ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672
7999 HOUSE RESOURCES 204

limits of the state during periods of emergency and crisis, and is expected to direct measures to be taken to meet that responsibility. In the State of Alaska, the Department of Health and Social Services, the Department of Environmental Conservation, the Department of Labor, and the Division of Emergency Services in the Department of Military and Veterans' Affairs are primarily responsible for responding to radiological emergencies.

Under the Federal Plan, for a fixed nuclear facility owned, authorized, or regulated by a federal agency, or for a transportation accident involving materials shipped by a federal agency, the onsite emergency response is the responsibility of that federal agency. For example, the Department of Defense is charged with the safe handling, storage, and transportation of nuclear weapons, nuclear weapon components, and other radioactive material in the department's custody. The Department of Defense is also responsible for the safe operation of its facilities, including nuclear facilities and installations such as missile bases, nuclear submarines, and weapons storage sites. The Department of Energy owns and contracts for the operation of a variety of fixed nuclear facilities throughout the United States, such as research and weapons production facilities. The Department of Energy is responsible for emergency response involving these facilities, or any nuclear weapons, materials, or devices in its custody. The Nuclear Regulatory Commission regulates the use of byproduct, source, and special nuclear material, including activities at commercial power plants, research nuclear facilities, and fuel processing centers, and therefore, is the lead federal agency for emergency response at those facilities. In an Agreement State, the state agency with regulatory authority assumes the onsite role normally assigned a federal agency for all the activities that the state regulates.

When radioactivity originating in a foreign country poses an actual or potential threat in the United States, such as during the Chernobyl accident or during nuclear testing by foreign countries, the Environmental Protection Agency (EPA) leads the federal response. EPA also directs the federal response for emergencies involving domestic sources of radiation that are not regulated by the Department of Defense, the Department of Energy, the Nuclear Regulatory Commission, or Agreement States.

CONCLUSION

The state statutes and regulations pertaining to radiation hazards have not been updated in some time. In many instances, they date back to the late 1970s and early 1980s. There have been many developments in federal law, as well as in nuclear science since that time. As a result of the Alaska State Emergency Response Commission's review of the radiation hazards in the State of Alaska, it may prove necessary or helpful to propose amendments to state law. We would be happy to assist in preparing any revisions or in answering any questions related to specific areas of concern.

NOTES

[1]"Byproduct material" means "(1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content." 42 U.S.C.S. § 2014(e)(Supp. 1992).

"Source material" means "(1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 2091 of this title to be source material; or (2) ores containing one or more of the foregoing materials, in such concentration as the Commission may by regulation determine from time to time." Id., § 2014(z) (1978).

"Special nuclear material" means "(1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 2071 of this title, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material." Id., § 2014(aa).

[2]The 12 agencies are the Departments of Commerce, Defense, Health and Human Services,

Appendices to Legal Analysis section

BIBLIOGRAPHY

Treatises

H. Brown, The Low-Level Waste Handbook: A User's Guide to the Low- Level Radioactive Waste Policy Amendments of 1985 (Nov. 1986).

J.P. Ludington, Annotation, Tort Liability Incident to Nuclear Accident or Explosion, 21 A.L.R.3d 1356 (1968).

Edward A. Nolfi, State or Local Regulation of Transportation of Hazardous Materials as Pre-Empted by Hazardous Materials Transportation Act, 78 A.L.R. Fed. 289 (1986).

Gregory A. Sarno, Annotation, Tort Liability for Nonmedical Radiological Harm, 73 A.L.R. 4th 582 (1989).

Deborah Tussey, Annotation, State Regulation of Nuclear Power Plants, 82 A.L.R.3d 551 (1978).

Journals

After Chernobyl: Liability for Nuclear Accidents Under International Law, 25 Colum. J. Transnat'l Law 647-72 (1987).

M. Anderson, The Role of the States in Energy Regulation, 4 Energy L. J. 255-68 (1983).

C.D. Andrus, Folly of Mismanaging Radioactive Waste, 27 Trial 26 (Spring 1991).

Atomic Energy Act Requires Exclusive Federal Regulation of Radioactive Discharges from Nuclear Power Plants, 25 Vand. L. Rev. (1972).

Banning the Transportation of Nuclear Waste: A Permissible Exercise of the State's Police Power?, 52 Fordham L. Rev. 663-90 (1984).

Berkovitz, Waste Wars: Did Congress "Nuke" State Sovereignty in the Low-Level Radioactive Waste Policy Amendments Act of 1985, 11 Harv. Envtl. L. Rev. 437 (1987).

Bravo's Fallout: International Law and Nuclear Pollution in the Pacific, 14 N.C. Cent. L. J. 172-214 (1983).

Chernobyl Fallout: Recent IAEA Conventions Expand Transboundary Nuclear Pollution Law, 23 Stan. J. Int'l L. 651-64 (Summer 1987).

Chernobyl's Legal Fallout: The Convention on Early Notification ofa Nuclear Accident, 17 Ga. J. Int'l & Comp. L. J. 241-69 (1988).

Chernobyl: Its Implications for International Atomic Energy Regulation, 9 Mich. Y.B. Int'l Legal Stud. 369-84 (1988).

Compensating Damage Arising From Global Nuclear Accidents: the Chernobyl Situation, 10 Loy. L.A. Int'l & Comp. L. J. 241-69 (1988).

L.D. Condon, The Never-Ending Story: Low Level Waste and the Exclusionary Authority of Noncompacting States, 30 Nat. Resources J. 65-86 (Winter 1990).

Congressional Pre-emption Held to Prevent State from Enforcing Stricter Pollution Standards Against Nuclear Electrical Power Plant, 55 Minn. L. Rev. 1223 (1971).

E.D. Cummings, Symposium on Management of Nuclear Wastes, 21 Nat. Resources J. 693 (Oct. 1981).

A.E. Curlee, Regulation of Radiation and Radioactive Materials, 31 A.F.L. Rev. 69-84 (1989).

C.E. Curtis, Legality of Seabed Disposal of High-Level Radioactive Wastes Under the London Dumping Convention, 14 Ocean Dev. & Int'l L. 383-415 (1985).

Early Notification of a Nuclear Accident: the Response to Chernobyl, 14 Brooklyn J. Int'l L. 687-713 (1988).

Emergency Offsite Planning and Nuclear Power Plants: the Opposition and the Federal Response, 37 Wash. U. J. Urb. & Contemp. L. 215-40 (Spring 1990).

Exercising Police Powers to Control Spent Fuel and Other Radioactive Wastes, 14 Golden Gate U. L. Rev. 335-58 (Summer 1984).

Federal Limitation on State Power to Regulate Radioactive Waste, 43 Mont. L. Rev. 271 (1982).

Federal Nuclear Waste Policy as Defined by the Nuclear Waste Policy Amendments Act of 1987, 34 St. Louis U. L.J. 111-31 (Fall 1989).

Federal Preemption Precludes More Stringent State Regulation, 46 Tul. L. Rev. 1016 (1972).

Federal Supremacy versus Legitimate State Interests in Nuclear Regulation, 33 Cath. U. L. Rev 899-942 (Summer 1984).

D.P. Flinn, Ocean Disposal of Radioactive Wastes: the Obligation of International Cooperation to Protect the Marine Environment, 21 Va. J. Int'l L. 621-90 (1981).

B.A. Finamore, Regulating Hazardous and Mixed Waste at Department of Energy Nuclear Weapons Facilities: Reversing Decades of Environmental Neglect, 9 Harv. Envtl. L. Rev. 83-141 (1985).

G.D. Haimbaugh, Jr., Protecting the Seas from Nuclear Pollution, 33 S.C. L. Rev. 197-225 (1981).

Low-Level Radioactive Waste Disposal Facility Sitings: Negotiating a Role for the Public, 3 Ohio St. J. Dis. Res. 219-41 (1982).

S.C. Goldberg, Radioactive and Hazardous Materials Transportation Law: Alike With Differences, 57 Transp. Prac. J. 50-61 (Fall 1989).

S.C. Goldberg, State Nuclear Transportation Routing Laws, 18 Transp. L.J. 15-29 (1989).

G. Handl, Transboundary Nuclear Accidents: the Post-Chernobyl Multilateral Legislative Agenda, 15 Ecology L. Q. 203-48 (1988).

International Law and Radioactive Pollution by Ocean Dumping: "With All Their Genius and With All Their Skill", 11 San Diego L. Rev. 757 (May 1974).

International Liability for Nuclear Pollution, 11 Suffolk Transr at'l L. J. 75-104 (Fall 1987).

International Management of Radioactive Waste, 5 Envtl. Aff. 363-80 (1977).

Into the Abyss: International Regulation of Sub-seabed Nuclear Waste Disposal, 139 U. Pa. L. Rev. 769-800 (Jan. 1991).

B. Kellman, Anxiety Over the TMI Accident: An Essay on NEPA's Limits of Inquiry, 51 Geo. Wash. L. Rev. 219-53 (1983).

Kindt, J.W., Radioactive Wastes, 24 Nat. Resources J. 967-1014 (1984).

R.E. Levy, International Law and the Chernobyl Accident Reflections on an Important But Imperfect System, 36 U. Kan. L. Rev. 81-131 (Fall 1987).

J.P. Lomis, International Law and the Disposal of Radioactive Wastes at Sea, 15 New England L. Rev. 253-86 (1979 - 1980).

Low-Level Radioactive Waste Disposal Compacts, 5 Va. J. Nat. Resources L. 383-414 (Spring 1986).

L.A. Malone, The Chernobyl Accident: A Case Study in International Law Regulating State Responsibility for Transboundary Nuclear Pollution, 12 Colum. J. Envtl. Law 203-64 (Summer 1987).

K.A. Massey, Challenge of Nonionizing Radiation: A Proposal for Legislation, 1979 Duke L. Rev. 105-89.

C.H. Montange, Federal Nuclear Waste Disposal Policy, 27 Nat. Resources J. 309-408 (Spring 1987).

Nevada v. Herrington, 777 F.2d 529: An Ineffective Check on the DOE, 8 J. Energy L. & Pol'y 301-18 (1988).

New Federalism and "Occupation of the Field": Failing to Maintain State Constitutional Protections Within a Preemption Framework — Alverado v. Washington Public Power Supply System, 759 P.2d 427 (Wash.), 64 Wash. L. Rev. 721-39 (July 1989).

Nuclear Energy Safety — Convention on Early Notification of a Nuclear Accident and Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 28 Harv. Int'l L. J. 558-67 (Spring 1987).

Nuclear Waste Disposal: A Federal and State Problem, 65 Ky. L. J. 917-31 (1976 - 1977).

Nuclear Waste Disposal: A Symposium, 53 Tenn. L. Rev. 1-111, 475-678 (Spring 1986).

Nuclear Waste Management, 8 Ecology L. Q. 790-800 (1980).

Nuclear Waste Management: A Challenge to Federalism, 7 Ecology L. Q. 917-53 (1979).

J.L. Peckinpaugh, An Analysis of Regional Interstate Compacts for the Disposal of Low-Level Radioactive Wastes, 5 J. Energy L. & Pol'y 21-48 (1983).

Planning for a National Nuclear Emergency: The Organization of Government and Federal-State Relations, 52 Va. L. Rev. 435 1966).

Preemption — Atomic Energy, 24 Nat. Resources J. 761-82 (July 1984).

Preemption Under the Atomic Energy Act of 1954: Permissible State Regulation of Nuclear Facilities Location, Transportation of Radioactive Materials, and Radioactive Waste Disposal, 11 Tulsa L. J. 397-419 (1976).

Problems Pertaining to Packaging and Transportation Regulatory Standards Applicable to Radioactive Materials, 6 Atomic Energy L. J. 327 (1964).

B.G. Rabe, Low-level Radioactive Waste Disposal and the Revival of Environmental Regionalism in the United States, 7 Envtl. & Plan. L. J. 171-80 (Spring 1990).

Radioactive Marine Pollution: International Law and State Liability, 15 Suffolk Transnat'l L. J. 674-99 (Spring 1992).

Radioactive Material Transportation: Federal Regulators Pose Roadblocks to Local and State Initiatives, 35 Syracuse L. Rev. 1235-81 (1984).

Radioactive Waste Management, 5 Harv. Envtl. L. Rev. 259-95 (1981).

Radiological Emergency Response Plans: State Inaction May Demand Adherence to Current Trend of Preemption Doctrine, 23 Suffolk U. L. Rev. 1049-81 (Winter 1989).

Radon: An Environmental Problem That Is Too Close to Home, 4 J. Contemp. Health L. & Pol'y 415-28 (Spring 1988).

Radon's Radioactive Ramifications: How Federal and State Governments Should Address the Problem, 16 B.C. Envtl. Aff. L. Rev. 329-82 (Winter 1988).

Retroactive Liability for Clean-Up of Hazardous Waste in Atlas v. United States, 895 F.2d 745: the Nuclear Industry's Failed Attempt to Make Government Pay, 6 J. Min. L. & Pol'y 275-90 (1990-'91).

M.E. Rosen, Nevada v. Watkins [914 F.2d 1545]: Who Gets the Shaft?, 10 Va. Envtl. L. J. 239 (Spring 1991).

P.F. Schuster, Nuclear Ship Pollution: National and International Regulation and Liability, 5 Envtl. L. 203-40 (1975).

J.F. Seiberling, Radioactive Waste Disposal: the Emerging Issue of States' Rights, 13 Akron L. Rev. 261-76 (1979).

K.L. Shepherd, Radon: Is Legislation the Answer?, 22 Md. B.J. 6-10 (July/Aug. 1989).
State Control of Low Level Nuclear Waste Disposal, 17 Nat. Resources J. 683-90 (1977).

State Participation in the Disposal of High-Level Nuclear Waste, 20 Tulsa L. J. 31-59 (Fall 1984).

States Precluded from Regulating Radioactive Emissions from Nuclear Power Plants, 37 Mo. L. Rev. 105 (1972).

J.M. Stensvaag, State Regulation of Nuclear Generating Plants Under the Clean Air Amendments of 1977, 55 So. Cal. L. Rev. 511 (Mar. 1982).

J.M. Stensvaag, Regulating Radioactive Air Emissions from Nuclear Generating Plants: A Primer for Attorneys, Decision-Makers, and Intervenors, 78 N.W. U. L. Rev. 1-197 (1983).

Survey of Research in the Transportation of Radioactive Materials, 7 Atomic Energy L. J. 1 (1965).

Symposium: Nuclear Waste Management, 32 S.C. L. Rev. 1-303 (1981).

Symposium on the Management of Nuclear Wastes, 21 Nat. Resources J. 693-894 (1981).

P.C. Szasz et al., International Responsibility for Manmade Disasters, 81 Am. Soc'y Int'l L. Proc. 320-45 (1987).

The Application of NEPA to Nuclear Weapons Production, Storage, and Testing, 11 B.C. Envtl. Aff. L. Rev. 805-37 (1984).

The Radon Review: The Federal and State Governments' Responses to Indoor Radon Contamination, 7 Temp. Envtl. L. & Tech. J. 39-61 (Fall 1988).

The Role of Localities in the Transportation and Disposal of Nuclear Wastes, 18 U. Rich. L. Rev. 655-95 (1984).

The United States Government Has the Sole Authority Under the Doctrine of Implied Preemption to Regulate Radioactive Discharges from Nuclear Power Plants, 22 Drake L. Rev. 194 (1972).

D.H. Topol, Rethinking Who is Left Holding the Nation's Nuclear Garbage Bag: the Legal and Policy Implications of Nevada v. Watkins, 914 F.2d 1545, 1991 Utah L. Rev. 791-836.

Transportation of Radioactive Materials in Our Backyards — a State's Perspective, 9 J. Energy L. & Pol'y 47-71 (1988).

L.M. Trosten & M.R. Ancarrow, Federal-State-Local Relationships in Transporting Radioactive Materials: Rules of the Nuclear Road, 68 Ky. L. J. 251-99 (1979 - 1980).

Who Regulates the Disposal of Low-Level Radioactive Waste Under the Low-Level Radioactive Waste Policy Act?, 9 J. Energy L. & Pol'y 73-98 (1988).

Karen A. Winchester and James W. Zirkle, Freedom of Information and the CIA Information Act, 21 U. Rich. L. Rev. 231 (1987).

L.A. Zax, The 1991 Bellagio Conference on U.S. — U.S.S.R. Environmental Protection Institutions, 19 B.C. Envtl. Aff. L. Rev. 481-654 (Spring 1992).

J.F. Zimmerman, Federal Preemption of State and Local Government Activities, 13 Seton Hall Legis. J. 25-51 (1989).

TABLE OF CASES

United States Supreme Court

New York v. United States, ___ U.S. ___, 112 S.Ct. 2408, 120 L. Ed.2d 120 (1992) (low-level radioactive waste, federal versus state authority).

English v. General Electric Co., 496 U.S. 72, 110 S.Ct. 2270, 110 L.Ed.2d 65 (1990) (Energy Reorganization Act does not preempt employee's state law claim for intentional infliction of emotional distress).

Goodyear Atomic Corp. v. Miller, 486 U.S. 174, 108 S.Ct. 1704, 100 L.Ed.2d 158 (1988) (additional workers' compensation coverage for employees at federally-owned, privately-operated nuclear production facility authorized by Congress).

Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 104 S.Ct. 615, 78 L.Ed.2d 443 (1984) (federal pre-emption of state regulation of safety aspects of nuclear energy does not extend to state-authorized award of punitive damages for conduct related to radiation hazards).

Pacific Gas & Electric Co. v. State, 461 U.S. 190, 103 S.Ct. 1713, 75 L. Ed. 2d 752 (1983) (federal government has occupied entire field of nuclear safety concerns).

Weinberger v. Catholic Action of Hawaii/Peace Education Project, 454 U.S. 139, 102 S.Ct. 197, 70 L.Ed.2d 298 (1981) (NEPA does not require Navy to prepare and release "hypothetical environmental impact statement" regarding nuclear weapons storage).

Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 98 S.Ct. 2620, 57 L.Ed.2d 595 (1978) (statutory limitation on liability for nuclear accident at private nuclear power plant).

Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 98 S.Ct. 1197, 55 L.Ed.2d 460 (1978) (administrative procedures used in licensing nuclear power plants).

Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1, 96 S.Ct. 1938, 48 L.Ed.2d 434 (1975) (Clean Water Act does not regulate discharge of source, byproduct, and special nuclear materials).

