The Hon. John A. Sandor
Commissioner
Dep't of Environmental
Conservation

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ADEC authority to review and approve U.S. Department of Energy Workplans for Amchitka Island Project

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The Alaska Department of Environmental Conservation (ADEC) requested advice concerning its regulatory authority over radioactive pollutants resulting from three high-yield underground nuclear test explosions on Amchitka Island. Amchitka is included as an off-site area in the U.S. Department of Energy (DOE) Environmental Restoration Program for the Nevada Test Site, a nuclear weapons testing complex in southern Nevada. ADEC will review and approve DOE's Amchitka workplans and reports for radiation monitoring, assessment, and cleanup activities. DOE's Preliminary Assessment Report, summarized below, describes the environmental and public health effects of the nuclear tests.

Amchitka Island, part of the Aleutian Islands National Wildlife Refuge, is under the administration of the U.S. Fish and Wildlife Service of the Department of the Interior. Executive Order 1733, which in 1913 designated the part of the Aleutian Chain that includes Amchitka a wildlife preserve, provides that "[t]he establishment of this reservation shall not interfere with the use of the Islands for . . . military . . . purposes." Exec. Order No. 1733, quoted in Aleut League v. Atomic Energy Comm'n, 337 F. Supp. 534, 542 (D. Alaska 1971). Relying on this language, the Atomic Energy Commission and the U.S. Department of Defense conducted the Long Shot nuclear test at Amchitka in 1965, with a yield of 80 kilotons. Long Shot was part of the Vela Uniform program, a defense project designed to improve the capability to detect, identify, and locate underground nuclear explosions. The Atomic Energy Commission conducted the 1-megaton yield Milrow test in 1969, a seismic calibration study for higher yield nuclear explosions. Finally, the Commission conducted the 5-megaton yield Cannikin test in 1971, a proof-test of the nuclear warhead for the Spartan anti-ballistic missile system.

All three nuclear detonations were conducted in underground test cavities drilled into a deep saline aquifer that discharges to the Bering Sea. The radioactivity at the site results from a complex mixture of 300 radioisotopes and 36 elements. A majority of the radioisotopes have reached more

stable forms, and the radioactivity has decreased from its initial levels. The deep aquifer, as well as a shallow aquifer that acts as a recharge conduit for the deeper system and for surficial lakes and streams, is contaminated by radioactivity. Radioactivity was also detected in the surface water at the Long Shot site. Chemical contaminants and wastes are present at the surface in widespread locations, in the shot cavities, in drilling mud pits, and at a metals dump. Trace amounts of radioactive soil gas were detected above the Long Shot crater.

The U.S. Navy maintains a radar station at Amchitka, soon to be decommissioned, that at one point had a resident population of approximately 160 persons.[1] Other human habitation of the island has been sporadic and brief, consisting mainly of scientific and technical teams. Amchitka Island and its surrounding waters, however, are rich in marine and bird life. Given the remoteness of the site and the depth at which the explosions took place, the primary risk is to the sensitive marine environment, as risk to the public of direct exposure is considered minimal.

DOE has identified as its principal concerns the potential migration of radionuclides from the deep aquifer to the Bering Sea and the Pacific Ocean, the potential threat to the marine environment, and the chemical contamination at the surface.

General Departmental Authorities

ADEC has "primary responsibility for coordination and development of policies, programs and planning related to the environment of the state and of the various regions of the state." AS 44.46.020(1). ADEC also has "primary responsibility for the adoption and enforcement of regulations setting standards for the prevention and abatement of all water, land, subsurface land and air pollution, and other sources or potential sources of pollution of the environment . . . ." AS 44.46.020(2). ADEC has authority to "promote and develop programs for the protection and control of the environment of the state," AS 44.46.020(3), and to "take actions that are necessary and proper to further the policy

[1] The permanent populations closest to Amchitka are Adak Naval Station, 190 miles to the east; Shemya Air Force Base, 230 miles to the west; and the Aleut community of Atka, 280 miles to the east.

declared in AS 46.03.010."[2] AS 44.46.020(4). ADEC is further authorized to adopt regulations for "the prevention and control of public health nuisances." AS 44.46.020(5)(A). ADEC's statutory authority to charge fees for services is found in AS 44.46.025.

