

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6365 SENATE JUDICIARY

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ASRN	Hazardous Substance	CASRN	Hazardous Substance
98457	Ethylalothiourea	1071011	1-Propanamine
97832	2-Imidazolinethione		n-Propylamine
	Ethyl methacrylate	107120	Ethyl cyanide
	2-Propanoic acid, 2-methyl-, ethyl ester		Propionitrile
98011	2-Furancarboxaldehyde	107131	Acrylonitrile
	Furfural		2-Propenenitrile
98077	Benzene, trichloromethyl-	107153	Ethylenediamine
	Benzotrichloride	107186	Allyl alcohol
98099	Benzenesulfonic acid chloride		2-Propen-1-ol
	Benzenesulfonyl chloride	107197	Propargyl alcohol
68828	Benzene, 1-methylethyl-		2-Propyn-1-ol
	Cumene	107200	Acetaldehyde, chloro-
98862	Acetophenone		Chloroacetaldehyde
	Elthanone, 1-phenyl-	107302	Chloromethyl methyl ether
98873	Benzal chloride		Methane, chloromethoxy-
	Benzene, dichloromethyl-	107493	Pyrophosphoric acid, tetraethyl ester
98884	Benzoyl chloride		Tetraethyl pyrophosphate
98953	Benzene, nitro-	107926	Butyric acid
	Nitrobenzene	108054	Vinyl acetate
99081	m-Nitrotoluene	108101	Methyl isobutyl ketone
99354	Benzene, 1,3,5-trimethyl-		4-Methyl-2-pentanone
	sym-Tri-nitrobenzene	108247	Acetic anhydride
99558	Benzenamine, 2-methyl-5-nitro-	108316	2,5-Furandione
	5-Nitro-o-toluidine		Maleic anhydride
99650	m-Dinitrobenzene	108383	Benzene, m-dimethyl-
99990	p-Nitrotoluene		m-Xylene
100016	Benzenamine, 4-nitro-	108394	m-Cresol
	p-Nitroaniline		m-Cresylic acid
100027	p-Nitrophenol	108463	1,3-Benzenediol
	4-Nitrophenol		Resorcinol
	Phenol, 4-nitro-	108601	Bis(2-chloroisopropyl) ether
100254	p-Dinitrobenzene		Propane, 2,2'-oxybis(2-chloro-
100314	Ethylbenzene	108883	Benzene, methyl-
100425	Styrene		Toluene
100447	Benzene, chloromethyl-	108907	Benzene, chloro-
	Benzyl chloride		Chlorobenzene
100470	Benzonitrile	108941	Cyclohexanone
100754	N-Nitrosopiperidine	109952	Benzene, hydroxy-
	Pyridine, hexahydro-N-nitroso-		Phenol
101144	Benzenamine, 4,4'-methylonebis(2-chloro-	108985	Benzenethiol
	4,4'-Methylenebis(2-chloroaniline)		Thiophenol
101553	Benzene, 1-bromo-4-phenoxy-	109068	2-Picoline
	4-Bromophenyl phenyl ether		Pyridine, 2-methyl-
103855	N-Phenylthiourea	109739	Butylamine
	Thiourea, phenyl-	109773	Malononitrile
105464	sec-Butyl acetate		Propanedinitrile
105679	2,4-Dimethylphenol	109897	Dialkylamine
	Phenol, 2,4-dimethyl-	109999	Furan, tetrahydro-
106423	Benzene, p-dimethyl-		Tetrahydrofuran
	p-Xylene	110009	Furan
106445	p-Cresol		Furfuran
	p-Cresylic acid	110167	Maleic acid
106467	Benzene, 1,4-dichloro-	110178	Fumamic acid
	1,4-Dichlorobenzene	110190	iso-Butyl acetate
	p-Dichlorobenzene	110758	2-Chloroethyl vinyl ether
106478	Benzenamine, 4-chloro-		Ethene, 2-chloroethoxy-
	p-Chloroaniline	110805	Ethylene glycol monoethyl ether
106490	p-Toluidine		2-Ethoxyethanol
	4-Amino-1-methyl benzene	110827	Benzene, hexahydro-
106514	p-Benzoquinone		Cyclohexane
	1,4-Cyclohexadienedione	110861	Pyridine
106898	1-Chloro-2,3-epoxypropane	111444	Bis (2-chloroethyl) ether
	Epichlorohydrin		Dichloroethyl ether
	Oxirane, 2-(chloromethyl)-	111546	Ethane, 1,1'-oxybis(2-chloro-
106934	Ethane, 1,2-dibromo-		1,2-Ethanediybis(carbamodithioic acid
	Ethylene dibromide		Ethylenebis(dithiocarbamic acid)
107028	Acrolain	111911	Bis(2-chloroethoxy) methane
	2-Propenal		Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-
107051	Allyl chloride	115026	Azaserone
107062	1,2-Dichloroethane		L-Serine, diazoacetate (ester)
	Ethane, 1,2-dichloro-	115297	Endosulfan
	Ethylene dichloride		5-Norbornene-2,3-dimethanol, 1,4,5,6,7,7-hexachloro, cyclic sulfite

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115322	Ketthane	142289	1,3-Dichloropropane
116063	Aldicarb Propanal, 2-methyl-2-(methylthio)-O- [(methylamino)carbonyl]oxime	142712	Cupric acetate
117806	Dichlone	142847	Dipropylamine
117817	1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)] ester	143339	1-Propanamine, N-propyl- Sodium cyanide
117840	Bis[2-ethylhexyl]phthalate 1,2-Benzenedicarboxylic acid, di-n-octyl ester	143500	Decachlorooctahydro-1,3,4-metheno-2H- cyclobuta(c,d)-pentalen-2-one
118741	Benzene, hexachloro- Hexachlorobenzene	145733	Kepona Endothal
119904	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethoxy- 3,3'-Dimethoxybenzidine	148823	7-Orabicyclo[2.2.1]heptane-2,3-dicarboxylic acid Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-L- Meflupatan
119937	(1,1'-Biphenyl)-4,4'-diamine, 3,3'-dimethyl- 3,3'-Dimethylbenzidine	151508	Potassium cyanide
120127	Anthracene	151564	Azindone Ethyleneimine
120581	Benzene, 1,2-methyleneedioxy-4-propenyl- Isosafrole	152169	Diphosphoramidate, octamethyl- Octamethylpyrophosphoramidate
120821	1,2,4-Trichlorobenzene	156605	1,2-trans-Dichloroethylene Ethene, trans-1,2-dichloro-
120832	2,4-Dichlorophenol Phenol, 2,4-dichloro-	189559	1,2,7,8-Dibenzopyrene Dibenz(a,i)pyrene
121142	Benzene, 1-methyl-2,4-dinitro- 2,4-Dinitrotoluene	191242	Benzo(g,h)perylene
121211	Pyrethrins	193395	Indeno(1,2,3-cd)pyrene
121299	Pyrethrins		1,10-(1,2-Phenylene)pyrene
121446	Triethylamine	205992	Benzo(b)fluoranthene
121755	Malathion	206440	Benzo(k)fluorene Fluoranthene
122098	alpha, alpha-Dimethylphenethylamine Ethanolamine, 1,1-dimethyl-2-phenyl-	207089	Benzo(k)fluoranthene
122667	1,2-Diphenylhydrazine H, triazine, 1,2-diphenyl-	208968	Acenaphthylene
123331	1,2-Dihydro-3,6-pyridazinedione Maleic hydrazide	218019	1,2-Benzophenanthrene Chrysene
123626	Propionic anhydride	225514	Benz(c)acridine 3,4-Benzacridene
123637	Paraldehyde	297972	O,O-Diethyl O-pyrazinyl phosphorothioate Phosphorothioic acid, O,O-diethyl, O-pyrazinyl ester
123739	2-Butenal Crotonaldehyde	298000	Methyl parathion O,O-Dimethyl O-p-nitrophenyl phosphorothioate
123864	Butyl acetate	298022	Phorate
123911	1,4-Dithylene dioxide 1,4-Dioxane		Phosphorodithioic acid, O,O-diethyl S- (ethylthio)methyl ester
123922	iso-Amyl acetate	298044	O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate
124049	Adipic acid		Disulfoton
124403	Dimethylamine Methanamine, N-methyl-	300765	Naled
124414	Sodium methylate	301042	Acetic acid, lead salt Lead acetate
124481	Chlorodibromomethane	302012	Diamine Hydrazine
126727	1-Propanol, 2,3-dibromo-, phosphate (3:1) Tris(2,3-dibromopropyl) phosphate	303344	Lasiocarpine
126987	Methacrylonitrile 2-Propenenitrile, 2-methyl-	305033	Butanoic acid, 4-[(bis(2-chloroethyl)amino) benzene- Chlorambucil
127184	Ethene, 1,1,2,2-tetrachloro- Tetrachloroethylene	309002	Aldrin 1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a- hexahydro-1,4:5,8-endo,exo- dimethanonaphthalene
127822	Zinc phenolsulfonate	311455	Diethyl-p-nitrophenyl phosphate Phosphonic acid, diethyl, p-nitrophenyl ester
129000	Pyrene	315184	Mexacarbate
130154	1,4-Naphthalenedione 1,4-Naphthoquinone	319846	alpha - BHC
131113	1,2-Benzenedicarboxylic acid, dimethyl ester Dimethyl phthalate	319857	beta - BHC
131748	Ammonium picrate Phenol, 3,4,6-trinitro-, ammonium salt	319868	delta - BHC
131895	4,6-Dinitro-o-cyclohexylphenol Phenol, 2-cyclohexyl-4,6-dinitro-	329715	2,5-Dinitrophenol
133062	Captan	330541	Diuron
134327	1-Naphthylamine alpha-Naphthylamine	333415	Diazinon
137268	Bis(dimethylthiocarbonyl) disulfide Thiram	353504	Carbon oxyfluoride Carbonyl fluoride
140885	Ethyl acrylate 2-Propenoic acid, ethyl ester	37573	Bromo Strychnidin-10-one, 2,3-dimethoxy-
141786	Acetic acid, ethyl ester Ethyl acetate		

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460195	Cyanogen
465738	Hexachloroheptahydro-endo,endo-dimethanonaphthalene 1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4,5,8-endo,endo-dimethanonaphthalene
492809	Auramine Benzeneamine, 4,4'-carbonimidoylbis (N,N-dimethyl-
494031	Chloronaphazine 2-Naphthylamine, N,N-bis(2-chloroethyl)-
496720	Diaminotoluene Toluenediamine
504245	4-Aminopyridine 4-Pyridinamine
504609	1,1'-ethylbutadiene 1,3-Pentadiene
506616	Potassium silver cyanide
506649	Silver cyanide
506683	Bromine cyanide Cyanogen bromide
506774	Chlorine cyanide Cyanogen chloride
506876	Ammonium carbonate
506967	Acetyl bromide
509148	Methane, tetranitro- Tetranitromethane
510156	Benzeneacetic acid, 4-chloro-alpha-(4-chloro-phenyl)-alpha-hydroxy-ethyl ester Ethyl 4,4'-dichlorobenzilate
513495	sec-Butylamine
528290	o-Dinitrobenzene
534521	4,6-Dinitro-o-cresol and salts Phenol,2,4-dinitro-6-methyl-, and salts
540738	1,2-Dimethylhydrazine Hydrazine, 1,2-dimethyl- tert-Butyl acetate
541093	Uranyl acetate
541537	2,4-Dithiourea Thiomidocarbonic diamide
541731	Benzene, 1,3-dichloro- 1,3-Dichlorobenzene m-Dichlorobenzene
542621	Barium cyanide
542756	Propene, 1,3-dichloro- 1,3-Dichloropropene
542767	3-Chloropropionitrile Propanenitrile, 3-chloro- bis(chloromethyl) ether
542881	Methane, oxybis(chloro- Cadmium acetate
543908	Cobaltous formate
544183	Copper cyanide
544923	m-Nitrophenol
554847	Nickel cyanide
557197	Nickel(II) cyanide
557211	Zinc cyanide
557346	Zinc acetate
557415	Zinc formate
563122	Ethion
563588	Acetic acid, thallium(I) salt Thallium(I) acetate
573568	2,6-Dinitrophenol
584849	Benzene, 2,4-disocyanatomethyl- Toluene diisocyanate
591082	Acetamide, N-(aminothioxomethyl)- 1-Acetyl-2-thiourea
592018	Calcium cyanide
592041	Mercuric cyanide
592258	Mercuric thiocyanate
592870	Lead thiocyanate
594423	Methanesulfanyl chloride, trichloro- Trichloromethanesulfanyl chloride

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598312	Bromoacetone 2-Propanone, 1-bromo-
606202	Benzene, 1-methyl-2,6-dinitro- 2,6-Dinitrotoluene
608935	Benzene, pentachloro- Pentachlorobenzene
609198	3,4,5-Trichlorophenol
610399	3,4-Dinitrotoluene
615532	Carbamic acid, methylnitroso, ethyl ester N-Nitroso-N-methylurethane
621647	Di-n-propylnitrosamine N-Nitrosodi-n-propylamine
624839	Isocyanic acid, methyl ester Methyl isocyanate
625161	tert-Amyl acetate
626380	sec-Amyl acetate
628637	Amyl acetate
628864	Fulminic acid, mercury(II)salt Mercury fulminate
630104	Carbamimidoseleonic acid Selenourea
630206	Ethane, 1,1,1,2-tetrachloro- 1,1,1,2-Tetrachloroethane
631618	Ammonium acetate
638215	Benzeneamine, 2-methyl-, hydrochloride o-Toluidine hydrochloride
640197	Acetamide, 2-fluoro- Fluoroacetamide
684935	Carbamide, N-methyl-N-nitroso- N-Nitroso-N-methylurea
692422	Arsine, diethyl- Diethylarsine
696285	Dichlorophenylarsine Phenyl dichloroarsine
757584	Hexaethyl tetraphosphale Tetraphosphoric acid, hexaethyl ester
759739	Carbamide, N-ethyl-N-nitroso- N-Nitroso-N-ethylurea
764410	2-Butene, 1,4-dichloro- 1,4-Dichloro-2-butene
765344	Glycidylaldehyde 1-Propanal, 2,3-epoxy-
815827	Cupnc tartrate
823405	Diaminotoluene Toluenediamine
924163	1-Butanamine, N-butyl-N-nitroso- N-Nitrosodi-n-butylamine
930552	N-Nitrosopyrrolidine Pyrrole, tetrahydro-N-nitroso-
933755	2,3,6-Trichlorophenol
933788	2,3,5-Trichlorophenol
959988	alpha - Endosulfan
1024573	Heptachlor epoxide
1031078	Endosulfan sulfate
1066304	Chromic acetate
1066337	Ammonium bicarbonate
1072351	Lead stearate
1111780	Ammonium carbamate
1116547	Ethanol, 2,2'-(nitrosamino)bis- N-Nitrosodithanolamine
1120714	1,2-Oxathiolane, 2,2-dioxide 1,3-Propane sulfone
1185575	Ferric ammonium citrate
1194656	Dichlobenil
1300716	Xylenol
1303282	Arsenic(V) oxide Arsenic pentoxide

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1303328	Arsenic disulfide	3486359	Zinc carbonate
1303339	Arsenic trisulfide	3689245	Dithiopyrophosphoric acid,tetraethyl ester
1305644	Antimony trioxide		Tetraethyl(dithiopyrophosphate
1310583	Potassium hydroxide	3813147	2,4,5-T amines
1310732	Sodium hydroxide	4170303	2-Butanol
1314325	Thallic oxide		Crotonaldehyde
	Thallium(III) oxide	4549400	Ethenamine, N-methyl-N-nitroso-
1314621	Vanadium pentoxide		N-Nitrosomethylvinylamine
	Vanadium(V) oxide	5344821	1-(o-Chlorophenyl)thiourea
1314803	Phosphorus pentasulfide		Thiourea, (2-chlorophenyl)-
	Phosphorus sulfide	5893663	Cupric oxalate
	Sulfur phosphide	5972736	Ammonium oxalate
1314847	Zinc phosphide	6009707	Ammonium oxalate
1314870	Lead sulfide	6369966	2,4,5-T amines
1314961	Strontium sulfide	6369977	2,4,5-T amines
1319728	2,4,5-T amines	6533739	Carbonic acid, dithallium (I) salt
1319773	Cresol(s)		Thallium(I) carbonate
	Cresylic acid	7005723	4-Chlorophenyl phenyl ether
1320189	2,4-D Esters	7421934	Endrin aldehyde
1321128	Nitrotoluene	7428480	Lead stearate
1327522	Arsenic acid	7439921	Lead
1327533	Arsenic(III) oxide	7439976	Mercury
	Arsenic trioxide	7440020	Nickel
1330207	Benzene, dimethyl-	7440224	Silver
	Xylene	7440235	Sodium
1332076	Zinc borate	7440280	Thallium
1332214	Asbestos	7440360	Antimony
1333831	Sodium bifluoride	7440382	Arsenic
1335328	Lead subacetate	7440417	Beryllium
1336216	Ammonium hydroxide		Beryllium dust
1336363	POLYCHLORINATED BIPHENYLS (PCBs)	7440439	Cadmium
	Aroclors	7440473	Chromium
1338234	2-Butanone peroxide	7440508	Copper
	Methyl ethyl ketone peroxide	7440666	Zinc
1338245	Naphtheneic acid	7446084	Selenium dioxide
1341497	Ammonium bifluoride		Selenium oxide
1464535	2,2'-Bioxane	7446142	Lead sulfate
	1,2:3,4-Diepoxybutane	7446186	Sulfonic acid, thallium(I) salt
1563662	Carboluran		Thallium(I) sulfate
1615801	N,N'-Diethylhydrazine	7446277	Lead phosphate
	Hydrazine, 1,2-diethyl-		Phosphonic acid, lead salt
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin(TCDD)	7447394	Cupric chloride
1762954	Ammonium thiocyanate	7488564	Selenium disulfide
1863634	Ammonium benzoate		Sulfur selenide
1888717	Hexachloropropene	7558794	Sodium phosphate, dibasic
	1-Propene, 1,1,2,3,3,3-hexachloro-	7601549	Sodium phosphate, tribasic
1918009	Dicamba	7631892	Sodium arsenate
1928387	2,4-D Esters	7631905	Sodium bisulfite
1928478	2,4,5-T esters	7632000	Sodium nitrite
1928616	2,4-D Esters	7645252	Lead arsenate
1929733	2,4-D Esters	7646857	Zinc chloride
2008460	2,4,5-T amines	7647010	Hydrochloric acid
2032657	Mercaptodimethur	7647189	Antimony pentachloride
2303164	Dallate	7664382	Phosphonic acid
	S-(2,3-Dichloroallyl) diisopropylthiocarbamate	7664393	Hydrofluoric acid
2312358	Propargite		Hydrogen fluoride
2545597	2,4,5-T esters		
2763964	5-(Amnomethyl)-3-isoxazolol		
	3(2H)-isoxazalone, 5-(amnomethyl)-		
2764729	Dquat		
2921882	Chlorpyrifos		
2944674	Fernc ammonium oxalate		
2971382	2,4-D Esters		
3012655	Ammonium citrate, dibasic		
3164292	Ammonium tartrate		
3165933	Benzanamine, 4-chloro-2-methyl-,hydrochloride		
	4-Chloro-o-toluidine, hydrochloride		
3251238	Cupric nitrate		
3288582	O,O-Diethyl S-methyl dithiophosphate		
	Phosphorodithioic acid, O,O-dimethyl S-methyls-		
	ter		

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7684417	Ammonia	8001589	Creosote
7684939	Sulfuric acid	8003198	Dichloropropane - Dichloropropene (mixture)
7681494	Sodium fluoride	8003347	Pyrethrins
7681529	Sodium hypochlorite	8014957	Sulfuric acid
7697372	Nitric acid	9004664	Femic dextran
7699458	Zinc bromide		Iron dextran
7705080	Ferric chloride	10022705	Sodium hypochlorite
7718549	Nickel chloride	10025873	Phosphorus oxychloride
7719122	Phosphorus trichloride	10025919	Antimony trichloride
7720787	Ferrous sulfate	10026116	Zirconium tetrachloride
7722647	Potassium permanganate	10028225	Ferric sulfate
7723140	Phosphorus	10031591	Sulfuric acid, thallium(I) salt
7733020	Zinc sulfate		Thallium(I) sulfate
7738945	Chromic acid	10039324	Sodium phosphate, dibasic
7758294	Sodium phosphate, inbasic	10043013	Aluminum sulfate
7758943	Ferrous chloride	10045893	Ferrous ammonium sulfate
7758954	Lead chloride	10045940	Mercuric nitrate
7758987	Cupric sulfate	10049055	Chromous chloride
7761888	Silver nitrate	10099748	Lead nitrate
7773060	Ammonium sulfamate	10101538	Chromic sulfate
7775113	Sodium chromate	10101630	Lead iodide
7778394	Arsenic acid	10101890	Sodium phosphate, inbasic
7778441	Calcium arsenate	10102064	Uranyl nitrate
7778509	Potassium bichromate	10102188	Sodium selenite
7778543	Calcium hypochlorite	10102439	Nitric oxide
7779864	Zinc hydrosulfite		Nitrogen(II) oxide
7779886	Zinc nitrate	10102440	Nitrogen dioxide
7782414	Fluorine		Nitrogen(IV) oxide
7782492	Selenium	10102451	Thallium(I) nitrate
7782505	Chlorine	10102484	Lead arsenate
7782630	Ferrous sulfate	10108642	Cadmium chloride
7782823	Sodium selenite	10124502	Potassium arsenite
7782867	Mercurous nitrate	10124568	Sodium phosphate, inbasic
7783008	Selenious acid	10140655	Sodium phosphate, dibasic
7783064	Hydrogen sulfide	10192300	Ammonium bisulfite
	Hydro-sulfuric acid	10196040	Ammonium sulfite
	Sulfur hydride	10361894	Sodium phosphate, inbasic
7783188	Ammonium thiosulfate	10380297	Cupric sulfate ammoniated
7783359	Mercuric sulfate	10415755	Mercurous nitrate
7783462	Lead fluoride	10421484	Femic nitrate
7783495	Zinc fluoride	10544726	Nitrogen dioxide
7783508	Femic fluoride		Nitrogen(IV) oxide
7783564	Antimony trifluoride	10588019	Sodium bichromate
7784341	Arsenic trichloride	11096825	Aroclor 1260
7784409	Lead arsenate		Polychlorinated Biphenyls (PCBs)
7784410	Potassium arsenate	11097691	Aroclor 1254
7784465	Sodium arsenite		Polychlorinated Biphenyls (PCBs)
7785844	Sodium phosphate, inbasic	11104282	Aroclor 1221
7786347	Mevinphos		Polychlorinated Biphenyls (PCBs)
7786814	Nickel sulfate	11115745	Chromic acid
7787475	Beryllium chloride	11141165	Aroclor 1232
7787497	Beryllium fluoride		Polychlorinated Biphenyls (PCBs)
7767555	Beryllium nitrate	12002038	Cupric acetoarsenite
7788989	Ammonium chromate	12039520	Thallium(I) selenide
7789006	Potassium chromate	12054487	Nickel hydroxide
7789062	Strontium chromate	12125018	Ammonium fluoride
7789095	Ammonium bichromate	12125029	Ammonium chloride
7789426	Cadmium bromide	12135761	Ammonium sulfide
7789437	Cobaltous bromide	12672296	Aroclor 1248
7789619	Antimony tribromide		Polychlorinated Biphenyls (PCBs)
7790945	Chlorosulfonic acid	12674112	Aroclor 1016
7791120	Thallium(I) chloride		Polychlorinated Biphenyls (PCBs)
7803512	Hydrogen phosphide	12771093	Sulfur monochloride
	Phosphine	13403393	Nickel carbonyl
7803556	Ammonium vanadate		Nickel tetracarbonyl
	Vanadic acid, ammonium salt	13560991	2,4,5-T salts
8001352	Camphene, octachloro-	13597994	Beryllium nitrate
	Toraphene	13746899	Zirconium nitrate
		13765190	Calcium chromate
			Chromic acid, calcium salt

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13814985	Lead fluoborate
13828830	Ammonium fluoborate
13952846	sec-Butylamine
14017415	Cobaltous sulfamate
14218752	Nickel nitrate
14258492	Ammonium oxalate
14307358	Lithium chlorate
14307438	Ammonium tartrate
14639975	Zinc ammonium chloride
14639986	Zinc ammonium chloride
14644612	Zirconium sulfate
15699180	Nickel ammonium sulfate
15739807	Lead sulfate
15950660	2,3,4-Trichlorophenol
16721805	Sodium hydrosulfide
16752775	Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-, methyl ester
	Methylthiomyl
16871719	Zinc silicofluoride
16919190	Ammonium silicofluoride
16923958	Zirconium potassium fluoride
18863664	D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-
	Streptozotocin
20816120	Osmium oxide
	Osmium tetroxide
20830813	Daunomycin
	5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[3-amino-2,3,6-Indeoxy-alpha-L-lyxo-hexopyranosyl]oxy]-7,8,9,10-tetrahydro-6,8,11-inhydroxy-1-methoxy-
20859738	Aluminum phosphide
23950585	3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide
	Pronamide
25154545	Dinitrobenzene (mixed)
25154556	Nitrophenol (mixed)
25155300	Sodium dodecylbenzene sulfonate
25167822	Trichlorophenol
25168154	2,4,5-T esters
25168267	2,4-D Esters
25321146	Dinitrotoluene
25321226	Dichlorobenzene (mixed)
25376458	Diaminotoluene
	Toluenediamine
25550587	Dinitrophenol
26264062	Calcium dodecylbenzene sulfonate
26471625	Benzene, 2,4-diisocyanatomethyl-
	Toluene diisocyanate
26828228	Sodium azide
26838197	Dichloropropane
26952238	Dichloropropane(s)
27176870	Dodecylbenzenesulfonic acid
27323417	Triethanolamine dodecylbenzene sulfonate
27774136	Vanadyl sulfate
28300745	Antimony potassium tartrate
30525894	Paraformaldehyde
32534955	2,4,5-TP acid esters
33213659	beta - Endosulfan
36478769	Uranyl nitrate
37211055	Nickel chloride
39196184	3,3-Dimethyl-1-(methylthio)-2-butanone,O-[(methylamino)carbonyl] oxime
	Thiofanox
42504461	Isopropanolamine dodecylbenzene sulfonate
52628258	Zinc ammonium chloride
52652592	Lead stearate
52740166	Calcium arsenite
53487111	2,4-D Esters
53469219	Aroclor 1242
	Polychlorinated Biphenyls (PCBs)

CASRN	Hazardous Substance
55488874	Ferric ammonium oxalate
56189094	Lead stearate
61792072	2,4,5-T esters

[50 FR 13474, Apr. 4, 1985, as amended at 51 FR 34541, Sept. 29, 1986; 52 FR 45767, Dec. 22, 1986]

§ 302.5 Determination of reportable quantities.

