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(d) Revisions

A State emergency response commission may revise its designations and appointments under subsections (b) and (c) of this section as it deems appropriate. Interested persons may petition the State emergency response commission to modify the membership of a local emergency planning committee.

(Pub.L. 99-499, Title III, § 301, Oct. 17, 1986, 100 Stat. 1729.)

Effective Date

Section 4 of Pub.L. 99-499, Oct. 17, 1986, 100 Stat. 1614, provided that title III of Pub.L. 99-499 [this chapter] is effective Oct. 17, 1986.

CERCLA and Administrator

Section 2 of Pub.L. 99-499, Oct. 17, 1986, 100 Stat. 1613, provided that, as used in this chapter—

(1) CERCLA.—The term "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C.A. § 9601 et seq.]

(2) Administrator.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

Short Title

Section 300(a) of Pub.L. 99-499, Title III, Oct. 17, 1986, 100 Stat. 1729, provided that: "This title [enacting this chapter] may be cited as the 'Emergency Planning and Community Right To Know Act of 1986'."

Library References

Health and Environment ⇔25.5(9).
C.J.S. Health and Environment §§ 65, 66, 103, 107, 140 et seq.

§ 11002. Substances and facilities covered and notification [EPCRTKA § 302]

(a) Substances covered

(1) In general

A substance is subject to the requirements of this subchapter if the substance is on the list published under paragraph (2).

(2) List of extremely hazardous substances

Within 30 days after October 17, 1986, the Administrator shall publish a list of extremely hazardous substances. The list shall be the same as the list of substances published in November 1985 by the Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance".

(3) Thresholds

(A) At the time the list referred to in paragraph (2) is published the Administrator shall—

(i) publish an interim final regulation establishing a threshold planning quantity for each substance on the list, taking into account the criteria described in paragraph (4), and

(ii) initiate a rulemaking in order to publish final regulations establishing a threshold planning quantity for each substance on the list.

(B) The threshold planning quantities may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(C) If the Administrator fails to publish an interim final regulation establishing a threshold planning quantity for a substance within 30 days after October 17, 1986, the threshold planning quantity for the substance shall be 2 pounds until such time as the Administrator publishes regulations establishing a threshold for the substance.

(4) Revisions

The Administrator may revise the list and thresholds under paragraphs (2) and (3) from time to time. Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combustability, or flammability of a substance. For purposes of the preceding sentence, the term "toxicity" shall include any short- or long-term health effect which may result from a short-term exposure to the substance.

(b) Facilities covered

(1) Except as provided in section 11004 of this title, a facility is subject to the requirements of this subchapter if a substance on the list referred to in subsection (a) of this section is present at the facility in an amount in excess of the threshold planning quantity established for such substance.

(2) For purposes of emergency planning, a Governor or a State emergency response commission may designate additional facilities which shall be subject to the requirements of this subchapter, if such designation is made after public notice and opportunity for comment. The Governor or State emergency response commission shall notify the facility concerned of any facility designation under this paragraph.

(c) Emergency planning notification

Not later than seven months after October 17, 1986, the owner or operator of each facility subject to the requirements of this subchapter by reason of subsection (b)(1) of this section shall notify the State emergency response commission for the State in which such facility is located that such facility is subject to the requirements of this subchapter. Thereafter, if a substance on the list of extremely hazardous substances referred to in subsection (a) of this section first becomes present at such facility in excess of the threshold planning quantity established for such substance, or if there is a revision of such list and the facility has present a substance on the revised list in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the State emergency response commission and the local emergency planning committee within 60 days after such acquisition or revision that such facility is subject to the requirements of this subchapter.

(d) Notification of Administrator

The State emergency response commission shall notify the Administrator of facilities subject to the requirements of this subchapter by notifying the Administrator of—

(1) each notification received from a facility under subsection (c) of this section, and

(2) each facility designated by the Governor or State emergency response commission under subsection (b)(2) of this section.

(Pub.L. 99-499, Title III, § 302, Oct. 17, 1986, 100 Stat. 1730.)

Library References

Health and Environment ⇔25.5(9.5).
C.J.S. Health and Environment §§ 91, 92, 106, 109, 129 to 131.

§ 11003. Comprehensive emergency response plans [EPCRTKA § 303]

(a) Plan required

Each local emergency planning committee shall complete preparation of an emergency plan in accordance with this section not later than two years after October 17, 1986. The committee shall review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require.

(b) Resources

Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources.

(c) Plan provisions

Each emergency plan shall include (but is not limited to) each of the following:

(1) Identification of facilities subject to the requirements of this subchapter that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 11002(a) of this title, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subchapter, such as hospitals or natural gas facilities.

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

(3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 11004 of this title).

(5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subchapter, and an identification of the persons responsible for such equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

(d) Providing of information

For each facility subject to the requirements of this subchapter:

(1) Within 30 days after establishment of a local emergency planning committee for the emergency planning district in which such facility is located, or within 11 months after October 17, 1986, whichever is earlier, the owner or operator of the facility shall notify the emergency planning committee (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

(2) The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such

facility as such changes occur or are expected to occur.

(3) Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.

(e) Review by the State emergency response commission

After completion of an emergency plan under subsection (a) of this section for an emergency planning district, the local emergency planning committee shall submit a copy of the plan to the State emergency response commission of each State in which such district is located. The commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan.

(f) Guidance documents

The national response team, as established pursuant to the National Contingency Plan as established under section 9605 of this title, shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after October 17, 1986.

(g) Review of plans by regional response teams

The regional response teams, as established pursuant to the National Contingency Plan as established under section 9605 of this title, may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review shall not delay implementation of the plan.

(Pub.L. 99-499, Title III, § 303, Oct. 17, 1986, 100 Stat. 1731.)

Library References

Health and Environment ⇐25.5(9).
C.J.S. Health and Environment §§ 65, 66, 103, 107, 140 et seq.

§ 11004. Emergency notification [EPCRTKA § 304]

(a) Types of releases

(1) 11002(a) substance which requires CERCLA notice

If a release of an extremely hazardous substance referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C.A. § 9603(a)] (hereafter in this section referred to as "CERCLA") (42 U.S.C. 9601 et seq.), the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section.

(2) Other section 11002(a) substance

If a release of an extremely hazardous substance referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA [42 U.S.C.A. § 9603(a)] the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section, but only if the release—

(A) is not a federally permitted release as defined in section 101(10) of CERCLA [42 U.S.C.A. § 9601(10)],

(B) is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and

(C) occurs in a manner which would require notification under section 103(a) of CERCLA [42 U.S.C.A. § 9603(a)]

Unless and until superseded by regulations establishing a quantity for an extremely hazardous substance described in this paragraph, a quantity of 1 pound shall be deemed that quantity the release of which requires notice as described in subsection (b) of this section.

(3) Non-11002(a) substance which requires CERCLA notice

If a release of a substance which is not on the list referred to in section 11002(a) of this title occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under section 103(a) of CERCLA [42 U.S.C.A. § 9603(a)], the owner or operator shall provide notice as follows:

(A) If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA [42 U.S.C.A. 9602(a)], the owner or operator shall provide notice as described in subsection (b) of this section.

(B) If the substance is one for which a reportable quantity has not been established under section 102(a) of CERCLA [42 U.S.C.A. § 9602(a)]—

(i) Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the community emergency coordinator for the local emergency planning committee, at the same time and in the same form, as notice is provided to the National Response Center under section 103(a) of CERCLA [42 U.S.C.A. § 9603(a)]

(ii) On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b) of this section.

(4) Exempted releases

This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

(b) Notification

(1) Recipients of notice

Notice required under subsection (a) of this section shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committees, if established pursuant to section 11001(c) of this title, for any area likely to be affected by the release and to the State emergency planning commission of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(2) Contents

Notice required under subsection (a) of this section shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

(A) The chemical name or identity of any substance involved in the release.

(B) An indication of whether the substance is on the list referred to in section 11002(a) of this title.

(C) An estimate of the quantity of any such substance that was released into the environment.

(D) The time and duration of the release.

(E) The medium or media into which the release occurred.

(F) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(G) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(H) The name and telephone number of the person or persons to be contacted for further information.

(c) Followup emergency notice

As soon as practicable after a release which requires notice under subsection (a) of this section, such owner or operator shall provide a written followup emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b) of this section, and including additional information with respect to—

(1) actions taken to respond to and contain the release,

(2) any known or anticipated acute or chronic health risks associated with the release, and

(3) where appropriate, advice regarding medical attention necessary for exposed individuals.

(d) Transportation exemption not applicable

The exemption provided in section 11017 of this title (relating to transportation) does not apply to this section.

(Pub.L. 99-499, Title III, § 304, Oct. 17, 1986, 100 Stat. 1733.)

Library References

Health and Environment ⇐25.5(5.6).
C.J.S. Health and Environment §§ 91, 92, 106, 109, 129 to 131.

Code of Federal Regulations

Emergency planning and notification, see 40 CFR 355.40 et seq.

§ 11005. Emergency training and review of emergency systems [EPCRTKA § 305]

(a) Emergency training

(1) Programs

Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and con-

trol, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.

(2) State and local program support

There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1987, 1988, 1989, and 1990, $5,000,000 for making grants to support programs of State and local governments, and to support university sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The remaining 20 percent of such costs shall be funded from non-Federal sources.

(3) Other programs

Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).

(b) Review of emergency systems

(1) Review

The Administrator shall initiate, not later than 30 days after October 17, 1986, a review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances from the substances on the list referred to in section 11002(a) of this title, for the purposes of this review. The Administrator shall report interim findings to the Congress not later than seven months after October 17, 1986, and issue a final report of findings and recommendations to the Congress not later than 18 months after October 17, 1986. Such report shall be prepared in consultation with the States and appropriate Federal agencies.

(2) Report

The report required by this subsection shall include the Administrator's findings regarding each of the following:

(A) The status of current technological capabilities to (i) monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances, (ii) determine the magnitude and direction of the hazard posed by each release, (iii) identify specific substances, (iv) provide data on the specific chemical composition of such releases, and (v) determine the relative concentrations of the constituent substances.

(B) The status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances into the environment, including releases into the atmosphere, surface water, or groundwater from facilities that produce, store, or use significant quantities of such extremely hazardous substances.

(C) The technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such extremely hazardous substances into the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

(3) Recommendations

The report required by this subsection shall also include the Administrator's recommendations for—

(A) initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and

(B) improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such extremely hazardous substances.

(Pub.L. 99-499, Title III, § 305, Oct. 17, 1986, 100 Stat. 1735.)

Library References

Health and Environment ⇐25.5(5), (10).
C.J.S. Health and Environment §§ 65, 66, 103 to 113, 129 to 130 et seq.

SUBCHAPTER II—REPORTING REQUIREMENTS

Library References

Health and Environment ⇐25.5(5.5).
C.J.S. Health and Environment §§ 91, 92, 106 to 109, 129 to 131.

§ 11021. Material safety data sheets [EPCRTKA § 311]

(a) Basic requirement

(1) Submission of MSDS or list

The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act [29 U.S.C.A. § 651 et seq.] shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in paragraph (2), to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) Contents of list

(A) The list of chemicals referred to in paragraph (1) shall include each of the following:

(i) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 [29 U.S.C.A. § 651 et seq.] and regulations promulgated under that Act, grouped in categories of health and physical hazards as set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).

(ii) The chemical name or the common name of each such chemical as provided on the material safety data sheet.

(iii) Any hazardous component of each such chemical as provided on the material safety data sheet.

(B) For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C.A. § 651 et seq.] and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(3) Treatment of mixtures

An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.

(B) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.

(b) Thresholds

The Administrator may establish threshold quantities for hazardous chemicals below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) Availability of MSDS on request

(1) To local emergency planning committee

If an owner or operator of a facility submits a list of chemicals under subsection (a)(1) of this section, the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to such committee.

(2) To public

A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 11044 of this title. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 11044 of this title.

(d) Initial submission and updating

(1) The initial material safety data sheet or list required under this section with respect to a hazardous chemical shall be provided before the later of—

(A) 12 months after October 17, 1986, or

(B) 3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C.A. § 651 et seq.] and regulations promulgated under that Act.

(2) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a) of this section, a revised sheet shall be provided to such person.

(e) "Hazardous chemical" defined

For purposes of this section, the term "hazardous chemical" has the meaning given such term by section 1910.1200(c) of title 29 of the Code of Feder

al Regulations, except that such term does not include the following:

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

(Pub.L. 99-499, Title III, § 311, Oct. 17, 1986, 100 Stat. 1736.)

§ 11022. Emergency and hazardous chemical inventory forms [EPCRTKA § 312]

(a) Basic requirement

(1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 [29 U.S.C.A. § 651 et seq.] and regulations promulgated under that Act shall prepare and submit an emergency and hazardous chemical inventory form (hereafter in this chapter referred to as an "inventory form") to each of the following:

(A) The appropriate local emergency planning committee.

(B) The State emergency response commission.

(C) The fire department with jurisdiction over the facility.

(2) The inventory form containing tier I information (as described in subsection (d)(1) of this section) shall be submitted on or before March 1, 1988, and annually thereafter on March 1, and shall contain data with respect to the preceding calendar year. The preceding sentence does not apply if an owner or operator provides, by the same deadline and with respect to the same calendar year, tier II information (as described in subsection (d)(2) of this section) to the recipients described in paragraph (1).

(3) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A) Providing information on the inventory form on each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the inventory form for the element or compound at the facility is necessary.

(B) Providing information on the inventory form on the mixture itself.

(b) Thresholds

The Administrator may establish threshold quantities for hazardous chemicals covered by this section below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) Hazardous chemicals covered

A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under section 11021 of this title.

(d) Contents of form

(1) Tier I information

(A) Aggregate information by category

An inventory form shall provide the information described in subparagraph (B) in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C.A. § 651 et seq.] and regulations promulgated under that Act.

(B) Required information

The information referred to in subparagraph (A) is the following:

(i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.

(ii) An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.

(iii) The general location of hazardous chemicals in each category.

(C) Modifications

For purposes of reporting information under this paragraph, the Administrator may—

(i) modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 [29 U.S.C.A. § 651 et seq.] and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency, or

(ii) require reporting on individual hazardous chemicals of special concern to emergency response personnel.

(2) Tier II information

An inventory form shall provide the following additional information for each hazardous chemical present at the facility, but only upon request and in accordance with subsection (e) of this section:

(A) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(B) An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

(C) An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

(D) A brief description of the manner of storage of the hazardous chemical.

(E) The location at the facility of the hazardous chemical.

(F) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 11044 of this title.

(e) Availability of tier II information

(1) Availability to State commissions, local committees, and fire departments

Upon request by a State emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (d) of this section, to the person making the request. Any such request shall be with respect to a specific facility.

(2) Availability to other State and local officials

A State or local official acting in his or her official capacity may have access to tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for tier II information, the State commission or local committee shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the official.

(3) Availability to public

(A) In general

Any person may request a State emergency response commission or local emergency planning committee for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(B) Automatic provision of information to public

Any tier II information which a State emergency response commission or local emergency planning committee has in its possession shall be made available to a person making a request under this paragraph in accordance with section 11044 of this title. If the State emergency response commission or local emergency planning committee does not have the tier II information in its possession, upon a request for tier II information the State emergency response commission or local emergency planning committee shall, pursuant to paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 11044 of this title to the person making the request.

(C) Discretionary provision of information to public

In the case of tier II information which is not in the possession of a State emergency response commission or local emergency planning committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The State emergency response commission or local emergency planning committee may, pursuant to paragraph (1), request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the State emergency response commission or local emergency planning com-

mittee shall make the information available in accordance with section 11044 of this title to the person.

(D) Response in 45 days

A State emergency response commission or local emergency planning committee shall respond to a request for tier II information under this paragraph no later than 45 days after the date of receipt of the request.

(f) Fire department access

Upon request to an owner or operator of a facility which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an on-site inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

(g) Format of forms

The Administrator shall publish a uniform format for inventory forms within three months after October 17, 1986. If the Administrator does not publish such forms, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter.

(Pub.L. 99-499, Title III, § 312, Oct. 17, 1986, 100 Stat. 1738.)

Code of Federal Regulations

Hazardous chemical reporting, community right to know, see 40 CFR 370.1 et seq.

§ 11023. Toxic chemical release forms [EPCRTKA § 313]

(a) Basic requirement

The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) of this section for each toxic chemical listed under subsection (c) of this section that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) of this section during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

(b) Covered owners and operators of facilities

(1) In general

(A) The requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that toxic chemical established under subsection (f) of this section during the calendar year for which a release form is required under this section.

(B) The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Code to which this section applies is relevant to the purposes of this section.

(C) For purposes of this section—

(i) The term "manufacture" means to produce, prepare, import, or compound a toxic chemical.

(ii) The term "process" means the preparation of a toxic chemical, after its manufacture, for distribution in commerce—

(I) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such chemical, or

(II) as part of an article containing the toxic chemical.

(2) Discretionary application to additional facilities

The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State), may apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) of this section if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.

(c) Toxic chemicals covered

The toxic chemicals subject to the requirements of this section are those chemicals on the list in Committee Print Number 99-169 of the Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986" [42 U.S.C.A. § 11023] (including any revised version of the list as may be made pursuant to subsection (d) or (e) of this section).

(d) Revisions by Administrator

(1) In general

The Administrator may by rule add or delete a chemical from the list described in subsection (c) of this section at any time.

(2) Additions

A chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one of the following:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of—

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section. The number of chemicals included on the list described in subsection (c) of this section on the basis of the preceding sentence may constitute in the aggregate no more than 25 percent of the total number of chemicals on the list.

A determination under this paragraph shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.

(3) Deletions

A chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph (2).

(4) Effective date

Any revision made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(e) Petitions

(1) In general

Any person may petition the Administrator to add or delete a chemical from the list described in subsection (c) of this section on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2) of this section. Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

(A) Initiate a rulemaking to add or delete the chemical to the list, in accordance with subsection (d)(2) or (d)(3) of this section.

(B) Publish an explanation of why the petition is denied.

