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STATE OF ALASKA
ATTORNEY GENERAL'S STATEMENT OF LEGAL AUTHORITY FOR
THE RESOURCE CONSERVATION AND RECOVERY ACT
SUBTITLE-C PROGRAM

Dated X

I hereby certify, pursuant to Section 3006(b) of the Solid Waste Disposal Act, as amended, also referred to as the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6901 *et seq.*), that in my opinion the laws of the State of Alaska provide authority to carry out the RCRA Subtitle C program set forth in the "Program Description" submitted by the Alaska Department of Environmental Conservation (ADEC) to the U.S. Environmental Protection Agency (EPA). The specific authorities, which are contained in lawfully adopted state statutes and regulations on the date of this Statement, include the following.

I. Alaska's Authorities in Statute and Regulation

Alaska's hazardous waste statutes were enacted in 1981 in Chapter 46.03 of the Alaska Statutes and have been variously updated since that date. All citations to state statutes, below, refer to the state statutes as they were revised on the date of this Statement. State hazardous waste regulations implementing state hazardous waste statutes, and adopting federal hazardous waste regulations by reference, became effective ____.

A 1983 Alaska Attorney General Opinion confirmed for ADEC that the state is empowered to adopt hazardous waste regulations that are the same as or broader than the federal regulations, and is prohibited from adopting a regulatory program less stringent than the federal equivalent. 1983 Alaska Op. Att'y Gen. No. 5.

Recently, Alaska adopted, almost verbatim, the federal hazardous waste management regulations. Deviations that are more stringent or broader in scope include certain annual reporting requirements, more specific groundwater monitoring guidance, more detailed corrective action requirements (to reconcile the state hazardous waste program with the state contaminated site program), and allowing electronic waste to be managed as universal waste. These deviations are discussed further below.

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For the sake of efficiency and ease of reference, this Statement's format has been altered from EPA's model format as follows: the Statement's organization is based on the requirements for a state hazardous waste program in 40 C.F.R. Part 271. This format is more straightforward for demonstrating how Alaska law meets federal requirements for program authorization.

Except where noted, Alaska changed federal terms to state terms in adopting the federal regulations by reference. 18 AAC 62.040.

a. ADEC General Regulatory Authorities

The Alaska Legislature grants ADEC broad authority to protect the environment and public health.

In its general duties under AS 44.46.020, 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(a). It 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(b).

In its general powers under AS 46.03.020, ADEC has the power to adopt regulations necessary to carry out the purposes of Chapter 46.03, including regulations providing for handling, transportation, treatment, storage, and disposal of hazardous wastes. AS 46.03.020(10)(H). ADEC may also adopt regulations necessary to implement the policy in AS 46.03.010, which includes controlling pollution to enhance the health, safety, and welfare of the people of the state. AS 46.03.020(10)(G).

These general statutes give ADEC the overarching authority to adopt and carry out the RCRA Subtitle C program.

b. ADEC Specific Hazardous Waste Authorities

ADEC's core hazardous waste statutory authorities are found at AS 46.03.250 – AS 46.03.313. AS 46.03.250 and AS 46.03.260 concern radioactive materials.

AS 46.03.296 makes it unlawful to dispose of hazardous wastes in the state unless (1) the waste has been treated and disposed of in a manner that maximally reduces its harmful qualities and that the department¹ determines is achievable, and (2) the waste is disposed of in a manner

¹ In this Attorney General's Statement, the "department" means the Alaska Department of Environmental Conservation.

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that will ensure the protection of human health, livestock, wildlife, property, and the environment. AS 46.03.296(a). The statute instructs the department to adopt regulations for the treatment, storage, and disposal of hazardous wastes. AS 46.03.296(b).

AS 46.03.299 instructs ADEC to adopt regulations to identify and manage hazardous waste as defined by EPA, as well as hazardous waste that exhibits the characteristic of toxicity, persistence, or carcinogenicity. AS 46.03.299(a). It includes Bevill and Bentsen exemptions, discussed in the Definitions section below. AS 46.03.299(b). The statute instructs ADEC to “take all actions necessary to receive authorization from the administrator of the [EPA] to administer and enforce a hazardous waste program in accordance with [RCRA]. It also specifies certain amounts of hazardous waste and acute hazardous waste (as defined by federal regulation) that are subject to ADEC regulation and specifies that the department may extend coverage. AS 46.03.299(d).

Under AS 46.03.302, a person may not treat, transport, store, or dispose of a hazardous waste, as defined in ADEC regulation, unless that person first secures a permit and submits any reports or manifests that ADEC may require. AS 46.03.302(a). A person who generates a hazardous waste is not required to obtain such a permit unless the person also treats, transports, stores, or disposes of the hazardous waste. AS 46.03.302(b).

AS 46.03.305 requires a person who generates hazardous wastes to submit to ADEC reports or manifests that the department may require for handling the hazardous wastes.

AS 46.03.308 prohibits the transport of hazardous waste unless it is accompanied by the uniform hazardous waste manifest required under 42 U.S.C. § 6922 – 6923 or other applicable federal law.