(a) *Listed hazardous substances.* The quantity listed in the column "Final RQ" for each substance in Table 302.4 is the reportable quantity for that substance.

(b) *Unlisted hazardous substances.* Unlisted hazardous substances designated by 40 CFR 302.4(b) have the reportable quantity of 100 pounds, except for those unlisted hazardous wastes which exhibit extraction procedure (EP) toxicity identified in 40 CFR 261.24. Unlisted hazardous wastes which exhibit EP toxicity have the reportable quantities listed in Table 302.4 for the contaminant on which the characteristic of EP toxicity is based. The reportable quantity applies to the waste itself, not merely to the toxic contaminant. If an unlisted hazardous waste exhibits EP toxicity on the basis of more than one contaminant, the reportable quantity for that waste shall be the lowest of the reportable quantities listed in Table 302.4 for those contaminants. If an unlisted hazardous waste exhibits the characteristic of EP toxicity and one or more of the other characteristics referenced in 40 CFR 302.4(b), the reportable quantity for that waste shall be the lowest of the applicable reportable quantities.

[51 FR 34547, Sept. 29, 1987]

§ 302.6 Notification requirements.

(a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release or application of a pesticide) of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the reportable quantity determined by this part in any 24-hour period, immediately

notify the National Response Center ((800) 424-8802; in Washington, D.C. (202) 426-2675).

(b) Releases of mixtures and solutions are subject to these notification requirements only where a component hazardous substance of the mixture or solution is released in a quantity equal to or greater than its reportable quantity.

(c) Notification of the release of an RQ of solid particles of antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc is not required if the mean diameter of the particles released is larger than 100 micrometers (0.004 inches).

(Approved by the Office of Management and Budget under control number 2115-0137)

§ 302.7 Penalties.

(a) Any person—

(1) In charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone,

(2) In charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) In charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that reportable quantity determined under this part who fails to notify immediately the National Response Center as soon as he has knowledge of such release shall be subject to all of the sanctions, including criminal penalties, set forth in section 103 of the Act with respect to such failure to notify.

(b) Notification received pursuant to this section or information obtained by the exploitation of such notifica-

tion shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act or to the handling and storage of such a pesticide product by an agricultural producer.

PART 303—CITIZEN AWARDS FOR INFORMATION ON CRIMINAL VIOLATIONS UNDER SUPERFUND

Subpart A—General

Sec.

303.10 Purpose.

303.11 Definitions.

303.12 Criminal violations covered by this award authority.

Subpart B—Eligibility to File a Claim for Award and Determination of Eligibility and Amount of Award

303.20 Eligibility to file a claim for award.

303.21 Determination of eligibility and amount of award.

Subpart C—Criteria for Payment of Award

303.30 Criteria for payment of award.

303.31 Assurance of claimant confidentiality.

303.32 Pre-payment offers.

303.33 Filing a claim.

AUTHORITY: 42 U.S.C. 9609(d), Executive Order No. 12580.

SOURCE: 53 FR 16088, May 5, 1988, unless otherwise noted.

Subpart A—General

§ 303.10 Purpose.

This regulation implements the "citizen award" authority granted by Congress to the President in the 1986 Amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), section 109(d). As authorized in the Superfund Amendments and Reauthorization Act of 1986 (SARA) section 109(c) and Executive Order No. 12580 (issued by the President on January 23, 1987), the Environmental Protec-

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Forget me not

Forget me not



"Reportable quantity" means that quantity, as set forth in this part, the release of which requires notification pursuant to this part;

"United States" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction; and

"Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

§ 302.4 Designation of hazardous substances.

(a) *Listed hazardous substances.* The elements and compounds and hazardous wastes appearing in Table 302.4 are designated as hazardous substances under section 102(a) of the Act.

(b) *Unlisted hazardous substances.* A solid waste, as defined in 40 CFR 261.2, which is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b), is a hazardous substance

under section 101(14) of the Act if it exhibits any of the characteristics identified in 40 CFR 261.20 through 261.24.

NOTE: The numbers under the column headed "CASRN" are the Chemical Abstracts Service Registry Numbers for each hazardous substance. Other names by which each hazardous substance is identified in other statutes and their implementing regulations are provided in the "Regulatory Synonyms" column. The "Statutory RQ" column lists the RQs for hazardous substances established by section 102 of CERCLA. The "Statutory Code" column indicates the statutory source for designating each substance as a CERCLA hazardous substance: "1" indicates that the statutory source is section 311(b)(4) of the Clean Water Act, "2" indicates that the source is section 307(a) of the Clean Water Act, "3" indicates that the source is section 112 of the Clean Air Act, and "4" indicates that the source is RCRA section 3001. The "RCRA Waste Number" column provides the waste identification numbers assigned to various substances by RCRA regulations. The column headed "Category" lists the code letters "X," "A," "B," "C," and "D," which are associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively. The "Pounds (kg)" column provides the reportable quantity for each hazardous substance in pounds and kilograms.

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

(See footnotes at end of Table 302.4)

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code	RCRA Waste Number	Category	Pounds(Kg)
Acenaphthene.....	83329		1*	2		B	100 (45.4)
Acenaphthylene.....	208968		1*	2		D	5000 (2270)
Acetaldehyde.....	75070	Ethanal.....	1000	1,4	U001	C	1000 (454)
Acetaldehyde, chloro.....	107200	Chloroacetaldehyde.....	1*	4	P023	C	1000 (454)
Acetaldehyde, trichloro.....	75876	Chloral.....	1*	4	U034	X	1# (0.454)
Acetamide, N-(aminothiosomethyl)-.....	591082	1-Acetyl-2-thiourea.....	1*	4	P002	C	1000 (454)
Acetamide, N-(4-ethoxyphenyl)-.....	62442	Phenacetin.....	1*	4	U187	X	1# (0.454)
Acetamide, N-9H-fluoren-2-yl-.....	53963	2-Acetylaminofluorene.....	1*	4	U005	X	1# (0.454)
Acetamide, 2-fluoro.....	640197	Fluoroacetamide.....	1*	4	P057	B	100(45.4)
Acetic acid.....	64197		1000	1		D	5000 (2270)
Acetic acid, ethyl ester.....	141785	Ethyl acetate.....	1*	4	U112	D	5000 (2270)
Acetic acid, fluoro, sodium salt.....	62748	Fluoroacetic acid, sodium salt.....	1*	4	P058	A	10 (4.54)
Acetic acid, lead salt.....	301042	Lead acetate.....	5000	1,4	U144	D	5000# (2270)
Acetic acid, thallium(I) salt.....	563688	Thallium(I) acetate.....	1*	4	U214	B	100 (45.4)
Acetic anhydride.....	108247		1000	1		D	5000 (2270)
Acetimidic acid, N-(methylcarbamoyl)oxylthio-, methyl ester.....	16752775	Methomyl.....	1*	4	P066	B	100 (45.4)
Acetone.....	67641	2-Propanone.....	1*	4	U002	D	5000 (2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—
Continued

[See footnotes at end of Table 302.4]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code	RCRA Waste Number	Category	Pounds(Kg)
Acetone cyanohydrin	75865	2-Methylactonitrile Propanenitrile, 2-hydroxy-2-methyl-	10	1,4	P069	A	10 (4.54)
Acetonitrile	75058	Ethanenitrile	1*	4	U003	D	5000 (2270)
3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts	81812	Warfium	1*	4	F001	B	100 (45.4)
Acetophenone	98862	Ethanone, 1-phenyl-	1*	4	U004	D	5000 (2270)
2-Acetylaminofluorene	53963	Acetamide, N-9H-fluoren-2-yl-	1*	4	U005	X	1# (0.454)
Acetyl bromide	506967		5000	1		D	5000 (2270)
Acetyl chloride	75365	Ethanoyl chloride	5000	1,4	U006	D	5000 (2270)
1-Acetyl-2-thiourea	591082	Acetamide, N-(aminothioxomethyl)-	1*	4	P002	C	1000 (454)
Acridin	107028	2-Propenal	1	1,2,4	P003	X	1 (0.454)
Acrylamide	79061	2-Propenamde	1*	4	U007	D	5000 (2270)
Acrylic acid	79107	2-Propenoic acid	1*	4	U008	D	5000 (2270)
Acrylonitrile	107131	2-Propenenitrile	101	1,2,4	U009	B	100# (45.4)
Adipic acid	124049		5000	1		D	5000 (2270)
Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-L-	146823	Melphalan	1*	4	U150	X	1# (0.454)
Aldicarb	116063	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime	1*	4	P070	X	1 (0.454)
Aldrin	309002	1,2,3,4,10-10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, exo-dimethanonaphthalene	1	1,2,4	P004	X	1# (0.454)
Allyl alcohol	107186	2-Propen-1-ol	100	1,4	P005	B	100 (45.4)
Allyl chloride	107051		1000	1		C	1000 (454)
Aluminum phosphide	20859738		1*	4	P006	B	100 (45.4)
Aluminum sulfate	10043013		5000	1		D	5000 (2270)
2-Amino-1-methylbenzene	95534	o-Toluidine	1*	4	U328	X	1# (0.454)
4-Amino-1-methylbenzene	106490	p-Toluidine	1*	4	U353	X	1# (0.454)
5-(Aminomethyl)-3-isoxazolol	2763964	3(2H)-isoxazolone, 5-(aminomethyl)-	1*	4	P007	C	1000 (454)
4-Aminopyridine	504245	4-Pyridinamine	1*	4	P008	C	1000 (454)
Amitrole	61825	1H-1,2,4-Triazol-3-amine	1*	4	U011	X	1# (0.454)
Ammonia	7664417		100	1		B	100 (45.4)
Ammonium acetate	631618		5000	1		D	5000 (2270)
Ammonium benzoate	1863634		5000	1		D	5000 (2270)
Ammonium bicarbonate	1066337		5000	1		D	5000 (2270)
Ammonium bichromate	7789095		1000	1		C	1000# (454)
Ammonium bifluoride	1341497		5000	1		B	100 (45.4)
Ammonium bisulfite	10192300		5000	1		D	5000 (2270)
Ammonium carbamate	1111780		5000	1		D	5000 (2270)
Ammonium carbonate	506876		5000	1		D	5000 (2270)
Ammonium chloride	12125029		5000	1		D	5000 (2270)
Ammonium chromate	7788989		1000	1		C	1000# (454)
Ammonium citric dibasic	3012655		5000	1		D	5000 (2270)
Ammonium fluoborate	13826830		5000	1		D	5000 (2270)
Ammonium fluoride	12125018		5000	1		B	100 (45.4)
Ammonium hydroxide	1336216		1000	1		C	1000 (454)
Ammonium oxalate	6009707		5000	1		D	5000 (2270)
	5972736						
	14258492						

METHOD OF ANALYSIS FOR
DIBENZO-P-DIOXINS AND -DI-
NS

42 U.S.C. 6905, 6912(a), 6921,

FR 33119, May 19, 1980, unless
d.

part A—General

use and scope.

part identifies those solid
wastes are subject to regulation
under Parts 262
268, and Parts 270, 271,
this chapter and which are
the notification require-
ment 3010 of RCRA. In

part A defines the terms
"solid waste" and "hazardous waste".
Those wastes which are ex-
empt from regulation under Parts
266, 268 and 270 and es-
pecial management require-
ments for hazardous waste produced
in small quantities and hazardous waste
recycled.

part B sets forth the criteria
used to identify characteris-
tic hazardous waste and to list haz-
ardous wastes.

part C identifies characteris-
tic hazardous waste.

part D lists particular haz-
ardous wastes.

part E: definition of solid waste
and this part applies only to
wastes which are hazardous for pur-
poses of regulations implementing
RCRA. For example, it
applies to materials (such as
metal scrap, paper, textiles,
etc.) that are not otherwise haz-
ardous and that are recycled.

part F identifies only some of
the wastes which are solid wastes
under sections
and 7003 of RCRA. A mate-
rial is not defined as a solid
waste, or is not a hazard-
ous waste, or is listed in this
part as a solid waste and a hazard-
ous waste for purposes of these sec-

in the case of sections 3007 and
3008 has reason to believe that

the material may be a solid waste
within the meaning of section 1004(27)
of RCRA and a hazardous waste
within the meaning of section 1004(5)
of RCRA; or

(ii) In the case of section 7003, the
statutory elements are established.

(c) For the purposes of §§ 261.2 and
261.6:

(1) A "spent material" is any materi-
al that has been used and as a result
of contamination can no longer serve
the purpose for which it was produced
without processing;

(2) "Sludge" has the same meaning
used in § 260.10 of this chapter;

(3) A "by-product" is a material that
is not one of the primary products of a
production process and is not solely or
separately produced by the production
process. Examples are process residues
such as slags or distillation column
bottoms. The term does not include a
co-product that is produced for the
general public's use and is ordinarily
used in the form it is produced by the
process.

(4) A material is "reclaimed" if it is
processed to recover a usable product,
or if it is regenerated. Examples are
recovery of lead values from spent bat-
teries and regeneration of spent sol-
vents.

(5) A material is "used or reused" if
it is either:

(i) Employed as an ingredient (in-
cluding use as an intermediate) in an
industrial process to make a product
(for example, distillation bottoms
from one process used as feedstock in
another process). However, a material
will not satisfy this condition if dis-
tinct components of the material are
recovered as separate end products (as
when metals are recovered from
metal-containing secondary materials);
or

(ii) Employed in a particular func-
tion or application as an effective sub-
stitute for a commercial product (for
example, spent pickle liquor used as
phosphorous precipitant and sludge
conditioner in wastewater treatment).

(6) "Scrap metal" is bits and pieces
of metal parts (e.g., bars, turnings,
rods, sheets, wire) or metal pieces that
may be combined together with bolts
or soldering (e.g., radiators, scrap au-
tomobiles, railroad box cars), which

when worn or superfluous can be recy-
cled.

(7) A material is "recycled" if it is
used, reused, or reclaimed.

(8) A material is "accumulated spec-
ulatively" if it is accumulated before
being recycled. A material is not accu-
mulated speculatively, however, if the
person accumulating it can show that
the material is potentially recyclable
and has a feasible means of being recy-
cled; and that—during the calendar
year (commencing on January 1)—the
amount of material that is recycled, or
transferred to a different site for recy-
cling, equals at least 75 percent by
weight or volume of the amount of
that material accumulated at the be-
ginning of the period. In calculating
the percentage of turnover, the 75 per-
cent requirement is to be applied to
each material of the same type (e.g.,
slags from a single smelting process)
that is recycled in the same way (i.e.,
from which the same material is recov-
ered or that is used in the same way).
Materials accumulating in units that
would be exempt from regulation
under § 261.4(c) are not to be included
in making the calculation. (Materials
that are already defined as solid
wastes also are not to be included in
making the calculation.) Materials are
no longer in this category once they
are removed from accumulation for re-
cycling, however.

[45 FR 33119, May 19, 1980, as amended at
48 FR 14293, Apr. 1, 1983; 50 FR 663, Jan. 4,
1985; 51 FR 10174, Mar. 24, 1986; 51 FR
40636, Nov. 7, 1986]

§ 261.2 Definition of solid waste.

(a)(1) A *solid waste* is any discarded
material that is not excluded by
§ 261.4(a) or that is not excluded by
variance granted under §§ 260.30 and
260.31.

(2) A *discarded material* is any mate-
rial which is:

(i) *Abandoned*, as explained in para-
graph (b) of this section; or

(ii) *Recycled*, as explained in para-
graph (c) of this section; or

(iii) Considered *inherently waste-
like*, as explained in paragraph (d) of
this section.

(b) Materials are solid waste if they
are *abandoned* by being:

- (1) Disposed of; or
- (2) Burned or incinerated; or
- (3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(c) Materials are solid wastes if they are recycled—or accumulated, stored, or treated before recycling—as specified in paragraphs (c)(1) through (4) of this section.

(1) *Used in a manner constituting disposal.* (i) Materials noted with a "*" in Column 1 of Table 1 are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal, or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

(ii) However, commercial chemical products listed in § 261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) *Burning for energy recovery.* Materials noted with a "*" in column 2 of Table 1 are solid wastes when they are:

- (A) Burned to recover energy;
- (B) Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

(i) However, commercial chemical products listed in § 261.33 are not solid wastes if they are themselves fuels.

(3) *Reclaimed.* Materials noted with a "*" in column 3 of Table 1 are solid wastes when reclaimed.

(4) *Accumulated speculatively.* Materials noted with a "*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

TABLE 1

	Use constituting disposal (§ 261.2(c)(1))	Energy recovery/fuel (§ 261.2(c)(2))	Reclamation (§ 261.2(c)(3))	Speculative accumulation (§ 261.2(c)(4))
	(1)	(2)	(3)	(4)
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in 40 CFR Part 261.31 or 261.32)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	(*)	(*)
By-products (listed in 40 CFR Part 261.31 or 261.32)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	(*)	(*)
Commercial chemical products listed in 40 CFR 261.33	(*)	(*)	(*)	(*)
Scrap metal	(*)	(*)	(*)	(*)

Note: The terms "spent materials", "sludges", "by-products" and "scrap metal" are defined in § 261.1

(d) *Inherently waste-like materials.* The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.

(2) The Administrator will use the following criteria to add wastes to that list:

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in Appendix VIII of Part 261 and these constituents are not ordinarily found in raw materials or products for which the materials

substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) *Materials that are not solid waste when recycled.* (1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products; or

Environment

(iii) Returned from which out first be raw materials must use feedstocks.

(2) The wastes, even use, reuse, process (des through

(i) Materials constituting products th or

(ii) Materials recovery, used in fu

(iii) Materials tively; or

(iv) Materials (d)(1) of thi

(f) *Documentation*

materials a

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§ 261.3 Defir

(a) A so § 261.2, is a

(1) It is :

tion as a § 261.4(b); a

(2) It mee

teria:

However, commercial chemical products listed in § 261.33 are not solid if they are applied to the land in their ordinary manner of

burning for energy recovery. (1) is noted with a "*" in column 2 of Table 1 are solid wastes when they

are returned to recover energy; (2) are used to produce a fuel or are contained in fuels (in which the fuel itself remains a solid

However, commercial chemical products listed in § 261.33 are not solid if they are themselves fuels,

reclaimed. Materials noted with a "*" in column 3 of Table 1 are solid when reclaimed.

Materials accumulated speculatively. Materials noted with a "*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

Energy recovery/fuel (§ 261.2(c)(2))	Reclamation (§ 261.2(c)(3))	Speculative accumulation (§ 261.2(c)(4))
(2)	(3)	(4)
(*)	(*)	(*)
(*)	(*)	(*)
(*)	(*)	(*)
(*)	(*)	(*)
(*)	(*)	(*)
(*)	(*)	(*)
(*)	(*)	(*)

"*" as defined in § 261.1

Materials (or are found in raw materials or products in smaller concentrations) and are not used or reused in the recycling process; and (3) the material may pose a substantial hazard to human health and the environment when recycled.

Materials that are not solid waste when recycled. (1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not reclaimed; or

(ii) used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed. The material must be returned as a substitute for raw material feedstock, and the process must use raw materials as principal feedstocks.

(2) The following materials are solid wastes, even if the recycling involves reuse, or return to the original process (described in paragraphs (c)(1) through (iii) of this section):

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in paragraph (d)(1) of this section.

(f) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce regulations implementing Subtitle C of RCRA who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

[50 FR 864, Jan. 4, 1985, as amended at 50 FR 33542, Aug. 20, 1985]

§ 261.3 Definition of hazardous waste.

(a) A solid waste, as defined in § 261.2, is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under § 261.4(b); and

(2) It meets any of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in Subpart C.

(ii) It is listed in Subpart D and has not been excluded from the lists in Subpart D under §§ 260.20 and 260.22 of this chapter.

(iii) It is a mixture of a solid waste and a hazardous waste that is listed in Subpart D solely because it exhibits one or more of the characteristics of hazardous waste identified in Subpart C, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in Subpart C.

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in Subpart D and has not been excluded from this paragraph under §§ 260.20 and 260.22 of this chapter; however, the following mixtures of solid wastes and hazardous wastes listed in Subpart D are not hazardous wastes (except by application of paragraph (a)(2) (i) or (ii) of this section) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater) and:

(A) One or more of the following spent solvents listed in § 261.31—carbon tetrachloride, tetrachloroethylene, trichloroethylene—*Provided, That the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 1 part per million; or*

(B) One or more of the following spent solvents listed in § 261.31—methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, creosols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents—*provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided*

ed by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million; or

(C) One of the following wastes listed in § 261.32—heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050); or

(D) A discarded commercial chemical product, or chemical intermediate listed in § 261.33, arising from *de minimis* losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph, "*de minimis*" losses include those from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Subpart D. *Provided, That the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation.*

(b) A solid waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in Subpart D, when the waste first meets

the listing description set forth in Subpart D.

(2) In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in Subpart D is first added to the solid waste.

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

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

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

(2)(i) Except as otherwise provided in paragraph (c)(2)(ii) of this section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste: (A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332).

(B) Waste from burning any of the materials exempted from regulation by § 261.6(a)(3)(v) through (ix).

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

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

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

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In the case of a mixture of solid and one or more listed hazardous wastes, when a hazardous waste in Subpart D is first added to solid waste.

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

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

A hazardous waste will remain a hazardous waste.

Except as otherwise provided in paragraph (c)(2)(ii) of this section, solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, residue, ash, emission control material, or leachate (but not including stormwater runoff) is a hazardous waste. However, materials that are reclaimed from solid wastes and that are beneficially used are not solid wastes unless they are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

The following solid wastes are hazardous even though they are reclaimed from the treatment, storage, or disposal of a hazardous waste, they exhibit one or more of the characteristics of hazardous waste: (A) Pickle liquor sludge generated from the stabilization of spent pickle brines from the iron and steel industry under §§ 331 and 332.

Waste from burning any of the materials exempted from regulation under 1.6(a)(3)(v) through (ix).

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

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

(2) In the case of a waste which is a hazardous waste listed under Subpart D, it contains only a waste listed under Subpart D or is reclaimed from a waste listed in Subpart D and has been excluded from regulation under §§ 260.20 and 260.22 of this chapter.

(45 FR 33119, May 19, 1980, as amended at 46 FR 56588, Nov. 17, 1981; 50 FR 14219, Apr. 11, 1985; 50 FR 49202, Nov. 29, 1985; 52 FR 11821, Apr. 13, 1987)

§ 261.4 Exclusions.

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

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

(2) Industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended.

(Comment: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.)

(3) Irrigation return flows.

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

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

(6) Pulping liquors (*i.e.*, black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in § 261.1(c) of this chapter.

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in § 261.1(c) of this chapter.

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

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

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility:

(i) Receives and burns only

(A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources) and

(B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

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

(i) The growing and harvesting of agricultural crops.

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

(3) Mining overburden returned to the mine site.

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

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

(6)(i) Wastes which fail the test for the characteristic of EP toxicity because chromium is present or are listed in Subpart D due to the presence of chromium, which do not fail the test for the characteristic of EP toxicity for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i)(A), (B) and (C) (so long as they do not fail the test for the characteristic of EP toxicity, and do not fail the test for any other characteristic) are:

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish;

hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO₂ pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.

(8) Cement kiln dust waste.

(9) Solid waste which consists of discarded wood or wood products which fails the test for the characteristic of EP toxicity and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit.

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Wastewater treatment sludges generated by the following subcategory: the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; no beamhouse; through-the-blue and shearing.

Wastewater treatment sludges generated by the following subcategory: the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other product manufacturing industries.

Wastewater treatment sludges from the production of TiO₂ pigment chromium-bearing ores by the extraction process.

Solid waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore. Cement kiln dust waste.

Solid waste which consists of discarded wood or wood products which the test for the characteristic toxicity and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and products for these materials' intended use.

Hazardous wastes which are excluded from certain regulations. A hazardous waste which is generated in a product or raw material storage area, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-treatment-manufacturing unit.

is not subject to regulation under Parts 262 through 265, 268, 270, 271 and 124 of this chapter or to the notification requirements of section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(d) *Samples.* (1) Except as provided in paragraph (d)(2) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this part or Parts 262 through 268 or Part 270 or Part 124 of this chapter or to the notification requirements of section 3010 of RCRA, when:

(i) The sample is being transported to a laboratory for the purpose of testing; or

(ii) The sample is being transported back to the sample collector after testing; or

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(iv) The sample is being stored in a laboratory before testing; or

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(2) In order to qualify for the exemption in paragraphs (d)(1) (i) and (ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(1) The sample collector's name, mailing address, and telephone number;

(2) The laboratory's name, mailing address, and telephone number;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.

[45 FR 33119, May 19, 1980]

EDITORIAL NOTE: FOR FEDERAL REGISTER citations affecting § 261.4, see the List of CFR Sections Affected in the Finding Aids section of this volume.

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

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 160 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in paragraphs (e), (f), (g), and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Parts 262 through 266, 268, and Parts 270 and 124 of this chapter, and the notification requirements of section 3010 of RCRA, provided the generator complies with the requirements of paragraphs (f), (g), and (j) of this section.