The general powers of ADEC are set out in AS 46.03.020. This statute authorizes ADEC to consult and cooperate with any public entity using or concerned with the environment of the state. AS 46.03.020(3). ADEC is given the power to undertake any studies, inquiries, surveys, or analyses it considers essential to the purposes of ADEC. AS 46.03.020(5). ADEC has the power to "enter and inspect with the consent of the owner or occupier any property or premises to investigate either actual or suspected sources of pollution or contamination or to ascertain compliance or noncompliance with a regulation that may be adopted under AS 46.03.020--46.03.040." AS 46.03.020(6). ADEC is authorized to "act as the official agency of the state in all matters affecting the purposes of ADEC under federal laws . . . ." AS 46.03.020(9). ADEC is authorized to adopt regulations providing for the control, prevention, and abatement of air, water, or land or subsurface land pollution; protection of public

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[2] AS 46.03.010 provides:

> Declaration of policy. (a) It is the policy of the state to conserve, improve, and protect its natural resources and environment and control water, land, and air pollution, in order to enhance the health, safety, and welfare of the people of the state and their overall economic and social well-being.
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> (b) It is the policy of the state to improve and coordinate the environmental plans, functions, powers, and programs of the state, in cooperation with the federal government, regions, local governments, other public and private organizations, and concerned individuals, and to develop and manage the basic resources of water, land, and air to the end that the state may fulfill its responsibility as trustee of the environment for the present and future generations.

water supplies; the collection and disposal of industrial and solid waste; and the handling, transportation, treatment, storage, and disposal of hazardous wastes. AS 46.03.020(10).

AS 46.03.710 prohibits pollution: "A person may not pollute or add to the pollution of the air, land, subsurface land, or water of the state." "Pollution" is defined as

> the contamination or altering of waters, land or subsurface land of the state in a manner which creates a nuisance or makes waters, land or subsurface land unclean, or noxious, or impure, or unfit so that they are actually or potentially harmful or detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, or recreational use, or to livestock, wild animals, bird, fish, or other aquatic life.

AS 46.03.900(19). Under AS 46.03.745, "a person may not cause or permit the release of a hazardous substance as defined in AS 46.09.900."[3] AS 46.03.100 requires a person who conducts an

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[3] AS 46.09.900(4) defines "hazardous substance" as:

> (A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of a natural habitat in which fish, animals, or wildlife may be found; or
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> (B) a substance defined as a hazardous substance under 42 U.S.C. 9601--9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)); "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil.

As discussed below, the CERCLA definition of "hazardous substance" includes all radionuclides. 42 U.S.C.S. • 9601(14) (1989); see 42 U.S.C.S. • 7412(b) (Supp. 1993).

The term "release" means "any spilling, leaking,

operation that results in the disposal of solid or liquid waste material into the waters or onto the land of the state to obtain a permit from ADEC before disposing of the waste material.

The pertinent enforcement provisions of the state's environmental laws are found in AS 46.03.760, AS 46.03.765, AS 46.03.790, and AS 46.03.850. AS 46.03.760 authorizes the award of damages in a civil action for pollution. AS 46.03.765 authorizes injunctive relief. AS 46.03.790 authorizes criminal penalties. AS 46.03.850 authorizes ADEC to issue compliance orders. ADEC also has the authority to order the abatement of water, land, and air nuisances. AS 46.03.800; AS 46.03.810. In addition, under AS 46.03.820, ADEC has the authority to abate a condition or activity that presents an imminent or present danger to the health and welfare of the people of the state. AS 46.03.865 authorizes ADEC to declare an emergency upon finding that an actual or imminent discharge of a hazardous substance or low level radioactive material poses an immediate threat to the public health or welfare or the environment, and to direct a person or persons to take action that ADEC believes necessary to meet the emergency and protect the public health and welfare and the environment.

AS 46.03.822(a)(1) imposes strict liability upon the owner of, and the person having control over, a hazardous substance at the time of a release or threatened release. This statute also authorizes cost recovery for state response and remediation for releases of hazardous substances. For purposes of AS 46.03.822 the term "hazardous substance" is defined broadly in AS 46.03.826(5) to include radioactive and chemical contaminants.[4] AS 46.03.780 authorizes the recovery of natural

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pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, except that `release' does not include a permitted release or an act of nature." AS 46.09.900(6). A "permitted release" means "a release occurring under the authority of a valid permit issued by the department or by the Environmental Protection Agency." AS 46.09.900(5).