Under AS 46.03.311, permits, permit applications, records, reports, and information obtained under AS 46.03.302 – 46.03.308 are available to the public, save for those demonstrated to be confidential trade secrets. Confidential information may be transmitted under a continuing restriction of confidentiality with other representatives of the state or United States if (1) the person responsible for furnishing the record is informed at least two weeks before the transmittal, and (2) the information has been acquired by the department under the provisions of AS 46.03.296 – .311. AS 46.03.311(b).

AS 46.03.250 – .313 are specifically referenced in ADEC’s civil and criminal penalty statutes, discussed further below. AS 46.03.760(e); AS 46.03.790.

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Note that AS 46.03.313 instructs ADEC to evaluate and select sites for hazardous waste management facilities in the state, and includes factors to consider when doing so. This statute is interpreted in a separate, state-specific regulation chapter outside of the RCRA subtitle C program, contained in 18 AAC 63. The hazardous waste siting approval is a state-only requirement, and does not conflict with requirements under the RCRA Subtitle C program.

II. Definitions

a. Hazardous Waste

Alaska statute defines “hazardous waste” to mean

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

(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). Unlike at the federal level, Alaska’s definition of hazardous waste does not reference its definition of solid waste *Compare* 42 U.S.C. § 6903(5), (27) *with* AS 46.03.900(9), (26).

AS 46.03.299(a) specifically empowers ADEC to “adopt regulations under AS 44.62 (Administrative Procedure Act) for the identification and management of hazardous waste as defined by the Environmental Protection Agency and hazardous waste that exhibits the characteristic of toxicity, persistence, or carcinogenicity.” The first clause enables ADEC to regulate all hazardous wastes regulated by the United States. The second clause enables ADEC to identify and regulate additional, state-only hazardous wastes beyond those identified by EPA.

b. Bevill and Bentsen Amendments

AS 46.03.299(b) is Alaska’s version of the Bevill and Bentsen amendments in 42 U.S.C. 6982(f) and (m) (respectively), and is narrower and more stringent than its federal counterparts. As 46.03.299(b) exempts from regulation “mining waste and waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy until studies required under 42 U.S.C. 6982(f) and (m) are completed. The department, after

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considering the findings in the reports of these studies, may terminate or amend the exemptions.” EPA generally completed studies required by 42 U.S.C. 6982(f) and (m) between 1988 and 2002, and issued regulatory determinations for Bevill-Bentsen wastes.²

Under AS 46.03.900(14), mining waste in AS 46.03.299(b) means “solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, and including phosphate rock and overburden from the mining of uranium ore.” Part of the Bevill Amendment exempts from regulation, pending EPA study, “[s]olid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.” 42 U.S.C. § 6921(b)(3)(A)(ii). The other parts of the Bevill Amendment exempt “[f]ly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels,” 42 U.S.C. § 6921(b)(3)(A)(i), and “[c]ement kiln dust waste,” 42 U.S.C. § 6921(b)(3)(A)(iii). This means that the part of AS 46.03.299(b) which addresses the Bevill Amendment, i.e. “mining waste,” is narrower than its federal counterpart. It has the exact same scope as 42 U.S.C. § 6921(b)(3)(A)(ii), and does not include the wastes exempted in (i) and (iii) of that subpart.

Under AS 46.03.900(35), waste associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy in AS 46.03.299(b) means:

- (A) waste, including drilling muds, cuttings, hydrocarbons, brine, acid, sand, and emulsions or mixtures of fluids produced from and unique to the operation or maintenance of a well, whether naturally occurring or added for the operation or productivity of the well; and
- (B) waste that is derived intrinsically from primary field operations;

The meaning of the phrase does not include “spent solvents and oils from equipment maintenance activities, discarded chemical products, or fuels.” AS 46.03.900(35). The Bentsen Amendment excludes from regulation, pending EPA study, “drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy.” 42 U.S.C. § 6921(b)(2)(A). Alaska’s statutory definition, therefore, is more narrowly defined than its federal counterpart.

² Congressional Research Service, Background on and Implementation of the Bevill and Bentsen Exclusions in the Resource Conservation and Recovery Act: EPA Authorities to Regulate “Special Wastes” (August 6, 2013), at 1, available at <https://crsreports.congress.gov/product/pdf/R/R43149>.

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c. Additional Key Terms

Alaska statutes do not themselves define several key terms relevant to RCRA-C implementation, including “management,” generators,” and “transporters.” ADEC defines these and other terms by adopting the definitions of 40 C.F.R. § 260.10 by reference in 18 AAC 62.1390. Additionally, ADEC adopts the definitions of 40 C.F.R. § 279.1 by reference in that same provision.

III. Identification and Listing of Hazardous Wastes

State law provides authority to control all hazardous wastes controlled under 40 C.F.R. Part 261, and to adopt a list of hazardous wastes and set of characteristics for identifying hazardous wastes equivalent to those under 40 C.F.R. Part 261.

Federal Authority: 42 U.S.C. § 6921

State Authority: AS 46.03.020, AS 46.03.296, AS 46.03.299, AS 46.03.302, AS 46.03.900

Remarks of the Attorney General

Federal regulation requires that a state program have authority to control all the hazardous wastes controlled under 40 C.F.R. Part 261, and to adopt a list of hazardous wastes and set of characteristics for identifying hazardous wastes equivalent to those under 40 C.F.R. Part 261. 40 C.F.R. § 271.9. ADEC adopts 40 C.F.R. Part 261 by reference in 18 AAC 62, Article 2. ADEC’s authority to do so stems from its general and specific authorities outlined above in Section I, mainly AS 46.03.020, AS 46.03.296, and AS 46.03.299. ADEC’s authority for adopting the general provisions of 40 C.F.R. Part 261, Subpart A also stems from its definitions statute at AS 46.03.900.