(c) Hazardous waste that is not subject to regulation or that is subject only to § 262.11, § 262.12, § 262.40(c), and § 262.41 is not included in the quantity determinations of this part and Parts 262 through 266, 268, and 270 and is not subject to any of the requirements of those parts. Hazardous waste that is subject to the requirements of § 261.6 (b) and (c) and Subparts C, D, and F of Part 266 is included in the quantity determination of this part and is subject to the require-

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subpart A—General

- Sec.
- 261.1 Purpose and scope.
- 261.2 Definition of solid waste.
- 261.3 Definition of hazardous waste.
- 261.4 Exclusions.
- 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.
- 261.6 Requirements for recyclable materials.
- 261.7 Residues of hazardous waste in empty containers.

Subpart B—Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Wastes

- 261.10 Criteria for identifying the characteristics of hazardous waste.
- 261.11 Criteria for listing hazardous waste.

Subpart C—Characteristics of Hazardous Waste

- 261.20 General.
- 261.21 Characteristic of ignitability.
- 261.22 Characteristic of corrosivity.
- 261.23 Characteristic of reactivity.
- 261.24 Characteristic of EP toxicity.

Subpart D—Lists of Hazardous Wastes

- 261.30 General.
- 261.31 Hazardous wastes from non-specific sources.
- 261.32 Hazardous wastes from specific sources.
- 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

APPENDICES

- APPENDIX I—REPRESENTATIVE SAMPLING METHODS
- APPENDIX II—EP TOXICITY TEST PROCEDURES
- APPENDIX III—CHEMICAL ANALYSIS TEST METHODS
- APPENDIX IV—(RESERVED FOR RADIOACTIVE WASTE TEST METHODS)
- APPENDIX V—(RESERVED FOR INFECTIOUS WASTE TREATMENT SPECIFICATIONS)
- APPENDIX VI—(RESERVED FOR ETIOLOGIC AGENTS)
- APPENDIX VII—BASIS FOR LISTING HAZARDOUS WASTE
- APPENDIX VIII—HAZARDOUS CONSTITUENTS
- APPENDIX IX—WASTES EXCLUDED UNDER §§ 260.20 AND 266.22

APPENDIX X—METHOD OF ANALYSIS FOR CHLORINATED DIBENZO-P-DIOXINS AND DIBENZOFURANS

AUTHORITY: 42 U.S.C. 6905, 6912(a), 6921 and 6922.

SOURCE: 45 FR 33119, May 19, 1980, unless otherwise noted.

Subpart A—General

§ 261.1 Purpose and scope.

(a) This part identifies those solid wastes which are subject to regulation as hazardous wastes under Parts 262 through 265, 268, and Parts 270, 271, and 124 of this chapter and which are subject to the notification requirements of section 3010 of RCRA. In this part:

(1) Subpart A defines the terms "solid waste" and "hazardous waste" and identifies those wastes which are excluded from regulation under Parts 262 through 266, 268 and 270 and establishes special management requirements for hazardous waste produced by conditionally exempt small quantity generators and hazardous waste which is recycled.

(2) Subpart B sets forth the criteria used by EPA to identify characteristics of hazardous waste and to list particular hazardous wastes.

(3) Subpart C identifies characteristics of hazardous waste.

(4) Subpart D lists particular hazardous wastes.

(b)(1) The definition of solid waste contained in this part applies only to wastes that also are hazardous for purposes of the regulations implementing Subtitle C of RCRA. For example, it does not apply to materials (such as non-hazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled.

(2) This part identifies only some of the materials which are solid wastes and hazardous wastes under sections 3007, 3013, and 7003 of RCRA. A material which is not defined as a solid waste in this part, or is not a hazardous waste identified or listed in this part, is still a solid waste and a hazardous waste for purposes of these sections if:

(1) In the case of sections 3007 and 3013, EPA has reason to believe that

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formed. In the event the matter cannot be resolved by settlement the person charged with the violation shall be informed in writing, of the decision of the Presiding Officer and shall be advised of his right to appeal.

§ 114.10 Decision.

Within thirty (30) days after the conclusion of the hearings, the Presiding Officer shall issue findings with respect to the matter, including, where appropriate to the amount of the civil penalty. In assessing the civil penalty the Presiding Officer shall consider the factors set forth in § 114.3. A copy of the Presiding Officer's decision shall be sent to the person charged in the Notice of Violation. The decision of the Presiding Officer shall become the final decision of the Environmental Protection Agency unless within fifteen (15) days from the date of receipt of such decision, the person assessed the penalty appeals the decision to the Administrator, or unless the Administrator shall have stayed the effectiveness of the decision pending review.

§ 114.11 Appeal to Administrator.

(a) The person assessed a penalty in the Presiding Officer's determination shall have the right to appeal an adverse decision to the Administrator upon filing a written Notice of Appeal in the form required by paragraph (b) of this section within fifteen (15) days of the date the receipt of the Presiding Officer's decision.

(b) The Notice of Appeal shall:

(1) State the name and address of the person filing the Notice of Appeal;

(2) Contain a concise statement of the facts on which the person relies;

(3) Contain a concise statement of the legal basis on which the person relies; and

(4) Contain a concise statement setting forth the action which the person proposed that the Administrator take.

(c) The Administrator may delegate this authority to act in a given case.

(d) The Administrator, after a Notice of Appeal in proper form has been filed, shall render a decision with respect to the appeal promptly. In rendering his decision, the Administrator may adopt, modify, or set aside the de-

cision of the Presiding Officer in any respect and shall include in his decision a concise statement of the basis therefore. The decision of the Administrator on appeal shall be effective when rendered.

PART 116—DESIGNATION OF HAZARDOUS SUBSTANCES

Sec.

116.1 Applicability.

116.2 Abbreviations.

116.3 Definitions.

116.4 Designation of hazardous substances.

Authority: Secs. 311(b)(2)(A) and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

§ 116.1 Applicability.

This regulation designates hazardous substances under section 311(b)(2)(A) of the Federal Water Pollution Control Act (the Act). The regulation applies to discharges of substances designated in Table 116.4.

[43 FR 10474, Mar. 13, 1978]

§ 116.2 Abbreviations.

ppm = parts per million

mg = milligram(s)

kg = kilogram(s)

mg/l = milligrams(s) per liter = (approx.) ppm

mg/kg = milligram(s) per kilogram = (approx.) ppm

[43 FR 10474, Mar. 13, 1978]

§ 116.3 Definitions.

As used in this part, all terms shall have the meaning defined in the Act and as given below:

"The Act" means the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500), and as further amended by the Clean Water Act of 1977 (Pub. L. 95-217), 33 U.S.C. 1251 et seq.; and as further amended by the Clean Water Act Amendments of 1978 (Pub. L. 95-676);

"Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges re-

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cision of the Presiding Officer in any respect and shall include in his decision a concise statement of the basis therefore. The decision of the Administrator on appeal shall be effective when rendered.

PART 116—DESIGNATION OF HAZARDOUS SUBSTANCES

Sec.

- 116.1 Applicability.
- 116.2 Abbreviations.
- 116.3 Definitions.
- 116.4 Designation of hazardous substances.

AUTHORITY: Secs. 311(b)(2)(A) and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

§ 116.1 Applicability.

This regulation designates hazardous substances under section 311(b)(2)(A) of the Federal Water Pollution Control Act (the Act). The regulation applies to discharges of substances designated in Table 116.4.

(43 FR 10474, Mar. 13, 1978)

§ 116.2 Abbreviations.

ppm = parts per million
 mg = milligram(s)
 kg = kilogram(s)
 mg/l = milligrams(s) per liter = (approx.) ppm
 mg/kg = milligram(s) per kilogram = (approx.) ppm

(43 FR 10474, Mar. 13, 1978)

§ 116.3 Definitions.

As used in this part, all terms shall have the meaning defined in the Act and as given below:

"The Act" means the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500), and as further amended by the Clean Water Act of 1977 (Pub. L. 95-217), 33 U.S.C. 1251 et seq.; and as further amended by the Clean Water Act Amendments of 1978 (Pub. L. 95-876);

"Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges re-

sulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems;

"Otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party.

"Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

"Public vessel" means a vessel owned or bareboat-chartered and operated by the United States, or a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

"Onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

"Offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

"Navigable waters" is defined in section 502(7) of the Act to mean "waters of the United States, including the territorial seas," and includes, but is not limited to: (1) All waters which are presently used, or were used in the past, or may be susceptible to use as a means to transport interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and including adjacent wetlands; the term "wetlands" as used in this regulation shall include those

areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevelance of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas; the term "adjacent" means bordering, contiguous or neighboring; (2) tributaries of navigable waters of the United States, including adjacent wetlands; (3) interstate waters, including wetlands; and (4) all other waters of the United States such as intrastate lakes, rivers, streams, mudflats, sandflats and wetlands, the use, degradation or destruction of which affect interstate commerce including, but not limited to:

(i) Intrastate lakes, rivers, streams, and wetlands which are utilized by interstate travelers for recreational or other purposes; and

(ii) Intrastate lakes, rivers, streams, and wetlands from which fish or shellfish are or could be taken and sold in interstate commerce; and

(iii) Intrastate lakes, rivers, streams, and wetlands which are utilized for industrial purposes by industries in interstate commerce.

"Contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone;

"Territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of 3 miles.

A discharge "in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)," means: (1) A discharge into any waters beyond the contiguous zone from any vessel or onshore or offshore facility, which vessel or facility is subject to or is engaged in

activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, and (2) any discharge into any waters beyond the contiguous zone which contain, cover, or support any natural resource belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

"Aquatic animals" means appropriately sensitive wholly aquatic animals which carry out respiration by means of a gill structure permitting gaseous exchange between the water and the circulatory system;

"Animals" means appropriately sensitive animals which carry out respiration by means of a lung structure permitting gaseous exchange between air and the circulatory system;

"Aquatic flora" means plant life associated with the aquatic eco-system including, but not limited to, algae and higher plants;

"Mixture" means any combination of two or more elements and/or compounds in solid, liquid, or gaseous

form except where such substances have undergone a chemical reaction so as to become inseparable by physical means.

"LC50" means that concentration of material which is lethal to one-half of the test population of aquatic animals upon continuous exposure for 96 hours or less.

[43 FR 10474, Mar. 13, 1978; 43 FR 27533, June 26, 1978, as amended at 44 FR 10266, Feb. 16, 1979]

§ 116.4 Designation of hazardous substances.

The elements and compounds appearing in Tables 116.4 A and B are designated as hazardous substances in accordance with section 311(b)(2)(A) of the Act. This designation includes any isomers and hydrates, as well as any solutions and mixtures containing these substances. Synonyms and Chemical Abstract System (CAS) numbers have been added for convenience of the user only. In case of any disparity the common names shall be considered the designated substance.

TABLE 116.4A—LIST OF HAZARDOUS SUBSTANCES

Common name	CAS No.	Synonyms	Isomers	CAS No.
Acetaldehyde.....	75070	Ethanal, ethyl aldehyde, acetic aldehyde.....		
Acetic acid.....	64197	Glacial acetic acid, vinegar acid.....		
Acetic anhydride.....	108247	Acetic oxide, acetyl oxide.....		
Acetone cyanohydrin.....	75865	2-methylactonitrile, alpha-hydroxyisobutyronitrile.....		
Acetyl bromide.....	506967			
Acetyl chloride.....	79387			
Acrolein.....	107028	2-propenal, acrylic aldehyde, acrylaldehyde, acraldehyde.....		
Acrylonitrile.....	107131	Cyanoethylene, Fumgran, Ventox, propenitrile, vinyl cyanide.....		
Adipic acid.....	124049	Hexanedioic acid.....		
Aldren.....	309002	Octalene, HHDN.....		
Allyl alcohol.....	107186	2-propen-1-ol, 1-propenol-3, vinyl carbinol.....		
Allyl chloride.....	107051	3-chloropropene, 3-chloropropylene, Chlorallylene.....		
Aluminum sulfate.....	10043013	Alum.....		
Ammonia.....	7664417			
Ammonium acetate.....	631618	Acetic acid ammonium salt.....		
Ammonium benzoate.....	1883634			
Ammonium bicarbonate.....	1066337	Acid ammonium carbonate, ammonium hydrogen carbonate.....		
Ammonium bichromate.....	7788095			
Ammonium bifluoride.....	1341497	Acid ammonium fluoride, ammonium hydrogen fluoride.....		
Ammonium bisulfite.....	10192300			
Ammonium carbonate.....	1111780	Ammonium aminofornate.....		
Ammonium carbonate.....	506876			
Ammonium chloride.....	12125029	Ammonium muriate, sal ammoniac, salmac, Amchlor.....		
Ammonium chromate.....	7788089			

TABLE 116.4A—LIST OF HAZARDOUS SUBSTANCES—Continued

form except where such substances have undergone a chemical reaction so as to become inseparable by physical means.

"LC50" means that concentration of material which is lethal to one-half of the test population of aquatic animals upon continuous exposure for 96 hours or less.

[43 FR 10474, Mar. 13, 1978; 43 FR 27533, June 28, 1978, as amended at 44 FR 10266, Feb. 16, 1979]

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Common name	CAS No	Synonyms	Isomers	CAS No
Ammonium citrate dibasic	3012655	Diammonium citrate, citric acid diammonium salt		
Ammonium fluoroborate	13826830	Ammonium fluoroborate, ammonium borofluoride		
Ammonium fluoride	12125018	Neutral ammonium fluoride		
Ammonium hydroxide	1336216			
Ammonium oxalate	6009707			
	5972738			
	14258492			
Ammonium silicofluoride	16919190	Ammonium fluosilicate		
Ammonium sulfamate	7773060	Ammate, AMS, ammonium amidosulfate		
Ammonium sulfide	12135761			
Ammonium sulfate	5196040			
	11923200			
Ammonium tartrate	3164292	Tartaric acid ammonium salt		
	14307438			
Ammonium thiocyanate	1762954	Ammonium rhodanide, ammonium sulfocyanate, ammonium sulfocyanide		
Ammonium thiosulfate	7783188	Ammonium hyposulfite		
Amyl acetate	628637	Amylacetate ester	iso-	123922
		Pear oil	sec-	626380
		Banana oil	tert-	625161
Aniline	62533	Aniline oil, phenylamine, aminobenzene, aminophen, kyandl		
Antimony pentachloride	7647189			
Antimony potassium tartrate	28300745	Tartar emetic, tartarated antimony, tartarized antimony, potassium antimonytartrate		
Antimony tribromide	7789619			
Antimony trichloride	10025919	Butter of antimony		
Antimony trifluoride	7783564	Antimony fluoride		
Antimony trioxide	1309644	Diantimony trioxide, flowers of antimony		
Arsenic disulfide	1303328	Red arsenic sulfide		
Arsenic pentoxide	1303282	Arsenic acid anhydride, arsenic oxide		
Arsenic trichloride	7784341	Arsenic chloride, arsenious chloride, arsenous chloride, butter of arsenic		
Arsenic trioxide	1327533	Arsenous acid, arsenous oxide, white arsenic		
Arsenic trisulfide	1303339	Arsenous sulfide, yellow arsenic sulfide		
Barium cyanide	542621			
Benzene	71432	Cyclohexane, benzol		
Benzoic acid	65850	Benzenecarboxylic acid, phenylacetic acid, dracrylic acid		
Benzonitrile	100470	Phenyl cyanide, cyanobenzene		
Benzoyl chloride	98884	Benzenecarbonyl chloride		
Benzyl chloride	100447			
Beryllium chloride	7787475			
Beryllium fluoride	7787497			
Beryllium nitrate	7787555			
	13597994			
Butyl acetate	123864	Acetic acid butyl ester	iso- sec- tert-	110190 105464 540885
Butylamine	109739	1-aminobutane	iso- sec- tert-	78819 513495 3952846 75649
n-butyl phthalate	84742	1,2-benzenedicarboxylic acid, dibutyl ester, dibutyl phthalate		
Butyric acid	107926	Butanoic acid, ethylacetic acid	iso-	79312
Cadmium acetate	543908			
Cadmium bromide	7789426			
Cadmium chloride	10108642			
Calcium arsenate	7778441	Tricalcium orthoarsenate		
Calcium arsenite	52740166			
Calcium carbide	75207	Carbide, acetylenogen		
Calcium chromate	13765190	Calcium chrome yellow, goblin, yellow ultramarine		
Calcium cyanide	592018			
Calcium dodecylbenzenesulfonate	26264062			
Calcium hypochlorite	7778543			

TABLE 116.4A—LIST OF HAZARDOUS SUBSTANCES—Continued

Common name	CAS No.	Synonyms	Isomers	CAS No.
Caplan	133082	Orthocid-403, SR-406, Vancide-88		
Carbaryl	63252	Sevin		
Carbofuran	1583662	Furadan		
Carbon disulfide	75150	Carbon bisulfide, dithiocarbonic anhydride		
Carbon tetrachloride	56235	Tetrachloromethane Perchloromethane		
Chlordane	57749	Touchlor, chlordan		
Chlone	75003			
Chlorobenzene	108907	Monochlorobenzene, benzene chloride		
Chloroform	67663	Trichloromethane		
Chloroxynil	2921862	Dursban		
Chlorosulfonic acid	7790945	Sulfonic chloroethylen		
Chromic acetate	1066304			
Chromic acid	11115745	Chromic anhydride, chromium trioxide		
Chromic sulfate	10101538			
Chromous chloride	10049055			
Cobaltous bromide	7789437	Cobalt bromide		
Cobaltous formate	544183	Cobalt formate		
Cobaltous sulfamate	14017415	Cobalt sulfamate		
Coumaphos	56724	Co-Ral		
Cresol	1319773	Cresylic acid	m-	108394
		Hj roxytoluene	o-	95487
			p-	106445
Crotonaldehyde	4170303	2-butenal propylene aldehyde		
Cupric acetate	142712	Copper acetate, crystalized verdigris		
Cupric acetoarsenite	12002038	Copper acetoarsenite, copper acetate arsenite, Paris green		
Cupric chloride	7447394	Copper chloride		
Cupric nitrate	3251238	Copper nitrate		
Cupric oxalate	5893663	Copper oxalate		
Cupric sulfate	7758987	Copper sulfate		
Cupric sulfate, ammoniated	10380297	Ammoniated copper sulfate		
Cupric tartrate	815827	Copper tartrate		
Cyanogen chloride	506774			
Cyclohexane	110827	Hexahydrobenzene, hexamethylene, hexanaphthene		
2,4-D acid	94757	2,4-dichlorophenoxyacetic acid		
2,4-D ester	94111	2,4-dichlorophenoxyacetic acid ester		
	94791			
	94804			
	1320189			
	1928387			
	1928616			
	1929733			
	2871382			
	25168287			
	53487111			
DDT	50293	p,p'-DDT		
Diazinon	333415	Dipofene, Diazitol, Basudin, Spectracide		
Dicamba	1918009	2-methoxy-3,6-dichlorobenzoic acid		
Dichlobenil	1194656	2,6-dichlorobenzonitrile, 2,6-DBN		
Dichlone	117806	Phygon, dichloronaphthoquinone		
Dichlorobenzene	25321226	Di-chlorocid	Ortho	95501
		Paramoth (Para)	Para	106487
Dichloropropane	26638197	Propylene dichloride	1,1	78999
			1,2	78875
			1,3	142289
Dichloropropene	26952238		1,3	542756
			2,3	78886
Dichloropropene-dichloropropane (mixture)	8003198	D-D mixture Vidden D		
2,2-Dichloropropionic acid	75990	Dalapon		
Dichlorvos	82737	2,2-dichlorovinyl dimethyl phosphate, Vapona		
Dieldrin	60571	Alvt		
Diethylamine	109697			
Dimethylamine	124403			
Dinitrobenzene (mixed)	25154545	Dinitrobenzol	m-	99650
			o-	528290
			p-	100254
Dinitrophenol	51285	Aldifen	(2,5-)	329715

Environment
 Comr
 Dinitrotoluene
 Duquel
 Disulfoton
 Druron
 Dodecylbenzene
 Endosulfan
 Endrin
 Epichlorohydrin
 Ethion
 Ethylbenzene
 Ethylenediamine
 Ethylenediamine (EDTA)
 Ethylene dibromide
 Ethylene dichloride
 Femic ammonium
 Femic ammonium
 Femic chloride
 Femic fluoride
 Femic nitrate
 Femic sulfate
 Ferrous ammonium
 Ferrous chloride
 Ferrous sulfate
 Formaldehyde
 Formic acid
 Fumic acid
 Furfural
 Guthion
 Heptachlor
 Hexachlorocycl
 Hydrochloric ac
 Hydrofluoric ac
 Hydrogen cyan
 Hydrogen sulfid
 Isoprene
 Isopropanolami
 esulfonate
 Kelthane
 Kepone
 Lead acetate
 Lead arsenate
 Lead chloride
 Lead fluoroborate
 Lead fluoride
 Lead iodide
 Lead nitrate
 Lead stearate
 Lead sulfate
 Lead sulfide

HAZARDOUS SUBSTANCES—Continued

TABLE 116.4A—LIST OF HAZARDOUS SUBSTANCES—Continued

Synonyms	Isomers	CAS No.	Common name	CAS No.	Synonyms	Isomers	CAS No.
SR-408, Venode-89			Dinitrotoluene	25321146	DNT	(2,4) (2,6)	573568 121142
Dimethylenediphosphoric anhydride and perchloromethane			Diquat	85007	Aquacide	2,4	606202
1,1-dimethyl-2,2-dichloroethane			Diquat	2784729	Dextrone, Regione Diquat dibromide	2,6	610399
1,1-dimethyl-2,2-dibromoethane			Diquat	298044	Di-syston		
1,1-dimethyl-2,2-dichloroethane			Diquat	330541	DCMU, DMU		
1,1-dimethyl-2,2-dibromoethane			Diquat	27176870			
1,1-dimethyl-2,2-dichloroethane			Diquat	115297	Thodon		
1,1-dimethyl-2,2-dibromoethane			Diquat	72208	Mendon, Compound 269		
1,1-dimethyl-2,2-dichloroethane			Diquat	106898	chloropropylene oxide		
1,1-dimethyl-2,2-dibromoethane			Diquat	563122	Niarate, ethyl methylene phosphorothioate		
1,1-dimethyl-2,2-dichloroethane			Diquat	100414	Phenylthane		
1,1-dimethyl-2,2-dibromoethane			Diquat	107153	1,2-diaminoethane		
1,1-dimethyl-2,2-dichloroethane			Diquat	60004	Edetic acid, Havidole (ethylenedinitriole), "acetic acid"		
1,1-dimethyl-2,2-dibromoethane			Diquat	106934	1,2-dibromoethane acetylene dibromide sym-dibromodithylene		
1,1-dimethyl-2,2-dichloroethane			Diquat	107062	1,2-dichloroethane sym-bichloroethane		
1,1-dimethyl-2,2-dibromoethane			Diquat	1185575	Ammonium ferric citrate		
1,1-dimethyl-2,2-dichloroethane			Diquat	2944674	Ammonium ferric oxalate		
1,1-dimethyl-2,2-dibromoethane			Diquat	5548874			
1,1-dimethyl-2,2-dichloroethane			Diquat	7705080	Flores maris, iron trichloride		
1,1-dimethyl-2,2-dibromoethane			Diquat	7783508	iron nitrate		
1,1-dimethyl-2,2-dichloroethane			Diquat	10421484	Ferric persulfate, ferric sesquisulfate, ferric tersulfate		
1,1-dimethyl-2,2-dibromoethane			Diquat	10028225			
1,1-dimethyl-2,2-dichloroethane			Diquat	10045893	Monie salt, iron ammonium sulfate		
1,1-dimethyl-2,2-dibromoethane			Diquat	7758943	Iron chloride, iron dichloride, von protochloride		
1,1-dimethyl-2,2-dichloroethane			Diquat	7720787	Green vitriol		
1,1-dimethyl-2,2-dibromoethane			Diquat	7782630	Iron vitriol, iron sulfate, von protosulfate		
1,1-dimethyl-2,2-dichloroethane			Diquat	50000	Methyl aldehyde, methanal, formalin		
1,1-dimethyl-2,2-dibromoethane			Diquat	64186	Methanoic acid		
1,1-dimethyl-2,2-dichloroethane			Diquat	110178	Trans-butenedioic acid, trans-1,2-ethylene-dicarboxylic acid, maleic acid, allomaleic acid		
1,1-dimethyl-2,2-dibromoethane			Diquat	98011	2-furaldehyde, pyromucic aldehyde		
1,1-dimethyl-2,2-dichloroethane			Diquat	86500	Gusathion, azinphos-methyl		
1,1-dimethyl-2,2-dibromoethane			Diquat	76448	Veiscol-104, Dnno, Heptagran		
1,1-dimethyl-2,2-dichloroethane			Diquat	77474	Perchlorocyclopentadiene		
1,1-dimethyl-2,2-dibromoethane			Diquat	7647010	Hydrogen chloride, muretic acid		
1,1-dimethyl-2,2-dichloroethane			Diquat	7664393	Fluohydric acid		
1,1-dimethyl-2,2-dibromoethane			Diquat	74908	Hydrocyanic acid		
1,1-dimethyl-2,2-dichloroethane			Diquat	7783064	Hydro-sulfuric acid sulfur hydride		
1,1-dimethyl-2,2-dibromoethane			Diquat	78795	2-methyl-1,3-butadiene		
1,1-dimethyl-2,2-dichloroethane			Diquat	42504461			
1,1-dimethyl-2,2-dibromoethane			Diquat	115322	Di(p-chlorophenyl)-trichloromethylcarbinol, DTMC, dicofol		
1,1-dimethyl-2,2-dichloroethane			Diquat	143500	Chlordecone 1,1a,3,3a,4,5,5a,5b,6-d-chlorooctahydro-1,3,4-metheno-2H-cyclobuta[cd]pentalen-2-one		
1,1-dimethyl-2,2-dibromoethane			Diquat	301042	Sugar of lead		
1,1-dimethyl-2,2-dichloroethane			Diquat	7784409			
1,1-dimethyl-2,2-dibromoethane			Diquat	7645252			
1,1-dimethyl-2,2-dichloroethane			Diquat	10102484			
1,1-dimethyl-2,2-dibromoethane			Diquat	7758954			
1,1-dimethyl-2,2-dichloroethane			Diquat	13814965	Lead fluoroborate		
1,1-dimethyl-2,2-dibromoethane			Diquat	7783462	Lead difluoride, plumbous fluoride		
1,1-dimethyl-2,2-dichloroethane			Diquat	10101630			
1,1-dimethyl-2,2-dibromoethane			Diquat	10099748			
1,1-dimethyl-2,2-dichloroethane			Diquat	7428480	Stearic acid lead salt		
1,1-dimethyl-2,2-dibromoethane			Diquat	1072351			
1,1-dimethyl-2,2-dichloroethane			Diquat	52652592			
1,1-dimethyl-2,2-dibromoethane			Diquat	7446142			
1,1-dimethyl-2,2-dichloroethane			Diquat	1314870	Galena		
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
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1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,2-dibromoethane			Diquat				
1,1-dimethyl-2,2-dichloroethane			Diquat				
1,1-dimethyl-2,							

