequate because they aren't out in the field inspecting enough to get a good feel for the needs of the community. The Commission recommends that the Mayor support increased state funding for enough staff in the State Fire Marshal's office to enable a regular, on-going program of inspections and hazardous material code enforcement.

Department of Transportation

The Commission interviewed a representative from the Alaska State Department of Transportation (ADOT) to gather information about road standards, designation of truck routes, maintenance and planning as they apply to routes of heavy highway use and transport of hazardous material. It was found that very rarely are roads designed specifically as truck routes, but all roads are designed with traffic projections based on a complex profile of the community and its growth patterns. Designation of truck routes is usually requested and described by local authorities for ease of traffic management. (A notable exception to this is the current request for a new truck route between the refinery in North Pole and the Richardson Highway.) Percent of truck traffic does affect the road design. Roads have a nominal 20 year design life, and most are rehabilitated in 10 years. There are no special standards for roads which will carry hazardous material

traffic or, for that matter, school bus traffic. Any roads constructed with federal aid money must comply with minimum standards at the time of their construction. While most truck routes in the Fairbanks North Star Borough do meet the minimum standards extant at their time of construction or upgrade, it is possible that several now carry more truck traffic than that for which they were designed; specific data on this question was not available. The ADOT develops a regular program of road maintenance and rehabilitation and is responsive to public requests for improvement or upgrading. To coordinate road and Borough planning, there is an ADOT representative on the Borough Platting Board, and all local road planning is done by policy and technical committees set up through the Fairbanks Metropolitan Area Transportation Study (FMATS). These committees are composed of Borough, ADOT, ADEC and City of Fairbanks' representatives. In consideration of this information the following recommendations have been adopted by consensus of the Commission:

a) that the Borough Assembly work with the Fairbanks and North Pole City Councils in developing ordinances which establish, designate, and call for enforcement of specific routes for the hauling of bulk quantities of the following substances by vehicles not on a regular route of delivery in the immediate area: poisons, corrosives, explosives, environmentally hazardous substances (use Title 49 definitions). Such establishment process must include evaluation of the roads composing the routes and their compliance with current standards for proposed use.

b) that the Mayor see that either the FMATS technical committee include a representative of a public safety agency familiar with hazardous material concerns or that a required step in local transportation planning guarantee consideration of public and environmental safety in regard to hazardous material transportation, especially in areas where hazardous material users or generators are involved.

c) that the Mayor request ADOT to evaluate all existing designated truck routes as to whether their current use is in keeping with their design standards.

d) that the Borough Assembly and Mayor indicate to ADOT that they feel that current truck routes in the Borough should be given a priority for maintenance and improvement.

Furthermore, as it was pointed out that the route for trucks to and from the North Pole refinery from 12-mile Richardson to North Pole is State maintained and not under the Federal aid system, and is probably sub-standard for its use, and as this road is considered to have the highest fuel-hauling rate in the Borough, it has been targeted by members of the Commission as a likely scene for a serious accident/incident. In light of this, the Commission urges the Mayor to take whatever action is necessary to assure that planning and development of a safe alternate route is a priority.

SPECIFIC BOROUGH CONCERNS

Planning and Zoning

The Commission studied the proposed Comprehensive Land Use Plan, current planning and zoning procedures and ways to address hazardous materials concerns within the existing structures of the Borough. The following are recommendations arising from these considerations:

a) In order to avoid such needless escalation of hazardous material risk within the Borough as the placement of the new North Pole High School next to the refinery, and to assure that there are mechanisms in place which guarantee the consideration of emergency services and hazardous materials concerns, the Commission recommends that ~~representatives~~ of emergency services, knowledgeable in hazardous materials concerns, be assigned to the Planning Commission and the Platting Board. Furthermore, all long-range development plans such as the Industrial Siting Study should be required to pass a review by public safety/emergency services representatives during the developmental stages.

b) In order to assure compliance with hazardous material concerns expressed in the proposed Comprehensive Land Use Plan and expressed by this Commission, the Commission recommends a zoning ordinance to limit all additions to existing facilities storing or handling hazardous materials (definition must be included) until such additions go through a recommended process of evaluation, compliance and permitting. The Commission also recommends an ordinance to redefine "Unrestricted" land use to exclude use, storage, or handling of hazardous materials (definition needed) without a permit. (This will address both the current situation as well as the future, after enactment of Comprehensive Plan.) Furthermore, any conditional or other use permits for facilities not requiring major capital improvements should not be granted "in perpetuity" but have time limits on them for review.

c) To tighten existing State codes, the Commission recommends adoption of a zoning ordinance requiring compliance with existing Uniform Fire Codes for all new installations involved with hazardous material storage or handling in the Borough.