(2) Governor petitions

A State Governor may petition the Administrator to add or delete a chemical from the list described in subsection (c) of this section on the basis of the criteria in subparagraph (A), (B), or (C) of subsection (d)(2) of this section. In the case of such a petition from a State Governor to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (1) to delete a chemical. In the case of such a petition from a State Governor to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator—

(A) initiates a rulemaking to add the chemical to the list, in accordance with subsection (d)(2) of this section, or

(B) publishes an explanation of why the Administrator believes the petition does not meet the requirements of subsection (d)(2) of this section for adding a chemical to the list.

(f) Threshold for reporting

(1) Toxic chemical threshold amount

The threshold amounts for purposes of reporting toxic chemicals under this section are as follows:

(A) With respect to a toxic chemical used at a facility, 10,000 pounds of the toxic chemical per year.

(B) With respect to a toxic chemical manufactured or processed at a facility—

(i) For the toxic chemical release form required to be submitted under this section on or before July 1, 1988, 75,000 pounds of the toxic chemical per year.

(ii) For the form required to be submitted on or before July 1, 1989, 50,000 pounds of the toxic chemical per year.

(iii) For the form required to be submitted on or before July 1, 1990, and for each form thereafter, 25,000 pounds of the toxic chemical per year.

(2) Revisions

The Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(g) Form

(1) Information required

Not later than June 1, 1987, the Administrator shall publish a uniform toxic chemical release form for facilities covered by this section. If the Administrator does not publish such a form, owners and operators of facilities subject to the requirements of this section shall provide the information required under this subsection by letter postmarked on or before the date on which the form is due. Such form shall—

(A) provide for the name and location of, and principal business activities at, the facility;

(B) include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the report, regarding the accuracy and completeness of the report; and

(C) provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility:

(i) Whether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category or categories of use of the chemical.

(ii) An estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year.

(iii) For each waste stream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods for that waste stream.

(iv) The annual quantity of the toxic chemical entering each environmental medium.

(2) Use of available data

In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation. In order to assure consistency, the Administrator shall require that data be expressed in common units.

(h) Use of release form

The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available, consistent with section 11044(a) of this title, to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

(i) Modifications in reporting frequency

(1) In general

The Administrator may modify the frequency of submitting a report under this section, but the Administrator may not modify the frequency to be any more often than annually. A modification may apply, either nationally or in a specific geographic area, to the following:

(A) All toxic chemical release forms required under this section.

(B) A class of toxic chemicals or a category of facilities.

(C) A specific toxic chemical.

(D) A specific facility.

(2) Requirements

A modification may be made under paragraph (1) only if the Administrator—

(A) makes a finding that the modification is consistent with the provisions of subsection (b) of this section, based on—

(i) experience from previously submitted toxic chemical release forms, and

(ii) determinations made under paragraph (3), and

(B) the finding is made by a rulemaking in accordance with section 553 of Title 5.

(3) Determinations

The Administrator shall make the following determinations with respect to a proposed modification before making a modification under paragraph (1):

(A) The extent to which information relating to the proposed modification provided on the toxic chemical release forms has been used by the Administrator or other agencies of the Federal Government, States, local governments, health professionals, and the public.

(B) The extent to which the information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through a State program.

(C) The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.

(4) 5-year review

Any modification made under this subsection shall be reviewed at least once every 5 years. Such review shall examine the modification and ensure that the requirements of paragraphs (2) and (3) still justify continuation of the modification. Any change to a modification reviewed under this paragraph shall be made in accordance with this subsection.

(5) Notification to Congress

The Administrator shall notify Congress of an intention to initiate a rulemaking for a modification under this subsection. After such notification, the Administrator shall delay initiation of the rulemaking for at least 12 months, but no more than 24 months, after the date of such notification.

(6) Judicial review

In any judicial review of a rulemaking which establishes a modification under this subsection, a court may hold unlawful and set aside agency action, findings, and conclusions found to be not supported by substantial evidence.

(7) Applicability

A modification under this subsection may apply to a calendar year or other reporting period beginning no earlier than January 1, 1993.

(8) Effective date

Any modification made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any modification made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(j) EPA management of data

The Administrator shall establish and maintain in a computer data base a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis.

(k) Report

Not later than June 30, 1991, the Comptroller General, in consultation with the Administrator and appropriate officials in the States, shall submit to the Congress a report including each of the following:

(1) A description of the steps taken by the Administrator and the States to implement the requirements of this section, including steps taken to make information collected under this section available to and accessible by the public.

(2) A description of the extent to which the information collected under this section has been used by the Environmental Protection Agency, other Federal agencies, the States, and the public, and the purposes for which the information has been used.

(3) An identification and evaluation of options for modifications to the requirements of this section for the purpose of making information collected under this section more useful.

(7) Mass balance study

(1) In general

The Administrator shall arrange for a mass balance study to be carried out by the National Academy of Sciences using mass balance information collected by the Administrator under paragraph (3). The Administrator shall submit to Congress a report on such study no later than 5 years after October 17, 1986.

(2) Purposes

The purposes of the study are as follows:

(A) To assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases.

(B) To assess the value of obtaining mass balance information, or portions thereof, to determine the waste reduction efficiency of different facilities, or categories of facilities, including the effectiveness of toxic chemical regulations promulgated under laws other than this chapter.

(C) To assess the utility of such information for evaluating toxic chemical management practices at facilities, or categories of facilities, covered by this section.

(D) To determine the implications of mass balance information collection on a national scale similar to the mass balance information collection carried out by the Administrator under paragraph (3), including implications of the use of such collection as part of a national annual quantity toxic chemical release program.

(3) Information collection

(A) The Administrator shall acquire available mass balance information from States which currently conduct (or during the 5 years after October 17, 1986, initiate) a mass balance-oriented annual quantity toxic chemical release program. If information from such States provides an inadequate representation of industry classes and categories to carry out the purposes of the study, the Administrator also may acquire mass balance information necessary for the study from a representative number of facilities in other States.

(B) Any information acquired under this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of Title 18, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this section.

(C) The Administrator may promulgate regulations prescribing procedures for collecting mass balance information under this paragraph.

(D) For purposes of collecting mass balance information under subparagraph (A), the Administrator may require the submission of information by a State or facility.

(4) Mass balance definition

For purposes of this subsection, the term "mass balance" means an accumulation of the annual quantities of chemicals transported to a facility, produced at a facility, consumed at a facility, used at a facility, accumulated at a facility, released from a facility, and transported from a facility as a waste or as a commercial product or byproduct or component of a commercial product or byproduct.

(Pub.L. 99-499, Title III, § 313, Oct. 17, 1986, 100 Stat. 1741.)

SUBCHAPTER III—GENERAL PROVISIONS

§ 11041. Relationship to other law [EPCRTKA § 321]

(a) In general

Nothing in this chapter shall—

(1) preempt any State or local law,

(2) except as provided in subsection (b) of this section, otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law, or

(3) affect or modify in any way the obligations or liabilities of any person under other Federal law.

(b) Effect on MSDS requirements

Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section 11021 of this title. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet (including information on the location and quantity of hazardous chemicals present at the facility), through additional sheets attached to the data sheet or such other means as the State or locality considers appropriate.

(Pub.L. 99-499, Title III, § 321, Oct. 17, 1986, 100 Stat. 1747.)

Library References

Health and Environment ⇔25.5(5.5)
C.J.S. Health and Environment §§ 91, 92, 106, 109, 129 to 131.

§ 11042. Trade secrets [EPCRTKA § 322]

(a) Authority to withhold information

(1) General authority

(A) With regard to a hazardous chemical, an extremely hazardous substance, or a toxic chemical, any person required under section 11003(d)(2), 11003(d)(3), 11021, 11022, or 11023 of this title to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name and other specific identification), as defined in regulations prescribed by the Administrator under subsection (c) of this section, if the person complies with paragraph (2).

(B) Any person withholding the specific chemical identity shall, in the place on the submittal where the chemical identity would normally be included, include the generic class or category of the hazardous chemical, extremely hazardous substance, or toxic chemical (as the case may be).

(2) Requirements

(A) A person is entitled to withhold information under paragraph (1) if such person—

(i) claims that such information is a trade secret, on the basis of the factors enumerated in subsection (b) of this section,

(ii) includes in the submittal referred to in paragraph (1) an explanation of the reasons why such information is claimed to be a trade secret, based on the factors enumerated in subsection (b) of this section, including a specific description of why such factors apply, and

(iii) submits to the Administrator a copy of such submittal, and the information withheld from such submittal.

(B) In submitting to the Administrator the information required by subparagraph (A)(iii), a person withholding information under this subsection may—

(i) designate, in writing and in such manner as the Administrator may prescribe by regulation, the information which such person believes is entitled to be withheld under paragraph (1), and

(ii) submit such designated information separately from other information submitted under this subsection.

(3) Limitation

The authority under this subsection to withhold information shall not apply to information which the Administrator has determined, in accordance with subsection (c) of this section, is not a trade secret.

(b) Trade secret factors

No person required to provide information under this chapter may claim that the information is entitled to protection as a trade secret under subsection (a) of this section unless such person shows each of the following:

(1) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4) The chemical identity is not readily discoverable through reverse engineering.

(c) Trade secret regulations

As soon as practicable after October 17, 1986, the Administrator shall prescribe regulations to implement this section. With respect to subsection (b)(4) of this section, such regulations shall be equivalent to comparable provisions in the Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200) and any revisions of such standard prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United States in United Steelworkers of America, AFL-CIO-CLC v. Thorne G. Auchter.

(d) Petition for review

(1) In general

Any person may petition the Administrator for the disclosure of the specific chemical identity of a hazardous chemical, an extremely hazardous substance, or a toxic chemical which is claimed as

a trade secret under this section. The Administrator may, in the absence of a petition under this paragraph, initiate a determination, to be carried out in accordance with this subsection, as to whether information withheld constitutes a trade secret.

(3) Initial review

Within 30 days after the date of receipt of a petition under paragraph (1) (or upon the Administrator's initiative), the Administrator shall review the explanation filed by a trade secret claimant under subsection (a)(2) of this section and determine whether the explanation presents assertions which, if true, are sufficient to support a finding that the specific chemical identity is a trade secret.

(3) Finding of sufficient assertions

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents sufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to supplement the explanation with detailed information to support the assertions.

(B) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are true and that the specific chemical identity is a trade secret, the Administrator shall so notify the petitioner and the petitioner may seek judicial review of the determination.

(C) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are not true and that the specific chemical identity is not a trade secret, the Administrator shall notify the trade secret claimant that the Administrator intends to release the specific chemical identity. The trade secret claimant has 30 days in which he may appeal the Administrator's determination under this subparagraph to the Administrator. If the Administrator does not reverse his determination under this subparagraph in such an appeal by the trade secret claimant, the trade secret claimant may seek judicial review of the determination.

(4) Finding of insufficient assertions

(A) If the Administrator determines pursuant to paragraph (2) that the explanation presents insufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to appeal the determination to the Administrator, or, upon a showing of good cause, amend the original explanation by providing supplementary assertions to support the trade secret claim.

(B) If the Administrator does not reverse his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the Administrator shall so notify the trade secret claimant and the trade secret claimant may seek judicial review of the determination.

(C) If the Administrator reverses his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the procedures under paragraph (3) of this subsection apply.

(e) Exception for information provided to health professionals

Nothing in this section, or regulations adopted pursuant to this section, shall authorize any person to withhold information which is required to be provided to a health professional, a doctor, or a nurse in accordance with section 11043 of this title.

(f) Providing information to the Administrator; availability to public

Any information submitted to the Administrator under subsection (a)(2) of this section or subsection (d)(3) of this section (except a specific chemical identity) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator has access under this section if made public would divulge information entitled to protection under section 1905 of Title 18, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter.

(g) Information provided to State

Upon request by a State, acting through the Governor of the State, the Administrator shall provide to the State any information obtained under subsection (a)(2) of this section and subsection (d)(3) of this section.

(h) Information on adverse effects

(1) In any case in which the identity of a hazardous chemical or an extremely hazardous substance is claimed as a trade secret, the Governor or State emergency response commission established under section 11001 of this title shall identify the adverse health effects associated with the hazardous chemical or extremely hazardous substance and shall assure that such information is provided to any person requesting information about such hazardous chemical or extremely hazardous substance.

(2) In any case in which the identity of a toxic chemical is claimed as a trade secret, the Administrator shall identify the adverse health and environmental effects associated with the toxic chemical and shall assure that such information is included in the computer database required by section 11023(j) of this title and is provided to any person requesting information about such toxic chemical.

(i) Information provided to Congress

Notwithstanding any limitation[1] contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available to a duly authorized committee of the Congress upon written request by such a committee.

(Pub.L. 99-499, Title III, § 322, Oct. 17, 1986, 100 Stat. 1717.)

[1] So in original. Probably should be "limitation".

Library References

Health and Environment ⇐25(45.5), (9).
C.J.S. Health and Environment §§ 65, 66, 91, 92, 103 to 109, 129 to 140 et seq.

§ 11043. Provision of information to health professionals, doctors, and nurses [EPCRTKA § 323]

(a) Diagnosis or treatment by health professional

An owner or operator of a facility which is subject to the requirements of section 11021, 11022, or 11023 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (d) of this section. The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that—

(1) the information is needed for purposes of diagnosis or treatment of an individual,

(2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and

(3) knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d) of this section.

(b) Medical emergency

An owner or operator of a facility which is subject to the requirements of section 11021, 11022, or 11023 of this title shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that—

(1) a medical emergency exists,

(2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first aid diagnosis or treatment, and

(3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet, an inventory form, or a toxic chemical release form under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) of this section and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) Preventive measures by local health professionals

(1) Provision of information

An owner or operator of a facility subject to the requirements of section 11021, 11022, or 11023 of

this title shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, or epidemiologist)—

(A) who is a local government employee or a person under contract with the local government, and

(B) who requests such information in writing and provides a written statement of need under paragraph (2) and a written confidentiality agreement under subsection (d) of this section.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local health professional. The authority to withhold the specific chemical identity of a chemical under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d) of this section.

(2) Written statement of need

The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(B) To conduct or assess sampling to determine exposure levels of various population groups.

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

(F) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(d) Confidentiality agreement

Any person obtaining information under subsection (a) or (c) of this section shall, in accordance with such subsection (a) or (c) of this section, be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

(e) Regulations

As soon as practicable after October 17, 1986, the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsection[1] (a) and (c) of this section and the confidentiality agreement under subsection (d) of this section.

(Pub.L. 99-499, Title III, § 323, Oct. 17, 1986, 100 Stat. 1750.)

[1] So in original. Probably should be "subsections".

§ 11044. Public availability of plans, data sheets, forms, and followup notices [EPCRTKA § 324]

(a) Availability to public

Each emergency response plan, material safety data sheet, list described in section 11021(a)(2) of this title, inventory form, toxic chemical release form, and followup emergency notice shall be made available to the general public, consistent with section 11042 of this title, during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 11022 of this title, the State emergency response commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 11022(d)(2) of this title to be contained in an inventory form as tier II information.

(b) Notice of public availability

Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (a) of this section.

(Pub.L. 99-499, Title III, § 324, Oct. 17, 1986, 100 Stat. 1752.)

Library References

Health and Environment ⇐25.5(5.5)
C.J.S. Health and Environment §§ 91, 92, 106, 109, 129 to 131

Law Review Commentaries

Environmental liability and the limits of insurance. Kenneth S. Abraham, 88 Columbia L.Rev. 942 (1988)

§ 11045. Enforcement [EPCRTKA § 325]

(a) Civil penalties for emergency planning

The Administrator may order a facility owner or operator (except an owner or operator of a facility designated under section 11002(b)(2) of this title) to comply with section 11022(c) of this title and section 11003(d) of this title. The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

(b) Civil, administrative, and criminal penalties for emergency notification

(1) Class I administrative penalty

(A) A civil penalty of not more than $25,000 per violation may be assessed by the Administrator in the case of a violation of the requirements of section 11004 of this title.

(B) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(C) In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(2) Class II administrative penalty

A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the Administrator in the case of a violation of the requirements of section 11004 of this title. In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 2615 of Title 15. In any proceeding for the assessment of a civil penalty under this subsection the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

(3) Judicial assessment

The Administrator may bring an action in the United States District court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation continues in the case of a violation of the requirements of section 11004 of this title. In the case of a second or subsequent violation, the amount of such penalty may be not more than $75,000 for each day during which the violation continues.

(4) Criminal penalties

Any person who knowingly and willfully fails to provide notice in accordance with section 11004 of this title shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than $50,000 or imprisoned for not more than five years, or both).

(c) Civil and administrative penalties for reporting requirements

(1) Any person (other than a governmental entity) who violates any requirement of section 11022 or 11023 of this title shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation.

(2) Any person (other than a governmental entity) who violates any requirement of section 11021 or 11043(b) of this title, and any person who fails to furnish to the Administrator information required under section 11042(a)(2) of this title shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each such violation.

(3) Each day a violation described in paragraph (1) or (2) continues shall, for purposes of this subsection, constitute a separate violation.

(4) The Administrator may assess any civil penalty for which a person is liable under this subsection by administrative order or may bring an action to assess and collect the penalty in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(d) Civil, administrative, and criminal penalties with respect to trade secrets

(1) Civil and administrative penalty for frivolous claims

If the Administrator determines—

(A)(i) under section 11042(d)(4) of this title that an explanation submitted by a trade secret claimant presents insufficient assertions to support a finding that a specific chemical identity is a trade secret, or (ii) after receiving supplemental supporting detailed information under section 11042(d)(3)(A) of this title, that the specific chemical identity is not a trade secret; and

(B) that the trade secret claim is frivolous,

the trade secret claimant is liable for a penalty of $25,000 per claim. The Administrator may assess the penalty by administrative order or may bring an action in the appropriate district court of the United States to assess and collect the penalty.

(2) Criminal penalty for disclosure of trade secret information

Any person who knowingly and willfully divulges or discloses any information entitled to protection under section 11042 of this title shall, upon conviction, be subject to a fine of not more than $20,000 or to imprisonment not to exceed one year, or both.