Hazardous Substances—Continued

TABLE 116.4A—LIST OF HAZARDOUS SUBSTANCES—Continued

Synonyms	Isomers	CAS No.	Common name	CAS No.	Synonyms	Isomers	CAS No.
1,1,1-trichloro-2,2,2-trifluoroethane			Propionic acid	79094	Propionic acid, methacetic acid, ethylformic acid		
1,1,1-trichloroethane			Propionic anhydride	123626	Propionic anhydride, methacetic anhydride		
1,1-dichloro-1,2,2,2-tetrafluoroethane			Propylene oxide	75569	Propene oxide		
1,1-dichloroethane			Pyrethrin I	121299	Pyrethrin I		
1,1-dibromo-1,2,2,2-tetrafluoroethane			Pyrethrin II	121211	Pyrethrin II		
1,1-dibromoethane			Quinoline	91225	1-benzazine, benzo(bipyridine), leucoline, chindoline, leucol		
1,1-dibromo-1,2-dichloroethane			Resorcinol	108463	Resorcin, 1,3-benzenediol, meta-dihydroxybenzene		
1,1-dibromo-2,2,2-trifluoroethane			Selenium dioxide	7446084	Selenium dioxide		
1,1-dibromoethane			Silver nitrate	7761888	Nitric acid silver (1-) salt, lunar caustic		
1,1-dichloro-1,2-dichloroethane			Sodium	7440235	Sodium		
1,1-dichloro-2,2,2-trifluoroethane			Sodium arsenate	7831892	Disodium arsenate		
1,1-dichloroethane			Sodium arsenite	7844465	Sodium metaarsenite		
1,1-dichloro-1,2,2,2-tetrafluoroethane			Sodium bichromate	10588019	Sodium dichromate		
1,1-dichloro-2,2,2-trifluoroethane			Sodium bisulfate	1333831			
1,1-dichloroethane			Sodium bisulfite	7631905	Sodium acid sulfite, sodium hydrogen sulfite		
1,1-dichloro-1,2,2,2-tetrafluoroethane			Sodium chromate	7775113			
1,1-dichloro-2,2,2-trifluoroethane			Sodium cyanide	143339			
1,1-dichloroethane			Sodium dodecylbenzene-sulfonate	25155300			
1,1-dichloro-1,2,2,2-tetrafluoroethane			Sodium fluoride	7581494	Villiumite		
1,1-dichloro-2,2,2-trifluoroethane			Sodium hydrosulfide	16721805	Sodium hydrogen sulfide		
1,1-dichloroethane			Sodium hydroxide	1310732	Caustic soda, soda lye, sodium hydrate		
1,1-dichloro-1,2,2,2-tetrafluoroethane			Sodium hypochlorite	7581529	Bleach		
1,1-dichloro-2,2,2-trifluoroethane				10022705			
1,1-dichloroethane			Sodium methylate	124414	Sodium methoxide		
1,1-dichloro-1,2,2,2-tetrafluoroethane			Sodium nitrite	7632000			
1,1-dichloro-2,2,2-trifluoroethane			Sodium phosphate, dibasic	7558794			
1,1-dichloroethane				10039324			
1,1-dichloro-1,2,2,2-tetrafluoroethane				10140655			
1,1-dichloro-2,2,2-trifluoroethane			Sodium phosphate, tribasic	7785844			
1,1-dichloroethane				7601549			
1,1-dichloro-1,2,2,2-tetrafluoroethane				10101890			
1,1-dichloro-2,2,2-trifluoroethane				10361894			
1,1-dichloroethane				7758294			
1,1-dichloro-1,2,2,2-tetrafluoroethane				10124588			
1,1-dichloro-2,2,2-trifluoroethane			Sodium selenite	10102168			
1,1-dichloroethane	m	554847		7782823			
1,1-dichloro-1,2,2,2-tetrafluoroethane	o	88755		7789062			
1,1-dichloro-2,2,2-trifluoroethane	p	100027	Strontium chromate	7789062			
1,1-dichloroethane	Ortho	88722	Strychnine	57249			
1,1-dichloro-1,2,2,2-tetrafluoroethane	Meta	99081	Styrene	100425	Vinylbenzene, phenylethylene, styrol, styrolene, cinnamene, cinnamol		
1,1-dichloro-2,2,2-trifluoroethane	Para	99990					
1,1-dichloroethane			Sulfuric acid	7664939	Oil of vitrol, oleum		
1,1-dichloro-1,2,2,2-tetrafluoroethane			Sulfur monochloride	12771083	Sulfur chloride		
1,1-dichloro-2,2,2-trifluoroethane			2,4,5-T acid	93785	2,4,5-trichlorophenoxyacetic acid		
1,1-dichloroethane			2,4,5-T amines	6369966	Acetic acid (2,4,5-trichlorophenoxy)-compound with N,N-dimethylmethanamine (1:1)		
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							
1,1-dichloro-2,2,2-trifluoroethane							
1,1-dichloroethane							
1,1-dichloro-1,2,2,2-tetrafluoroethane							

TABLE 116.4A—LIST OF HAZARDOUS SUBSTANCES—Continued

Common name	CAS No.	Synonyms	Isomers	CAS No.
Tetraethyl pyrophosphate	107493	TEPP		
Thallium sulfate	10031591			
	7446186			
Toluene	108883	Toluol, methylbenzene, phenylmethane, Methacide		
Toxaphene	8001352	Camphchlor		
Trichlorfon	52686	Dipterex Dylox		
Trichloroethylene	79016	Ethylene trichloride		
Trichloropentol	25167822	Collunolol, Dow, do 2 or 2S, Omal, Phen-achlor	(2,3,4-) (2,3,5-) (2,3,6-) (2,4,5-) (2,4,6-) (3,4,5-)	15950660 74931 933788 933755 95954 88062 609198
Triethanolamine dodecylbenzene-sulfonate	27323417			
Triethylamine	121448			
Trimethylamine	75503	TMA		
Uranyl acetate	541093			
Uranyl nitrate	10102064			
	36478769			
Vanadium pentoxide	1314621	Vanadic anhydride, vanadic acid anhydride		
Vanadyl sulfate	27774138	Vanadic sulfate, vanadium sulfate		
Vinyl acetate	108054	Acetic acid ethylene ether		
Vinylidene chloride	75354	1,1-dichloroethylene		
Xylene (mixed)	1330207	Dimethylbenzene	m- o- p-	108383 35476 106423
Xylenol	1300716	Dimethylphenol, hydroxymethylbenzene		
Zinc acetate	557348			
Zinc ammonium chloride	14639975			
	14639986			
	52628258			
Zinc borate	1332078			
Zinc bromide	7699458			
Zinc carbonate	3486359			
Zinc chloride	7646857	Butter of zinc		
Zinc cyanide	557211			
Zinc fluoride	7783495			
Zinc formate	557415			
Zinc hydrosulfite	7779864			
Zinc nitrate	7779888			
Zinc phenolsulfonate	127822	Zinc sulfocarbolate		
Zinc phosphide	1314847			
Zinc silicofluoride	16871719	Zinc fluosilicate		
Zinc sulfate	7733020	White vitrol, zinc vitrol, white copperas		
Zirconium nitrate	13746899			
Zirconium potassium fluoride	16923958			
Zirconium sulfate	1404612	Disulfatozirconic acid		
Zirconium tetrachloride	10026116			

TABLE 116.4B—LIST OF HAZARDOUS SUBSTANCES BY CAS NUMBER

CAS No.	Common name
50000	Formaldehyde
50293	DOT
51285	2,4-Dinitrophenol
52686	Trichlorfon
54382	Parathion
56724	Coumaphos
57249	Strychnine
57749	Chlordane
56896	Lindane

TABLE 116.4B—LIST OF HAZARDOUS SUBSTANCES BY CAS NUMBER—Continued

CAS No.	Common name
60002	Ethylenediaminetetraacetic acid (EDTA)
60571	Dieldrin
62533	Aniline
62737	Dichlorvos
63252	Carbaryl
64186	Formic acid
64197	Acetic acid
65850	Benzoic acid

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T.
SUBS
CAS

87663
71432
72208
72435
72548
74895
74908
74931
75047
75070
75150
75207
75445
75503
75649
75865
75990
76448
76448
78002
78795
78819
79094
79312
79367
80326
85007
85500
85600
87865
88755
91203
91225
93765
93796
94111
94757
94791
94804
95476
95487
98011
98884
98953
99650
100027
100254
100414
100425
100447
100470
105464
106423
106445
107028
107051
107131
107153
107186
107493
107926
108054
108247
108316
108383
108394
108463
108883
108907
108952
109739

OUS SUBSTANCES—Continued

Synonyms	Isomers	CAS No
benzene, phenylmethane		
oxide 2 or 2S, Omal, Phen	(2,3,4-) (2,3,5-) (2,3,6-) (2,4,5-) (2,4,6-) (3,4,5-)	15950660 933788 933755 95954 88062 609198
oxide, vanadic acid anhydride		
oxide, vanadium sulfate		
ylene ether		
ylene		
ene		
ene	m- o- p-	108383 95478 108423
yl, hydroxydimethylbenzene		
olate		
inc vitrol, white copperas		
nic acid		

TABLE 116.4B—LIST OF HAZARDOUS SUBSTANCES BY CAS NUMBER—Continued

CAS No.	Common name
67663	Chloroform
71432	Benzene
72208	Endrin
72435	Methoxychlor
72548	TDE
74895	Monomethylamine
74908	Hydrogen cyanide
74931	Methyl mercaptan
75047	Monoethylamine
75070	Acetaldehyde
75150	Carbon disulfide
75207	Calcium carbide
75445	Phosgene
75503	Trimethylamine
75649	tert-Butylamine
75865	Acetone cyanohydrin
75990	2,2-Dichloropropionic acid
76448	Heptachlor
79002	Tetraethyl lead
79795	Isoprene
79819	iso-Butylamine
79094	Propionic acid
79112	iso-Butyric acid
79367	Acetyl chloride
80626	Methyl methacrylate
85007	Diquat
86500	Guthion
87865	Pentachlorophenol
88755	o-Nitrophenol
91203	Naphthalene
91225	Quinoline
93765	2,4,5-T acid
93798	2,4,5-T ester
94111	2,4-D ester
94757	2,4-D acid
94791	2,4-D ester
94804	2,4-D Butyl ester
95476	o-Xylene
95487	c-Cresol
98011	Furfural
98884	Benzoyl chloride
98953	Nitrobenzene
99650	m-Dinitrobenzene
100027	p-Nitrophenol
100254	p-Dinitrobenzene
100414	Ethylbenzene
100425	Styrene
100447	Benzyl chloride
100470	Benzonitrile
105464	sec-Butyl acetate
106423	p-Xylene
106445	p-Cresol
107028	Acrolein
107051	Allyl chloride
107131	Acrylonitrile
107153	Ethyleneimine
107186	Allyl alcohol
107493	Tetraethyl pyrophosphate
107926	n-Butyric acid
108054	Vinyl acetate
108247	Acetic anhydride
108316	Maleic anhydride
108383	m-Xylene
108394	m-Cresol
108463	Resorcinol
108683	Toluene
108907	Chlorobenzene
108952	Phenol
109739	n-Butylamine

TABLE 116.4B—LIST OF HAZARDOUS SUBSTANCES BY CAS NUMBER—Continued

CAS No.	Common name
109897	Diethylamine
110167	Maleic acid
110178	Fumic acid
110190	iso-Butyl acetate
110827	Cyclohexane
115297	Endosulfan
115322	Kelthane
117806	Dichloro
121211	Pyrethrin
121299	Pyrethrin
121448	Triethylamine
121755	Malathion
123626	Propionic anhydride
123864	n-Butyl acetate
123922	iso-Amyl acetate
124403	Dimethylamine
124414	Sodium methylate
127822	Zinc phenylsulfonate
133062	Captan
142712	Cupric acetate
143339	Sodium cyanide
151508	Potassium cyanide
298000	Methyl parathion
298044	Disulfoton
300765	Naled
301042	Lead acetate
309002	Aldrin
315184	Mexacarbate
329715	2,5-Dinitrophenol
330541	Duron
333415	Diazinon
506774	Cyanogen chloride
506876	Ammonium carbonate
506987	Acetyl bromide
513495	sec-Butylamine
526290	o-Dinitrobenzene
540885	tert-Butyl acetate
541093	Uranyl acetate
542621	Barium cyanide
543908	Cadmium acetate
544183	Cobaltous formate
554847	m-Nitrophenol
557211	Zinc cyanide
557348	Zinc acetate
557415	Zinc formate
563122	Ethion
573568	2,6-Dinitrophenol
592018	Calcium cyanide
592041	Mercuric cyanide
592858	Mercuric thiocyanate
592870	Lead thiocyanate
625161	tert-Amyl acetate
626380	sec-Amyl acetate
625637	n-Amyl acetate
631618	Ammonium acetate
815827	Cupric tartrate
1066304	Chromic acetate
1066337	Ammonium bicarbonate
1072351	Lead stearate
1111780	Ammonium carbamate
1185575	Ferric ammonium citrate
1194656	Dichlobenil
1300716	Xylenol
1303282	Arsenic pentoxide
1303328	Arsenic trisulfide
1303339	Arsenic trisulfide
1309644	Antimony trioxide
1310583	Potassium hydroxide
1310732	Sodium hydroxide

TABLE 116.4B—LIST OF HAZARDOUS SUBSTANCES BY CAS NUMBER—Continued

CAS No.	Common name
60004	Ethylenediaminetetraacetic acid (EDTA)
60571	Dieldrin
62533	Aniline
62737	Dichlorvos
63252	Carbaryl
64186	Formic acid
64197	Acetic acid
65860	Benzic acid

TABLE 116.4B—LIST OF HAZARDOUS SUBSTANCES BY CAS NUMBER—Continued

CAS No.	Common name
1314621	Vanadium pentoxide
1314803	Phosphorus pentasulfide
1314847	Zinc phosphide
1314870	Lead sulfide
1319773	Cresol (mixed)
1320189	2,4-D ester
1327533	Arsenic trioxide
1330207	Xylene
1332076	Zinc borate
1333831	Sodium difluoride
1336216	Ammonium hydroxide
1336363	Polychlorinated biphenyls
1338245	Naphthenic acid
1341497	Ammonium difluoride
1762954	Ammonium thiocyanate
1863634	Ammonium benzoate
1918009	Dicamba
1928387	2,4-D esters
1928478	2,4,5-T ester
1928616	2,4-D ester
1929733	2,4-D ester
2545597	2,4,5-T ester
2764729	Diquat
2921882	Chlorpyrifos
2944674	Ferric ammonium oxalate
2971382	2,4-D ester
3012655	Ammonium citrate, dibasic
3164292	Ammonium tartrate
3251238	Cupric nitrate
3486359	Zinc carbonate
5893663	Cupric oxalate
5972736	Ammonium oxalate
6060707	Ammonium oxalate
6369966	2,4,5-T ester
7428480	Lead stearate
7440235	Sodium
7446084	Selenium oxide
7448142	Lead sulfate
7447394	Cupric chloride
7558794	Sodium phosphate, dibasic
7601549	Sodium phosphate, tribasic
7631892	Sodium arsenate
7631905	Sodium bisulfite
763200C	Sodium nitrite
7645252	Lead arsenate
7646857	Zinc chloride
7647010	Hydrochloric acid
7647189	Antimony pentachloride
7664382	Phosphonic acid
7664393	Hydrofluoric acid
7664417	Ammonia
7664930	Sulfuric acid
7681494	Sodium fluoride
7681529	Sodium hypochlorite
7697372	Nitric acid
7899458	Zinc bromide
7705080	Ferric chloride
7718549	Nickel chloride
7719122	Phosphorus trichloride
7720787	Ferrous sulfate
7722847	Potassium permanganate
7723140	Phosphorus
7733020	Zinc sulfate
7758294	Sodium phosphate, tribasic
7758943	Ferrous chloride
7758954	Lead chloride
7758967	Cupric sulfate
7773060	Ammonium sulfamate
7775113	Sodium chromate

TABLE 116.4B—LIST OF HAZARDOUS SUBSTANCES BY CAS NUMBER—Continued

CAS No.	Common name
7778441	Calcium arsenate
7778509	Potassium dichromate
7778543	Calcium hypochlorite
7779864	Zinc hydrosulfite
7779886	Zinc nitrate
7782505	Chlone
7782630	Ferrous sulfate
7782823	Sodium selenite
7782887	Mercurous nitrate
7783188	Ammonium thiosulfate
7783359	Mercuric sulfate
7783462	Lead fluoride
7783495	Zinc fluoride
7783508	Ferric fluoride
7783564	Antimony trifluoride
7784341	Arsenic trichloride
7784409	Lead arsenate
7784410	Potassium arsenate
7784465	Sodium arsenite
7785844	Sodium phosphate, tribasic
7786347	Mevinphos
7786814	Nickel sulfate
7787475	Zirconium chloride
7787497	Beryllium fluoride
7787555	Beryllium nitrate
7788989	Ammonium chromate
7789006	Potassium chromate
7789062	Strontium chromate
7789095	Ammonium bichromate
7789426	Cadmium bromide
7789437	Cobaltous bromide
7789619	Antimony tribromide
7790945	Chlorosulfonic acid
8001352	Toxaphene
10022705	Sodium hypochlorite
10025873	Phosphorus oxychloride
10025919	Antimony trichloride
10026116	Zirconium tetrachloride
10028225	Ferric sulfate
10028247	Sodium phosphate, dibasic
10039324	Sodium phosphate, dibasic
10043013	Aluminum sulfate
10045893	Ferrous ammonium sulfate
10045940	Mercuric nitrate
10049055	Chromous chloride
10099748	Lead nitrate
10101538	Chromic sulfate
10101630	Lead iodide
10101890	Sodium phosphate, tribasic
10102064	Uranyl nitrate
10102188	Sodium selenite
10102440	Nitrogen dioxide
10102484	Lead arsenate
10108642	Cadmium chloride
10124502	Potassium arsenite
10124568	Sodium phosphate, tribasic
10140655	Sodium phosphate, dibasic
10192300	Ammonium bisulfite
10196040	Ammonium sulfite
10361894	Sodium phosphate, tribasic
10380297	Cupric sulfate, ammoniated
10415755	Mercurous nitrate
10421484	Ferric nitrate
10588019	Sodium dichromate
11115745	Chromic acid
12002038	Cupric acetoarsenite
12054487	Nickel hydroxide
12125018	Ammonium fluoride
12125029	Ammonium chloride

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CAS No.	Common name
12135761	
12771083	
13597994	
13746899	
13785190	
13814866	
13826830	
13852848	
14017415	
14218752	
14258492	
14307358	
14307438	
14639975	
14639986	
14644612	
15699180	
16721805	
16871719	
16919190	
16923958	
25154545	
25154556	
25155300	
25187822	
25168154	
25168267	
26264062	
27176870	
27323417	
27774138	
26300745	
30525894	
6478789	
211055	
274481	
52628258	
52740186	
53487111	
55488874	
61792072	

[43 FR 1
June 26,
Feb. 18, 1
FR 66802

PART 1
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Sec.
117.1 De
117.2 Ab
117.3 De
ties.

117.11 C

TABLE 118.4B—LIST OF HAZARDOUS SUBSTANCES BY CAS NUMBER—Continued

CAS No	Common name
101	Calcium arsenate
109	Potassium bichromate
143	Calcium hypochlorite
164	Zinc hydrosulfite
186	Zinc nitrate
305	Chlone
530	Ferrous sulfate
423	Sodium selenite
167	Mercurous nitrate
188	Ammonium thiosulfate
59	Mercuric sulfate
482	Lead fluoride
195	Zinc fluoride
308	Ferric fluoride
164	Antimony trichloride
141	Arsenic trichloride
109	Lead arsenate
110	Potassium arsenate
165	Sodium arsenite
144	Sodium phosphate, tribasic
147	Mevinphos
114	Nickel sulfate
175	Beryllium chloride
197	Beryllium fluoride
155	Beryllium nitrate
189	Ammonium chromate
306	Potassium chromate
162	Strontium chromate
395	Ammonium bichromate
426	Cadmium bromide
437	Cobaltous bromide
919	Antimony tribromide
345	Chlorosulfonic acid
152	Toxaphene
2705	Sodium hypochlorite
5873	Phosphorus oxychloride
5919	Antimony trichloride
9116	Zinc ammonium tetrachloride
3225	Furic sulfate
9247	Sodium phosphate, dibasic
3324	Sodium phosphate, dibasic
1013	Aluminum sulfate
1893	Ferrous ammonium sulfate
5940	Mercuric nitrate
1055	Chromous chloride
3746	Lead nitrate
1538	Chromic sulfate
1830	Lead iodide
1890	Sodium phosphate, tribasic
2064	Uranyl nitrate
2188	Sodium selenite
2440	Nitrogen dioxide
2484	Lead arsenate
3642	Cadmium chloride
1502	Potassium arsenite
1568	Sodium phosphate, tribasic
3655	Sodium phosphate, dibasic
2300	Ammonium bisulfite
1040	Ammonium sulfite
1894	Sodium phosphate, tribasic
3297	Cupric sulfate, ammoniated
5755	Mercurous nitrate
1484	Ferric nitrate
1019	Sodium bichromate
1745	Chromic acid
1038	Cupric acetoarsenite
1487	Nickel hydroxide
3018	Ammonium fluoride
3029	Ammonium chloride

TABLE 118.4B—LIST OF HAZARDOUS SUBSTANCES BY CAS NUMBER—Continued

CAS No	Common name
2135-81	Ammonium sulfide
2111-083	Sulfur chloride
1597-994	Beryllium nitrate
3746-899	Zirconium nitrate
3765-190	Calcium chromate
3844-855	Lead fluoborate
3820-630	Ammonium fluoborate
7952-848	sec-Butylamine
4017-415	Cobaltous sulfamate
4218-752	Nickel nitrate
4258-922	Ammonium oxalate
4307-358	Ammonium chromate
4307-438	Ammonium tartrate
4679-715	Zinc ammonium chloride
4675-906	Zinc ammonium chloride
4646-172	Zirconium sulfate
5699-190	Nickel ammonium sulfate
6721-005	Sodium hydrosulfide
6871-119	Zinc silicofluoride
6919-190	Ammonium silicofluoride
6923-958	Zirconium potassium fluoride
7554-545	2-nitrobenzene
2515-556	Nitrophenol
2515-300	Sodium dodecylbenzenesulfonate
2516-922	Trichlorophenol
2516-154	2,4,5-T ester
2516-267	2,4-D ester
2626-062	Calcium dodecylbenzenesulfonate
2717-6870	Dodecylbenzenesulfonic acid
2732-347	Tetraethylenediamine dodecylbenzenesulfonate
2774-138	Vanadyl sulfate
2830-745	Antimony potassium tartrate
3052-5894	Paralformaldehyde
3647-8789	Uranyl nitrate
3721-1055	Nickel chloride
4250-461	Dodecylbenzenesulfonate isopropanolamine
5262-8258	Zinc ammonium chloride
5274-0166	Calcium arsenite
5346-7111	2,4-D ester
5548-874	Ferric ammonium oxalate
6179-2072	2,4,5-T ester

[43 FR 10474, Mar. 13, 1978; 43 FR 27533, June 26, 1978, as amended at 44 FR 10268, Feb. 18, 1979; 44 FR 65400, Nov. 13, 1979; 44 FR 66602, Nov. 20, 1979]

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

Subpart A—General Provisions

Sec.

117.1 Definitions.

117.2 Abbreviations.

117.3 Determination of reportable quantities.

Subpart B—Applicability

117.11 General applicability.

117.12 Applicability to discharges from facilities with NPDES permits.

117.13 Applicability to discharges from publicly owned treatment works and their users.

117.14 Demonstration projects.

Subpart C—Notice of Discharge of a Reportable Quantity

117.21 Notice.

117.22 Penalties.

117.23 Liabilities for removal.

AUTHORITY: Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), ("the Act") and Executive Order 11735.

SOURCE: 44 FR 50776, Aug. 29, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 117.1 Definitions.

As used in this part, all terms shall have the meanings stated in 40 CFR Part 118.

(a) "Reportable quantities" means quantities that may be harmful as set forth in § 117.3, the discharge of which is a violation of section 311(b)(3) and requires notice as set forth in § 117.21.

(b) "Administrator" means the Administrator of the Environmental Protection Agency ("EPA").

(c) "Mobile source" means any vehicle, rolling stock, or other means of transportation which contains or carries a reportable quantity of a hazardous substance.

(d) "Public record" means the NPDES permit application or the NPDES permit itself and the "record for final permit" as defined in 40 CFR 124.122.

(e) "National Pretreatment Standard" or "Pretreatment Standard" means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to industrial users of a publicly owned treatment works. It further means any State or local pretreatment requirement applicable to a discharge and which is incorporated into a permit issued to a publicly owned treatment works under section 402 of the Act.

