

October 15, 2023

Rebecca Colvin
DEC Division of Environmental Health
555 Cordova Street
Anchorage, AK 99501

Re: Public Comments on Proposed Regulations for a Hazardous Waste Program

Dear Ms. Colvin,

As a former RCRA Permit Writer and RCRA Inspector in the ADEC Hazardous Waste Program, I respectfully submit the following public comments on this 18 AAC 62 proposed rulemaking. Please consider these public comments to be highly supportive of the State of Alaska and ADEC seeking authorization of a State Hazardous Waste Program. Some of these comments may sound adverse at first, but rather are intended to share a few ideas for consideration and to give some challenge to ADEC to articulate why it is choosing exact wording in this rulemaking process.

EPA and ADEC should both recognize that this authorization is thirty years overdue and both agencies should endeavor to make it happen now. Hope it energizes a new generation of Alaskans to contribute to accomplishing the RCRA statutory objectives of protecting human health and the environment.

The amount of money identified for an EPA grant seems too meager. Isn't this "pass-through" money that Congress intended EPA distribute to the fifty states for the purpose of having the states administer the Hazardous Waste Program? Imagine the Alaska Congressional delegation and EPA Region 10 can do far better than \$400,000 annually in 2025. I seem to recall (not 100% certain) that our ADEC Hazardous Waste Program was getting ~\$615,000 from EPA in grant money in the 1995–1996 timeframe—or that was our entire budget of EPA grant and state general funds combined. But either way, at $i=3%$ a year for $n=27$ years, the Present Value for that equates to \$1,366,093. I recommend the EPA grant fund at least half of that figure—\$683,0467 to support the development of the Alaska Hazardous Waste Program in 2025.

Don't expect much revenue from fees for hazardous waste in Alaska beyond electronic manifest fees collected, if any, per 18 AAC 62.595 and 62.696. There are simply not enough Large Quantity Generators and permitted Treatment, Storage, or Disposal Facilities in Alaska from which to generate much fee revenue from. To make up an example, if ADEC were to charge \$2,000/yr to 8 TSDFs, \$1,000/yr to 33 LQGs, and \$250/yr to 200 SQGs, that only adds up to \$99,000/yr. The program should be entirely funded by EPA grant money with state general funds used for the minimum required match to be sustainable and to maintain a close and productive relationship with EPA Region 10.

Noticed paying electronic hazardous waste manifest fees is addressed in 18 AAC 62.595 and 62.696; but note it is not addressed for owners/operators with standardized permits in 18 AAC 62 Article 8.

Note that AS 46.03.302 requires a person to first secure a permit from the department to transport hazardous waste. Suggest a bill to delete the word "transport" from AS 46.03.302 or otherwise address what constitutes the issuance of a valid permit for hazardous waste

transporters—would it suffice to get a state Permit by Rule if a RCRA Section 3010 notification of regulated waste activity has been submitted and an EPA Identification number obtained as a hazardous waste transporter? Or develop and issue a general permit by rule for hazardous waste transporters and accept Notices of Intent?

If such a bill were to be drafted, suggest also that the word “very” be inserted in front of “small quantity generators” in AS 46.03.309. Household Hazardous Waste Collection Events should be limited to participation by households and to “very small quantity generators” (who generate less than or equal to 100 kg of non-acute hazardous waste per month) of hazardous waste since small quantity generators (who generate >100 but <1000 kg of non-acute hazardous waste per month) have further obligations re notification, the use of manifests, and restrictions on eligible designated facilities.

Recommend that ADEC and EPA consider entering into an Interpersonnel Agreement (IPA) to have a highly experienced EPA RCRA Permit Writer and a highly experienced EPA Compliance Monitoring & Enforcement staff person work in the ADEC office and mentor ADEC Hazardous Waste Program personnel for a year or two during the ADEC Hazardous Waste Program development phase. Recommend EPA fully fund those two IPAs instead of requesting reimbursement from the State of Alaska, particularly if the EPA grant funding in 2025 is going to be relatively meager.