Alaska includes an option for managing electronic waste as universal waste. The state defines “electronic waste” as “a device that contains one or more circuit boards or other complex circuitry, including computer components, laptops, central processing units, mice, keyboards, monitors, cellular telephones, audio or video devices, and copy machines; electronic waste includes components, subassemblies, or other parts derived from the disassembly of electronic items. It does not include refrigerators, freezers, stoves, dishwashers, washers, or dryers” 18 AAC 62.1390(c)(2).

In addition to the wastes listed under 40 C.F.R. Part 261.9, electronic waste is exempt from 18 AAC 62.300 - 18 AAC 62.970 (i.e. standard hazardous waste requirements) if managed

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under 18 AAC 62.1100 - 18 AAC 62.1160 (i.e. universal waste). 18 AAC 62.205. This framework is essentially reiterated in 18 AAC 62, Article 11 (Standards for Universal Waste Management) at 18 AAC 62.1110. Electronic waste that is not a characteristic hazardous waste as determined by a toxicity characteristic leaching procedure (TCLP) performed on that specific item or model by the generator or manufacturer, or other documentation provided by the manufacturer and approved by EPA or the department, may be managed as solid waste as set out under 18 AAC 60. 18 AAC 62.1110(b). Additional requirements for handlers of electronic waste as universal waste, including reporting, are located in 18 AAC 62.1135.

IV. Generators of Hazardous Waste

State law provides authority to:

- a. Regulate all generators covered by 40 C.F.R. Part 262, and require new generators to contact the state and obtain an EPA identification number before performing any activity subject to regulation;
- b. Require all generators to comply with reporting and recordkeeping requirements equivalent to those under 40 C.F.R. § 262.40 and 262.41, including record retention for at least 3 years;
- c. Require that generators who accumulate hazardous waste for short periods of time comply with requirements equivalent to 40 C.F.R. § 262.16 or 262.17;
- d. Require that generators comply with requirements equivalent to those for packaging, labeling, marking, and placarding of hazardous waste under 40 C.F.R. § 262.30 to 262.33, and are consistent with relevant U.S. Department of Transportation regulations;
- e. Provide requirements respecting international shipments that are equivalent to those at 40 C.F.R. Part 262, Subpart H, other applicable federal regulations, and exclusion conditions for import or export in 40 C.F.R. Part 261, without replacing EPA or international references with state references;
- f. Require that all generators of hazardous waste who transport (or offer for transport) hazardous waste off-site:
 - i. Use a manifest system with the same form, information, and electronic signature requirements as the federal system;

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- ii. Initiate the manifest and designate the facility to which the waste is to be shipped;
- iii. Ensure that all wastes offered for transportation are accompanied by a manifest form or tracked with an electronic manifest, except shipments subject to 40 CFR 262.20(e) or (f), and shipments by rail or water, as specified in 40 CFR 262.23(c) and (d);
- iv. Investigate instances where manifests have not been returned, and report such instances to the state;
- g. Require, in the case of interstate shipments for which the manifest has not been returned, notification to the facility state and the state where the shipment may have been delivered;
- h. Follow the federal manifest format for paper and electronic manifest forms;
- i. Have standards for generators which are at least as stringent as any amendment to 40 C.F.R. Part 262 promulgated after July 1, 1984.

Federal Authority: 42 U.S.C. § 3001, 3002

State Authority: AS 46.03.020, AS 46.03.296, AS 46.03.299, AS 46.03.305, AS 46.03.311

Remarks of the Attorney General:

Federal regulation requires that a state program have authority to impose the requirements listed above. 40 C.F.R. § 271.10. ADEC fulfills these requirements by adopting 40 C.F.R. Part 262, Subparts A, B, C, D, G, H, K, L, and M by reference in 18 AAC 62, Article 3 pursuant to AS 46.03.020, AS 46.03.296, AS 46.03.299, AS 46.03.305, and AS 46.03.311. These statutes are described above in Section I. The state also adopts an annual report requirement for generators in 18 AAC 62.330, which is more stringent than the federal program before the requirement sunsets according to its terms.

As required by 40 C.F.R. § 271.10(a), the state program regulates all generators covered by 40 C.F.R. Part 262, and requires new generators to contact the state and obtain an EPA identification number before performing any activity subject to regulation. 40 C.F.R. Part 262, Subpart A (General), adopted by reference in 18 AAC 62.301, describes the purpose, scope, and applicability of Part 262.

As required by 40 C.F.R. § 271.10(b), the state program requires all generators to comply with reporting and recordkeeping requirements equivalent to those under 40 C.F.R. § 262.40 and

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262.41, including record retention for at least 3 years. These requirements are found in 40 C.F.R. Part 62, Subpart D, which 18 AAC 62.330 adopts by reference.

As required by 40 C.F.R. § 271.10(c), the state program requires that generators who accumulate hazardous wastes for short periods of time comply with requirements that are equivalent to 40 CFR § 262.16 or .17. The state program adopts these provisions by reference in 18 AAC 62.301 as part of 40 C.F.R. Part 262, Subpart A (General).