[4] AS 46.03.826 defines "hazardous substance" as

> (A) an element or compound which, when it enters into the atmosphere or in or upon the water or surface or subsurface land of the state, presents an imminent and substantial

resources damages resulting from violation of state environmental laws.

Atomic Energy Act

The Atomic Energy Act of 1954 (AEA), as amended, provides the framework by which the Department of Energy and the Nuclear Regulatory Commission, successors to the Atomic Energy Commission, regulate radioactive materials in all forms, including waste, classified as "source," "special nuclear," and "byproduct" materials.[5] The AEA will preempt the state's

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> danger to the public health or welfare, including but not limited to fish, animals, vegetation, or any part of the natural habitat in which they are found;
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> (B) oil; or
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> (C) a substance defined as a hazardous substance under 42 U.S.C. 9601(14) [CERCLA].

[5] "Source material" means "(1) uranium, thorium, or any other material which is determined by the Commission pursuant to the provisions of section 61 [42 U.S.C. • 2091] 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." 42 U.S.C.S. • 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 51 [42 U.S.C. • 2071], 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." 42 U.S.C.S. • 2014(aa) (1978).

"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

regulation of source, special nuclear, and byproduct materials (AEA materials, pollutants, or wastes) unless a subsequent federal statute expressly negates the preemption. As discussed below, several federal environmental statutes that waive the federal government's sovereign immunity from state regulation, also negate the AEA preemption, allowing the state to regulate, in certain respects, AEA radioactive pollutants.

While Alaska is not an "Agreement State" under section 274 of the AEA, with authority to regulate AEA materials, the AEA allows two other mechanisms by which Alaska may regulate in this area. First, section 274(k) of the AEA allows states "to regulate activities for purposes other than protection against radiation hazards." 42 U.S.C.S. • 2021(k) (1978); see English v. General Elec. Co., 496 U.S. 72 (1990) (state tort claim by former employee who reported safety violations against nuclear industry employer for intentional infliction of emotional distress not preempted); Silkwood v. Kerr-McGee Corp., 464 U.S. 238 (1984) (state-authorized award of punitive damages for tortious conduct related to radiation hazards not preempted); Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n, 461 U.S. 190 (1983) (state statute conditioning construction of nuclear power plants on finding by state commission of availability of adequate storage facilities and means of disposal not preempted, since statute furthered economic rather than nuclear safety purposes). Second, the AEA does not regulate naturally-occurring radioactive materials, radium, and accelerator-produced isotopes, and thus the states are free to regulate in this area. See Train v. Colorado Public Interest Research Group, 426 U.S. 1, 8 (1976); 40 C.F.R. • 122.2 (1992) (note to definition of "pollutant").

Solid and Hazardous Waste

The Resource Conservation and Recovery Act (RCRA) applies to generators, transporters, and those who treat, store, and/or dispose of hazardous waste. 42 U.S.C.S. • 6922, 6923, 6924 (1982 & Supp. 1993). Section 6001 of RCRA waives the federal government's sovereign immunity from all state substantive and procedural requirements for the control and abatement of solid waste or hazardous waste management and disposal. 42 U.S.C.S. • 6961(a) (Supp. 1993).

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uranium or thorium from any ore processed primarily for the source material content." 42 U.S.C.S. • 2014(e) (Supp. 1993).

RCRA defines "hazardous waste" as a subset of "solid waste." 42 U.S.C.S. • 6903(5) (1982). The RCRA definition of "solid waste" specifically excludes source, special nuclear, or byproduct material as defined by the AEA. Id., • 6903(27). Thus, RCRA expressly precludes regulation of AEA radioactive waste. However, RCRA also provides that it does not apply to, nor does it authorize any state to regulate, any activity or substance that is subject to AEA, "except to the extent that such application (or regulation) is not inconsistent with the requirements of [the Atomic Energy Act]." Id., • 6905(a). Section 6905(a) therefore precludes RCRA application only to the extent it is inconsistent with the AEA. AEA facilities are subject to RCRA, except as to AEA wastes. United States v. New Mexico, Civ. No. 90-276 SC, 35 Env't Rep. Cas. (BNA) 1693, 1992 WL 437983 (D.N.M. Aug. 13, 1992); Legal Envtl. Assistance Found. v. Hodel, 586 F. Supp. 1163, 1166-68 (E.D. Tenn. 1984).