In 18 AAC 62.040(b), as proposed it states “RCRA permits or RCRA Part B permits.” Recommend deleting “or RCRA Part B permits.” There are RCRA permits, standardized permits, individual RCRA permits, emergency permits, permits by rule, and EPA-issued permits properly referred to in 40 CFR Parts 124 and 270. There is a Part A and a Part B to a RCRA permit application.

The proposed 18 AAC 62.1010 references 18 AAC 63. 18 AAC Chapters 62 and 63 work in tandem. Recognize that the Location Requirements in 18 AAC 63.040 are arduous and may prove to be a show-stopper from time to time if the state is trying to support the development of permitted waste management capacity in-state. To strike an appropriate balance among competing interests and statutory objectives in AS 46.03, recommend excluding applicants who only seek a standardized permit under 18 AAC 62 Article 8 from being subject to 18 AAC 63 in the applicability section of 18 AAC 63 and in 18 AAC 62.1010. This would still keep 18 AAC 63 intact for hazardous waste incinerators and land disposal facilities.

Note also that 18 AAC 63 does not grandfather existing facilities which become newly regulated facilities; e.g., when the Toxicity Characteristic (TC) Rule added D018 benzene as a newly regulated hazardous waste in 1990, it was going to subject two Alaska Pollution Control, Inc. facilities in Palmer, the ESI “dirt burner” in Moose Creek just south of Fairbanks, and the Alyeska Valdez Marine Terminal ballast water surface impoundment system as being “new” facilities to the siting process and most notably to the minimum setback requirements in Table I of 18 AAC 63 because they were not existing hazardous waste management facilities with interim status on March 31, 1989. None of them ever received a RCRA permit; they all took steps to cease managing hazardous waste altogether or to cease having RCRA regulated units. If PFAS, for example, became a newly regulated hazardous waste in the future, the applicability of 18 AAC 63 to existing facilities would likely become problematic again.

Adding electronic waste to the universal waste standards should further promote e-waste reclamation which is a good thing. Note for the other universal wastes (lamps, batteries, aerosol cans, etc) it has been helpful to have multiple alternative marking or labeling requirements instead of just one. Suggest adding one or more additional labeling alternatives in 18 AAC 62.1135(a)(2) including “e-waste.”

EPA does not require small or large quantity handlers of universal waste to submit biennial reports. In 18 AAC 62.1135(b), why require both small and large quantity handlers of universal electronic waste to submit an annual “notification” [report] by March 1 of each year? Do you mean for them to merely check the small quantity handler of universal waste box or the large quantity handler of universal waste box on EPA’s Site ID form—or do you mean for handlers to quantify it in pounds? Why would they have to identify and report each facility they send their e-waste to? Small Quantity Handlers of Universal Waste are not required to even keep or retain records of shipments per 40 CFR 273.19 and Large Quantity Handlers of Universal Waste are required to keep records and to retain them for three years but are not required to report to EPA either. Furthermore, LQHUWs who have already notified EPA of their hazardous waste management activities and have received an EPA Identification Number are not required to renotify per 40 CFR 273.32....let alone submit biennial or annual reports. I believe EPA did their best to reduce the amount of regulations that universal waste handlers would be subject to in order to facilitate and promote universal waste management; reports go against that grain.

We should acknowledge that EPA only requires Large Quantity Generators of hazardous waste to submit biennial reports per 40 CFR 262.41—for the odd-numbered reporting years by March 1 of the following even-numbered year. There is not an annual report obligation. Small Quantity Generators and Very Small Quantity Generators do not have to report to EPA whatsoever, let alone biennially.