Chlorine

The Commission also addressed other specific hazardous material concerns such as the movement of large amounts of chlorine around the Borough. Chlorine probably presents as big a potential hazard to the community as any other single material in the area. Large cylinders of pressurized chlorine are regularly moved on the roads around Fairbanks between the railroad industrial area and incoming roads en route to the sewage

treatment plant (where about 40 1-ton cylinders are regularly stored), water treatment plant, water stations and swimming pools at the University and near the schools. The Commission recommends that an ordinance be passed such that any movement of 150 pounds or more of chlorine in a single shipment within the Borough requires prior notification of the appropriate public safety agencies and be restricted to agreed upon routes.

Railroad Industrial Area

The Commission requested that K.A. Smith and Ernie Misewicz prepare a study of the railroad industrial area, its current facilities, capacities and the residential areas surrounding it. Railroad freight volume is up 15% in the past four years, and vehicular traffic and land development are continuing despite the efforts of public safety officials to halt it (Appendix D). Many problems exist there. While each in itself presents a significant hazard, when taken all together in a worst case scenario, the result is well beyond the emergency resources of the community. Most of these facilities are not dependent on neighboring ones and would lend themselves well to separation beyond safe distances. The problem which the Commission designated as most serious and which should have the highest priority for solution is the use and storage of compressed flammable gasses, such as LPG, in the area near residences, schools and other hazardous material areas (Appendix F). These facilities present not only the greatest threat to the community but they happen to be probably the easiest to move. The Commission recommends that the Borough mandate that all compressed flammable gas facilities be removed from the railroad industrial area within five years. Concurrent with this, the Borough should forbid expansion of existing facilities or construction of new ones in the area. The Borough should, furthermore, regulate flowthrough of compressed flammable gas in some reasonable and just manner, so that the major risks which are associated with the transportation and transfer of such materials are kept at least within current levels. In order to facilitate timely moving of the facilities, it is recommended that the Borough provide incentives (tax or land) for these facilities to relocate and that the Borough mandate buffer zones around such facilities and develop an industrial park for them (perhaps near the airport, with a re-routed rail spur).

There are a significant number of other facilities in the railroad area which also handle corrosives, such as hydrochloric acid, liquid flammables, and materials whose fire-products are toxic, such as plastics and foam insulation. While these individually do not represent a single-event threat of the magnitude of compressed flammable gas, their presence in the area, without isolation from each other and from dense population, does evoke serious hazardous material concerns. The Commission recommends that the Borough forbid any such new facilities or expansion of existing facilities in the railroad industrial area. The Borough should, as with compressed gas facilities, regulate flowthrough/production of these facilities

by means of a reasonable formula (Appendix Q). The Borough should encourage the relocation of these facilities to a new industrial area, conforming to the requirements of the Uniform Fire Code.

The Happy and Moose Creek Sidings

The Alaska Railroad is no longer unloading hazardous material shipments in the Railroad Industrial area. All such shipments are being unloaded at Happy Siding, on Sheep Creek Road, or at Moose Creek. It was decided that the Moose Creek siding was preferable as a temporary unloading area for highly hazardous materials, including explosives. The Commission recommends that a bunkered railroad siding should be constructed within the Borough with adequate storage facilities. The site should be selected as part of the Borough's Industrial Siting Project.

Schools and University

The University of Alaska, Fairbanks, and the Fairbanks North Star Borough School District are to be commended for their activities directed toward the safe handling and storage of hazardous materials. While both have made significant inroads into cleaning out stockpiles of hazardous materials, developing working inventories, and raising the consciousness of staff members using hazardous substances, there continues to be a need for on-going purchase control of hazardous materials. The Commission recommends that the University have one person designated to review and evaluate need and quantities for purchase of hazardous materials. The Commission also recommends that the school district have a person so designated who should also oversee safety procedures, inventory and storage on a regular basis. The Commission believes very strongly that its philosophy, wherein users of hazardous materials must be accountable for them and incidents arising from them, should apply equally to the educational sector of the community as to the commercial sector.

Public Education

a) The Commission recommends that public education be designated as a priority in order to gain public support for controls which must, in good conscience, be developed and upheld; in order to make individuals and businesses more safety conscious in their handling and storage of hazardous materials; and in order to make the public more aware of the need for immediate cooperation in case of emergency.

b) The Commission recommends the continuance on a regular basis of the hazardous materials clean-up program started last summer.

c) The Commission recommends a study and promotion of possible public education campaigns such as general reference booklets, on emergency actions, along with accompanying television and radio advertising.