Federal Courts of Appeal

Idaho v. United States, 945 F.2d 295 (9th Cir. 1991), cert. denied, 112 S.Ct. 2302, 119 L.Ed.2d 225 (1992) (storage agreements).

Nevada v. Watkins, 943 F.2d 1080 (9th Cir. 1991) (site characterization).

In re TMI Litigation Cases Consol. II, 940 F.2d 832 (3d Cir. 1991), cert. denied, Gumby v. General Public Utilities Corp., 112 S.Ct. 1262, 117 L.Ed.2d 491 (1992) (federal cause of action for nuclear accident claims).

Nevada v. Watkins, 939 F.2d 710 (9th Cir. 1991) (nuclear waste repositories).

County of Esmeralda v. United States, 925 F.2d 1216 (9th Cir. 1991) (denial of county's request to be designated nuclear waste repository project).

Kerr-McGee Chemical Corp. v. City of West Chicago, 914 F.2d 820 (7th Cir. 1990) (city had power to reject certain aspects of chemical company's project that violated city's erosion and sedimentation code, if they did not directly involve radiation hazards, including those inextricably intermixed with nonradiation hazards, and that were not selected by city for scrutiny to frustrate project as a whole).

Nevada v. Burford, 918 F.2d 854 (9th Cir. 1990), cert. denied, Nevada v. Jamison, 111 S.Ct. 2052, 114 L.Ed.2d 458 (1991) (site characterization studies under Nuclear Waste Policy Act).

Nevada v. Watkins, 914 F.2d 1545 (9th Cir. 1990), cert. denied, 111 S.Ct. 1105, 113 L.Ed.2d 215 (1991) (high-level radioactive waste repository, state's rights).

Public Citizen v. Nuclear Regulatory Commission, 901 F.2d 147 (D.C. Cir. 1990), cert. denied, Nuclear Management and Resources Council, Inc. v. Public Citizen, 111 S.Ct. 536, 112 L.Ed.2d 546 (1990) (NRC required to promulgate regulations compelling nuclear power plant licensees to create personnel training programs).

Amoco Oil Co. v. Borden, Inc., 889 F.2d 664 (5th Cir. 1989) (radioactive materials are hazardous substances under CERCLA).

Natural Resources Defense Council v. United States, 824 F.2d 1258 (1st Cir. 1987) (EPA standards for long-term disposal of high level radioactive waste found inadequate).

Nevada v. Herrington, 827 F.2d 1394 (9th Cir. 1987) (state's independent evaluation of nuclear waste siting activities).

Allen v. United States, 816 F.2d 1417 (10th Cir. 1987), cert. denied, 484 U.S. 1004, 108 S.Ct. 694, 98 L.Ed.2d 647 (1988) (Atomic energy Commission, in planning and conducting open-air atomic bomb tests in Nevada in the 1950s and 1960s, was making policy judgments protected by the discretionary function exception to the Federal Tort Claims Act).

Tennessee v. Herrington, 806 F.2d 642 (6th Cir. 1986), cert. denied, 480 U.S. 946, 107 S.Ct. 1604, 94 L.Ed.2d 790 (1987) (state participation in selecting sites for monitored retrievable nuclear waste storage facility).

Maine v. Herrington, 790 F.2d 1 (1st Cir. 1986) (state's comments on nuclear waste storage sites).

Nevada ex rel. Loux v. Herrington, 777 F.2d 529 (9th Cir. 1985) (state's statutory rights under Nuclear Waste Policy Act).

Jersey Cent. Power & Light Co. v. Lacey, 772 F.2d 1103 (3d Cir. 1985), cert. denied, 475 U.S. 1013, 106 S.Ct. 1190, 89 L.Ed.2d 305 (1986) (township ordinance prohibiting importation of radioactive waste for purposes of storage preempted by Hazardous Materials Transportation

Act).

Duke Power Co. v. United States, 770 F.2d 386 (4th Cir. 1985) (nuclear safety and the Nuclear Regulatory Commission).

Brown v. Kerr-McGee Chemical Corp., 767 F.2d 1234 (7th Cir. 1985), cert. denied, 475 U.S. 1066, 106 S.Ct. 1378, 89 L.Ed.2d 604 (1986) (Atomic Energy Act preempts state law injunction to remove nonradioactive hazards when nonradioactive and radioactive materials are inseparable).

Texas v. United States, 764 F.2d 278 (5th Cir. 1985), cert. denied, 474 U.S. 1008, 106 S.Ct. 531, 88 L.Ed.2d 463 (nuclear waste repository sites).

County of Suffolk v. Long Island Lighting Co., 728 F.2d 52 (2d Cir. 1984) (responsibility to regulate and enforce safety aspects of nuclear energy power plants sole province of Nuclear Regulatory Commission).

Pennsylvania v. General Public Utilities Corp., 710 F.2d 117 (3d Cir. 1983) (property damage resulting from radioactive air contaminants).

County of Rockland v. United States, 709 F.2d. 766 (2d Cir. 1983), cert. denied, 464 U.S. 993, 104 S.Ct. 485, 78 L.Ed.2d 681 (Nuclear Regulatory Commission emergency preparedness regulations).

McKay v. United States, 703 F.2d 464 (10th Cir. 1983) (private civil actions for damages incurred upon property bordering manufacturing facility allowed).

Washington State Building and Construction Trades Council v. Spellman, 684 F.2d 627 (9th Cir. 1982), cert. denied, Don't Waste Washington Legal Defense Foundation v. Washington, 461 U.S. 913, 103 S.Ct. 1891, 77 L.Ed.2d 282 (1983) (state statute that closes borders of state to entry of low-level radioactive waste originating outside state is invalid as violation of Commerce Clause and Supremacy Clause).

Illinois v. Kerr-McGee Chemical Corp., 677 F.2d 571 (7th Cir. 1982), cert. denied, 459 U.S. 1049, 103 S.Ct. 469, 74 L.Ed.2d 618 (failure of state to enter into agreement with Nuclear Regulatory Commission under Atomic Energy Act does not lessen state regulatory authority over non-radiation hazards).

Susquehanna Valley Alliance v. Three Mile Island, 619 F.2d 231 (3d Cir. 1980), cert. denied, General Public Utilities Corp. v. Susquehanna Valley Alliance, 449 U.S. 1096, 101 S.Ct. 893, 66 L.Ed.2d 824 (1981) (discharge of intermediate level radioactive waste following nuclear power plant incident, NEPA and Clean Water Act).

Akron, C. & Y. R. Co. v. Interstate Commerce Comm'n, 611 F.2d 1162 (6th Cir. 1979), cert. denied, 449 U.S. 830, 101 S.Ct. 97, 66 L.Ed.2d 34 (1980) (DOT and NRC have exclusive authority to promulgate industry-wide standards for carriage of radioactive materials; ICC may allow individual carriers to make more stringent rules for their own carriage).

Minnesota v. Nuclear Regulatory Comm'n, 195 U.S. App. D.C. 234, 602 F.2d 412 (1979) (nuclear waste disposal).

Natural Resources Defense Council, Inc. v. Nuclear Regulatory Comm'n, 582 F.2d 166 (2d Cir. 1978) (given progress toward development of disposal facilities and availability of interim storage, NRC could continue to license new reactors).

York Committee for Safe Environment v. United States, 174 U.S. App. D.C. 29, 527 F.2d 812 (1975) (level of radioactive material in effluent).

Northern States Power Co. v. Minnesota, 447 F.2d 1143 (8th Cir. 1971), aff'd, 405 U.S. 1035, 92 S.Ct. 1307, 31 L.Ed.2d 576 (1972) (federal government has sole authority under doctrine of preemption to regulate radioactive waste releases from nuclear power plants to exclusion of states).

Federal District Courts

O'Conner v. Commonwealth Edison Co., 748 F. Supp. 672 (C.D. Ill. 1990) (federal safety standards at nuclear plants).

Borough of Maywood v. United States, 679 F. Supp. 413 (D.N.J. 1988) (local planning boards decisions to deny subdivision and site plan approval for private conveyance of land to United States for use as temporary repository for radioactive waste preempted).

Tennessee v. Herrington, 626 F.Supp. 1345 (M.D. Tenn. 1986) (cooperation of state in selecting monitored retrievable storage system).

Citizens for an Orderly Energy Policy, Inc. v. Suffolk County, 604 F. Supp. 1084 (D.N.Y. 1985) (school district and nonprofit corporation had standing to challenge county's lack of participation in off-site emergency evacuation planning for nuclear power facility).

Legal Environmental Assistance Foundation, Inc. v. Hodel, 586 F. Supp. 1163 (E.D. Tenn. 1984) (RCRA applies to nuclear weapons plant, except as to nuclear and radioactive materials).

United Nuclear Corp. v. Cannon, 553 F. Supp. 1220 (D.R.I. 1982) (Atomic Energy Act preempts state statute requiring nuclear power company to post bond with state for 20 year period to cover any costs expended by state to decontaminate area surrounding company's facilities, since statute is attempt at simultaneous versus seriatim regulation).

State Courts

Northern California Ass'n to Preserve Bodega Head & Harbor, Inc. v. Public Utilities Comm'n, 390 P.2d 200 (Cal. 1964) (federal government has not preempted the question of safety of location of atomic reactors).

Marshall v. Consumers Power Co., 237 N.W.2d 266 (Mich. App. 1975) (state is preempted from regulating those matters that deal with radioactive hazards but not from regulating nonradiological hazards).

Maryland Heights Leasing, Inc. v. Mallinckrodt, Inc., 706 S.W.2d 218 (Mo. App. 1985) (owners of property adjoining plant that produces nuclear and radioactive pharmaceuticals and medical supplies denied state court injunctive relief against plant for radiation hazards, since, under the Atomic Energy Act, public protection from radiation hazards is exclusively a federal concern).

Bennett v. Mallinckrodt, Inc., 698 S.W.2d 854 (Mo. App. 1985), cert. denied, 476 U.S. 1176, 106 S.Ct. 2903, 90 L.Ed.2d 989 (1986) (federal law does not preempt state law remedies for radiation injuries, and does not preclude state law actions for negligence, assault and battery, and strict liability resulting from exposure to radioactive emissions).

Public Interest Research Group of New Jersey, Inc. v. State, 377 A.2d 915 (N.J. Super. 1977), certification denied, 384 A.2d 517 (given comprehensive nature of federal legislation and regulations, state commissioner had no authority under state Coastal Area Facility Review Act to make independent judgment as to ability of plant facility to protect against radiation hazards either from operation of plant or from handling of radioactive waste).

State v. Jersey Cent. Power & Light Co., 351 A.2d 337 (N.J. 1976) (state does not have right to seek damages for destruction of fish by thermal pollution due to alleged negligence in operation of nuclear power plant pump).

Wyatt v. Kundert, 375 N.W.2d 186 (S.D. 1985) (low-level radioactivewaste, federal versus state authority).

STATE STATUTES AND REGULATIONS

AS 11.46.490(8)	Defines "widely dangerous means" to include radioactive material. This term is used in AS 11.46.480(a)(2), establishing the elements of criminal mischief in the first degree, a class B felony, and AS 11.46.482(a)(3), criminal mischief in the second degree, a class C felony.
AS 18.45	Atomic energy; U.S. licenses or permits required; facilities siting permits; transportation of nuclear waste material; atomic industrial development; injunctive proceedings; intergovernmental cooperation; definitions.
AS 18.60	Radiation protection; powers and duties of Department of Health and Social Services; radiation sources; notification of violation and order of abatement; authority of department in case of emergency; assisting other agencies; exceptions; penalties; definitions.
AS 21.69.650	National emergency provisions to allow continued operation of domestic insurers in the event of a nuclear disaster.
AS 26.23.120 26.23.130	Interstate Civil Defense and Disaster Compact.
AS 29.35.500	Municipal reporting programs for hazardous chemicals, materials, and wastes include radioactive materials.

AS 36.30.735	Restriction on contracting with or employing experts on radiation hazards.
AS 41.98.110	Western Interstate Nuclear Compact. 41.98.150
AS 44.99.120 —	Nuclear Freeze Policy. 44.99.125
AS 46.03.250	Authorizes DEC to adopt regulations relating to low level radioactive materials.
AS 46.03.260	DEC permit for discharge of low level radioactive materials.
AS 46.03.865	Authority of DEC in cases of emergency resulting from actual or imminent discharge of low level radioactive materials.
AS 46.03.900	Defines atomic radiation and low level radioactive materials.
AS 46.45	Northwest Interstate Compact on Low Level Radioactive Waste Management.

REGULATIONS

8 AAC 05.120	Minors excluded from occupations involving exposure to radioactive substances and ionizing radiations.
13 AAC 04.250	Vehicles transporting radioactive materials.
18 AAC 60.910	Solid waste management regulations definitions of hazardous waste and low level radioactive waste includes radioactive materials; definition of solid waste excludes source, special nuclear or byproduct material as defined in the Nuclear Waste Policy of 1982, Pub. L. No. 97-425.
18 AAC 63.900	Siting of hazardous waste management facilities. Definition of release excludes release of source, byproduct, or special nuclear material.
18 AAC 78.005(f)	Underground storage tanks containing radioactive material. Certain provisions apply; UST exempt from others.
18 AAC 80	Drinking water standards, sections 70, 230, 240, 250, 260, 310, and 990.
18 AAC 85	Radiation protection.

FEDERAL STATUTES

7 U.S.C.S. § 450j (1992) (contamination of milk).

15 U.S.C.S. § 272 (1992) (National Institute of Standards and Technology may investigate ionizing and non-ionizing radiation and radioactive substances, their uses, and ways to protect people, structures, and equipment from their harmful effects).

21 U.S.C.S. § 342 (1984) (adulterated food).

21 U.S.C.S. § 453(g) (1984) (adulterated poultry).

Nuclear Non-Proliferation Act of 1978, 22 U.S.C.S. §§ 3201 — 3282 (1982 & Supp. 1992) (international cooperation to ensure worldwide development of peaceful nuclear activities).

Occupational Safety and Health Act of 1970, 29 U.S.C.S. §§ 653, 655, 657 (1990) (occupational health and safety standards include standards for ionizing radiation and nonionizing radiation; hazardous waste operations and emergency response).

Clean Water Act, 33 U.S.C.S. § 1311(f) (Supp. 1992) (discharge of radiological agents and high level radioactive waste into navigable waters illegal).

Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C.S. §§ 1401 — 1445 (1987 & Supp. 1992) (regulates ocean dumping of radioactive materials and radioactive waste).

42 U.S.C.S. § 241 (Supp. 1992) (research on biological effects of ionizing radiation).

Radiation Control for Health and Safety Act of 1968, 42 U.S.C.S. §§ 263b — 263n (1989 & Supp. 1992) (electronic product radiation control).

Safe Drinking Water Act, 42 U.S.C.S. §§ 300f et seq. (1991) (contaminants include any radiological substance in water).

Atomic Energy Act of 1954, 42 U.S.C.S. §§ 2011 — 2296 (1989 & Supp. 1992) (atomic energy and atomic weapons control).

42 U.S.C.S. § 2021a (Supp. 1992) (nuclear waste storage or disposal facilities, state participation).

Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C.S. §§ 2021b —2021g (Supp. 1992) (disposal of low-level radioactive waste).

Energy Reorganization Act of 1974, 42 U.S.C.S. §§ 5801 — 5891 (1989) (establishes Nuclear Regulatory Commission).

Federal Facilities Compliance Act of 1992, Pub. L. No. 102-386, ___ Stat. ___, amending scattered sections of the Solid Waste Disposal Act, 42 U.S.C.S. §§ 6901 et seq. (1982 & Supp. 1992) (mixed hazardous and radioactive wastes at federal facilities, compliance with the Solid Waste Disposal Act (Resource Conservation and Recovery Act)).

42 U.S.C.S. § 7133 (1989) (U.S. Department of Energy responsibilities, including environmental responsibilities, international programs, national security functions, and nuclear waste management).

42 U.S.C.S. § 7158 (1989) (naval reactor and military application programs).

Clean Air Act, 42 U.S.C.S. §§ 7412, 7422 (1989 & Supp. 1992) (lists radionuclides as hazardous substances; radioactive air pollutants).

Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C.S. §§ 7901 — 7942 (1989 & Supp. 1992).

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C.S. §§ 9601 — 9677 (1989) (radioactive materials are hazardous substances under CERCLA; definition of "release" excludes release of source, byproduct, or special nuclear material as defined in Atomic Energy Act of 1954 and special nuclear material from any processing site designated under the Uranium Mill Tailings Radiation Control Act of 1978).

Nuclear Safety Research, Development, and Demonstration Act of 1980, 42 U.S.C.S. §§ 9701 — 9708 (1989) (establishes federal program to improve safety of nuclear powerplants).

Consumer-Patient Radiation Act Health and Safety Act of 1981, 42 U.S.C.S. §§ 10001 — 10008 (1989 & Supp. 1992) (safety of medical and dental radiologic procedures).

Nuclear Waste Policy Act of 1982, 42 U.S.C.S. §§ 10101 — 10270 (1989 & Supp. 1992) (disposal and storage of high-level radioactive waste, spent nuclear fuel, and low-level radioactive waste; defines relationship between federal government and state governments with respect to such waste and spent fuel).

Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C.S. §§ 1801 — 1819 (1990 & Supp. 1992) (transportation of radioactive materials).

Federal Civil Defense Act of 1950, 50 U.S.C.S. § 2251 (Supp. 1992) (civil defense from attack and natural disasters) (Atomic Energy Act of 1946 unaffected, 42 U.S.C.S. § 2262 (1989).

Radiation Exposure Compensation Act, Pub. L. No. 101-426, 104 Stat. 920, as amended, Act of Nov. 5, 1990, Pub. L. No. 101-510, 104 Stat. 1835, 1837 (compensation for individuals exposed to radiation during government's atmospheric nuclear tests).

Omnibus Low-Level Radioactive Waste Interstate Compact Consent Act, Pub. L. No. 99-240, 99 Stat. 1859 (1986) (congressional consent to interstate compacts; section 221, Northwest Interstate Compact on Radioactive Waste Management includes Alaska).

MULTILATERAL TREATIES

Convention on early notification of a nuclear accident. Done at Vienna, Sept. 26, 1986; entered into force, Oct. 27, 1986; for the United States, with declarations, Oct. 20, 1988. TIAS.