(e) Special enforcement provisions for section 11043

Whenever any facility owner or operator required to provide information under section 11043 of this title to a health professional who has requested such information fails or refuses to provide such information in accordance with such section, such health professional may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 11043 of this title.

(f) Procedures for administrative penalties

(1) Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(2) The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(Pub. L. 99-499, Title III, § 325, Oct. 17, 1986, 100 Stat. 1753.)

Library References

Health and Environment ⇐25.5(10), 38.
C.J.S. Health and Environment §§ 49, 50, 101 et seq., 113, 131 to 156.

§ 11046. Civil actions [EPCRTKA § 326]

(a) Authority to bring civil actions

(1) Citizen suits

Except as provided in subsection (e) of this section, any person may commence a civil action on his own behalf against the following:

(A) An owner or operator of a facility for failure to do any of the following:

(i) Submit a followup emergency notice under section 11004(c) of this title.

(ii) Submit a material safety data sheet or a list under section 11021(a) of this title.

(iii) Complete and submit an inventory form under section 11022(a) of this title containing tier I information as described in section 11022(d)(1) of this title unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(iv) Complete and submit a toxic chemical release form under section 11023(a) of this title.

(B) The Administrator for failure to do any of the following:

(i) Publish inventory forms under section 11022(g) of this title.

(ii) Respond to a petition to add or delete a chemical under section 11023(e)(1) of this title within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under[1] 11023(g) of this title.

(iv) Establish a computer database in accordance with section 11023(j) of this title.

(v) Promulgate trade secret regulations under section 11042(e) of this title.

(vi) Render a decision in response to a petition under section 11042(d) of this title within 9 months after receipt of the petition.

(C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 11044(a) of this title.

(D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 11022(e)(3) of this title within 120 days after the date of receipt of the request.

(2) State or local suits

(A) Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(i) Provide notification to the emergency response commission in the State under section 11002(c) of this title.

(ii) Submit a material safety data sheet or a list under section 11021(a) of this title.

(iii) Make available information requested under section 11021(c) of this title.

(iv) Complete and submit an inventory form under section 11022(a) of this title containing tier I information unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 11003(d) of this title or for failure to submit tier II information under section 11022(e)(1) of this title.

(C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section 11042(g) of this title.

(b) Venue

(1) Any action under subsection (a) of this section against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (a) of this section against the Administrator may be brought in the United States District Court for the District of Columbia.

(c) Relief

The district court shall have jurisdiction in actions brought under subsection (a) of this section against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) of this section against the Administrator to order the Administrator to perform the act or duty concerned.

(d) Notice

(1) No action may be commenced under subsection (a)(1)(A) of this section prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a)(1)(B) or (a)(1)(C) of this section prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) Limitation

No action may be commenced under subsection (a) of this section against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this chapter with respect to the violation of the requirement.

(f) Costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs

of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) Other rights

Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

(h) Intervention

(1) By the United States

In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.

(2) By persons

In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

(Pub.L. 99-499, Title III, § 326, Oct. 17, 1986, 100 Stat. 1755.)

[1] So in original. Probably should be preceded by "section".

Law Review Commentaries

Environmental liability and the limits of insurance. Kenneth S. Abraham, 88 Columbia L.Rev. 942 (1988).

§ 11047. Exemption [EPCRTKA § 327]

Except as provided in section 11004 of this title, this chapter does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this chapter, including the transportation and distribution of natural gas.

(Pub.L. 99-499, Title III, § 327, Oct. 17, 1986, 100 Stat. 1757.)

Library References

Health and Environment ⇐25.5(5.5)
C.J.S. Health and Environment §§ 91, 92, 106, 109, 129 to 131.

§ 11048. Regulations [EPCRTKA § 328]

The Administrator may prescribe such regulations as may be necessary to carry out this chapter.

(Pub.L. 99-499, Title III, § 328, Oct. 17, 1986, 100 Stat. 1757.)

Library References

Health and Environment ⇐25.5(1).
C.J.S. Health and Environment §§ 61 et seq., 91 et seq., 106 to 133 et seq.

§ 11049. Definitions [EPCRTKA § 329]

For purposes of this chapter—

(1) Administrator

The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) Environment

The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(3) Extremely hazardous substance

The term "extremely hazardous substance" means a substance on the list described in section 11002(a)(2) of this title.

(4) Facility

The term "facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 11004 of this title, the term includes motor vehicles, rolling stock, and aircraft.

(5) Hazardous chemical

The term "hazardous chemical" has the meaning given such term by section 11021(e) of this title.

(6) Material safety data sheet

The term "material safety data sheet" means the sheet required to be developed under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(7) Person

The term "person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

(8) Release

The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

(9) State

The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

(10) Toxic chemical

The term "toxic chemical" means a substance on the list described in section 11023(c) of this title.

(Pub.L. 99-499, Title III, § 329, Oct. 17, 1986, 100 Stat. 1757.)

Library References

Health and Environment ⇐25.5(5.5)
C.J.S. Health and Environment §§ 91, 92, 106, 109, 129 to 131.

§ 11050. Authorization of appropriations [EPCRTKA § 330]

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to carry out this chapter.

(Pub.L. 99-499, Title III, § 330, Oct. 17, 1986, 100 Stat. 1758.)

Library References

United States ⇐85.
C.J.S. United States § 123.

Norman L. Stanley
Texaco Inc
Manager
Public and
Government Affairs
Western Region

March 6, 1992

RE: STATE OF ALASKA - 1992 LEGISLATION
SENATE BILL 384

The Honorable Curt Menard
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Senator Menard:

Texaco supports Senate Bill 384.

As you are well aware, this legislation allows for the funds available in the Oil and Hazardous Substance Response Release Fund, or "470 Fund", to be used for certain activities related to the underground petroleum storage tank program.

During the 1990 Alaska Legislative Session, HB220 (the Underground Storage Tank Statute) was passed authorizing the development of a comprehensive, state-managed UST Program. A portion of this program, Storage Tank Assistance Fund, was designed to provide grants and loans to tank owners and operators.

Financial assistance was offered to mitigate the often excessive financial encumbrances encountered when replacing and removing USTs, including the associated cleanup costs that often occur. These activities, of course, must achieve the standards set forth in the Alaska and Federal UST programs for soil and groundwater remediation. Originally, the entire program was to be funded by the financial resources generated from the fees collected annually from the registration of all USTs within the State. However, these revenues are not sufficient to meet the needs of the requests presented to the ADEC.

The "470 Fund", which is already in place, would help provide for those funds and preclude the necessity of establishing a new tax or increasing existing taxes. It would also help ensure that an adequate number of service stations remain open to care for the Alaskan consumer's energy needs.

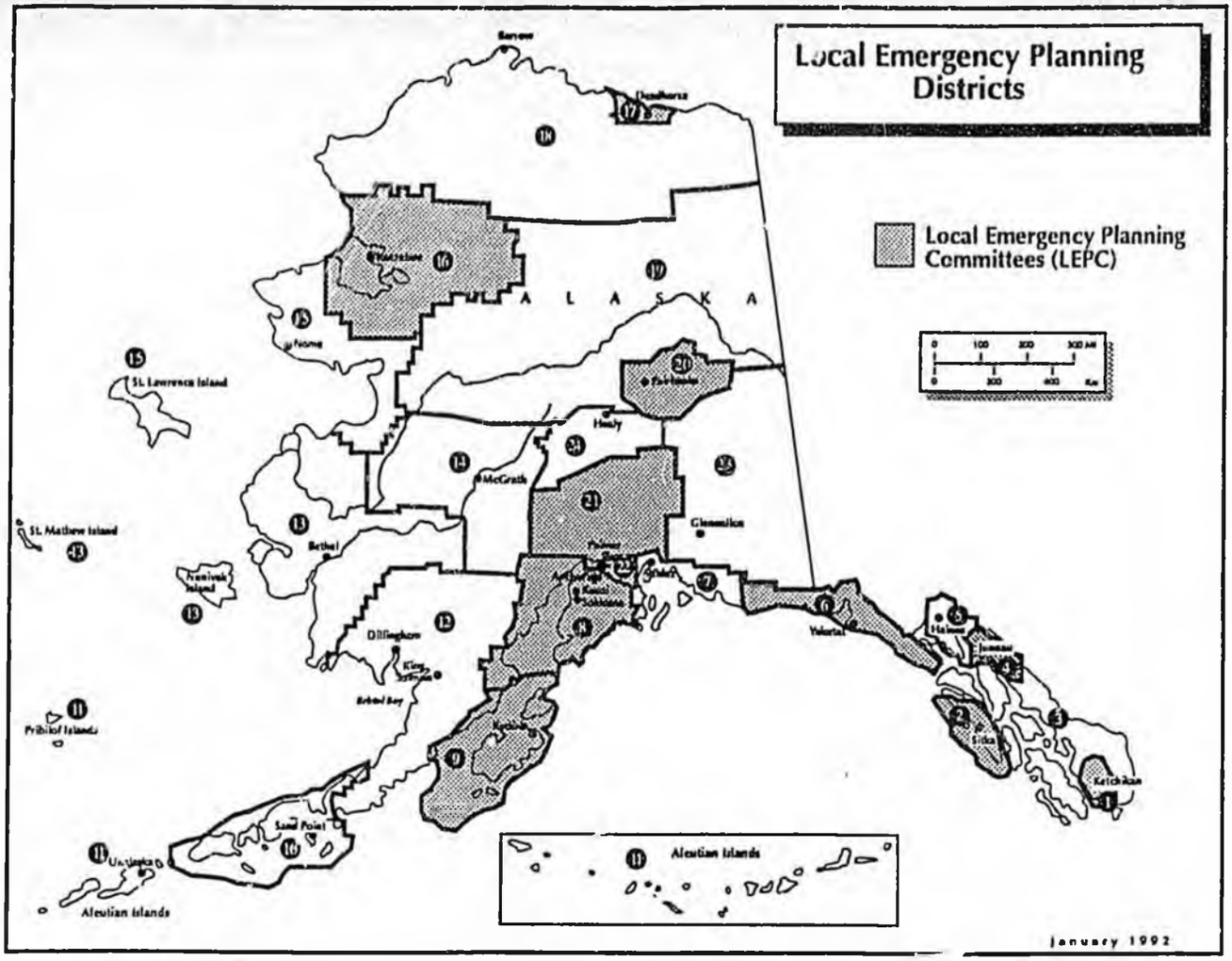
Accordingly, Texaco supports the measure, and respectfully requests your favorable vote for SB 384. Additionally, it is my understanding that a Committee Substitute (CS) is being considered that is identical to CS House Bill 264 (Resources). We are also supportive of that particular Committee Substitute.

Sincerely,

Norman L. Stanley

NLS
feb25-01.akhb264

cc: Senate Resources Committee Members



Map Key	Local Emergency Planning District (LEPD)	Principal City	LEPC appointed by SERC
1	KETCHIKAN GATEWAY BOROUGH	Ketchikan	April 4, 1991
2	CITY & BOROUGH OF SITKA	Sitka	May 14, 1990
3	Southeast	Juneau	
4	CITY AND BOROUGH OF JUNEAU	Juneau	January 29, 1992
5	Lynn Canal	Haines	
6	CITY OF YAKUTAT	Yakutat	September 18, 1989
7	Prince William Sound	Valdez	
8	KENAI PENINSULA BOROUGH	Soldotna	June 9, 1989
9	KODIAK ISLAND BOROUGH	Kodiak	June 9, 1989
10	Aleutians East Borough	Sand Point	
11	Aleutian Islands	Unalaska	
12	Bristol Bay	Dillingham	
13	Yukon Delta	Bethel	
14	Southwestern Interior	McGrath	
15	Northwestern	Nome	
16	NORTHWEST ARCTIC BOROUGH	Kotzebue	June 14, 1991
17	PRUDHOE BAY	NA	June 14, 1991
18	North Slope Borough	Barrow	
19	Interior Alaska	Fairbanks	
20	FAIRBANKS NORTHSTAR BOROUGH	Fairbanks	June 9, 1989
21	MATANUSKA-SUSITNA BOROUGH	Palmer	June 14, 1991
22	MUNICIPALITY OF ANCHORAGE	Anchorage	June 14, 1991
23	Southeastern Interior	Glennallen	
24	Denali Borough	Healy	

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSSB 384

Revision Date: May 8, 1992
Title: Oil and Hazardous Substance

Sponsor: Sen. Menard
Requestor: Senate Resources

Department Affected: Department of Revenue
BRU: Revenue Operations
Component: Income and Excise Audit

COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE	4,600.0	4,600.0	4,600.0	4,600.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0.0

ANALYSIS: Attach a separate page if necessary.

SEE ATTACHED

Prepared By: Paul E. Dick
Division: Income and Excise Audit

Phone: (907) 465-2320
Date: May 8, 1992

Approved by Commissioner: Darrel J. Rexwinkel
Agency: Department of Revenue

Date: 5/11/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Analysis

Section 2 of this bill adds a 1 cent per gallon surcharge on highway motor fuel sold, transferred or consumed in the state for funding the storage tank assistance fund under the Department of Environmental Conservation. The surcharge becomes effective July 1, 1992 and would be automatically repealed effective July 1, 1996 under section 9 of this bill.

Based on FY 91 consumption, the 1 cent surcharge would generate an additional $4.6 million.

TESORO ALASKA

W. Gene Burden
Vice President
Environmental Affairs & Government Relations

March 23, 1992

Senator Curt Menard
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, Alaska 99811

SUBJECT: SB384 - Underground Tank Assistance Fund

Dear Senator Menard:

I have been asked to provide Tesoro Alaska's position on SB384 regarding the inclusion of designated charges for underground storage tanks to the list of approved expenditures for "470 funds".

There is a definite need to have a secure funding source for this program to assure that the State's underground storage tank program is implemented uniformly throughout the state. The availability of such funding can make the difference in whether some small business people stay in business. This issue potentially affects Alaskans in all regions of the State. As a result Tesoro Alaska supports the present draft of SB384.

If there are any questions, please call.

Sincerely,

W. Gene Burden

WGB:mm

Tesoro Alaska Petroleum Company P.O. Box 196272, Anchorage, Alaska 99519-6272 (907) 561-5521 FAX (907) 561-8218

Era Aviation, Inc.

Wilbur O'Brien
President

VIA FACSIMILE

March 5, 1992

The Honorable Lloyd Jones, Chairman
Senate Resources Committee
Alaska State Capitol Building
Room 30
Juneau, AK 99801-1182

Ref: Support for Senate Bill 384; Funding for Underground Storage Tank Program

Dear Senator Jones:

I would like to express Era's strong support for passage of Senate Bill 384. This would make the 470 Fund available for compliance with the HB220 Underground Storage Tank Program.

Without this funding, the Underground Storage Tank Program presents a nightmare to most Alaska businesses and individuals. In many cases, expensive remediation and cleanup will be required for leaks that occurred 30 and 40 years ago through no fault of the present owner. Compliance, cleanup, remediation and upgrade are designed to be for the benefit of the environment and all Alaska citizens. The costs then, should be borne in large measure by the State.

Thank you for considering our views on this matter.

Sincerely,

Wilbur O'Brien

WO/mg

cc: Senator Curt Menard

6160 South Airpark Drive, Anchorage, Alaska 99502, (907) 248-4422, Telecopier: (907) 266-8350, Telex: 25324

Corporate Headquarters • P.O. Box 129 • Barrow • Alaska • 99723-0129 • (907) 852-8533 or (907) 852-8633 • FAX (907) 852-5733

arctic slope regional corp.

Dear Legislator:

The Arctic Slope Regional Corporation as a supporter of responsible resource development and as a land owner has grave concerns about the continued depletion of the 470 fund. You as a legislator know that this fund was intended for Alaska to be prepared for oil spills. Yet the administration and the legislature continue to abuse this fund and it is getting to a point where major resource developers are finding it difficult to spend investment dollars in Alaska. Investment dollars means jobs for Alaskans, profits for Alaskan companies and continued revenue for the State of Alaska. We as Alaskans cannot afford to risk our future by discouraging investors.

Would it be too hard to ask that the intend of the legislation creating the 470 fund be honored?

Sincerely yours,

Jacob Adams, President
Arctic Slope Regional Corporation

Anchorage Office • 301 Danner Avenue • Suite 300 • Anchorage • Alaska • 99518-3035 • (907) 349-2369 • FAX (907) 349-5478

Alaska State Legislature

SENATE

Official Business

SENATOR CURT MENARD

P.O. Box V
State Capitol
Juneau, Alaska 99811

SPONSOR STATEMENT

SB 384 amends the purposes for which money in the oil and hazardous substance release response fund (.470 Fund) may be expended to include technical, educational and financial assistance to underground tank owners/operators under Alaska's Underground Storage Tank Program.

The new underground storage tank program was created in 1990 to assist Alaskan underground storage tank owners/operators comply with federal law mandating tank tightness testing, site assessment, tank upgrades, cleanup of petroleum contaminated soils and groundwater and to protect our environment and public water supplies.

To date, the Department of Environmental Conservation has received financial assistance requests from owner/operators of regulated underground storage tanks in excess of $ 30 million. Applications are being received by the department on a daily basis and the trend is expected to continue through the 1992 and 1993 construction seasons.

Of the $5.3 million appropriated for grants and loans in FY 91, the Board of Storage Tank Assistance allocated $1.5 million to closures and upgrades, $2.3 million to site assessments and tightness tests and $1.5 million for cleanups.

The uncertainty of annual appropriations from the general fund to support the upgrade of tanks and cleanup of contaminated sites raises serious concerns for Alaskan small business, local governments and the public. I believe that it is imperative that a secure alternative funding source be put in place to address the intent and purpose of the underground storage tank program and assist in the cleanup and protection of our public water supplies.

I would appreciate your consideration and support of this legislation.

FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 384

1992 LEGISLATIVE SESSION

Revision Date:

Department Affected: Environmental Conservation

Title: Amending Purposes of OHSRRI

BRU: Spill Prevention & Response

Sponsor: Senator Menard

Component Storage Tank Assistance Program

Requestor: Senator Menard

COMPONENT SERIAL NO. 1 | 6 | 2 | 3

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	.	.	.	.	.	.
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	(6,715.8)					
FEDERAL FUNDS						
OTHER FUND SOURCE: 1052	6,715.8	6,715.8	6,715.8	6,715.8	6,715.8	6,715.8
TOTAL	6715.8	6715.8	6715.8	6715.8	6715.8	6715.8

POSITIONS: 0.0

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

This Fiscal note is intended to show only a change in funding source for the department's underground storage tank program. We have used the amount requested for FY 93 as the amount anticipated for each subsequent fiscal year.

Prepared by: Janice Adair

Phone : 465-5050

Division: Commissioner's Office

Date : 2/20/92

Approved by Commissioner: Joan D Fowler

Agency: Environmental Conservation

Date: 2/20/92

Distribution (by preparer):Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM February 18, 1992

SUBJECT: Senate Bill 384, amending the purposes for which money in the oil and hazardous substances release response fund may be expended -- sectional analysis (Work Order No. 7-LS1926\A)

TO: Senator Curt Menard
ATTN: Johanna Munson

FROM: Jack Chenoweth
Legislative Counsel

The measure expands use of the so-called "470 fund" -- properly called the oil and hazardous substance release response fund -- to allow its expenditure for the programs and administrative costs associated with ch. 96, SLA 1990, legislation relating to investigation, containment, and cleanup of leaking underground storage tanks.

The measure's principal operative provision is **bill section 3.** That bill section adds a new provision, paragraph 8, to AS 46.08.040, permitting use of the fund balance to pay costs of regulation and pollution prevention under various enumerated programs related to motor fuel, petroleum, and chemical storage tanks.

A related provision, **bill section 5,** exempts the payments made from the fund for purposes of storage tank cleanup from the requirement that the commissioner of environmental conservation seek reimbursement of the expenditures.

The remaining codified bill sections make necessary related changes. **Bill sections 1 and 4** make technical corrections. Current law limits use of the oil and hazardous substance release response fund for capital improvements; **bill section 2** makes an exception to that limitation, explicitly permitting use of the oil and hazardous substance release response fund for a capital improvement in conjunction with the storage tank program.

The changes made in the two uncodified substantive sections, bill sections 6 and 7, give the measure retrospective application. Section 7, ch. 96, SLA 1990 authorized

an underground petroleum storage tank reimbursement assistance program to reimburse persons making expenditures relating to leaking tanks after December 21, 1988, and until six months after the effective date of the 1990 legislation. **Bill section 6** authorizes use of the fund balance to pay the expenses incurred under that reimbursement program, while **bill section 7** applies to any reimbursement payments that are payable on and after the date of enactment of that reimbursement program, in effect permitting payment from the fund of all claims for reimbursement allowed by sec. 7, ch. 96, SLA 1990.

Bill section 8 gives the measure an immediate effective date.

JBC:mi
92-027.mai

UNDERGROUND PETROLEUM STORAGE TANK PROGRAM

Board of Storage Tank Assistance

410 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801
(907) 465-5200
FAX (907) 465-5218

Walter J. Hickel, Governor

POSITION PAPER

IN SUPPORT OF: **Senate Bill No. 384 (SB384)**

WITH AMENDMENTS

SUBJECT: **"An Act amending the purposes for which money in the oil and hazardous substance release response fund may be expended and to reimbursements due to that fund; and providing for an effective date"**

The Board of Storage Tank Assistance supports Senate Bill Number 384 amending the oil and hazardous substance release response fund with the following changes to be included as amendments.

(1) Limit expenditures from the oil and hazardous substance response fund to only pay for grants and loans described in AS 46.03.410 (b)(2) and (3); and

(2) Pay the expenses incurred under the underground petroleum storage tank reimbursement program authorized by sec. 7, ch.96, SLA 1990.

The state underground storage tank program has been implemented to assist owners and operators determine the extent and subsequently clean up contamination resulting from underground petroleum storage tanks (UST's), to close out their tanks properly if necessary and to upgrade existing tanks to new performance standards that will prevent future leaks. The UST Assistance Programs are pollution prevention and spill response activities that would be within the existing scope of the oil and hazardous substance release response fund.

A considerable amount of time, effort and funds will need to be invested to assess, cleanup and upgrade these tanks to protect the public health and environment and keep Alaska's small business tank owners and operators in business. It is also important to provide sufficient funding for underground petroleum storage tank owners and operators to adequately clean up their sites to become insurable to satisfy the EPA's financial responsibility requirements.

The financial assistance programs established by the original enabling legislation passed in 1990 are (1) reimbursements for a portion of the costs to conduct a tank tightness test or a site assessment, (2) grants for a portion of the costs of either upgrading (including replacing) or closing (including removing) a pre-1988 tank, (3) grants and loans for the cost of cleanup associated with a release from an underground petroleum storage tank and (4) reimbursement for upgrading, closing, or cleanup of an UST done after the effective date of the EPA regulations (December 22, 1988) and before September 5, 1990, the effective date of Alaska's UST laws.

At the present time the grant requests far exceed the available funds. Concerns for continued appropriations from the general fund have prompted a need for identifying an alternative funding source for this program. The state underground petroleum storage tank program is based on providing technical, educational, and financial assistance to Alaska's underground tank owners. It is imperative that a secure funding source be in place to address the intent and purpose of that program. Senate Bill 384 provides assurance that the original intent and purpose of the Underground Storage Tank Program will be realized.

Dated: 2/24/92

For and on behalf of the
BOARD OF STORAGE TANK ASSISTANCE,

John C. Barnett, Executive Director

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
410 WILLOUGHBY AVENUE, SUITE 105
JUNEAU, AK 99801-1795

Phone: (907) 465-5000
Fax: (907) 465-5070

Date: 2-26-92

By: Commissioner

POSITION PAPER

SB 384, amending the purposes for which money in the oil and hazardous substance release response fund may be expended and to reimbursements due to that fund; and providing for an effective date.

The Department of Environmental Conservation supports stable funding for the underground storage tank (UST) program in order to allow the owners and operators of regulated USTs to meet the financial responsibility requirements of the EPA. We believe the Oil and Hazardous Substance Release Response (470) Fund will meet the EPA's requirements as a state assurance fund, and thus support using it to cover some costs associated with the State's UST program. The Department's support for this legislation is conditioned on inclusion of the following amendments to SB 384:

1) Amend the title to read: "An Act authorizing use of the oil and hazardous substance release response fund for certain activities related to the underground petroleum storage tank program, and terminating that authorization; and providing for an effective date.

This amendment will change the title to accurately reflect the subject of the legislation.

2) On Page 4, change subparagraph 8 to read: "(8) pay for the grants and loans described in AS 46.03.410(b)(2) and (3);

3) Add a subparagraph (9) to Section 3 which would read: (9) pay for the cost of enforcement of AS 46.03.360 - 46.03.450."

The first of these two amendments will allow the 470 Fund to be used only for the grants and loans to UST owners, leaving the administration of the program to be funded through general funds and tank registration fees. The EPA requirements for financial responsibility dictate that owners and operators be able to demonstrate the financial ability to cleanup a release from a UST. Thus, the Department believes that the 470 Fund should not be used for the program's administrative costs.

We also believe however that we have a duty to protect the investment the state has made and will continue to make in the cleanup and replacement of USTs. This will be accomplished through enforcing the standards for UST maintenance and operation contained in DEC's UST regulations. Subsection 9 will ensure the Department has the continuing ability to ensure regulatory compliance.

4) Add a provision which would repeal the use of the 470 Fund for Subparagraph (8) on June 30, 1996.

The state's UST financial assistance program was envisioned as a time-limited program. Federal law requires that all tanks be upgraded to the new regulatory standards by 1998. State law requires that all applications for financial assistance be filed by July 1, 1994. In addition, the Board of Storage Tank Assistance sunsets on June 30, 1996. This amendment would have the authority for using the 470 Fund for the grants and loans expire on the same date as the Board, which is two years after the last of the applications will be filed. During those two years, the state will be able to wind up cleanup activities.

ALASKA MUNICIPAL LEAGUE

217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907) 586-1325, Fax (907) 463-5480

March 4, 1992

Position Paper

SB 384 - Amending Purposes for Which Money in Oil and Hazardous Substance Release Fund May Be Expended

The Alaska Municipal League supports SB 384, which would add regulation and pollution prevention activities involving underground petroleum storage tanks to the list of purposes for which the oil and hazardous substance release response ("470") fund may be used, to the extent that the bill is a clear recognition of the need for meeting the federal financial responsibility requirements and for funding underground storage tank assessment, cleanup, and upgrading or closure under state and federal law.

The *1992 Policy Statement* of the Alaska Municipal League states: "The League strongly encourages the State to develop regulations to implement the Underground Storage Tank Assistance Program created by the Legislature and to adequately fund programs necessary to mitigate the impact of EPA underground tank regulations on municipal budgets and facilities." SB 384 would provide access to some funds for this purpose.

It should be noted that the Underground Storage Tank Assistance Program, created by the Legislature by passage of HB 220 during the 1990 session, provides assistance to municipalities as owners of underground storage tanks as well as to private owners. Of over 2,800 tanks registered with the program last year, 14 percent, or nearly 400 of them, are owned by 45 municipalities. Data presented this year by the Board of Storage Tank Assistance indicates there are 3,890 tanks in use and 655 tanks out of service. Of these, 3,032 are owned by municipalities and private businesses and potentially in need of assistance to avoid environmental damage or health problems in the event of a leak.

The League and its members support providing funding to assist these municipal owners deal with their abatement and pollution prevention efforts, tank tightness and site assessment, tank cleanup, and tank upgrading and closure, as well as meeting the federal financial responsibility requirements. To the extent that SB 384 would provide a stable funding mechanism for these related purposes, the Alaska Municipal League supports its passage.

sab6:SB384.34

Norman L Stanley
Manager
US Public and
Government Affairs
Western Region

Texaco Inc

March 6, 1992

RE: STATE OF ALASKA - 1992 LEGISLATION
SENATE BILL 384

The Honorable Lloyd Jones
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Senator Jones:

Texaco supports Senate Bill 384.

As you are well aware, this legislation allows for the funds available in the Oil and Hazardous Substance Response Release Fund, or "470 Fund", to be used for certain activities related to the underground petroleum storage tank program.

During the 1990 Alaska Legislative Session, HB220 (the Underground Storage Tank Statute) was passed authorizing the development of a comprehensive, state-managed UST Program. A portion of this program, Storage Tank Assistance Fund, was designed to provide grants and loans to tank owners and operators.

Financial assistance was offered to mitigate the often excessive financial encumbrances encountered when replacing and removing USTs, including the associated cleanup costs that often occur. These activities, of course, must achieve the standards set forth in the Alaska and Federal UST programs for soil and groundwater remediation. Originally, the entire program was to be funded by the financial resources generated from the fees collected annually from the registration of all USTs within the State. However, these revenues are not sufficient to meet the needs of the requests presented to the ADEC.

The "470 Fund", which is already in place, would help provide for those funds and preclude the necessity of establishing a new tax or increasing existing taxes. It would also help ensure that an adequate number of service stations remain open to care for the Alaskan consumer's energy needs.

Accordingly, Texaco supports the measure, and respectfully requests your favorable vote for SB 384. Additionally, it is my understanding that a Committee Substitute (CS) is being considered that is identical to CS House Bill 264 (Resources). We are also supportive of that particular Committee Substitute.

Sincerely,

Norman L. Stanley

NLS
feb25-01.akhb264

cc: Senate Resources Committee Members

ALASKA MUNICIPAL LEAGUE

217 Second Street, Suite 200 ▪ Juneau, Alaska 99801 ▪ Tel (907) 586-1325, Fax (907) 463-5481

March 4, 1992

Position Paper

SB 384 - Amending Purposes for Which Money in Oil and Hazardous Substance Release Fund May Be Expended

The Alaska Municipal League supports SB 384, which would add regulation and pollution prevention activities involving underground petroleum storage tanks to the list of purposes for which the oil and hazardous substance release response ("470") fund may be used, to the extent that the bill is a clear recognition of the need for meeting the federal financial responsibility requirements and for funding underground storage tank assessment, cleanup, and upgrading or closure under state and federal law.

The *1992 Policy Statement* of the Alaska Municipal League states: "The League strongly encourages the State to develop regulations to implement the Underground Storage Tank Assistance Program created by the Legislature and to adequately fund programs necessary to mitigate the impact of EPA underground tank regulations on municipal budgets and facilities." SB 384 would provide access to some funds for this purpose.

It should be noted that the Underground Storage Tank Assistance Program, created by the Legislature by passage of HB 220 during the 1990 session, provides assistance to municipalities as owners of underground storage tanks as well as to private owners. Of over 2,800 tanks registered with the program last year, 14 percent, or nearly 400 of them, are owned by 45 municipalities. Data presented this year by the Board of Storage Tank Assistance indicates there are 3,890 tanks in use and 655 tanks out of service. Of these, 3,032 are owned by municipalities and private businesses and potentially in need of assistance to avoid environmental and health problems in the event of a leak.

The League and its members support providing funding to assist these municipal owners deal with their abatement and pollution prevention efforts, tank tightness and site assessment, tank cleanup, and tank upgrading and closure, as well as meeting the federal financial responsibility requirements. To the extent that SB 384 would provide a stable funding mechanism for these related purposes, the Alaska Municipal League supports its passage.

sab6:SB384.34

Alaska Oil and Gas Association

121 West Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114

March 9, 1992

VIA FACSIMILE

The Honorable Lloyd Jones, Chairman
Resources Committee
Alaska State Senate
Room 30, Capitol Building
P. O. Box V
Juneau, Alaska 99811

SB384, Response Fund: Use for Tank Programs

Dear Mr. Chairman:

Thank you for the invitation to testify via teleconference from the Anchorage Legislative Information Office at today's hearing of the Senate Resources Committee. AOGA will be submitting the attached testimony for the hearing record.

Sincerely,

WILLIAM W. HOPKINS
Executive Director

WWH:MC13:SB384
Attachment

Testimony of the
Alaska Oil and Gas Association
before the
Alaska State Senate
Resources Committee
on
SB 384, An Act amending the
purposes for which money in
the oil and hazardous substance
release response fund may be expended
and to reimbursements due to that fund;
and providing for an effective date

March 9, 1992

I am William W. Hopkins, Executive Director of the Alaska Oil and Gas Association (AOGA). Our members conduct the majority of oil and gas exploration, production and transportation in Alaska. We appreciate this opportunity to express our position regarding SB 384.

AOGA strongly opposes SB 384 for several important reasons. This bill would, in effect, impose a hidden but real tax increase on all oil production in Alaska. It would impose unfair costs to the oil producers in Alaska to fund a program to correct underground storage tank problems over which they have no control and which are not associated with crude oil production. Those costs are largely unknown but could be potentially significant based on the thousands of various underground tanks throughout Alaska. In addition, the bill does not require the state to seek reimbursement for costs of expenditures from responsible parties. We urge the state to consider alternatives and the potential impact of this proposed legislation on the oil producers.

We understand that the Federal Superfund Reauthorization Legislation enacted in October 1986 has a provision to impose a 0.1 cent per gallon motor fuels excise tax as a revenue source to fund a separate Federal Leaking Underground Storage Tank Fund. Under certain conditions, that fund can pay up to 90% of any state's cost for cleanup resulting from a discharge from an underground storage tank. To use the federal fund, Alaska may need to establish its own fund to cover its 10% corrective action costs, but the 470 Fund is not the appropriate source.

In summary, SB 384 would place an unfair tax burden on oil producers to pay for problems not related to production. We urge Senate Resources Committee to reject it. Thank you for this opportunity to comment.

TS16:1602

SB

391

S IATE COMMITTEE REPOI
FIRST COMMITTEE OF REFERRAL

DATE: 2/7/92

FURTHER: Finance

Date of 5-Day Notice: Feb 27 1992
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: March 4, 1992

Resources Committee considered SB 391

"An Act relating to the restoration of impaired public drinking water supplies or the provision of alternative public drinking water supplies in connection with oil or hazardous substance containment and cleanup activities; and providing for an effective date."

and recommends:

[ ] replace with _____ CS _____(_____)

[ ] attaches amendment(s)

[ ] same title
[ ] **new** title
[ ] technical title change (HB only)

[ ] adopts _____Letter of Intent

[ ] further referral to the _____ _____

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

NEW FISCAL NOTES: Dept/Date
[X] **zero** fiscal notes DEC 2/10/92
_____
_____

[ ] fiscal notes _____
_____
_____

[ ] **appropriation**--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date
[ ] **Governor's bill** with fiscal notes:
zero fiscal notes _____
_____

fiscal notes _____
_____
_____

DO PASS:

OTHER RECOMMENDATIONS:

Chair: Signature and Recommendation

Senator Lyman F. Hoffman

Alaska State Senate
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4453

SB 391

RESTORING IMPAIRED PUBLIC DRINKING WATER SUPPLIES

Senator Lyman F. Hoffman, Sponsor

A growing problem in rural areas is the increase of undetected spills of hazardous materials, especially fuel oil, which have contaminated public water supplies. In the past two years, fuel spills have contaminated the water supplies of the communities of Toksook Bay, Minto and Marshall. In each case, the Department of Environmental Conservation (DEC) reacted with a spill response team to identify the source of the pollution and initiate the cleanup. The cleanup was paid for with funds from the state's oil spill cleanup fund, referred to as the "470 fund".

However, although DEC could clean up the contamination, there has been no legal mechanism to allow DEC to use the 470 fund to replace the contaminated water source. Instead, communities have had to go through the normal capital appropriation process in order to provide funding for new water sources in these communities. This process can take months, and even years. During that time, residents have had to pack water, usually from unreliable and marginal sources. This has created a very difficult situation for the communities and their schools and other facilities.

SB 391 would allow the 470 Fund to be tapped for the expense of replacing the contaminated water system with a new one. This could be done during the cleanup process, which would reduce the state's costs substantially.

The 470 fund was created to help people who have suffered from a hazardous material spill. SB 391 would help the fund live up to its purpose. This legislation is supported by DEC.