Coordination of Hazardous Material Concerns in the Future

The Commission has found that there are many agencies and individuals who are concerned about hazardous material safety in the Borough and are committed to making the community safer in this respect. Rather than creating a new board or commission to carry on overseeing activities, the Commission recommends that the coordination of activities directed toward hazardous material safety be included, with appropriate financial support, under the umbrella of an existing board or department. The Commission recommends a periodic review of inventory, controls, resources, and identified high risk situations by an identified watch-dog organization. Above all the Commission reiterates its belief that the role of the Borough lies primarily in coordinating related activities to reduce duplication in planning, setting acceptable parameters, and being prepared in event of catastrophic accident, AND that it is the role of the producers, transporters and consumers of hazardous materials to protect themselves and others by establishment of safe handling and storage procedures and by having on hand required materials and equipment for the control of incidents.

SUMMARY

The Mayor's Blue Ribbon Commission on Hazardous Materials met for approximately seven months in 1983 hearing the testimony of many individuals concerned directly or indirectly with hazardous materials, their production, transportation, storage, consumption and disposal. Arising from this study are many recommendations to the Mayor, some in the form of local ordinance and some in the form of matters to be directed to the state legislature or state commissions.

The following is a list of the recommendations:

^f
Highway Traffic Inventory -- It is the opinion of the Commission that maintenance of a highway traffic inventory in and of itself is not a necessary or effective use of resources, as the problem can be approached from many other, more effective angles.

Borough Inventory of Hazardous Materials -- The Commission recommends the establishment of a system to maintain inventories of hazardous materials within the Borough, and that this be tied into the proposed permit system and include at least an annual update by the Borough's Environmental Services Division. Emergency service agencies must also be kept up to date on available information.

State Regulation -- The Commission has discovered an example of a confusing multiplicity of state agencies which are responsible for various facets of hazardous materials incidents response and control. The Commission recommends that the Mayor seek to have this situation corrected.

Centralized Dispatch -- The lack of centralized dispatch could hamper effective and timely utilization of all emergency resources. The Commission recommends the development of an easily accessed Borough-wide central computerized system for notification and dispatch of all emergency incidents.

Public Warning System -- As evidenced by the hydrochloric acid spill incident which spotlighted the current reliance on inadequate sirens, poor public education, and practical difficulties in coordination of evacuation with radio and television stations, the Commission recommends the installation of the proposed new warning siren system to cover populated areas outside of the cities of North Pole and Fairbanks, as well as within them.

Evacuation Information -- The Commission recommends the printing of a clear and concise set of evacuation procedures in the telephone directories with other emergency information.

7
Materials Needed for Response -- The Commission recommends that the Mayor support the efforts of the Emergency Services Division to procure and completely equip a hazardous response vehicle.

8
Coordination of Resources and Concerns -- The Commission recommends that some mechanism be established within the Borough to regularly continue the review of hazardous material resources and concerns. This would best be accomplished by an existing board or regular commission.

9
Permit System -- The Commission recommends that the Borough adopt a system through the Environmental Services Division requiring users, generators, and handlers of large quantities of specifically dangerous materials to secure a permit (not to include regular fuel distributors). Such permits should be contingent upon a requirement for training of personnel, posting of safety and incident procedures in house and with the Environmental Services Division, maintaining a current inventory of materials with Environmental Services, and having on hand the necessary materials/equipment to handle incidents including emergency material transfer to safe storage. Containment/control equipment should be available in-house or by contract with a local company/agency which specializes in such activities. Users/handlers should be allowed to have no more of these materials on hand than they can handle safely. To assure distribution of hazardous material information to appropriate agencies, the Environmental Services Division will pass related permit information to the Emergency Services Division which will be responsible for its dissemination.

10
State Legislation -- The Commission recommends that the Mayor support Senate Bill 26, known as the "Good Samaritan" bill for hazardous material incident responders.

11
D. E. C. Proposed Regulations -- The Commission supports the regulations as proposed and recommends that the Mayor endorse them and the necessary resources to enforce them.

ATC

12
~~Public Safety~~ Motor Vehicle Regulations -- the Commission recommends that the Mayor support revision of 3AAC 62 to include "Title 49 of the Code of Federal Regulations as amended" thereby allowing updates as necessary.

13
Alaska State Trooper Personnel Needs -- It is the consensus of the Commission that the trucking industry must be expected to comply with hazardous material safety regulations and to this end it recommends that the Mayor endorse efforts at the State level to restore adequate Trooper personnel for the purpose of regular, on-going truck inspections and enforcement of hazardous material regulations.

14
Fire Marshal's Personnel Needs -- The Commission recommends

that the Mayor support increased state funding for enough staff in the State Fire Marshal's office to enable a regular, on-going program of inspections and hazardous material code enforcement.