Convention on assistance in the case of a nuclear accident or radiological emergency. Done at Vienna, Sept. 26, 1986; entered into force, Feb. 26, 1987; for the United States, with declarations, Oct. 20, 1988. TIAS.

Convention on the physical protection of nuclear materials, with annex. Done at Vienna, Oct. 26, 1979; entered into force, Feb. 8, 1987. TIAS.

Treaty on the prohibition of the emplacement of nuclear weapons and other weapons of mass destruction on the seabed and the ocean floor and in the subsoil thereof. Done at Washington, London, and Moscow, Feb. 11, 1971; entered into force, May 18, 1972. 23 UST 701; TIAS 7337; 955 UNTS 115.

Treaty on the Non-Proliferation of Nuclear Weapons. Done at Washington, London, and Moscow, July 1, 1968, entered into force, Mar. 5, 1970. 21 UST 483; TIAS 6839; 729 UNTS 161.

Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space, and Under Water. Done at Moscow, Aug. 5, 1963; entered into force, Oct. 10, 1963. 14 UST 1313; TIAS 5433; 480 UNTS 43.

Statute of the International Atomic Energy Agency. Done at New York, Oct. 26, 1956; entered into force, July 29, 1957. 8 UST 1093; TIAS 3873; 276 UNTS 3.

Appendices

LETTER FROM GOVERNOR WALTER J. HICKEL

Included is a copy of the letter from Governor Walter J. Hickel to the State Emergency Response Commission requesting a review of radiological threats and release response preparedness in Alaska.

REVIEW OF ALASKA'S RADIATION PROTECTION ACTIVITIES BY THE CONFERENCE OF RADIATION CONTROL PROGRAM DIRECTORS, INC.

Coincident with the Governor's request for this review of radiological threats and release response preparedness, the Conference of Radiation Control Program Directors sent a team of federal and state radiation control practitioners to Alaska to perform a review of Alaska's radiation control program. Their review and recommendations are included in this appendix.

COMMENTS BY JESLIE KALEAK, SR., MAYOR NORTH SLOPE BOROUGH

The State Emergency Response Commission requested of Mayor Jeslie Kaleak, Sr. that the North Slope Borough review and comment on a draft of this report. Their review and recommendations are included in this appendix.

LETTER FROM GOVERNOR WALTER J. HICKEL

Copy of letter dated September 25, 1992 from Governor Walter J. Hickel to the State Emergency Response Commission requesting a review of radiological threats and release response preparedness in Alaska.

WALTER J. HICKEL
GOVERNOR

P. O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

September 25, 1992

Commissioner John A. Sandor, Chairman
Major General Hugh Cox, Vice Chairman
State Emergency Response Commission
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Dear John and Hugh,

In your role as chairman and vice-chairman of the State Emergency Response Commission, I'm writing to ask you and the Commission to lead an immediate review of radiological threats facing Alaskans, and the preparedness of our federal, state, and local agencies to respond to these threats.

I would like a status report in 90 days so that if state legislation is necessary, we can propose it in January.

I am asking for this review because of the recent revelations in the hearing held by Senator Murkowski and the Senate Select Committee on Intelligence concerning Arctic radiation as well as the discovery of a 30-year old radioactive waste dump at Cape Thompson near Point Hope. In addition, it was news to me and many Alaskans that Radioisotope Thermal Generators (RTG's) are employed by the U.S. Air Force and the Navy on Alaskan soil without any consultation with state agencies.

We cannot say today what effect, if any, radiation from nuclear testing, operations, or waste disposal may have had on Alaskans' health or the environment. We deserve to know. Some activities have taken place in secret, or have been forgotten. We deserve to know those facts as well. Given the fears I have heard voiced by many Alaskans around the state, we must act quickly to identify risks and to respond to them. We must also communicate these risks with the public in a trustworthy, understandable way.

Because the SERC includes representation from every state agency directly concerned with health and radiological protection, including your departments and the Departments of Health and Social Services and Labor, I believe this Commission is well constituted to undertake this charge. I recently appointed Pt. Hope Mayor Ray Koonuk to the Hazardous Substance Spill Technology Review Council, which met this week, and he may be able to support your efforts where new tools are necessary or research is needed.

In further support of improved preparedness, I intend to follow up on our request for better notification and joint response plans with Russia for nuclear incidents that may arise in the Arctic. A nuclear power plant operating in the Chukotka Peninsula is closer to some parts of Alaska than those places are to Juneau. Past waste disposal practices and possible resumption of underground nuclear testing in the Russian Arctic may also be a cause for concern.

As you are already aware, The Northern Forum and the Arctic Environmental Protection Strategy have projects underway to expand environmental monitoring and to increase emergency response capability. We want to encourage both our federal government and the Russian government to better support these international agreements. We may need to push to speed up monitoring efforts, for example. Your review will help define exactly what the state should ask for from these efforts and from U.S. implementation of the Russian Aid package.

I've asked Dr. Luis Proenza, vice president of the University of Alaska, a member of the U.S. Arctic Research Commission, and my science advisor, to explain to the SERC the research program the University has proposed to better define the threats from Russia. Senator Murkowski has worked successfully to see these concerns are included in the Russian Aid package. I've asked Mr. John Katz, in our Washington office, to brief our congressional delegation and appropriate federal agencies on this review, and to gain further support.

Thank you for taking on this task. We look forward to your report.

Sincerely,

Walter J. Hickel
Governor

Issues to be reviewed by the SERC

Threats/Risk Assessment

International sources of radiation for Alaskans: what research is ongoing to tell us of past practices, current practices, and future radiation threats? What additional research is necessary?

National sources of radiation for Alaskans: what research is necessary to tell us of past practices, current practices, and future radiation threats? Are there more Project Chariot disposal sites or other sites we do not know of? Are there more RTG's?

What are the risks to Alaskans of accidental detonation, accident in a nuclear submarine, accident in an RTG, or accident in the transfer of material?

Cumulative radiation: what levels are of concern to health and the environment? What has the environment received already? What have humans received already?

Government Preparedness

Should Alaska become an "Agreement State" with the Nuclear Regulatory Commission?

What role are state and local agencies expected to have in a radiological response? Are we prepared now? What do we have to do to get prepared?

Are the international notification agreements on nuclear radiation effective? Are the links tested? Are there any improvements to links between the federal and state government that are appropriate? Are direct communications also appropriate? What kind of monitoring is necessary to provide warning should notification agreements fail?

Does Alaska need any additional legislation, in state, to bring about better notification of the use of nuclear material, better oversight of private or federal activity, or better prevention and response requirements in the use of radioactive materials?

Ongoing Federal Activities On Radiation

International

--*U.S. Arctic Research Commission (attached resolution)*

--*Pending Russian Aid Package*

--*The Northern Forum Environmental Health and Emergency Response Project; Environmental Monitoring Project*

--*Arctic Environmental Protection Strategy activities on Emergency Response and AMAP, Arctic Monitoring and Assessment Program*

--*Bilateral U.S.-Russian efforts on disarmament*

--*Bilateral, multilateral efforts with Russia on health*

--*Bilateral Scandinavian efforts on identifying radioactive waste*

--*Bilateral U.S.-Russian agreements on emergency response, environment*

National

--*Nuclear Regulatory Commission oversight*

--*Report by the CIA to Senator Murkowski; intelligence committee*

--*U.S. participation in International Atomic Energy Agency*

--*U.S. Department of Energy cleanups, monitoring at Cape Thompson, Amchitka*

--*U.S. Army cleanup at Ft. Greely*

--*U.S. Navy response plan at Ketchikan submarine facility*

--*U.S. Radiological Response Plan*

REVIEW OF ALASKA'S RADIATION PROTECTION ACTIVITIES BY THE CONFERENCE OF RADIATION CONTROL PROGRAM DIRECTORS, INC.

Coincident with the Governor's request for this review of radiological threats and release response preparedness, the Conference of Radiation Control Program Directors sent a team of federal and state radiation control practitioners to Alaska to perform a review of Alaska's radiation control program. This appendix contains the report of their review and recommendations.

Conference of Radiation Control Program Directors, inc.

Office of Executive Director 205 Capital Avenue Frankfort, Kentucky 40601 (502) 227-4543

December 15, 1992

John Sandor, Commissioner
Department of Environmental Conservation
410 Willoughby Avenue
Juneau, Alaska 99811

Dear Mr. Sandor,

On behalf of the Conference of Radiation Control Program Directors, Inc. (CRCPD), we wish to thank you for the invitation for us to perform an independent review of the radiation protection activities in Alaska. We met many dedicated and talented state people during our review, and appreciate the hospitality shown us during our visit. Our discussions were very productive due in great part to the forthright, candid and complete cooperation from you and your staff. It is clear there is a knowledgeable, "can do" spirit expressed both up and down the chain of command, as well as across departments.

While a full list of program administrators and technical people with whom we spoke are shown elsewhere in this report, we do want you to know we were pleased to visit with Lieutenant Governor Jack Coghill; Pat Ryan, Chief of Staff for Governor Hickel; and Kris Lethin, Legislative Liaison for the Governor. We gave them each a general briefing relating to our visit.

Enclosed is the final report of our comprehensive review of the radiation protection activities in the State of Alaska. This report is basically the same as the Preliminary Draft sent to you on December 2, 1992. We wish to recognize our report does not directly address some of the issues with which the State has recently expressed concern, since these issues were not within the scope of our review.

As noted in the report, we recommend Alaska consider becoming an "Agreement State" with the NRC, making note of the small increment of staff which would be required for such an Agreement, but which would enable the State to regulate its existing radioactive sources not regulated by the NRC, as well as those regulated by the NRC, and enable the State to respond more

completely to incidents which may occur within the State boundary and beyond.

Again, thank you for the opportunity to conduct the review. We sincerely hope our recommendations will be of benefit to the State of Alaska.

Sincerely,

Charles M. Hardin

Charles M. Hardin
Executive Director

CMH/sah
Enclosure

REPORT

ON

REVIEW OF THE ALASKA RADIATION PROTECTION PROGRAM

Date of Report: December 15, 1992

INTRODUCTION

A multitude of radiation sources, both ionizing and nonionizing, exist in every state. These sources, when improperly used, or allowed to enter the environment, can unnecessarily expose the population causing a variety of illnesses, such as cancer and cataracts. Radiation exposure can also cause birth defects and a shorting of life span.

At the request of Dr. Katherine A. Kelley, Chief of the Section of Laboratories, Department of Health & Social Services (DHSS), the Conference of Radiation Control Program Directors, Inc. (CRCPD), conducted a comprehensive review of the radiation protection activities in the State of Alaska. This review was performed November 2 through November 5, 1992. A verbal review of the findings were discussed with management on the afternoon of November 5, 1992.

The objective of the comprehensive review was to assist the state in identifying areas where improvements can be made, as related to radiation protection for the citizens of Alaska.

The review was performed by a team of individuals having a diverse background in radiation protection. A list of the review team is shown on Attachment I.

Several major radiation protection concerns were brought to the attention of the Review Team prior to the review. These concerns were:

1. Potential environmental contamination from a 30-year old radioactive dump site near Point Hope.

2. The use of Radioisotope Thermal Generators (RTGs) used by the U.S. Air Force and Navy in parts of Alaska.

3. Exposure of Alaska citizens from radioactive fallout from past Russian nuclear weapons testing, and the possible continuation of underground testing of nuclear weapons, in the former Soviet Union.

4. Potential exposure of Alaskan citizens in the event of an accident from the nuclear power reactor operating in the Chukotka Peninsula in the former Soviet Union.

5. Past waste disposal practices in the Russian Arctic.

6. Potential population exposure from microwave energy from the transmission of electricity by a microwave tower at the Bradley Lake Hydroelectric Project.

Although these specific concerns may have merit, and should be thoroughly investigated by Alaskan officials, these issues were not within the scope of this comprehensive review. In particular, there are no established CRCPD criteria which address these specific concerns. However, the NRC representative on the review team did set up meetings and contacts with NRC officials for Alaskan officials to pursue.

Several Alaskan officials were interviewed during the review. A list of those interviewed are shown on Attachment II.

The basic elements of a comprehensive radiation control program (RCP) are contained in Attachment III. The findings of the review were compared with criteria contained in five CRCPD documents, and recommendations will be made, based on the criteria contained in these documents. These documents are:

1. *Criteria for Adequate Radiation Control Programs (X-Ray)*, A Report of Task Force 2A, HHS Publication FDA 81-8160, printed April, 1981,
2. *Criteria for Adequate Radiation Control Programs (Radioactive Materials)*, A Report of Task Force E-3, CRCPD Publication #82-2, printed November, 1982,
3. *Criteria for Adequate Radiation Control Programs (Nonionizing)*, A Report of Task Force H-2, CRCPD Publication #85-2, printed April, 1985,
4. *Criteria for Adequate Radiation Control Programs (Environmental Monitoring and Surveillance)*, A Report of Task Force E-10, CRCPD Publication 86-4, printed May, 1986, and
5. *Interim Criteria for Adequate Radiation Control Programs (Radon)*, A Report of Task Force E-16, CRCPD Publication 90-8, printed September 1990.

An overview of the Alaska radiation protection program, and general comments and recommendations are found in Attachment IV.

FINDINGS AND RECOMMENDATIONS

Listed below are specific criteria, findings from the review and recommendations, based on the above referenced CRCPD Criteria documents.

Recommendation #1

CRITERIA: Radiation control activities in state governments should be within one single agency. The RCP should be a separate government entity, and should be easily identifiable and visible to the public. The public's concern with radiation exposure should be easily translatable from a radiation expert who can provide competent risk based answers to their concerns. The program should be located within the state organizational structure so that it is parallel with comparable health and safety programs unit with a single person responsible for directing the work of the program.

FINDINGS: Radiation responsibilities in Alaska government are severely fragmented, being place in at least five different agencies. In some cases, these responsibilities are over-lapping and duplicative, and in some cases, the responsibilities are not clear.

Recommendation #1

The State of Alaska should consolidate the major radiation protection activities within one agency, assigning leadership responsibility to a single individual. The RCP should be elevated so that the program is visible to the public and have the necessary status to successfully compete with other governmental entities having similar comprehensive responsibility. It should be, at a minimum, at the Division level in Alaska's organizational structure.

Comment

Should consolidation occur, the number of staff commensurate for the program to be a Division should be resolved. Due to the multiple interest and responsibilities currently in the Department of Environmental Conservation (DEC), it would appear that the primary responsibility for a single RCP should be placed in this Department. If consolidation cannot be performed, then Memoranda of Understanding (MOU) should be developed between each agency which clearly identifies the responsibility of each.

Recommendation #2

CRITERIA: The RCP should be funded from sources that insure continuity of the program, and that are adequate to provide a comprehensive protection program for the citizens. Fees should be collected to provide the major funding of the RCP. Fee schedules to provide funding should be through regulation rather than through legislation. There should be a funding mechanism for agency use of contractual services.

FINDINGS: The current funding for radiation protection in Alaska is not adequate to provide a comprehensive radiation protection program for the public health and safety of the citizens.

Recommendation #2

Funds which are adequate to provide total radiation protection to the citi Alaska should be obtained and expended. Consideration should be given establishing a stable funding program by:

a. Raising machine user fees.
b. Initiate NARM and general license fees.
c. Seek matching funds from the EPA radon programs.
d. Seek industrial user support (e.g., five cents per barrel of oil).
e. Pursue monies from grants, contracts, etc.
f. Increase support from the State's General Fund.

Comment

An analysis of the number of sources in Alaska indicates that more than funding necessary to provide a comprehensive RCP can be obtained through for licensing, registration and inspection of sources, funding from feder conduct x-ray performance and mammography surveys and funding fi implementing a radon awareness program.

Recommendation #3

CRITERIA: A RCP should have adequately trained staff to provide the necessary service for a comprehensive program in radiation protection.

FINDINGS: Alaska has only one radiation physicist, with comprehensive radiolc training and experience. This individual is located in the DHSS. Other state emplc with radiation protection responsibilities have only limited training and ex radiological health practices.

Recommendation #3

Alaska should have nine (9) Professional/Technical Full-Time Equivalent and two (2) Clerical FTE[1] devoted to radiation protection activities.

1. An FTE is a unit of measure which is equivalent to one person-year given area.

Comment

Of the eleven FTE's recommended, three (3) Professional/Technical, and one (1) Clerical currently exists. A break down of the recommended FTE's is as follows:

Program Area	Recommended	Existing	Needed
Administration	1	1	0
Radioactive Material	1	0	1
X-Ray	2	0	2
Environment	2	0	2
Radon	0.5	0	0.5
Nonionizing	0.5	0	0.5
Emergency Response	2	2	0
Clerical	2	1	1
Total	11	4	7

Recommendation #4

CRITERIA: The state should have enabling legislation essentially in conformity with the Council of State Governments', *Suggested State Legislation*, 1983 Edition, Volume 42. A State which has regulatory authority over sources of ionizing radiation should have authority for responding to the indoor radon issue under the general radiation protection mandate of a State's enabling legislation. An environmental surveillance program should have specific legislation as a basis for its authority and evaluations. The legislation should authorize the RCP to provide, through regulation where appropriate, the following:

1. Provisions to register or license radiation producing machines.
2. Provisions to register or license radioactive material source.
3. Provisions to register all nonionizing radiation sources.
4. Provisions to inspect and enforce radiation protection standards for all radiation source users.
5. Provisions to set fees for registration, certificates and/or licenses, and to set fees for inspections and surveys or monitoring.
6. Provisions to establish surety arrangements with certain types of radiation users.
7. Provisions to issue civil penalties.
8. Provisions to appoint advisory committees.
9. Authority to license or credential identified users of radiation sources.
10. Authority shall provide for prompt correction of items of noncompliance.
11. Authority to enter into interstate and federal/state arrangements for the control of radiation hazards. Such arrangements should include training, travel, joint inspections, equipment loans, etc.
12. Provisions for reciprocity with other states for coverage of radiation hazards.
13. Authority to set qualifications for private consultants or radiation safety officers when the survey reports of such individuals are used by the agency to evaluate continuing compliance with its regulations in lieu of installation inspections by program staff.

FINDINGS: Legislative authority is fragmented in various statutes, and provides for some overlap and duplication of responsibilities. Current legislation does not provide for all the provisions and authority identified above.