P.O. Box 763 • Bethel, Alaska 99559 • (907) 543-3543

FISCAL NOTE

STATE OF ALASKA

BILL NO SB 391

1991 LEGISLATIVE SESSION

Revision Date:

Department Affected: Environmental Conservation

Title: Restoring impaired public drinking water supplies

BRU: Spill Prevention and Response

Sponsor: Sen. Hoffman

Component: Contaminated Sites

Requestor: Sen. Hoffman

COMPONENT SERIAL NO. 1 | 4 | 3 | 1

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	*					
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE: 1052	*					
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: none

ANALYSIS: (Attach a separate page if necessary.)

* Any costs associated with this legislation would be recovered from the party responsible for the contamination.

Prepared by: Janice Adair

Phone : 465-5050

Division: Commissioner's Office

Date : 2/10/92

Approved by Commissioner:

Agency: Environmental Conservation

Date: 2/10/92

Distribution (by preparer):Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

SB

397

(File 1)

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/12/92

FURTHER:

Date of 5-Day Notice: Feb 20, 1992
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: March 10, 1992

Resources Committee considered SB 397

"An Act authorizing the Board of Fisheries to allocate fishery resources to the guided sport fishery."

and recommends:

[X] replace with SC CS SB397 (Res)

[ ] same title
[X] new title
[ ] technical title change (HB only)

[ ] attaches amendment(s)

[ ] adopts ______ Letter of Intent

[ ] further referral to the ______

[ ] do pass

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

NEW FISCAL NOTES: Dept/Date

[X] **zero** fiscal notes Sponsor 3/2/92

[ ] fiscal notes ______

[ ] **appropriation**--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

[ ] **Governor's bill** with fiscal notes:

zero fiscal notes ______

fiscal notes ______

DO PASS:

McGlosson do pass

OTHER RECOMMENDATIONS:

[signature] no rec

[signature] no rec.

[signature] (Do Pass)

Chair: Signature and Recommendation

7-LS1751\D.1
Utermohle
03/09/92

AMENDMENT

OFFERED IN THE SENATE BY SENATOR ELIASON

TO: CSSB 397 ( )

Page 1, line 1, after "sport fishery":

Insert ", regulation of sport fisheries,"

Page 2, line 31, following "fishing":

Insert ":

(15) regulating resident or nonresident sport fishermen as needed for the conservation, development, and utilization of fishery resources"

DEPARTMENT OF FISH AND GAME

POSITION PAPER

Bill No: SB 397

Sponsor: Senator Richard I. "Dick" Eliason

Bill Title: An Act authorizing the Board of Fisheries to allocate fishery resources to the guided sport fishery.

Department Position: Support

Background/Legislative Intent: Alaska Statute AS 16.05.251(e) allows the Board of Fisheries to allocate fishery resources among personal use, sport, and commercial fishing. The Department of Law has been asked for a legal opinion if the board is authorized to establish differential regulations for sport anglers who utilize commercial sport fishing enterprises (fishing lodge or charter boat clients) versus unguided sport anglers. As of the date this analysis is being prepared (2/24/92), this legal opinion has not been released. SB 397 would add "guided sport" as a separate user category for allocative purposes and thereby clarify the authority of the Board of Fisheries.

Analysis of Bill/Program Effects: Since 1977, the total number of anglers fishing in Alaska has increased at a rate of six percent per year. Resident angler participation has increased at four percent per year, nonresident angler participation has increased at ten percent per year. This growth, and in particular growth in the number of nonresident anglers and the growth of the lodge and charter industry that supports these anglers is causing concern from commercial fishermen and some resident anglers. These concerns center on increased crowding in popular fishing areas and competition for available fish. This bill would provide the Board of Fisheries with legislated authority to make allocation decisions for the guided sport fishery in addition to subsistence, personal use, sport, and commercial fisheries. If the board exercises this authority and does initiate separate allocations and regulations for "guided sport fishermen," several new data gathering programs with additional costs may be necessary.

Department Recommendations: Support.

Commissioner's Signature C Meacham Date 2-26-92

ANALYSIS OF FISCAL NOTE FOR SB 397

This bill provides the mechanism for specific fishery allocations to the guided sport industry. This bill would not, in and of itself, result in any increased costs to the Division of Sport Fish. However, if the Board of Fisheries chooses to institute specific guided sport fishery allocations and regulations, there would be associated costs for monitoring the affected fisheries. This fiscal note does not make the assumption that the Board will automatically adopt fiscally significant regulations.

Presently, the Division of Sport Fish monitors allocations/guideline harvest levels to the sport fishery as a whole (guided and unguided anglers combined). The two primary methods used to monitor sport fisheries are: on-site creel surveys, and the statewide sport fish harvest survey. If specific allocations are made to guided sport fisheries, additional methods could be required to segregate this portion of the harvest. The programs that we could implement are: annual registration of all sport fishing guides/charter operators in the state; a fish ticket/log book program to monitor the harvest by sport fishing clients of all guides; modifications of the statewide sport fishing harvest survey to estimate catch by guided sport anglers as well as unguided sport anglers; and additional creel surveys to monitor specific fisheries to assure that the allocations to guided anglers are not exceeded. Guided sport fishery allocations could also increase costs associated with preparation and printing the annual regulations summary and added staff time to attend advisory committees, prepare for Board of Fishery meetings, and attend Board meetings to deal with guided sport fishing allocation issues.

As a first step in monitoring guided sport fisheries, the Division of Sport Fish recommends that a statewide registration and fish ticket program be initiated. This would allow for an accurate reckoning of the number of sport fishing guides in the state, and it would provide annual estimates of harvest by sport fishermen who use guide services.

Our best estimate is that there are about 2,100 guides operating in the state at this time. To register these guides each year, obtain monthly fish ticket harvest data, and analyze the catch data will require the services of a permanent seasonal Fishery Biologist II. The summary of costs are as follows:

Personal Services

FY93	FY94	FY95	FY96	FY97	FY98
63.0	63.0	63.0	63.0	63.0	63.0

Fishery Biologist II (11 months): $63.0

Travel

FY93	FY94	FY95	FY96	FY97	FY98
3.0	3.0	3.0	3.0	3.0	3.0

Travel and per diem to visit regional offices to provide instructions for completing forms and attend Board of Fisheries meeting to provide data.

Contractual

FY93	FY94	FY95	FY96	FY97	FY98
30.0	30.0	30.0	30.0	30.0	30.0

Printing costs for registration forms and fish tickets, and communications expenses.

Supplies

FY93	FY94	FY95	FY96	FY97	FY98
4.0	4.0	4.0	4.0	4.0	4.0

Office and other operating supplies.

Equipment

FY93	FY94	FY95	FY96	FY97	FY98
0.0	0	0	0	0	0

Total

FY93	FY94	FY95	FY96	FY97	FY98
100.0	100.0	100.0	100.0	100.0	100.0

A second method for estimating harvest from guided sport fisheries would be desirable, because it would allow for an independent estimate that could be used to verify the accuracy of estimates obtained from the fish ticket program. Without a second method of estimating harvest, the accuracy of the fish ticket estimates would be suspect. On-site creel surveys, or the statewide harvest survey (modified to obtain estimates from guided sport fisheries) could be used as a check on the accuracy of the fish ticket estimates. The costs for these programs could be as much as $200.0. These potential costs are not included in the attached fiscal note.

If the Board of Fisheries makes individual allocations to guided sport fisheries, and requires in-season management of those fisheries, on-site creel surveys will be needed. Depending on the number and magnitude of the fisheries involved, the total cost of this program could easily be $400.0. Costs for creel surveys are high because they are labor intensive. The potential costs of in-season management are not included in the attached fiscal note.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSSB397(Res)

Revision Date: 3/2/92 **Department Affected:** Fish and Game

Title: Relating to the Guided Sport Fishery **BRU:**

Component:

Sponsor: Senator Eliason

Requestor: Senate Resources Committe **COMPONENT SERIAL NO.**

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: Zero Impact

ANALYSIS: (Attach a separate page if necessary.)

This bill only clarifies statutory language regarding regulatory authority of the Board of Fisheries. It does not change any regulations or require any action by the Board or Department.

Prepared By: Senator Eliason **Phone:** 465-4916

Division: Senate **Date:** March 2, 1992

Approved by Commissioner:

Agency: Sponsor of Bill **Date:** 3/2/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 397

Revision Date: 2/25/92 **Department Affected:** FISH AND GAME

Title: FISHERY ALLOCATION: GUIDED SPORT FISHERY **BRU:** SPORT FISH

Component: SPORT FISHERIES

Sponsor: SENTATOR ELIASON

Requestor: SENATE RESOURCES COMMITTEE **COMPONENT SERIAL NO.** # 4 6 4

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	63.0	63.0	63.0	63.0	63.0	63.0
TRAVEL	3.0	3.0	3.0	3.0	3.0	3.0
CONTRACTUAL	30.0	30.0	30.0	30.0	30.0	30.0
SUPPLIES	4.0	4.0	4.0	4.0	4.0	4.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	100.0	100.0	100.0	100.0	100.0	100.0

CAPITAL						

REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS	75.0	75.0	75.0	75.0	75.0	75.0
OTHER FUND SOURCE: 1024 FISH AND GAME FUND	25.0	25.0	25.0	25.0	25.0	25.0
TOTAL						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	1	1	1	1	1	1
TEMPORARY						

Estimate of current year impact: ZERO IMPACT

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHMENT.

Prepared By: ROCKY HOLMES **Phone:** 465-4180

Division: SPORT FISH **Date:** 02/25/92

Approved by Commissioner: By: Tom Sandvik

Agency: FISH AND GAME **Date:** 2/26/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

ALASKA STATE LEGISLATURE SENATE

SENATOR RICHARD I. ELIASON

PRESIDENT OF THE SENATE
LABOR & COMMERCE COMMITTEE
RESOURCES COMMITTEE
RULES COMMITTEE
CHAIRMAN, SPECIAL COMMITTEE ON DOMESTIC & INTERNATIONAL COMMERCIAL FISHERIES

P.O. BOX 143
SITKA, ALASKA 99835

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4916

FAX (907) 465-4928

BRIEF EXPLANATION OF SENATE BILL 397, BY SENATOR ELIASON, WHICH AUTHORIZES THE BOARD OF FISHERIES TO REGULATE SPORT AND GUIDED SPORT FISHERIES SEPARATELY

The effect of SB 397 would be to expand and clarify the statutory language spelling out options open to the Board of Fish in its **regulatory** decisions. Currently state law says that the Board may establish criteria for the allocation of fishery resources among personal use, sport, and commercial uses. **SB 397 simply adds the guided sport fishery to this list of fisheries for which the Board establishes criteria for allocations (and thus, for which the Board may establish regulations).**

Essentially, the bill spells out that the Board will recognize and define sport and guided sport as two different fisheries, rather than lumping them together as current law implies. The Board could then continue to regulate them exactly alike, or if necessary, may establish different regulations for each. While the authority for the Board to divide sport into "sub-groups" for the purpose of regulation or allocation may already exist in current law, this bill makes it absolutely clear that the state recognizes sport and guided sport as two different categories and that the Board may regulate them differently if they so choose.

The goal is to ensure that the Board has the tools it will need to deal with conflicts that will inevitably occur due to the sky-rocketing growth in the sportfish charter industry. This ability to distinguish between sport and guided sport may help to prevent the over restriction of the true sports angler as growth in guided sportfishing necessitates revision of sport regulations.

The bill avoids "management by statute," and the inflexibility of that approach, by **leaving specific decisions to the Board of Fish.** Management by regulations through the Board process allows for far more flexibility over time than locking provisions into state law. SB 397 does not **require** the Board to adopt different regulations for sport and guided sport fisheries, nor does it require or even suggest what sorts of regulatory distinctions they might consider. (Perhaps initially there would be only something such as different catch reporting requirements). This bill **provides the full public input process which is inherent in the Board's regulatory process, allowing for adequate participation in all decisions by all parties involved.**

Please contact Sen.Eliason's office for further information. (Phone 465-4916, or write Sen. Eliason, State Capitol, Juneau, AK 99801)

ALASKA STATE LEGISLATURE SENATE

SENATOR RICHARD I. ELIASON

PRESIDENT OF THE SENATE
LABOR & COMMERCE COMMITTEE
RESOURCES COMMITTEE
RULES COMMITTEE
CHAIRMAN, SPECIAL COMMITTEE ON DOMESTIC & INTERNATIONAL COMMERCIAL FISHERIES

P.O. BOX 143
SITKA, ALASKA 99835

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4916

FAX (907) 465-4928

February 14, 1992

Senator Dick Eliason has introduced SB 397, regarding the guided sport fishery. While the title of the bill refers to allocation of resources, the actual effect of the bill would be to expand and clarify the statutory language spelling out the factors the Board of Fish may consider in its **regulatory** decisions.

Currently state law says that the Board may establish criteria for the allocation of fishery resources among personal use, sport, and commercial uses. **SB 397 simply adds the guided sport fishery to the list of fisheries among which the Board may allocate and for which the Board may set regulations.**

Essentially, the bill spells out that if the the Board finds it necessary, it may establish separate regulations for sport fishing and guided sport fishing. This provides clear direction to the Board that sport and guided sport are recognized by the state to be two different things, and provides specific statutory language to allow the Board to regulate them differently if they so choose. The goal here is to ensure that the Board has the tools it will need to deal with conflicts that will inevitably occur due to the sky-rocketing growth in the sportfish charter industry. This ability to distinguish between sport and guided sport could be an important factor in the protection of the true sports angler from being overly restricted as enormous growth in guided sportfishing necessitates revision of sport regulations.

This bill leaves all decisions to the Board of Fish. It does not **require** them to adopt different regulations for sport and guided sport fisheries, nor does it require or even suggest what sorts of regulatory distinctions they might consider. It avoids attempts to deal with the growing concern over the impacts of the expanding guided sport fishery by statute. It **maintains the full public process which is inherent in the Board's regulatory process, allowing for adequate participation in all decisions by all parties involved.** Management by regulations through the Board process allows for far more flexibility over time than locking provisions into state statute.

The bill has been referred to the Senate Resources Committee where Sen. Eliason hopes it will have a hearing soon.

MEMORANDUM

State of Alaska
Department of Law

TO: Hon. Carl L. Rosier
Commissioner
Alaska Department of
Fish and Game

DATE: March 7, 1992

FILE NO: 663-92-0077

TEL. NO: 465-3600

SUBJECT: Allocation of SE Chinook Salmon

Stephen M. White

FROM: Assistant Attorney General
Natural Resources -- Juneau

You informed us that the Alaska Trollers Association petitioned the Alaska Board of Fisheries ("Board") to allocate a portion of the available chinook salmon quota to the commercial troll fleet. In essence, this allocation would create an allocation to southeast Alaska chinook anglers (sport fishers).

You have asked the following questions concerning this proposal. We have given our answer and discussion after each question.

Question 1. Can the Board adopt regulations for anglers who use commercial services and facilities, like charter boats and lodges, and that are different from regulations for anglers who do not use them?

Answer: Uncertain. Under existing statutes, it is not clear whether the legislature has given the Board statutory authority to allocate fishery resources between anglers who use commercial services and those who do not.

Discussion:

A. General Principles Governing Board Regulations.

For all of these questions, we believe it would be helpful to review legal principles that govern Board regulations.

The Alaska Supreme Court has held that the Board of Fisheries, when it adopts regulations, must comply with two general principles. Under the first principle, the Board must stay within its statutory authority. That is, the Board must pursue permissible purposes, and it must use means that are within its powers. Meier v. State, 739 P.2d 172, 173 (Alaska 1987). This is because "administrative agencies are creatures of statute, deriving from the legislature the authority for the exercise of any power they claim." Rutter v. State, 688 P.2d 1343, 1349 (Alaska 1983).

The Board was created "[f]or the purposes of the conservation and development of the fishery resources of the state

...." AS 16.05.221. For sport fishing, the legislature has given the Board authority to adopt regulations needed for conservation, development, and utilization of fisheries. AS 16.05.251(a)(12). The Alaska Supreme Court has held that words "conserving" and "developing" involve the utilization of resources, and these purposes permit the board to establish priorities for use between fishing groups due to sharp competition between them for a limited fishery resource. Meier, 739 P.2d at 174.

Under the second general principle, Board regulations must be reasonable and not arbitrary. That is, the regulations must be consistent with and reasonably necessary to the purposes for which the Board was created, i.e., conservation and development. Meier, 739 P.2d at 173.1/

B. Board's Statutory Authority to Adopt Different Sport Fishing Regulations for Users of Commercial Support Services.

The permissible ways that the Board can regulate sport fisheries are set out in AS 16.05.251(a). The Board can regulate, among other ways, by (1) establishing open and closed seasons and areas for taking fish, (2) setting quotas, bag limits, harvest levels, and sex and size limitations, and (3) establishing methods and means employed in the pursuit, capture and transport of fish. AS 16.05.251(2), (3), and (4).

It is not clear from your request what type of different regulations are envisioned for sport anglers who use commercial services. The most restrictive regulations would cause an outright ban on the use of these services.

If an absolute ban is intended, we have previously advised that, under the Board's power to establish "methods and means", it has statutory authority to absolutely prohibit support services. Such a prohibition, however, cannot be arbitrary or unreasonable, and, in this context, it must be consistent with and reasonably necessary to the conservation and development of southeast Alaska chinook stocks. Gilbert v. State Dept. of Fish and Game, 803 P.2d 391 (Alaska 1990). Also, it must satisfy constitutional requirements such as equal protection. (See discussion in Question 3.)

1/ This principle is reiterated in AS 16.05.251(d) which says that Board regulations must, consistent with sustained yield and the subsistence law, provide a fair and reasonable opportunity for the taking of fishery resources by personal use, sport, and commercial fishers.

On the other hand, the Board may allow anglers to use support services, but adopt more restrictive area, season, period, bag, possession, or equipment regulations for them. As we understand it, the intended purpose for this type of regulation would not be for conservation. The fish that would be spared by these regulations would not contribute to escapement, but instead, would be available for harvest by anglers who do not use these services. The purpose, then, would be for allocation.