15 **Designation of Truck Routes** -- The Commission recommends that Mayor encourage the Borough Assembly to work with the Fairbanks and North Pole City Councils in developing ordinances which establish, designate, and call for enforcement of specific routes for the hauling of bulk quantities of the following substances by vehicles not on a regular route of delivery in the immediate area: poisons, corrosives, explosives, environmentally hazardous substances (use Title 49 definitions). Such establishment process must include evaluation of the roads composing the routes and their compliance with current standards for proposed use.

16 **Fairbanks Municipal Area ^{TRANSPORTATION} ~~TRANSIT~~ Study Planning** -- The Commission recommends that the Mayor see that either the FMATS Technical Committee include a representative of a public safety agency familiar with hazardous material concerns or that a required step in local transportation planning guarantee consideration of public and environmental safety in regard to hazardous material transportation, especially in areas where hazardous material users or generators are involved.

17 **Evaluation of Existing Truck Routes** -- The Mayor should request DOT to evaluate all existing designated truck routes as to whether their current use is in keeping with their design standards.

18 **Maintenance of Truck Routes** -- The Borough Assembly and Mayor should indicate to DOT that they feel that current truck routes in the Borough should be given a priority for maintenance and improvement.

19 **Truck Route for Refinery Traffic** -- The Commission urges the Mayor to take whatever action is necessary to assure that planning and development of a safe alternate route is a priority.

20 **Planning Commission and Platting Board Membership** -- The Commission recommends that representatives of emergency services, knowledgeable in hazardous materials concerns, be assigned to the Planning Commission and the Platting Board.

21 **Industrial Siting Study Review** -- That all long-range development plans such as the Industrial Siting Study be required to pass a review by public safety/emergency services representatives during the developmental stages.

22 **Zoning Ordinance for Unrestricted Land Use** -- The Commission recommends a zoning ordinance to limit all additions to existing facilities storing or handling hazardous materials (definition must be included) until such additions

go through a recommended process of evaluation, compliance and permitting. The Commission also recommends an ordinance to redefine "Unrestricted" land use to exclude use, storage, or handling of hazardous materials (definition needed) without a permit. (This will address both the current situation as well as the future after enactment of Comprehensive Plan.) Furthermore, any conditional or other use permits for facilities not requiring major capital improvements should not be granted "in perpetuity" but have time limits on them for review. (Refer also to recommendation of permit system.)

23
Zoning Ordinance for Uniform Fire Code -- The Commission recommends adoption of a zoning ordinance requiring compliance with existing Uniform Fire Codes for all new installations involved with hazardous material storage or handling in the Borough.

24
Ordinance for Transportation of Chlorine -- The Commission recommends that an ordinance be passed such that any movement of 150 pounds or more of chlorine in a single shipment within the Borough requires prior notification of the appropriate public safety agencies and be restricted to agreed upon routes.

25
Ordinance to Control and Relocate Flammable Gas Facilities -- The Commission recommends that the Borough mandate that all compressed flammable gas facilities be removed from the railroad industrial area within five years. Concurrent with this, the Borough should forbid expansion of existing facilities or construction of new ones in the area. The Borough should, furthermore, regulate flowthrough of compressed flammable gas in some reasonable and just manner, so that the major risks which are associated with transportation and transfer of such materials are kept at least within current levels. In order to facilitate timely moving of the facilities, it is recommended that the Borough provide incentives (tax or land) for these facilities to relocate and that the Borough mandate buffer zones around such facilities and develop an industrial park for them (perhaps near the airport, with a re-routed rail spur).

26
Ordinance to Control and Encourage Relocation of Flammable Liquid and Corrosives Facilities -- The Commission recommends that the Borough forbid any such new facilities or expansion of existing facilities in the railroad industrial area. The Borough should, as with compressed gas facilities, regulate flowthrough/production of these facilities by means of a reasonable formula. The Borough should encourage the relocation of these facilities to a new industrial area, conforming to the requirements of the Uniform Fire Code.

27
Railroad Off-loading Facilities -- The Commission concluded that the Moose Creek siding was preferable as a temporary unloading area for highly hazardous materials, including

explosives. The Commission recommended that a bunkered railroad siding should be constructed within the Borough with adequate storage facilities. The site should be selected as part of the Borough's Industrial Siting Project.

28

University Purchasing -- The Commission recommends that the University have one person designated to review and evaluate need and quantities for purchase of hazardous materials.

29

School District Safety Personnel -- The Commission recommends that the school district have a person designated to review and evaluate need and quantities for purchase of hazardous materials, and to oversee safety procedures, inventory and storage on a regular basis.

