ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
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act was passed about two cases were filed per month (Attachment B). By 1982 law suits diminished to about one every two months. The article reports that the act stimulates settlements prior to court proceedings.

New Jersey

The New Jersey statute permitting citizen environmental law suits was recently amended. During 1990, a cap on the amount of attorney fees that may be collected was raised from $10,000 to $50,000 for citizen suits, and the cap on suits initiated by governments were unlimited. Charles Licata, assistant environmental prosecutor, estimated that about two citizen suits have been initiated each month since amendments to the statute became effective last July. The law requires that a 60-day notice be given before suits are initiated. State agencies often negotiate a solution to the problem. If no settlement is reached after the 60-day notice period, a citizen may initiate action through the courts. Mr. Licata is not aware of any suits being dismissed as frivolous.

South Dakota

Roxanne Giedd, an assistant attorney general, said that citizen suit provisions permit the state to file enforcement action on behalf of a citizen. The provisions also permit citizens to file suits directly against a polluter. Ms. Giedd said that citizens file about two cases per year against polluters and request state action to mitigate pollution about 40 times per year. State involvement usually results in some action taken by the polluter to resolve the problem. Ms. Giedd did not know of any instances where cases were dismissed as frivolous.

Wyoming

Steve Jones, senior assistant attorney general and head of the environmental section, said that he is aware of only one instance where someone has used Wyoming's citizen lawsuit statute. The statute, WS 35-11-902, permits individuals "having an interest which is or may be affected" to commence a civil action against the state government for failing to enforce the Environmental Quality Act or against any private party that violates provisions of the act. The one law suit Mr. Jones was aware of was dismissed because the plaintiff did not comply with the required 60-day waiting period before initiating a law suit.

Conclusion

Statutory provisions permitting citizens to sue polluters vary among the states. Some states require that the state bring action on behalf of the

individual. Other states permit citizens to initiate law suits on behalf of themselves or on behalf of the state. While some states require citizens to wait a specified number of days before filing a suit, other states permit immediate filings.

State officials we contacted reported that citizen law suit legislation has been used less than initially expected. Government agencies tend to use such statutes as often or more often than citizens. Because of the costs associated with litigation, many polluters settle out-of-court. Therefore, environmental law suit legislation may serve to reduce the number of court cases rather than bog down the court system with an excessive number of civil cases. No one we contacted thought that frivolous law suits were a problem. Few states track the number of court cases initiated in association with citizen law suit statutes, but many officials provided rough estimates. Older laws permitting citizens and government agencies to initiate law suits against polluters tend to be used less often by the states now that newer, more specific laws have been adopted.

Please contact this office if we be of additional assistance.

Attachments

Alaska Oil Spill Commission
Recommendation 13

Alaska's Surface Coal Mining Act citizen suit provisions

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

Alaska Oil Spill Commission
Recommendation 13

Recommendation 13
Enhanced regulatory strength

The state should expand and exercise its regulatory authority over environmental safety. Measures voluntarily adopted by industry should be backed up by state regulation. Federal technical standards and safety requirements should not preclude more stringent state standards.

The State of Alaska currently does not exercise its full power under the U.S. Constitution to regulate environmental safety. Recent congressional enactments and judicial decisions make it clear that Congress does not intend that states should hesitate to protect local environments with greater stringency than the minimums established under federal law. The state should have the power, for example, to prohibit vessels from entering or departing Alaska ports and waters under unsafe circumstances.

Regulatory effectiveness also should be improved through assessment of administrative and civil penalties to encourage prevention, no preen-

forcement review of compliance orders, environmental audits, stronger criminal penalties, and statutory provision for citizen lawsuits. Private voluntary prevention measures, though commendable, are often ignored as memories fade unless backed up by state regulations.

Alaska's Surface Coal Mining Act
citizen suit provisions

tion of persons engaging in or directly responsible for blasting or the use of explosives in surface coal mining operations. (§ 1 ch 29 SLA 1982)

Revisor's notes. — Formerly AS 41.45.940. Renumbered in 1983.

Sec. 27.21.950. Civil actions. (a) Except as provided in (b) of this section, a person who is or may be adversely affected by a failure to comply with this chapter may commence a civil action in the superior court on the person's own behalf and compel compliance with this chapter against

(1) the commissioner, if the commissioner has failed to perform a nondiscretionary act or duty;

(2) an instrumentality or agency of the state which is in violation of this chapter or a regulation adopted, or an order or permit issued, under this chapter; or

(3) a person who is in violation of a regulation adopted or an order or permit issued under this chapter.

(b) A person may not commence an action under (a)(1) of this section until 60 days after giving the commissioner written notice of the intended action in the manner prescribed by regulations adopted by the commissioner, except that an action may be brought immediately after the notice if the commissioner's failure to perform constitutes an imminent threat to the health or safety of the person or would immediately affect a legal interest of the person.

(c) A person may not commence an action under (a)(2) or (a)(3) of this section.

(1) until 60 days after the plaintiff has given notice in writing of the violation to the commissioner and to the agency, instrumentality, or alleged violator;

(2) if the state is diligently prosecuting a civil action in a state or federal court to require compliance with the provisions of this chapter or a regulation adopted or an order or permit issued under this chapter; however, any person may intervene in that civil action as a matter of right.

(d) A person may commence an action under this section only in the judicial district in which the surface coal mining operation is located.

(e) Nothing in this section restricts any right that a person or class of persons may have under statute or common law to seek enforcement of any of the provisions of this chapter and the regulations adopted under it, or to seek any other relief, including relief against the commissioner.

(f) A person who is injured or whose property is damaged by the violation by a permittee of a regulation adopted or an order or permit issued under this chapter may bring an action for damages, including

reasonable attorney fees and expert witness fees, only in the judicial district in which the permittee's operation is located. Nothing in this subsection affects the rights established by or limits imposed under AS 23.30.

(g) In an action under this section, the commissioner may intervene as a matter of right. (§ 1 ch 29 SLA 1982)

Revisor's notes. — Formerly AS 41.45.950. Renumbered in 1983.

Sec. 27.21.960. Inconsistencies with federal act. (a) A provision of this chapter that is inconsistent with the provisions of the Surface Mining Control and Reclamation Act of 1977 as determined by the Secretary of the United States Department of the Interior under 30 U.S.C. 1255(b) is invalid from the date of the secretary's determination.

(b) If a provision of the Surface Mining Control and Reclamation Act of 1977 or of the regulations promulgated under that Act by the Secretary of the United States Department of the Interior is deleted, amended, set aside, enjoined, or declared invalid by Congress, the secretary, or in a final, unappealable judgment of a court of competent jurisdiction, then the commissioner shall review the changes made and make an appropriate recommendation as to whether changes in this chapter or the regulations adopted under it should be made. (§ 1 ch 29 SLA 1982)

Revisor's notes. — Formerly AS 41.45.960. Renumbered in 1983.

Sec. 27.21.970. Relationship to other laws. (a) Nothing in this chapter abrogates or modifies the power of a state agency to enforce laws and regulations within its jurisdiction, except as specifically stated in this chapter and regulations adopted under it. The commissioner shall coordinate permitting procedures to prevent unnecessary duplication in permit review.

(b) Surface coal mining operations for coal which has been or is conveyed out of federal ownership must meet the requirements of this chapter. (§ 1 ch 29 SLA 1982)

Revisor's notes. — Formerly AS 41.45.970. Renumbered in 1983.

Editor's notes. — Section 2, ch. 29, SLA 1982, purported to add a subsection (c). Section 7 of ch. 29 provided that the amendment take effect on the effective date of a version of Senate Bill No. 84; however, Senate Bill No. 84 did not pass the House of Representatives, and consequently, the amendment made by § 2 of ch. 29 never took effect.

Sec. 27.21.975. Severability. If any provision of this chapter or the applicability of it to any person or circumstances is held invalid, the remainder of this chapter and the application of that provision to other persons or circumstances is not affected. (§ 1 ch 29 SLA 1982)

Alaska Oil & Gas Commission Statutes
citizen suit provisions

randum, the person is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $5,000, or by imprisonment in jail for not more than six months, or by both.

(c) A person who knowingly aids or abets another person in the violation of any provision of this chapter, or a regulation or order of the commission adopted under this chapter is subject to the same penalty as that prescribed by this chapter for the violation by the other person.

(d) The penalties provided in this section are recoverable by suit filed by the attorney general in the name and on behalf of the commission in the superior court of the judicial district in which the defendant resides or in which any defendant resides, if there is more than one defendant, or in the superior court of the judicial district in which the violation occurs. The payment of a penalty does not relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of the violation.

(e) The commission may impose a penalty payment on every 1,000 cubic feet of natural gas flared, vented or otherwise determined to be waste as defined in AS 31.05.170. The penalty shall be the fair market value of the natural gas at the point of waste. (§ 12 ch 40 SLA 1955; am § 1 ch 195 SLA 1968)

Collateral references. — 58 C.J.S. Mines and Minerals § 241.

Sec. 31.05.160. Injunctive relief. (a) Whenever it appears that a person is violating or threatening to violate any provision of this chapter, or any regulation or order of the commission, the commission shall bring suit against that person in the superior court of the judicial district where the violation occurs or is threatened, to restrain the person from continuing the violation or from carrying out the threat of violation. In the suit, the court shall have jurisdiction to grant to the commission, without bond or otherwise undertaking, such prohibitory and mandatory injunctions as the facts warrant.

(b) If the commission fails to bring suit to enjoin a violation or threatened violation within 10 days after receipt of written request to do so by a person who is or will be adversely affected by the violation, the person making the request may bring suit to restrain the violation or threatened violation in the court in which the commission may bring suit. If the court finds that injunctive relief should be granted, the commission shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the commission had at all times been the plaintiff. (§ 13 ch 40 SLA 1955)

Sec. 31.05.170. Definitions. In this chapter, unless the context otherwise requires

(1) "and" includes "or" and "or" includes "and";

(2) "correlative rights" mean the opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas, or both, in the pool; being an amount, so far as can be practically determined, and so far as can practicably be obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas, or both under the property bears to the total recoverable oil or gas or both in the pool, and for such purposes to use the owner's just and equitable share of the reservoir energy;

(3) "commission" means the Alaska Oil and Gas Conservation Commission;

(4) "cubic foot" of natural gas means the volume of gas contained in one cubic foot of space measured at a pressure base of 14.65 pounds per square inch absolute and a temperature base of 60 degrees Fahrenheit;

(5) "field" means a general area which is underlain or appears to be underlain by at least one pool, and includes the underground reservoir containing oil or gas and the words "pool" and "field" mean the same thing when only one underground reservoir is involved, but "field" unlike "pool" may relate to two or more pools;

(6) "gas" includes all natural gas and all hydrocarbons produced at the wellhead not defined as oil;

(7) "landowner" means the owner of the subsurface estate of the tract affected;

(8) "oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas;

(9) "owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil and gas the person produces from a pool for that person and others;

(10) "person" includes a natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes a department, agency or instrumentality of the state or a governmental subdivision of the state;

(11) "pool" means an underground reservoir containing, or appearing to contain, a common accumulation of oil or gas. Each zone of a general structure which is completely separated from any other zone in the structure is covered by the term "pool";

(12) "producer" means the owner of a well or wells capable of producing oil or gas or both;

New Jersey Statutes

New Jersey

CHAPTER 35A. ENVIRONMENTAL RIGHTS

Law Review Commentaries

A thumbnail sketch of the Environmental Rights Act. Lewis Goldshore (Winter 1975) No. 70 N.J State Bar J. 18.

Analysis of environmental legislation from 1970 to 1975 in New Jersey. Lewis Goldshore (Summer 1976) 1 Seton Hall Legis J. 1.

Environmental protection: Perspective 1978. Lewis Goldshore (Fall 1978) No. 86 N.J. State Bar J. 44.

2A:35A-1. Short title

This act shall be known and may be cited as the "Environmental Rights Act."

L.1974, c. 169, § 1, eff. Dec. 9, 1974.

Title of Act:

An Act concerning the commencement of actions for the protection of the environment and the public interest therein. L.1974, c. 169.

Administrative Code References

Environmental health standards of administrative procedure, see N.J.A.C. 7:1H-2.1 et seq.

Law Review Commentaries

1985 environmental protection case law (second in a series). Lewis Goldshore and Marsha Wolf, 117 N.J.L.J. 375 (1986).

1985 environmental protection legislation (first in a series). Lewis Goldshore and Marsha Wolf, 117 N.J.L.J. 335 (1986).