If an Annual Hazardous Waste Report is going to get resuscitated in the State of Alaska and be required by 18 AAC 62, please do NOT make the off year state-only report mirror the federal biennial reporting system effort nor make any reference to EPA Form 8700-13 A/B. Noticed in 18 AAC 62.430, as proposed, that the distinction was made for transporters to only submit the EPA Form 8700-12 Site Identification Form—versus EPA Form 8700-13 A/B. In the state-only year, ADEC should merely require an updated EPA Form 8700-12 Site Identification Form be submitted by any and all types of handlers to ADEC (and to ADEC only) or ADEC should periodically create a simple one or two page questionnaire for generators that can have boxes checked and hand-written lines—something that can be easily read in < 5 minutes—e.g., facility name? EPA RCRA ID#? Best facility contact name, phone number, email address for day-to-day waste compliance issues? Were you an LQG, SQG, VSQG, or non-generator? Were you a planned or unplanned episodic generator? Which one waste was your biggest wastestream? What were all of the RCRA waste codes for the hazardous waste you did generate in 20XX? Did you generate any acute hazardous waste? Did you market on or off-spec used oil off-site? Did you burn any used oil for energy recovery on-site? Did you sample and have a laboratory analyze any hazardous waste in year 20XX? How much hazardous waste (estimate) were you accumulating on-site on Dec 31, 20XX? How many uniform hazardous waste manifests did you use in year 20XX to ship hazardous waste off-site? Did you treat any hazardous waste on-site with or without a permit in year 20XX? Do you have a hazardous waste minimization program in place? Something to this effect; these are but example questions (and quite similar to the EPA Site ID Form)—something short, simple, and to the point without the need for much if any instructions and something useful for state regulators to quickly assess the adequacy of their level of compliance monitoring oversight. No need for a thousand additional GM, WR, and OI Forms painstakingly filled out state-wide in strict conformance with the EPA Form 8700-13 A/B and its 77 pages of instructions—that data can wait another 12 months for the federal biennial report interval and its attendant level of effort.

In 18 AAC 62.330, as proposed, what about small and large quantity generators who have generated quantities of hazardous waste in the reporting year but did not ship it off-site as of January 1 (they were still accumulating it on-site prior to shipment)? Only generators that ship

hazardous waste off-site need to report while those who continue to accumulate it on-site don't have to report? In 18 AAC 62.330, as proposed, what about small and large quantity generators (who are not also permitted TSDFs) that treated hazardous waste on-site in a manner that does not require a permit; e.g., elementary neutralization, totally enclosed treatment facility, or decharacterization by dilution prior to injection in a UIC Class I disposal well (versus shipping it off-site to a TSDF)? Don't need to report either?

Why is 18 AAC 62.330 requiring annual reports be submitted every year to EPA? If ADEC is going to require an annual report be submitted for the even-numbered years (over and above EPA's biennial report for the odd-numbered reporting years), then recommend that it should be required to be submitted to ADEC only rather than to both ADEC and EPA. The agencies can directly exchange submitted information without it being required by regulation to be sent in duplicate to two agencies. Note The Paperwork Reduction Act governs how federal agencies collect information from the public and I am not familiar with it so I ask that that be adequately considered before state regulations are promulgated requiring the submittal of new reports to EPA by a deadline.

What happens before ADEC gets authorized with respect to 18 AAC 62.330(d)—no report is required? What if ADEC doesn't get authorized for several years? As written, it can be inferred that reports are only required after ADEC gets authorized.

ADEC should support EPA in collecting the biennial report so that Alaska's data is as complete and formatted as accurately as possible for the national data collection effort so that Alaska's data can be compared "apples to apples" and "oranges to oranges" to other state's data. Again, if ADEC identifies a need for an annual report in the off-years, it does not have to be the same format as EPA's; tailor it more to Alaska's low population and relevant waste management issues. Note the 2021 Biennial Reporting System data shows that Alaska only generated 0.015% of the waste nationally, only shipped 0.06% of the waste nationally, and only had 33 LGs—0.17% of the LQGs in the nation. Such an annual report does not need to be required by 18 AAC 62 to be on EPA Form 8700-13 A/B nor submitted to EPA annually.