Recommendation #4

The State should consider consolidating existing legislation radiation and updating such legislation to provide the authority identified above. The Council of State Governments "Suggested State Legislation", Vol 42, 1983 Edition, should be used as a guide for the development of Alaskan Radiation Legislation.

Recommendation #5

CRITERIA: The RCP should have regulations essentially in conformity with the *Suggested State Regulations for the Control of Radiation*, (SSRCR), which are published by the CRCPD. These regulations should address, but not be limited to, the following areas:

1. Setting registration and/or licensing fees.
2. As related to radioactive material, such regulations should be compatible with the provisions of Part C, titled, *Licensing of Radioactive Material*, of the SSRCR's.
3. Should embrace reciprocal state cooperation for licensing, inspection and enforcement of the shipment, manufacture, and product usage of radioactive materials, and the exchange of monitoring data and reports from neighboring States.

Regulations should be completely reviewed at least every two years and the revision adopted within one year thereafter. At least every five years, regulations should be critically reviewed and updated as necessary.

Appropriate affected groups should be provided an opportunity to review and comment on proposed changes in regulations.

Provisions should be made for public hearings to allow review and comment by affected groups, and a review and comment period of at least sixty days prior to changes in the regulation should be provided.

FINDINGS: The existing radiation control regulations are significantly outdated; last being amended in 1978. These regulations are not comprehensive, and do not provide the necessary provisions contained in the *Suggested State Regulations for the Control of Radiation.*

Recommendation #5

Immediate steps should be taken to update existing radiation control regulations to conform with the CRCPD *Suggested State Regulations for the Control of Radiation.*

Comment

The *Suggested State Regulations for the Control of Radiation* can be obtained from the CRCPD on computer floppy disk, which should expedite the development of Alaska regulations.

Recommendation #6

CRITERIA: The priorities for an Electronic Products program must be clearly focused and designed to mitigate the public health effects by reducing unnecessary radiation exposure.

FINDINGS: Alaska has a registration and inspection program for x-ray tubes. There are currently approximately 1265 x-ray tubes registered and located in roughly 459 facilities. An inspection frequency has been established for the various types of facilities (i.e., dental, hospitals, industrial etc.) However, due to recent problems in recruiting staff and due to the limited number of staff, inspections are far behind schedule. There was no evidence of an overall plan to try and resolve this problem. The instrumentation that the State used for inspections appears to be adequate.

Recommendation #6

The State's X-ray Program should develop a plan to inspect facilities at the established frequency. As noted in Criteria 3, additional staff are needed to meet these requirements. In the interim of adding staff, a designated amount of time should be devoted each month for doing as many inspections as possible.

Comment

An assessment of the population radiation exposure, made by the National Council on Radiation Protection and Measurements (NCRP 93) in 1987, found that healing arts uses of radiation (x-ray and nuclear medicine) represent approximately 83% of the total man-made exposure to the U.S. population. In contrast, occupational exposures were less than 2% and exposure to the entire nuclear fuel cycle was less than 0.5% of the total man-made exposure. Not only is diagnostic x-ray by far the single largest source of exposure to man-made radiation, it is also the source for which the biggest dose reduction gains can occur without having a negative impact on the benefits for the public. In other words, the greatest source of "unnecessary risk to human health" are in diagnostic x-ray. It is recognized that staff are extremely limited and that travel distances are great, but the

health benefits for reducing unnecessary radiation exposure are worthy of pursuing vigorously.

Recommendation #7

CRITERIA: The U.S. Nuclear Regulatory Commission (NRC), under the 1974 Atomic Energy Act, has responsibility to regulate the use of most radioactive material. However, radioactive material not regulated by the NRC is the responsibility of each individual state. Radium and other Naturally Occurring or Accelerator Produced Radioactive Material (NARM) are the materials that every state must regulate, independent of the NRC. Therefore, every state should have a Radioactive Material Program.

FINDINGS: Alaska is not an NRC Agreement State. The radiation protection activities within the DHSS does not appear to have an adequate program to properly regulate the use of naturally occurring and accelerator produced radioactive material. There was evidence of several radiation sources, not under NRC jurisdiction, that should be licensed, inspected and regulated on a routine basis.

Recommendation #7

Notwithstanding limited resources the State RCP should pursue licensing and regulating all NARM sources not covered by the NRC. Fees could be assessed to offset expenses incurred by this activity. Initial phases of the licensing process could be done by mail, thus saving time and travel costs. After a NARM program has been established, including an updating of the regulations, Alaska should consider becoming a CRCPD "Licensing State" for NARM.

Comment

If the state should assume the responsibility to regulate radioactive material under the Atomic Energy Act (i.e., become an NRC Agreement State) the Program would be larger. In either case the Program should obtain information from those using the radioactive material to assure that they can operate safely and in compliance with rules and license conditions. The information should encompass such areas as; facility structure, equipment, training of personnel, radiation safety officer, operating and emergency procedures and quality assurance with As Low As Reasonably Achievable (ALARA) exposure control principles.

Inspection and enforcement procedures should be in place along with appropriate legal authority. It would be prudent for Alaska to pursue becoming an Agreement State with the NRC. The State would be able to assess the same cost recovery fees that the NRC charges. Agreement State status would provide Alaska the privileges of training programs offered by NRC and technical help in all phases of radiation protection activities. It was noted that the State's NRC Liaison Officer and the Low Level Waste Compact representative were in the DEC. This adds support to the concept to locate the primary

RCP in DEC.

Recommendation #8

CRITERIA: Environmental Monitoring Issues

An environmental program should have specific legislation and regulations as a basis for its authority and evaluations. However, several states have used the authority identified in general public health statutes to proceed in developing their environmental radiation programs. The environmental unit should report directly to the Director of the RCP. The responsibilities for sample collection and analysis as well as report writing should be in this unit. The program should characterize the State's general radiological profile, be capable of verifying radiation releases from man-made or natural sources and evaluate the public health or environmental impact of such releases. Reports should be published and distributed regularly so the public recognizes who to notify in case of any concerns. The analytical laboratory should participate in national quality assurance programs sponsored by the Environmental Protection Agency (EPA) to ensure that all measurements being performed are precise and accurate. This provides for legally defensible data should the need arise.

CRITERIA: Radon Issues

Radon programs are frequently organized within environmental units among the states. Since radon problems vary widely and are dependent largely on soil parameters, the program activities are commensurately variable. Notwithstanding this, every state should have a program to identify potential radon problems. The EPA has made grant money available for states to scope out radon issues. They also provide informational brochures for public distribution. It has been said that radon is the second leading cause of lung cancer, therefore public health programs should address that concern. A radon program should have a strategy to assess the potential for high and low risk areas within the state. Problem response activities should be well defined; this includes mitigation, building codes and real estate transactions. Public information is also a vital part of a radon program. Testing firms and mitigators should be publicized and public meetings held to inform and address concerns of the citizens.

FINDINGS: Environmental Monitoring Issues

Environmental radiation monitoring is very limited in Alaska. The EPA has established three Environmental Radiation Air Monitoring Stations (ERAMS). The analyses are done by their labs in Las Vegas, Nevada or Montgomery, Alabama. The primary function of these stations is to detect any abnormal ambient radiation levels. The major threat would be from nuclear reactors in the Soviet Republics. The DEC has some laboratory capability. The existing radiation counting equipment was not routinely used and was said to be inoperable. In essence the State would not be able to immediately analyze samples for radioactive contaminants if the need should arise. There was no evidence of a plan to get samples analyzed in case of an emergency.

FINDINGS: Radon Issues

The State has completed around 3000 tests of schools, homes and daycare centers. The University of Alaska has a Grant from the EPA for radon testing activities. About 9% of the homes tested have levels greater than 4 pico curies per liter (Pci/l).

Recommendation #8

Environmental Monitoring Issues:
The State should, at minimum, develop a plan to have environmental samples analyzed for radioactive contaminants in case of an emergency. The analyses could be done by the public or private sector. Preferably they should be done by the State's own laboratory. The State should enhance their current analytical capability to include gamma spectroscopy along with gross alpha and gross beta analyses.

Radon Issues:
The activities associated with Radon should be more focused. A plan should be developed for informing the citizens about radon. There should also be information available who to contact for mitigating identified problems.

Comment

Environmental Monitoring Issues:
A concern surfaced during the interviews regarding possible radiation releases from Russian nuclear reactors impacting the State. There was also some concern about radioactive waste buried near Point Hope and the impact it might have on citizens living there. To address these concerns the State could develop an environmental sampling strategy of the food chain media in that area. This would establish a "baseline" to compare with future intrusions of radioactive contaminants to the area. It would also identify if current problems exist. The analyses could be done by contracting laboratories until the capability is developed to do them internally. With this information State agencies could answer questions of the people in that area.

Radon issues:
Continue working with the EPA and apply for Grants to enhance public information and mitigation activities.

Recommendation #9

CRITERIA: A state should have general emergency plans which addresses transportation accidents, spills, incidents at fixed radioactive material licensed facilities, accidental overexposures, and contaminated material from such places as steel mills, scrap yards or landfills. The emergency plan key components should include: 1) Possible sites where emergencies could happen along with the specific location of the material; 2) On-site authorities

and responsibilities; 3) Off-site agency contacts including an up-to-date call list of all applicable responders and decision makers; 4) Action guideline levels; 5) Emergency equipment; 6) Training programs for first responders and those nearest the sites as appropriate; and 7) Public information services. There are several Federal Agencies who could provide assistance over the long term, but local personnel must be prepared to take action immediately.

FINDINGS: Alaska does not have any nuclear power generating facilities, nor are there facilities close enough to the borders to warrant emergency response plans commensurate with the Federal Emergency Management Agency criteria for ingestion zone planning. However, there is radioactive material in the State and/or passing through via aircraft that merits the need to have plans to respond if an incident happens. The State does not have a written plan to respond to radiation emergencies. The Department of Emergency Services (DES), Military Affairs, in Anchorage, maintains some equipment that could be used in cases of emergencies. The equipment is primarily designed to be used for nuclear war purposes (Radiological Defense), but some is applicable for peace time needs such as transportation accidents. The DEC has an emergency response program with the main focus on spills of hazardous materials (not including radioactivity). This agency desires to develop the capability to respond to radiation emergencies.

Recommendation #9

The State should designate one agency with responsibility to develop a comprehensive Radiological Emergency Response Program. That agency should coordinate with all other applicable state and local agencies with writing a plan covering the key components listed above. Based upon the information gathered during the review it appears the DEC would be the best agency to assume this responsibility.

Comment

Emergency response tends to be thought of in terms of nuclear power generating facilities. However, there are several crucial areas of an emergency response program, as identified above, that have no ties to nuclear power generation. Emergency response responsibilities cannot be "contracted out". The State has the ultimate responsibility to protect the health and safety of the public, workers the environment. Adequate plans must be in place. Authority to use a portion of the 470 Funds to support radiological emergency response planning should be pursued.

Recommendation #10

CRITERIA: A state should consider the establishment of a nonionizing program to assure that the citizens are not unnecessarily exposed to the various nonionizing sources that are in use. The type of sources are discussed in the comment portion of this criteria.

FINDINGS: Alaska, like many other states, has not fully addressed the potential for health and safety problems with nonionizing radiation sources. No contact agency has been identified and

extremely limited resources or efforts have been devoted to addressing nonionizing concerns.

Recommendation #10

The State should designate a responsible agency for nonionizing radiation issues. It should be within the same agency as the RCP. Rules should be promulgated to regulate these sources and a program developed to adequately respond to health and safety needs of the public and workers.

Comment

Nonionizing radiation concerns are becoming more prevalent. Research data is beginning to show some evidence of possible health effects for persons living near power transmission lines, children living or playing for extended periods near transformers, and men exclusively using electric razors. There is also some concern for the safety of workers using industrial radiofrequency (RF) heat sealers. There is an increasing use of powerful lasers in the medical arena and other industrial settings. Many states have promulgated rules for the regulation of Tanning devices. This was prompted by the many medical reports of sever skin burns and eye damage by the improper use of these units.

If the 0.5 FTE listed in Criteria 3 is devoted to nonionizing activities, the States needs in this area should be met. The priority for resources devoted to this program may vary with the perceived needs among the applicable agencies. However, it would be prudent to seriously consider developing some expertise within the designated agency to answer inquiries from the public, workers and the media.

Review Team Members

The individuals listed below, as a combined unit, have extensive training and experience in the following areas of radiation protection:

1. Radiation control administration
2. X-ray use (medical, dental and industrial)
3. Radioactive material use (medical, industrial and academic)
4. Environmental surveillance and monitoring
5. Emergency planning and response
6. Radon awareness programs
7. Nonionizing radiation use (microwave, laser, ultra-violet and electric and magnetic fields)

Ray D. Paris, Manager
Radiation Control Section
State Health Division
Department of Human Resources
1400 Southwest Fifth Ave.
Portland, OR 97201
Telephone: 503/229-5797

Charles M. Hardin, Executive Director
CRCPD, Inc.
205 Capital Avenue
Frankfort, KY 40601
Telephone: 502/227-4543

Carlton C. Kammerer, Director
State Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Telephone: 301/504-2321

Jack W. Hornor
Regional State Agreements Officer
U.S. Nuclear Regulatory Commission
1450 Maria Lane
Walnut Creek, CA 94596
Telephone: 510/975-0224

Wilbur F. Van Pelt
Rad. Health Representative
U.S. Food & Drug Administration
22201 23rd Drive, S.E.
P. O. Box 3012
Bothell, WA 98041-3012
Telephone: 206/483-4954

Jerry Leitch
Radiation Program Manager
Pacific Region
U.S Environmental Protection Agency
1200 Sixth Ave., Mail Stop 533
Seattle, WA 98101
Telephone: 206/442-7660

INDIVIDUALS INTERVIEWED DURING THE ALASKA REVIEW

Heidersdorf, Sid	Radiological Health Specialist (Retired)
Hensley, John	Emergency Management Specialist, Division of Emergency Services, Department of Military & Veteran Affairs
Kelley, Katherine, Ph.D.	Chief, Section of Laboratories, Department of Health & Social Services
Kent, Lynn	Chief, Spill Prevention & Planning Section, Department of Environmental Conservation
Lowe, David	Environmental Scientist for BP Exploration
Mala, Theodore, M.D.	Commissioner, Department of Health & Social Services
Martz, Karen	Administrator, Health Facilities Licensing & Certification, Department of Health & Social Services
Miller, Glen	Environmental Specialist, Section of Hazardous & Solid Waste, Department of Environmental Conservation
Nakamura, Peter, MD.	Director, Division of Public Health, Department of Health & Social Services
Powell, Jim	Acting Deputy Director, Environmental Quality, Department of Environmental Conservation
Sandor, John	Commissioner, Department of Environmental Conservation
Short, Eric	Assistant Chief, Occupational Safety and Health of the Alaska Department of Labor
Tedford, Charles	Chief, Radiological Health Program, Department of Health & Social Services
Treadwell, Mead	Deputy Commissioner, Department of Environmental Conservation

INDIVIDUALS BRIEFED DURING OR AFTER THE REVIEW

Coghill, Jack	Lieutenant Governor
Ryan, Patrick	Chief of Staff for Governor Hickel
Lethin, Kris	Legislative Liaison for Governor Hickel
Mala, Theodore, M.D.	Commissioner, Department of Health & Social Services
Sandor, John	Commissioner, Department of Environmental Conservation
Nakamura, Peter, M.D.	Director, Division of Public Health, Department of Health & Social Services
Treadwell, Mead	Deputy Commissioner, Department of Environmental Conservation

ELEMENTS OF A BASIC RADIATION CONTROL PROGRAM

The components of a radiation control program (RCP) are generally broken into the following areas:

A. Legislation
B. Regulations
C. Program Organization
D. Federal/State Arrangements
E. Program Planning and Evaluation
F. Budgeting and Funding
G. Staffing
H. Training
I. Inspections
J. Enforcement
K. Instrumentation
L. Record Keeping
M. Radiological Incident Response
N. User Education
O. Public Education
P. Regional/Local Agencies
Q. Special Studies
R. Operational Programs, which include the following:
    1. Radiation Machine Control
        a. X-Ray
        b. Accelerators
    2. Radioactive Materials Control
        a. Atomic Energy Act (AEA) Material
        b. Naturally Occurring and Accelerator Produced Radioactive Material, given the acronym "NARM."
    3. Environmental Monitoring and Surveillance
        a. Contamination from Man-made Radioactive Material
        b. Contamination from Naturally Occurring Radioactive Material, given the acronym "NORM."
    4. Emergency Planning and Response
        a. Nuclear Power Facilities (Off-site)
        b. Non-Nuclear Power Accidents
    5. Radioactive Waste Management
        a. Low-level
        b. High-level
    6. Nonionizing Radiation Control
        a. Microwave
        b. Laser
        c. Ultra-Violet
        d. Ultra Sound

e. Electric and Magnetic Fields (EMF)

7. Radon Reduction Programs
   a. Private Homes
   b. Public Buildings
8. User Certification or Credentialing
9. Consumer Education and Information

A complete and comprehensive RCP will have an adequate program in all of the above areas when appropriate for their respective jurisdiction.

Outside supporting areas which may be necessary for most comprehensive programs will include the following:

1. Legal
2. Personnel
3. Electronic and Maintenance
4. Education
   a. Radiation Control Staff
   b. Public
5. Printing

The comprehensiveness of a RCP for a given state or local government entity will depend on several factors, including, but not limited to the following:

1. Type of radiation sources within the jurisdiction of responsibility. For example, there may not be a nuclear power facility within, or surrounding, the governmental entity, and therefore no need for a program for off-site emergency planning for nuclear power facilities.

2. The number of radiation sources, both ionizing and nonionizing, within the jurisdiction of the governmental entity.

3. Whether the governmental entity has an agreement or not with the U.S. Nuclear Regulatory Commission.

4. The comprehensiveness of legislative authority.

5. The economic conditions of the state or local entity.

If a state or local entity has one or more radiation sources which pose a potential hazard or treat to the public health and safety, to the safety of the radiation worker, or as a potential source for radioactive contamination of the environment, a governmental RCP should exist to assure proper and adequate protection.