Notes of Decisions

1. Jurisdiction

Issue of whether United States Army Corps of Engineers had subject matter jurisdiction over validity of water diversion project was not ripe for adjudication, in light of fact that engineers were being selected to engage in feasibility study to help establish specifics of construction for the project; it would be only after such information was gathered that submission could be made to Army Corps so that it might determine whether it should assert jurisdiction. Application of North Jersey Dist. Water Supply Commission, 175 N.J. Super. 167, 417 A.2d 1095 (A.D.1980).

2A:35A-2. Legislative findings and determinations

The Legislature finds and determines that the integrity of the State's environment is continually threatened by pollution, impairment and destruction, that every person has a substantial interest in minimizing this condition, and that it is therefore in the public interest to enable ready access to the courts for the remedy of such abuses.

L.1974, c. 169, § 2, eff. Dec. 9, 1974.

Notes of Decisions

1. Construction and application

Policy of protecting state's environment from pollution, impairment and destruction is properly effectuated through the zoning power and may influence local zoning decisions. Lusardi v. Curtis Point Property Owners Ass'n, 86 N.J. 217, 430 A.2d 881 (1981).

Section 2A:35A-4 granting standing to any person to maintain action to enforce or restrain the violation of any statute, regulation or ordinance designed to prevent or minimize impairment or destruction of the environment is limited to destruction of the natural environment as opposed to destruction of historical buildings. Hoboken Environment Committee, Inc. v. German Seaman's Mission of New York, 161 N.J.Super. 256, 391 A.2d 577 (Ch.1978).

2A:35A-3. Definitions

For the purposes of this act, the following words and phrases shall have the following meanings:

a. "Person" includes corporations, companies, associations, societies, firms, partnerships and joint stock companies, individuals, the State, any political subdivision of the State and any agency or instrumentality of the State or of any political subdivision of the State.

b. "Pollution, impairment or destruction of the environment" means any actual pollution, impairment or destruction to any of the natural resources of the State or parts thereof. It shall include, but not be limited to, air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper disposal of refuse, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other water resources, destruction of seashores, dunes, wetlands, open spaces, natural areas, parks or historic areas.

L.1974, c. 169, § 3, eff. Dec. 9, 1974.

Law Review Commentaries

Environmental protection: Perspective 1978. Lewis Goldshore (Fall 1978) No. 85 N.J. State Bar J. 44.

Library References

Words and Phrases (Perm.Ed.)

2A:35A-4. Actions to enforce laws on pollution, impairment or destruction of environment, or to protect environment; dismissal of frivolous actions

a. Any person may maintain an action in a court of competent jurisdiction against any other person to enforce, or to restrain the violation of, any statute, regulation or ordinance which is designed to prevent or minimize pollution, impairment or destruction of the environment.

b. Except in those instances where the conduct complained of constitutes a violation of a statute, regulation or ordinance which establishes a more specific standard for the control of pollution, impairment or destruction of the environment, any person may maintain an action in any court of competent jurisdiction for declaratory and equitable relief against any other person for the protection of the environment, or the interest of the public therein, from pollution, impairment or destruction.

c. The court may, on the motion of any party, or on its own motion, dismiss any action brought pursuant to this act which on its face appears to be patently frivolous, harassing or wholly lacking in merit.

L.1974, c. 169, § 4, eff. Dec. 9, 1974.

Library References

Health and Environment ⇐25.5.
Injunction ⇐114(1).
C.J.S. Health and Environment §§ 61 to 66, 69, 71 to 73, 78 to 80, 82 to 86, 88 to 90, 94, 104, 110, 115 to 126, 128, 129, 132, 133, 135, 137 to 140, 142, 144 to 153
C.J.S. Injunctions § 173 et seq.

Notes of Decisions

1. Construction and application

Action plan applied as "a more specific standard" to interstate highway construction project

HOUSE BILL 29
COMMENTS BEFORE THE HOUSE JUDICIARY COMMITTEE
ROBERT K. REGES JR.
ON BEHALF OF THE ALASKA
DEPARTMENT OF LAW
AND
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

FEBRUARY 14, 1992

We are not opposed to the concept of providing a cause of action to citizens so that they may enforce chapters 46.03., 46.04 and 46.09. However, we cannot support the draft of HB 29 which is before you now. 1\ From our perspective, the specific shortcomings of that bill are as follows:

DAMAGES AGAINST THE STATE

Some commentators have suggested that the bill is not designed to allow a citizen to secure damages (money) from the state. However, section 2 of the bill proclaims, in pertinent part:

> [A] person who has an interest that is or may be adversely affected by the violation may file a civil action against... the state or an agency of the state..

Such a suit would be a suit under (d)(1) of AS 46.03.870. The bill goes on to say:

> In an action under (d)(1) of this section, the court may ...order other relief.

This is found in the proposed AS 46.03.870(f).

It is hard to imagine a broader authorization. Clearly,

1\ 7-LS0295\S, CS for Sponsor Substitute for House Bill no. 29 (Resources), Offered 5/20/91

this language would allow a plaintiff to recover damages against the state whenever the state, or an agency of the state is alleged to be in violation of a law, regulation, permit, plan, or order established under AS 46.03, 46.04 or 46.09. This is not in the best interest of any government, particularly an "owner state."

Environmental laws usually hold both the owner and operator liable for a violation. The state is sometimes liable for the actions of persons who are conducting operations on state lands. In the past, concepts of sovereign immunity and other legal barriers have held people back from pursuing the state for this indirect, passive liability. However, under this bill the state becomes an easy target.

The state is a deep pocket. There are no problems establishing jurisdiction over the state for the type of actions at issue here. There is no chance that the state will file bankruptcy or will be able to hide its assets in a series of subsidiaries. For all these reasons, it will be easier to secure relief from the state than it will be to secure relief from the operator who actually caused the damage.

This waiver of sovereign immunity; this cause of action created by the bill, is simply too broad. Perhaps it is in the public's interest to allow injunctions against an owner state. It is not in the public's interest to allow the levy of money damages against the state. Accordingly, we object to the phrase "and order other relief" now found on page 2, line 9.

PENALTIES ACCRUING TO PRIVATE PARTIES

At present the bill also allows a court to "assess civil penalties under AS 46.03.760." 2\ On its face, this would appear to allow private parties to secure penalties.

We note that AS 46.03.760 says that a person who violates state environmental laws "is liable, in a civil action, to the state..." It is our understanding that the sponsors of the bill intended that this language in 760 would prohibit the accrual of any penalties to any person except the state. That is why the bill allows for penalties "under AS 46.03.760." This intent is not clear on the face of HB 29. We recommend clarification, such as:

> In an action under (d)(1) of this section, the court may [ASSESS] award civil penalties to the state, irrespective of whether the state is a party to the action, under AS 46.03.760,...

CLOSED SITES AND PAST VIOLATIONS

Some commentators have stated that the bill is not designed to address completely closed sites or entirely past violations. We feel that it fails to accomplish this purpose. At present, a cause of action is provided if the violation is:

> ...continuing, intermittent, or likely to recur,...

The concept of a continuing nuisance is well established in caselaw. 3\ So long as a hazardous substance leaks from a

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2\ Page 2, line 8, which is the proposed subsection AS 46.03.870(f).

3\ E.g. United States v. Price, 523 F.Supp. 1055, 1071(D.N.J. 1981); CPC International, Inc. v. Aerojet-General Corp., 759 F.Supp. 1269, 1277 - 1278 (W.D. Mich. 1991).

buried container, so long as a pollutant migrates from one media to another, the violation is continuing. In order to overcome those precedents; in order to limit this bill to future violations, courts will have to take a narrow reading of terms that define a violation. However, narrow interpretations of words such as "discharge", "disposal", "release" and other synonyms should not be encouraged. Does the violation of our oil spill laws end when the vessel stops releasing oil into the environment or does the "discharge" continue when oil moves from water to beach? We would certainly want to argue the latter. Accordingly, we suggest that the language be changed to expressly state that it does not provide a cause of action for past violations and we further recommend that a definition of "past violation" be crafted to insure that the scope of the bill is not broader than intended.

UNEVEN PLAYING FIELD AS TO COSTS

As written, the bill encourages litigation and discourages prelitigation negotiations. If a person brings a legitimate concern to the attention of ADEC and the matter is resolved without resort to litigation, the person receives no fee for the time spent in discussion or negotiation. On the other hand, if a person files a complaint, he or she may use monies received in settlement to pay attorney's fees and costs.4\ This provides an incentive to litigate, rather than attempt to resolve disputes short of litigation.

In the general scheme of things this incentive is offset

4\ See proposed AS 46.03.870(i).

by the risk of having to pay a defendant's fees if the defendant prevails. 5\ However, in Alaska this disincentive has been eliminated whenever the plaintiff can establish that he or she is a "public interest litigant." 6\ It is forseeable and fair to expect that persons who are able to use HB 29 will almost always qualify as public interest litigants. Thus, they can march into court with impunity afforded by caselaw, wielding the causes of action afforded by this bill. The plaintiff risks nothing. Only the defendant is at risk.

This combination of HB 29 and the public interest litigant exception to Civil Rule 82 creates an unlevel playing field. This combination flies in the face of the so-called "American rule" whereby each party bears his or her own costs of litigating. That rule, expressly recognized by the United States Supreme Court in a case that arose in Alaska, 7\ is still the best tool for avoiding nuisance suits. While our courts have seen fit to emasculate the rule with "public interest litigant" exceptions, this legislature -- in the interest of fairness -- should not tip the balance any further in favor of such litigants.

One solution would be to remove the phrase "or for reimbursement of legal fees and costs" from proposed subsection AS

5\ Alaska Rules of Civil Procedure, Rule 82.

6\ See Sisters of Providence in Washington, Inc. v. Dept. of Health and Social Services, 648 P.2d 970, 979 (S.Ct.Ak. 1982)(attorneys fees cannot be awarded against a public interest litigant); Alaska Survival v. Alaska Dept. of Natural Resources, 720 P.2d 1281, 1292 (S.Ct.Ak. 1986)(a public interest litigant is entitled to full, reasonable fees, not just partial fees).

7\ Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1975).

46.03.870(i). 8\ That way persons settling an action would secure no personal benefit. Benefits would only go to the public purposes purportedly represented. This should remove some of the incentive to bring a suit since the plaintiff will know that most cases settle and, in settlement, he or she will get no fees. Of course, we recognize the downside of this proposition; once a suit is commenced, the motivation to settle is reduced.

Accordingly, we more strongly recommend another solution. State that the public litigant exception does not apply to suits brought under this section. That would eliminate any tendency for plaintiffs to abuse the cause of action provided by the bill.

WINDFALL TO ENVIRONMENTAL GROUPS

Some commentators have said that this bill is not designed to provide a windfall to public interest groups. If that is true; if the purpose of the bill is really to bring about environmental improvement and not to line the pockets of activists, why does the bill allow settlement monies to be used for any purpose by 501(c)(3) organizations? 9\ Most public interest groups fall into this category. If the bill is really designed as it has been touted, this reference should be deleted. Otherwise the bill provides activists with a back door into the coffers of the state and the regulated community.

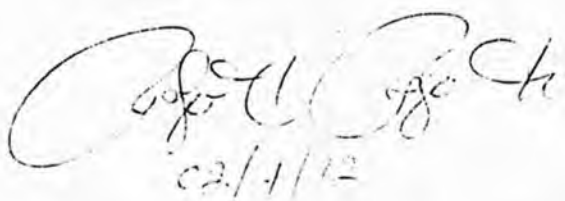
CONCLUSION

8\ Page 2, line 31 and page 3, line 1 of the bill.

9\ Page 2, line 31 of the bill.

In the environmental arena citizen suits can provide a useful balance to the tension existing between regulators and the regulated community. And, as testimony has revealed, there have been isolated instances where government was unable to resolve environmental concerns as expeditiously as prudence would have dictated. So, there probably is a legitimate basis for allowing third parties to bring an action for injunction or in the nature of mandamus. This is what most other federal and state citizen suit provisions provide.

But this bill goes too far. Unless and until it is recrafted in the manner set forth herein, neither the department of law nor the department of environmental conservation can support it. Thank you.



Alaska Health Project

Information and advocacy on occupational and environmental health.
1818 W. Northern Lights Blvd., Suite 103, Anchorage, Alaska 99517
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January 31, 1992

Representative Dave Donley
Chair, Judiciary Committee
House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Representative Donley:

Please include this letter as testimony for the hearing scheduled for February 3 in the Judiciary Committee on HB 29.

The Alaska Health Project is a private, nonprofit organization that has been providing information and services regarding occupational and environmental health to Alaskan residents, workers, and small businesses since 1980.

The provisions that HB-29 proposes to include in our state statutes are provisions that have existed in most federal environmental statutes for many years. Therefore, the concepts in HB 29 are not new and have been implemented at the federal level for quite some time.