STOP
30

Public Education -- The Commission recommends that public education be designated as a priority in order to gain public support for controls which must, in good conscience, be developed and upheld; in order to make individuals and businesses more safety conscious in their handling and storage of hazardous materials; and in order to make the public more aware of the need for immediate cooperation in case of emergency.

31

Hazardous Materials Clean-Up -- The Commission urges the continuance on a regular basis of the hazardous materials clean-up program started last summer.

32

Public Education Strategies -- The Commission recommends a study and promotion of possible public education campaigns such as general reference booklets on emergency actions along with accompanying television and radio advertising.

33

Coordination of Activities -- The Commission recommends that the coordination of activities directed toward hazardous material safety be included, with appropriate financial support, under the umbrella of an existing board or department. The Commission recommends a periodic review of inventory, controls, resources, and identified high risk situations by an identified watch-dog organization.

Recommended Operational Philosophy -- Above all the Commission reiterates its belief that the role of the Borough lies primarily in coordination of activities to avoid duplication in planning, setting acceptable parameters and being prepared in event of catastrophic accident, AND that it is the role of the producer, transporter and consumer of hazardous materials to protect themselves and others by establishment of safe handling and storage procedures and by having on hand required materials and equipment for the control of incidents.

P R E S S R E L E A S E

MAYORS APPOINT COMMISSION ON HAZARDOUS MATERIALS

As a result of the acid and PCB spills which occurred over the Memorial Day weekend, North Star Borough Mayor Bill Allen and City of Fairbanks Mayor Bill Walley today announced the appointment of a commission to study the public safety problems associated with the storage, handling, and transportation of hazardous materials within the Borough.

This commission has been charged to inventory the kinds of hazardous materials present or being transported within the Borough, determine the location of these kinds of materials, outline what equipment and other items are needed to mitigate the effects of accidents involving these materials, and to recommend actions which can be taken to make their use, storage, and transportation safer for Borough residents.

Members of the Commission are Chairperson Deborah Pomeroy, Mike Brallier, Captain Bob Palmer, Whitey Gregory, John Kairis, Bud Sands, Bernie Saupe, Bill Shechter, and K.A. Smith.

A request is being made to Governor Sheffield to provide representatives from the Departments of Public Safety and Environmental Conservation, and the Alaska Division of Emergency Services to assist the Commission in their study.

June 8, 1983
4:00 PM

LIST OF APPOINTEES TO
THE MAYOR'S COMMISSION ON
HAZARDOUS MATERIALS

<u>NAME</u>	<u>REPRESENTING</u>
Mike Brallier	Spenard Builder's Supply
Capt. Bob Palmer	Eielson Air Force Base
Whitey Gregory	Sourdough Express
Deborah Pomeroy, Chairperson	Chemistry Teacher/Fire Chief
Richard Joy	Environmental Engineer
Penny Morgan	Northern Alaska Environ. Cen.
Bud Sands	Fire Training Officer
Bernie Saupe	Chevron Oil Distributors
Bill Shechter	Fire Chief
K.A. Smith	Alaska Railroad
Bob Hall	Alaska Transportation Comm.

Resource Persons:

- Jay Morris, Ass't. Fire Chief, Fairbanks
- Lob Cavanaugh, Emergency Services Director
- Tom Dome, Alaska Railroad HAZMAT Officer
- Lt. John Shover, Alaska State Troopers
- Scott Waggoner, Alaska State Troopers
- Charity Fechter, Alaska DOT/PF
- Ernie Misewicz, Alaska Fire Marshal's Office
- Vern Long, Alaska Fire Marshal's Office
- R.H. Franklin, Mammoth of Alaska
- Rick Navin, FNSB Land Management
- Chris Ballard, FNSB Planning Div.
- Jim Lee, FNSB Planning Div.
- John Hensley, Division of Emerg. Svcs.