OVERVIEW OF RADIATION PROTECTION ACTIVITIES IN ALASKA

The current number of x-ray tubes in Alaska is 1,265. There is an estimated 60 Naturally Occurring or Accelerator Produced Radioactive Material (NARM) sources registered. Approximate 9% of homes or other buildings in Alaska which have been tested for radon accumulation exceed recommended limits for corrective action. Radioactive materials use in Alaska, and which are covered by the Atomic Energy Act, are licensed and inspected by the U.S. Nuclear Regulatory Commission. However, approximate 60 NARM sources exist in the State, and which are not regulated by the NRC.

Because of its size, lack of roads, limited transportation systems and harsh winters, Alaska offers inspection problems not found in other states. For example, the retired radiological specialist explained that 140 on-site inspections for X-ray tubes was a good year. For comparison, 700 tube inspections per year are considered an average workload in Oregon. Similar overhead should be anticipated in inspecting radioactive materials licensees or registrants. The cost of travel ranges from 50 to 100 percent more than in the Continental United States.

Radiation protection activities are being performed by several governmental agencies in the State of Alaska. Many of these activities are overlapping with other agencies. These activities and the agencies that perform some function for the identified activity are:

1. Registration and Inspection of X-ray sources.
   Department of Health & Social Services (DHSS)

2. Registration of Naturally Occurring Radioactive Sources.
   DHSS

3. Radon Public Awareness Program
   DHSS

4. Environmental Surveillance and Monitoring
   Department of Environmental Conservation (DEC)
   DHSS

5. Emergency Planning and Response
   DEC
   DHSS
   Department of Military & Veteran Affairs (DMVA)
   Department of Labor (DOL)

6. Protection for the Radiation Worker
   DOL

7. Licensing & Certification of X-ray Facilities
DHSS

8. Low Level Waste Siting
DEC

One Memorandum of Understanding (MOU), dated 1982, which relates only to emergency response, exists between the DHSS, the DMVA, the DEC, and the DOL. However, the MOU does not assign authority or responsibility for actions in accordance with the various laws and regulations, nor is the jurisdiction clearly defined.

A variety of statutes have various requirements relating to radiation control in the state of Alaska. These are:

AS 11.46.490 (8), AS 18.45.020 through AS 18.45.900, AS 18.60.475, AS 18.60.545, AS 21.69.650, AS 26.23.120 thru AS 26.23.130, AS 29.35.500, AS 41.98.110 through AS 41.98.150, AS 44.65.060, AS 44.83.170, AS 44.83.990, AS 44.99.120 through AS 44.99.125, AS 45.88.010, AS 45.88.500, AS 46.03.250 through AS 46.03.296, AS 46.03.865, AS 46.03.900, AS 46.11.900, AS 46.45.

Under authority of some of the above statutes, various departments have adopted specific regulations relating to radiation control.

DEPARTMENT OF LABOR

Under AS 18.60 the DOL is responsible for occupational radiation exposure resulting from both ionizing and nonionizing radiation sources. The Department's day to day activities are conducted in accordance with the methods and priorities of Federal OSHA guidelines. The Department's operation is 50% federally funded, and is a "State Plan" State with step 18e independence from OSHA. The Department's efforts are directed to a OSHA supplied list of most hazardous industries, none of which included radiation concerns.

During the last few years, no inspections of ionizing source records have been performed. Reviews of occupational ionizing radiation exposures are not conducted as part of normal business. The Department has no radiation detecting instruments, and there are no staff with formal training in radiation matters. No consideration of As Low As Reasonably Achievable (ALARA) principles were noted.

Some investigations have been performed of a potentially significant exposure to nonionizing radiation from a radar.

NATURALLY OCCURRING OR ACCELERATOR PRODUCED RADIOACTIVE MATERIAL (NARM)

The 1978 Alaska regulations require registration of all sources of radiation brought into the State, except for some specific small quantities and those under the jurisdiction of the NRC. Review of ten years of registrant files (1982-1992) identified between 50 - 60 sources above the exempt quantities located in the State. These discreet sources, referred to a NARM, are not

regulated by the NRC. According to the records and interviews, there have been no attempts to inspect or verify the current location or existence of these radioactive materials.

David Lowe, Environmental Scientist for BP Exploration who spoke for the joint operators of the north slope oil operations, and the NORM Task Force of the Alaska Oil and Gas Association, provided the following information relative to the NORM conditions in Alaska. According to him, the authority to regulate the practice of the management of NORM, appears to be contained in the DEC's, Sec. 46.03.260. According to Mr. Lowe, DEC deferred to the Alaska Oil and Gas Conservation Commission for regulation of the practice as pipe scale, a material permitted in class II injection wells.

He indicated that the tendency for pipe to scale was largely the result of water injection in depleted oil deposits. According to him, the north slope deposits are still relatively young, and that significant amounts of produced waters, and therefor scale, are only now beginning to be produced. Mr. Lowe stated that the specific activity of the scale on the north slope was less than 2,000 Pci/g. He had little information about the oil operations in southeastern Alaska, but noted that they were much smaller than the north slope.

According to literature provided by Mr. Lowe, "According to Alaska's state radiation health physicist, who has been to the North Slope to monitor the situation in the past, no health hazards from low-level gamma rays have been identified."

Mr. Lowe indicated that there were about 3,500 joints or lengths of pipe with external gamma rates over 50 μR/h, a threshold he called NORM contaminated. They propose to de-scale these using a proprietary water blast device in a closed cabinet. Some number of fittings or vessels have or will be de-scaled. The resulting slurry will be injected in Class II injection wells several thousand feet underground.

Mr. Lowe did express a desire for specific regulations covering NORM in Alaska. He stated that they followed what guidelines he knew to exist, but felt that specific NORM regulations would provide a higher level of assurance to the State and would be desirable to the operating firms.

NRC LICENSES

The NRC sends the State copies of all new licenses, amendments and terminations pertaining to Alaska licensees. The State file these documents without maintaining an up-to-date list of current licensees or tracking the amount and location of radioactive material within the State. The State's list shows 116 active NRC licenses, however, there are only 62 active licenses.

NRC also provides the State with copies of all Alaska inspection reports and enforcement actions. They also notify the State prior to an inspection with an invitation to join the NRC inspector. The purpose of this practice is to allow the State to gain knowledge of radioactive material within the State and to provide training in regulating new uses of radioactive material.

ENVIRONMENTAL SURVEILLANCE AND MONITORING

The State has created a task force to assess the radiation sources and their routes of exposure, but the head of this task force lacks training and experience in radiation protection. It would be more effective for a professional staff to review the tremendous volume of data which already exists. This data should be built upon, and used to evaluate current results.

There are many reasons for a monitoring network in Alaska. The current interest is in plume phase atmospheric exposures from catastrophic releases in Russia, contaminated water and food webs due to Russian waste handling practices, as well as very localized contaminated sites in Alaska. If a reasonable level of confidence is expected, these are not trivial questions to answer. At the time of the review, Alaska did not perform the required drinking water screening, which also shows the need for a monitoring program.

The DEC expressed a desire to establish a radioisotope laboratory in Juneau, although it appears that careful attention have not been paid to the operational cost of such a laboratory. It is the impression of the review team that the Department feels that a chemist can do the radionuclide laboratory work as a sideline, as well as collect samples. To establish a creditable laboratory, the following equipment, as a minimum, would be recommended: a low background gamma spectrometer, a liquid scintillation detector, an alpha spectrometer, and TLD system. There appears to be several forgotten pieces of radiation detection equipment scattered around, most of which is old civil defense equipment, but nobody knows how to operate it, and there is no current calibration program established for the equipment. In lieu of the State establishing a laboratory in Juneau, consideration should be given to a Memorandum of Agreement (MOA) or contract with the radioisotope laboratory in the State of Washington for the needed laboratory work in Alaska.

HEALTH FACILITIES LICENSING AND CERTIFICATION

The Health Facilities Licensing and Certification (HFLC) Section, Division of Medical Assistance, DHSS, is the state contractor for the Medicare Program in Alaska, and is responsible for annual surveys covering 15 mammography clinics and one mobile radiographic facility which desire Medicare reimbursement for radiological services performed. Since the HFLC Section does not have expertise in Radiological Health, the Section has a Memorandum of Agreement between the Division of Medical Assistance and the Division of Public Health to have the radiation program perform the technical inspections of the mammography equipment. The 15 fixed mammography facilities are to be inspected annually, with the single mobile x-ray facility to be inspected every other year.

A new bill, signed by the president in late October, 1992, will require that all mammography facilities be inspected on an annual basis, whether or not the mammography services are Medicare reimbursable. That will raise the number of fixed mammography facilities to be inspected annually from 15 to 30. If the state decides to perform these required inspections (the state has the option of not performing the inspections) the workload for the RCP will be substantially increased. This workload could be raised even more, should the HFLC Section decide not to survey mammography facilities, and instead give "deemed" status to those facilities inspected and approved under the new bill. HFLC may not have the authority to

inspect facilities not asking for Medicare reimbursement. The RCP will, in this case, be left with the entire survey (technical and administrative).

At present the HFLC Section transfers funds, in the form of general funds, between the two Divisions for the technical radiological health inspections. If the new mammography program goes into effect, the RCP will have the authority to charge fees for the inspections, which should cover the costs of the inspections.

HFLC Section also has the responsibility to do hospital surveys which include the x-ray department. A cursory survey is performed which may or may not be valid. The recommendations given by the HFLC Section surveyor to the facility may themselves not be valid, and the RCP may wish to review this survey protocol.

EMERGENCY RESPONSE

Although any agency notified of a radiation emergency is required to notify the DHSS, according to some persons interviewed, that has not always been the case. Confusion exists if an emergency requires Federal notification. DHSS has the responsibility to notify U.S. FDA, and U.S. NRC; the Division of Emergency Services (DES) notifies U.S. FEMA; the DEC notifies U.S. EPA, and the DOL notifies OSHA. In reality, there are only three qualified responders in the State; the chief of radiological health in DHSS and two DES individuals who have received the RERO emergency response course. If these individuals are not available, then the State must depend on first responders from police, fire and hazardous materials teams, who are only minimally trained in radiation protection, and who have no connections to the agencies named in the MOU.

The Division of Emergency Services (DES) has responsibilities for Radiological Defense (RADEF) planning, which is essentially the old Civil Defense operation of planning for a nuclear war. Along with this responsibility, DES has been involved with general Radiological Emergency Preparedness (REP), or planning, for a radiological Incident. Since the demise of the Soviet Union, the role of the DES has been more and more toward REP.

DES has a data base covering the REP resources in the state. There are some 3100 "Civil Defense" type kits for radiation monitoring within the state, 1250 of them in the hands of local governments. There are 882 trained radiation monitors, 312 are on teams. Over 100 individuals have taken a RADEF course. Also in the data base is information on 270 communities with information on instrument location, population exposure, phone numbers, personnel contact and training information.

The DES has not had an emergency exercise in recent years, except for a small one on Adac in 1990. The DES has two individuals working in REP/RADEF, one as a coordinator and one in instrument repair and maintenance.

There would seem to be some value in having a cadre of trained first responders in a state so large in size, although additional training not so centered around nuclear weapons is probably in order. Incorporation of these two REP/RADEF individuals in the overall state radiological health program seems appropriate.

X-RAY

In Alaska, there are 1265 X-ray tubes in 459 facilities. The break down of these tubes/facilities by type of use are as follows:

Type of Use	# of Tubes	# of Facilities
Mammography	27	
Medical	237	104
Dental	873	233
Chiropractic	52	52
Veterinary	35	32
Industrial	35	30
Educational	6	8
Total	1265	459

The CRCPD criteria document calls for an individual surveyor to inspect 500-700 tubes per year. This is not possible in Alaska because of the great distances involved and the lack of road transport to many of the sites. The previous inspector was able to perform approximately 150 tubes per year, travelling from the Juneau area. If inspectors were stationed out of Anchorage, and in an area where the population is concentrated and highway passage to many of the facilities is possible, the efficiency of inspections would be enhanced, with 200-250 tubes per year per inspector being a goal.

Based on the CRCPD Criteria, two inspectors would be needed to carry out the routine x-ray inspections. Assuming that the new Mammography Quality Assurance bill will be carried out by the RCP in it's entirety (without help by HFLC), an additional ½ FTE would be required (30 Facilities x ½ day each for paper inspection + ½ day for the technical + ½ day for the paperwork write-up = 45 days or @¼ person year plus a similar time spent in travel and co-ordination with the facilities, not all of which operate all the time). This adds up to 2½ FTE's for the x-ray program alone.

In Alaska there are only two certified health physicists in the state, one in Juneau (Retired) and one in Anchorage (Fully Employed). Due to the lack of trained radiation physicist in Alaska, the state inspector may be the only trained radiation physicist, having knowledge in the requirements of proper imaging modalities, machine exposure parameters, and quality control procedures in film development, to ever visit the state's facilities with x-ray equipment.

In addition to the need for addition staff in the x-ray program, many other actions are needed in the Alaska RCP to meet the criteria of the CRCPD. These other actions are:

* The regulations covering the x-ray program are 14 years old and desperately need updating. The most recent version of the CRCPD Suggested State Regulations should be used as a guide in re-writing.

* There is no formal survey protocol yet and one will need to be developed along with new regulations.

* There is need for several pieces of x-ray inspection equipment, such as a kVp meter for mammography, and another set of processor Quality Control test instruments.

* A new computer program should be developed to keep track of registration of machines and for the assignment of workloads.

* Although the above estimate of personnel needed was based on an assumed inspection priority system, a formal statement of that system needs to be developed.

NONIONIZING RADIATION

The state has regulations covering several sources of nonionizing radiation. The microwave oven standards are a condensed version of the Food and Drug Administration (FDA) standards of 1971. Since they cover the same ground as those of FDA, and since the microwave oven problem appears to have long ago been solved, perhaps these regulations should be rescinded. The only standard that might be useful here would be one covering the servicing of the ovens, registering the service personnel and making sure that they have meters capable of proper measurement and assuring that the ovens are safe to use following repair.

Laser regulations contained in the statutes are essentially operator and environs protection criteria. As such, they are essentially OSHA type standards. There is a state OSHA agency in Alaska with the authority to regulate the use of lasers in the workplace. OSHA Regulations include provision for controlling the exposure of ancillary personnel which would effectively protect the passerby as well. Unfortunately, OSHA does not have anyone fully trained to perform inspections of laser workplaces. Protection of customers at laser light shows is also covered by FDA regulations with inspections done by FDA inspectors who have received specialized training.

There appears to be no authority to address the radiation exposure concerns of microwave transmission of power, or high exposure around transmitter sites. There is again some authority in OSHA which would relate to the workplace, but there does not appear to be any authority to protect the average citizen who may be inadvertently exposed. If the idea of high power transmitters grows, some control regulations may be needed.

COMMENTS BY JESLIE KALEAK, SR., MAYOR NORTH SLOPE BOROUGH

The State Emergency Response Commission requested of Mayor Jeslie Kaleak, Sr. that the North Slope Borough review and comment on a draft of this report. Their review and recommendations are included in this appendix.

NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 69
Barrow, Alaska 99723

Phone: 907-852-2611

Jesse Kaleak, Sr., Mayor

February 16, 1993

John A. Sandor
Office of the Commissioner
Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, Alaska 99801-1795

Re: Draft Report to Governor Walter J. Hickel: "Radiological Threats and Release Response Preparedness in the State of Alaska", December 1992

Dear Mr. Sandor:

The North Slope Borough (NSB) and our technical consultant have reviewed the State Emergency Response Commission (SERC) Report on Radiological Threats and Releases in Alaska. This report covers recommendations made by a number of state agencies and outside reviewers concerning the State preparedness for responding to radiological threats/emergencies. Releases discussed ranged from a minor localized spill of radioactive materials to widespread fallout from atmospheric nuclear testing. The report includes identification of a range of radiological threats (some involving non-ionizing radiation). From the text of the report, it is apparent that there is insufficient response capability for some of the radiation hazard, which must be monitored to protect the population. In addition, it is evident that some initial background information may need to be gathered in several areas before a protocol can be identified for response protection actions.

Our comments to the draft report entitled " Radiological Threats and Release Response Preparedness in the State of Alaska" are presented below.

1. ***Report Organization and Presentation -***

   A. The title should reflect that this is a preliminary report. For example it might be something like:

   "Preliminary Report to Governor Walter J. Hickel: Radiological Threats..."
   OR
   "Report to Governor Walter J. Hickel: Preliminary Evaluation of Radiological..."

   Everyone who reads this report - especially the Governor - must understand that if it is preliminary. Otherwise, it is likely that they will assume it is more comprehensive and complete than it is. Such assumptions could contribute to delay or prevention of further evaluation.

   B. There should be clearly stated Goals and Objectives for the project and the report. The Goals and Objectives should be clearly labeled as such, preceded by appropriate background and placed at the very beginning of the report (i.e. in the Introduction).

C. All the recommendations should be listed. They should be accompanied by:

(a) clearly-stated criteria for prioritizing them and rational for these criteria;
(b) timetables for implementation;
(c) statement of additional information needed;
(d) plan for overcoming obstacles to the recommendations.

D. All the recommendations should include how to address the report's limitations - e.g. which ones must be overcome and how, which ones are of minor concern.

E. Pages should be numbered consecutively from beginning to end.

F. The Reference Section should be clearly marked as such.

2. ***Comprehensive Planning*** - In general, there is a need for the State of Alaska to establish the ability to respond to any radiological condition in a manner that will assure the protection of its citizens. While a number of competent individuals within the State are prepared by both experience and training to provide specific review of and response to emergencies, the overshadowing need is for a single, comprehensive plan that will identify specific individuals-- by title--who will be responsible for each component of the protective action. There must be a sufficient number of professionals available to perform these actions. In addition, these individuals must have the authority of the State behind their actions. To provide this type of plan, agreements must be established among the State's agencies identifying their individual areas of responsibility and specifying their authority to perform these functions. Further, to assure their ability to respond to emergencies, there must be a method to establish that an undesirable or dangerous condition exists and to communicate that information to the appropriate agencies. The important concept is for coordination of the activities. The DEC may well be the best selection for this role; but without oversight and coordination, no agency will succeed. The key will be coordination and cooperation.