A study conducted recently in the Nikiski, Alaska, area investigated the record of environmental law compliance of four major industrial facilities from the 1950's until 1989. The findings were that the best compliance was with the laws that were solely under federal jurisdiction (such as the Clean Water Act.) In the cases where the state is authorized to enforce a federal environmental law, but the federal agency retains oversight, (such as the Clean Air Act), the compliance record was not as good, and limited to cases where the federal agency had been involved in an enforcement action. For the state laws that do not have federal oversight, (such as the solid waste, waste water and waste water sludge regulations) researchers found the worst record, including noncompliance and lack of enforcement. (A copy of this study is included with this letter.)

There could be several explanations for the federal laws having better compliance than the state laws. One major difference between the federal environmental laws and the state environmental laws is the inclusion of citizen suit provisions at

reprinted from: Proceedings of the First International Symposium on Oil and Gas Exploration and Production Waste Management Practices.
U.S. Environmental Protection Agency. September 1990.

AN ENVIRONMENTAL COMPLIANCE AUDIT OF FOUR OIL AND GAS FACILITIES IN KENAI, ALASKA

Reller, C.
entropy - senior scientist
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Introduction

Nikiski, a small Alaska town on the Kenai peninsula, 100 km SW of Anchorage, hosts four oil and gas facilities on less than one square mile, including the world's largest ammonia/urea plant, North America's largest exporter of natural gas, and two other petroleum refineries. Located on a deep water port of Cook Inlet, Nikiski is adjacent to 21 oil and gas fields. Along the ice affected coast 15 platforms extract petroleum. Across Cook Inlet is Marathon's Trading Bay facility, the largest oil production facility in North America. Also on the west shore is the Drift River crude oil storage terminal, located in a flood plain dramatically affected by Mt. Redoubt, an active volcano.

Prior to this study there were no comprehensive evaluations of pollution discharges, no compiled records of environmental violations, nor an analyses of enforcement actions for the Kenai industries. The Nikiski facilities selected for investigation because of their proximity to human habitation and potential to pollute. Further research is needed regarding platforms, facilities on the western shore of Cook Inlet, and drilling mud pits.

Research covered a period from the late 1950's to January 1989. More recent events may add to the results but would not affect the conclusions. The four facilities studied are the Unocal-Mitsubishi ammonia/urea plant, Phillips-Marathon-USX natural gas refinery, Tesoro Alaska refinery, and Chevron USA refinery. At Unocal-Mitsubishi over 3 billion pounds of nitrogen based chemicals are produced annually - equal to 2% of the world's annual nitrogen fixing by soil bacteria. Contiguous to the ammonia/urea plant are three refineries that produce and export 2.6 billion gallons a year of gasoline, jet fuel, fuel oils, asphalt, and natural gas. If the refineries combined annual production capacity was placed in barrels and put end-to-end they would encircle the globe with enough left over to reach from Prudhoe Bay to San Francisco.

Method

The research method used is historical in nature. Agency records were systemically collected and evaluated in order to understand past events and analyze trends in environmental regulation. Primary sources of information are inspection reports, permits, enforcement orders, interviews, facility self reporting, letters, and memos. Approximately 5,000 copies were made from a total of 20,000 reviewed pages. Alaska Department of Environmental Conservation (DEC) records were searched in local, regional, and central offices of Kenai, Anchorage, and Juneau. If information was missing or a lack of data was important to document requests were made in writing in accordance with Alaska Public Records Act. Federal records are predominately kept in Seattle and were obtained through the Freedom of Information Act.

Results

The data is organized according to receptor media; that is, air, water, and soils. It is through these media that adverse effects of pollution are transferred between each other and to living things. The total pollution released into each media is listed first then major violations followed by agency responses.

AIR POLLUTION

- RELEASES

The four Nikiski facilities release 67 million pounds of air pollutants annually (Table 1). If these pollutants were individually and uniformly distributed across the state National Air Quality Standards would be exceeded to a height of 250 feet.

MAJOR VIOLATIONS

Unocal-Mitsubishi operates in almost daily violation of Clean Air Act limitations on suspended particulates (1). Major spills of ammonia, as much as 800,000 pounds at one time (2) occur on a regular basis, usually two or three times a year (3). Off site air monitoring instruments have exceeded maximum readings for six hours at a time (4). A major air release occurred during unpermitted hazardous waste treatment, when uncontrolled gasses escaped, (5) spreading across public roads and disrupting industrial operations; including the adjacent liquified natural gas storage facility.

Tesoro refinery hydrocrackers exceed nitrogen oxide standards and Tesoro recently built new sources of air pollution without prior authorization, a violation of the Clean Air Act (6).

At the Phillips-Marathon-USX refinery waste oil and gasses were dumped into a flare pit and burned in violation of air quality standards for a period of 18 years (7).

TABLE 1

Annual Air Pollution from the Nikiski Oil and Gas Industry (8)

pounds	pollutant
30,000,000	ammonia
19,000,000	nitrogen oxides*
5,400,000	carbon monoxide*
4,300,000	hydrocarbons
3,400,000	methanol
2,400,000	particulates*
1,000,000	sulfur oxides*
1,000,000	hazardous waste-arsenic
73,000	benzene
45,000	xylenes
32,000	chloroform
31,000	toluene
18,000	1,1,1 trichloroethane
17,000	cyclohexane
13,000	ethylbenzene
4,000	formaldehyde
500	naphthalene
100	lead*
34	ethylene dichloride
22	polycyclic aromatics
5	ethylene dibromide
2	cadmium
1	chromium
67,000,000	

(* Clean Air Act permitted releases).

AGENCY RESPONSE

In response to over 15 years of violations at Unocal-Mitsubishi, DEC has done the following: stopped recording violations (9), requested EPA not to issue an enforcement letter to Unocal-Mitsubishi (10), promised to refrain from fines or legal action for past violations (11), amended state air quality regulations thereby creating less stringent standards (12), and allowed Unocal-Mitsubishi to operate with an expired permit.

In response to violations at Tesoro DEC reissued an air permit.

In response to over 18 years of violations at Phillips-Marathon-USX, DEC issued a Notice of Violation.

WATER POLLUTION

RELEASES

The Nikiski facilities release 6.5 million pounds of waste into Cook Inlet each year (Table 2), which does not include the weight of polluted water.

TABLE 2

Annual Surface Water Pollution from the Nikiski Oil and Gas Industry (13)

pounds	pollutant
3,300,000	nitrogen compounds*
2,400,000	sulfuric acid*
690,000	unidentified suspended solids*
140,000	oil and grease*
18,000	zinc*
7,000	ethylene glycol
2,500	1,1,1 trichloroethane
970	chromium*
460	phenols*
550	sulfide*
370	polynuclear aromatics
200	cyclohexane
200	xylenes
130	benzene
60	toluene
7	ethylbenzene
7	arsenic
7	cadmium
4	nickel
4	cyanide
6,500,000	

(* Clean Water Act permitted releases).

MAJOR VIOLATIONS

The ammonia/urea plant was formerly owned by "Colliers" at which time self monitoring reports were intentionally falsified (14). More recently Unocal-Mitsubishi dumped hazardous waste containing

methanol and formaldehyde into Cook Inlet in violation of RCRA and the Clean Water Act (15). Unocal-Mitsubishi allowed the out fall diffuser to become plugged, then cut the diffuser off, thus negating the permit mixing zone calculations (16).

Over 200 unpermitted underground injection wells are used to dump water contaminated with ammonia and arsenic (17). A Unocal underground injection well exceeded pressure limits and injected prohibited waste, violations of the Safe Drinking Water Act permit (18).

Tesoro did not meet schedules for effluent bioassays.

Phillips-Marathon-USX uses unpermitted shallow underground injection wells to dump contaminated water. Also the facility discharges waste water into Cook Inlet without a Clean Water Act permit.

AGENCY RESPONSE

After nearly a decade and a half of documented ground water pollution by Unocal-Mitsubishi neither state nor federal authorities have taken enforcement actions.

When Tesoro production capacity increased, EPA and DEC simply allowed total pollution to increased (19) despite the fact bioassay studies have shown the effluent so toxic that all species subjected to a 1:10 dilution were killed and even a 3% mixture severely affected reproduction (20).

SOLID WASTE

RELEASES

Unocal-Mitsubishi disposed of 70,000 pounds of drummed hazardous waste by giving it to the City of Kenai for road oiling (21,22). No records of manifests, storage facility permits, or other required RCRA reports were found in the public record.

Each day Unocal-Mitsubishi dumps 10,000 pounds of metal sludges containing high levels of zinc (250,000 ppm), arsenic (3,300 ppm), copper (25,500 ppm) and lesser amounts of chromium, nickel, lead, and cadmium, into gravel pits (23,24,25). In addition, Unocal-Mitsubishi generates one half million pounds of catalyst each year. Used catalysts are dumped on the ground, used for fill, and buried (26). Laboratory testing in 1983 indicated used catalysts are hazardous waste due to high levels of extractable chromium. Unocal-Mitsubishi repeated laboratory analyses until the catalyst passed EP-tox tests. Intra-laboratory differences of more than 100, between three separate labs were not resolved (27), and the catalyst waste was declared non hazardous.

In a single year as much as 640,000 pounds of hazardous waste were spilled at the ammonia/urea plant (28). Between 1983 and 1985 there were seven reported major hazardous waste spills (29). Halogenated solvents are disposed in waste oil (30, 31), a practice clearly prohibited by the RCRA.

Tesoro generates 10,000,000 pounds of elemental sulfur each year which is dumped on the ground without a permit.

Phillips-Marathon-USX filter charcoal contaminated with arsenic and mercury (32) is used for disposal, masquerading as "road oiling dust control", rather than managed as solid waste. The most recent disposal involved 22,000 pounds of contaminated charcoal. Waste oil, possibly mixed with RCRA listed hazardous waste, is dumped on the ground with the intent of disposal (33).

Chevron dumps "oil filter waste" on roads for the purpose of disposal (34). In the past Chevron dumped hazardous waste in unpermitted pits on Chevron property (35, 36).

MAJOR VIOLATIONS

Unocal-Mitsubishi ignored RCRA regulations and stored over 140,000 pounds of hazardous waste in violation of 40 CFR 270.71. Further mismanagement resulted in unreported spillage from bulldozers knocking over drums of hazardous waste (37). Hazardous waste tanks (190,000 pounds capacity) do not have RCRA tank permits (38).

Tesoro dumped hazardous waste into unlined pits dug in porous soils (39), spread it on public roads (40), illegally stored and shipped hazardous waste (41), and hazardous waste solids were allegedly recycled for disposal pits walls (42).

Chevron adds hazardous waste to consumer products (43). A disposal method not approved by RCRA; because, solids derived from listed hazardous waste are not eligible for recycling (40 CFR 261.1).

AGENCY RESPONSE

EPA cited Unocal-Mitsubishi for violating the same RCRA storage regulation as many as three times in only four months (44).

At Tesoro, EPA imposed fines totalling $57,750 (45, 46).

Chevron was twice served Notices of Violations by EPA for noncompliance with hazardous waste laws (47).

Discussion

AIR POLLUTION

EPA has delegated authority of the Clean Air Act to DEC. Therefore inspections, reporting, and enforcement are the responsibility of the state. As a result of state authorization DEC lowered state air quality standards; that is, an opacity limit was raised, for the purpose of allowing Unocal-Mitsubishi to gradually come into compliance. However for almost two decades the ammonia/urea plant has exceeded even the generous variance allowed by DEC. When EPA threatened to override DEC primacy the state commissioner pleaded with EPA to not issue an enforcement letter. Unocal-Mitsubishi also leveraged the DEC by pressuring the Alaska legislature. As a result of testimony at public hearings, Unocal-Mitsubishi sent a letter protesting proposed ambient air standards. The protest letter was sent all Alaska's congressmen, governor, and every state representative and senator (48).

Inability and unwillingness to enforce are further illustrated by DEC knowingly allowing construction of new air pollution sources by Tesoro in violation of the Clean Air Act. Despite ongoing violations, the Tesoro permit was renewed. Tesoro and DEC justified renewing the air permit because it would be more economical to bring the facility into compliance at some time in the future.

Prior to DEC acquiring primacy of the Clean Air Act, Alaska had state air quality regulations at which time facilities such as oil and gas platforms and incinerators were required to both obtain operating permits and report regularly. However since assumption of Clean Air Act primacy DEC has substituted less stringent air quality regulations; thus, effectively deregulating oil and gas platforms and large incinerators such as the oily and chemical waste incinerator located at Trading Bay, across Cook Inlet from Nikiski. These deregulated sources are not insignificant. Oil and gas platforms, off shore from Nikiski, emit approximately 34% of the 35 million pounds/year of NO_x produced in upper Cook Inlet. Additional deregulation is evident by the fact that none of the oil and gas platforms; including three with permits, report, measure, or are required to even estimate SO_x emissions. Despite a history of almost daily violations at multiple facilities, no evidence was found of state assessed fines.