As required by 40 C.F.R. § 271.10(d), the state program requires that generators comply with requirements for the packaging, labeling, marking, and placarding of hazardous waste under 40 C.F.R. § 262.30 to 262.33. The state adopts these provisions by reference in 18 AAC 62.321 as part of 40 C.F.R. Part 262, Subpart C (pre-transport requirements applicable to small and large quantity generators).

As required by 40 C.F.R. § 271.10(e), the state program provides requirements respecting international shipments which are equivalent to those at 40 C.F.R. Part 262, Subpart H, other hazardous waste import and export regulations in 40 C.F.R. Parts 260, 262, 263, 264, 265, 266, 267 and 273, and exclusion conditions for export or import in 40 C.F.R. Part 261 to the extent that state has adopted such exclusion conditions. The state adopts 40 C.F.R. Part 262, Subpart H by reference at 18 AAC 62.350. The state adopts exclusion conditions for export or import from 40 C.F.R. 261.4 in 18 AAC 62.201. The state adopts hazardous waste import and export regulations in 40 C.F.R. Parts 260, 262, 263, 264, 265, 266, 267 and 273 in 18 AAC 62. In all of these adoptions by reference, the state does not replace EPA or international references with state references.

As required by 40 C.F.R. § 271.10(f), the state program requires all generators of hazardous waste who transport (or offer for transport) such hazardous waste off-site comply with manifest requirements. The state adopts 40 C.F.R. Part 262, Subpart B (manifest requirements applicable to small and large quantity generators) by reference in 18 AAC 62.311. In compliance with 40 C.F.R. § 271.10(f)(1), the state does not require any manifest forms or signatures other than federal requirements for any hazardous waste shipments.

As required by 40 C.F.R. § 271.10(g), in the case of interstate shipments for which the manifest has not been returned, the state program provides for notification to the state in which the facility is located and the state in which the shipment may have been delivered.

Commented [JJ51]: Lindsay: We have a draft answer to this question but I have left this paragraph open as we figure it out. I have asked Washington State how they meet this requirement.

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As required by 40 C.F.R. § 271.10(h), the state program follows the federal manifest format for paper and electronic forms, including the federal electronic manifest form and instructions as obtained from the Electronic Manifest System described in 40 C.F.R. § 260.10. The state describes its use of these federal forms in its program description. As described above, the state adopts 40 C.F.R. Part 262, Subpart B (manifest requirements applicable to small and large quantity generators) by reference in 18 AAC 62.311. It also adopts the Electronic Manifest System definition (located in 40 C.F.R. § 260.10) by reference in 18 AAC 62.1390.

As required by 40 C.F.R. § 271.10(i), the state program has standards for generators which are at least as stringent as any amendment to 40 C.F.R. Part 262 promulgated after July 1, 1984. The state adopts 40 C.F.R. Part 262, Subparts A, B, C, D, G, H, K, L, and M, revised as of July 12, 2022, by reference in 18 AAC 62, Article 3.

V. Transporters of Hazardous Waste

State law provides authority to:

- a. Regulate all transporters covered by 40 C.F.R. Part 263. New transporters are required to contact the state and obtain an EPA identification number before accepting hazardous waste for transport;
- b. Require all transporters to comply with reporting and recordkeeping requirements equivalent to those under 40 C.F.R. § 263.22;
- c. Shipment Requirements:
 - i. Require the transporter to carry manifest forms during transport;
 - ii. Require the transporter deliver hazardous waste only to the facility designated on the manifest;
 - iii. Provide requirements for shipments by rail or water equivalent to those under 40 C.F.R. § 263.20(e) and (f);
 - iv. For exports of hazardous waste, require that the transporter refuse acceptance of the hazardous waste for export if the exporter has not provided required documents;
- d. For hazardous wastes that are discharged in transit, require that transporters notify appropriate agencies of such discharges and clean up such wastes, or take action so that such wastes do not present a hazard to human health or the environment;

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- e. Have standards for transporters that are at least as stringent as any amendment to 40 C.F.R. Part 263 which is promulgated after July 1, 1984.

Federal Authority: 42 U.S.C. § 6923

State Authority: AS 46.03.020, AS 46.03.299, AS 46.03.302, AS 46.03.308

Remarks of the Attorney General:

Federal regulation requires that a state program have authority to impose the requirements listed above. 40 C.F.R. § 271.11. The state fulfills these requirements by adopting 40 C.F.R. Part 263, Subparts A, B, and C by reference in 18 AAC 62, Article 4 pursuant to 46.03.020, AS 46.03.299, AS 46.03.302, and AS 46.03.308. These statutes are described above in Section I. The state also adopts an annual report requirement for transporters in 18 AAC 62.430, which is more stringent than the federal program.

As required by 40 C.F.R. § 271.11(a), the state program regulates all transporters covered by 40 C.F.R. Part 263. The state adopts 40 C.F.R. Part 263 by reference in 18 AAC 62, Article 4. As also required by 40 C.F.R. § 271.11(a), new transporters are required to contact the state and obtain an EPA identification number before accepting hazardous waste for transport. Not doing so would be in violation of 18 AAC 62.401, which adopts by reference 40 C.F.R. § 263.11³ as part of 40 C.F.R. Part 263, Subpart A.