3.. ***Russian Radioactive Waste Dumping*** - A serious concern for the NSB is the potential for marine mammals to be contaminated by the extensive Russian nuclear and hazardous waste dumping programs, then migrate to our waters and be consumed by residents of the NSB. In review of recent information on the Russian dumping program, there are evidently large, highly contaminated areas that exist, and thus we feel that this situation needs to be monitored. DOE recently completed a study of this contamination and quoted an NRC article which stated "although the characteristics and extent of the contamination are not well known, it has been stated that the contamination in the Arctic may range form 1 to 3.5 billion curies. (Inside NRC, June 29, 1992). This is an incredible amount of radiation. We recognize that widespread food monitoring is a difficult program to establish as a blanket project. For locations of known contamination, a monitoring program can be established to reflect and measure hazards presented by the contaminant. However, to attempt to monitor the entire coastline, with its wide variety of ocean life, is a challenge that may not result in any meaningful data. We thus recommend that periodic checks of major food harvesting be performed from the principle villages on the North Slope and other specific identified areas. This would be valuable as an early warning mechanism to identify if more extensive monitoring is needed.

4. ***Preexisting Radiation Sources*** - In the evaluation of radiological hazard, more research must be performed to investigate previous radioactive sources that are present on the North Slope. The recent discovery of the radioactive material near Point Hope and the possibility that Radioisotope Thermoelectric Generators (RTG) are present on the North Slope, indicate that there have not been enough investigations to identify all the existing sources. I understand that a Congressional subcommittee is currently contemplating a thorough investigation of previous activities. Something similar also needs to be done on the State level, so that all known sources can be identified and evaluated for their potential health efforts.

5. ***NORM Monitoring*** - NORM Monitoring is also another very important area, which we must address especially on the North Slope. We feel there is a great need to have a focused, educational program that provides background information on radon, and secondly radon monitoring should be performed in areas likely to be impacted. On the North Slope, the potential presence of high levels of radon in natural gas pumped into Barrow residences could be a significant source of radiation exposure. Clearly, in our borough where buildings are well-sealed to insulate form the cold, the potential for radon in buildings may be significant. Thus a monitoring program to identify if any high levels are present is needed. This program should not only monitor for radon, but other influences on indoor air quality should also be evaluated in this program.

The Recommendations section of this report suggests licensing all NORM sources within the State. This can require a significant staff. At this time, it may be expensive for the State to initiate this regulatory approach. However, we do advise that potential NORM sources be more closely monitored. As noted in this Draft report, a principal NORM source is oil wells and gas production of which we have a significant amount on the North Slope. As this industry matures, oil and gas production will become a progressively larger source of concern. In addition, as the mineral resources of the State are developed (and processed locally) the impact of NORM will also increase. Mining residues resulting from processing activities can have long-term impacts on both the environment and the natural beauty of the State. We thus recommend that increased monitoring of potential NORM sources be performed, so that long-term planning and control can be implemented.

6. ***Airborne Monitoring Network*** - This report also suggests augmenting the present airborne monitoring network. This is an expensive undertaking, given the size of the State. Placing these devices at selected points, with support telemetry for "real time" transmission of the collected data may actually be cost-effective, if the network is designed to reflect levels at known population centers, most frequent wind directions, and known or anticipated sources of radiation. This air monitoring network should include all the principal villages on the North Slope.

7. ***Medical Equipment Monitoring*** - We agree and support the need to improve monitoring of medical radiation equipment. Shortfalls in staffing are argued to have historically precluded the adequate routine evaluation of X-ray machine and radioactive sources used medically. The first step in implementing a more aggressive monitoring program for medical machine sources should certainly receive the top priority, the perspective of a statewide protection program. This will have the highest return for the cost, so increased funding needs to be allocated. This is an area where complacency can result in hazards to the public. Other States have reduced costs for these programs by using screening techniques (distribution by mail of dosimeters to check performance of the units) to establish priorities for on-site visits to verify performance of units.

8. ***"Agreement State" Status*** - Your preparedness plan discusses the fact that Alaska is not an Agreement State. A number of States have opted not to take that option for control of radioactive materials, since it requires a significant resource commitment. In the event that Alaska chooses to pursue this avenue, all enforcement by NRC will cease, since the only area of control retained by NRC in Agreement States is for regulation of nuclear power plants. Prior to pursuing this option, Alaska should determine what resources NRC has expended to maintain oversight in the State and whether the level of oversight by NRC was adequate. This will reflect the costs Alaska will likely incur as an Agreement State. If the state judges it practical to do so, it should become and "Agreement State". As the CRCPS stated, doing so "... would enable the State to respond more completely to incidents which may occur within the State boundary and beyond". Becoming an Agreement State would allow Alaska to bring home a great deal of control over radioactive materials and allow the State itself to make sure incidents such as the radioactive waste burial at Cape Thompson do not occur.

9. ***Notification Guidelines*** - Notification guidelines for radiological emergencies should be amended to improve communication with local governments - i.e. the borough level. It is not sufficient to give the responsibility for local government notification to only the owners / operators. Local government should be the same as for state agencies other than DHSS.

10. ***Monitoring*** - The baseline radiation study (Section v. Monitoring Capability, Future Considerations) should be a high priority recommendation. If such a study had already been done (and had included the Point Hope region), some of the current Cape Thompson (Project Charlot) questions - such as whether the food chain is contaminated - would likely have been answered.

I hope you will take my comments under serious consideration in the finalization of this plan. Radiation protection is an area of keen interest on the North Slope, especially after the discovery of the radioactive material neat Point Hope. Please call me if I can provide you with additional information on our comments.

Sincerely yours,

Jeslie Kaleak, Sr.
Mayor North Slope Borough

Mental Health Lands Trust Discussion 2-10-93

8-LS0604\A
Chenoweth
2/8/93

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

"An Act amending provisions of ch. 66, SLA 1991, that relate to reconstitution of the corpus of the mental health trust, the management of trust assets, and to the manner of enforcement of the obligation to compensate the trust; and providing for an effective date."

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

* **Section 1.** AS 22.10.020 is amended by adding a new subsection to read:

(j) The superior court is the court of original jurisdiction to hear and determine any dispute arising under AS 37.14.036(c) - (e).

* **Sec. 2.** AS 37.14.009(a), added by sec. 10, ch. 66, SLA 1991, is amended to read:

(a) The Alaska Mental Health Trust Authority

(1) shall manage the assets of the trust in a fiduciary manner to fulfill the purposes of the trust;

(2) may, consistent with (1) of this subsection and AS 47.30.036(1), sell, lease, exchange, or otherwise dispose of land in the trust;

(3) may, consistent with (1) of this subsection, use land that is an asset of the trust directly for the integrated comprehensive mental health program;

(4) **shall** [MAY] contract with the Department of Natural Resources to manage the land assets of the trust**, unless the authority determines that the best interests of trust beneficiaries would be served by other arrangements**; and

(5) shall contract with the Alaska Permanent Fund Corporation for management of the trust's cash assets, unless the authority finds that the best interests of trust beneficiaries would be served by contracting with another entity.

* **Sec. 3.** AS 37.14.031, added by sec. 11, ch. 66, SLA 1991, is amended to read:

Sec. 37.14.031. TRUST FUND ESTABLISHED. The mental health trust fund is established as a separate fund within the state treasury. The fund consists of the cash assets of the principal of the trust**, including the proceeds earned from the management of the land placed in the trust corpus under AS 38.05.800**.

* **Sec. 4.** AS 37.14.036(c), added by sec. 11, ch. 66, SLA 1991, is repealed and reenacted to read:

(c) As compensation for the land that constituted the trust established by the enabling Act and that is not reconstituted as part of the mental health trust corpus established under AS 38.05.800, the state shall make an annual payment of six percent of the unrestricted general fund revenue of the state during each fiscal year. The commissioner of revenue shall annually allocate that amount from the general fund to the mental health trust income account established in (a) of this section.

* **Sec. 5.** AS 37.14.036, added by sec. 11, ch. 66, SLA 1991, is amended by adding new subsections to read:

(d) To secure the allocation of amounts required under (c) of this section, land granted to the state under the enabling act, and that is, on the effective date of this subsection, designated by law as a state park, state forest, state game refuge, state wildlife refuge, state game sanctuary, state recreational area, state recreational river, state wilderness park, state marine park, state special management area, state public use area, critical habitat area, bald eagle preserve, bison range, or moose range, is pledged as security to the mental health trust. Title to this land remains in the state and, so long as a default does not exist under (c) of this section, income from that land

shall be deposited in the general fund and considered unrestricted general funds of the state.

(e) Upon default, the foreclosure of the lands pledged as security under (d) of this section, including the parcels to be foreclosed and the manner of foreclosure, shall be determined by the superior court.

* **Sec. 6.** AS 38.05.800 is repealed and reenacted to read:

Sec. 38.05.800. RECONSTITUTION OF MENTAL HEALTH TRUST CORPUS. The corpus of the mental health trust includes land granted to the state under the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, that, on the effective date of this Act,

(1) has not been conveyed or encumbered by the state, or reserved by law from the public domain;

(2) is subject to only one or more of the following:

(A) an oil or gas lease, coal lease, or other lease;

(B) a timber contract;

(C) a mining claim;

(D) a sale of materials under AS 38.05.110 - 38.05.120;

(E) a land use permit or right-of-way issued by the department under this chapter;

(3) is not necessary to carry out the purposes of an interagency land management agreement; or

(4) was selected by a municipality under AS 29.65 or under former AS 29.18.190 - 29.18.200 and the selection of which, on the effective date of this Act, has been neither approved nor disapproved by the director.

* **Sec. 7.** Section 49, ch. 66, SLA 1991, is amended to read:

Sec. 49. AS 37.14.011, 37.14.021, [AS 38.05.800,] AS 47.30.546, secs. 1, 2, 4, and 5, ch. 132, SLA 1986; and secs. 7 - 10, ch. 48, SLA 1987 are repealed.

* **Sec. 8.** Sections 54, 55, 56, and 57, ch. 66, SLA 1991, are repealed.

* **Sec. 9.** SPECIAL MASTER. The superior court may refer the proceedings under AS 22.10.020(j), added by sec. 1 of this Act, to a special master.

* **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 67

Revision Date: February 2, 1993
Title: "...amending...Ch. 66, SLA 1991, that relate to the mental health trust..."
Sponsor: Senate Resources Committee
Requestor: Senate Resources Committee

Department Affected: Department of Law
BRU: Legal Services
Component: Mental Health Lands

COMPONENT SERIAL NO. 1421

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						
FUNDING:						
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA	-0-	-0-	-0-	-0-	-0-	-0-
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact:

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: February 2, 1993

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law
Date: February 2, 1993

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 67

ANALYSIS CONTINUATION:

Enacting SB 67 as a proposed settlement of the mental health trust lands litigation will require the Department of Law to undertake some substantial effort, including:

1. Efforts to obtain court approval of the settlement. The mental health trust lands litigation is a class action lawsuit. Settlement of that lawsuit must comply with Rule 23 of the Alaska Rules of Civil Procedure. The parties may first need to draft a settlement agreement to present to the court (a settlement agreement may address terms not specifically provided for in the bill). The settlement agreement must then be presented to the court for preliminary approval--the court must determine that the settlement is fair, reasonable, and adequate. Following preliminary approval, notice of the settlement must be given to the class (in general, beneficiaries of the mental health land trust) so that they may comment to the court about the settlement. Only after notice may the court approve the settlement and dismiss the litigation

The time and effort necessary to obtain final approval of a settlement arising from SB 67 is uncertain because it is not possible to predict what challenges may come. However, possible challenges include:

(a) that the constitutional prohibition against dedicated funds [Article IX, Sec. 7, Alaska Constitution] is violated by the provision in Sec. 4 of SB 67 [to be codified as AS 37.14.036(c)] that allocates 6% of the unrestricted general fund revenue during each fiscal year to the mental health income account, coupled with the restriction that future legislatures and governors may appropriate these amounts for other high priority public needs only if the funds are not "reasonably necessary to meet the projected operating and capital expenses of the integrated comprehensive mental health program" [Sec. 10, Ch. 66, SLA 1991, to be codified in AS 37.14].

(b) that the dedication of 6% of the unrestricted general fund revenue to the mental health income account [Sec. 4, SB 67], coupled with the reconstitution of almost one-half of the original one million acre land grant [Sec. 6, SB 67], coupled with the restrictions on appropriating amounts from that account under Sec. 10, Ch. 66, SLA 1991 [see Paragraph (a) above] may be challenged as being contrary to the public interest by persons who believe that the legislature and governor should not be restricted from appropriating public funds for other public needs if those needs are of higher priority (e.g. education, public safety, etc.). Different public interest groups will attach different priorities to the public need for different programs.

(c) that the allocation of 6% of the of the state's unrestricted general fund revenue to the mental health income account in perpetuity [Sec. 4, SB 67], coupled with the reconstitution of almost one-half of the original one million acre land grant [Sec. 6, SB 67], coupled with restrictions on appropriating "trust funds" [Sec. 10, Ch. 66, SLA 1991] is contrary to the public interest because it provides too much compensation to resolve this litigation. This claim was raised by intervenors Alaska Center for the Environment, et al. with respect to allegations that the state will overcompensate the ment[illegible] health trust by reconstituting too much land under Ch.

DEPT. OF LAW ANALYSIS

ANALYSIS CONTINUATION:

66. This "public interest" challenge could more easily be made as to the state overcompensating the mental health trust with funds under SB 67.

(d) that the transfer of any existing leases to the mental health trust [Sec. 6, SB 67, to be codified as AS 38.05.800(2)] could be challenged by the lessees. Marathon Oil Company and Union Oil Company of California have been permitted to intervene in the mental health trust land litigation to challenge the assignability of state oil and gas leases on state general grant land to the trust authority.

(e) that the combination in one bill of the reconstitution of mental health trust lands [Sec. 6, SB 67] with other substantive provisions [the remainder of SB 67] violates the constitutional provision that bills for appropriation shall be confined to appropriations [Article II, Sec. 13, Alaska Constitution]. The Alaska Center for the Environment, et al. have challenged the constitutionality of Ch. 66 on the grounds that this constitutional provision extends to bills that affect the status of public lands--such as reconstitution of land into the mental health trust.

(f) other challenges may be made by parties opposed to SB 67 as a resolution of the mental health trust lands litigation.

2. Enactment of SB 67 may result in litigation with the mental health trust plaintiffs and third-parties who hold interests in former trust lands over whether particular parcels are suitable for being reconstituted into the trust. The provisions in Sec. 6, SB 67 are ambiguous because the bill does not explicitly validate existing interests in former trust lands nor does it identify the specific parcels that will be reconstituted--e.g. trust land that "has not been conveyed or encumbered by the state" is subject to conflicting interpretations.

The settlement agreement negotiated under Ch. 66, SLA 1991 that provides specifically as to parcels which will be reconstituted will not serve SB 67. Under Ch. 66, SLA 1991 the parties negotiated parcels to be reconstituted with the understanding that for any former trust parcel not reconstituted, the state would provide substitute land of comparable character and equal fair market value--the value obtained by the trust was the same regardless of whether the former trust parcel was reconstituted. Under SB 67, the trust is given an all or nothing choice--reconstitute the former trust parcel or receive nothing. Plaintiffs are likely to claim that any parcel arguably described in Sec. 6, SB 67 for reconstituting must be reconstituted regardless of the impact on the state or third-party interests.

The Department of Law currently receives $589,500 in general funds, and $1,000,000 in mental health trust funds to implement the Ch. 66, SLA 1991 settlement, including reconstituting the mental health lands trust within the terms of the settlement. The general funds are used to pay for two attorneys, one paraprofessional, and one clerical employee, who carry-out the state's responsibilities under Ch. 66. The mental health trust funds are provided to the plaintiffs who have accepted the settlement so that they can carry-out their responsibilities under Ch. 66.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 67

ANALYSIS CONTINUATION:

Because of the uncertainties described above, and because of the potential for continued legal challenges, we do not believe that the current efforts of either the state or the plaintiffs, will be reduced if SB 67 is adopted. This would cause existing resources to be redirected to implement and defend the new law. We cannot say if the bill would cause additional costs due to the uncertainty of potential litigation.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 67

Revision Date:

Department Affected: Natural Resources

Title: Mental Health Trust: Alternative Settlement Proposal

BRU: Resource Management

Components: Land Management

Sponsor: Senate Resources Committee

Requestor:

Component Serial No. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	1,022.2	817.2	186.1	197.3	209.2	221.8
TRAVEL	7.5	6.0				
CONTRACTUAL	890.0	1,625.0	2,000.0	2,000.0	2,000.0	2,000.0
SUPPLIES	22.0	14.5				
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1,941.7	2,462.7	2,186.1	2,197.3	2,209.2	2,221.8
CAPITAL						
REVENUE fund source:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA	1,941.7	2,462.7	2,186.1	2,197.3	2,209.2	2,221.8
Other						
TOTAL	1,941.7	2,462.7	2,186.1	2,197.3	2,209.2	2,221.8

POSITIONS:

FULL-TIME	16	11	2	2	2	2
PART-TIME	1	3				
TEMPORARY	2	2				

Estimate of current year (FY93) impact: $ 1941.7

ANALYSIS:
The program impacts of this legislation are somewhat difficult to determine because of ambiguity in the wording of the legislation. It is unclear if the legislation contemplates the conveyance of unencumbered Original Trust Land to the Trust Authority or its "redesignation" as Original Trust Land on DNR status plats. We have based our analysis on the premise that the aforementioned land is to be conveyed to the Trust Authority. This interpretation seems appropriate since Sec. 2 AS 37.14.009(a)(2) allows the Trust Authority to sell, lease, exchange, or otherwise dispose of land in the trust.

Prepared by: Ron Swanson Phone : 762-2692

Division: Land Date : 29-Jan-93

Approved by Commissioner: Glenn A. Olds Date: 2/2/93

Agency: Department of Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

[redacted]

(REV 11/92) (fnform.xls/DNR) Page 1 of 1

DNR FISCAL NOTE

Original in mail, to arrive 2/3/93

SB.67[1]

DIVISION OF LAND

7100 Personnel Services	FY 94	FY 95
Mental Health Project Team		
(1) Project Manager	80.7	85.5
(1) Lands Manager	55.5	58.8
(2) NRO II	122.6	129.9
(2) NRO I	103.2	130.4
(1) CT III	37.3	39.5
(1) DPC II	39.2	41.3
(2) College Interns	27.5	29.1
	466.0	514.5
Land & Resource Management		
(1) Cadastral Surveyor III	110.2	116.8
Regional Offices		
Northern Regional Office		
(1) NRO II	60.4	32.0
Southcentral Regional Office		
(1) NRO II	60.4	32.0
Southeast Regional Office		
(1) NRO II (6 mo.)	30.2	32.0
Subtotal	727.2	727.3
7200 Travel		
Mental Health Project Team	3.0	3.0
Land & Resources	—	—
Regional Offices		
NRO	1.5	1.0
SCRO	1.5	1.0
SERO	1.5	1.0
Subtotal	7.5	6.0
7300 Contractual Services		
Mental Health Project Team		
Hazardous Substance Inventory	125.0	125.0
Land & Resources		
Cadastral Survey	750.0	1,500.0
Subtotal	875.0	1,625.0

[1] Assumes conveyance of unencumbered OTL to MHTA.