SURFACE WATER POLLUTION

EPA retains authority for enforcing the Clean Water Act. The four Nikiski facilities discharge waste water to Cook Inlet. A review of discharge monitoring reports (DMRs) indicates a high level of

compliance. The exception is an intentional falsification of ammonia/urea plant DMRs. A search of state and federal records did not reveal this enforcement case. However personal communication with a state regional supervisor and enforcement officer revealed the nature of this case. A criminal conviction was reportedly plea bargained for a fine of approximately $400,000, one of the highest ever assessed nationwide, at the time.

GROUND WATER POLLUTION

DEC regulates the discharge of waste water to the land. However, neither the Unocal-Mitsubishi 200 underground injection wells nor a leaky Unocal-Mitsubishi waste water pipeline nor the several dozen discharges of Phillips-Marathon-USX are permitted. Likewise none of the Nikiski facilities have the state required permits or plans for waste water sludge disposal.

An example of state inability to enforce is illustrated by a Unocal-Mitsubishi response to DEC requests for monitoring wells. Unocal-Mitsubishi claimed their carcinogenic arsenic-containing hazardous waste is "less toxic than table salt" (49). Unocal-Mitsubishi used human subjects for a taste and odor panel to screen for contamination. Unocal claimed "Should any contaminated water somehow reach a domestic water well, the water would acquire a detectable taste or odor prior to becoming hazardous." (50). Eventually Unocal-Mitsubishi groundwater investigations were transferred from RCRA to CERCLA (51). A CERCLA study found that contaminated ground water and unpermitted air releases resulted in a Hazard Ranking System score over 30, high enough for National Priorities List nomination (52). Later, ground water compliance issues were reassigned back to RCRA. There are neither plans nor schedules to evaluate the contamination issues under either RCRA or CERCLA. In the future DEC may request Unocal-Mitsubishi to study their ground water problems.

SOLID WASTE

Solid waste regulations are a complex web of state and federal laws. State laws regulate non-RCRA solid waste. None of the facilities have solid waste permits yet they all dispose of solid waste on their facilities. No record was found of any attempt by DEC to require solid waste permits of these facilities. Additional evidence of widespread disregard for solid waste regulations is borne by the fact that 60 nearby pits used for disposal of drilling muds have no permits.

RCRA waste is regulated jointly by EPA and DEC. EPA actions have resulted in several major compliance actions with fines. Additional federal actions include forcing Tesoro to submit closure plans for

unlined hazardous waste surface impoundments. DEC actions are limited to a few simple reports by an inexperienced inspector. DEC has never taken a RCRA sample from any of the four Nikiski facilities (53).

Conclusions

I. Environmental laws with sole federal jurisdiction; such as the Clean Water Act in Alaska, have the best compliance record.

II. When the state is authorized to enforce federal environmental laws; such as, the Clean Air Act and Resource Conservation and Recovery Act, compliance is limited to incidents of federal involvement.

III. State environmental laws without federal oversight are virtually without compliance and enforcement; such as, solid waste, waste water, and waste water sludges.

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Dave Heynen, AIA
606 West 42nd Ave
Anchorage, AK 99503

Phone: 265-4410

Representative Dave Donley,

I understand that a vote is scheduled for this afternoon in the Judiciary Committee on HB 29. I urge you to vote against passing this bill along. HB 29 will give anyone the power to stop development projects due to alleged violations of environmental laws. I believe the intent of this bill is good, but the language currently will create unfounded litigation and delays to worthwhile construction projects, thus adding cost....

As an architect, a lifelong Alaskan, and a constituent of yours concerned about the future of our state, I urge you to vote against HB 29 and look for legislation that will encourage a diversified industrial base for Alaska's future economic health....let's see some incentives for sensible development of our proven resources.

Dave Heynen DAVE H.

February 21, 1992

Attn: Representative Dave Donley

From: Greg Thompson

Subject: House Bill #29

I am sending this fax in regards to House Bill 29 scheduled before the House Judiciary Committee at 1:30 today.

This bill, as I understand it, has "FIASCO" written all over it. Please do all that you can to ensure that it meets its much deserved demise.

Thank You,

Greg Thompson

10460 Old Seward Highway
Anchorage, Alaska 99515

(907) 349-6474

February 21, 1992

Representative Dave Donley
Ref. HB 29

Dear Representative Donley,

I have heard quite a bit about House Bill 29, and what it would do the Alaskan economy if it were to pass. I have heard both the pro's and con's connected to this bill. I must say that, in my opinion, if this Bill were to pass we would once again pound another nail in our coffin.

I am sure that you have heard the saying, "WE HAVE MET THE ENEMY AND HE IS US", well it is certainly the case in this instance. I am sure that the intent was good behind this Bill; However, I am positive that the thought process was a little cloudy, to say the least.

We need to ensure that positive development continues in the state for ourselves and our children. We have already placed so many obstacles in the way of progress that any real development either can not take place, or is so far in the future our lifetime will never see it.

In summary, this bill must be killed immediately before it goes any further, and you must ensure that it can not rear it's ugly head at any time in the future.

Thank you for your consideration.

Patrick Kenny

To: Rep. Cliff Davidson
Rep. Fred Zharoff

Re: Citizen Suits, HB 29 (SS) Citizen Suits to Enforce Environmental Laws

The Kodiak Environmental Network (KEN) supports the passing of HB 29. Recommendation by the Oil Spill Commission advised the state to adopt citizen suits as a component in Alaska's regulatory scheme. Citizens suits can help give people power to enforce pollution laws when normal administrative channels are not adequate.

We support the bill because,

1) It provides an incentive to industry to prevent pollution & comply with anti-pollution laws
2) Citizens are watching when DEC is not
3) It pushes DEC to take action against polluters & enforce the laws
4) People can take action against pollution when DEC has failed to.

The intention of the bill is to enhance the intent of public interest laws. The result would be a cleaner and safer environment for us all. Congress has recognized the right of the citizen to sue for enforcement & allows this under the Clean Water Act, Clean Air Act, & other federal laws. Now it would be a good time for the state to recognize the value of citizen suits.

The EXXON-VALDEZ OIL SPILL might never have occurred had citizen suits enforced the existing pollution laws. DEC is under-funded + understaffed + this would help the enforcement of our pollution laws.

We hope you will support this bill.

Thank you,
Sincerely,
Tracy Akers
Kodiak Environmental
Network
P.O. Box 2661
KODIAK, AK 99615

1/31/92

Rep. Dave Donley
Chairman, House Judiciary Comm.
Capitol Room 122
Juneau, Alaska 99811

Dear Rep. Donley:

I understand HB 29, authorizing suits to enforce environmental laws, will be heard in your committee on February 3, 1992. I would like to express my concerns about the bill, and request, as well, an opportunity for a teleconference dedicated to this legislation so others like myself can be heard.

I am opposed to HB 29 for a variety of reasons. First, the Alaska Department of Environmental Conservation is charged with monitoring suspected environmental violations, and currently has the authority to pursue any such violations.

Allowing private actions to be brought against alleged violators will result in a legal free-for-all that would ultimately line the pockets of the environmental groups, who currently lead the charge to stop most development in Alaska. I cannot imagine that trend would do anything but increase under this legislation, since the groups could then take on the role of pseudo-enforcer through their favorite venue - the court system.

In addition, several other states have enacted similar legislation, and according to reports I have read, the end result is the environment gains little from these lawsuits, with most of the penalties or profits going straight to the third-party groups (primarily environmental organizations), which pursue the legal action. I think if you look at the previous hearing record on this bill, and note that the Attorney General's office is opposed to it, and a slew of environmental groups, particularly those that have litigation arms, support HB 29, you can see my point.

This legislation has the potential to do massive damage to the current system, where enforcement is rightfully placed with the state and federal branches of government.

Again, I oppose this bill and request an opportunity for myself and others to testify via the teleconference network at a future date.

Thank-you,

Scott Thorson

2356 Sonstrom Dr.
Anchorage, Alaska 99517
Ph: 243-0644

Feb. 6, 1992

Representative Dave Donley
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99801

Dear Representative Donley:

I am writing to express my opposition to CS SS HB 29, which would allow citizen's lawsuits to enforce environmental laws and regulations.

Current laws vest enforcement authority in State agencies, particularly in the Department of Environmental Conservation. Permitting individuals to share that authority could only undermine DEC's authority. In time, it is possible that DEC would come to rely on such citizen suits as a means of enforcing its authority.

Suits filed by private citizens

and organizations do not always consider all of the facts, or even contract or permit stipulations. In such cases a great deal of time and funds of all parties concerned, including the courts, is wasted.

Should such a suit be successful, the penalties - financial penalties - would be awarded to the litigant. This is an open invitation to harassing suits by litigants who, if they do not hope to win, can hope to settle for some lesser sum out of court.

The concept of using the State as a means of increasing one's income appears unethical. Yet that is just what awarding financial penalties to a litigant would do. The potential for abuse of subsection (f) is far too great.

Lastly, public interest groups and individuals who disapprove of development, either a specific project or development as a concept - any development - are invited to try to stop it after all permits have been issued and work has commenced. With increasing costs of both development and government, this is a sure recipe for disaster.

Please use your influence to drop C555 HB 29 from further consideration.

Sincerely yours,

George R. Schmidt

George R. Schmidt

Representative Donnely
165-2299

Dear Sir:

Please add my name to the list of people OPPOSED to HB 29, Citizens Suits to Enforce Environmental Laws.

If Laws are broken, it should be up to the State to enforce these laws. Upon successful prosecution any fines levied or judgements received should accrue to the State, not a private citizen .

Sincerely yours,

Joseph F. Ruzicka
4065 Hood Court
Anchorage, Ak 99517

February, 6, 1992

Representative, Dave Donley
Chairman, House Judiciary Committee
Capitol Room 122
Juneau, Alaska 99811

RE: HB29 and CS

Dear Representative Donley,

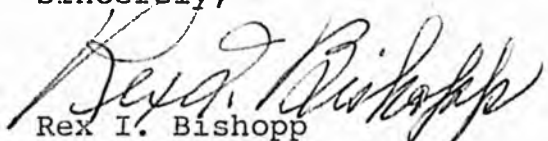
With reference to HB29, I wish to advise you that I am strongly opposed to this bill becoming law. It appears to be a bill that, if enacted, would encourage filing of lawsuits against companies who are "ALLEGED" to have violated pollution control laws.

We already have in place a strong Alaska Department of Environmental Conservation, which is charged with monitoring environmental concerns and has the authority to assess penalties if need be.

Passage of this bill would add another impediment to economic development and another set of regulations to business that is already overburdened with cumbersome regulations.

Again, I oppose this bill and strongly urge you and your associates in the legislature to see that this bill does not become law.

Sincerely,



Rex I. Bishopp
4150 North Point Drive
Anchorage, Alaska 99515

33:RIB:AHI1

31 January 1992

Representative Dave Donley
House Judiciary Committee
PO Box V
Juneau, Alaska 99811

Dear Chairman Donley,

I would like to express my opposition to House Bill 29, which would allow citizen's lawsuits to enforce environmental laws and regulations. Please enter this letter in the record for the February 3, 1992 hearing, as well as my request for a future teleconference to allow adequate discussion of this bill before the House Judiciary Committee.

As a long-time, responsible Alaska miner and industry consultant, I am opposed to HB 29 for a variety of reasons. The amended version does little to correct the primary problem with this bill, which is setting up citizens as private enforcers of state laws and regulations.

Specifically, this bill will repeal a subsection of state law (AS 64.03.870 a) and would expose an alleged polluter not only to an enforcement action by the Department of Environmental Conservation, but also to complaints of others. This results in an alleged violator being exposed to numerous suits, many of which, I believe would be instigated for the sake of harassment.

There are numerous other subsections of this bill that pose serious problems. They include subsection (f), which permits a court to assess penalties against an alleged polluter, and because of the repeal of subsection (a), those penalties would be awarded to the citizen litigant. This section alone will do more to encourage public interest groups to accelerate their abuse of the court system than virtually any section in the bill.

In addition, I am concerned with subsection (h), which removes from the DEC commissioner the opportunity to investigate an alleged violation to decide what to do. Rather, it forces the commissioner to rush to court in order to maintain control of the incident and

resulting litigation. This particular language forces a direct competition between a state agency charged with enforcing environmental laws, and an overzealous public interest group or citizen interested in pursuing their own legal agenda.