HB

91



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

RECEIVED

APR 24 1989

JAN FAIKS
SENATE OFFICE

ANCHORAGE REGIONAL OFFICE

1411 W. 33RD AVENUE
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

April 24, 1989

To: Senator Jan Faiks, Chair
Members, Senate Judiciary Committee

Re: CS for House Bill No. 91; An Act relating to protection for certain public employees and certain other persons who report or participate in a proceeding connected with a matter of public concern."

NEA-Alaska supports CS for HB 91 and encourages your favorable consideration.

This legislation is good public policy in that it provides the opportunity for improvement of government at all levels by enabling employees to be more productive and confident in fulfilling their responsibilities as employees and citizens as well.

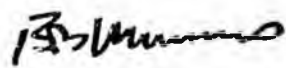
School district employees have been subjected to reprisals for speaking out on matters of public concern.


HB 91 will permit all public employees to be more secure in their work environment knowing that they have a responsibility to speak out on matters of public concern.

The other strength of this legislation is that it does require employees to be responsible in their actions.

Thank you for your consideration of our position.

Respectfully submitted,


Bob Manners
Executive Secretary


Judy Salo
President

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892

February 6, 1989

MEMORANDUM

To: Members, House Judiciary Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: HB 91 - "Whistleblower" protection

The House State Affairs CS for HB 91, relating to protection of public employees who disclose certain public information, is currently before the House Judiciary Committee.

Modeled after other states "whistleblower" laws, HB 91 was introduced by the House Labor and Commerce Committee to provide protection for public employees who disclose information of public concern before a public body. A similar measure has been before this Legislative body for each of the last six years. Unfortunately, none has yet passed into law.

The House State Affairs CS adopted three amendments (see attached) to the bill as filed that:

- Specifically include school districts and REAA's under the definition of "public employer"
- Broaden the definition of "public body"
- Provide that the protections under the act do not apply unless the employee has reasonable cause to believe the information reported is a matter of public concern and that they report the information in good faith.

HB 91 is a much needed bill that will assure that the Legislature and other public bodies receive critical public information. I urge your support.



Position Paper
CSHB 91 (SA)
Whistle Blowers Protection

The Office of the Ombudsman strongly supports the passage of HB 91 as a positive effort to improve the administration of Alaska's government. This office worked with the House Judiciary Committee in the development of its committee substitute and concur with its provisions. This bill will provide better protections for Alaskans who seek to correct problems with state and local governments.

Whistle Blowers protection is not a new concept in Alaska Law. Last year, the Alaska Legislature again embraced the concept through the adoption of the act creating the Long Term Care Ombudsman (2ch 108 SLA 1988). This act covers not only state-operated long term care facilities but private facilities and landlords and contractors who may take retaliatory actions against someone making a complaint. State labor law (AS 23.10.135) provides for penalties to any employer who "discharges or in any other manner discriminates against an employee because the employee has filed a complaint . . ." relating to the Wage and Hour Act.

The Federal Civil Service Reform Act of 1979 originally created Whistle Blower protections for federal employees. This past month it was revised with new "teeth" and signed into law by President Bush. There had been concerns that not enough employees had been protected by the previous act. The revision allows the Office of Special Counsel (OSC) to stop or postpone detrimental personnel actions which may be retaliatory to federal employees. It also prevents disciplinary actions being taken during the course of an investigation. The Federal Merit System Protection Board reviews the actions of the OSC and provides time extensions for the protections.

The Ombudsman's Interest

The Ombudsman Act requires that the confidentiality of the names of complainants and witnesses involved in an investigation "except insofar as disclosures may be necessary . . . to support recommendations" be maintained. The act also provides a maximum penalty of \$1000 for a person who "willfully hinders the lawful actions of the ombudsman". The Ombudsman Act does not provide protections to those citizens, including state employees, who may either complain in good faith or provide testimony regarding one of our investigations.

This is an important issue for the Office of the Ombudsman. Lack of such protections has caused many citizens to withdraw apparently justified complaints when it became necessary for the ombudsman to release their names in order to "prove" information. Citizens have claimed to have not been hired for state jobs because of complaints made to the ombudsman. Several have claimed to have lost housing and other benefits because they complained. I have heard stories of people who believe that if they complain to the ombudsman they will lose a state benefit.

Few, if any, of these citizens would dare testify before the legislature in support of this measure because of their perceived fear of retaliation.

Complaints to the Ombudsman Covered

It is not unusual for my office to receive calls from potential complainants who first ask "Do you offer Whistle Blower protection?" More often than not, even after we explain our confidentiality provisions, the citizen will either just hang up or refuse to let the issue be further pursued.

Lack of such protection generates anonymous letters with allegations describing various degrees of abuses of the public trust being sent to my office. Such letters cause a dilemma. Some letters are clearly "poison pen" letters intended as revengeful acts. Others are honest attempts to cause an investigation of an action the author perceives as improper. In these cases, the author is clearly afraid of retaliation either by an agency or a supervisor.

As a matter of policy, my office does not pursue anonymous complaints. On rare occasions, I do consider an ombudsman initiated complaint (as allowed by the Ombudsman Act) if solid evidence is offered and there is opportunity for third party verification of the allegation. I believe the passage of a measure offering adequate Whistle Blowers protection would reduce the number of anonymous complaints received by the Office of the Ombudsman.

I was involved with a situation when an employee was fired from a position with a public agency for complaining to the ombudsman about fraud and mismanagement. The agency, after becoming aware of the complaint, conducted an internal investigation and created a reason for dismissing our complainant. As a result, our complainant, who was a specialized professional and head of a household, was unemployed for a 2 1/2 year period. It appeared many potential employers wondered why the termination occurred and would not offer the person a position. The family was forced to seek help from Public Assistance. After filing a civil suit and suffering through prolonged negotiations, a settlement was reached.

I believe had HB 91 been enacted at that time, the public employer may not have terminated that employee. The Alaskan and family involved paid dearly for doing what a responsible citizen should do -- make a legitimate complaint to this office about governmental fraud. This person is not able to present testimony to you about the situation. They believe their settlement prevents such action.

Managers of that public agency were later prosecuted for their management abuses.

Witness Protection

Over the past several months, my office has received a number of complaints alleging misconduct on the part of office supervisors. It has been necessary to depose several of the staff in those offices. As often as not, clerk's or other staff in lower pay ranges are deposed. They often have witnessed -- or have information on -- incidents of misconduct. I have had them report overhearing conversations where the supervisor being investigated believed the "clerk" was my complainant. The supervisors made comments they were going to "get" them for causing the "trouble".

In these complaints I issue subpoenas to provide witnesses a "legal excuse" for providing sworn testimony to my investigators. Despite the state's requirement for the witness to "tell the truth" there is little real protection for them when the witness returns to the work-place. There is an equity problem when a complaint may be found to be technically "unsupported" but later detrimental personnel actions are taken against employees who have provided what may have been embarrassing testimony involving their supervisor.

Protection from Specious Complaints

Few argue the soundness of setting a public policy which protects those with the courage to come forward to "Blow the Whistle" on government officials who are abusing their position. After all, it is those within the government who are often the first to become aware of such abuses. This kind of legislation does create concern on the part of managers however. It is the fear that "bad" employees, or those about to be justifiably terminated, will file false charges in order to become sheltered by the protections of a "Whistle Blowers Act."

The House Committee substitute handles that problem well. It provides that matters **accepted for investigation** by the Office of the Ombudsman be considered a "matter of public concern" and subject to the protections of the act. This essentially requires the ombudsman perform a preliminary screening of a complaint and make a positive decision to accept it for investigation before the protections would take effect. This, in effect, prevents abuse by the filing of a last minute specious complaint with the ombudsman.

Section 39.90.110 of the measure also sets out other limitations for protections under the act. It should be noted that persons are required to make the complaint in good faith and, if an employee, must submit a written report to the employer concerning the matter. Employees are not required to file written reports if they reasonably fear reprisals or if an emergency exists.

MOA Resolution
in support of
HB 91.

APPROVED
Date: 4-11-89

Submitted by: Mayor
Prepared by: Municipal Manager
For reading: April 11, 1989

ANCHORAGE, ALASKA
AR NO. 89-92(S)

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY ENDORSING THE CONCEPT OF HOUSE BILL NO. 91 (HB 91) RELATING TO WHISTLE BLOWERS PROTECTION

WHEREAS, HB 91 has passed the House and is before the State Senate Affairs Committee; and

WHEREAS, the Act provides protection for certain public employees and certain other persons who report matters of public concern; and

WHEREAS, the Act includes protection for municipal employees who report on matters of municipal concern; and

WHEREAS, the Municipality of Anchorage wishes to encourage public employees to report violations of municipal law, regulation or ordinance; a danger to public health or safety; or gross mismanagement, a substantial waste of funds, or a clear abuse of authority; and

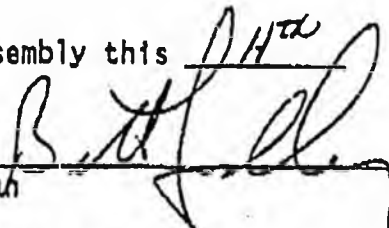
WHEREAS, the Municipality of Anchorage believes passage of this Act will improve the provision of municipal government to the benefit of the general public.

NOW, THEREFORE, the Anchorage Municipal Assembly resolves:

Section 1: That this body endorses the concept embodied in HB 91 and urges passage of such a concept by the Legislature. The final bill should contain a balance between the employers' need to manage the workforce and the public interest relative to the protection of individuals reporting matters of public concern. The final bill should also provide that local governments will establish their own whistle blowers protection ordinances.


Section 2: That copies of this resolution be forwarded to the Governor and Legislature.

PASSED AND APPROVED by the Anchorage Assembly this 11th day of April, 1989.


Chairman

Joe Griffith 4-20-89

ATTEST:


Deputy Municipal Clerk

LDC:mr
m2/ari

AM 357-89

admw. didn't want as broad as HB 91.
Mayor concerned about whistle blowers would get him in trouble! MOA decided not to take him on so accepted his version

On grounds usurps muni.'s power. Didn't give inland's man chance to respond.

From Michael Mills

4/5/89

Duncan -

This Resolution on the Whistleblowers Act was passed but later reconsidered by Wood and Campbell to allow the Administration to offer some changes to the resolution at next weeks meeting (4-11-89). I will keep you posted.

Michael

RECEIVED

APR 07 1989

JUNEAU
OFFICE OF OMBUDSMAN



Municipality of Anchorage
Office of the Ombudsman
Michael Mills, Ombudsman

313-4461

Submitted by: Assemblymen Wood
and Kubitz
Prepared by: Office of the
Ombudsman
For reading: April 4, 1989

ANCHORAGE, ALASKA
AR NO. 89-92

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUPPORTING HOUSE
BILL NO. 91 (HB 91) RELATING TO WHISTLE BLOWERS PROTECTION

WHEREAS, HB 91 has passed the House and is before the State
Senate Affairs Committee; and

WHEREAS, the Act provides protection for certain public
employees and certain other persons who report matters of public
concern; and

WHEREAS, the Act includes protection for municipal employees
who report on matters of municipal concern; and

WHEREAS, the Municipality of Anchorage wishes to encourage
public employees to report violations of municipal law, regula-
tion or ordinance; a danger to public health or safety; or gross
mismanagement, a substantial waste of funds, or a clear abuse of
authority; and

WHEREAS, the Municipality of Anchorage believes passage of
this Act will improve the provision of municipal government to
the benefit of the general public.

NOW, THEREFORE, the Anchorage Municipal Assembly resolves:

Section 1: That this body endorses HB 91 and urges its
passage by the Legislature.

Section 2: That copies of this resolution be forwarded to
the Governor and Legislature.

PASSED AND APPROVED by the Anchorage Assembly this _____
day of _____, 1989.

Chairman

ATTEST:

Municipal Clerk

MM:eg
DOCA/AR33

Date: April 19, 1989
To: State Affairs Committee, Alaska State Senate, (Pat Pourchot)
From: Jamie Bollenbach, Executive Director, AkCLU
Re: HB 91
Attn: Sandra Schubert

The Alaska Civil Liberties Union, a private membership organization acting to promote and protect the Bill of Rights, strongly supports House Bill 91. The ability of a public employee to report to a public body a matter of public concern without fear of retribution is a policy that promotes the responsibility of state agencies. HB 91 also extends the spirit of the First Amendment's protection of free speech to employees acting in the public interest.

Of particular concern to the AkCLU is the possibility under current law that an employee required to report to a public body may be terminated or reprimanded for compelled testimony. A public employee in this situation is forced to either comply with the law and face the loss of a job or other sanctions from employers, or to violate the law and withhold relevant information from the courts, the legislature, or other public bodies. The protection of these employees is critical for fairness in the workplace and for the accuracy of testimony.

The AkCLU would oppose amendments to the bill that weaken the protections for employees, place undue restrictions on the availability of these protections, or add language confusing to employees or employers affected by the law.

At least nineteen states have some form of statutory protection in this area. As currently drafted, HB 91 would facilitate the honest and responsible operation of state government by encouraging reports of questionable activity, and would contribute to fair dealing and free speech for public employees.

The AkCLU would like to thank the Labor and Commerce Committee for their consideration in this matter. We would be happy to answer questions or provide further information on this topic.

Sec. 18.60.089. Prohibition against retribution. (a) A person may not discharge or discriminate against an employee because the employee has filed a complaint or instituted or caused to be instituted a proceeding related to the enforcement of occupational safety and health standards, or has testified or is expected to testify in a proceeding relating to occupational safety and health or because an employee has exercised personally or on behalf of others a right afforded under AS 18.60.010 — 18.60.105.

(b) An employee who has been discharged or discriminated against by a person in violation of this section may, within 30 days after the violation occurs, file a complaint with the commissioner alleging the discrimination. Upon receipt of the complaint, the commissioner shall investigate the matter as the commissioner considers appropriate. If, upon investigation, the commissioner determines that this section has been violated, the commissioner shall request the attorney general to bring an action in the superior court against the violator. The superior court has jurisdiction to restrain violations of (a) of this section and to order all appropriate relief including rehiring or reinstatement of the employee to the employee's former position with back pay.

(c) Within 90 days of the receipt of a complaint filed under this section, the commissioner shall notify the complainant of the determination under (b) of this section. (§ 7 ch 72 SLA 1973)

Sec. 18.60.090. Penalty for violations. [Repealed, § 9 ch 72 SLA 1973.]

Sec. 18.60.091. Citations. (a) If, upon inspection or investigation, the department believes that an employer has violated a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer, the department shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and must describe with particularity the nature of the violation, including reference to the provisions of the chapter or any order or regulation alleged to have been violated, and must fix a reasonable time for abatement of the violation. The department may prescribe procedures for the issuance of a notice instead of a citation with respect to minor violations that have no direct or immediate relationship to safety or health, or violations that are not serious and that the employer agrees to correct within a reasonable time. If an employer does not, within a reasonable time set out in the notice, correct a violation that is not serious, the department shall issue a citation to the employer.

(b) Upon receipt by the employer, each citation issued under this section, or a copy of the citation, shall be immediately and prominently posted, at or near each place the violation referred to in the citation occurred.

Sec. 44.21.234. Access to long term care facilities, older Alaskans, and records. (a) A person may not deny access to a long term care facility or to an older Alaskan by the ombudsman or an employee, volunteer, or other representative of the office.

(b) Notwithstanding the provisions of AS 44.21.232(c)(1), the ombudsman may obtain medical or other records of an older Alaskan who resides in a long term care facility in the state only with the consent of the older Alaskan or the older Alaskan's legal guardian or, if the older Alaskan is unable or incompetent to consent and does not have a legal guardian, only with a court order. (§ 2 ch 108 SLA 1988)

Sec. 44.21.235. Confidentiality. (a) Records obtained or maintained by the ombudsman are confidential, are not subject to inspection or copying under AS 09.25.110 — 09.25.120 and, except as provided in (b) of this section, may be disclosed only at the discretion of the ombudsman.

(b) The identity of a complainant or an older Alaskan on whose behalf a complaint is made may not be disclosed without the consent of the identified person or the person's legal guardian, unless required by court order. (§ 2 ch 108 SLA 1988)

Sec. 44.21.236. Immunity from liability. (a) A person who, in good faith, makes a complaint described in AS 44.21.232 is immune from civil or criminal liability that might otherwise exist for making the complaint.

(b) The ombudsman, or an employee, volunteer, or other representative of the office, is immune from civil or criminal liability for the good faith performance of official duties. (§ 2 ch 108 SLA 1988)

Sec. 44.21.237. Interference with the long term care ombudsman and retaliation prohibited. (a) A person may not intentionally interfere with the ombudsman, or an employee, volunteer, or representative of the office, in the performance of official duties under AS 44.21.232.

(b) If a person makes a good faith complaint described in AS 44.21.232, an employer or supervisor of the person, or a public or private agency or entity that provides benefits, services, or housing to the person, may not discharge, demote, transfer, reduce the pay or benefits or work privileges of, prepare a negative work performance evaluation of, deny or withhold benefits or services, evict, or take other detrimental action against the person because of the complaint. The person making the complaint may bring a civil action for compensatory and punitive damages against an employer, supervisor, agency, or entity that violates this subsection. In the civil action there is a rebuttable presumption that the detrimental action was retaliatory if it was taken within 90 days after the complaint was made.

(c) A person who violates this section is guilty of a class B misdemeanor. (§ 2 ch 108 SLA 1988)

Sec. 44.21.238. Legal counsel for the long term care ombudsman. The attorney general shall provide legal advice and representation in connection with any matter relating to the powers, duties, and operation of the office, and in any legal action brought against the ombudsman or an employee, volunteer, or other representative of the office. If the attorney general cannot provide legal advice or representation because of a conflict of interest, the ombudsman may employ private legal counsel. (§ 2 ch 108 SLA 1988)

Sec. 44.21.239. Cooperative agreements. The commission shall enter into cooperative agreements concerning the operations of the office, including protocols for investigations, with state and local agencies that have jurisdiction over long term care facilities or over the abuse and neglect of older Alaskans. (§ 2 ch 108 SLA 1988)

Sec. 44.21.240. Definitions. In AS 44.21.200 — 44.21.240,

- 1) "commission" means the Older Alaskans Commission;
- 2) "long term care facility" means a foster home or other residential facility for dependent adults that is required to be licensed under AS 47.35 and a nursing home as defined in AS 08.70.180;
- 3) "office" means the office of the long term care ombudsman;
- 4) "older Alaskan" means a resident who is 60 years of age or older;
- 5) "ombudsman" means the long term care ombudsman hired under AS 44.21.231;
- 5) "senior citizen housing" has the meaning given in AS 47.620(e). (§ 2 ch 79 SLA 1981; am § 3 ch 108 SLA 1988)

Effect of amendments. — The 1983 amendment rewrote and restructured this section, which read "In AS 44.21.200 — 44.21.240, 'commission' means the Older Alaskans Commission."

Article 5. Alaska Council on Science and Technology.

secs. 44.21.241 — 44.21.255. [Repealed, § 63 ch 21 SLA 1985.]

Article 6. Alaska Public Broadcasting Commission.

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NOTE

State Law Protection of At-Will Employees Who "Blow the Whistle"

I. INTRODUCTION

In recent years there has been a tremendous increase in litigation concerning the common-law "at-will employment" rule, which provides that, absent a contract for employment for a definite period of time, an employer has the right to discharge any employee at any time, for any reason. It is estimated that as many as seventy percent of all private sector workers are considered at-will employees, and thus, arguably not entitled to protection against unjust dismissal.¹ For most of this country's history, the at-will rule went unchallenged, or at least seldom successfully challenged. However, in a trend that developed slowly, but accelerated in the late 1970s, courts in many jurisdictions came to view the doctrine as manifestly unfair and, hence, created exceptions to it.²

These judicially created exceptions can be placed into three distinct categories: (1) actions for breach of an express or implied contract; (2) actions in tort for abusive or wrongful discharge under a theory of intentional infliction of emotional harm or interference with employment relations; and (3) actions, essentially in tort, arguing that a discharge has violated the public policy of the state in which it arose.³ This Note will focus upon the last of these theo-

1. See Committee on Labor and Employment Law, *At-Will Employment and the Problem of Unjust Dismissal*, 36 RECORD OF THE ASS'N OF THE BAR OF THE CITY OF NEW YORK 170 (1981). See also 9A *Indiv. Empl. Rts. Man.* (BNA) § 505:2 (Jan. 1, 1987) (estimates of the actual number of workers range from 50 million to almost 76 million).

2. See generally Blades, *Employment At Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power*, 67 COLUM. L. REV. 1404 (1967); Mauk, *Wrongful Discharge: The Erosion of 100 Years of Employer Privilege*, 21 IDAHO L. REV. 201 (1985); Murg & Schurman, *Employment At Will: Do the Exceptions Overwhelm the Rule?*, 23 B.C.L. REV. 329 (1982); Olsen, *Wrongful Discharge Claims Raised by At-Will Employees: A New Legal Concern for Employers*, 32 LAB. L.J. 265 (1982); Note, *Protecting Employees At Will Against Wrongful Discharge: The Public Policy Exception*, 96 HARV. L. REV. 1931 (1983); Note, *Protecting At-Will Employees Against Wrongful Discharge: The Duty to Terminate Only in Good Faith*, 93 HARV. L. REV. 1816 (1980); Note, *Employment At Will—Limitations on Employers' Freedom to Terminate*, 35 LA. L. REV. 710 (1975); Annotation, *Modern Status of Rule that Employer May Discharge At-Will Employee For Any Reason*, 12 A.L.R.4th 344 (1982).

3. The three categories are "natural" ones. The first, the implied (or express) contract theory, relies upon proof that the employer made a promise of continued employment absent just cause for termination. Courts have held that such a promise may be established by oral representations, a course of dealing, employment

ries—the so-called “public policy exception” to the at-will rule. More specifically, this Note will address one particular type of claim that is recognized as a public policy exception: actions by an employee who reports or exposes illegal or unsafe conduct on the part of his employer and is subsequently discharged in retaliation—the “whistleblower” exception.⁴ The scope of this article is further limited to a discussion of the protection of private sector, at-will employees; thus, it will not address the protection of public sector employees or those covered by collective bargaining agreements.⁵

handbooks, or personnel manuals. See *Leikvold v. Vallev View Community Hosp.*, 141 Ariz. 544, 688 P.2d 170 (1984); *Pugh v. See Candies*, 116 Cal. App. 3d 311, 171 Cal. Rptr. 917 (1981); *Toussaint v. Blue Cross & Blue Shield of Mich.*, 408 Mich. 579, 292 N.W.2d 880 (1980). Related to this basic theory is the situation in which a discharged employee attempts to show a breach by the employer of an “implied covenant of good faith and fair dealing,” which exists in every contract, and which in this case would protect an employee from termination for bad cause. See *Clary v. American Airlines, Inc.*, 111 Cal. App. 3d 443, 168 Cal. Rptr. 722 (1980); *Fortune v. National Cash Register Co.*, 373 Mass. 96, 364 N.E.2d 1251 (1977); *Monge v. Beebe Rubber Co.*, 114 N.H. 130, 316 A.2d 549 (1974).

The second category develops the tort theory of abusive discharge. The employee seeks to prove intentional infliction of emotional harm by the employer, or interference by the employer with the employment relation (for example, with the right to file for workers' compensation or to file a sex discrimination charge), causing damages to the employee. Successful litigation in this area is rare and narrowly construed. See *Alcorn v. Ambro Eng'g Inc.*, 2 Cal. 3d 498, 468 P.2d 216, 86 Cal. Rptr. 88 (1970); *Howard Univ. v. Best*, 484 A.2d 958 (D.C. 1984); *Gates v. Life of Mont. Ins. Co.*, 668 P.2d 213 (Mont. 1983). See also Note, *Protecting At-Will Employees Against Wrongful Discharge: The Duty to Terminate Only in Good Faith*, 93 HARV. L. REV. 1816 (1980).

The third category, and the one that this Note addresses, is the public policy exception. Although essentially an action in tort, this exception leads the courts who have adopted it to concentrate on the harm incurred by an unjustly discharged employee and by the public. Proponents of this theory assert that an employee should not be discharged for asserting basic rights that society has an interest in protecting. See *Novosel v. Nationwide Ins. Co.*, 721 F.2d 894 (3d Cir. 1983); *Peterman v. Local 396, International Brotherhood of Teamsters*, 174 Cal. App. 2d 184, 344 P.2d 25 (1959); *Kelsav v. Motorola Inc.*, 74 Ill. 2d 172, 384 N.E.2d 353 (1978); *Nees v. Hocks*, 282 Or. 210, 536 P.2d 512 (1975).

4. See generally R. NADAR, P. PETKAS & K. BLACKWELL, *WHISTLEBLOWING* (1972); A. WESTIN, *WHISTLEBLOWING! LOYALTY AND DISSENT IN THE CORPORATION* (1981); Kohn & Kohn, *An Overview of Federal and State Whistleblower Protections*, 4 ANTI-OCH L.J. 99 (1986); Malin, *Protecting the Whistleblower From Retaliatory Discharge*, 16 J. MICH. J.L. REF. 277 (1985); Rogine, *Toward a Coherent Legal Response to the Public Policy Dilemma Posed by Whistleblowing*, 23 AMER. BUS. L.J. 281 (1985); Note, *Protecting At-Will Employees Against Wrongful Discharge: The Duty to Terminate Only in Good Faith*, 93 HARV. L. REV. 1816 (1980); Comment, *Protecting the Private Sector At-Will Employee Who "Blows the Whistle": A Cause of Action Based Upon Determinants of Public Policy*, 1977 WIS. L. REV. 777.