As required by 40 C.F.R. § 271.11(b), the state program requires all transporters to comply with reporting and recordkeeping requirements equivalent to those under 40 C.F.R. § 263.22. The state adopts this provision by reference as part of 40 C.F.R. Part 263, Subpart B in 18 AAC 62.411. In compliance with 40 C.F.R. § 271.11(b), by adopting 40 C.F.R. § 263.22, the state requires the transporters keep these records at least three years.

As required by 40 C.F.R. § 271.11(c), the state program (1) requires the transporter to carry manifest forms during transport, (2) requires the transporter to deliver hazardous waste only to the facility designated on the manifest, (3) provide requirements for shipments by rail or water equivalent to those under 40 C.F.R. § 263.20(e) and (f), and (4) requires the transporter to refuse to accept hazardous waste for export if the exporter has not provided required documents, and to carry a movement document and appropriately report to the manifest system. The state does so by adopting 40 C.F.R. Part 263, Subpart B by reference in 18 AAC 62.411.

³ “A transporter must not transport hazardous wastes without having received an EPA identification number[.]”

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As required by 40 C.F.R. § 271.11(d), for hazardous wastes that are discharged in transit, the state program requires that transporters notify appropriate agencies of such discharges and clean up such wastes, or take action so that such wastes do not present a hazard to human health or the environment. These requirements must be equivalent to those found at 40 C.F.R. § 263.30 and .31. The state adopts these provisions by reference in 18 AAC 62.421.

As required by 40 C.F.R. § 271.11(e), the state program has standards for transporters that are at least as stringent as any amendment to 40 C.F.R. Part 263 promulgated after July 1, 1984. The state adopts 40 C.F.R. Part 263, Subparts A, B, and C, revised as of July 1, 2022 by reference in 18 AAC 62, Article 4.

VI. Hazardous Waste Management Facilities

State law provides authority to have standards for hazardous waste management facilities that are equivalent to 40 C.F.R. Parts 264 and 266, including:

- a. Technical standards for tanks, containers, waste piles, incineration, chemical, physical and biological treatment facilities, surface impoundments, landfills, and land treatment facilities;
- b. Financial responsibility during facility operation;
- c. Preparedness for and prevention of discharges or releases of hazardous waste; contingency plans and emergency procedures to be followed in the event of a discharge or release of hazardous waste;
- d. Closure and post-closure requirements including financial requirements to ensure that money will be available for closure and post-closure monitoring and maintenance;
- e. Groundwater monitoring;
- f. Security to prevent unauthorized access to the facility;
- g. Facility personnel training;
- h. Inspections, monitoring, recordkeeping, and reporting;
- i. Compliance with the manifest system;
- j. Other requirements to the extent that they are included in 40 CFR parts 264 and 266; and
- k. Requirements for owners or operators of facilities to pay user fees to EPA to recover EPA's costs related to the development and operation of an electronic hazardous waste manifest system.

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Federal Authority: 42 U.S.C. § 6924

State Authority: AS 44.46.020, AS 46.03.020, AS 46.03.296, AS 46.03.299, AS 46.03.302, AS 46.03.710, AS 46.03.830, AS 46.03.833

Remarks of the Attorney General:

Federal regulation requires that a state program have authority to impose the requirements listed above. 40 C.F.R. § 271.12. The state fulfills these requirements by adopting 40 C.F.R. Part 264, Subparts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, S, W, X, AA, BB, CC, DD, EE, FF, and appendices by reference in 18 AAC 62, Article 5, and by adopting 40 C.F.R. Part 266, Subparts C, F, G, H, M, N, P by reference in 18 AAC 62, Article 7.⁴

The state adopts these provisions by reference mainly pursuant to AS 44.46.020, AS 46.03.020, AS 46.03.296, AS 46.03.299, AS 46.03.302, which are described above in Section I.

The state also relies in part on AS 46.03.710 for regulations related to releases from solid waste management units, state-specific procedures for corrective action, and closure and post-closure requirements. AS 46.03.710 states in its entirety:

A person may not pollute or add to the pollution of the air, land, subsurface land, or water of the state.

In Chapter AS 46.03, “pollution” means “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(20).

For adopting by reference regulations related to financial responsibility, discussed below in b., the state relies in part on AS 46.03.830 and AS 46.03.833 for authority. Under AS 46.03.830 a person may not operate a “hazardous waste disposal site unless the person has furnished proof to [ADEC] of financial ability to control a hazardous waste that will be used in, produced by, or disposed of at the facility or the site.” AS 46.03.830(a). Such required proof

⁴ Note that the state also adopts 40 C.F.R. Part 265, Subparts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, W, AA, BB, CC, DD, EE, FF, and appendices by reference in 18 AAC 62, Article 6.