Taken in its current context this bill will plainly encourage non-development, public interest groups to seek out alleged violations, pursue them through the courts, and pocket the proceeds from the fines assessed. This process does not benefit the environment, it does not benefit the state, which is charged with enforcing such laws, and it certainly does not benefit any legitimate industry or business, which deals regularly with DEC. Under HB 29, the person or groups receiving the process from fines assessed by the court is not required to make a report regarding any expenditures of the funds.

Finally, this bill in its entirety would strip the DEC commissioner of administration responsibilities for anti-pollution laws and regs. But worse than that, it strips from an alleged violator the rights guaranteed under both the 5th and 14th Amendments to the U.S. Constitution and Article I of the Alaska Constitution, which are designed to restrain the power of government, not individuals citizens. Endowing citizens with governmental powers, without the afore-mentioned constitutional restraints, will limit the court's ability to guarantee a fair result under HB 29.

I strongly oppose HB 29 and ask that this committee plan a future teleconference hearing to allow further public input.

Sincerely,

Paul Glavinovich

Alaska State Legislature

Please enter into the record my testimony to the Judiciary
committee name

committee on HB29
bill/subject
, dated 3/9/92.

I urge you to support this very important piece of legislation. Please allow the people access to get back into the governing. The people are apathetic now because it is hard to have input into the system. Now all kinds of criminals are able to hide behind the corporate veil. This bill will allow the public to flush some of them out. It will put some power back in the hands of the people and out of the corporations. The corporations need to be reined in as they are now out of control and destroying the biological systems that support us.

Signed: Dave Love
Testifier

Representing (Optional)

Box 81765, Fbx 99708
Address

474 8224
Phone No.

9/86 Legislative Information Office

Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIARY COMMITTEE
committee name

committee on HOUSE BILL 29 , dated 5/20/91 .
bill/subject

"HAZARDOUS WASTE" AND "HAZARDOUS SUBSTANCE" ARE DEFINED IN AS 46.03.826, 46.03.900 AND 46.09.900. THE DEFINITION FOR "HAZARDOUS SUBSTANCE" IS VERY THOROUGH, WHILE THE ONE FOR "HAZARDOUS WASTE" IS VERY INCOMPLETE. ~~HAZARDOUS WASTES~~

I SUGGEST THIS REMEDY:

IN 46.03.900, STRIKE SECTION (9) AFTER THE WORD "CHARACTERISTICS" AND ADD, "~~ARE~~ IS A HAZARDOUS SUBSTANCE AS DEFINED IN AS 46.03.826;"

IT MUST BE MADE CLEAR THAT HAZ. WASTES ARE HAZ. SUBSTANCES, AND THAT THEIR EFFECTS ON PUBLIC HEALTH & WELFARE, FISH, ANIMALS, VEGETATION, ETC. ARE ALL IMPORTANT, NOT JUST THE EFFECT MORTALITY AND ILLNESS (HUMAN ASSUMED) IN 46.03.900.

Signed: Larry Edwards LARRY EDWARDS
Testifier

Representing (Optional)

BOX 6001 SITKA
Address

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To Rep. Dave Donley	From H. Springer
Co. House Judiciary	Co. AGC
Dept.	Phone # 561.5354
Fax # 465.2299	Fax #

7/Febr. 1992

To

Rep. Dave Donley
House Judiciary Committee
Juneau, Ak.

Subject:
CS SS HB 29 (Resources)
"An Act authorizing suits to enforce environmental laws"

AGC of Alaska is strongly opposed to this bill.

This is another example of completely unnessary legislation! More than sufficient laws and regulations are in place to protect the environment from pollution and enable adequate enforcement of its provisions. Private individuals and groups have enough access to the processes to safeguard enforcement and corrective actions through the established law enforcement agencies at all Governmental levels.

This bill does not only create unwarranted interference from private sources into Governmental affairs, it creates also incredible possibilities for excessive costs, confusion over jurisdiction and in summary is bad public policy.

This bill deserves to die in committee.

Sincerely,

Henry Springer
Director

Alaska State Legislature

Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
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House District 21

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Citizen Suits
Questions and Answers

Q. What is the need for this law?

A. The regulatory process has not worked as well as it could, either due to shortcomings inherent in any bureaucracy or due to lack of funding. In some cases it has failed spectacularly. Testimony received by the House Resources Committee indicated that Alaskans have seen property values destroyed, water wells poisoned, air degraded and fisheries threatened. In one instance, Alaskans waited nine years for the state to act. In the case of the Exxon Valdez disaster, a citizen suit over Alyeska's failure to live up to its permit obligations could have forced the company to be ready when the oil first hit the water.

Q. Don't citizens already have a way to stop pollution and protect themselves through common nuisance suits?

A. Common nuisance suits can, indeed be brought, but only after the damage has been done, small comfort to someone whose drinking water or property value is threatened. Moreover, it is extremely difficult to prove that a particular pollutant or polluting activity caused a particular injury. Environmental laws were established because of the recognition that pollution needs to be stopped before people are hurt and the environment damaged. HB 29 is about preventing pollution, not about recovering damages.

Q. Do citizen suits create unpredictability for industry by allowing suits at any time for past violations.

A. No. HB 29 is limited to three sections of statute (AS 46.03, 46.04 and 46.09) which describe ongoing violations.

In a similar question under federal law, the U. S. Supreme Court has ruled (Gwaltney v. Chesapeake Bay Foundation) that only violations which are ongoing or likely to recur are subject to such suit under federal laws. Because HB 29 has been drafted using the same language which was under review in Gwaltney, it is expected that should the issue ever arise, our courts would interpret the law in a similar fashion.

Q. Does the inclusion of violations of "permits, plans or orders" in this bill unduly broaden the scope of citizen action?

A. The inclusion of "permits, plans or orders" in language throughout the bill is designed to encourage the regulatory process to work. Laws are crafted broadly. Permits, plans and orders are specific instructions which contain DEC's determination of what a company must do to comply with the law. They are usually drawn up with maximum industry involvement. Allowing citizens to sue only when laws or regulations are violated would circumvent this regulatory process and cast a cloud over such vehicles as compliance orders, which allow industry some latitude for a period of time while measures are being taken to meet environmental standards. Deletion of the language would substitute a hammer for a scalpel and would work to undermine, not strengthen, industry confidence that legal obligations can be met by following DEC instructions.

It is important to note that citizens would only be able to sue a polluter when a permit, plan or order was being violated. Nothing in this bill would allow suit to be brought against an operator simply because a citizen disliked the terms of the permit, plan or order.

Q. Would this bill undermine the finality of legal or administrative action by permitting repeated suits over the same issue.

A. No. Just as in any other area of law, once an issue is decided, it cannot be brought again. Nothing in this bill would override that common legal practice. Again, administrative action would still be, as it is now, final, so long as industry is not violating the terms of any law, permit, plan, or order under which it is operating. Only when those terms are broken could a citizen bring suit. This bill would buttress the administrative process by providing an incentive to comply with legally binding requirements.

Q. Will this law excuse citizens from participating in the agency process to challenge and agency decision?

A. No. This bill has nothing to do with judicial review of agency decisions. A person who wants to challenge an agency permit, order, regulation or other decision will still be required to follow the procedure now in place to bring a lawsuit. Those rights and responsibilities are already spelled out in existing law. This bill simply allow citizens to go to court to enforce the requirements of law, including final agency regulations, permits or orders, against those who are in violation of those requirements. It does not allow citizens a second opportunity to challenge final agency actions.

Q. Would HB 29 result in a proliferation of new lawsuits?

A. Nowhere else has this happened. Similar laws have existed for nearly two decades at the federal level and in seventeen states and the District of Columbia. A survey done by the Legislative Research Agency indicates that citizen suit laws are used sparingly. Anecdotal evidence indicates that such laws have exactly the effect intended by the sponsor, i.e., there is greater compliance by industry and greater effectiveness of regulatory agencies.

Q. Will this bill interfere with DEC's ability to settle with industry for violations of pollution laws?

A. No. DEC can reach settlement of an action in court or administrative penalty proceeding without interference from citizens suits.

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*** Sponsor Statement ***
SSHB 29

SSHB 29 is intended to give citizens the right to bring polluters to justice when the state lacks the resources to do so. This measure is patterned after federal law, which has been in effect since the early 70's and has proven both judicially acceptable and practical. Citizen suits are provided for in the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Surface Mining Control and Reclamation Act. Seventeen states also have citizen suit provisions.

People facing daily threats to health and well-being from environmental pollution deserve the protection of the law. Often, however, government has inadequate resources to remedy such violations. SSHB 29 would complement the Department's enforcement procedures and afford citizens the protection they currently do not have. The Oil Spill Commission, recognizing that citizen participation would enhance Alaska's regulatory effectiveness, included citizen suits among its recommendations. Citizen suits become especially appropriate in the era of declining state revenues which may soon be upon us.

In the aftermath of the oiling of Prince William Sound, and in light of incidents such as the Kenai dumping now known as Poppy Lane, it is apparent that an involved citizenry is crucial to effective oversight of industry operations. Nothing keeps regulators and industry alert as the active involvement of local residents who have their interests at stake. The key to involving citizens is empowering them. Citizens suits clearly and unequivocally place those who have the most to lose in a position to act.

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M E M O R A N D U M

To: Rep. Cliff Davidson
Chair, House Resource Committee

From: Rep. Niilo Koponen

Re: Citizen Suits

Date: 2/27/91

The following are states identified by Legislative Research as having broad-based citizen suit provisions in their statutes, that is, statutes which are not tied to narrowly defined causes of action.

Connecticut
Florida
Indiana
Michigan
Minnesota
New Jersey
Massachussets
Nevada
South Dakota
Louisiana
Illinois
Wyoming

In addition, the following states provide for citizen action in certain areas.

Idaho - hazardous waste
Ohio - solid and hazardous waste
Pennsylvania - solid waste
California - coastal protection
District of Columbia - water pollution

This list is probably incomplete, as citizen suit provisions are often embedded in inconspicuous places. Alaska is a case in point. Citizen suits are currently provided for in our Oil & Gas Commission statutes and surface coal mining laws.

Alaska's Oil & Gas Commission statutes are unique, and bear close scrutiny. I have provided committee members with copies. So important did the legislature consider these

Alaska Action Trust
P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 L Street, Suite 104 • Anchorage
(907) 258-4040

HB 29 - CITIZENS SUITS TO ENFORCE ENVIRONMENTAL LAWS

HB 29 is intended to empower citizens of the State of Alaska who are directly affected by environmental law violations to bring suit to compel the Department of Environmental Conservation (DEC) to act against violators. HB 29 also allows for direct enforcement by the affected citizen. The intent of the bill is to increase the effectiveness of public interest laws by promoting voluntary compliance and citizen enforcement resulting in a safer, cleaner and healthier environment. The beauty of HB 29 is that it clearly places those who have the most to lose in a position to act to enforce environment laws.

Citizen suit provisions are not new or unique. They are provided for in the Clean Air Act, Clean Water Act, Resource Conservation Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the Surface Mining Control and Reclamation Act. At least 17 states also have citizens suit provisions as part of their state statutory scheme.

Will this well-intentioned legislation lead to the feeding frenzy by lawyers and the mountains of litigation predicted by some critics? It doesn't seem likely. The State of Alaska's Legislative Research Agency has investigated the effect that citizen suit legislation has had in other states. On March 15, 1991, a legislative analyst reported to Representative Koponen that the citizen suit provisions in other states were rarely used. While accurate statistics were not kept, estimates varied from a reported low in the state of Wyoming (where the official contacted could remember only <u>one</u> instance of the citizen suit provision leading to litigation) to a record high in the well-populated state of New Jersey, where a whopping 24 cases a year are estimated to have been filed since initiation of that state's citizen suit legislation.

HB 29 doesn't give citizens the resources to develop their cases or promote their rights. It does provide a legal tool to help protect people who are the victims of pollution or toxic exposure. Currently these people must depend on the DEC, a state agency that has traditionally been unloved, under-funded, and thus constrained by practical circumstances to be less than an effective advocate for the poison-free environment that we have too long taken for granted, but all wish to make our homes in.

Individual citizen litigants have no monetary incentive under HB 29

to participate in the litigation. If the litigation is effective, they may protect their homes or their families; they won't get rich in the process. Their attorneys in these cases won't get rich either. The most the bill provides to the citizens' counsel is the hope of sooner or later being paid for work that has long since been performed.

Most of the criticisms of HB 29 have been offered by industrial polluters. The fact of the matter is that Alaska, with over 1,000 identified hazardous waste sites, has been used as a dumping ground for industry for a long time. HB 29 is not a cure-all. It will, however, give those people whose lives and property values are directly affected by illegal conduct a chance to stand up for themselves when government either cannot or will not stand up for them. It is an idea whose time has come, and it deserves our support.

Letter submitted by Gerald Hooper, 2-14-92 House Judic. Hearing.