5. Both state and federal laws guarantee the public sector employee some protection against arbitrary or unjust dismissal. The Civil Service Reform Act of 1978, Pub. L. No. 95-434, 92 Stat. 1111 (1978) (codified in scattered sections of 5 U.S.C. (1982)), protects federal employees. Among its several sections are provi-

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Until very recently, principled or conscientious employees who were brave enough to call attention to their employer's wrongdoings did not fare particularly well in actions for wrongful or abusive discharge.⁶ Even today, a successful challenge to dismissal from employment under this theory is no minor feat because the law in this area can be described as inconsistent or, at best, perhaps more aptly as in a severe state of disarray.⁷ It is clear that no general rule is accepted as a framework for analyzing a whistleblower claim, as

sions for whistleblower protection and disclosure investigation, 5 U.S.C. § 2302(b)(8) (1982). However, these sections have thus far proven to be ineffective. See *Special Focus: Whistleblower and the Public Interest*, 4 ANTIOCH L.J. 1 (1986) (Introduction by Patricia Schrieder, D-Colorado: Chairwoman of the Subcommittee on Civil Service: U.S. House of Representatives) (ineffective or unconcerned special counsel in charge of enforcing the whistleblower protection provisions have "crippled" the protection provided by that legislation). The specific employee protection provisions for whistleblowing that are written into individual federal laws are far more effective. Examples include the whistleblower provisions in the Occupational Safety and Health Act (OSHA), 29 U.S.C. § 660(c) (1982); the Fair Labor Standards Act (FLSA), 29 U.S.C. § 215 (1975); the Federal Mine Health and Safety Act (FMHSA), 30 U.S.C. § 815(c) (1979); and the various environmental protection laws, such as the Solid Waste Disposal Act, 42 U.S.C. § 6971 (1982).

Most states provide protection against arbitrary and unjust dismissal for their public sector employees as well, either through laws allowing collective bargaining between employee unions and the state or local municipalities, or through specific protective legislation. One author estimates that over 50% of all state and local government employees have bargained for some sort of "just cause" protection. Peck, *Unjust Discharge From Employment: A Necessary Change in the Law*, 40 OHIO ST. L.J. 1, 8-9 (1979). Several states have passed legislation designed to protect public sector whistleblowers only. At this writing they are: DEL. CODE ANN. tit. 29, § 5115 (1983); IND. CODE ANN. § 4-15-10-4 (Burns 1987); KAN. STAT. ANN. § 75-2973 (1984); KY. REV. STAT. ANN. § 61.990 (Mirchie/Bohbs-Merrill 1986); MD. ANN. CODE art. 64A, § 12G (1983); OR. REV. STAT. § 240.740 (1985); TEX. REV. CIV. STAT. ANN. art. 6252-16a (Veillon 1987); UTAH CODE ANN. § 67-21-3 (1986); WASH. REV. CODE ANN. § 42.40.010 (1987); WIS. STAT. § 230.81-88 (1987). A few states have enacted legislation to protect private sector whistleblowers as well. See *infra* note 76 and accompanying text.

6. As noted, there was little litigation concerning the at-will rule until recently. Professor Summers comments:

Ten years ago a symposium on the subject of employment at will would have been unthinkable. There would have been few commentators willing to write on the subject, and few others interested in reading about it. The misbegotten legal doctrine was mechanically, and at times brutally, applied by the courts but was seldom examined or questioned. It was one of our inherited legal curses which we mindlessly accepted.

Summers, *Introduction: Individual Rights in the Workplace*, 16 U. MICH. J.L. REF. 201 (1983). The early leading case in whistleblower litigation is *Geary v. United States Steel Corp.*, 319 A.2d 174 (Pa. 1974), discussed *infra* in text accompanying notes 19-30.

7. One author describes the recent judicial attempts to deal with the subject as "patchwork, ad hoc, and inconsistent." He calls for the enactment of uniform legislation as the only way to remedy a situation that at present is "neither rational or humane." Rongine, *Toward a Coherent Response to the Public Policy Dilemma Posed by Whistleblowing*, 23 AMER. BUS. L.J. 281, 297 (1985).

the traditional rule denying protection once was. This Note will provide an overview of the laws created by the few courts and legislatures that have examined and acted upon the issue. It will begin with an examination of decisions in those states that decline to accept the idea of a public policy exception to the traditional rule and then analyze the varying degrees to which other states provide protection for employees who presume to report the illicit activities of their employers.

II. THE PUBLIC POLICY EXCEPTION FOR WHISTLEBLOWERS

A. No Exception Recognized

Several jurisdictions decline to deviate from the traditional at-will rule under any theory.⁸ In a state that does not recognize any public policy exception, the outcome of the discharged whistleblower's action, though harsh, is easily determined: there can be no recovery for abusive or retaliatory discharge because there is no theory under which to recover.

The Texas Court of Appeals' decision in *Maus v. National Living Centers, Inc.*⁹ demonstrates the harshness of such a rule. In *Maus* a nurse's aide was discharged for complaining to her supervisors about patient neglect. The court affirmed the trial court's grant of summary judgment for the employer and declined to "recognize a new cause of action for retaliatory discharge" absent a determination by either the state legislature or supreme court.¹⁰ Although it recognized the importance of policing the operation of nursing homes, the court would admit only that it stood "at the crossroads

8. At this writing, at least nine state courts refuse to recognize a public policy exception to the traditional rule in the absence of legislation. See *Hinrichs v. Tranquiraire Hosp.*, 352 So. 2d 1190 (Ala. 1977); *Lampe v. Presbyterian Medical Center*, 41 Colo. App. 465, 590 P.2d 513 (1978); *Haney v. Laub*, 312 A.2d 330 (Del. Super. Ct. 1973); *DeMarco v. Public Supermarkets, Inc.*, 384 So. 2d 1253 (Fla. 1980); *Goudroe v. Georgia Power Co.*, 148 Ga. App. 193, 251 S.E.2d 51 (1978); *Abrisz v. Pulley Freight Lines, Inc.*, 270 N.W.2d 454 (Iowa 1978); *Gil v. Metal Serv. Corp.*, 412 So. 2d 706 (La. App. 1982), *cert. denied*, 414 So. 2d 379 (La. 1982); *Green v. Amereda-Hess Corp.*, 612 F.2d 212 (5th Cir. 1980); *Phung v. Waste Management, Inc.*, 23 Ohio St. 3d 100, 491 N.E.2d 1114 (1986).

9. 633 S.W.2d 674 (Tex. Ct. App. 1982).

10. *Id.* at 677. In its analysis of plaintiff's public policy argument, the court recognized that "[t]here is a trend toward limiting the employer's right to discharge his employees." *Id.* at 676 n.1. However, the court held that such a trend, without specific guidance, was not reason enough to exceed its "proper authority within the legal framework." *Id.* at 676. The harshness of the rule in this case is further exemplified by the fact that, while the Texas court refused to recognize an exception for employees who report the wrongdoing of their employers, a state statute existed that required nursing home employees to report cases of neglect to the state licensing agency or to law enforcement officials. Failure to report is a misdemeanor. *Id.* at 675. See TEX. REV. CIV. STAT. ANN. art. 4442C § 16 (Supp. 1982). Thus, the employee in *Maus* was caught between the threat of legal sanctions and discharge.

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of two important public policies:"¹¹ the proper and safe functioning of the state's health care facilities, and the traditional doctrine of judicial restraint and deference to the legislative function of promulgating state laws and creating public policy. The court held that the latter policy was overriding.¹²

A more recent application of this reasoning is found in the Ohio Supreme Court's opinion in *Phung v. Waste Management, Inc.*¹³ in which the court held that an employee discharged for reporting violations of certain environmental regulations to his supervisor did not state a cause of action.¹⁴ The court reasoned that because the legislature had not yet created an exception for abusive discharge, one did not exist.¹⁵

Similarly, the Georgia Court of Appeals in *Goodroe v. Georgia Power Co.*¹⁶ held that a security officer who claimed he was discharged because he was about to uncover evidence of criminal activities by a superintendent of his employer did not have a cause of action. The court in *Goodroe* likewise deferred to the legislature's failure to provide such an exception to the at-will rule.¹⁷

B. Limited Exception Recognized

Several states, however, do recognize a general public policy

11. *Id.* at 676 (emphasis added). The court posed its determinative question as "whether the time has come for the nursing home policy (requiring employees to report neglect) to override the employment at-will doctrine." *Id.* It found it could not answer affirmatively without more guidance.

12. *Id.*

13. 23 Ohio St. 3d 100, 491 N.E.2d 1114 (1986).

14. *Id.* at 103, 491 N.E.2d at 1117. The court of appeals, in finding that such a cause of action existed, stated that "[p]ublic policy requires that there be an exception to the absolute right of an employer to discharge an employee at will when such employee is discharged for reporting to his employer or proper authorities that the employer is conducting its business in violation of the law." *Id.* at 101, 491 N.E.2d at 1115-16 (quoting from the court of appeals' unpublished opinion).

15. The court stated simply that "an at-will employee who is discharged for reporting to his employer that it is conducting its business in violation of the law does not have a cause of action against the employer for wrongful discharge." *Id.* at 103, 491 N.E.2d at 1117.

16. 148 Ga. App. 193, 251 S.E.2d 51 (1978).

17. *Id.* at 194, 251 S.E.2d at 52. See *Perdue v. J.C. Penney Co.*, 470 F. Supp. 1234 (S.D.N.Y. 1982). In *Perdue*, plaintiffs, who had conducted an internal audit of the employer, uncovered an illegal bribery or kickback scheme. They claimed that they were discharged to cover up their conclusion. The court applied Texas law and held that the wrongful purpose on the part of the employer was irrelevant. See also *Martin v. Platt*, 386 N.E.2d 1026 (Ind. App. 1979) (employees claimed that they were discharged for reporting a supervisor who was receiving kickbacks; the court held that what constitutes public policy is a decision better left to the legislature); *Pavolini v. Bard Air Corp.*, 451 N.Y.S.2d 288, 88 A.2d 714 (1982) (after noting the merits of the case and the harshness of the rule, the court refused to recognize a cause of action by a discharged at-will employee on public policy grounds).

exception to the at-will rule. These exceptions are varied in scope, and not all are broad enough to include whistleblowing activity.¹⁸ Some state courts create a public policy exception so narrow that it is often impossible for the whistleblower to enlist its protection. For example, in *Geary v. United States Steel Corp.*,¹⁹ the seminal case in whistleblower litigation, the Pennsylvania Supreme Court considered the discharge of a salesman who had repeatedly voiced to his superiors his concerns over the safety of a particular product he was selling. When his protestations were ignored, he took the matter to a company vice-president.²⁰ The product was reevaluated and taken off the market, but Geary was discharged shortly thereafter, allegedly in retaliation for disrupting and ignoring procedure.²¹ The court rejected Geary's public policy argument, but did not, as the courts in *Maus* and *Phung* did,²² completely decline the invitation to create any exception.²³ It merely found that in this case it was not convinced that "a clear mandate of public policy" had been violated by the employer.²⁴ The court noted the "praiseworthiness" of Geary's intentions, but found that a new cause of action was not the most appropriate method for employees to express their views on the quality of their employer's products.²⁵ The court also noted that Geary was not an expert²⁶ on the subject of product safety and that he had gone outside of the usual chain of command established for voicing opinions and concerns.²⁷ It concluded that the case did

18. For a state-by-state analysis of those jurisdictions that recognize an exception, however limited, to the traditional rule, see 9A *Indiv. Empl. Rts. Man.* (BNA) § 540-90 (1987). The degree of protection provided by these courts varies from state to state.

19. *Geary v. United States Steel Corp.*, 456 Pa. 171, 319 A.2d 174 (1974).

20. *Id.* at 173, 319 A.2d at 175.

21. *Id.* at 180, 319 A.2d at 178.

22. See *supra* text accompanying notes 9-15.

23. The court discussed Geary's claim that his actions were undertaken with good intent and were obviously of some merit given the subsequent change made in the product. Yet the court refused to credit the argument, concluding that:

It may be granted that there are areas of an employee's life in which his employer has no legitimate interest. An intrusion into one of those areas by virtue of the employer's power of discharge might plausibly give rise to a cause of action, particularly where some recognized facet of public policy is threatened. The notion that substantive due process elevated an employer's privilege of hiring and discharging his employees to an absolute constitutional right has long since been discredited.

Geary, 456 Pa. at 184, 319 A.2d at 180.

24. *Id.* at 184-85, 319 A.2d at 180. "We hold only that where the complaint itself discloses a plausible and legitimate reason for terminating an at-will employment relationship and no clear mandate of public policy is violated thereby, an employee at will has no right of action against his employer for wrongful discharge." *Id.*

25. *Id.* at 183, 319 A.2d at 180.

26. *Id.* at 181, 319 A.2d at 178-79.

27. *Id.* at 180, 319 A.2d at 178.

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not clearly involve any significant danger or wrongdoing on the part of the employer, and therefore expressly refused to fashion a privilege based upon an employee's right to express his views.²⁸ The decision in *Geary* is significant, though, because the court at least implied a willingness to entertain an exception when a "clear mandate" of public policy warrants.²⁹

Critics of *Geary's* strict standard fault the opinion for its apparent requirement that there be a "pronouncement" of policy by the legislature before the court takes action.³⁰ They argue that, as a practical matter, the discharged employee would then be required to allege that the employer violated a specific legislative prohibition or that he was discharged for exercising a specific statutory right or fulfilling a specific statutory duty.³¹ Some courts indicate that a public policy exception will be recognized only under these circumstances. In *Campbell v. Eli Lilly & Co.*³² the Indiana Court of Appeals rejected a wrongful discharge claim by a researcher at a drug manufacturing company. The researcher was fired for reporting his su-

28. *Id.* at 183, 319 A.2d at 180. The Michigan Supreme Court made a similar ruling in *Sucholski v. Michigan Consol. Gas Co.*, 412 Mich. 692, 316 N.W.2d 710 (1982). The court rejected an employee's claim that he was discharged for his complaints concerning the company's internal auditing practices and that the discharge was in violation of public policy. The employee based his complaint on two sources, the Code of Ethics of the Institute of Internal Auditors and the Regulations of the Public Service Commission. *Id.* at 696, 316 N.W.2d at 712. The court stated that for it to support an action for retaliatory discharge, the employee must establish a violation of a "clearly mandated public policy." *Id.* A dispute over internal auditing procedures, it argued, was at best a "corporate management dispute." *Id.*

29. *Geary*, 456 Pa. at 185, 319 A.2d at 180. See also *Rossi v. Pennsylvania State Univ.*, 340 Pa. Super. 39, 489 A.2d 828 (1985) (plaintiff's claim that he was fired for attempting to prevent a "waste of taxpayer's money" through frequent criticism or complaints to management was denied as not establishing a sufficient violation of a clear mandate of public policy); *Rachford v. Evergreen Int'l Airlines, Inc.*, 596 F. Supp. 384 (N.D. Ill. 1984) (plaintiff, fired for reporting aircraft defects to the FAA, had no viable claim since he could not show that the discharge violated a clear mandate of public policy); *Percival v. General Motors Corp.*, 400 F. Supp. 1322, 1324 (E.D. Mo. 1975), *aff'd*, 539 F.2d 1126 (8th Cir. 1976) (plaintiff's claim that he was fired for trying to correct misinformation given by the company to the public and government was rejected since there existed no violation of a clear mandate of public policy in the absence of "contractual, statutory or public policy considerations").

30. See, e.g., Note, *Protecting the Private Sector Employee Who "Blows the Whistle": A Cause of Action Based Upon Determinants of Public Policy*, 1977 Wis. L. Rev. 777, 802.

31. [The] use of such terms as "clear mandate" or "expressed" policy, if taken as those terms are conventionally used, refers to legislatively defined public policy. If this is how the *Geary* . . . [court] mean(s) to limit the exception, then [it has], by inference, rejected the application of the public policy exception to cases which present non-legislatively defined public policy issues.

Id. at 802.

32. *Campbell*, 413 N.E.2d 1054 (Ind. App. 1980).

pervisor's misconduct and questioning the safety of some of the drugs.³³ The court found that the plaintiff had not demonstrated a "statutory source for the alleged rights he claims to have exercised,"³⁴ nor a "statutory source for the duty he claims to have fulfilled."³⁵ The court, therefore, refused to "recognize the general public policy exception . . . to the venerable at will employment doctrine we reconfirm today."³⁶ Again, the case is significant because it implies a willingness to create *some* kind of exception so long as there is a statutory basis for the employee's actions.³⁷

An even more restrictive interpretation of the statutory-based requirement is found in *Murphy v. American Home Products Corp.*³⁸ In *Murphy* the New York Court of Appeals considered the case of an at-will employee who reported the illegal manipulation of a company pension plan by high-ranking officers to his superiors.³⁹ Although the court found that the actions of the officers only amounted to unorthodox accounting procedures, it stated that in order to succeed Murphy needed to show that he was fired either for some "constitutionally impermissible purpose" or that a *statutory proscription* against firing for that particular reason existed.⁴⁰ Otherwise, the employer's right to fire him is unaffected.⁴¹

33. *Id.* at 1057.

34. *Id.* at 1061.

35. *Id.* The court in *Campbell* relied on the decision in *Percival*, discussed *supra* at note 29, which used similar language to limit protection under the public policy exception to cases in which the discharge was "motivated by the fact that an employee did something that public policy encourages or refused to do something that public policy forbids or condemns." *Percival*, 539 F.2d at 1129-30.

36. *Campbell*, 413 N.E.2d at 1061.

37. The court indicated its reliance on its earlier decision in *Frampton v. Central Indiana Gas Co.*, 260 Ind. 249, 297 N.E.2d 425 (1973), in which it established the "statutory right or statutory duty" test. It concluded only that under the facts before it, plaintiff had not satisfied the test, and refused to create the general exception urged by plaintiff. *Campbell*, 413 N.E.2d at 1061.

The court's decision in *Campbell* is reaffirmed by the recent decision of *Romack v. Public Serv. Co. of Ind.*, 499 N.E.2d 768 (Ind. App. 1986), in which plaintiff alleged he was fired for reporting to his superiors several safety and security problems at the employer's nuclear power plant. The court of appeals dismissed his complaint and concluded that a "narrowly construed exception" to the at-will rule existed only "when the employee is discharged solely for exercising a statutorily conferred right." *Id.* at 773.

38. 58 N.Y.2d 293, 448 N.E.2d 86, 461 N.Y.S.2d 232 (1983).

39. *Id.* at 297-98, 448 N.E.2d at 87-88, 461 N.Y.S.2d at 233-34.

40. *Id.* at 305, 448 N.E.2d at 91, 461 N.Y.S.2d at 237. "In sum, under New York law as it now stands, absent a constitutionally impermissible purpose, a statutory proscription, or an express limitation in the individual contract of employment, an employer's right at any time to terminate an employment at will remains unimpaired."

41. *Id.* The New York court was particularly careful about infringing upon the territory of the legislature in making policy decisions, acknowledging that body's "infinitely greater resources and procedural means to discern the public will." *Id.*

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In some cases it is impossible to establish the existence of the plaintiff's right or duty. For example, in *Pierce v. Ortho Pharmaceutical Corp.*⁴² the New Jersey Supreme Court held that a physician did not have a cause of action when she resigned after Ortho removed her from a team working on the development of a drug that she claimed might be harmful.⁴³ The court argued that the physician's Hippocratic Oath was not comparable to a statute and thus was an insufficient basis upon which to claim a public policy exception.⁴⁴

Some courts, while still requiring a legislative basis for a finding of public policy violations, allow the whistleblowing plaintiff to satisfy his burden by establishing something less than an explicit statutory right or duty. In some jurisdictions, the mere existence of a statute specifically prohibiting the reported activity, even if the action is not brought under it, will provide a basis upon which to argue the existence of a policy favoring a remedy for discharge. These courts reason that the existence of a legislative prohibition is persuasive evidence of a public policy against such activity. In *Harless v. First National Bank*⁴⁵ the court examined violations of state and federal consumer credit and protection laws by a West Virginia bank. A bank employee brought the violations to the attention of several of his superiors and a bank auditor⁴⁶ and was discharged for reporting the violations.⁴⁷ The court accepted the plaintiff's argument that his discharge violated the state's public policy, concluding that the legislature's adoption of the consumer protection and credit laws created a "clear and unequivocal public policy that consumers

at 302, 448 N.E.2d at 90, 461 N.Y.S.2d at 236. As such, it concluded: "If the rule of nonliability for termination of at-will employment is to be tempered, it should be accomplished through a principled statutory scheme, adopted after opportunity for public ventilation, rather than in consequence of judicial resolution of the partisan arguments of individual adversarial litigants." *Id.* The court's position here is much like that of the courts in *Maus* and *Phung*. See *supra* text accompanying notes 9-14 for a discussion of these cases.

42. 84 N.J. 58, 417 A.2d 505 (1980).

43. *Id.* at 61, 76, 417 A.2d at 507, 514.

44. *Id.* at 76, 417 A.2d at 514. Compare *Suchdolski v. Michigan Consol. Gas Co.*, 412 Mich. 692, 316 N.W.2d 710 (1982), discussed *supra* note 28. An even more difficult determination for the employee is found in *Welch v. Brown's Nursing Home*, 20 Ohio App. 3d 15, 484 N.E.2d 178 (1984). The *Welch* court found that since the statute, which provided that no nursing home or employee of a nursing home may retaliate against any person for reporting alleged violations to the Commission on Aging, was an administrative, not legislative, one, it did not create a cause of action for retaliatory discharge. *Id.* at 17, 484 N.E. 2d at 180. See also *Roberts v. Atlantic Richfield Co.*, 88 Wash. 2d 887, 897, 368 P.2d 764, 770 (1977) (no cause of action existed since plaintiff did not claim that he was discharged for "exercising a statutory right" or for "refus[ing] to engage in criminal activity").

45. 246 S.E.2d 270 (W. Va. 1978).

46. *Id.* at 272.

47. *Id.*

... [are] to be given protection."⁴⁸ Such "manifest public policy," it argued, should not be frustrated by allowing an employee to be fired for attempting to ensure consumer protection.⁴⁹

Similarly, the Connecticut Supreme Court in *Sheets v. Teddy's Frosted Foods, Inc.*⁵⁰ held that an employee had stated a claim for wrongful discharge when he was dismissed after reporting to his employer several state law violations, including the mislabeling of food weight and the use of substandard raw materials.⁵¹ The court noted that state law imposed a criminal penalty for such violations and concluded that an employee should not be forced to choose between the risk of criminal sanctions and the loss of employment.⁵² More recently, the Illinois Supreme Court in *Wheeler v. Caterpillar Tractor Co.*⁵³ held that a cause of action existed for retaliatory discharge when a radiographer was fired for refusing to operate a unit that utilized live, radioactive cobalt in violation of Nuclear Regulatory Commission standards.

C. Broad Exception Recognized

Finally, some jurisdictions recognize a very broad public policy exception, affording substantial protection to the employee who reports an employer's wrongdoing, regardless of statutory authority. In carving out such an exception, courts generally determine that it is proper, if not often necessary, to look outside the legislative area for a definition of public policy. Particularly illustrative of this conclusion is *Wagner v. City of Globe*.⁵⁴ In which the Arizona Supreme Court endorsed plaintiff's argument that his discharge violated the state's public policy. Wagner, a newly-hired, probationary employee with the Globe police department, was fired after uncovering

48. *Id.* at 276.

49. *Id.*

50. 179 Conn. 471, 427 A.2d 385 (1980).

51. *Id.* at 473, 427 A.2d at 386.

52. The court found that the statute, which made the employer's actions criminal, was intended to "safeguard the public health and promote the public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandising deceit." *Id.* at 478, 427 A.2d at 388. The court concluded that because the statute was clearly relevant to plaintiff's claim, it could not "ignore the statement of public policy that it represents." *Id.* at 478, 427 A.2d at 389.

53. 108 Ill. 2d 502, 485 N.E.2d 972 (1982). See also *Kalman v. Grand Union Co.*, 183 N.J. Super. 153, 443 A.2d 728 (1982). In *Kalman*, a pharmacist was fired for refusing to close his pharmacy within the employer's store. State statutes (as well as the pharmacy profession's code of ethics) required the pharmacy to keep the same hours of operation as the store. The New Jersey court found that these laws sufficiently expressed public policy, which would be violated if the employee had been fired for attempting to comply with them.

54. 150 Ariz. 82, 772 P.2d 250 (1986).

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the illegal arrest and detention of a prisoner.⁵⁵ He brought the prisoner before a magistrate who, after some persuasion, reluctantly released the prisoner.⁵⁶ However, Wagner was terminated from his position shortly thereafter.⁵⁷

Wagner argued that despite his at-will status, his discharge was wrongful. He advanced two theories in support of his contention: breach of contract by the employer for violation of the rules set out in its personnel manual (his "employment contract"),⁵⁸ and violation of the state's public policy in favor of reporting illegal and improper activities.⁵⁹ The trial court granted summary judgment in favor of the employer, and the court of appeals affirmed.⁶⁰ The supreme court, however, reversed.⁶¹

The supreme court was very receptive to plaintiff's public policy argument, stating at the outset that "employees should not have to choose between their jobs and the demands of important public policy interests; . . . thus courts have developed the public policy exception to the at-will doctrine."⁶² The Arizona court, unlike other courts, was not inhibited by the lack of "explicit statutory expression" of such policy. Such explicit recognition, it argued, was "no longer required."⁶³

The court initially examined several generally recognized policy exceptions to the rule, including that for the whistleblower. It concluded that whistleblowing employees had lately "gained a measure of judicial protection,"⁶⁴ that such activity serves a public purpose, and that it should enjoy equal status among the other perhaps better-established exceptions.⁶⁵ Protection for the at-will employee who blows the whistle on his employer would henceforth be granted, the court ruled, "[s]o long as employees' actions are not merely private or proprietary, but instead seek to further the public good. . . ."⁶⁶

55. *Id.* at 84, 772 P.2d at 252. The prisoner was given a ten-day sentence for vagrancy under a statute that had been amended or abolished over a year earlier. He was in jail for twenty-one days when Wagner discovered the "error." *Id.*

56. *Id.*

57. *Id.*

58. *Id.* at 85-86, 772 P.2d at 253-54.

59. *Id.* at 87-90, 722 P.2d at 255-58.

60. *Id.* at 82, 722 P.2d at 250.

61. *Id.*

62. *Id.* at 87-88, 722 P.2d at 255-56. "Whatever the nomenclature, our concern remains the same: employees should not be discharged because they performed an act that public policy would encourage, or refused to do that which public policy condemns." *Id.* at 88, 722 P.2d at 256.