HAZARDOUS MATERIALS INCIDENTS

1982 and 1983

DATE	NATURE OF INCIDENT	LOCATION
1-19-82	Small vehicle fuel tank leak 10 gal.	416 - 3rd Street
*1-20-82	Liquid propane leak from 30,000 gal rail car	Van Gas - ARRA
2-4-82	Chlorene gas leak	Hamme Pool
2-23-82	Propane tank valve leak	506 Gaffney
3-12-82	Chlorene gas leak	Hamme Pool
3-13-82	Chlorene gas leak	Hamme Pool
4-7-82	Small vehicle fuel tank leak	Barnette St. garage
4-25-82	Small vehicle accident - tank leak 15 gal.	1200 Cowles
5-3-82	Small vehicle fuel tank leak	122 Noble
5-15-82	Fuel oil spill less than 3 gal.	Flipper's
5-24-82	Propane tank valve leak	1241 McCarthy
5-27-82	Small vehicle accident - tank leak 5 gal.	1/4 mi. Richardson
6-22-82	Benzene cylinder explosion	Borough Baler
6-24-82	Small vehicle fuel tank leak - 1 gal.	516 - 2nd
6-25-82	Small vehicle fuel tank leak	500 - 2nd
6-26-82	Small vehicle fuel tank leak	548 - 2nd
6-28-82	Alaska Railroad engine, diesel fuel leak 30 gal.	Driveway St.
7-13-82	Small vehicle fuel tank leak 2 gal.	814 - 6th
8-7-82	Small vehicle accident - fuel tank leak 10 gal.	College & Antoinette
8-25-82	55 gal. drum of tar on fire	1316 Bedrock
8-25-82	Small vehicle fuel line leak 2 gal.	600 - 14th
9-10-82	Propane leak from appliance	26th & Lathrop
9-18-82	Small vehicle fuel tank leak 2 gal	500 Old Steese
9-24-82	Smoke grenade	Lathrop High
9-30-82	Tear gas in building	223 - 2nd Ave.
10-7-82	Diesel fuel spill in road 30 gal	30th & Cushman
10-15-82	Gasoline pump hose break at filling sta. 5 gal.	30th & Cushman
11-16-82	Leaking propane tank valve	525 - 5th Ave.
11-17-82	Small vehicle fuel tank leak	Barnette St.
1-9-83	Propane tank valve leak	Bentley Mall
1-13-83	Gasoline spill at service station 1 gal.	College & Illinois
1-21-83	Propane gas venting from vehicle tank	500 - 5th Ave.
1-28-83	Gasoline spill at service station 30 gal	1800 Airport
2-22-83	Propane gas leak at bulk plant	2250 Cushman
2-24-83	Oxygen tank leak	100 - 10th
*4-1-83	Chlorene leak	Hamme Pool
4-10-83	Small vehicle fuel tank leak 2 gal.	501 - 3rd Ave.
4-13-83	Diesel tanker overturned 125 gal.	Steese & Richardson
4-22-83	Small vehicle fuel tank leak	2500 Cushman
4-22-83	Fuel oil tank rupture 50 gal.	517 Craig St.
4-30-83	Fuel tank explosion - welding	1915 Cushman
5-17-83	Explosives discovered on private property	642-28th
*5-28-83	HCI tank car leak	ARRA
5-28-83	PCB transformer leak	10th & Lacey
*5-28-83	Propane liquid leak - ruptured tank filler	1454 Cushman
6-4-83	Propane tank punctured	3rd & Steese
6-6-83	2400 gal diesel tanker overturned 70 gal.	College & Steese
6-9-83	Small vehicle fuel tank leak 5 gal.	8th & Bonnifield
6-21-83	Propane gas leak in building	1267 Airport
6-24-83	JP-4 tanker leak 2 gal.	Airport Rd.
7-12-83	Propane leak in building	Bentley Mall
7-12-83	Small vehicle fuel tank leak 1 gal.	510 Gaffney
7-18-83	Small vehicle fuel tank leak	500 2nd Ave.
7-20-83	Small vehicle fuel tank leak 1 gal.	600 7th Ave.
8-4-83	Small vehicle fuel tank leak 5 gal.	1420 Cushman
9-3-83	Small vehicle fuel tank leak	2500 Cushman
9-10-83	Small vehicle fuel tank leak	5th & Lacey
9-17-83	Pressurized diesel fuel leak in building/explosion	GVFA
10-9-83	Gasoline bulk tank leak 20 gal.	Steese & Minnie
10-16-83	Gasoline spill at service station 2 gal.	2600 Cushman

* Considered to have been serious incident

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Reported Oil & Hazardous Substances Spills