7400 Supplies

Mental Health Project Team		6.0	6.0
Land & Resouces		1.5	1.5
Regional Offices			
NRO		1.5	1.0
SCRO		1.5	1.0
SERO		1.5	1.0
	Subtotal	12.0	10.5
	TOTAL	1,621.7	2,368.8

	94	95
Personnel-Full time	11	9
Part time	1	3
Temporary	2	2

SB 67

LAND RECORD INFORMATION SECTION

	FY 94	FY 95
Personnel Services		
(1) Analyst/Programmer IV	77.0	0
(1) Analyst Programmer III	68.0	0
(1) Natural Resource Officer II	65.0	0
(1) Natural Resource Officer I	50.0	53.0
(1)(Data Processing Clerk I	35.0	37.0
Subtotal	295.0	90.0
Contractural Services		
DOA Data Processing Chargeback	15.0	0
Subtotal	15.0	0
Supplies		
Plotter, Micrographic & Office Supplies	10.0	4.0
Subtotal	10.0	4.0
TOTAL	320 0	94.0

TOTAL PROJECT COST

		FY 94	FY 95
Personnel Services			
Division of Land		727.2	727.3
LRIS		295.0	90.0
	Subtotal	1,022.2	817.3
Travel			
Division of Land		7.5	6.0
LRIS		0	0
	Subtotal	7.5	6.0
Contractural Services			
Division of Land		875.0	1,625.0
LRIS		10.0	0
	Subtotal	890.0	1,625.0
Supplies			
Division of Land		12.0	10.5
LRIS		10.0	4.0
	Subtotal	22.0	14.5
	TOTAL	1,941.7	2,462.8

	FY 94			FY 95		
	Land	LRIS	Total	Land	LRIS	Total
Positions						
Full time	11	5	16	9	2	11
Part time	1		1	3		3
Temp.	2		2	2		2

OUT-YEAR COSTS

Personnel Services	FY 96	FY 97	FY 98	FY 99
Land Manager	62.3	66.1	70.1	74.3
Cadastral Survey	123.8	131.2	139.1	147.5
Subtotal	186.1	197.3	209.2	221.8
Contractural Survey	2,000.0	2,000.0	2,000.0	2,000.0
TOTAL	2,186.1	2,197.3	2,209.2	2,221.8

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

M E M O R A N D U M January 28, 1993

SUBJECT: Senate Bill 67, amending provisions of ch. 66, SLA 1991 (relating to the reconstitution of the mental health trust); and providing for an effective date -- sectional analysis (Work Order No. 8-LS0409\A)

TO: Senator Mike Miller, Chair
Senate Resources Committee
ATTN: Teresa Sager-Stancliff

FROM: Jack Chenoweth
Legislative Counsel

The measure, based on CSSB 469 (Resources) of the last legislature, sets out a series of proposed amendments to ch. 66, SLA 1991, the legislation reconstituting the mental health trust. Necessarily, I will discuss these provisions out of the order in which they appear in the bill.

I

Sec. 54 of existing ch. 66, SLA 1991, reconstitutes the corpus of the mental health trust by identifying specific land held by the state and that is to be conveyed by it in order to reconstitute the trust. Sec. 55, ch. 66, SLA 1991, authorizes substitution of other state land (i.e. "replacement land" as substitution for former mental health lands that now cannot be returned to the trust because it is unavailable to the state) to the reconstituted trust and sets out standards to guide the making of replacement land substitutions. Sec. 56, ch. 66, SLA 1991, is an enforcement mechanism in that it hypothecates or pledges certain state assets to secure the transfer of compensation due the reconstituted trust corpus. These provisions are proposed to be repealed by **bill section 8.**

In their place, **bill section 6** proposes to reconstitute the trust corpus in the permanent law. Some, but not all, of the land identified in sec. 54, ch. 66, SLA 1991, is carried over into this section. Omitted from the list approved in the 1991 Act is land identified in paragraph (5) (Tanana Valley State Forest and Haines State Forest

Resource Management lands), paragraph (6) (other land satisfactory to the plaintiffs drawn from legislatively-designated areas), and paragraph (7) (compensation land identified under former sec. 55). Added, in the enumeration set out in bill section 6, is land subject to "other lease" (proposed AS 38.05.800(2)(A)), land subject to mining claim or sale of materials (proposed AS 38.05.800(2)(D) and (E)), and land exclusive of that necessary to carry out purposes of an interagency land management agreement (proposed AS 38.05.800(3)).

In the 1991 legislation, existing AS 38.05.800 was to have been repealed. Since, in this bill, AS 38.05.800 would be modified and continued, the change set out in **bill section** 7 drops that section from the list of sections repealed in the 1991 legislation.

II

This legislation also proposes to revise the mechanism by which to reconstitute an important element of the mental health trust, the mental health trust income account. Under current AS 37.14.036(c), the state obligates itself to pay to the mental health trust income account a declining percentage (six percent at inception declining to one percent in the last years) of unrestricted state revenue, the last payment to be made by June 30, 2003. The change proposed by **bill section** 4, a reenactment of AS 37.14.036(c), directs that a fixed annual payment of six percent of unrestricted state general fund revenue be allocated for an indefinite period "as compensation for land that constituted the [original] trust . . . and that is not reconstituted as part of the mental health trust corpus established under AS 38.05.800 . . . ." The payment, when made by the state and received by the trust, would be added to the balance of the mental health trust income account, the principal source of support for the programs and services to the trust beneficiaries.

However, payment of the allocation requires legislative appropriation. As a guarantee that the allocation will be made, **bill section** 5 adds two subsections to AS 37.14.036. Under proposed subsection (d), land that came to the state under the mental health enabling act and that has been since placed in so-called "legislatively-designated" land status--state park, state forest, state game refuge, and the like--would be pledged as security. Under proposed subsection (e), the superior court is given the authority to determine the manner of the trust's foreclosure against those lands in the event the state fails to make the required allocation under subsection (c).

I want to note that it was the decision to convert the six percent payment obligation from one with a set termination date to one of indefinite duration that prompted the addition or revision of permanent law sections and the repeal or deletion of temporary law sections.

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

February 3, 1993

The Honorable Mike M er, Chai man
Senate Resources Co. ittee
Seventeenth Alaska State Legislature
Room 423
State Capitol
Juneau, Alaska 99801-1182

Re: SB 67 (RES) (mental health lands trust)

Dear Senator Miller:

A bill relating to Weiss v. State, 4FA-82-2208 Civil, the mental health lands trust litigation, has been introduced by your committee. It is SB 67 (RES) (hereafter referred to as "SB 67"). SB 67 is substantially identical to SB 469 which was before this committee last year. Governor Hickel, Natural Resources Commissioner Olds, and I all opposed SB 469 last year and we oppose SB 67 now. This letter gives you our reasons for opposing the bill.

We oppose SB 67 because, notwithstanding what the legislature might want to do with respect to mental health funding on an annual basis, this bill is nothing more than a raid on the state treasury. It also presents several other problems which cast serious doubt on whether it would resolve the litigation.

In Chapter 66, SLA 1991, the bill passed as a framework for settlement of the case, the state gave up a $1.3 billion offset which the Alaska Supreme Court held that the state is entitled to. Chapter 66 also provides a number of other benefits to the plaintiff class which they would not be able to obtain in continued litigation, including (1) a new mental health permanent fund would be established, (2) a new Mental Health Trust Authority to manage the reconstituted trust and oversee the administration of the state's mental health programs would be created, (3) a separate process for appropriating trust revenues would be provided, (4) the state's current mental health program will be significantly amended to make it both more comprehensive and more expensive, and (5) perhaps most significantly, court approval would be required for any change in the future. SB 67, in addition to giving up the offset and all of the other benefits given plaintiffs in Chapter 66, would return much of the original land grant to trust status and commit six percent of the unrestricted general fund and all new

03-C32LH

Letter from AG opposing SB67

revenues from the returned lands to the trust every year in perpetuity. Because of the restrictions which would be applied to that money, however, the actual amount committed to mental health programs would be substantially greater.

That is much too much to pay to settle the case. Any litigation settlement that I approve must be drafted in light of the state's potential liability. Under the Supreme Court's order, a fair resolution of this case would be to return to trust status the original mental health lands which SB 67 (RES) would return, and consider the $1.3 billion offset as having purchased the balance of the original grant. By reconstituting the equivalent of the full original one million acre mental health trust, Chapter 66 was more than fair. The threatened continued litigation over Chapter 66 by its opponents is not a sufficient reason to return much of the original land grant to trust status, commit six percent of the unrestricted general fund to the trust in perpetuity, and create a possibility that substantially greater expenditure of state general funds will be required for mental health programs.

Some say that passage of this bill would be a panacea and make all the litigation over this issue disappear. That simply is not true. Other claims will be made, at least some of which we have already identified and describe below.

Fundamentally, however, I would recommend a veto of SB 67 if it passes in its current form because it simply is too much to pay for a quick resolution of this case. It would be a breach of my fiduciary duty as Alaska's Attorney General, a duty that I owe to all Alaskans, to do otherwise.

Brief explanations of the problems with SB 67 are set forth below.

I. SB 67 could cost the state far more than six percent of the unrestricted general fund every year.

SB 67 would commit six percent of the unrestricted general fund to the mental health trust every year. Proponents of the bill argue that, because the state currently spends about six percent of the unrestricted general fund on mental health programs, SB 67 would not cost the state any more than it currently is spending. That is not true.

The legislature authorized expenditure of $132,386,900 from the mental health trust for mental health programs in FY 92, while six percent of projected FY 92 unrestricted general fund revenues is almost identical -- $132 million. But the programs for which the more than $132 million in trust spending is authorized are those that the legislature has determined are appropriate for funding from the trust. Not everyone agrees with the legislature's determination in that regard.

Most specifically, the Alaska Mental Health Board (which has current responsibility for making recommendations for funding from the trust, a responsibility that under SB 67 would be assumed by the Alaska Mental Health Trust Authority established under Chapter 66) believes only about half of that amount goes to programs that should be funded by the trust.

Under Chapter 66's stringent restrictions on the legislature's and the governor's ability to deviate from the Trust Authority's recommendations for appropriation of trust funds, more than $60 million in programs currently funded by the trust would have to be funded from general fund revenues over and above the six percent SB 67 would commit to the trust if the Trust Authority were to adopt the current board's narrow approach to programs that qualify for trust funding. SB 67 thus could result in far more than six percent of the unrestricted general fund being committed to mental health programs every year. (We "accepted" the restrictions on appropriations in Chapter 66 because they were coupled with a declining percentage of general fund contributions to the trust. They would have been unacceptable if applied to a fixed percentage in perpetuity, which is what SB 67 would do.)

In other words, the true cost of this bill is far more than six percent of the state's unrestricted general fund, and that does not even count additional monies attributable to development of the lands which would be returned to the trust. SB 67 would simply cost the state too much.

II. **SB 67 would violate the Alaska Mental Health Enabling Act.**

Section 3 of SB 67 would require that all "proceeds earned" from the reconstituted mental health trust lands -- i.e., both principal from the sale of trust land or extraction of nonrenewable resources and income from leasing the land or the sale of renewable resources -- be deposited in the mental health trust fund, a permanent fund from which only the earnings may be spent. Subsection 202(e) of the Alaska Mental Health Enabling Act (the federal act that created the trust), however, provides in part that "such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska."

We believe we can defend the deposit of principal from the lands in the mental health trust fund under general private trust law principles. But income from trust lands is normally spent for trust purposes, and Congress clearly intended that income from mental health lands be spent first for programs before being used in any other way. Depositing the income directly in the fund, therefore, is prohibited by the federal Enabling Act.

III. **SB 67 may create an unconstitutional dedicated fund.**

Article IX, section 7 of the Alaska Constitution prohibits the dedication of state revenues to specific purposes "unless required by the federal government for state participation

in federal programs" or if the dedication pre-dated the constitution. As noted in the preceding section, section 3 of SB 67 would dedicate trust land income to the mental health trust fund, and such income could not be spent on mental health programs as Congress required when it created the trust originally.

Because the dedication of income to the permanent mental health trust fund is not required by federal law (and, indeed, is prohibited by the Enabling Act), it may violate article IX, section 7. We are analyzing this issue.

IV. **SB 67 may violate the single appropriation bill requirement.**

Chapter 66 imposes several restrictions on appropriations of income from the reconstituted mental health land trust, including a requirement that the governor introduce a separate appropriation bill limited to appropriations from the mental health trust income account. SB 67 would apply the separate bill requirement to a percentage of the unrestricted general fund. The Alaska Constitution imposes specific requirements upon the Governor with respect to the preparation and review of the budget and all appropriations and upon the legislature with respect to passage of the budget and all appropriations. The restrictions placed on the budget and appropriation processes in Chapter 66 when applied to a percentage of the unrestricted general fund revenue in perpetuity raise serious questions regarding the permissibility of delegating some of those responsibilities to an agency such as the Trust Authority. We are analyzing these issues.

V. **Land management would remain a question under SB 67.**

The proponents of SB 67 suggest that, because it would require the Alaska Mental Health Trust Authority to contract with the Department of Natural Resources to manage the land unless the Authority determines that it is in the best interest of the trust to do otherwise, SB 67 allows continuity of management and gives affected industries some comfort with respect to trust ownership of the land.

What they fail to recognize, however, is that the courts will require that trust lands be managed in a fiduciary manner and in the best interest of the trust. Whether DNR or the Trust Authority exercises management duties, therefore, the current state pricing structure and policies for land use could not be applied to trust lands unless they meet fiduciary standards and are in the best interests of the beneficiaries and not just the best interests of the state standard employed by DNR for non-trust lands. The "comfort" to affected industries therefore is illusory.

VI. **SB 67 provides no protection to third party interests and would create potential liability for the state.**

As under Chapter 66, SB 67 would reconstitute the trust with some "encumbered land" -- i.e., land subject to an oil or gas lease, coal lease, or other lease, timber contract, mining claim, sale of materials, land use permit or right-of-way. Under the Settlement Agreement implementing Chapter 66, the plaintiffs agreed that the trust would be bound by the terms of such encumbrances because the trust will be compensated to the extent those encumbrances reduce the value of the lands returned to the trust.

Nothing in SB 67, however, provides that the trust will be bound by the terms of the encumbrances, nor does it provide compensation for those encumbrances. Instead, the trust would be given an "all or nothing choice" to either accept the encumbrance and receive no compensation in return for the devaluation or contest the validity of the encumbrance and, if successful, receive the parcel with no devaluation. Faced with this choice, the trust would vigorously contest the validity of third party interests.

If the trust were to successfully challenge an encumbrance or some of its terms, an affected third party might then try to hold the state liable for the termination of the encumbrance or an increase in rents or royalties. The state would then have settled the Weiss case only to expose itself to numerous other lawsuits.

VII. **SB 67 would preclude development of some land currently available for development.**

Section 5 of SB 67 would pledge all original mental health lands in state parks, state forests, state wildlife refuges, etc., as security for the state's performance under the bill. Under the Settlement Agreement implementing Chapter 66, and to the extent permitted by the statutes governing the areas, those lands will be available for development prior to court approval if plaintiffs agree and after court approval whether plaintiffs agree or not. If they become security for the state's performance as SB 67 would provide, however, the state would be obligated not to diminish their value. In other words, even if otherwise allowed by law, development would be prohibited.

VIII. **SB 67 does not protect Native allotments.**

Under Chapter 66 and the Settlement Agreement, original trust land encumbered by valid Native allotment claims will not be returned to the trust; instead, the trust will receive other state land to compensate for any value lost to the trust as a result of those claims. As a result, the state will decide whether to challenge the validity of Native allotment claims and will review Native allotments on original trust land under the same standards applied to general state land instead of under a higher trust standard of review which would result in more challenges. Under SB

67, land with allotment claims would go back to the trust, and the trust would be almost compelled to challenge each claim because, if the claim were found valid, the trust would receive less valuable over-selection land.

IX. **The provisions of the April 6, 1992 Settlement Agreement cannot be simply cut and pasted into a new agreement.**

Supporters of SB 67 have argued that, as a time saving measure, all that will be necessary for a new Settlement Agreement is to cut and paste pertinent parts of the Chapter 66 Settlement Agreement. This will not be possible because each provision of the April 6 Settlement Agreement was negotiated in the context of Chapter 66.

For example, the Settlement Agreement defines an encumbrance to mean every kind of lease, permit, contract, right-of-way, interagency land management agreement, etc. If that very expansive definition is used in a new settlement agreement, very little original trust land would be returned to the trust because SB 67 provides that only certain encumbered land is returned to the trust. As another example, Chapter 66 provides for conveyance of the reconstituted trust lands to the Trust Authority, and the Settlement Agreement includes detailed provisions for such conveyances and for proper accounting following such conveyance. Under SB 67, trust lands will not be conveyed. Instead, they will simply be redesignated, and an entirely different approach would have to be taken in any implementing settlement agreement.

X. **Certain pending challenges to Chapter 66 raised by intervenors would be equally applicable as to SB 67.**

Certain issues raised by both the environmental and oil company intervenors to challenge Chapter 66 are equally applicable as to SB 67. The issues raised by the environmental intervenors have been fully briefed and the matter is pending for decision before the trial court. The issues raised by the oil company intervenors will be briefed on an expedited schedule dictated by the trial court, with dispositive motions due on or before March 22, 1993. While we believe these challenges have little or no merit, the interventions have raised the following issues:

1. **A settlement that provides too much compensation may not be approved because it is contrary to the public interest.**

The environmental intervenors argued in opposing preliminary approval of the proposed chapter 66 settlement that the broad public interest must be considered, and any settlement that provides too much compensation is contrary to the public interest and must be rejected by the court. Their specific claim is that because the state waived the "offset" and agreed to reconstitute a land trust comparable in value to the original one million acre grant, the trust receives too much, the settlement is therefore

contrary to the public interest, and the court may not approve it. As is set forth above, an even better claim may be made that SB 67 would "overcompensate" the mental health trust at the expense of other public needs, such as education, public safety, transportation, etc.