SIERRA CLUB
LEGAL DEFENSE FUND, INC.

Sunrise, Mt. McKinley Ansel Adams 419 6th Street, Suite 323 Juneau, Alaska 99801 (907) 586-2751

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August 26, 1987

CERTIFIED MAIL

Our File
BLM District: Steese/White Mountain
BLM Claim Nos.: F-70054, F-70051

Gerald W. Hooper
P.O. Box 2750
Palmer, AK 99645

Re: Notice of Violations of § 301 of the Clean Water Act, 33 U.S.C. § 1311

Dear Mr. Hooper:

The Sierra Club, the Northern Alaska Environmental Center, The Wilderness Society, Birch Creek Village, the Native Village of Minto, and Cenaliulriit Coastal Management District have requested that I inform you that you appear to have violated the Clean Water Act by discharging dredged and fill materials into the waters of the United States without a permit from the United States Army Corps of Engineers.

The Clean Water Act prohibits the discharge of any pollutants into the waters or upon the wetlands of the United States without compliance with its provisions. *See* 33 U.S.C. § 1311. Section 404 of the Clean Water Act provides that the discharge of dredged or fill material requires a permit from the United States Army Corps of Engineers. *See* 33 U.S.C. § 1344. We believe that your placer mining operations are in violation of these requirements for the following reasons:

(1) Your 1986 Annual Placer Mining Application (APMA No. 852881) indicates that your reclamation plans include reestablishing stream channels. This implies that your operations have disrupted or will disrupt the stream channels through the discharge of dredged or fill material into the waters of the United States. 33 C.F.R. § 323.2(d) and (f). (If there were no disruption through the discharge of dredged or fill material, there would be no need to reestablish the stream channels.) You do not have the § 404 permit required for such discharge, as far as we can determine.

(2) Regardless of whether the disruption of the stream channels caused by your operations involves the discharge of dredged or fill materials, the reestablishment of the channels planned in your annual application will. 33 C.F.R. § 323.2(d) and (f). You do not have the § 404 permit required for such discharge, as far as we can determine.

(3) Your five-year mining plan that you submitted to the Bureau of Land Management on July 24, 1986, states that in 1988 you plan to "move Swift Creek via a culvert." Moving a creek results in the discharge of dredged or fill material into the waters of the United States. 33 C.F.R. § 323.2 (d) and (f). You do not have the § 404 permit required for this discharge, as far as we can determine.

In addition to the violations listed above, we believe that you have violated the dredge and fill permit requirements of the Clean Water Act in conducting your operations by building tailing piles, settling ponds, roads, and other structures on wetlands without obtaining a § 404 permit.

Your failure to obtain the necessary permits prior to discharging dredged or fill material constitutes a violation of the Clean Water Act. As such, you may be subject to a civil enforcement action in federal court and you may be liable for penalties amounting to $25,000 per day of violation. *See* 33 U.S.C. § 1319(d).

Pursuant to the notice requirement of § 505 of the Clean Water Act, 33 U.S.C. § 1365(b), we hereby advise you that you should obtain the appropriate permits from the United States Army Corps of Engineers prior to commencing operations in 1988 or you may be subject to a civil enforcement action initiated by one or more of the organizations listed above. We suggest that you contact the Corps as soon as possible to obtain a permit application so that processing of your application can be completed before the start of the 1988 mining season. The Corps' Permit Processing Section in Alaska can be contacted at 907/753-2712, or toll-free at 800/478-2712, or by mail addressed to P.O. Box 898, Anchorage, Alaska 99506-0898.

If you believe that this notice of violation is in error in any way, please write to us as soon as possible.

Sincerely,

Philip S. Barnett

Matthew G. Olsen (law clerk)

cc: Colonel Wilbur T. Gregory, Jr., District Engineer, United States Army Corps of Engineers, Alaska District
Lee M. Thomas, Administrator, Environmental Protection Agency
Robie G. Russell, Regional Administrator, Environmental Protection Agency, Region 10
Michael Penfold, State Office Director, Bureau of Land Management, Alaska
Dennis D. Kelso, Commissioner, Alaska Department of Environmental Conservation

TO: HOUSE JUDICIARY COMMITTEE
FROM: GERALD W. HOOPER BOX 875272 WASILLA, ALASKA
REF: H.B. 29

I HAVE BEEN A RESIDENT OF ALASKA FOR APROX 20 YEARS
I AM A RETIRED ALASKA STATE TROOPER AND AM CURRENTLY WORKING AS AN INSTRUCTOR IN THE FIELD OF HAZARDOUS MATERIALS AND RESPONSE TO EMERGENCY RELEASES OF HAZARDOUS MATERIALS

I AM ALSO A GOLD MINER CURRENTLY HOLDING OVER 300 ACRES OF FEDERAL MINING CLAIMS NORTH OF THE YUKON RIVER.

WITH MY BACKGROUND I AM VERY CONCERNED AND HAVE BEEN VERY CONCERNED THAT MY MINING OPERATIONS MEET OR EXCEED THE STANDARDS ESTABLISHED BY THE LAW AND HAVE INFACT GONE TO EXTRA EXPENSE TO INSURE THAT I AM ABLE TO PREFORM MY OPERATIONS WITH A MIMIMUM OF IMPACT TO THE ENVIRONMENT.

IN JULY OF 1986 I FILED A FIVE YEAR ANTICIPATED MINING PLAN WITH THE BUREAU OF LAND MANAGEMENT AFTER CONFIRMING THAT MY OPERATION AND PLAN WOULD BE IN COMPLIANCE WITH ALL APPLICABLE REGS AS ISSUED BY BLM, EPA, CORP OF ENGINEERS AND STATE DIVISION OF DEC, AND ADF&G.

IN AUG 0F 1987 I RECIEVED THE ATTACHED LETTER FROM THE SIERRA CLUB LEGAL DEFENSE FUND

WHAT IS INTERESTING WAS THAT I WAS 2 YEARS BEHIND IN MY PLAN AND HAD YET TO BEGIN MY OPERATION ADDITIONALLY I HAD (PRIOR TO SUBMITTING MY MINING PLAN) CONFIRMED WITH BOTH THE CORP OF ENG, THE EPA AND THE BLM THAT MY CREEK DID NOT MEET THE STANDARDS SET FORTH IN SECTION 404 OR 33 CFR. AND THUS NO ADDITIONAL PERMITTING WAS REQUIRED.

MY FEAR IS THAT WITH A BILL SUCH AS WHATS BEEN PROPOSED THESE ALLEDGED DO-GOODERS THRU NUMEROUS CHEAP AND EASY TO FILE LAWSUITS.WILL SHUT DOWN ALL SMALL AND LARGE OPERATORS FOR SOME ALLEDGED VIOLATION THAT IS WITHOUT SUBSTANCE OR BASIS.

IF THE REGULATORS AND INDUSTRY ARE TIED UP IN COURT TRYING TO FIGHT FRIVOLOUS AND UNSUBSTIATED ALLEGATIONS WE WILL HAVE NEITHER THE RESOURSES NOR THE TIME TO GET ANY WORK DONE.

I WOULD URGE THE COMMITTEE TO CHECK WITH BLM IN FAIRBANKS AND DETERMINE THE MANPOWER THAT HAD TO BE ALLOCATED AND THE EXPENSE INCURRED BY THE REGULATORS JUST SO THE SIERRA CLUB. COULD MAIL NOTICES OF THIS TYPE.

THE ARGUMENT THAT THIS BILL WILL NOT RESULT IN FRIVOLOUS LAWSUITS WILL NOT STAND UP, YOU NEED ONLY LOOK TO THE SIERRA CLUB LEGAL DEFENSE FUND OFFICE AND ASK THEM HOW MANY OF THESE SUCH LETTERS WERE MAILED, WITHOUT EVER HAVING ANY FIRST HAND KNOWLEDGE IF A VIOLATION WAS EVEN OCCURRING AT ALL.

THIS BILL WILL ALLOW THESE ORGANIZATIONS TO CARRY THIS FORM OF HARRASSMENT ONE STEP FURTHER WITH NO BASIS IN FACT.

DURING MY CARREER AS AN ALASKA STATE TROOPER I MADE NUMEROUS ARRESTS AND WROTE A LOT OF TICKETS BECAUSE THAT WAS MY JOB AS A REGULATOR. I ALSO RESPONDED TO A NUMBER OF CITIZENS WHO CONTACTED OUR OFFICE WHO HAD OBSERVED A VIOLATION AND WISHED THE OFFENDER DEALT WITH. WHERE I WAS ABLE TO DEVELOP THE NECCESSARY EVIDENCE AND DETERMINE THAT A VIOLATION HAD OCCURRED I FILED THE APPROPRIATE CHARGES WITH THE APPROPRIATE COURT.

THIS BILL WILL ALLOW ANYONE TO BECOME A REGULATOR AND TAKE LEGAL ACTION BASED ON **THEIR INTREPTATION** OF THE LAW AND PERCEPTION OF REGULATORY OVERSIGHT.

GRANTED THERE IS A 60 DAY CLAUSE FOR RESPONSE BUT IN THE EVENT OF A MASSIVE MAILING SUCH AS MAY HAVE OCCURRED DURING THE 1987 CAMPAIGN THAT I WAS A RECEPIENT OF, THE REGULATORY AGENCIES MAY NOT BE ABLE TO RESPOND QUICK ENOUGH TO PREVENT A "COURT PLUGGING INDUSTRY STOPPING, FINANCIALLY DEVASTATING, GOAT ROPE"

THIS PROPOSED BILL SHOULD BE DEFEATED ALONG WITH THIS MESSAGE TO THOSE ENVIROMENTAL GROUPS LOOKING FOR ANOTHER

AVENUE TO STOP ALL GROWTH IN THE STATE "BUZZ OFF. AND LET THE REGULATOR REGULATE AND INDUSTRY OPERATE, AND YOU CAN WATCH AND LET US KNOW IF YOU SEE A REAL VIOLATION AND HAVE SOME REAL EVIDENCE, AND THEN WE THE REGULATORS WILL DO WHAT IS RIGHT.

THANK YOU FOR THE OPPORTUNITY TO OFFER THIS TESTIMONY FOR THE RECORD

Sunrise, Mt. McKinley Ansel Adams

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The Law Firm for the Environmental Movement

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February 19, 1992

Representative Dave Donley
Chairman, House Judiciary Committee
Room 122, Capitol Building
P.O. Box V
Juneau, Alaska 99811

Re: H.B. 29

Dear Representative Donley:

I understand that at a recent hearing on H.B. 29, a Mr. Gerald Hooper introduced a letter addressed to him from the Sierra Club Legal Defense Fund as an example of abuse of the citizen suit process. I am writing to you so you and other members of the committee will understand that this is instead an example of just how well federal citizen suit mechanisms work and why Alaska should enact similar provisions.

In fact, the letter to Mr. Hooper and other similar letters to other miners did not result in any harassing litigation. Instead, the Corps of Engineers responded to these letters by stepping in to require placer miners to obtain permits under the Clean Water Act, as it should have been doing all along. As a result, litigation was avoided, the Clean Water Act was enforced and the environment protected from unnecessary destruction.

The letter to Mr. Hooper was sent pursuant to the citizen suit provision of the federal Clean Water Act, 33 U.S.C. § 1365, which requires that, in most cases, at least 60 days notice be provided to any alleged violator of the Act before a lawsuit to enforce the Act can be brought. In this respect, the Clean Water Act is very similar to the prior notice requirements of H.B. 29. The letter concerned potential violations of section 404 of the Clean Water Act by placer miners in Alaska. This section of the Act requires a permit from the Corps of Engineers for discharge of fill material into rivers, wetlands, and other waters of the

United States. At the time the letter was written, by its own admission the Corps was essentially failing to enforce this requirement for placer mining in Alaska, even though most operations involved activities requiring such a permit.

The Legal Defense Fund responded to requests from environmental and Native groups, and local governments to take steps to protect the streams and wetlands of interior Alaska from the unnecessary pollution and habitat destruction caused by unregulated mining activities. As a result, we pressured the Corps to begin enforcing the law by notifying miners of their obligation to obtain permits. I have attached a copy of one of our letters to the Corps and some newspaper stories about our efforts. At the same time, we attempted to identify placer mining operations which appeared to require permits but did not have them. To identify these operations, we examined state and federal records for existing and proposed mines. We then sent letters to the operators of mines that appeared to require a permit based on the available information, notifying them of the requirements of the Clean Water Act and the need to apply for a permit where needed. Mr. Hooper received one of those letters.