63. *Id.* This language is particularly important because it shows that the court is aware that it is expanding the existing law to accommodate the new exception.

64. *Id.* at 83, 722 P.2d at 256.

65. *Id.* at 89, 722 P.2d at 257.

66. *Id.* indeed, the court states that the decision on the part of an employee to

The *Wagner* court noted that the facts clearly established that the employer had violated the law, making it a particularly strong case in which to justify the creation of an exception to the at-will doctrine. Nevertheless, it explicitly acknowledged that its decision to afford protection to whistleblowing employees was not limited to such a case, but would extend to any instance in which "some 'important public policy interest in the law' has been furthered by the whistleblowing activity."⁶⁷ Thus, the court broadly held that "all employees who attempt to correct problems of public interest fall within the ambit of the public policy exception to the at-will doctrine."⁶⁸

Wagner is not the only instance in which a court has provided maximum protection to an employee discharged for whistleblowing. The *Wagner* court, for example, relied heavily on the Illinois Supreme Court case of *Palmateer v. International Harvester Co.*⁶⁹ in which an employee was fired for supplying information to local law enforcement authorities regarding another employee and agreeing to assist in the investigation and trial.⁷⁰ The *Palmateer* court held that, while no particular constitutional or statutory provision "requires a citizen to take an active part in the ferreting out and prosecution of a crime," public policy must nonetheless protect the "citizen crime-fighters."⁷¹

expose illegal or unsafe practices on the part of his employer should not only be protected, but encouraged as well. *Id.*

67. *Id.*

68. *Id.* at 90, 722 P.2d at 258. It is important to note the absence of any kind of "qualifying" language in the court's holding (for example, that the employee must report only to his superiors, or be correct).

69. 85 Ill. 2d 124, 421 N.E.2d 876 (1981).

70. *Id.* at 127, 421 N.E.2d at 877.

71. *Id.* at 132, 421 N.E.2d at 880. On remand the trial court granted summary judgment to the plaintiff. The employer appealed, and the court of appeals reversed, holding that an issue of fact existed regarding whether the plaintiff was in fact fired for his whistleblowing or for some other reason. The court did not contest the supreme court's ruling that a cause of action existed. *Palmateer v. International Harvester Co.*, 140 Ill. App. 3d 857, 489 N.E.2d 474 (1986). The Illinois Supreme Court's ruling in *Palmateer* was recently affirmed in *Johnson v. World Color Press*, 147 Ill. App. 3d 746, 498 N.E.2d 575 (1986). In *Johnson* the plaintiff claimed that he was discharged for complaining to superiors about the use of certain accounting procedures, which he contended overstated income and net worth. The employer cited *Petrík v. Monarch Printing Corp.*, 143 Ill. App. 3d 1, 493 N.E. 2d 616 (1986), in which the court had ruled that a discharge for similar activity did not create a cause of action, reasoning that the controversy concerned internal management disputes. Compare *Suchdolski v. Michigan Consol. Gas Co.*, 412 Mich. 692, 316 N.W.2d 710 (1982), discussed *supra* note 28. The *Johnson* court distinguished *Petrík*, stating that it had involved a dispute over two acceptable practices while *Johnson* involved a procedure that was arguably fraudulent. In reaffirming *Palmateer*, the court stated: "We have found public policy favors, and certain statutes require, full disclosure, truthfulness, and accuracy in financial reports made by businesses to the government and to the public. Public policy favors employees

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Another recent decision in which a court has recognized a broad, nonstatutory policy exception is *Boyle v. Vista Eyewear, Inc.*⁷² The Missouri Court of Appeals in *Boyle* concluded that:

where an employer has discharged an at-will employee . . . because the employee reported to his superiors or the public authorities serious misconduct that constitutes violations of the law and of such well established and clearly mandated public policy, the employee has a cause of action in tort for damages for wrongful discharge.⁷³

Like the court in *Wagner*, the *Boyle* court noted that the public policies of the "state and nation" are found in the "constitutions, statutes, judicial decisions, and administrative regulations."⁷⁴

D. Legislative Recognition

A handful of states have enacted legislation explicitly designed to protect the *private sector* at-will whistleblower. Such statutes, along with the liberal judicial interpretations (such as *Wagner*), are the "cutting edge" of developing at-will exceptions. Federal and state employees have long enjoyed such protection,⁷⁵ but at present only a few states afford this protection to private sector employees.⁷⁶

Typical of such state legislation is the Michigan Whistleblower's

attempting to ensure management's compliance with the requirements of the law and public policy." *Johnson*, 147 Ill. App. 3d at 752, 498 N.E.2d at 580. Illinois recently enacted a statute designed to protect both public- and private-sector employees. ILL. REV. STAT. ch. 127 § 63b119c.1 (1981).

See also *Garibaldi v. Lucky Food Stores*, 726 F.2d 1367 (9th Cir. 1984). Plaintiff claimed he was fired for reporting to state health officials that his employer had forced him to deliver adulterated milk in violation of state laws specifically prohibiting such activity. The Ninth Circuit held that the action on the part of the employee to protect the health and safety of the citizens of California is exactly what that state's supreme court had in mind when it created its public policy exception to the at-will rule in *Tameny v. Atlantic Richfield Co.*, 27 Cal. 3d 167, 610 P.2d 1330, 164 Cal. Rptr. 839 (1980).

72. 700 S.W.2d 859 (Mo. App. 1985).

73. *Id.* at 871.

74. *Id.* at 877 (emphasis added).

75. See *supra* note 5 and accompanying text.

76. The number of states with statutes that protect private sector employees (or both public and private) is rapidly increasing. At this writing the list consists of: CAL. LAB. CODE § 1102.3 (West Supp. 1987) (public and private); CONN. GEN. STAT. ANN. § 31-51m(a) (private), § 4(b)-(d) (public) (West 1987); FLA. STAT. ANN. § 760.10 (West 1986) (public and private); ILL. ANN. STAT. ch. 63, § 19 (Smith-Hurd 1979) (public and private); IOWA CODE ANN. § 19A.19 (private), § 20.10 (public) (West 1978); LA. REV. STAT. ANN. § 30:1074.1(A) (West Supp. 1987) (public and private); ME. REV. STAT. ANN. tit. 26, § 964 (1974) (public and private); MICH. STAT. ANN. § 17.128 (2) (Callaghan 1982) (public and private); N.J. REV. STAT. ANN. § 34.19 (West Supp. 1987) N.Y. CIV. SERV. LAW § 75-b(2)(i) (McKinney 1987) (public and private); R.I. GEN. LAWS § 36-15-3 (1987) (public and private).

"Whistle Blower"

Protection Act of 1980,⁷⁷ which provides protection to both public and private employees. The Act, in rather broad language, purports to apply to any employee who "reports or is about to report" suspected violations of any law on the part of his employer, or who testifies in any enforcement proceedings.⁷⁸ If, however, the employee "knows" the report is false, he is not protected by the Act.⁷⁹ Generally, the employee must file suit within ninety days of the employer's action.⁸⁰ If found to be protected, the employee is entitled to injunctive relief and/or actual damages, which may include reinstatement, back pay, benefits, seniority, and attorney fees.⁸¹

Interestingly, there has not been a great deal of litigation under the Michigan Act. One major issue, the establishment of a prima facie case, has been addressed. In *Melchi v. Burns International Security Services, Inc.*,⁸² a federal district court applied Michigan law in holding that a plaintiff must demonstrate that he was engaged in a protected activity, that he was subsequently discharged from employment, and that there was a causal connection between his activity and the discharge.⁸³ The burden of production then shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the discharge.⁸⁴ If the defendant sustains this burden, the plaintiff must demonstrate that the legitimate reason was a mere pretext for the retaliatory action.⁸⁵ The overall burden of persuasion remains with the plaintiff who must show that, but for his protected activity, he would not have been discharged.⁸⁶

Several states have enacted laws to protect the private sector whistleblower that are similar to Michigan's Act. The statutes generally provide a cause of action for the employee who reports an actual or suspected legal violation and protect the employee who is asked to testify before an investigating agency.⁸⁷ Some statutes provide a great deal of protection. For example, Connecticut's statute protects an employee who reports any suspected violation of any federal, state, or municipal law, regulation, or ordinance.⁸⁸ Others

77. MICH. COMP. LAWS ANN. §§ 15.361-.369 (West 1981).

78. MICH. COMP. LAWS ANN. § 15.362 (West 1981).

79. *Id.*

80. MICH. COMP. LAWS ANN. § 15.363(1) (West 1981).

81. MICH. COMP. LAWS ANN. § 15.364 (West 1981).

82. 597 F. Supp. 575 (E.D. Mich. 1984).

83. *Id.* at 582.

84. *Id.* (citing *Woinack v. Munson*, 619 F.2d 1292, 1296 (6th Cir. 1980)).

85. *Id.*

86. The order and allocation of the burden of going forward in *Melchi* parallels that first established for Title VII actions in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), which was later elaborated upon by the Court in *Texas Dept. of Community Affairs v. Burdine*, 430 U.S. 248 (1981).

87. MICH. COMP. LAWS ANN. § 15.364 (West 1981); CONN. GEN. STAT. ANN. § 31-51m(d) (West 1987).

88. CONN. GEN. STAT. ANN. § 31-51m(i) (West 1987).

SENATE COMMITTEE REPORT

FURTHER

JUD
FIN

3/23/89

DATE TURNED INTO OFFICE 4-22-89

Mr. President:

STATE AFFAIRS

Committee considered

CSHB 91 (JUD)

protection for certain public employees and certain other persons who report or participate in a proceeding connected with a matter of public concern

and recommended

replace with _____ CS HB 91 (ST Aff)) same title
 or adopt _____ CS _____) new title
 attached amendment(s) and technical title change (HB only)
 _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) zero fiscal impact appropriation no FN
 new updated previous
 same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Jim Hill No Rec
Tim Kelly No Rec
Al Adams No Rec

[Signature]
Chairman signature and recommendation

Committee Backup attached

FISCAL NOTE

REQUEST:

Revision Date:	Agency Affected:	Alaska Court System
Title: An Act relating to protection for certain public employees ...	BRU:	Trial Courts
Sponsor: Labor & Commerce	Components:	
Requestor: Judiciary		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

The State Affairs CS has no fiscal effect. This fiscal note is appropriate
S Schubert

Prepared by: Jan Strandberg, General Counsel

Division: Alaska Court System

Phone: 264-8228

4-21-89 Date: 04/20/89

Approved by: Arthur H. Snowden, II, Administrative Director

Date: 04/20/89

Agency: Alaska Court System

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An Act relating to protection BRU: Personnel
for public employees
 Sponsor: House Labor and Commerce Committee Components: Centralized Administrative Services
 Requestor: House Labor and Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill would not require an additional appropriation.

Changes made in the CS have no fiscal effect. This fiscal note is appropriate.
 Schubert
 4-21-89

Prepared By: David K. F. Otto *DKFO* Phone: 465-4450
 Division: Personnel Date: 1-31-89

Approved by Commissioner: John M. Andrews *John M. Andrews* Date: 1-31-89
 Agency: Department of Administration *John M. Andrews*

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

108

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
Title: An Act relating to protection BRU: Personnel
for public employees
Sponsor: House Labor and Commerce Committee Components: Centralized Administrative Services
Requestor: House Labor and Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This bill would not require an additional appropriation.

Prepared By: David K. F. Otto *DKFO* Phone: 465-4430
Division: Personnel Date: 1-31-89

Approved by Commissioner: John M. Andrews *John M. Andrews* Date: 1-31-89
Agency: Department of Administration

- Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

H B

114

Alaska State Legislature



House of Representatives House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

February 28, 1989

MEMORANDUM

TO: Senator Jan Faiks, Chair
Senate Judiciary Committee

FROM: Representatives Max Gruenberg *MG* and Peter Goll
Co-Chairs, House Judiciary Committee

RE: HB 114, relating to the examination of regulations
and opinions and decisions issued by courts and
agencies on the law of the state

HB 114 submitted by the House Judiciary Committee would amend AS 24.20.065(a). That statute requires the legislative council to annually review judicial and administrative decisions and administrative regulations for their effect on state statutes. HB 114 amends AS 24.20.065(a) to include a review for the effects of court decisions on state common law (non-statutory) provisions.

We would appreciate your scheduling a hearing on this bill as soon as possible.

Thank you.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the examination
of regulations and of opinions and decisions...
Sponsor: House Judiciary
Requestor: House State Affairs

Affect Agency Legislative Affairs Agency
BRU: Legislative Council BRU
Components Legal Services

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	0	0	0	0	0	0
Travel	0	0	0	0	0	0
Contractual	0	0	0	0	0	0
Supplies	0	0	0	0	0	0
Equipment	0	0	0	0	0	0
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0	0	0	0	0	0
Federal Fund						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

There would not be a fiscal impact for the Division of Legal Services under the Legislative Council BRU relating to adding examination of common law. However, it should be noted that the annual examination of administrative regulations and final decisions adopted under the Administrative

Prepared By: Pamela Stoops, Director *Pamela Stoops* Phone: 465-3850
Division: Administrative Services Date: 2/6/89

Approved By: Warren Endicott, Executive Director *Warren Endicott*
Agency: Legislative Affairs Agency Date: 2/6/89

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

CONTINUATION OF FISCAL NOTE

HB 114
HOUSE 2/15/89

ANALYSIS (continued)

Procedure Act is not currently being done by Legal Services for Legislative Council.

The Administrative Regulation Review Committee is in charge of administrative regulations.

There are insufficient funds at this time to support the attorney time needed to fully examine the administrative regulations and Administrative Procedures Act. A substantial fiscal impact would be realized to comply with these aspects of this statute.

Revisor's notes. — Formerly AS
24.05.200. Renumbered in 1985.

Sec. 24.20.062. Legislative internship program. A legislative internship program established by the legislative council under AS 24.20.060(8) shall provide that

(1) the University of Alaska provide academic support and credit to the program;

(2) students enrolled and in good standing at any accredited postsecondary educational institution who have successfully completed at least two years of study are eligible to participate in the program;

(3) interns will be selected by a committee composed of members of the legislature appointed by the legislative council and representatives of the university appointed by the university;

(4) interns will be selected on the basis of their experience and interest in subjects which the legislative council feels are likely to be considered during a legislative session;

(5) legislative interns are entitled to receive academic credit and payment of \$30 for each day of participation in the program during the legislative session. (§ 11 ch 87 SLA 1979)

*
Sec. 24.20.065. Examination of regulations and opinions. (a) The legislative council shall annually examine administrative regulations, published opinions of state and federal courts and of the Department of Law that rely on state statutes, and final decisions adopted under the Administrative Procedure Act (AS 44.62) to determine whether or not

(1) the courts and agencies are properly implementing legislative purposes;

(2) there are court or agency expressions of dissatisfaction with state statutes;

(3) the opinions or regulations indicate unclear or ambiguous statutes.

(b) The legislative council shall submit a comprehensive report of the annual examination with recommendations to the members of the legislature at the start of each regular session. (§ 1 ch 72 SLA 1963)

Sec. 01.05.036. Improvement of statutes. The Legislative Affairs Agency, working in cooperation with the revisor shall make recommendations to the legislative council concerning deficiencies, conflicts, or obsolete provisions in and the need for reorganization or revision of the statutes, and, at the direction of the legislative council, shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state. Each title of the Alaska Statutes shall be systematically reviewed at least once each two years for deficiencies, conflicts, or obsolete provisions. (§ 1 ch 1 SLA 1963; am § 1 ch 106 SLA 1974)

Cross references. — For the responsibility of the Alaska Legislative Council for statute revision, see AS 24.20.070.

Chapter 10. Laws and Statutes.

Article

1. Common Law (§ 01.10.010)
2. General Rules of Statutory Construction (§§ 01.10.020—01.10.065)
3. Effect of Statutes (§§ 01.10.070—01.10.100)
4. The Statehood Act (§ 01.10.110)

Article 1. Common Law.

Section

10. Applicability of common law

Collateral references. — 73 Am. Jur. 2d, Statutes, § 1 et seq.
82 C.J.S., Statutes, § 1 et seq.

* **Sec. 01.10.010. Applicability of common law.** So much of the common law not inconsistent with the Constitution of the State of Alaska or the Constitution of the United States or with any law passed by the legislature of the State of Alaska is the rule of decision in this state. (§ 2-12 ACLA 1949; § 65-1-3 ACLA 1949)

Opinions of attorney general. — trust investment. 1963 Op. Att'y Gen., No. 13.
There is considerable authority at common law which defines the scope of permissible

NOTES TO DECISIONS

Applicability of common law. — This section, which makes the common law applicable in Alaska, refers to the common law of England. It should be noted here that Alaska has the common law of the United States now, some of which is over 300 years old. The ancient common law of England is not controlling over the developing common law of this country. *Howarth v. Pfeifer*, Sup. Ct. Op. No. 488 (File No. 890), 443 P.2d 39 (1968).

Meaning of common-law. — See *Valentine v. Roberts*, 1 Alaska 536 (1902).

The common law is but the accumulated expressions of the various judicial tribunals in their efforts to ascertain what is right and just between individuals with respect to private disputes. *Howarth v. Pfeifer*, Sup. Ct. Op. No. 488 (File No. 890), 443 P.2d 39 (1968).

And scope. — The common law includes those principles, usages, and rules of action applicable to the government and security of person and property which do not rest for their authority on any express and positive declaration of the will of the legislature; a system of elementary principles and of general judicial truths which are continually expanding with the progress of society, and adapting themselves to the gradual changes of trade and commerce and the mechanic arts and the exigencies and usages of the country. *In re Burkell*, 2 Alaska 108 (1903).

The common law is not a rigid and arbitrary code, crystallized and immutable. Rather it is flexible and adapts itself to changing conditions. *Howarth v. Pfeifer*, Sup. Ct. Op. No. 488 (File No. 890), 443 P.2d 39 (1968).

Duty to explicate common law. — It is the task of the supreme court of Alaska to explicate the common law which will apply in situations not dealing with a constitutional question or statutory interpretations unless and until the Alaska legislature acts to modify it. *Surina v. Buckalew*, Sup. Ct. Op. No. 2255 (File Nos. 5205, 5462), 629 P.2d 969 (1981).

Common-law trusts. — There are no statutes upon the subject of common-law trusts. *Powell v. Hammon Consol. Gold Fields*, 8 Alaska 153 (1929).

There is no inhibition against common-law trusts. *Powell v. Hammon Consol. Gold Fields*, 8 Alaska 153 (1929).

Negligent misrepresentation. — One may now maintain an action for negligent misrepresentation, even though that may

not have been the case under the common law in years gone by. *Howarth v. Pfeifer*, Sup. Ct. Op. No. 488 (File No. 890), 443 P.2d 39 (1968).

Imputation of unchastity. — Common-law rule that a statement imputing unchastity to a woman, or even professional unchastity, is not considered slanderous per se, is clearly outmoded. *Hollman v. Brady*, 16 Alaska 308, 233 F.2d 877 (9th Cir. 1956).

Separate maintenance. — Alaska has no law on separate maintenance, but the common law, by this section, has been declared to be in force in Alaska. And a suit for separate maintenance was well known at common law. *Moller v. Moller*, 11 Alaska 33, 66 F. Supp. 507 (D. Alas. 1946).

Common law as to loss of consortium. — See *Schreiner v. Fruit*, Sup. Ct. Op. No. 1003 (File No. 1949), 519 P.2d 462 (1974).

Actions against tortfeasor's liability insurer. — The common-law rule allowing no direct cause of action against a tortfeasor's liability insurer prevails in this state. *Severson v. Severson*, Sup. Ct. Op. No. 2344 (File No. 5461), 627 P.2d 649 (1981).

Sequestration. — Given the harsh nature of the remedy of sequestration and the fact that the Alaska legislature has spelled out in some detail the procedure for obtaining other similar remedies while it has not enacted a sequestration statute, the implication is clear that Alaska has decided that sequestration of the nature sought in an action to require a regional corporation organized under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq., to place certain funds in secure and liquid investments pending litigation is not available and has preempted the common law with a complex statutory scheme. *Aleut Corp. v. Arctic Slope Regional Corp.*, 424 F. Supp. 397 (D. Alas. 1976).

Title by accretion. — At common law the riparian owner acquires title to additions thereto by accretion. *Nordale v. Waxberg*, 12 Alaska 399, 84 F. Supp. 1004 (D. Alas. 1949), aff'd, 12 Alaska 695, 182 F.2d 1022 (9th Cir. 1950).

Applied in *United States v. Pacific & A. Ry. & Nav. Co.*, 5 Alaska 43 (1914); *Van Dyke v. Midnight Sun Mining & Ditch Co.*, 177 F. 85 (9th Cir. 1910); *Northwestern S.S. Co. v. Cochran*, 191 F. 146 (9th Cir.

1911); *Bosel v. State*, Sup. Ct. Op. No. 280 (File No. 32), 398 P.2d 651 (1965).

Quoted in *Turnbull v. Bonkowski*, 419 F.2d 104 (9th Cir. 1969); *Smiloff v. State*, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978); *Carter v. Brodrick*, Sup. Ct. Op. No. 2500 (File No. 5511), 644 P.2d 850 (1982).

Stated in *In re Burkell*, 2 Alaska 108 (1903); *McFarland v. Alaska Perseverance Mining Co.*, 3 Alaska 308 (1907); *Jansen v.*

Pollastrine, 10 Alaska 316 (1942); *Territory of Alaska v. 188 Cases of Mixed Intoxicating Liquors*, 10 Alaska 414 (1944); *Bickel v. Polaris Inv. Co.*, 17 Alaska 389, 155 F. Supp. 411 (D. Alas. 1957).

Cited in *Ketchikan Co. v. Citizens' Co.*, 2 Alaska 120 (1903); *First Nat. Bank v. Stout*, 9 Alaska 400 (1938); *Northwest Airlines, Inc. v. Alaska Airlines, Inc.*, 351 F.2d 253 (9th Cir. 1965).

Article 2. General Rules of Statutory Construction.

Section	—	Section
20. Applicability of AS 01.10.040 — 01.10.090		50. Tense, number, and gender
30. Constitutionality and severability		60. Definitions
40. Words and phrases		65. Certified mail

Collateral references. — 73 Am. Jur. 2d, Statutes, §§ 142-341.
82 C.J.S., Statutes, §§ 311-398.

Sec. 01.10.020. Applicability of AS 01.10.040 — 01.10.090. The provisions of AS 01.10.040 — 01.10.090 shall be observed in the construction of the laws of the state unless the construction would be inconsistent with the manifest intent of the legislature. (§ 1 ch 62 SLA 1962)

NOTES TO DECISIONS

The supreme court is enjoined by the legislature to observe the provisions of this section, in resolving any issue relating to AS 01.10.080 and its applicability to the five-day recount provision of AS 15.20.430. *Wade v. Dworkin*, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1965).

Sec. 01.10.030. Constitutionality and severability. Any law heretofore or hereafter enacted by the Alaska legislature which lacks a severability clause shall be construed as though it contained the clause in the following language, "If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be effected thereby." (§ 1 ch 98 SLA 1949)

facts. A judge may comment "on the weight of the evidence and indicate his own opinion concerning the credibility of witnesses and the relative strength of competing permissible inferences, provided always that he makes it clear to the jury that it is their province to decide such questions of weight and credibility." James, Civil Procedure §7.14 (1965). However, a prosecutor may not "comment" on the refusal of a defendant in a criminal proceeding to testify, and the court may not instruct a jury that such silence is evidence of guilt. See 380 U.S. 609.

COMMERCIAL BRIBERY see bribery.

COMMERCIAL FRUSTRATION see frustration.

COMMERCIAL PAPER a negotiable instrument, i.e., a writing indorsed by the maker or drawee, containing an unconditional promise or order to pay a certain sum on demand or at a specified time, made payable to order or to bearer. U.C.C. §3-104(1). The term comprehends bills of exchange, checks, notes, and certificates of deposit. U.C.C. §3-104(2).

COMMERCIAL PREFERENCE see preference.

COMMODITY any tangible good; commercially, commodities refer to products that are the subject of sale or barter. See also futures.

* **COMMON LAW** the system of jurisprudence, which originated in England and was later applied in the United States, which is based on judicial precedent rather than legislative enactments; it is to be contrasted with civil law (the descendant of Roman Law prevalent in other western countries). Originally based on the unwritten laws of England, the common law is "generally derived from principles rather than rules; it does not consist of absolute, fixed, and inflexible rules, but rather of broad and comprehensive principles based on justice, reason, and common sense. It is of judicial origin and promulgation. Its principles have been determined by the social needs of the community and have changed with changes in such needs. These principles are susceptible of adap-

tation to new conditions, interests, relations, and usages as the progress of society may require." 37 N.W. 2d 543, 547.

COMMON LAW COPYRIGHT see copyright.

COMMON NUISANCE see nuisance.

COMMON PROPERTY see property.

COMMONS land set aside for public use, e.g., public parks; also, the untitled class of Great Britain, represented in Parliament by the House of Commons.

COMMUTATION substitution, change; the substitution of a lesser penalty or punishment for a greater one, such as from death to life imprisonment, or from a longer term to a shorter one. The chief executive officer (President, governor) has the constitutional power of executive clemency which includes the broad power in his discretion to commute a sentence. Compare with pardon and reprieve.

COMPANY broadly, any group of people voluntarily united for performing jointly any activity, business, or commercial enterprise. See 23 Tax. 295, 303.

In reference to trades, "company" applies to the combination of individuals' capital, skill and labor for the purpose of business carried on for such individuals' common benefits. 6 So. 362, 364.

The term also applies to a wide range of activities, and under statutory construction has been held to include private corporations, joint stock companies (see below), all partnerships, etc. See 222 S.W. 736, 739. "Company" has also been considered synonymous with "firm".

HOLDING COMPANY see holding company.

JOINT STOCK COMPANY a company or association, usually unincorporated, which has the capital of its members pooled in a common fund; the capital stock is divided into shares and distributed to represent ownership interest in the company, see Henn, Law of Corporations §50 (1961); a form of partnership, but one which

CSHB 58(Jud)

Representative Navarre moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the court rule change. There being no objection, it was so ordered.