In addition, when hazardous wastes are mixed with AEA radioactive wastes, the state may regulate the hazardous components of the mixed waste under the hazardous waste laws. New Mexico v. Watkins, 969 F.2d 1122, 1130-32 (D.C. Cir. 1992); Sierra Club v. United States Dep't of Energy, 734 F. Supp. 946 (D. Colo. 1990); 10 C.F.R. 962.3 (1993).

ADEC may thus regulate non-AEA radioactive waste and the hazardous components of the mixed waste at Amchitka under the state's solid and hazardous waste laws.[6] AS 46.03.020(10)(D) and

[6] "Hazardous waste" is defined in state law as "a waste or combination of wastes that because of quantity, concentration, or physical, chemical, or infectious characteristics may

> (A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
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> (B) pose a substantial present or potential hazard to human health or the environment when improperly managed, treated, stored, transported, or disposed of."

AS 46.03.900(9).

"Industrial waste" is defined as "a liquid, gaseous,

(E) authorize ADEC to adopt regulations concerning the collection and disposal of industrial waste and garbage, refuse, and other discarded solid materials. ADEC's solid waste management regulations are found at 18 AAC 60. Under 18 AAC 60.087, a person may dispose of hazardous waste only in accordance with a specific permit issued by ADEC, or at a facility that is approved for the disposal of each specific type of waste.

AS 46.03.020(10)(I), AS 46.03.296, and AS 46.03.299 authorize ADEC to adopt regulations for the identification and management of hazardous waste, and for the handling, transportation, treatment, storage, and disposal of hazardous waste. AS 46.03.302 requires a person to obtain a permit from ADEC to treat, transport, store, or dispose of a hazardous waste, and to submit to ADEC any reports or manifests that ADEC requires for handling the waste. See also AS 46.03.305; AS 46.03.308. ADEC's hazardous waste regulations are found at 18 AAC 62.

ADEC's statutory authority relating to low level radioactive waste is found in AS 46.03.250 and AS 46.03.260. "Low level radioactive materials" is defined as "a radioactive waste other than (A) used nuclear reactor fuel; (B) waste produced during the reprocessing of used nuclear reactor fuel; and (C) elements having an atomic number greater than 92 and containing 10 or more nanocuries per gram." AS 46.03.900(12). Low level waste typically includes equipment, paper, and clothing contaminated with radioactivity.

AS 46.03.250 provides:

> Authority. The department shall adopt regulations
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> (1) establishing standards governing the discharge of low level radioactive materials to the air, water, land, and subsurface land of the

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solid,or other waste substance or a combination of them resulting from process of industry, manufacturing trade or business, or from the development of natural resources . . . ." AS 46.03.900(11).

"Solid waste" is defined as "all unwanted, abandoned, or discarded solid or semi-solid material whether or not subject to decomposition, originating from any source." AS 46.03.900(25).

> state;
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> (2) establishing safeguards for radioactive waste materials that do not constitute a threat to public health or safety and that may be stored or disposed of in the state; and
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> (3) establishing procedures for the storage and disposal of radioactive materials used in medicine, education, instruments, industrial testing, or scientific research.

Under AS 46.03.260,

> A person who conducts an operation that results in the discharge of low level radioactive materials to the air, water, land, or subsurface land of the state shall obtain a permit from the department before commencing the discharge.

ADEC's solid waste regulations require a permit for the disposal of low level radioactive waste. 18 AAC 60.087(e). The disposal of low level waste must meet the requirements of 18 AAC 85, in particular 18 AAC 85.270--18 AAC 85.310.