in the

Fairbanks North Star Borough, 1982 and 1983

<u>DATE</u>	<u>SUBSTANCE</u>	<u>LOCATION</u>
<u>1982</u>		
01/05	300-500 gal. Jet A	N. P. Refinery
01/08	800-1000 gal. #2 Diesel	Interior Energy
01/27	1 qt. PCB Dielectric Fluid	Ft. Wainwright
01/27	RR Boxcar exploded — contained various hazardous materials	Eielson AFB
02/03	Large quantity Ammonium Nitrate	Happy Siding
02/04	50-75 gal. Jet B	Fbks. Int'l Airport
02/09	650 gal. Jet B	Fbks. Int'l Airport
02/22	3-5 gal. Ronnel Pesticide	FNSB Offices
02/24	125 gal. Jet A	N. P. Refinery
02/26	800-1200 lbs. Amnium Nitrate	Happy Siding
03/18	100 gal. Diesel	Moose Creek Dam
06/12	72 gal. Gasoline	Peede Rd.
06/29	Various Pesticides and Chemicals	Wescott Gardens
07/22	10,000 gal.+ Kerosene/Naptha	N. P. Power Plant
08/20	400-500 gal. Diesel	21 Mi. Old Rich.
09/28	2-3 gal PCB Dielectric Fluid	UAF
11/05	300 gal. JP-4	N. P. Refinery
11/06	25,000 gal. Isopropanol	Eielson AFB
11/11	900-1000 gal. Jet A	N. P. Refinery
12/30	3000 gal.+ Diesel	Fbks. Int'l Airport
<u>1983</u>		
02/04	125 gal. Gasoline	Eielson AFB
02/04	50 gal. #2 Fuel Oil	Alaskaland
02/13	Unknown amount Diesel	Eielson AFB
04/05	200 gal. Diesel/Asphalt	Texaco Bulk/Fairbanks
04/13	120 gal. #2 Fuel Oil	Rich. Hwy & Airprt Rd.
04/22	less than 1/2 gal. PCB Dielectric Fluid	McCallum & Moore Sts.
04/22	50-100 gal. Heating Fuel	525 Craig St.
05/28	less than 1/2 gal. PCB Dielectric Fluid	10th Ave. & Lacey St.
05/28	1000 gal. Hydrochloric Acid	Minnie Str.-ARR area
06/03	11. . . Gasoline	5th & Rich Hwy. N.P.
06/05	500+ g. Gasoline	5th & Rich Hwy. N.P.
06/06	30 gal #2 Fuel Oil	College Rd. & Steese
06/08	80 gal. JP-4	8th & Snowman N. P.
08/25	Unknown amount- Jet A & JP-4	N. P. Refinery
09/02	100 gal. Diesel	Eielson AFB
09/03	2000 gal. Gasoline	5th & Rich Hwy. N.P.
09/09	150 160 JP-4	Ft. Wainwright Hangars
09/20	50 gal. Diesel	Fbks. Int'l Airport
09/26	1-2 qt. PCB Dielectric Fluid	Eielson AFB
10/25	500 gal. #2 Fuel Oil	Eielson AFB
10/25	950 gal. #2 Fuel Oil	9 Mile CBR
11/05	Unknown amount (less than 15 gal.) PCB	Fbks. Int'l Airport
11/07	less than 1/2 gal. PCB Dielectric Fluid	7th Ave. & Perry St.



LAWS OF ALASKA

1983

Source

CSSB 79 (Res)

Chapter No.

93

AN ACT

Relating to toxic and hazardous substances in the workplace; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9

Approved by the Governor: July 25, 1983
Actual Effective Date: Sections 1, 3, and 4 take effect July 26, 1983; and Section 2 takes effect July 1, 1984

Chapter 93

AN ACT

Relating to toxic and hazardous substances in the workplace; and providing for an effective date.

* Section 1. AS 18.60.030 is amended by adding new paragraphs to read:
(12) annually publish a list of toxic and hazardous substances;

(13) maintain a current set of OSHA form 20's or equivalent information for toxic and hazardous substances, and other information relevant to toxic and hazardous substances;

(14) assist employers, upon request, to identify and obtain information on toxic and hazardous substances and develop employee safety education programs.

* Sec. 2. AS 18.60 is amended by adding new sections to read:

Sec. 18.60.065. IMPORTATION OF TOXIC AND HAZARDOUS SUBSTANCES. Toxic and hazardous substances imported into the state shall be accompanied by a federal Occupational Safety and Health Administration (OSHA) form 20 or equivalent information. This requirement does not apply to a substance for which the in-state purchaser has already received the most current information.

Sec. 18.60.036. EMPLOYEE SAFETY EDUCATION PROGRAMS. (a) An employer shall conduct a safety education program for an employee before the employee performs a new work assignment that may result in the employee being exposed to a toxic or hazardous substance for which the employee has not received safety instruction as provided under (b)

Appendix E-1

of this section.

(b) An employee safety instruction program shall inform the employee of

(A) the location, properties, and known or suspected acute and chronic health effects of the hazardous or toxic substances to which the employee is exposed in the workplace;

(B) the nature of the operations that could result in exposure to hazardous or toxic substances, as well as any necessary handling or hygienic practices or precautions; and

(C) the location, purpose, proper use, and limitations of personal protective equipment used in the workplace.

Sec. 18.60.067. INFORMATION PROVIDED ON EMPLOYER'S REQUEST. (a)

An employer shall make available to an employee on request a copy of the most recent OSHA form 20 or equivalent written information for a toxic or hazardous substance to which the employee may be exposed. If the employer does not have the copy or information requested, the employer shall request a copy from the department or the manufacturer of the substance within three state government working days after receiving the request.