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includes “responsibility for the hazardous waste after the facility or site is closed, and may be demonstrated by self-insurance, insurance, surety, or guarantee, under regulations adopted by the department.” *Id.* Acceptance of proof of financial responsibility expires one year from its issuance for self-insurance, on the effective date of a change, or on the expiration or cancellation date. AS 46.03.830(b). AS 46.03.833 sets forth procedures for compliance with these requirements, including that application for renewal must be filed at least 90 days before the date of expiration, and that ADEC, after notice and hearing, may revoke acceptance. AS 46.03.833.

a. Technical Standards

As required by 40 C.F.R. § 271.12(a), the state has technical standards for tanks, containers, waste piles, incineration, chemical, physical and biological treatment facilities, surface impoundments, landfills, and land treatment facilities that are equivalent to 40 C.F.R. Parts 264 and 266. The state adopts technical standards for these units by reference in 18 AAC 62, Articles 5 and 7.

b. Financial Responsibility

As required by 40 C.F.R. § 271.12(b), the state has standards for financial responsibility during facility operation that are equivalent to 40 C.F.R. Parts 264 and 266. The state adopts 40 C.F.R. Part 264, Subpart H (financial requirements) by reference in 18 AAC 62.535.

c. Preparedness and Prevention; Contingency Plans and Emergency Procedures

As required by 40 C.F.R. § 271.12(c), the state has standards for preparedness for and prevention of discharges or releases of hazardous waste, as well as contingency plans and emergency procedures in the event of a discharge or release of hazardous waste. The state adopts 40 C.F.R. Part 265, Subpart C (preparedness and prevention) by reference in 18 AAC 62.512, and the state adopts 40 C.F.R. Part 264, Subpart D (contingency plan and emergency procedures) by reference in 18 AAC 62.515.

d. Closure and Post-Closure Requirements

As required by 40 C.F.R. § 271.12(d), the state has standards for closure and post-closure requirements including financial requirements to ensure that money will be available for closure and post-closure monitoring and maintenance. The state adopts 40 C.F.R. Part 264, Subpart G (closure and post-closure) by reference in 18 AAC 62.530. As mentioned above, the state also adopts 40 C.F.R. Part 264, Subpart H (financial requirements) by reference in 18 AAC 62.535.

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For releases of hazardous wastes, Alaska adds more stringent measures for closure and corrective action to reconcile its hazardous waste regulations with its contaminated sites regulations. When a release from a solid waste management unit is identified, in addition to complying with the requirements of 40 C.F.R. Part 264, Subpart F (releases from solid waste management units), adopted by reference in 18 AAC 62.525, the owner or operator must also comply with the requirements of 18 AAC 75.300 – .396 (discharge reporting, cleanup, and disposal of oil and other hazardous substances). 18 AAC 62.527.

In addition to the closure standards in 40 C.F.R. Part 264, Subpart G (closure and post-closure), adopted by reference in 18 AAC 62.530, where applicable, closure under 18 AAC 75 or 18 AAC 78 must be completed in the corrective action process. 18 AAC 62.532. Where soil or groundwater cleanup standards differ between 18 AAC 62 and 18 AAC 75, the applicable standard is the most stringent of those standards unless otherwise approved by the department. 18 AAC 62.532.

e. Groundwater Monitoring

As required by 40 C.F.R. § 271.12(e), the state has standards for groundwater monitoring at hazardous waste management facilities. The state adopts 40 C.F.R. Part 264, Subpart F (releases from solid waste management units), which includes provisions for groundwater monitoring, by reference in 18 AAC 62.525.

Alaska adds more stringent requirements for groundwater monitoring than the federal program, and specifically adopts certain EPA groundwater monitoring guidance in regulation by reference. The state specifies that statistical method selected for groundwater analysis must be conducted separately for each constituent in each well, and the statistical analyses under each method must be developed in consideration of EPA's *Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities - Unified Guidance* (EPA 530-F-09-007, March 2009), adopted by reference, unless an alternative approach is approved by the department, using the performance standards in 40 C.F.R. 264.97(i). 18 AAC 62.525(b).

f. Security

As required by 40 C.F.R. § 271.12(f), the state has standards for security to prevent unauthorized access to a hazardous waste management facility. The state adopts 40 C.F.R. § 264.14 (security) by reference as part of 40 C.F.R. Part 264, Subpart B in 18 AAC 62.505.

g. Facility Personnel Training

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As required by 40 C.F.R. § 271.12(g), the state has standards for facility personnel training at hazardous waste management facilities. The state adopts 40 C.F.R. § 264.16 (personnel training) by reference as part of 40 C.F.R. Part 264, Subpart B in 18 AAC 62.505.

h. Inspections, Recordkeeping, and Reporting

As required by 40 C.F.R. § 271.12(h), the state has standards for inspections, monitoring, recordkeeping, and reporting. It does so with federal requirements adopted by reference throughout 18 AAC 62, Articles 5 and 7. Per its program description, Alaska will receive electronic documents, and therefore includes the substantive requirements of 40 C.F.R. Part 3 (electronic reporting) in its program.

i. Manifest System

As required by 40 C.F.R. § 271.12(i), the state requires compliance with the manifest system, including the requirement that facility owners or operators return a signed copy of the manifest (1) to the generator, (2) to EPA's e-manifest system, and (3) after listing the relevant consent number, matched to the relevant list number, to EPA using allowable methods. The state adopts 40 C.F.R. Part 264, Subpart E (manifest system, recordkeeping, and reporting) by reference in 18 AAC 62.520.