Air Quality

The Clean Air Act contains a broad waiver of sovereign immunity from state requirements, whether procedural or substantive, respecting the control and abatement of air pollution. 42 U.S.C.S. • 7418 (Supp. 1993). Section 7602(g) of the Act defines the term "air pollutant" to specifically include all radioactive substances, including source, special nuclear, and byproduct materials, that are emitted to or otherwise enter the ambient air. This definition expressly negates the AEA preemption for these materials. Thus, section 7416 of the Clean Air Act allows states to regulate all radioactive air emissions. Id., • 7416 (1989). In addition, under section 7412(b), radionuclides are listed as a hazardous air pollutant. Id., • 7412(b) (Supp. 1993). Section 7412(*l*) authorizes states to establish programs for the implementation and enforcement of emission standards and other requirements for hazardous air pollutants or requirements for the prevention and mitigation of accidental releases. Id., • 7412(*l*).

AS 46.03.710 prohibits air pollution. State air

quality legislation is primarily found in AS 46.14. AS 46.03.020 (10)(A) and AS 46.14.010 authorize ADEC to adopt regulations providing for the control, prevention, and abatement of air pollution. ADEC's air quality control regulations are found in 18 AAC 50. Under 18 AAC 50.110, "No person may permit any emission which is injurious to human health or welfare, animal or plant life, or property, or which would unreasonably interfere with the enjoyment of life or property."

CERCLA

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) defines "hazardous substance" to include all hazardous air pollutants listed under section 112 of the Clean Air Act. 42 U.S.C.S. • 9601(14) (1989). Because section 112 of the Clean Air Act lists radionuclides as a hazardous air pollutant, 42 U.S.C.S. • 7412(b) (Supp. 1993), CERCLA negates the AEA preemption for source, special nuclear, and byproduct substances. Therefore, all radioactive substances are subject to CERCLA.

The federal facilities provisions of CERCLA are found in 42 U.S.C.S. • 9620 (1989). This section requires that each federal agency be subject to and comply with CERCLA in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity. Section 9620(a)(4) contains a more expansive waiver for federal facilities that are *not* on the National Priorities List: State laws concerning removal and remedial actions apply to these sites. Amchitka is not on the National Priorities List; therefore, state law concerning removal and remediation will apply.[7] AS 46.09.020 requires a person who causes a release of a hazardous substance to make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release. ADEC's regulations concerning hazardous substance pollution control are found at 18 AAC 75, in particular, at 18 AAC 75.300--18 AAC 75.370 and 18 AAC 75.905--18 AAC 75.990. Under 18 AAC 75.327, a person responsible for a discharge of a hazardous substance to land or waters of the state must contain, clean up, and dispose

[7] In United States v. Colorado, 990 F.2d 1565 (10th Cir. 1993), the court held that CERCLA allows a state to enforce its delegated RCRA authority at a federal facility on the National Priorities List. At present, Alaska does not have delegated RCRA authority.

of the material collected, using ADEC approved methods. This regulation requires that the discharge be cleaned up to ADEC's satisfaction. Under 18 AAC 75.319, prior ADEC approval is required for the ultimate disposal of a hazardous substance and of soil, cleanup materials, or other contaminated substances.

Moreover, in addition to AS 46.09.020, ADEC can enforce general state environmental laws, including state solid waste and water pollution control laws, at Amchitka, provided these laws compel activities falling within the CERCLA definition of "removal" and "remedial action" found in 42 U.S.C.S. • 9601(23), (24) (1989 & Supp. 1993). United States v. Pennsylvania Dep't of Envtl. Resources, 778 F. Supp. 1328, 1330-32 (M.D. Pa. 1991).

Under CERCLA, state officials have the right to participate in planning and selecting the remedial action, including review of all data as it becomes available and the development of studies, reports, and action plans. 42 U.S.C.S. • 9620(f) (1989). Section 9621(f) outlines the process for state involvement. Id., • 9620(f).

For remedial actions, CERCLA also authorizes the imposition of state standards, requirements, criteria, or limitations through the ARARs (Applicable, Relevant and Appropriate Requirements) process, even when these requirements would not otherwise independently apply. Id., • 9621(d). The state water quality standards, 18 AAC 70, including radioactivity criteria, apply to fresh waters, groundwaters, and marine waters. 18 AAC 70.050. Our groundwater is protected for freshwater water supply uses and marine water industrial water supply uses, 18 AAC 70.050. The state's water quality standards and antidegradation policy, 18 AAC 70.010, qualify as ARARs. See United States v. AZCO Coatings of America, Inc., 949 F.2d 1409, 1439-46 (6th Cir. 1991). The state's drinking water standards, 18 AAC 80, may also qualify as ARARs for the Amchitka site.