(b) If the copy or information requested under (a) of this section is not made available to the employee within 15 calendar days after the request is received, the employer shall take measures to assure that employees are not exposed to the substance to which the copy or information pertains until the copy or information is made available to the employee who made the request. This subsection applies only to substances for which an OSHA form 20 or equivalent information is required under OSHA regulations. This subsection does not alter, deny, or abrogate any right an employee may have under law to refuse to work under hazardous circumstances.

Sec. 18.60.068. POSTING OF INFORMATION IN WORKPLACE. (a) The department shall print and make available to employers posters that contain notice of the provisions of this chapter relating to toxic and hazardous substances.

(b) An employer whose employees are or may be exposed in the workplace to a toxic or hazardous substance shall display the following information in a manner designed to notify the employees:

(1) a poster printed by the department under (a) of this section; and

(2) an OSHA form 20 or equivalent information for each toxic or hazardous substance to which an employee may be exposed in the workplace

(A) under normal conditions of work; or

(B) during a reasonably foreseeable emergency, including equipment failure and rupture of containers.

(c) Instead of posting the information required under (b)(2) of this section, an employer may post a list of the chemical name and product name of each toxic or hazardous substance to which an employee may be exposed in the workplace, together with an identification of a location, in or near the workplace and accessible to employees, where an employee may inspect the information listed under (b)(2) of this section.

* Sec. 3. AS 18.60.105 is amended by adding new paragraphs to read:

(6) "be exposed" means to ingest, inhale, or absorb through the skin or eyes a substance, or fumes or other potentially harmful aspect of a substance;

(7) "OSHA" means the federal Occupational Safety and Health Administration;

(8) "toxic or hazardous substance" includes

Appendix E-2

Chapter 93

1 (A) a chemical listed in 29 CFR Part 1910, Subpart Z,
2 Toxic and Hazardous Substances, "General Industry Standards",
3 Occupational Safety and Health Administration;

4 (B) a chemical listed in "Threshold Limit Values for
5 Chemical Substances and Physical Agents in the Work Environment",
6 American Conference of Governmental Industrial Hygienists (Latest
7 Edition);

8 (C) a substance for which an OSHA form 20 or
9 equivalent information is required under OSHA regulations; and

(D) a substance determined by the department, in
accordance with the Administrative Procedure Act (AS 44.62), to
be a health hazard to an employee who is exposed to the
substance, including a carcinogen, reproductive toxin, irritant,
corrosive, sensitizer, hepatotoxin, nephrotoxin, neurotoxin,
agent that acts on the hematopoietic system, agent that damages
the lungs, a cutaneous hazard and an eye hazard;

17 (9) "toxic or hazardous substance" does not include

18 (A) substances that because of their physical state,
19 volume, or concentration do not pose a health hazard upon expo-
20 sure;

21 (B) substances that are goods, food, drugs, cosmetics,
22 or tobacco products intended for personal consumption; or

23 (C) substances in transit;

24 (10) "transit" means conveyed in a sealed or unopened con-
25 tainer by a mode of transportation.

26 * Sec. 4. AS 18.60.105 is amended by adding a new subsection to read:

27 (b) In AS 18.60.030(14), 18.60.065 - 18.60.068, and 18.60.105-

28 (a)(9)

29 (1) "employee" means a person who works for an employer,

Memorandum of Understanding
between
The Department of Health and Social Services
Department of Military Affairs
Department of Environmental Conservation
and the
Department of Labor
Concerning Emergency Response to Peace Time
Radiation Incidents and Accidents

PURPOSE

The purpose of this agreement is to delineate areas of responsibility thereby clarifying individual agency's roles to ensure cooperation and mutual assistance between responsible Departments in responding to radiation incidents and accidents. Proper implementation should ensure that each Department's statutory responsibilities are met.

AGENCY RESPONSIBILITY

A. Health and Social Services

Under AS 18.45 and AS 18.60, the Alaskan Department of Health and Social Services is responsible for radiation safety dealing with exposure to the general public. This responsibility covers all ionizing and non-ionizing sources of radiation in the State.

B. Military Affairs

Under AS 26.20 and AS 26.30, the Department of Military Affairs has responsibility for planning and coordinating response to radiation incidents which result from detonation of nuclear weapons.

C. Environmental Conservation

Under AS 46.03, the Department of Environmental Conservation has the responsibility for environmental radiation matters relating to the contamination of air, water, soil or subsurface soil of the State.

D. Department of Labor

The Department of Labor under AS 18.60 is responsible for occupational radiation exposure resulting from both ionizing and non-ionizing radiation sources.