We attempted to find a way to notify the miners of possible violations that would meet the requirements of the law, yet not be unfair to small operators. As you know, most placer mining operations are seasonal in Alaska. Most operations do not proceed in the winter months. We were concerned about waiting until the beginning of operations in the 1988 season to provide notice, in part because of the unfairness to miners. We concluded the best approach was to write letters the year before the next season's operations would begin. This would give operators a reasonable amount of time to contact us if we were in error or to obtain the necessary permit from the Corps. To provide this kind of fair advance warning, we obviously had to notify miners before their next season's operations began and, therefore, based our notice on prior operations at the same site or on plans filed for the next season or both.

In fact, we never initiated litigation against Mr. Hooper or any other miner under section 404 of the Clean Water Act. After we sent the notice letters, the Corps stepped in to address the problem, at least in part. The following year, the Corps issued a general permit under section 404 for all small placer miners in Alaska, which imposed certain important restrictions on placer mining operations to protect the environment. Many mines were required to obtain individual permits before the 1988 season. Though our clients were not entirely satisfied with the Corps' response, it was, we believed, a sufficient beginning and we elected not to file any litigation on the issue. Today, largely as a result of our efforts, larger mines are required to obtain permits and, in fact, regularly apply for and receive them. Smaller mines are operating

within the limits imposed by the Corps' general permit. As a result, the unnecessary destruction of Alaska's natural resources from such operations has been reduced.

Though we can understand how it might be unsettling to receive a letter like the one Mr. Hooper received, we attempted to handle the notice in the way most fair to the affected miners. We went far beyond the requirements of the law to provide advance notice and attempted to assist the miners to comply by providing detailed information about our concerns and about how to get a permit. We encouraged Mr. Hooper and the other recipients to contact us if we had made a mistake and gave them many months to do so. In fact, as a result of our efforts there was no harassment of miners or even any litigation. Instead, the notice letters led to enforcement of the law by the Corps, which it should have been doing all along. In other words, the citizen suit provision of the Clean Water Act worked exactly as it should. Rather than a reason not to enact H.B. 29, this whole episode is an example of why it is so important for Alaska's citizens to have a similar remedy for enforcement of Alaska state pollution laws.

I hope this letter addresses any concerns which might have been raised by Mr. Hooper's testimony. I would be happy to answer any other questions you may have.

Sincerely yours,

Eric Jorgensen
Managing Attorney

EPJ:ld
enclosures
cc: Rep. Gruenberg
Rep. Ellis
Rep. Parnell
Rep. Hanley
Rep. Martin
Rep. Miller
Rep. Koponen

SIERRA CLUB
LEGAL DEFENSE FUND, INC.

Sunrise, Mt. McKinley Ansel Adams

419 6th Street, Suite 323 Juneau, Alaska 99801 (907) 586-2751

June 12, 1987

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Colonel Wilbur T. Gregory, Jr.
District Engineer
United States Army Corps of Engineers, Alaska District
P.O. Box 898
Anchorage, AK 99506-0898

Dear Colonel Gregory:

On behalf of the Sierra Club, the Northern Alaska Environmental Center, The Wilderness Society, Birch Creek Village, and Cenaliulriit Coastal Management District, my office has commenced reviewing the Bureau of Land Management's mining files to determine the extent to which placer mining operators in Alaska comply with the dredge and fill requirements of the Clean Water Act, 33 U.S.C. §§ 1311 and 1344. We recently completed our review of mines within the Anchorage District for which notices or plans of operations were submitted in 1986 or 1987. The results are startling.

We reviewed a total of fifty-six (56) separate mining operations. Even based on the limited information in BLM's files, over half of these operations show the discharge of dredged or fill materials without the necessary permit from the Corps. Usually there are multiple violations at individual mines. Indeed, the average mine violates dredge and fill requirements four (4) times. On the face of BLM's documents were such obvious violations as the construction of on-stream dams and settling ponds and the instream use of bulldozers and draglines. Streams have been diverted, had roads built across them, and had overburden piled into them. To be sure, a more intensive on-the-ground review of these mines would reveal further violations by a far greater proportion of operators.

Notices of violations were sent today on behalf of the organizations listed above under the citizen suit provisions of the Clean Water Act to those operators in the Anchorage District that appear to be in violation with the Act's dredge and fill requirements. You will find details about the specific violations in the notices of violations that we sent to the operators, copies of which are enclosed.

We are gravely concerned about the extensive violations found in the Anchorage District alone. These serious and widespread violations, coupled with our understanding that your agency has issued only one permit under § 404 of the Clean Water Act for a placer mining operation in Alaska to date, indicate that the Corps has systematically failed to monitor mining operations in Alaska for unpermitted

dredge and fill discharges. There could well be hundreds of placer mines in the state that are operating in violation of the dredge and fill requirements that you administer.

Your agency has primary responsibility for insuring compliance with the dredge and fill requirements of the Clean Water Act. 33 U.S.C. § 1344. In addition, your agency is required to notify unpermitted dischargers of their violations. *See* Memorandum of Agreement Between Environmental Protection Agency and Department of the Army Concerning Regulation of Discharges of Solid Waste Under the Clean Water Act at 2 (March 14, 1986). The Clean Water Act's objective is clear: to eliminate the discharge of pollutants by 1985. 33 U.S.C. § 1251(a)(1). The Corps' programmatic failure to address mine dredge and fill discharges constitutes an abdication of your statutory responsibilities rather than an aggressive effort to restore and maintain the integrity of the nation's waters.

Therefore, we request that you take action to prevent mines that have violated or will violate the Clean Water Act from operating in 1988 until the mines obtain the necessary permits. Specifically, we request that you exercise your powers under 33 C.F.R. § 326.3(c) to issue notices of noncompliance to all the operators who are in violation of the dredge and fill requirements. The notices should require the operators to apply for and obtain the necessary Corps permits before commencing operations in 1988. Further, we request that your agency undertake a rigorous review of the notices and plans of operations and State of Alaska tri-agency applications filed for the 1988 mining season to insure that the operators have obtained the necessary Corps permits prior to commencing operations.

We urge your agency to immediately undertake a concerted effort to address these serious deficiencies. I request an opportunity to meet with you as soon as possible to discuss what steps your agency can take to facilitate bringing the mining industry into compliance with the dredge and fill requirements of the Clean Water Act by 1988.

Very truly yours,

Fern L. Shepard
Sierra Club Legal Defense Fund, Inc.

FLS/ke
Encls.
cc: Rooie G. Russell, Regional Administrator, Environmental Protection Agency, Region 10
Michael Penfold, State Office Director, Bureau of Land Management, Alaska
Dennis D. Kelso, Commissioner, Alaska Department of Environmental Conservation

Fairbanks Daily News-Miner, Fairbanks, Alaska, Wednesday, June 17, 1987—7

Coalition says Army Corps lax in requiring miner permits

By DAVID FOSTER
Associated Press Writer

ANCHORAGE—The U.S. Army Corps of Engineers has ignored its du , require permits for placer gold miners who dump earth onto wetlands or change the course of streams, a coalition of environmental and Native groups charged on Tuesday.

The coalition wrote a letter to the corps, demanding that the agency require all of Alaska's placer miners to comply with the federal Clean Water Act by the start of the 1988 summer mining season.

The coalition said the corps has issued only one permit for a placer mining operation in Alaska.

"By the very nature of placer mining, which is essentially strip mining in streambeds and on riparian land, it is clear that corps permits are required for the vast majority of operations," said Fern Shepard, attorney for the Sierra Club Legal Defense Fund, which is representing the coalition.

"The corps has entirely ignored the problem. It is simply not doing its job," Shepard said.

Pat Richardson, a corps spokeswoman, agreed that the agency has not pursued the task vigorously in the past, but she said officials developed a policy paper in April to deal with placer mining.

"It's something we've always had the responsibility to do, but we've had a lot of other things to do, and we were taking our time," said Richardson.

The corps now is working with other regulatory agencies and mining associations to alert miners of a planned increase in enforcement. This fall, the agency will mail letters to miners and ask for their applications during the winter, Richardson said.

The agency, which already handles about 600 applications a year for disturbances of wetlands in Alaska, will try to handle the increased workload of miners' applications with no extra staff, she said.

She predicted that most applications would be approved in some form. "We don't try to prevent people from doing something," she said. "We try to help them implement a plan that would have the least impact."

Shepard said her group examined Bureau of Land Management records for 56 mining operations, mostly in southcentral Alaska.

"Even based on the limited information in BLM's files, over half of these operations show the discharge of dredged or fill materials without the necessary permit from the corps," she said in a letter to Col. Wilbur Gregory Jr., district engineer for the Army Corps.

Curt McVee, executive director of the Alaska Miners Association, said the coalition's figures may be too high. "The Sierra Club must be assuming that these areas are all wetlands—that's an interpretation that must be left up to the corps," he said.

The coalition also sent notices of violations to 30 miners, a procedure required if the group intends to bring civil suits against them. Notices will be sent to other miners this summer as Shepard and two assistants review other mining records, she said.

The coalition is not threatening lawsuits yet, Shepard said. "But that's certainly something we would consider doing in 1988 if the problem is still unresolved," she said.

The Sierra Club has been successful in other recent lawsuits involving placer mines. A July 1985 decision by a federal judge has shut down placer mining in Alaska's national parks until a cumulative environmental impact statement is finished. The same judge ruled last month that larger mines on BLM land in several rich gold-mining drainages around Fairbanks will have to shut down next summer if the BLM does not finish environmental studies by then.

The earlier lawsuits do not affect any mines on state land, nor do they affect mines disturbing less than five acres of BLM land. But the Army Corps of Engineers has jurisdiction over any operation that disturbs wetlands, Shepard said.

"What we're trying to do is close a loophole," she said. "There are a lot of mines that don't have any environmental review. This is sort of the last piece of the puzzle."

The coalition comprises the Sierra Club, the Northern Alaska Environmental Center, the Wilderness Society, Birch Creek Village and Cenaliulriit Coastal Management District.

SATURDAY A.M.

SPORTS D-1
World's fastest man?
Lewis, Johnson to meet in Rome

BUSINESS D-7
Bigger than Texas
Alaska to be top oil producer

The Anchorage Times

3rd year/52 pages SATURDAY MORNING, AUGUST 29, 1987 25¢

INSIDE

rison guards need better checks

Corrections officials say they are looking at ways to tighten background checks of applicants for guard positions at state prisons. page B-1

Scientists install meters on volcano

FAIRBANKS (AP) — Researchers have begun installing devices on Augustine Volcano to warn of impending

Corps told mines don't comply

By John Quinley
Times Writer

A coalition of environmental and native groups Friday renewed its criticism of the Army Corps of Engineers after finding 89 placer gold mining operations in the Fairbanks area are in violation of the Clean Water Act.

"Mine operators regularly divert and dam streams, build roads across streams and operate heavy equipment such as bulldozers in streams, all without the required corps permit," said Fern Shepard, attorney for the Sierra Club Legal Defense Fund.

In June, the coalition reported that more than half of the 56 placer mines operating in South-central and Southwest Alaska were discharging dredge and fill materials without a corps permit.

At that time, corps officials acknowledged they had ignored provisions of the Clean Water Act and did not require permits for placer miners.

The corps has begun a program to bring miners into compliance and is compiling a master mailing list of placer miners that is likely to contain more than 450 operations, spokeswoman Pat Richardson said. A letter to be sent this fall will tell miners they need permits to operate.

Permits are required when mining operations place "dredged or fill material in waters and wetlands," Richardson said. That includes stockpiling overburden, placing material into streams for stream diversion, building berms or fish bypass channels, and building roads or airstrips on wetlands.

The corps has put a three-man team working full-time on the project, she said, and plans to hold informational meetings in the winter and spring to tell miners about what will be required of them.

The coalition also sent letters to individual operators threatening lawsuits unless they obtain

See Corps, page A-10

Anchorage Times 8/29/87

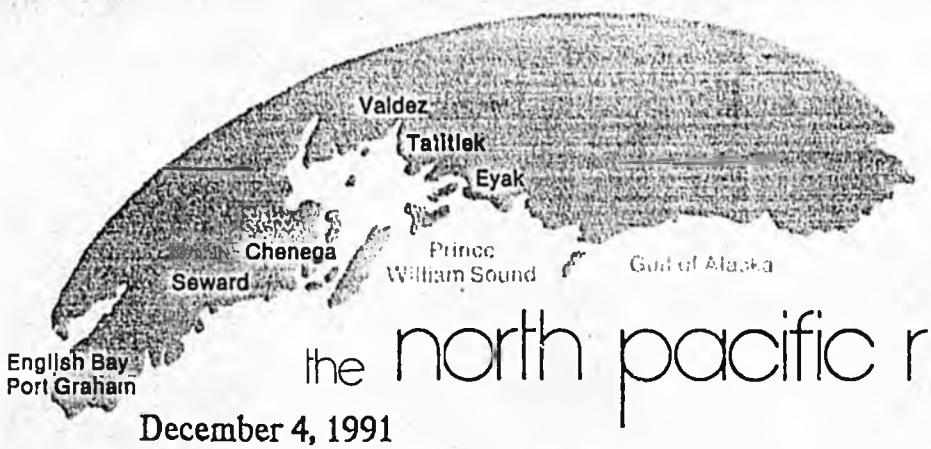
Corps: Takes heat

Continued from page A-1

Corps permits before starting to mine next year. Richardson said the corps would work first with miners to try to get permits for the operations but would cite violators next year.