Water Quality

The federal facilities provision of the Clean Water Act, found at 33 U.S.C.S. • 1323(a) (1987), waives the federal government's sovereign immunity from procedural and substantive state requirements respecting the control and abatement of water pollution. The United States Supreme Court, however, has ruled that the "pollutants" subject to the Clean Water Act do not include source, byproduct, or special nuclear materials subject to regulation by the Atomic Energy Commission and its successors under the AEA. Train v. Colorado Public Interest Research Group, Inc., 426 U.S. 1 (1976). Non-AEA radioactive pollutants are subject to the Clean Water Act and state water pollution control laws. See id. at 8; 40 C.F.R. • 122.2 (1922) (note to definition of "pollutant"). Further, section 311(f) of the Clean Water Act prohibits the introduction of any radiological warfare agent or high-level radioactive waste into navigable waters. 42 U.S.C.S. • 1311(f) (1987). This prohibition applies to both AEA and non-AEA high-level radioactive waste.

Under AS 46.03.710, "A person may not pollute or add to the pollution of the air, land, subsurface land, or water of the state." The term "waters" is defined broadly and includes all surface and underground water, as well as the Bering Sea. AS 46.03.900(35). The term "person" includes any government agency. AS 46.03.900(17). ADEC is authorized to adopt regulations for the control, prevention, and abatement of water pollution. AS 46.03.020(10)(A). Under AS 46.03.050, ADEC has jurisdiction to prevent and abate the pollution of the waters of the state. ADEC is authorized to develop comprehensive water pollution control plans, pollution standards, and quality and purity standards. AS 46.03.060--46.03.080. The state water quality standards are found at 18 AAC 70. Under the Clean Water Act, as interpreted in Train, these state authorities will apply to non-AEA radioactive pollutants.

Safe Drinking Water

The Safe Drinking Water Act requires each federal agency having jurisdiction over any federally owned or maintained public water system to comply with all federal and state requirements, administrative authorities, and process and sanctions respecting the provision of safe drinking water in the same manner and to the same extent as any nongovernmental entity. Federal facilities are subject to all substantive and procedural requirements, including permits, record-keeping, and reporting

requirements. 42 U.S.C.S. • 300j-6(a) (1991). For purposes of the Safe Drinking Water Act, which regulates the maximum contaminant levels in drinking water, the term "contaminant" includes any radiological substance or matter in water. Id., • 300f(6).

Alaska has primary enforcement responsibility for public water systems, including those at federal facilities. AS 46.03.020(10)(C) authorizes ADEC to adopt regulations for the "protection of public water supplies by establishing minimum drinking water standards, and standards for the construction, improvement, and maintenance of public water supply systems." Under AS 46.03.050, ADEC has jurisdiction to prevent and abate water pollution. AS 46.03.070 and AS 46.03.080 authorize ADEC to establish pollution standards and quality and purity standards. ADEC's drinking water regulations are found at 18 AAC 80. Source protection is required in 18 AAC 80.015(a). The maximum contaminant levels for radioactive contamination of drinking water are found in 18 AAC 80.070(a)(4). Monitoring, analytical, and reporting requirements are found in 18 AAC 80, article 2. Under AS 46.03.720(b) and 18 AAC 80, article 3, any person seeking to construct, modify, or operate a public water system must first obtain written ADEC approval.

Emergency Planning and Right-to-Know

On April 22, 1993, President Clinton pledged that federal facilities will comply with the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C.S. •• 11001--11050 (1989), and an executive order will be issued within the next several months. Among other requirements, the owners and operators of facilities subject to EPCRA reporting requirements must submit to the state emergency response commission and the appropriate local emergency planning committee a material safety data sheet for each hazardous chemical present at the facility and an emergency and hazardous chemical inventory form. Id., •• 11021, 11022. The Alaska State Emergency Response Commission, a commission within ADEC, is authorized to serve as the state emergency response commission required under section 11001 of EPCRA. AS 46.13.040(1). The commission has established the Aleutian - Pribilof Islands Local Emergency Planning Committee for the local emergency planning district that includes Amchitka. Under AS 46.13.090, an emergency plan prepared by a local emergency planning committee must include response procedures for releases of both hazardous and extremely hazardous substances.