Concerning allocations, the Alaska Supreme Court held that the Board's duty under AS 16.05.221(a) to conserve and develop fishery resources implies a concomitant power to allocate fishery resources among competing users. Kenai Peninsula Fisherman's Co-op Ass'n v. State, 628 P.2d 897, 903 (Alaska 1981). In that case, the court held that the Board's allocation power permitted it to establish priorities for use between commercial and recreational fishermen as a response to sharp competition between the two groups for a limited fishery resource. Id. In a later case, where there was keen competition between two subgroups of commercial fishermen, i.e., between commercial setnet and driftnet fishermen in Bristol Bay, the court said that the Board's power allows it to allocate salmon between these two subgroups. Meier, 739 P.2d at 174.

Here, the Board would be allocating fishery resources between two "subgroups" of another overall user group, sport fishers. The two subgroups are (1) anglers who use commercial services and (2) those who do not. This raises the question of what authority the Board has to identify subgroups for allocation purposes.

Alaska Statute 16.05.251(e) directs the Board to establish criteria for making allocation decisions.2/ Among the criteria that the Board may use are seven criteria that are listed in this statute. The Board has said that it will consider factors such as the seven statutory criteria when they are appropriate to allocation decisions. 5 AAC 39.205.

Six of the seven allocation criteria deal with the characteristics of "fisheries". AS 16.05.251(e)(1)-(3), (5)-(7) Thus, the legislature intended that allocations could be made between subgroups that are "fisheries".

2/ This statute has been interpreted to apply to allocations between commercial "subgroups" as well as to allocations among overall user groups, i.e., among personal use, sport, and commercial fishers. Peninsula Marketing Ass'n v. State, __ P.2d__, Op. No. 3754 (Alaska, Sept. 20, 1991).

The statutes define a "fishery" as "a specific administrative area in which a specific fishery resource is commercially taken with a specific type of gear", with the Board having authority to designate that a fishery has more than one area, gear type, or resource. AS 16.05.940(12), emphasis added. The terms "type of gear" and "gear" are defined in a statute that pertains to the Alaska Commercial Fisheries Entry Commission, and thus are also defined in the context of commercial fishing. See AS 16.43.990(4) and (8).

Accordingly, for allocations within the overall user group of commercial fishing, we believe that the statutes identify permissible subgroups according to (1) the geographic fishing area(s), (2) the fishery resource(s) harvested, and (3) the type(s) of apparatus used to harvest the resource, such as purse seine, drift gillnet, set gillnet, power troll, or hand troll. For a permissible allocation between two groups of commercial fishermen, the groups should differ by at least one of these characteristics.

For subgroups within the overall user group of sport fishing, however, the allocation statute - AS 16.05.251(e) - is not helpful. As mentioned above, this statute refers to competing "fisheries" which, in AS 16.05.940(12) and AS 16.05.990(4) and (8), are defined according to commercial fishing. Even if the allocation statute "fit" a sport fishery allocation, it would not help the present one. Since anglers who use commercial services share the same waters, fish with the same "gear", (i.e., rod and reel), and fish for the same resource (i.e., chinook salmon) as anglers who do not use these services, they cannot be considered separate "subgroups" under this statute.

On the other hand, it may be argued that the Board is not limited in its discretion to define subgroups for allocation purposes. That is, it could be argued that the Board is authorized to define sport fishing subgroups according to their "methods and means" - such as whether or not they use charter boats and lodges - and then allocate different fishing opportunities among them.

This argument would be aided by the fact that fish and game laws are to be "liberally construed." Kenai Peninsula, 628 P.2d at 897. Other case law holds that when a statute delegating authority to an administrative agency does not expressly provide a standard, the standard may be implied from the general policy and purposes underlying the statute. Kenai Peninsula, 628 P.2d at 907.

Under these precedents, one can argue that the clear purpose of AS 16.05.251(e) is to allow the board to allocate "among . . . sport . . . fishing" and that the "methods and means"

authority of AS 16.05.251(a)(4) is a permissible way to identify allocation groups. Although we believe that the contrary argument is stronger, it is not conclusively so.

Question 2. Can the Board adopt regulations that set bag, possession, and size limit regulations for resident anglers that are different from such regulations for nonresident anglers?

Answer: Uncertain. Again, it is not clear whether the legislature has given the Board statutory authority to discriminate against nonresident anglers.

Discussion: As noted above, the Board must stay within its statutory authority. That is, the Board must pursue permissible purposes, and it must use means that are within its powers. Meier v. State, 739 P.2d 172, 173 (Alaska 1987). The question, therefore, is whether the Board has statutory authority to set bag, possession, and size limits that discriminate against nonresident anglers.

As we understand it, the reason that the Board would be adopting more restrictive regulations for nonresidents is not to allow the spared fish to escape to spawning streams, but instead, to enable resident anglers to catch them. Thus, the regulations would have to be justified on allocation, not conservation grounds.

There is statutory authority that would allow the Board to consider resident and nonresident use of fish when making allocations among fisheries. Alaska Statute 16.05.251(e) directs the Board to adopt allocation criteria, and it says that these may include (1) the participation of residents and nonresidents in each fishery, (2) the importance of each fishery in providing for residents' consumption, and (3) the importance of each fishery in providing recreational opportunities for residents and nonresidents. AS 16.05.251(e)(2), (3), (7).

The authority to account for resident and nonresident participation and recreational opportunities, and the authority to account for residents' consumption, is not clear legislative authority to establish different fishing opportunities for these two groups. However, it is not logical that the legislature, having authorized the Board to account for resident and nonresident use when deciding allocations, intended that these accountings would not be reflected in the decisions themselves. We believe that the authority to account for resident and nonresident use is a strong implication that the Board is authorized to treat residents and nonresidents as separate subgroups for allocation purposes.

On the other hand, we note that the legislature has clearly authorized the Board of Game to limit nonresidents' taking of big game in a particular situation. AS 16.05.256.3/

A rule of statutory interpretation says that when a specific activity is designated by statute, it must be inferred that all omitted activities are intentionally excluded. 2A N. Singer Sutherland Statutory Construction, § 47.23 (5th Edit. 1992). Here, the rule means that if the legislature has granted a certain kind of authority in one area, its failure to grant the same type of authority in another area means that it withheld the authority in that second area.

Thus, it could be argued that the legislature's clear grant of authority to the Board of Game to discriminate against nonresidents, and its failure to give the Board of Fisheries the same clear authority, supports a conclusion that it did not intend for the latter to have this power. This is buttressed by the fact that the definition in AS 16.05.940(12) does not identify resident and nonresident anglers as separate "fisheries" when they fish in the same area for the same species with the same tackle.

Accordingly, we caution the Board against adopting different regulations for resident and nonresident anglers unless the legislature gives it clear authority to do so. If the Board does discriminate against nonresidents under its present authority, the Board should exercise restraint. Depending upon the method, degree, and purpose, such a discrimination may raise state and federal constitutional problems.

We have previously advised the Board about constitutional concerns that arise if state residency is used as an allocation criteria in commercial fisheries. 1988 Inf. Op. Att'y Gen. (Nov. 15; 663-89-0200). Except for violation of the Privileges and Immunities Clause of the federal constitution (U.S. Const. art. IV, § 2), these same concerns, as well as equal protection, would be raised by regulations that discriminate against nonresident sport fishers.

At this time, we do not know the manner in which the Board would discriminate against nonresidents. Once there is a specific proposal that identifies the method, degree, and purpose

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3/ The legislature has enacted other laws that distinguish nonresidents. For example, it has set higher license and tag fees for nonresidents who take fish and game (AS 16.05.340(a), 16.05.480), and it has required nonresidents to be accompanied by guides when hunting certain big game species. (AS 16.05.407).

for treating nonresident anglers differently, we will be able to advise the Board on these constitutional issues.

Question 3. Can the Board limit the catch in a sport fishery in order to allocate to a limited entry commercial fishery the fish that the sport anglers might have caught if no catch limit were imposed? Would this be consistent with the common use and equal protection provisions of the Alaska Constitution?

Answer: Yes to both questions.

Discussion:

A. Statutory Authority.

As discussed in our answer to Question 1., the Board's allocation power allows it to establish priorities for use between commercial and recreational fishers. Kenai Peninsula, 628 P.2d at 903. In the Kenai Peninsula case, the Board adopted a policy that closed commercial fishing on late-run cohos so that sports fishers could catch them.

Here, the Board would be doing the opposite of its actions in Kenai Peninsula - it would be allocating in favor of commercial fishers to the detriment of sport fishers. Nevertheless, we believe that the holding of that case applies regardless of which user group benefits.

Like any other allocation, this one must be consistent with and reasonably necessary to the conservation and development of Alaska fishery resources. Meier 739 P.2d at 174. Also, in making the allocation, the Board must consider the appropriate allocation criteria set out in AS 16.05.251(e). 5 AAC 39.205.

B. Constitutional Issues.

The "common use" clause (Alaska Const. art. VIII, § 3) and two other clauses in the Alaska Constitution - the "no exclusive right" clause (Alaska Const. art VIII, § 15) and the "uniform application" clause (Alaska Const. art. VIII, § 17) - are often referred to as the "equal access" clauses. See McDowell v. State, 785 P.2d 1, f. 14 at 8 (Alaska 1989). The Alaska Supreme Court has consistently held that these clauses are implicated only when the state places limits on the admission of persons to resource user groups. Id. Also, the court has consistently distinguished the state's power to limit admission to user groups

Hon. Carl L. Rosier
Commissioner
Alaska Department of
Fish and Game

March 12, 1992

663-92-0077

465-3600

Allocation of SE Chinook
Salmon

Stephen M. White
Assistant Attorney General
Natural Resources -- Juneau

You informed us that the Alaska Trollers Association petitioned the Alaska Board of Fisheries ("Board") to allocate a portion of the available chinook salmon quota to the commercial troll fleet. In essence, this allocation would create an allocation to southeast Alaska chinook anglers (sport fishers).

You have asked the following questions concerning this proposal. We have given our answer and discussion after each question.

Question 1. Can the Board adopt regulations for anglers who use commercial services and facilities, like charter boats and lodges, and that are different from regulations for anglers who do not use them?

Answer: Uncertain. Under existing statutes, it is not clear whether the legislature has given the Board statutory authority to allocate fishery resources between anglers who use commercial services and those who do not.

Discussion:

A. General Principles Governing Board Regulations.

For all of these questions, we believe it would be helpful to review legal principles that govern Board regulations.

The Alaska Supreme Court has held that the Board of Fisheries, when it adopts regulations, must comply with two general principles. Under the first principle, the Board must stay within its statutory authority. That is, the Board must pursue permissible purposes, and it must use means that are within its powers. Meier v. State, 739 P.2d 172, 173 (Alaska 1987). This is because "administrative agencies are creatures of statute, deriving from the legislature the authority for the exercise of any power they claim." Rutter v. State, 688 P.2d 1343, 1349 (Alaska 1983).

The Board was created "[f]or the purposes of the conservation and development of the fishery resources of the state

...." AS 16.05.221. For sport fishing, the legislature has given the Board authority to adopt regulations needed for conservation, development, and utilization of fisheries. AS 16.05.251(a)(12). The Alaska Supreme Court has held that words "conserving" and "developing" involve the utilization of resources, and these purposes permit the board to establish priorities for use between fishing groups due to sharp competition between them for a limited fishery resource. Meier, 739 P.2d at 174.

Under the second general principle, Board regulations must be reasonable and not arbitrary. That is, the regulations must be consistent with and reasonably necessary to the purposes for which the Board was created, i.e., conservation and development. Meier, 739 P.2d at 173.1/

B. Board's Statutory Authority to Adopt Different Sport Fishing Regulations for Users of Commercial Support Services.

The permissible ways that the Board can regulate sport fisheries are set out in AS 16.05.251(a). The Board can regulate, among other ways, by (1) establishing open and closed seasons and areas for taking fish, (2) setting quotas, bag limits, harvest levels, and sex and size limitations, and (3) establishing methods and means employed in the pursuit, capture and transport of fish. AS 16.05.251(2), (3), and (4).

It is not clear from your request what type of different regulations are envisioned for sport anglers who use commercial services. The most restrictive regulations would cause an outright ban on the use of these services.

If an absolute ban is intended, we have previously advised that, under the Board's power to establish "methods and means", it has statutory authority to absolutely prohibit support services. Such a prohibition, however, cannot be arbitrary or unreasonable, and, in this context, it must be consistent with and reasonably necessary to the conservation and development of southeast Alaska chinook stocks. Gilbert v. State Dept. of Fish and Game, 803 P.2d 391 (Alaska 1990). Also, it must satisfy constitutional requirements such as equal protection. (See discussion in Question 3.)

1/ This principle is reiterated in AS 16.05.251(d) which says that Board regulations must, consistent with sustained yield and the subsistence law, provide a fair and reasonable opportunity for the taking of fishery resources by personal use, sport, and commercial fishers.

On the other hand, the Board may allow anglers to use support services, but adopt more restrictive area, season, period, bag, possession, or equipment regulations for them. As we understand it, the intended purpose for this type of regulation would not be for conservation. The fish that would be spared by these regulations would not contribute to escapement, but instead, would be available for harvest by anglers who do not use these services. The purpose, then, would be for allocation.

Concerning allocations, the Alaska Supreme Court held that the Board's duty under AS 16.05.221(a) to conserve and develop fishery resources implies a concomitant power to allocate fishery resources among competing users. Kenai Peninsula Fisherman's Co-op Ass'n v. State, 628 P.2d 897, 903 (Alaska 1981). In that case, the court held that the Board's allocation power permitted it to establish priorities for use between commercial and recreational fishermen as a response to sharp competition between the two groups for a limited fishery resource. Id. In a later case, where there was keen competition between two subgroups of commercial fishermen, i.e., between commercial setnet and driftnet fishermen in Bristol Bay, the court said that the Board's power allows it to allocate salmon between these two subgroups. Meier, 739 P.2d at 174.

Here, the Board would be allocating fishery resources between two "subgroups" of another overall user group, sport fishers. The two subgroups are (1) anglers who use commercial services and (2) those who do not. This raises the question of what authority the Board has to identify subgroups for allocation purposes.

Alaska Statute 16.05.251(e) directs the Board to establish criteria for making allocation decisions.2/ Among the criteria that the Board may use are seven criteria that are listed in this statute. The Board has said that it will consider factors such as the seven statutory criteria when they are appropriate to allocation decisions. 5 AAC 39.205.

Six of the seven allocation criteria deal with the characteristics of "fisheries". AS 16.05.251(e)(1)-(3), (5)-(7) Thus, the legislature intended that allocations could be made between subgroups that are "fisheries".

2/ This statute has been interpreted to apply to allocations between commercial "subgroups" as well as to allocations among overall user groups, i.e., among personal use, sport, and commercial fishers. Peninsula Marketing Ass'n v. State, __ P.2d__, Op. No. 3754 (Alaska, Sept. 20, 1991).

The statutes define a "fishery" as "a specific administrative area in which a specific fishery resource is commercially taken with a specific type of gear", with the Board having authority to designate that a fishery has more than one area, gear type, or resource. AS 16.05.940(12), emphasis added. The terms "type of gear" and "gear" are defined in a statute that pertains to the Alaska Commercial Fisheries Entry Commission, and thus are also defined in the context of commercial fishing. See AS 16.43.990(4) and (8).

Accordingly, for allocations within the overall user group of commercial fishing, we believe that the statutes identify permissible subgroups according to (1) the geographic fishing area(s), (2) the fishery resource(s) harvested, and (3) the type(s) of apparatus used to harvest the resource, such as purse seine, drift gillnet, set gillnet, power troll, or hand troll. For a permissible allocation between two groups of commercial fishermen, the groups should differ by at least one of these characteristics.

For subgroups within the overall user group of sport fishing, however, the allocation statute - AS 16.05.251(e) - is not helpful. As mentioned above, this statute refers to competing "fisheries" which, in AS 16.05.940(12) and AS 16.05.990(4) and (8), are defined according to commercial fishing. Even if the allocation statute "fit" a sport fishery allocation, it would not help the present one. Since anglers who use commercial services share the same waters, fish with the same "gear", (i.e., rod and reel), and fish for the same resource (i.e., chinook salmon) as anglers who do not use these services, they cannot be considered separate "subgroups" under this statute.

On the other hand, it may be argued that the Board is not limited in its discretion to define subgroups for allocation purposes. That is, it could be argued that the Board is authorized to define sport fishing subgroups according to their "methods and means" - such as whether or not they use charter boats and lodges - and then allocate different fishing opportunities among them.

This argument would be aided by the fact that fish and game laws are to be "liberally construed." Kenai Peninsula, 628 P.2d at 897. Other case law holds that when a statute delegating authority to an administrative agency does not expressly provide a standard, the standard may be implied from the general policy and purposes underlying the statute. Kenai Peninsula, 628 P.2d at 907.

Under these precedents, one can argue that the clear purpose of AS 16.05.251(e) is to allow the board to allocate "among . . . sport . . . fishing" and that the "methods and means"

On the other hand, we note that the legislature has clearly authorized the Board of Game to limit nonresidents' taking of big game in a particular situation. AS 16.05.256.3/

A rule of statutory interpretation says that when a specific activity is designated by statute, it must be inferred that all omitted activities are intentionally excluded. 2A N. Singer Sutherland Statutory Construction, § 47.23 (5th Edit. 1992). Here, the rule means that if the legislature has granted a certain kind of authority in one area, its failure to grant the same type of authority in another area means that it withheld the authority in that second area.

Thus, it could be argued that the legislature's clear grant of authority to the Board of Game to discriminate against nonresidents, and its failure to give the Board of Fisheries the same clear authority, supports a conclusion that it did not intend for the latter to have this power. This is buttressed by the fact that the definition in AS 16.05.940(12) does not identify resident and nonresident anglers as separate "fisheries" when they fish in the same area for the same species with the same tackle.

Accordingly, we caution the Board against adopting different regulations for resident and nonresident anglers unless the legislature gives it clear authority to do so. If the Board does discriminate against nonresidents under its present authority, the Board should exercise restraint. Depending upon the method, degree, and purpose, such a discrimination may raise state and federal constitutional problems.