"In the Bureau of Land Management files are hundreds of unpermitted discharges of dredge and fill, yet the corps has issued only one permit for a placer mining operation to date," Shepard said. "We hope the corps is now serious about initiating a permit program that will bring these mines into compliance by the 1988 mining season."

The coalition also includes the Northern Alaska Environmental Center, The Wilderness Society, Birch Creek Village, the native village of Minto, and the Cenaliulriit Coastal Management District.



the north pacific rim

December 4, 1991

Representative Niilo Koponen
Alaska State Legislature
PO Box V
Juneau, AK 99811

RE: HB0029c

Dear Representative Koponen:

Thank you for informing our Health Director, Leonard Hamilton, concerning HB0029c. We are in full support of having a statutorily created cause of action for protection against environmental threats.

However, please be advised that our in-house counsel believes there is a syntax error at section (d)(1) which should be corrected. On the last line of page one (line 14) and the first line of page two, the type of municipality excluded from suits is described. The prepositional phrase "by the Department of Community and Regional Affairs under AS 14.17.140" is misplaced. As it reads now, that phrase modifies "the alleged violation," which would mean that DCRA is either the violator or the entity alleging the violation. Neither meaning makes sense.

We believe that the phrase should be inserted earlier in the sentence, at line 14 on page one, so that the bill reads as follows:

> "....
> determination of $100,000,000 or less as determined by the Department of Community and Regional Affairs under AS 14.17.140 as of January 1 of the second fiscal year preceding the alleged violation [BY THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS UNDER AS 14.17.140]; ..."

Please advise us when the bill's language has been corrected.

3300 "C" Street / Anchorage, Alaska 99503-3920 / Ph. (907) 562-4155 / Fax (907) 563-2891
The Non-Profit Corporation Serving The People Of The Chugach Native Region

Again, thank you for informing us about the bill.

Sincerely,
THE NORTH PACIFIC RIM

Richard A. Rolland
Executive Director

cc: Leonard Hamilton, TNPR Health Director
Alaska Native Health Board
Representative Kay Brown
Representative Johnny Ellis

CITY OF HAINES, ALASKA
P.O. BOX 1049
HAINES, ALASKA 99827
(907) 766-2231 • TOURISM (907) 766-2234 • FAX (907) 766-3179

COPY

December 11, 1991

Rep. Jerry Mackie
P.O. Box V (MS 3100)
Juneau, AK 99811

Re: HB 29

Dear Jerry:

The City of Haines supports HB 29. It is an important bill relating to public health in our community.

Pollution by septic tank/leach field systems, outhouses and cesspools affects property located downhill or downstream from the pollution source. This pollution creates unsafe drinking water and a noticeable smell in the neighborhoods. Pools of sewage from septic systems have been noted in children's play areas.

Pollution laws need to be created and enforced; especially where drinking water and public health are impacted.

Please support HB 29.

Thank you for your attention to health-related issues.

Sincerely,

Frank L. Wallace

Frank L. Wallace
Mayor
CITY OF HAINES

cc: Sen. Dick Eliason
Rep. Niilo Koponen
Rep. Kay Brown
Rep. Johnny Ellis

Poppy Lane: A Good Case for Citizen Suits

by Karen Wood
3/91

Sheila and Charlie Dickson and their daughter Kim worked for nine years to get relief from toxic exposure to the drilling muds and other wastes being illegally dumped in the Poppy Lane gravel pit behind their house. Nine long years of a toxic nightmare, with the Department of Environmental Conservation slow to take action and the family unable to move because the value of their house lot plunged to zero.

If the Dicksons had been able to sue Unocal to bring the company into compliance with Alaska pollution laws (to stop the illegal dumping and storage of hazardous wastes), they might have found relief sooner. But Alaskans do not have that right under state law.

House Bill 29, reintroduced this year by Representative Niilo Koponen, would give Alaskans the ability to take action to control pollution when DEC has failed to act. Passage of this bill would enable Alaskans like the Dicksons to protect themselves from pollution.

It's too late for Sheila, Charlie and Kim. They have finally escaped their toxic backyard in Kenai and are starting their life over again elsewhere in Alaska. Below is their story, as told to me by Sheila Dickson.

Sheila and Charlie Dickson built their home on Poppy Lane in Soldotna in 1981, expecting to raise their daughter in a quiet, rural setting in Southcentral Alaska. Soon after they moved into their new home, the Dicksons noticed trucks dumping loads of what looked like mud in the gravel pit behind their house; 5-8 vacuum truckloads being dumped each day. Unocal Oil and Gas, owners of the pit, mined gravel there to build their oil and gas production pads.

"I didn't know what drilling muds were," said Sheila. "I thought they were some sort of septic waste."

The Dicksons reported the dumping to the Department of Environmental Conservation (DEC), and Richard Moulton came out to visit the Unocal gravel pit. After looking around, he obtained a search warrant and took samples of muds. Moulton estimated that the pit had been an illegal dumping site for at least 10 years.

"The trucks would run in and hide behind mounds of mud to dump," reports Sheila. The Dicksons couldn't catch the trucks because they'd exit through the Kenai gas fields, and they didn't have a phone in their house. Their nearest neighbor lived a quarter mile away.

After Moulton made his initial investigation, "Unocal got craftier," says Sheila. "They came to dump before we got up in the morning and after dark."

In 1982, Unocal set the pit on fire, infuriating neighborhood residents. Meanwhile, Charlie was learning about drilling muds. He had taken a job running a vacuum truck for Alaska Environmental

Industry where he hauled drilling muds to the Sterling Special Waste Site for disposal, and began to worry about the potential toxicity of the wastes dumped near their home.

The Dicksons had good reason to be concerned. Drilling fluids or muds are suspensions of solids and dissolved materials in a base of water or oil that are used in drilling operations to lubricate and cool drill bits, control formation pressure, remove drill cuttings, and perform other functions. These wastes can contain a number of toxic substances, including petroleum hydrocarbons (including benzenes, naphthalenes, and phenanthrenes) and additives such as bactericides, soluble salts, heavy metals, and ethylene glycol (from Oil in the Arctic).

The family decided to move. They put their house on the market in the fall of 1983, but found little interest in the property. Rumours had begun to spread about the Poppy Lane pit. The number of potential buyers became smaller and smaller, and the Dicksons eventually lost hope that they would ever be able to sell.

"Old-timers began telling us that they were afraid to walk through the pit in rubber boots because of what the stuff dumped there would do to your shoes." For a long time, local residents had gone to the pit to get old barrels for their household rubbish. "They'd just dump the contents of the barrels on the ground--there's no telling what people were exposed to," said Sheila.

Charlie began demanding that DEC take notice of the Poppy Lane pit. Mike Lucky and Bob Canone of DEC held an informal meeting with Bob Anderson and Larry Cutting of Unocal, Charlie and another Poppy Lane resident to discuss the pit. After the meeting, says Sheila, Larry Cutting "came up and poked Charlie in the chest and said, 'I'll see your entire family dead and buried in the dirt before Unocal gives you a dime.'" With that, said Sheila, "the fight was on."

About this time, one of the Dickson's neighbors fell sick from chromium poisoning. Sheila and Charlie began hauling their drinking water from Soldotna, and boiled tap water for all other uses.

In 1984, local residents pushed for an analysis of pit contents, for monitoring wells to measure the extent of pollution and potential groundwater contamination, and for a fence around the pit to keep children out of it.

The analysis began in 1985, and piles of peat soaked with gas condensate were found. It took several years to quantify the contamination. DEC dug nine trenches in different parts of the pit, but didn't find consistent results. Unocal did some testing as well, but used only a small bucket and did not dig deeply, says Sheila.

The Dicksons, along with several of their neighbors, filed suit for damages against Unocal in 1985. The case was based on a nuisance complaint that Unocal had created a nuisance on their land, making it impossible for the Dicksons to sell their own adjacent property.

In 1987, a new, more extensive investigation was begun. Joe Labeaux of DEC obtained a search warrant and interviewed local residents to document dumping sitings. Dave Knuth of DEC collected samples from the pit. Sheila described how, after getting into the

bucket of a backhoe, Knuth was lowered down into a ditch of gas condensate soaked peat. After only a few minutes, Knuth fainted.

At this point, Labeaux visited the Dickson's and advised them not to use the water, even though the samples from the investigation had not yet been analyzed. The family began showering in town.

In the course of the investigation, drilling bits, barrels, a boiler covered with asbestos, and a complete drill rig were removed from the pit. "A lot more substances were found, more hydrocarbons, and more areas where produced waters were dumped," said Sheila.

The contractor responsible for hauling the metal parts away was supposed to steam clean them before disposing of them in the landfill. Sheila said that at one point, two of the Dickson's neighbors followed the contractor's truck. The truck went straight to the landfill; no removal of drilling muds from the metal parts was done. DEC was notified, but the agency did not follow up on the report.

What is happening now at the Poppy Lane site? Clean up is finally underway. The contaminated ground water is being removed from the ground, cleaned, and reinjected into the aquifer. And in December 1990, the Dickson's law suit was finally settled out of court for an undisclosed amount (as requested by Unocal).

Who would have thought this horrible story took place in Alaska? Hazardous pollution does blight even the far reaches of our state, and citizens must be empowered to protect themselves from it. The ability to file a citizen suit to stop the dumping and get a quick cleanup might have ended the Dickson's nightmare sooner. Passage of HB 29 is needed to prevent more Alaskans from suffering similar experiences.

Alaska Center for the Environment

519 West 8th Avenue, Suite 201 • Anchorage, Alaska 99501 • (907) 274-3621

Briefing Paper on HB 29 (HRes)
Citizen Self-Protection Act

1/92

Why does Alaska need the Citizen Self-Protection Act?

This bill would enable citizens to 1) provide an incentive to industry to prevent pollution, because a regulatory entity (the citizen) is present and watching even when DEC is not, 2) force DEC to take action to enforce the laws against polluters, or 3) take action against polluters when DEC has failed to do so. Citizen suits would be applicable in the case of an ongoing violation of state pollution laws. The intention is to enhance the effectiveness of public interest laws, resulting in a cleaner environment and better health and well-being.

The Oil Spill Commission advised the state to adopt citizen suits (Recommendation #13) as an important component in Alaska's regulatory scheme. Over 900 hazardous wastes sites have been documented in the state, and more are added to the list each year. The Department of Environmental Conservation, an agency with a large statutory mandate and a large geographical area to cover, was underfunded even before this year's proposed budget cuts. DEC can't do everything. The Citizen Self-Protection Act will put power back into the hands of the people when normal administrative channels aren't adequate.

When can citizens take action?

A suit can not be filed until 60 days after the plaintiff has given notice of violation to the Commissioner and to the alleged polluter. If the Commissioner is already prosecuting a civil or administrative penalty proceeding, a suit may not be filed.

Who can be sued, and what remedies can be achieved?

Citizens could sue any person, the state, or any agency of the state that is allegedly violating pollution laws (Title 46). A citizen may also sue the DEC Commissioner if the Commissioner fails to perform a nondiscretionary act or duty.

The court may award civil penalties, issue an injunction, or provide for other relief. Any monetary penalty above and beyond reimbursement of attorney's fees reverts to the state general fund.

Does the federal government or any other states use citizen suit provisions?

Congress has recognized the value of citizen suits as supplements to the government's enforcement. Citizens have ample authority to enforce federal environmental laws. Citizen enforcement actions have proven not to be unreasonable avenues for harassment of industry or the EPA, but to be a valuable means for stopping major violators whom the EPA had been unable to reach. The Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, or Superfund) and the Surface Mining Reclamation Act all have citizen suit provisions. *The business community has operated under these federal laws for nearly 20 years.* Sixteen other states and the District of Columbia have citizen suit provisions in various forms.

What powers do Alaskans have now to protect themselves from pollution?

Alaskans can bring a lawsuit against polluters who are violating federal environmental laws. In some cases, Alaskans do have the legal authority to sue violators of some state laws, including the state surface mining coal law. *Interestingly, citizen suits are a prominent feature of the Oil and Gas Commission laws, existing to protect the interests of the oil industry.* Victims of pollution do not, however, have the power to enforce state pollution laws.