The Alaska State Emergency Response Commission is also authorized to perform other coordinating, advisory, or planning tasks related to hazardous substance emergency planning and preparedness, community right-to-know reporting, toxic chemical release reporting, or the management of hazardous substances. AS 46.13.040(8). The commission may also recommend procedures to integrate, as appropriate, hazardous substance response planning under EPCRA, the Oil Pollution Act of 1990, "other federal laws applicable to hazardous substance discharges," and state, regional, and local hazardous substance contingency planning under AS 26.23 (the Alaska Disaster Act) and AS 46.04.200--46.04.210 (state and regional master plans). The commission has review and approval authority over the emergency response plans prepared by the local emergency planning committees, ADEC's state and regional master oil and hazardous substance discharge prevention and contingency plans prepared under AS 46.04.200 and AS 46.04.210, and the hazardous substance annex to the State Emergency Plan prepared under the Alaska Disaster Act, AS 26.23. AS 46.13.040(4).

Coastal Zone Management

The Coastal Zone Management Act requires that all federally conducted activities affecting the coastal zone be undertaken in a manner consistent to the maximum extent practicable with approved state coastal management programs. 16 U.S.C.S. • 1456(c)(1) (Supp. 1993). Federal agencies must provide state agencies with consistency determinations for all federal activities directly affecting the coastal zone. 15 C.F.R. • 930.34(a) (1992). Federal waste disposal plans for federal facilities are considered a "federal activity." 44 Fed. Reg. 37142, 37146 (1979).

When an environmental impact statement (EIS) is required,[8] the Division of Governmental Coordination in the

[8] The National Environmental Policy Act (NEPA) requires federal agencies to assess the effects of proposed major federal actions significantly affecting the quality of the human environment. 42 U.S.C.S. • 4332(2)(C) (1989). For example, the Atomic Energy Commission was required to comply with NEPA for the Cannikin test. Committee for Nuclear Responsibility, Inc. v. Seaborg, 463 F.2d 783 (D.C. Cir. 1971).

NEPA may apply to any cleanup at Amchitka. See, e.g.,

Office of Management and Budget in the Office of the Governor is authorized to perform a consistency review of the EIS at both the draft and final stages. If a federal permit or state permits from two or more state agencies are required, the Division will perform the consistency review. AS 44.19.145(a)(11). ADEC is authorized to participate in this process as outlined in 6 AAC 50.070, and due deference is given to its comments. 6 AAC 50.120. If the project requires only permits from ADEC, then ADEC is authorized to coordinate the consistency review as a single agency review. 6 AAC 50.030(b).

Conclusion

ADEC has statutory and regulatory authority as described above to participate in the development of DOE workplans for Amchitka Island. Please do not hesitate to contact us if we can be of further assistance with respect to this matter, or if you require copies of any of the references cited above.

MS:lae

cc: Mead Treadwell, Deputy Commissioner
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Dunn v. United States, 842 F.2d 1420, 1427 (3d Cir. 1988) (Remedial actions under the Uranium Mill Tailings Radiation Control Act (UMTRCA) to clean up radioactive and radiation contaminated materials from inactive mill sites and their environs requires compliance with NEPA, even though UMTRCA does not explicitly direct the Secretary of Energy to comply with NEPA); City of West Chicago v. U.S. Nuclear Regulatory Comm'n, 701 F.2d 632, 650 (7th Cir. 1983) (EIS required for decommissioning and stabilization plan for thorium milling facility, and to dispose of tailings and other contaminated materials onsite); Public Serv. Co. of Colorado v. Andrus, Civ. No. 91-0035-S-SLR (D. Idaho June 28, 1993) (EIS required for all DOE actions involving the transportation, receipt, processing, and storage of spent nuclear fuel at the Idaho National Engineering Laboratory).

Dep't of Law