The tremendous distances that hazardous waste must be transported for proper recycling, reclamation, treatment, and disposal (compounded with extreme weather conditions) is the single most unique issue that Alaskan hazardous waste generators face. And the lack of road infrastructure necessitates that a higher than average percentage of hazardous waste generated in Alaska needs to be transported by air and by vessel. And there is simply not enough hazardous waste generated in Alaska to sustain much if any TSDF capacity. Consequently, it is appropriate for EPA and ADEC to acknowledge and provide regulations that facilitate the proper and safe on-site accumulation of hazardous waste for longer durations in Alaska prior to shipment. Yes 40 CFR Part 262 provides for SQGs to accumulate hazardous waste on-site without a permit or interim status for up to 270 days if they have to transport their waste over 200 miles. But what if a generator has to transport their waste over 500 or a 1,000 miles? And has no year-round road? Or has to wait until winter to build another ice road? And go by vessel through Canadian waters? And has to fly in qualified samplers to collect samples for waste characterization? And fly in haz-mat employees to package the waste during pre-transport? What is unacceptable about allowing that SQG 365 days instead of 180 or 270 days to accumulate on-site prior to shipment off-site? And/or an LQG 180 days instead of 90 days? For Alaska, the on-site accumulation time limits are a very real issue that creates stress and needs to be intelligently addressed. It is simply inadequate to say that the accumulation time limit provisions "have always been that way" since they were contrived in 1980. There remain a few substantive standards that can easily be added to counteract the lengthening of the on-site accumulation time limits; e.g., require secondary containment and inspect central accumulation areas at least daily looking for leaks and spills (versus the weekly

documented inspection obligation which requires the inspection of various items). Could also consider adding an administrative requirement for an SQG to notify ADEC verbally and/or in writing within 15 days prior to a 270 day limit being exceeded and an LQG to similarly notify prior to a 90 day limit being exceeded so ADEC can consider its need for closer oversight. And in exchange for this added accumulation time, even drop the 30 day extension request for unforeseen circumstances from the regulations since that required the agency to respond in a timely manner; this notification of extending the on-site accumulation time limit would not require an approval or denial by the agencies. This suggestion would not alter the land disposal restrictions prohibitions on storage in 40 CFR 268.50 and RCRA Section 3004(j).

Permitting, Compliance Monitoring, and Enforcement of large federal facilities consumed a significant portion of the Alaska Hazardous Waste Program's resources in the 1980s and 1990s. Recommend the state retain the decisionmaking ability to inspect federal facilities at whatever frequency it believes is adequate instead of being required (by grant stipulations or federal policy) to inspect federal facilities annually or at another set frequency. In a small program with constrained resources, all that really ensures is that many Alaskan towns and private sector businesses never or rarely ever get inspected.

Don't hesitate to limit inspections to one day or a day and a half at TSDFs and other large facilities that get routinely inspected. Too often in the 1980s and 1990s, we took three days each to annually inspect USAF Elmendorf AFB, USAF Eielson AFB, USAF Shemya AFB, US Army Ft Wainwright, US Army Fort Richardson, USCG Support Center Kodiak, US Navy Adak Naval Air Station, and BP Prudhoe Bay. If we limited those inspections alone to one day each and spot checked certain locations instead of looking at every nook and cranny on-site, then we could have freed up 16 days of inspection resources to inspect smaller facilities that have never been inspected before. When flying to some of these remote large facilities, take the opportunity to perform another inspection at a smaller or more random facility near by.

During inspections, spend some time but not too much time looking at Satellite Accumulation Areas and Universal Waste Accumulation Areas. Facilities typically attempt to manage them systematically (the same) using the same procedure and same interpretation of the regulations; so spot checking four SAAs and UAAs is as representative as looking at every single SAA and UAA on-site. A highly experienced RCRA Inspector will pay more attention to the facility's non-hazardous waste determinations and to its non-hazardous waste management to make sure no hazardous waste is being mis-managed.

Encourage ADEC to be willing to experiment with the underutilized tool of issuing emergency permits per 40 CFR 270.61 when relevant circumstances arise.

Thank you for the opportunity to comment on this proposed rulemaking.

Regards,



Geoffrey S. Kany