2. **A bill that includes provisions that affect both the status of public lands and other substantive provisions violates the constitutional requirement that bills for appropriation shall be confined to appropriations [Art. II, Sec. 13, Alaska Constitution].**

The environmental intervenors challenged Chapter 66 arguing that constitutional provisions related to appropriation bills apply to bills that affect the status of public lands. The State argued that this constitutional provision applies only to appropriations of state revenues. If the environmental intervenors argument is correct, then SB 67 is unconstitutional because it includes both an "appropriation" of land [see Sec. 6, SB 67] with other substantive provisions. Further, if the environmental intervenors argument is correct, whether any public lands are now validly within legislative designated areas is subject to challenge because legislation that created those designated areas included both "appropriations" of land and other substantive provisions.

3. **SB 67 provides no "other safeguards of the public interest" in terms of management of lands by the Trust Authority or conveyance of lands to the Trust Authority.**

The environmental intervenors argue that Chapter 66 violates Article VIII, Section 10 of the Alaska Constitution because it fails to provide "other safeguards of the public interest" both as to the management of lands by the Trust Authority and as to the conveyance of lands to the Trust Authority. SB 67 does not address either of those arguments, but instead leaves trust land managment and conveyance of land to the Trust Authority as they appear in Chapter 66.

4. **Whether state leases may be assigned to the Trust Authority.**

The oil company intervenors challenge whether the st... may assign its lessor's interest in state oil and gas leases to the Trust Authority. The court permitted the intervention, in part, because "[i]f the [oil company] intervenors are correct and the reason [they are correct] is broadly applicable to state leases, it will be impossible to reconstitute the trust under the Chapter 66 procedures." The assignability of all state leases -- and more broadly land contracts -- is therefore at issue. Whether the state may assign its interest in oil or gas leases, coal leases, or other leases, timber contracts, mining claims, material sales, land use permits or rights-of-way under Sec. 6 of SB 67 could also be challenged.

For all of the foregoing reasons, I would recommend that Governor Hickel veto SB 67 should it pass the legislature. It certainly is not appropriate to pass such legislation as a settlement of the Weiss litigation, especially since Chapter 66 will resolve the litigation on terms which are fair to both the trust and the state.

If I or my staff can answer any questions, please contact us at your convenience.

Very truly yours,

Charles E. Cole
Attorney General

cc: Glenn Olds, Commissioner of Natural Resources
Kris Lethin, Senior Legislative Liaison

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM February 4, 1993

SUBJECT: Constitutional questions raised by Senate Bill 67 (Work Order No. 8-LS0409\A)

TO: Senator Mike Miller, Chair
Senate Resources Committee

FROM: Jack Chenoweth
Legislative Counsel

I am responding to the two questions you have asked with respect to Senate Bill 67, an Act amending the 1991 mental health trust measure, reconstituting the mental health corpus, and altering the manner of enforcement of the state's obligation to compensate the reconstituted trust:

(1) Does section 4 of the bill, establishing an ongoing annual payment of six percent of the state's unrestricted general fund revenue to the mental health trust income account, violate the prohibition of article IX, section 7 of the state constitution against dedication of state funds?

(2) Does section 6 of the bill, identifying specific state land obtained by the territory and the state under the provisions of the former Alaska Mental Health Enabling Act of 1956 that shall be used to reconstitute the state's mental health trust corpus, constitute an appropriation such that its inclusion with other substantive provisions violate the second sentence of article II, section 13 wherein appropriation bills are to be confined to appropriations?

For the reasons set out below, I am inclined to answer both questions in the negative.

I

Section 4 of the bill establishes an ongoing obligation by which the state would pay six percent of the state's unrestricted general fund revenue into the mental health

SB 67
Legal Services Memo - Constitutional Questions

trust income account. [1] The provision directs the commissioner of revenue to "allocate" the amount from the general fund into the mental health trust income account. [2] The allocation of an amount of money from the general fund into an account established within that fund is, to my mind, nothing more than a bookkeeping matter, an accounting transfer that does not require a legislative appropriation. A legislative appropriation is required only as to the withdrawal of money from the state treasury. Article IX, section 13, Alaska constitution.

It is clear that the legislature prepared ch. 66, SLA 1991, contemplating that money would not be withdrawn or expended from the mental health trust income account without a legislative appropriation. [3]

---

[1] The proposed language of the bill's section 4 would replace AS 37.14.036(c), added by sec. 11, ch. 66, SLA 1991. Subsection (c) directs

> (c) In each of the following state fiscal years, the commissioner of revenue shall allocate from the general fund of the state to the mental health trust income account in the general fund an amount equal to the percent of the unrestricted revenue of the state specified for that fiscal year:
>
> | FISCAL YEAR ENDING | PERCENT OF UNRESTRICTED STATE REVENUE |
> |---|---|
> | June 30, 1992 | six percent |
> | June 30, 1993 | six percent |
> | June 30, 1994 | five percent |
> | June 30, 1995 | five percent |
> | June 30, 1996 | four percent |
> | June 30, 1997 | four percent |
> | June 30, 1998 | three percent |
> | June 30, 1999 | three percent |
> | June 30, 2000 | two percent |
> | June 30, 2001 | two percent |
> | June 30, 2002 | one percent |
> | June 30, 2003 | one percent |

[2] This "allocation" language is consistent with the approach taken in current AS 37.14.036(c), added by ch. 66, SLA 1991, the subsection being replaced by this bill section. The same section identifies the mental health trust income account as "a separate account within the general fund of the state." AS 37.14.036(a).

[3] See AS 37.14.003, setting out the obligations of the governor, and AS 37.14.005, identifying the obligations of the legislature, in the handling of proposed appropriations of the balance of the mental health trust income account. Specifically, under AS 37.14.005(b):

> (b) Before taking action on appropriations from the mental health trust income account proposed by the governor, the legislature shall consider

(continued...)

Consequently, since the transfer to the special account is an accounting mechanism and appropriation of the balance of the account involves an appropriation, the change proposed by bill section 4 does not violate the prohibition of article IX, section 7 of the state constitution against dedication of state funds.

II

Section 6 of the measure proposes to reconstitute the mental health trust corpus. In essence, it identifies land that came to the state under provisions of the former Mental Health Enabling Act of 1956--former trust corpus land--that, in general, has not been conveyed or generally encumbered and that remains available now out of the general grant land inventory for restoration to the reconstituted trust or that is so encumbered that its removal from the state general grant land inventory and restoration to the reconstituted trust ought not to impair the interests of third parties.

Whether inclusion of section 6 within Senate Bill 67 improperly and unconstitutionally [4] joins an appropriation with other material making a change in substantive law depends, of course, on whether or not section 6 makes an appropriation. If it makes an appropriation, it is an appropriation of land. The courts have held that land, as a state asset, may be a subject of appropriation, at least in certain circumstances. Thomas v. Bailey, 595 P.2d 1 (Alaska 1979) (initiative that would have provided state land to residents under the Alaska Homestead Act, the so-called "Beirne Initiative," invalidated as an "appropriation" made in violation of constitutional provision, article XI, section 7, precluding use of initiative to make appropriations); McAlpine v. University of Alaska, 762 P.2d 81 (Alaska 1988) (required transfer of university assets in initiative to reestablish a separate community college system identified as an "appropriation" that is an impermissible violation of the constitutional prohibition).

---

[3] (...continued)

> the needs of the beneficiaries of the trust without regard to other potential objects of state expenditure. The legislature shall make appropriations from the mental health trust income account in a separate appropriation bill limited to appropriations from the mental health trust income account.

(Emphasis added.)

[4] Unconstitutionally as an asserted violation of the second sentence of article II, section 13:

> FORM OF BILLS. Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

The court has tagged the segregation and allocation of state assets as appropriations only in the context of upholding the prohibition of article XI, section 7, against use of the initiative process to accomplish the transfer of state assets. Whether the court is prepared to extend the reasoning it used to find a violation of article XI, section 7 to circumscribe appropriations of assets other than money by application of the second sentence of article II, section 13 is debatable. To date the court has not been asked to do so, and I hesitate to reach that conclusion in the absence of a definitive judicial opinion. 5/

5/ The two circumstances are, to my mind, distinguishable. I have considered the matter in the context of whether a bill making an appropriation of money may combine or incorporate provisions appropriating non-monetary state assets and believe that the distinction in the handling of monetary and non-monetary state assets, at least for purposes of compliance with article II, deserves to be maintained.

Under the state constitution, the executive's treatment of measures appropriating money differs from the authority he or she has with respect to all other measures. Constitutionally, the governor must submit a general appropriation bill authorizing proposed expenditures during the ensuing fiscal year. Article IX, section 12, Alaska constitution. The appropriation bill making these expenditures serves only (or should serve only) to withdraw money from the state treasury. Other appropriation bills may also serve to withdraw money from the state treasury. Article IX, section 13.

All legislative bills, whatever the subject, must run the gauntlet of the executive's veto. However, under article II, section 15, the governor enjoys wider latitude with the disposition of appropriation bills in that the governor "may, by veto, strike or reduce items in appropriation bills." For a bill involving the appropriation of money, the ability to "strike or reduce" is meaningful, its use is well understood, and it is arguably limited to dealing with the dollar amount set out in the appropriation rather than with any of the language in which the appropriation appears in context. By contrast, for measures purporting to dispose of or appropriate other kinds of state assets, the governor's ability to "strike or reduce" the appropriation or disposition of a non-monetary asset is without precedent. Indeed, if the assets that is the subject of the appropriation is something other than money, a reduction or partial veto may amount to an alteration of substantive law.

Additionally, no case has as yet focussed on the treatment properly to be given the legislature's response to a veto in the event the appropriation involves an asset other than money in the state treasury. Left unanswered at this time is the question of whether the governor's veto of a legislative measure making an appropriation of a non-monetary asset must, under article II, section 16, be overridden with a vote of three-quarters of the legislature or whether a two-thirds override vote would be sufficient.

These considerations raise sufficient question as to whether the court would extend the reasoning applied in its Thomas and McAlpine decisions to equate the manner of handling of non-monetary state assets with that give monetary assets under article II of the state constitution.

The action required to be taken by the bill's section 6 may not, in fact, constitute an "appropriation."

In its McAlpine decision, the court indicated that a key reason that it was invalidating the property transfer provisions of the community college system initiative was to protect, to the widest possible degree, the discretion that was constitutionally given to the legislature to make decisions with respect to state assets:

> . . . Outside the context of give-away programs, the more typical appropriation involves committing certain assets for a particular public purpose. The reason for prohibiting appropriations by initiative is to ensure that the legislature, and **only** the legislature, retains control over the allocation of state assets among competing needs. This rationale applies as much or nearly as much to allocations of physical property as to allocations of money. To whatever extent it is desirable for the legislature to have sole responsibility for allocating the use of state money, it is also desirable for the legislature to have the same responsibility for allocating property other than money. . . . .

McAlpine, 762 P.2d at 88, 89 (emphasis added; footnote reference omitted). But, in the area in which Senate Bill 67 operates--restoration of the Alaska Mental Health Trust--the legislature decidedly does not have discretion or latitude to act to allocate assets among competing needs. That door closed when the court decided, in State v. Weiss, 706 P.2d 681 (Alaska 1985), that the trust should be reconstituted. The legislature is constrained by the "guidance" provided by the court to accomplish that end:

> . . . [T]he redesignation [of former mental health trust land] legislation is invalid [and] the trust must be reconstituted to match as nearly as possible the holdings which comprised the trust when the 1978 law became effective. . . . We take the opportunity to provide some guidance to the trial court to simplify its task.
>
> Those general grant lands which were once mental health lands will return to their former trust status. In the event exchanges have been made, those properties which can be traced to an exchange involving mental health lands will also be included in the trust. To the extent that former mental health lands have been sold since the date of the conveyance the trust must be reimbursed for the fair market value at the time of sale. In calculating the total amount owed, the trial court should grant a set-off for mental health expenditures made by the state during the same period. In the event that expenditures exceeded the value of lands sold, the state need not furnish cash as part of the reconstitution. The goal is to restore the trust to its

> position just prior to the conveyance effected by the redesignation legislation.

Weiss, 706 P.2d 681, at 684. Arguably, the state's former holdings of the assets of the trust first established by the 1956 Mental Health Enabling Act, and the assets that have been derived from the sale, exchange, or other actions involving those original assets are not unencumbered or unobligated state assets over which the legislature has discretion, but are held subject to the court's opinion in Weiss. The court has already ordered allocation of assets into a reconstituted trust, [6/] and the legislature's actions taken in response to that order may not constitute, for purposes of article II, the appropriation of a state asset as the term "appropriation" has been explained in the McAlpine decision.

Finally, for whatever merit it may have, I should point out that the bill's section 6 in effect replaces an uncodified provision, sec. 54, ch. 66, SLA 1991, reconstituting the mental health trust corpus. If the approach taken in this section of this bill is unconstitutional as a violation of the second sentence of article II, section 13, it merely compounds the error made in legislation making a substantially similar effort to resolve the Weiss claims enacted in 1991.

*

I trust this is responsive to your questions.

JBC:lmb
93-028.lmb

[6/] The court's disposition of the appeal in the Weiss decision is in marked contrast to the usual disposition of cases raising claims against the state. Under the relevant statute, AS 09.50.270:

> PAYMENT OF JUDGMENT AGAINST THE STATE. No attachment or execution shall issue against the state. When a final judgment is rendered against the state in an action, the clerk of the court shall immediately transmit a certified copy of the judgment to the Department of Administration which shall either approve payment of the judgment against the state if a sufficient appropriation exists for payment, or audit the amount and transmit a copy to the legislature with the recommendation that an appropriation be made for its payment.

The court has observed that "[this] statute gives [a successful plaintiff] a specific, albeit uncertain, remedy: the chance to have his claim presented to the Legislature." Zerbetz v. Alaska Energy Center, 708 P.2d 1270, 1278 (Alaska 1985). But Zerbetz's claim involved money damages and was prosecuted under provisions of law that raised a question whether money might be drawn from the state treasury to pay the claim in the absence of an appropriation, a question involving article IX. No such uncertainty attends the disposition of the claim successfully litigated by Weiss and his colleagues.

BURR, PEASE & KURTZ
A PROFESSIONAL CORPORATION

DONALD A. BURR
RICHARD A. HELM
OF COUNSEL

THEODORE M. PEASE, JR.
CHARLES P. FLYNN
ARDEN E. PAGE
RUSSELLYN S. CARRUTH
RALPH E. DUERRE
ANN C. LIBURD
JOHN C. SIEMERS
NELSON G. PAGE
THOMAS E. MEACHAM
PETER GRUENSTEIN
MICHAEL W. SEWRIGHT
PETER J. MAASSEN
MICHAEL W. SEVILLE
DAVID W. PEASE
THOMAS P. OWENS III

810 N STREET
ANCHORAGE, ALASKA 99501-3293
TELEPHONE: (907) 276-6100
FACSIMILE III: (907) 258-2530

TAX ID NO. 92-0037399

February 5, 1993

The Honorable Bill Williams, Chairman
House Resources Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Re: The Alaska Mental Health Lands Trust

Dear Representative Williams:

At the hearing of the House Resources Committee on the morning of W nesday, February 3, 1993, Representatives Bunde and Green d that each person who testified indicate his or her posi on SB 67, regarding the reconstitution of the Mental Health Trust. My clients, Marathon Oil Company and Union Oil Company of California, wholeheartedly support SB 67. Their oil and gas leases are not on original Mental Health Trust lands, but they are currently embroiled in the Weiss litigation as both security for the successful reconstitution of the trust and as "Proposed Substitute Lands" for eventual inclusion in the reconstituted trust. SB 67, on the other hand, does not include a wholesale land substitution process. Its passage, therefore, will eliminate my clients' concerns about changed lease administration and the uncertainty caus by perpetual litigation over the reconstitution process.

I apologize for the delay in answering the committee's question. As I know you're aware, trying to get out of Juneau and back to the office these past few days has been a challenge. Thank you for the opportunity to explain my clients' position, and if I can be of further help to the committee, please don't hesitate to contact me.

Very truly yours,

BURR, PEASE & KURTZ

Peter J. Maassen

HOUSE RESOURCES COMMITTEE

DATE: 2/10/93

PLACE: Capitol, Room 124

SUBJECT OF MEET
Spruce Bark Beetle E
Committee Discussion
Lands Settlemen

	NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		
(1)	Dan Golden	State of AK	3601 C Street, Suite 1008	99503	243-4733	762-2123	(Y)	N	
(4)	John Torgerson	Kenai Borough	35322 Spur Hwy Soldotna	99669	262-6192	262-4902	(Y)	N	
(5)	Ron Somerville	ADF&G	Juneau			465-4100	Y	(N)	a
							Y	N	
(2)	Steve Albert test. from Anch. LIO						Y	N	
(3)	Steve ~~Gibson~~ Gilbert test. from Homer LIO		11.22 Highland Ave		235-6457 Homer	99603	Y	N	
							Y	N	
							Y	N	
							Y	N	
							Y	N	
							Y	N	

HOUSE RESOURCES COMMITTEE

SUBJECT OF MEETING:
Spruce Bark Beetle Briefing (SBB)
Committee Discussion of Mental Health Lands Settlement

1/10/93

PLACE: Capitol, Room 124

REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
State of AK	3601 C Street, Suite 1008	99503	243-4733	762-2123	(Y)	N	SBB
Kenai Borough	35322 Spur Hwy Soldotna	99669	262-6192	262-4902	(Y)	N	Bags
ADF&G	Juneau			465-4100	Y	(N)	available for Questions
					Y	N	
from Anch. LIO					Y	N	
from Homer LIO	11, 22 Hayklazy Ave		235-6487 Homer	9961?	Y	N	
					Y	N	
					Y	N	
					Y	N	
					Y	N	
					Y	N	