We have previously advised the Board about constitutional concerns that arise if state residency is used as an allocation criteria in commercial fisheries. 1988 Inf. Op. Att'y Gen. (Nov. 15; 663-89-0200). Except for violation of the Privileges and Immunities Clause of the federal constitution (U.S. Const. art. IV, § 2), these same concerns, as well as equal protection, would be raised by regulations that discriminate against nonresident sport fishers.

At this time, we do not know the manner in which the Board would discriminate against nonresidents. Once there is a specific proposal that identifies the method, degree, and purpose

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3/ The legislature has enacted other laws that distinguish nonresidents. For example, it has set higher license and tag fees for nonresidents who take fish and game (AS 16.05.340(a), 16.05.480), and it has required nonresidents to be accompanied by guides when hunting certain big game species. (AS 16.05.407).

for treating nonresident anglers differently, we will be able to advise the Board on these constitutional issues.

Question 3. Can the Board limit the catch in a sport fishery in order to allocate to a limited entry commercial fishery the fish that the sport anglers might have caught if no catch limit were imposed? Would this be consistent with the common use and equal protection provisions of the Alaska Constitution?

Answer: Yes to both questions.

Discussion:

A. Statutory Authority.

As discussed in our answer to Question 1., the Board's allocation power allows it to establish priorities for use between commercial and recreational fishers. Kenai Peninsula, 628 P.2d at 903. In the Kenai Peninsula case, the Board adopted a policy that closed commercial fishing on late-run cohos so that sports fishers could catch them.

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Like any other allocation, this one must be consistent with and reasonably necessary to the conservation and development of Alaska fishery resources. Meier 739 P.2d at 174. Also, in making the allocation, the Board must consider the appropriate allocation criteria set out in AS 16.05.251(e). 5 AAC 39.205.

B. Constitutional Issues.

The "common use" clause (Alaska Const. art. VIII, § 3) and two other clauses in the Alaska Constitution - the "no exclusive right" clause (Alaska Const. art VIII, § 15) and the "uniform application" clause (Alaska Const. art. VIII, § 17) - are often referred to as the "equal access" clauses. See McDowell v. State, 785 P.2d 1, f. 14 at 8 (Alaska 1989). The Alaska Supreme Court has consistently held that these clauses are implicated only when the state places limits on the admission of persons to resource user groups. Id. Also, the court has consistently distinguished the state's power to limit admission to user groups

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

M E M O R A N D U M February 27, 1992

SUBJECT: CSSB 397 ( ); Summary

TO: Senator Dick Eliason
ATTN: Mary McDowell

FROM: George Utermohle GU
Legislative Counsel

This memorandum summarizes CSSB 397 ( ), an Act relating to the guided sport fishery.

CSSB 397 ( ) clarifies the authority of the Board of Fisheries to regulate the guided sport fishery as a distinct fishery. The board has ample authority under the provisions of AS 16.05.221 and 16.05.251(a) to regulate the guided sport fishery and that authority should be construed liberally to promote the conservation and development of the fishery. See, Kenai Peninsula Fisherman's Co-operative Association v. State, 628 P.2d 897, 903 (Alaska 1981). The board's authority to distinguish between user groups and between subgroups of users has been recognized by the Alaska courts in numerous decisions that occurred before the legislature eventually recognized those groups or subgroups in statute. Kenai at 901 - 02; State v. Hebert, 743 P.2d 392 (Alaska App. 1987), aff'd. 803 P.2d 863, 865 (Alaska 1990); Meier v. State, Board of Fisheries, 739 P.2d 172 (Alaska App. 1987). The board has the authority to distinguish between guided and unguided sport fishermen as necessary for the conservation and development of fisheries in the state. The board may also make such distinctions under its authority to regulate the manner and means of taking fish. However, by specifically mentioning the guided sport fishery as a fishery subject to regulation by the board, the legislature may be able to avoid a lawsuit testing the board's authority.

Section 1 of the bill amends AS 16.05.251(a)(12) by adding the guided sport fishery to the list of fisheries which the Board of Fisheries is specifically authorized to regulate.

Section 2 of the bill amends AS 16.05.251(e) by adding the guided sport fishery to the list of fisheries for which the Board of Fisheries must develop fishery resource allocation criteria.

By inserting a reference to the guided sport fishery into AS 16.05.251(e), the legislature is acknowledging the existence of a guided sport fishery and is requiring the board to adopt criteria for making allocations of fishery resources to the fishery. The bill does not require that allocations be made to the guided sport fishery, but if the board does decide to make such an allocation the board must do so in accordance with the criteria adopted under AS 16.05.251(e).

The term "guided sport" is not defined. The Board of Fisheries will have the discretion to define the term.

If I may be of further assistance, please advise.

GU:gc
92-168.glc

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

M E M O R A N D U M February 24, 1992

SUBJECT: SB 397; Summary

TO: Senator Dick Eliason
ATTN: Mary McDowell

FROM: George Utermohle GU
Legislative Counsel

This memorandum summarizes SB 397, an Act authorizing the Board of Fisheries to allocate fishery resources to the guided sport fishery.

SB 397 amends AS 16.05.251(e) by adding the guided sport fishery to the list of fisheries for which the Board of Fisheries must develop fishery resource allocation criteria.

The Board of Fisheries has authority under AS 16.05.251(a) to allocate fishery resources among fisheries, however any criteria that the board may use to make the allocation must be adopted as regulations of the board. Kenai Peninsula Fisherman's Cooperative Association v. State, 628 P.2d 897, 904-06 (Alaska 1981). AS 16.05.-251(e) codifies the decision of the Alaska Supreme Court in the Kenai Peninsula Fisherman's Coop. Assn. case. By inserting a reference to the guided sport fishery into AS 16.05.251(e), the legislature is acknowledging the existence of a guided sport fishery and is requiring the board to adopt criteria for making allocations of fishery resources to the fishery. The bill does not require that allocations be made to the guided sport fishery, but if the board does decide to make such an allocation the board must do so in accordance with the criteria adopted under AS 16.05.251(e).

The term "guided sport" is not defined. The Board of Fisheries will have the discretion to define the term.

If I may be of further assistance, please advise.

GU:lmb
92-044.lmb

ACTION NARRATIVE

Minutes of May 1, 1986
House Special Comm. on Fisheries

TAPE #36 SIDE ONE
Recording

Number 002

Chairman Goll called the meeting to order at 8:40 a.m. He announced calendar and asked Director of Boards, Beth Stewart, to address the February 13, 1986 letter from Ron Jolin, Chairman, Alaska Board of Fisheries, to the Special Committee on Fisheries. (Letter follows:)

Dear Representative Goll:

At the 1985 Southeast finfish meeting, the Hoonah Advisory Committee's Proposal #338 requested that the Alaska Board of Fisheries ask the Legislature to identify charter vessel operations as a separate user group for which separate regulations could be written. The board agreed, and so I am writing to you as the Chairman of the House Special Committee on Fisheries and Hoonah's representative. The board also asked the Southeast Regional Council members to make their views known to their legislators.

For the past several years we have received a number of proposals which address charter boat fishing. It is apparent that most people view charter operations as a discrete classification. However, since AS 16.05.251, which outlines the board's authority, does not refer to charter operations, the Department of Law has told us that we are on very shaky legal ground when we adopt regulations like the six line limit for charter vessels in Southeast.

This regulation was strongly supported by the Southeast charter vessel operators, who continue to be concerned that this regulation could be overturned in court. As this industry grows, I believe that more and more fishermen will want the board to address it separately. In order to avoid at least some confusion, it would be helpful if the board's authority to do so were clear.

If the board can provide any further clarification, please do not hesitate to contact us.

Sincerely,

Ron Jolin, Chairman
Alaska Board of Fisheries

March 4, 1992

Senator Dick Eliason
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Subject: S.B. 397

Dear Senator Eliason:

This letter is to show my support for S.B. 397 " An act authorizing the Board of Fisheries to allocate fishery resources to the guided sport fishery.
I served on the Board of Fisheries from Jan. 1989 to Jan. 1992. Throughout out the entire time I served on the Board of Fisheries the question of can we, the Board of Fisheries allocate to the different sport fish user groups, i.e. guided sport fisherman vs. non-guided and where does Johnny Q, Public and his son fit into the allocation scheme.
I don't have to remind you of the explosive growth in the sport fisheries all across the State. Sport fisherman on the keni river are packed into that river like sardines from a king oscar can. Here in Bristol Bay, twenty years ago their was twenty (20) guides or less, today that number is in excess of 125 operators. Look what is happening in Southeast between the charter boat operators and the commercial trollers, that Senator is just the tip of the ice berg. I have been in every district across the state twice dealing with regulatory proposals concerning fishery allocation. These allocation battles are getting uglier and about as distasteful as can be imagined between the different user groups as well as the sub-groups.
The Board of Fisheries has had conflicting options offered to them by the State A.G. office on AS 16.05.251 (e). One attorney from the A.G. office states yes the board does have the statutory authority to make the allocation decisions between the different sport fisherman. The very next Board of Fish meeting the A.G. office would have a different attorney attending the boards meeting. This attorney would state in his or her opinion, looking at the AS 16.05.251 (e) the board does not have the Statutory Authority to make such a allocation decision between the sport fisherman groups. I believe this matter needs to be cleared up and S.B. 397 will do just that. If it is unclear to the A.G. office and their battery of attorneys than how do you

think the Board of Fish members feel, they are left hanging in the wind.

While serving on the Board of Fisheries we the State of Alaska came out of compliance with the federal government on subsistence. The Board of Fisheries stopped doing subsistence proposals unless their was a conservation concern for the stock or the subsistence fisherman did not have a reasonable opportunity to harvest their subsistence needs. The Board turned to the legislature for further direction. I believe that is how the process is suppose to work, the board carries out the statute intent they are not legislature.

S.B. 397 will clear up the intent of the legislature . It is a tool the Board of Fish needs. The public also needs to have a law that they can also understand.

Thank you for taking on this issue I know it is a highly charged issue with a lot of people and I am sure you are getting a ear full from all sides. Let me state again this bill is long over due and its just one of many statutes that needs the legislatures attention to help clarify.

Thank You

H. Robin Samuelsen Jr.

H. Robin Samuelsen Jr
Box 412
Dillingham, Alaska 99576

QUESTIONS WHICH MAY BE ASKED ON SB 397/HB 505

QUESTION: *How do these bills relate to the Alaska Trollers Association petition to the Board of Fish?*

The ATA petition asks the Board to allocate a percentage of the king salmon quota to the trollers. This would ensure that the number of king salmon available to trollers will no longer decrease as the sports catch increases.

SB 397/HB 505 provide the Board with the tool to separate the sport fleet and the charter fleet for allocation purposes which they cannot do at present.

QUESTION: *How would the "true" Alaskan sportsman be impacted by this legislation?*

It would serve to protect the true sports fisherman because the Board could allocate separately to the charter fleet rather than having to do a lump allocation. It is the charter fleet which is seeing such a rapid expansion; the sports fisherman may see some limits on their catch unless they are separated from the charter fleet.

QUESTION: *Why should the charter fleet be treated differently from the sports fisherman?*

The charter fisherman is a commercial business; even if the charter operator takes out sports fisherman, his is a for-profit enterprise, he pays taxes on his business, he has a business license. He cannot be considered the same as a sports fisherman.

QUESTION: *Why not just limit the entry for the charter fleet?*

This would not resolve the problem. There is a limited number of king salmon which may be caught under the U.S. Canada treaty. If you limit the NUMBER of charter operators, they can still catch the same number of fish. Limiting the entry does no good unless there is also an allocation.

Additionally, there is the question of whether or not the limited entry program was intended for this purpose.

QUESTION: If the problem is in southeast, then why should legislation be enacted that would affect all areas of the state?

First of all, the legislation only gives the Fish Board the OPTION of allocating separately. The Board is not required to do this if it is not necessary. Secondly, there may be other areas of the state where such a tool may apply, if not now, then perhaps in the future. The U.S. Canada treaty quota has brought the issue to the forefront here in Southeast.

QUESTION: Why are the trollers so concerned about 40,000 king salmon that are being caught by the sport/charter fleet; it's only the equivalent of two days of king salmon fishing for the trollers?

Two days equate to 50% OF THE TROLLERS KING SALMON SEASON.

The charter fleet has expanded so rapidly (an additional 100 boats in 2 years) and is essentially unregulated and something needs to be done now to protect the resource.

QUESTION: Why should the charter fleet have to be cut back?

Since the inception of the treaty, the troll fleet has taken ALL the cutbacks and will continue to do so unless the charter fleet is regulated.

QUESTION: Doesn't Fish and Game manage the fisheries by conducting creel census and sending out questionnaires? Why create another layer of bureaucracy?

The creel census is only conducted in Ketchikan and Juneau and the questionnaires which are sent out to visitors are not an adequate or accurate means of data collection.

QUESTION: Why not regulate the charter fleet by imposing some form of possession/export limit?

This is certainly one tool which should be available to the Fish Board. However, in the fall of 1991, The Fish Board discussed a proposal that would have effectively accomplished this but it didn't pass. Many members of the charter industry believe that people won't come to Alaska if they are limited in what they can take home.

Others believe that visitors come to Alaska for the quality of the experience and not for the quantity of product they take out.

QUESTION: Won't this have an economic impact on the tourism industry?

This legislation does not attempt to favor one group over another. On the contrary, it attempts to provide equity and regulation for all involved groups. The troll fleet, which provides an enormous economic benefit to Southeast Alaska (and in many small communities is the only economy)is presently suffering severe economic losses. It is not equitable for one group to benefit at the expense of another.

QUESTION: What about the Fish and Game study which shows that the value of a sports-caught king is $923?

ATA is presently preparing a critique of this study as well as providing figures to show the high economic value of the troll industry. The Fish and Game study purports to show how much money a sports fisherman brings to the state but the figures are statistically skewed. For example, the study attributes 2/3 of the dollars spent by sports fishermen to the travel costs incurred by a nonresident coming to Alaska and this is factored into the $923 figure.

(prepared by Dick HofMann 2/26/92)

Alaska Boating Association • P.O. Box 210430 • Anchorage, Alaska 99521

SENATOR Lloyd Jones

12 Mar 1992

The added text to SB397 is another means of the commercial fishing industry to take out the sportsfishing persons and the tourist trade that is generated by the guided sportfish people. The trollers are not satisfied with their allocations and want more. Due to the fact of overloading the present market and driving down their own prices, now they want more to cover their loss, at the expense of the sportfish industry.

According to the ADF&G Commerical Div report dated 21 Oct 91, the total harvest of Chinook salmon was 571,000. Of that sport-fish harvest was 9% with a 2% by catch kill. That takes only 11% out of the hold catch. Where did the rest go?? Commerical fish was 61%, Trollers 23%, Beach nets 4.9%. The 1990 commerical fish season was the biggest in the state of Alaska's history. And now they want to put a cap on the guided sportfishing industry, this is ludicrous.

We (All Alaskans) pay for the enhancement of our fisheries and should have equal access to them. The monies generated by our sport and guided sportfishing industry stays in the state. The commerical fish industries, for the most part, go to either Foreign or Seattle areas processors. The state see's another source of much needed revenue escapeing with no hope of recover-ing it. The sportfish industry will continue to grow and the revenue derived fromit will continue and the money stays here.

I hope you will look at SB397 in its true light as a selfish endeavor by a few that will hurt a great many Alaskan's through out the state. And that is what SB397 (the added text) is all about. As you can see the Alaska Boating Assoc. strongly opposes SB397. We thank you for any help you can give us in this important matter.

DONALD E. SHERWOOD
PRESIDENT

March 27, 1992

SB397 / HB505
Guided
Sportfishery

Hon. Richard I. Eliason
P.O. Box V
Juneau, Alaska 99811

Kenai River Property Owners Association
P.O. Box 3070
Soldotna, Alaska 99669

Dear Senator Eliason;

The KRPOA supports the passage of SB-397 which allows the Board of Fisheries to allocate the Kenai River Kings to guided and non-guided anglers. In the last two years, guided anglers have caught more than 65% of the kings caught in the Kenai River. Additionally, they have caught more than 80% of the kings below the Soldotna bridge. The excessive number of guides, 310 in 1990, and their success rate has almost decimated the entire late run of our big Kenai kings. Something must be done in order to prevent the Kenai River from becoming another Columbia River.

We also ask that legislation be introduced and passed to prevent helicopters being used in the fishing industry the same way they are not allowed in hunting. We ask for your efforts to pass SB-379 immediately.

Sincerely,

Will Josey

Will Josey, Chairman
Kenair River Property Owners Association

✓ CY TO: Each Legislator
Gov. Walter Hickel

Distributed to all Legislators at request of Kenai River Property Owners Assoc.

Feb. 25, 1992

Gerald Castle
F/V Diamond A
5224 Shoreline Dr.
Ketchikan, AK 99901

Senator Lloyd Jones
State Capitol
P.O. Box V
Juneau, AK 99801

Dear Senator Lloyd Jones:

I have lived in Ketchikan for the last 22 years and own a 45 ft. power troller and permit. I urge your passage of Senate Bill 397 so that the Board of Fish could put separate regulations on "sport fishing" and commercial "charter fishing". I feel the Board's hands are tied in not being able to regulate an uncontrolled fishery.

Sincerely,

Gerald Castle

Gerald Castle

PRO 397

Dear Floyd

We are writing you to ask you to support Dick Eliasons SB 349 bill. I know you are aware of the way our fishing time has been cut back. If we lose any more we'll go out of Business.

I think that after paying 3% off the top of our gross earnings all these years it would be very unfair.

I have nothing against Sport fisherman as such, but a Charter boat operator is commercial not Sport. They are making their money off the salmon same we. As far as I know they have contributed nothing towards hatcheries or enhancement. Also remember that most of the money from trolling stays in Alaska.

as always

Pete & Iora

P.S. May see you next month

February 24, 1992

Attention Commercial Troller:

We have copied on the reverse of this sheet a recent publication by two Ketchikan charterboat organizations blasting Senate Bill 397 and House Bill 505. Note that there is no description of the legislation that has so upset these charter guys.

Senate Bill 397 (introduced by Sen. Dick Eliason) and House Bill 505 (introduced by Rep. Jerry Mackie) would give the Board of Fish the right to separate charterboats from the true sportfisheries.