Representative Navarre moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

CSHB 58(Jud) was referred to the Chief Clerk for engrossment.

HB 114

The following was read the second time:

HOUSE BILL NO. 114

"An Act relating to the examination of regulations and of opinions and decisions issued by courts and agencies on the law of the state."

with the:

State Affairs Committee report	page 347
Zero fiscal note with analysis (LAA) published 2/15/89	page 347
Judiciary Committee report with previous zero fiscal note	page 399

Representative Navarre moved and asked unanimous consent that HB 114 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

HB 114 was read the third time.

The question being: "Shall HB 114 pass the House?" The roll was taken with the following result:

HB 114

Yeas:	37	Barnes, Boucher, Boyer, Brown, Cato, Collins, Cotten, Davidson, Davis, C., Davis, M., Donley, Ellis, Foster, Goli, Gruenberg, Grussendorf, Hanley, Hoffman, Hudson, Jacko, Koponen, Larson, Leman, MacLean, Martin, Miller, Navarre, Phillips, Rieger, Sharp, Shultz, Spohnholz, Swackhammer, Taylor, Ulmer, Wallis, Zawacki
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HB 114

Nays: 0
Excused: 1 Pettyjohn
Absent: 2 Furnace, Menard

And so, HB 114 passed the House and was referred to the Chief Clerk for engrossment.

LEGISLATIVE CITATIONS

Representative Navarre moved and asked unanimous consent that the House approve the citation on the calendar. There being no objection, the House approved the following citation:

Honoring - Senator Bettye M. Fahrenkamp

The citation was referred to the Chief Clerk for transmittal to the Senate.

Representative Navarre moved and asked unanimous consent that the House revert to Messages from the Senate. There being no objection, the House reverted to:

MESSAGES FROM THE SENATE

A message dated February 23, 1989, was read stating the Senate has passed the following and it is transmitted for consideration:

FIRST READING AND REFERENCE OF SENATE RESOLUTIONSSJR 32am

SENATE JOINT RESOLUTION NO. 32 amended, by the Senate Special Committee on International Trade and Tourism:

Relating to a celebration of the 250th anniversary of the Russian discovery of Alaska.

was read the first time and referred to the Rules Committee for consideration.

HB

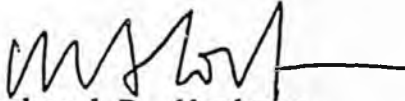
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MEMORANDUM

State of Alaska
Department of Law

TO: Mary Halloran
Director
Division of Policy
Office of Management and Budget
Office of the Governor

DATE: March 31, 1988
FILE NO: 663-88-0432
TEL. NO: 465-3600
SUBJECT: Retroactivity of HB 164


FROM: Richard D. Monkman
Assistant Attorney General

You requested our opinion as to whether CSHB 164(Fin) am ("HB 164"), which would retroactively apply changes to the economic limit factor in the Oil and Gas Properties Production Tax (AS 43.55), would be likely to be held constitutionally permissible. If not, you ask our advice on "the maximum degree of retroactive application that would likely be held permissible."

The short answer is that the sections which would make HB 164 retroactive to June 1, 1987, would likely be held constitutional. If the law was retroactive to January 1, 1988, it would certainly be held constitutional.

1. Article II. The first step in analysis is the Alaska Constitution, article II, section 18:

Laws passed by the legislature become effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date.

This section was designed to give the public three months notice of a new law before it is applied to them - unless the legislature, by a two-thirds vote, provides otherwise. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980). In line with this provision, the general state policy is against retroactive statutes, based on the philosophy that people "should be able to rely on existing laws with reasonable certainty." Norton v. State, ABC Board, 695 P.2d 1090, 1093 (Alaska 1985). Retroactive application of new laws requires an express statement in the statute itself:

No statute is retrospective unless expressly declared therein.

AS 01.10.090.

Mary Halloran, Director
Division of Policy
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Page 2

The leading case on point is Atlantic Richfield v. State, 705 P.2d 418, 438 (Alaska 1985). In this challenge to Alaska's former "separate accounting" oil tax statute, the Supreme Court upheld retroactive application of the statute back from the date of enactment to the beginning of the calendar year. The bill in question was signed into law on July 8, 1978. It provided:

* Sec. 4. This Act applies to taxable income earned or received after December 31, 1977.

* Sec. 5. The Act takes effect immediately in accordance with AS 01.10.070(c).

Ch. 110 SLA 1978.

Retroactive application was challenged by the oil companies. The Supreme Court held that the statute was "properly retroactive to January 1, 1978," because (1) the statute expressly stated it was to be retroactive, in accord with AS 01.10.090 and (2) the two-thirds vote requirement on the immediate effective date clause was met. The Court rejected oil company arguments that a separate two-thirds vote was required for retroactivity:

AS 01.10.090 states that "[n]o statute is retrospective unless expressly declared therein." A two-thirds vote requirement does not appear in that section, or elsewhere in Alaska law. The legislature, however, has recognized that where retroactive application of a portion or all of a bill is desired, an immediate effective date, which does require a two-thirds vote under article II, sec. 18 and AS 01.10.070(a), should be used in conjunction with the retroactivity section.

705 P.2d at 438, citing Legislative Affairs Agency, Manual of Legislative Drafting II (1977 ed.) and Uniform Rules of the Alaska State Legislature, Rule 10 (May 3, 1977); accord, Legislative Affairs Agency, Manual of Legislative Drafting 28-29 (1987 ed.).

The language of sections 3 and 4 of HB 164 is similar to the language approved by the Supreme Court in Atlantic Richfield. Ch. 110 SLA 1978. If passed by the legislature with the requisite two-thirds vote on the effective date clause, the bill is certain to pass this first constitutional hurdle. Without passage of the effective date clause by a two-thirds vote, the retroactive application section will be void, and the bill will operate prospectively only.

2. Due Process. The next constitutional question is whether the bill would offend guarantees of due process of law. Generally speaking, there is no vested right in any particular rate of taxation. Cohan v. Commissioner, 39 F.2d 540, 545 (2d Cir. 1930) (Learned Hand, J.). Both Congress and state legislatures can change tax statutes and apply the changes retroactively:

Taxation is neither a penalty imposed on the taxpayer nor a liability which he assumes by contract. It is but a way of apportioning the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burdens. Since no citizen enjoys immunity from that burden, its retroactive imposition does not necessarily infringe due process, and to challenge the present tax it is not enough to point out that the taxable event, the receipt of income, antedated the statute.

Welch v. Henry, 305 U.S. 134, 146-147 (1935).

The federal rule on retroactivity is that "the application of an income tax statute to the entire calendar year in which enactment took place does not per se violate the Due Process Clause of the Fifth Amendment." United States v. Darusmont, 449 U.S. 292, 297 (1980). A tax rate "may be retroactively changed at the will of Congress at least for periods of less than twelve months; Congress has done so from the outset..." Cohan, 39 F.2d at 545, quoted in Darusmont, 449 U.S. at 298. The rule is based in large part on Congressional history:

For more than seventy-five years it has been the familiar legislative practice of Congress in the enactment of revenue laws to tax retroactively income or profits received during the year of the session in which the taxing statute is enacted, and in some instances during the year of the preceding session.

Welch, 305 U.S. at 148.

Welch upheld a Wisconsin tax on dividends passed in 1935, and made retroactive to tax years 1933 and 1934. The Court noted that the Wisconsin legislature meets every other year, and thus the 1935 session was "the first opportunity after the tax year in which the income was received" at which the tax could be changed. Reaching back twelve months (1933 taxes were due in

Mary Halloran, Director
Division of Policy
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Page 4

1934) did not "exceed" the "limit of permissible retroactivity."
Welch, 305 U.S. at 151.

The federal rule is based largely on questions of "fair notice", whether "the nature or amount of the tax could not have reasonably been anticipated by the taxpayer at the time of the particular voluntary act which the statute later made the taxable event." Welch, 305 U.S. at 147. Changes to tax rates are presumed to be foreseeable. In Darusmont, for example, the Court flatly rejected a taxpayer's argument that retroactivity of an income tax change was barred by due process concerns. The Court stated that the proposed rate increase had been under public discussion in the form of bills before Congress for about a year, and therefore, the taxpayer "had ample advance notice of the increase." 449 U.S. at 299. -/

State courts generally follow the federal rule, noting that "[t]ax provisions, as key components in a system designed to fairly apportion the costs of government, seldom remain static. Rather, we expect them to change in response to changing conditions." Martin v. Board of Assessment Appeals, 707 P.2d 348, 354 (Colo. 1985). The Alaska Supreme Court, as noted above, approved retroactive application of the Oil Tax Act to the full year in which it was enacted. Atlantic Richfield. In another case, the Alaska court had "no doubt" that a license fee increase could have been retroactive to the start of the year of enactment, if the legislature had followed AS 01.10.090 and "stated expressly that it intended the revised fee schedule to be retroactive." State, ABC Board v. Odom, 671 P.2d 375, 377 (Alaska 1983), quoting United States v. Hudson, 299 U.S. 498, 500 (1937) ("it has been the practice of Congress to make [income tax statutes] retroactive for relatively short periods ... and repeated

* The Court also rejected the taxpayer's argument, based on gift tax cases, that he "could have altered his behavior to avoid the tax if it could have been anticipated by him at the time the transaction was effected." Darusmont, 449 U.S. at 299. Gift taxes seem to be the only tax area where the Court has been receptive to arguments against retroactivity. The Court has refused to consider income in the same light as the "one time transaction" of a gift. "[A] tax on the receipt of income is not comparable to a gift tax. We cannot assume that stockholders would refuse to receive corporate dividends even if they knew that their receipt would later be subjected to a new tax or an increase of an old one." Welch v. Henry, 305 U.S. at 148-149.

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decisions of this court have recognized the practice and sustained it as consistent with the due process clause of the Constitution.").

Because HB 164, as written, goes back beyond the start of the calendar year in which it will be passed, we cannot absolutely assure you that the retroactivity section will be held constitutional. By contrast, there is "no doubt" that the bill could be retroactive to January 1, 1988. Odom, Atlantic Richfield. However, going back further is not an insurmountable problem by any means. The proposed effective date of May 31, 1987 is less than twelve months prior to the presumed date HB 164 will be enacted. Twelve months is a "short period," approved by the United States Supreme Court in Welch and again, albeit implicitly, in Darusmont. The bill proposes to change tax rates, an area which is presumed to be subject to legislative change on a regular basis. In this particular case, the taxpayers have been on actual notice that the tax rate might be changed since HB 164 was introduced in January, 1987. Thus, it can be argued that the May 31, 1987 effective date does not violate due process. We believe these arguments to be very strong, although, given the widespread adherence to the "calendar year" approach by the courts, not absolutely certain of success.

RDM:nb

STATE OF ALASKA
THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY


MEMORANDUM

February 6, 1989

SUBJECT: Retrospective application of the economic
limit factor tax amendments, CSHB 118 ()

TO: Representative Cliff Davidson, Co-Chair
House Resources Committee

FROM: Jack Chenoweth
Legislative Counsel



The amendments requested are enclosed. The drafts differ only as to the date of retrospective application of each. The draft identified as 6-0652E applies the economic limit factor (ELF) retrospectively to oil produced after June 30, 1987; the draft identified as 6-0652H applies the economic limit factor retrospectively to oil produced after December 31, 1988. (A subsequent memo from your office specified different alternative dates. Mechanically changing a date in any of these drafts is not a significant drafting problem.)

It is my understanding that these provisions limit the applicability of the ELF to the state's major producing fields and that, as a consequence, the tax liability of some taxpayers subject to the severance tax, AS 43.55, would be increased, while the liability of others may decrease. 1/

1/ Under AS 43.55.020(a):

The gross production tax on oil or gas shall be paid monthly. The tax is due on the 20th day of each calendar month on oil or gas produced from each lease or property during the preceding month. If the tax is not paid before the end of the month in which it becomes due, the tax becomes delinquent.

Thus, tax liability is incurred and remitted on a monthly, not an annual basis. For oil production during December, 1988, the tax became due and payable January 20, 1989, and tax liability for oil production during January, 1989, becomes due and payable February 20, 1989.

A retroactive tax adjustment will apply if there is a valid public purpose served by giving retrospective effect to that adjustment. Here, the committee's deliberations may be critical. As a committee substitute for HB 118 is considered, it would, in my judgment, be important to develop a record on which a court, if called upon to consider an argument, would conclude that there was a public purpose served by giving the adjustment a retrospective effect.

A reasonable retrospective application will be sustained. The farther back the retroactive provision is given effect, the less likely a court would be to sustain the provision without a clear showing of public purpose. (To foreclose a claim altogether, this office has discouraged retrospective application of severance tax adjustments beyond the narrow period recognized under AS 43.55.020(a), that is, a change amending the economic limit factor to be made retroactive only to the beginning of the month in which the bill is to take effect. That approach should not create any problems of retrospective applications since the tax liability would not have become due on that date.)

I

RETROSPECTIVE APPLICATION OF THE AMENDMENTS:

Tax statutes may be made retroactive. 2/ The threshold

2/ This office has also recently considered proposed retrospective application of severance tax adjustments, specifically relying on the federal and state constitutional prohibitions against passage of ex post facto laws. There are two ex post facto law prohibitions of the federal constitution. Article I, section 9, clause 3 is a limitation on the federal government, while article I, section 10, clause 1 imposes a similar limitation on the states. Alaska's constitution also contains a limitation in section 15 of article I.

Our previous conclusion that federal and state constitutional prohibitions against enactment of ex post facto laws would support a challenge to the amendment's retrospective application was surely in error. Federal court decisions have limited the application of the limitations to criminal or penal consideration is that the retrospective application of the measure must not impair an obligation of contract.

Representative Cliff Davidson

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The impairment of contract consideration appears to be inapplicable in this instance. Retrospective application of a newly-enacted statute may, in some instances, impair obligations of contract, in violation of article I, section 10 of the United States Constitution and article I, section 15 of the State Constitution. However, the Alaska Supreme Court appears to have cut off an impairment of contract argument applicable to retrospective application of a tax amendment in Atlantic Richfield Co. v. State, 705 P.2d 418 (Alaska, 1985). To the argument that the oil and gas corporate income tax then in litigation impaired the obligation of the state's underlying lease contracts, the court concluded that "[the] argument [was] without merit":

. . . No lease provision has been impaired. In entering into the leases the state could not, and did not, contract away its power as a sovereign to tax income earned in the state. Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 102 S.Ct. 894, 71 L.Ed.2d 21 (1982) disposes of this issue:

Contractual arrangements remain subject to subsequent legislation by the presiding sovereign. Even where the contract at issue requires payment of a royalty for a license or franchise issued by the government entity, the government's power to tax remains unless it "has been specifically surrendered in terms which admit of no other reasonable interpretation." St. Louis v. United R. Co., 210 U.S. 266, 280, 28 S.Ct. 630, 634, 52 L.Ed. 1054 (1908).

455 U.S. at 148, 102 S.Ct. at 907, 71 L.Ed.2d at 36 (citations omitted); see also Exxon v. Eagerton, 462

statutes, concluding that retrospective tax legislation is not prohibited by the ex post facto clause. Personal Finance Co. v. United States, 86 F. Supp. 779 (D.Del., 1949). See 16A Am. Jur. 2d secs. 636, 677. Decisions in other state courts have similarly concluded. Parlato v. McCarthy, 69 A.2d 648 (Ct., 1949), Walker v. Commonwealth, 130 S.W.2d 27 (Ky., 1939). The Alaska Supreme Court has not extended application of the state constitutional ex post facto prohibition beyond penal or criminal matters. Danks v. State, 619 P.2d 720 (Alaska, 1980); Creekpaum v. State, 753 P.2d 1139 (Alaska, 1988).

U.S. at 187-94, 103 S.Ct. at 2304 - 2307, 76 L.Ed.2d at 508-12.

705 P.2d 418, at 438.

*

If legislation acts retrospectively, the nature and duration of its retrospective application should be reasonable. The arguments favoring a reasonable retrospective operation arise out of the equal protection and due process clauses of the state and federal constitutions.

Federal equal protection considerations:

State legislation retroactively imposing a tax is not necessarily and certainly invalid under the equal protection clause of the Fourteenth Amendment to the federal constitution. The inquiry to be made is one of whether the retroactivity impairs substantial, vested rights, and is reasonable in the circumstances. As to retroactively imposed new taxes, the courts have been reluctant to find a violation because of the impairment of a vested right. Welch v. Henry, 305 U.S. 134, 83 L.Ed. 87, 59 S.Ct. 121 (1938), rehearing denied 305 U.S. 675, 83 L.Ed. 437, 59 S.Ct. 250 (1938). 3/ Several state courts have agreed. See Garrett

3/ In Welch, the United States Supreme Court concluded that a Wisconsin state statute, enacted in 1935 and operating retrospectively to tax corporate dividends earned in 1933 which, when received, were deductible from gross income, did not violate the equal protection clause. The tax rates applied to the dividends differed from the rates applicable to other types of taxable income. As to the retrospective application of the new tax to dividends that were, when earned, exempt from tax, the court noted that:

The equal protection clause does not preclude the legislature from changing its mind in making an otherwise permissible choice of subjects of taxation. The very fact that the dividends were relieved of tax [in 1933], when the need was less, is basis for the legislative judgment that they should bear some of the added burden when the need is greater.

Freight Lines v. State Tax Commission, 135 P.2d 523, at 526, 527 (Utah, 1943); Colonial Pipeline Co. v. Commonwealth, 145 S.E.2d 227 (Va., 1965), reh. den. (1966), app. dismissed, 384 U.S. 268, 16 L.Ed.2d 523, 86 S.Ct. 1476 (1966). 4/

Numerous retroactive revisions of the federal and Wisconsin revenue laws . . . have imposed taxes on subjects previously untaxed and shifted the burden of old taxes by changes in rates, exemptions, and deductions. It has never been thought that such changes involve a denial of equal protection if the new taxes could have been included in the earlier act when adopted. If some retroactive alteration in the scheme of a tax act is permissible, as is conceded, it seems plain that validity, so far as equal protection is concerned, must be determined, as in the case of any other tax, by ascertaining whether the thing taxed falls within a distinct class which may rationally be treated differently from other classes. If such changes are forbidden in the name of equal protection, legislatures in laying new taxes would be left powerless to rectify to any extent a previous distribution of tax burdens which experience had shown to be inequitable, even though constitutional.

83 L.Ed. 87, at 92.

4/ In Garrett Freight Lines v. State Tax Commission, 135 P.2d 523 (Utah, 1943), the Utah Supreme Court, called upon to determine whether an excise tax levied on the use of diesel motor fuel that was used prior to the date the legislative act became law, found no equal protection violation:

It is well settled that a tax does not necessarily violate the Federal Constitution merely because it contains retroactive features. Milliken v. United States, 283 U.S. 15, 21, 51 S.Ct. 324, 75 L.Ed. 809 [(U.S., 1931)]; Billings v. United States, 232 U.S. 261, 34 S.Ct. 421, 58 L.Ed. 596 [(U.S., 1914)]; Welch v. Henry, 305 U.S. 134, 59 S.Ct. 121, 125, 83 L.Ed. 87 [(U.S., 1938)]

Neither the Federal Constitution nor the Utah

Federal due process considerations:

Retroactive imposition of a tax is not necessarily a violation of the due process clause of the Fourteenth Amendment to the federal constitution. The leading case is Welch, cited earlier, in which the United States Supreme Court determined:

The objection chiefly urged to the taxing statute is that it is a denial of due process of law because in 1935 it imposed a tax on income received in 1933. But a tax is not necessarily unconstitutional because retroactive. Milliken v. United States, 283 U.S. 15, 21, 75 L.Ed. 809, 814, 51 S.Ct. 324 [(1931)], and cases cited. Taxation is neither a penalty imposed on the taxpayer nor a liability which he assumes by contract. It is but a way of apportioning the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burdens. Since no citizen enjoys immunity from that burden, its retroactive imposition does not necessarily infringe due process, and to challenge the present tax it is not enough to point out that the taxable event, the receipt of income, antedated the statute.

83 L.Ed. 87, at 93. But the assertion that due process is not violated is not absolute and, the court has said that

In each case it is necessary to consider the nature of the tax and the circumstances in which it is laid before it can be said that its retroactive application is so harsh and oppressive as to transgress the constitutional limitation.

Id.

Similarly, in Garrett Freight Lines, earlier cited, the Utah Supreme Court determined that the due process clause is not

Constitution has any provision in terms prohibiting retroactive legislation -- excepting that which forbids the enactment of ex post facto laws. [Citations omitted.] That clause relates to criminal and penal matters and does not affect legislation such as the statute here involved. Calder v. Bull, 3 Dall. 386, 390, 1 L.Ed. 648, 1 Kent Commentaries 409; 3 Story on Constitution 212; 18 C.J.S. Constitutional Law, sec. 435, p. 886.

a limitation on the state's ability to retrospectively impose a tax:

Although basing its case upon the due process clause, appellant does not show wherein the tax constitutes any arbitrary and oppressive discrimination except to assert that a tax based upon a transaction consummated prior to passage of the act amounts to a taking of property without due process. It has many times been questioned whether the due process clause constitutes any limitation upon the taxing power. In this connection we quote from Mr. Justice Sutherland of the United States Supreme Court in an opinion upholding the validity of a statute of the State of Washington levying a tax upon the sale of oleomargarine:

Except in rare and special instances, the due process of law clause contained in the Fifth Amendment is not a limitation upon the taxing power conferred upon Congress by the Constitution. * * * And no reason exists for applying a different rule against a state in the case of the Fourteenth Amendment. * * * That clause is applicable to a taxing statute such as the one here assailed only if the act be so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power, but constitutes, in substance and effect, the direct exertion of a different and forbidden power, as, for example, the confiscation of property. * * * Collateral purposes or motives of a Legislature in levying a tax of a kind within the reach of its lawful powers are matters beyond the scope of judicial inquiry. * * * Nor may a tax within the lawful power of a state be judicially stricken down under the due process clause simply because its enforcement may or will result in restricting or even destroying particular occupations or businesses, * * * unless, indeed, as already indicated, its necessary interpretation and effect be such as plainly to demonstrate that the form of taxation was adopted as a mere disguise, under which there was exercised, in reality, another and different power denied by the Federal Constitution to the state.

A. Magnano Co. v. Hamilton, 292 U.S. 40, 54 S.Ct. 599, 601, 78 L.Ed. 1109.

Garrett Freight Lines, 135 P.2d 523, at 527.

Courts have, however, considered retrospective tax legislation unconstitutional as a violation of the due process clause when, as Welch concludes, in light of "the nature of the tax and the circumstances in which it is laid," the legislation is "so harsh and oppressive as to transgress [that] constitutional limitation." Welch v. Henry, 305 U.S. 134, 59 S.Ct. 121, 83 L.Ed. 87, at 93. The question is typically one of the degree of harshness, based upon consideration of factors such as (1) the effect of the retroactive application of legislation amending a tax on a taxpayer's voluntary act that was influenced by the taxpayer's understanding of tax incidence or consequence at the time of that act, especially if the tax to be imposed or amended is "novel," (2) the sufficient certainty of the taxpayer's expectation of money that is jeopardized by the retroactive legislation, (3) the length of the period of the legislation's retrospective application, and (4) the importance of the public purpose to be served by the action. The first three elements are, to some degree, based on the taxpayer's expectations, while the fourth involves a determination of a public interest that necessitated the actual enactment.

Computation and payment of the severance tax is not greatly determinative of taxpayers' taxable activities that generate the tax liability, nor does this proposed legislation seem to strike at activities of a taxpayer that reasonably relied on the current severance tax rates before this bill proposed amendment of that tax. It is the length of the period of the legislation's retrospective application and the importance of the public purpose to be served that need be most carefully considered.

The state's strongest case would be one that suggests that the purpose of the retroactive provision was remedial and that its impact was limited to the shortest period practicable. One benchmark date that might serve that purpose is July 1, 1988 (start of the current fiscal year, if, indeed, the principal purpose of the retroactive application is to meet revenue shortfalls in this fiscal year); a number of cases would sustain the argument that the legislation may be retrospective over the calendar or fiscal period of its enactment. An alternative--riskier because of the length of the period over which that retroactivity would reach back, but perhaps stronger from the point of view of public policy considerations--would be that date in 1987 when the ten-year exemption from the ELF's operation expired

and the economic limit factor became applicable to the state's major producing fields. But this would probably be justified only if the state could demonstrate that the conditions that suggested in 1981 that adoption of the ELF would benefit production are now shown to have been inaccurate or incorrect.

State due process and equal protection considerations:

Nothing in my quick research suggested that an analysis under the state's "due process" clause, article I, section 7, would reach a conclusion at variance with the decisions based on the comparable federal provision discussed above.

State "equal protection" analysis differs, though the conclusion reached under that analysis is consistent with the conclusions reached under the analysis applicable to the federal provisions. In State v. Erickson, 574 P.2d 1 (Alaska, 1976), the court established a "single test" approach for state-constitution based equal protection analysis, essentially requiring that the court (1) ascertain the purposes of the legislation to determine whether they are legitimate; (2) determine whether the means chosen to accomplish the objectives actually do so; and (3) balance the importance of the state's interest against the constitutional right involved. The state has plenary authority to tax. Assuming an adequate record--and the April, 1988, "ELF Policy Perspective" document may be sufficient--the ELF adjustments now proposed, adding to tax liability on the major producing fields that are most profitable but continuing or reducing rates on marginally producing fields, seems to bear a strong correlation to the state's efforts to impose a tax burden on an oil field's production that is consistent with the field's economics. By that analysis, if the retrospective application of the change is reasonable, the court should reject any state constitutional equal protection-based claim.

II

IS THERE A NEED FOR A SEVERABILITY CLAUSE?

A severability clause is not needed, and one has not been included in either draft. In the absence of a severability clause, you may rely on AS 01.10.030.

III

TO THE EXTENT THAT THE BILL MAKES A RETROACTIVE TAX REDUCTION, MAY THE LEGISLATURE PROVIDE FOR THAT TAX