Alaska includes a more stringent reporting requirement. Notwithstanding 40 C.F.R. § 264.75, the owner or operator must complete and submit EPA Form 8700-13 A/B to the department and EPA not later than March 1 of each year. 18 AAC 62.520(b). The form must cover activities during the previous year. *Id.*

j. Other Requirements

As required by 40 C.F.R. § 271.12(j), the state has other requirements for hazardous waste management facilities to the extent they are included in 40 C.F.R. Part 264 and 266. The state adopts 40 C.F.R. Part 264, Subparts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, S, W, X, AA, BB, CC, DD, EE, FF, and appendices by reference in 18 AAC 62, Article 5, and by adopting 40 C.F.R. Part 266, Subparts C, F, G, H, M, N, P by reference in 18 AAC 62, Article 7.

k. User Fees to EPA

As required by 40 C.F.R. § 271.12(k), the state has requirements for owners or operators of facilities to pay user fees to EPA to recover EPA's costs related to the development and operation of an electronic hazardous waste manifest system, in the amounts specified by the user fee methodology included in subpart FF of 40 CFR parts 264 and 265, for all paper and

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electronic manifests submitted to the e-Manifest system. The state adopts 40 C.F.R. Part 264, Subpart FF (fees for the electronic hazardous waste manifest program) by reference in 18 AAC 62.595.

VII. Permits and Permit Applications

State law provides authority to:

- a. Require permits for owners and operators of all hazardous waste management facilities that are required to obtain a permit under 40 C.F.R. Part 270, prohibit the operation of any hazardous waste management facility without such a permit, and authorize interim status with standards at least as stringent as 40 C.F.R. Part 265;
- b. Require all new hazardous waste management facilities to contact the state and obtain an EPA identification number before commencing treatment, storage, or disposal of hazardous waste;
- c. Require compliance in all permits issued with the standards adopted by the state under 40 C.F.R. § 271.12;
- d. Require that all permits issued under state law prior to the date of approval of final authorization be reviewed by the state director and modified or revoked and reissued to require compliance with the requirements of 40 C.F.R. Part 271.

Federal Authority: 42 U.S.C. § 6925, 6974

State Authority: AS 46.03.020, AS 46.03.296, AS 46.03.299, AS 46.03.302, AS 46.03.313, AS 46.03.830

Remarks of the Attorney General:

Federal regulation requires that a state program have authority to impose the requirements listed above. 40 C.F.R. § 271.13. The state fulfills these requirements by adopting 40 C.F.R. Part 270, Subparts A, B, C, D, E, F, G, H, I, and J by reference in 18 AAC 62, Article 10. The state also adopts 40 C.F.R. Part 124, Subparts A, B, and G, except for 40 C.F.R. § 124.19 and 124.20, by reference in 18 AAC 62.1020.

Alaska includes a more stringent facility siting requirement. For new facilities, not less than 365 days before the construction of a facility requiring a permit under this chapter, the owner or operator must initiate the requirements of 18 AAC 63. 18 AAC 62.1010. That chapter,

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18 AAC 63, implements the state statutory siting approval requirement in AS 46.03.313. These requirements do not conflict with RCRA Subtitle C program requirements.

Alaska does not assert permitting authority over Indian country in Alaska or in Denali National Park and Preserve.⁵

As required by 40 C.F.R. § 271.13(a), the state requires permits for owners and operators of all hazardous waste management facilities that are required to obtain a permit under 40 C.F.R. Part 270, prohibits the operation of any hazardous waste management facility without such a permit, and authorizes interim status with standards at least as stringent as 40 C.F.R. Part 265. The state adopts 40 C.F.R. Part 270, Subpart A (general) by reference in 18 AAC 62.1000. It also adopts 40 C.F.R. Part 265, Subparts A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, W, AA, BB, CC, DD, EE, FF, and appendices by reference in 18 AAC 62, Article 6.

As required by 40 C.F.R. § 271.13(b), the state requires all new hazardous waste management facilities to contact the state and obtain an EPA identification number before commencing treatment, storage, or disposal of hazardous waste. The state adopts 40 C.F.R. Part 270, Subpart A (general) by reference in 18 AAC 62.1000.

As required by 40 C.F.R. § 271.13(c), the state requires compliance in all permits issued with the standards adopted by the state under 40 C.F.R. § 271.12. The state will do so in each permit, as described in its program description. The state also adopts 40 C.F.R. Part 270, Subpart C (permit conditions) by reference in 18 AAC 62.1040.

40 C.F.R. § 271.13(d) requires that all permits issued under state law prior to the date of approval of final authorization be reviewed by the state director, and modified or revoked and reissued to require compliance with the requirements of this part. Alaska has no hazardous waste permits issued under state law, and will not until it receives final authorization.

VIII. Permitting

As required by 40 C.F.R. § 271.14, state law provides authority to implement the following provisions:

- a. Section 270.1(c)(1)—(Specific inclusions) is adopted by reference in 18 AAC 62.1000 as part of 40 C.F.R. Part 270, Subpart A.

⁵ State authority is excluded from Denali National Park and Preserve pursuant to Alaska Statehood Act §11. That section gives the United States exclusive jurisdiction over the Denali National Park and Preserve.