The bills by Sen. Eliason and Rep. Mackie do not usurp the authority of the Board of Fish. Instead, this very reasonable legislation clarifies the power of the Board to resolve conflicts that involve professional and non-professional sportfishermen.

Now, charter groups that are accustomed to hiding the excesses of their growing industry under a sportfishing disguise are applying strong pressure on our legislators to forestall action on these bills. Their voices are loud, therefore we must WORK to be heard in Juneau. It is time to unmask the charter operators.

The members of the Ketchikan Trollers Committee urge you to write or phone our elected officials to support this legislation.

Phone your support to:

Sen. Dick Eliason	(465-4916),	Sen. Lloyd Jones	(465-3743)
Sen. Jim Duncan	(465-4766),	Rep. Robin Taylor	(465-3873)
Rep. Jerry Mackie	(465-4925),	Rep. Cheri Davis	(465-3424)
Rep. Fran Ulmer	(465-4927),	Rep. Ben Grussendorf	(465-3824)

Or write: (name), State Capitol, PO Box V, Juneau, AK 99801

This is important! The charter businesses are set to build an empire on the bones of the troll fleet. It is vital that we show our support for this legislation. Be sure to give an extra "pat on the back" to Senator Eliason and Representative Mackie for having the courage to address this issue.

Sincerely,

Lonnie Haughton (F/V China Cove) - Chairman
Brian Warmuth (F/V Corsair) - Vice Chairman
Ketchikan Trollers Committee
PO Box 3006
Ketchikan, AK 99901

P.S. The Board of Fish meeting to consider the A.T.A. chinook allocation petition begins March ? in Juneau. Every additional voice is important as we battle to save our king salmon fishery. Come if you can!

THE HONORABLE LLOYD JONES:

R.E.: SENATE BILL #397
HOUSE BILL #505

SIR:

The present King Salmon harvest system seems to be maintaining treaty stock.

With the single allotment to the net fisheries (which acts as a limit to stay within while targeting mostly other salmon species), we have a fair, flexible and comparatively easily managed fishery.

We presently have a limit to trollers based on actual sport catch plus a 20,000 fish net limit.

A second allotment to trollers, however, who do target this species would, of necessity, cause an allotment of the sport fishery.

We are not merely talking about an allotment of the commercial catch between commercial gear groups here. We are talking about a whole different situation.

The sport fishery is the only harvest method allowed for public subsistence use of this stock. Under the present system, the public is allowed to harvest this food year round at a maximum rate of two fish per day.

However, the method of harvest makes the taking of many fish extremely difficult already. The addition of an allotment would almost certainly additionally curtail the partaking of this valued food source. A sports fisherman is now averaging one-half of a treaty fish per year if he gets as many as he can.

A troller has the <u>privilege</u> of using machinery that allows him to harvest quickly and easily, and the privilege of selling what he catches. If the State allocates him 200,000 fish, it is the same as guaranteeing him 8 million dollars?* 1) In effect, a system of welfare for the privileged few, at the public's expense. This is a very dangerous precedent to set.

Is the public taking too much of a public resource away from a private interest group?* 2) I think not. I don't think the public <u>can</u> take away too much of a public resource from a private interest group. Thank you.

Sincerely, Kenneth J. Anthony (P.O. BOX 3165 KETCHIKAN, AK. 9

* (1) at an estimated $40 average to fisherman per chinook

* (2) In 1991 77,144 sport fish licenses were sold in Southeastern. 41,700 treaty chinook were taken by the sports fishery. Whereas 1551 active trollers took 224,569 treaty fish.
NON-RESIDENT commercial TROLLERS CAUGHT an ESTIMATED 41,250 — 48,866 TREATY CHINOOK.
854 ACTIVE POWER TROLLERS (24% NON-RESIDENT) PROBABLY TOOK 86% OF THE CATCH, BASED ON '90.

Senator Elias on

Please feel free to use this letter in what ever manner that you choose, if it would help clarify the issue. We need everyone to pull together so ALL Alaskans can survive.

thank you,

S. Ted Kunz

Pro SB397

:o: Area sports fishers
From:Steve Kinney, a salmon user-F/V TRADITION
Re: Increasing Competition for Salmon

We who depend upon Alaska's salmon and other fish species for our recreation and/or livelihood appear to be headed for an inevitable battle. On the surface, it appears that this battle is between the oldtimers (the troll fleet) and the new comers (the charterboat operators). But beneath the surface, the water becomes muddy. I believe that ALL of the user-groups need to consider the issue- Allocation of a portion of the King salmon quota specifically to the troll industry. This topic will be the sole agenda item of the Alaska Board of Fish in an upcoming March meeting. I encourage you to write your Alaska Fish Board and voice your concern.

Please allow me a few minutes of your time in which to share some of my ideas.

I have been a commercial fisherman for 25 years, a power troller for the past 14 years and an educator in fisheries technology at Ketchikan High School for the past 12 years. Many students, friends, as well as myself will be affected by the outcome of this issue.

The basic problem is simply that a finite resource is being utilized by ever increasing, evolving and competing user-groups. In a nutshell the number of charter vessels has increased many fold while the number of fish in the sea has remained relatively static.

The solution at first glance, appears complex and devisive. Let the strongest survive! There are several component issues which need to be considered: A) Commercial vs sport status.. B) Statutory guidelines in determining stock allocation and C) unfair treatment in the U.S. / Canada Salmon treaty annexes.

COMMERCIAL/SPORT/CHARTER STATUS

Most charter vessel skippers contend that they are not commercial operators but rather are persons simply providing a platform from which a sportfisherman may operate. The crucial factor involved is whether the operator makes a livelihood at a particular activity; ie fishing. This is the only logical determiner in the commercial-sport-charter designation problem. Since most charter vessel operators are endeavoring to make a livelihood, then it follows that, for them at least, it must be a commercial venture. Whether or not we determine that charter vessels are indeed

commercial in nature, we must recognize them as the largest growing segment of the user-groups and one which is not currently regulated. Therefore, it would follow that we must divide the Allowable-Catch pie into yet another slice.

STATUTORY GUIDELINES FOR ALLOCATION:

Statutory guidelines for fish allocation place historic use and economic value as the key elements in the allocation question. In assessing these factors we might consider them separately.

Historically there can be little question about "who is the new kid on the block?". Over the past 10 years the number of persons licensed by the Coast Guard as well as the number of vessels licensed by the state for charter purposes, has increased many fold. Alaska today issues many more non-resident licenses than ever before. A "walk of the dock" in Ketchikan will quickly impress one with the sudden increase in charterboats. Local sportsfishers are finding their favorite "fish'n hole" full to overflowing with charterboats from "somewhere", whereas only a few short years ago these same areas could have been fished in solitude. There truly can be no doubt as to why the equation has changed. There ARE MORE CHARTER BOATS.True sports fishing boats and Commercial trollers have, by way of contrast, operated S.E.Alaskan waters since before the advent of the gas engine. Since 1973, commercial vessel numbers have been set by limited entry. Resident(true sports?) licenses, while increasing some, have not exploded in the same manner as non-resident(charter). There can be little doubt as to which fishery should have an allocation if such a decision were based solely upon historical use-true sports and commercial troll. (These groups have fished side by side for years without problems).

The economic value consideration is more complex to unravel. ADF+G recently undertook a study to determine the value of a "sport-caught" fish. I think a better term might be "a fish caught under the auspices of a sport license". King salmon were valued at over $900 each. Silvers over $400. These dollar figures are certainly impressive. They must include not only the surface platform and guide, but also air fare, lodging, food, gear and entertainment for those traveling to Alaska in search of a fishing vacation.

The troll fleet, on the other hand, can quote facts such as the McDowell report which stated that trolling is the single largest employer in S.E. Alaska.Or the UAS Economic Development Data Base which indicates that the total value for the salmon industry is $124 million(1988) while all tourism is only $94 million. It is, however, impossible to compare apples and oranges. For example, what is the true value of a king salmon sold by a powertroller for $70, if

you also include in its value the costs innumerated above?... and I live here year around . Do you count my full year's food, lodging, gear, fuel. and repair purchases etc. Do you count the myriad support industries ie. fish processing, transportation, fabrication, chandlery, repair, and retail jobs? Or, consider the infamous $900 King salmon. Wasn't most of that money really spent for the VACATION? These folks are really purchasing a vacation, and secondarily hoping to catch some fish. They probably would spend that money, fish or no, on a vacation in one way or another.

I think perhaps that we need to look past all of these arguments which would separate us and instead return to the basic Statutory allocation guidelines for a fresh point of view.

Economic value ... ie: What would maximize the economic value of this resource to S.E. Alaska. There can only be one true answer to this question... Keep all these fisheries groups operating with as little loss as possible. "Pie in the sky thinking!" you say? I think not.

Solution?

1) Establish a ceiling on the number of charter vessels so that current operators can continue to operate. Trollers and others who make their livelihood from this resource did so years ago for all the same reasons.

2) Establish an allocation system of ALL SALMON, HALIBUT, BOTTOM FISH ETC. etc. based upon historic use percentages so that net, commercial troll, and sport/charter or sports and charter all have a percentage from which to plan and work. Establish these allocations now in all fisheries before they become a problem like the King Salmon problem.

3) Utilize fish bag and possession limits rather than season lengths where ever possible in limiting sport and sport/charter fish quotas, thus allowing these vessels to continue to operate for as many days as possible.

4) Lobby vigorously for increased annex allocations in the U.S. / Canada Salmon treaty or get us out. We Alaskans have made major, major cutbacks in our fish takes while other treaty entities have not.

5) Broaden the base of support for the Regional Aquaculture Associations so that all user groups, not just the commercial boats, put in 3% of their catch value to maintain important fish sources.

SALMON DERBY CANCELED ???

Sport fishermen we have to unite. A large special interest group has petitioned the Alaska Board of Fisheries to increase their allocation of king salmon. Any increase granted will directly decrease availability for sport fishing, and the Department of Fish and Game would be mandated to decrease the limit sport fishermen could take in a season.

Fish and Game could reduce the daily limit or simply close the season when the quota had been reached. The quota could be reached before the Salmon Derby or part way through the Derby.

Commercial trollers have become so efficient that they took 22,000 kings per day last year, a 400% increase in just a few years. If the sport fishery were closed for the entire summer, trollers would take the total sport catch in a couple of days.

Many people come to Southeast Alaska to vacation and fish each summer. Allocating salmon would have a tremendous negative impact on our visitors and our own ability to catch a fish. In the face of declining oil revenues, we need tourists and the benefits they bring.

If you like to fish or have friends and relatives that like to fish, you need to stand up and be heard. The best way to preserve your rights is to write to the Alaska Board of Fisheries and legislators.

Included in this packet are prepared letters you can use by signing and mailing. No envelope is required, just fold on the dotted line and tape or staple. You can also just use the addresses to prepare individual letters.

The Alaska Board of Fisheries will take written comments until February 29, 1992. Please don't delay because without your help you could loose a valuable fish resource.

One Southeast lodge takes so many "sport" caught salmon that it has its own freezers and planes to process the customers fish and fly them south. This is so that the high number of fish leaving the state will not *DISTURB* the *RESIDENTS*!! They also advertise that their clients catch *ONE MILLION POUNDS* of "sport-caught" fish *EVERY YEAR*!

QUESTION: Is the Alaska Department of Fish and Game protecting the commercial sportfishing industry? You decide.....

Why hasn't ADF&G requested that the legislature identify charterboats as a commercial operation and limit the number of charterboats?

Why doesn't ADF&G have creel census takers at fishing lodges in Southeast? (Just how many fish do *NON-RESIDENTS* harvest?)

Why did ADF&G sportfish staff send charterboat operators a packet with a registration form (for the first time ever); AND information on their recent sportfish economic study; AND a notice about the upcoming Board of Fish meeting? (neither the average sport angler or commercial fishermen have received similar information.)

How many ADF&G employees, past and present, hold charterboat licenses? Are the foxes guarding the hen house?

SPORTSMEN: THIS IS THE BOTTOM LINE

By hiding behind traditional sportfishing; the commercial charter and lodge harvest could severely limit our resident fishing privileges.

NON-RESIDENTS forced the Chinook quota on Alaska, and now *NON-RESIDENTS* harvest most of the sport Chinook taken in Southeast! We can't allow the unchecked exploitation of a limited resource by any user group.

DO THESE ISSUES BOTHER YOU?

This issue is happening now! If we just sit back waiting for the fish to show and do not make ourselves heard this year, next year we'll be waiting for the sports charter division of ADF&G to tell us how many fish the charter fleet will let us have.

Write comments, or plan to testify at the Board of Fisheries meeting in Juneau, March 7. Deadline for written comment ends February 26th. Send comments to:

Alaska Board of Fisheries
Post Office Box 3-2000
Juneau, Alaska 99802-2000

Paid for By: Concerned Resident Sports Anglers Association

SPORT ANGLERS BEWARE
THE CHARTERBOAT FLEET IS HIDING BEHIND YOUR SKIFF!

The Board of Fisheries has been asked to allocate Chinook salmon between the troll and sport fisheries. If you look at this issue closely, it becomes obvious that charterboat and lodge owners are commercial operators disguised as "sportsmen." Here are a few things that *RESIDENT* sport anglers should know...

The number of Chinook salmon harvested by commercial AND sport fishermen in Southeast is limited by the U.S./Canada Salmon Treaty.

The unchecked, *EXPLOSIVE* growth of the commercial sportsfishing industry is negatively impacting resident sport fishing in Southeast.

Fish and Game has found that anglers fishing on charterboats catch more fish in a shorter period of time:

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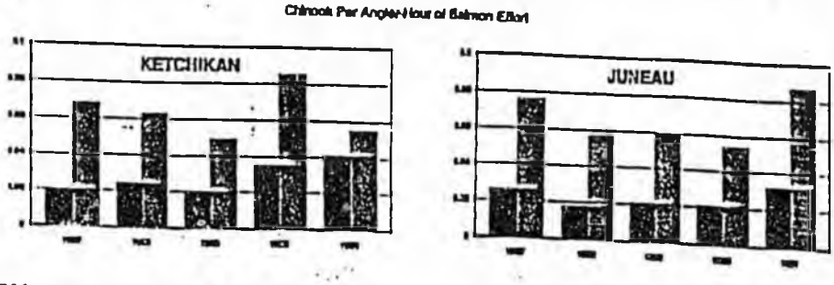


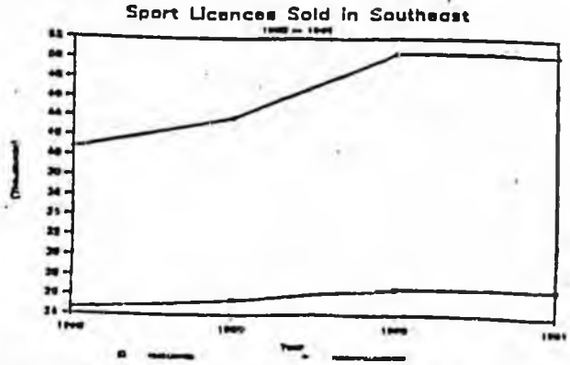
While most *RESIDENT* sportfishermen are working 8 hours *EVERY DAY*, many charterboat operators make two or three fishing trips *EVERY DAY*.

TABLE 3 In the last ten years, the number of charterboats registered in Southeast grew by over 400%!!

Charterboats serve *NON-RESIDENT* sport anglers almost exclusively.

1991: 46,000 *NON-RESIDENT* sport licenses (65%) versus 25,000 (35%) resident sport licenses issued in Southeast.

Mike Mills
Anchorage Fisheries Scientist
Sport Fish
phone # 267-2364



1991: In the Ketchikan sport harvest alone, 62% of the Chinook, 83% of the coho, and 92% of the pinks were taken by *NON-RESIDENT* anglers.

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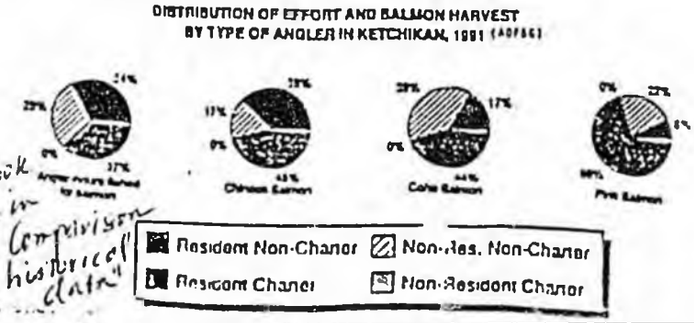
Memo from Paul Suchanek to Fred Gaffney dated 12/05/91 "Summary of 1991 Chinook Salmon Sport Fishery in SE AK and Comparison with historical data"



2/24/92

Scare tactics

EDITOR, Daily News:

Sport fishermen, what is the truth?

Too frequently during heated debate and politics, misinformation or outright lies are told in hopes they will be believed. And if told often enough, they become believable — right?

The charter boat operators and the Tongass Sportfishing Association are using those tactics to scare you into believing a quota of chinook designated to the commercial troll fleet will eliminate your opportunity to catch chinook salmon. The problem is that, despite the abundance of salmon, Alaska fishermen, commercial and sportfish, are managed by a treaty quota that limits how many chinook salmon can be caught. The only exception is that there is no quota on Alaska hatchery chinook salmon.

The commercial troll fleet has seen their catch reduced by this quota but the sport catch has not. The rapid increase in the charter fleet is creating the existing problem. This uncontrolled and expanding commercial charter user group is disrupting the resident sportfishermen and commercial trollers. Don't let the commercial charters confuse you.

The fact is that most of the sport caught chinook are hatchery salmon and are not subject to the quota. A quota on the commercial charters will not eliminate the sport harvest of chinook. The only impact will be on the commercial charters and this will be in late summer when most are targeting pink and coho salmon. Do not believe the propaganda being distributed which falsely claims that with a quota on trollers, the charter industry will be destroyed or that you will not be able to catch chinook almost any time you want.

Sincerely

DONALD F. AMEND
General Manager
Southern Southeast Regional
Aquaculture Association, Inc.
Ketchikan