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- b. Section 270.4—(Effect of permit) is adopted by reference in 18 AAC 62.1000 as part of 40 C.F.R. Part 270, Subpart A.
- c. Section 270.5—(Noncompliance reporting) is adopted by reference in 18 AAC 62.1000 as part of 40 C.F.R. Part 270, Subpart A.
- d. Section 270.10—(Application for a permit) is adopted by reference in 18 AAC 62.1030 as part of 40 C.F.R. Part 270, Subpart B.
- e. Section 270.11—(Signatories) is adopted by reference in 18 AAC 62.1030 as part of 40 C.F.R. Part 270, Subpart B.
- f. Section 270.12—(Confidential information) is adopted by reference in 18 AAC 62.1030 as part of 40 C.F.R. Part 270, Subpart B.
- g. Section 270.13—(Contents of part A) is adopted by reference in 18 AAC 62.1030 as part of 40 C.F.R. Part 270, Subpart B.
- h. Sections 270.14 through 270.29—(Contents of part B) is adopted by reference in 18 AAC 62.1030 as part of 40 C.F.R. Part 270, Subpart B.
- i. Section 270.30—(Applicable permit conditions) is adopted by reference in 18 AAC 62.1040 as part of 40 C.F.R. Part 270, Subpart C.
- j. Section 270.31—(Monitoring requirements) is adopted by reference in 18 AAC 62.1040 as part of 40 C.F.R. Part 270, Subpart C.
- k. Section 270.32—(Establishing permit conditions) is adopted by reference in 18 AAC 62.1040 as part of 40 C.F.R. Part 270, Subpart C.
- l. Section 270.33—(Schedule of compliance) is adopted by reference in 18 AAC 62.1040 as part of 40 C.F.R. Part 270, Subpart C.
- m. Section 270.40—(Permit transfer) is adopted by reference in 18 AAC 62.1050 as part of 40 C.F.R. Part 270, Subpart D.
- n. Section 270.41—(Permit modification) is adopted by reference in 18 AAC 62.1050 as part of 40 C.F.R. Part 270, Subpart D.
- o. Section 270.43—(Permit termination) is adopted by reference in 18 AAC 62.1050 as part of 40 C.F.R. Part 270, Subpart D.
- p. Section 270.50—(Duration) is adopted by reference in 18 AAC 62.1060 as part of 40 C.F.R. Part 270, Subpart E.

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- q. Section 270.60—(Permit by rule) is adopted by reference in 18 AAC 62.1070 as part of 40 C.F.R. Part 270, Subpart F.
- r. Section 270.61—(Emergency permits) is adopted by reference in 18 AAC 62.1070 as part of 40 C.F.R. Part 270, Subpart F.
- s. Section 270.64—(Interim permits for UIC wells) is adopted by reference in 18 AAC 62.1070 as part of 40 C.F.R. Part 270, Subpart F.
- t. Section 124.3(a)—(Application for a permit) is adopted by reference in 18 AAC 62.1020 as part of 40 C.F.R. Part 124, Subpart A.
- u. Section 124.5(a), (c), (d)—(Modification of permits) is adopted by reference in 18 AAC 62.1020 as part of 40 C.F.R. Part 124, Subpart A.
- v. Section 124.6(a), (d), and (e)—(Draft permit) is adopted by reference in 18 AAC 62.1020 as part of 40 C.F.R. Part 124, Subpart A.
- w. Section 124.8—(Fact sheets) is adopted by reference in 18 AAC 62.1020 as part of 40 C.F.R. Part 124, Subpart A.
- x. Section 124.10(a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e)—(Public notice) is adopted by reference in 18 AAC 62.1020 as part of 40 C.F.R. Part 124, Subpart A.
- y. Section 124.11—(Public comments and requests for hearings) is adopted by reference in 18 AAC 62.1020 as part of 40 C.F.R. Part 124, Subpart A.
- z. Section 124.12(a)—(Public hearings) is adopted by reference in 18 AAC 62.1020 as part of 40 C.F.R. Part 124, Subpart A.
- aa. Section 124.17(a) and (c)—(Response to comments) is adopted by reference in 18 AAC 62.1020 as part of 40 C.F.R. Part 124, Subpart A.

IX. Compliance Evaluation Programs

State law provides authority to:

- a. Receive, evaluate, retain, and investigate for possible enforcement all notices and reports required of permittees and other regulated person (and for investigation for possible enforcement of failure to submit these notices and reports);
- b. Inspect and surveil to determine, independent of information supplied by regulated persons, compliance or noncompliance with program requirements, including:

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- i. Make comprehensive surveys of facilities and activities subject to state authority to identify persons subject to regulation who have failed to comply with program requirements, and make such information available to EPA upon request;
 - ii. Periodically inspect facilities and activities subject to regulation to determine compliance or noncompliance, verify the accuracy of information submitted, and verify the accuracy of sampling, monitoring, and other methods;
 - iii. Investigate information obtained regarding violations of program requirements;
 - iv. Receive and ensure proper consideration of information submitted by the public about violations, including making available information on reporting procedures;
- c. Enter any site or premises subject to regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor, or otherwise investigate compliance;
 - d. Investigate and inspect, take samples, and gather information in a manner that will produce evidence admissible in an enforcement proceeding or in court.

Federal Authority: 42 U.S.C. § 6927

State Authority: AS 46.03.020(6), (7); AS 46.03.860

Remarks of the Attorney General:

Federal regulation requires that a state have authority for the elements of a compliance evaluation program listed above, including authority to inspect and investigate facilities and documents to evaluate compliance with the hazardous waste program. 40 C.F.R. § 271.15.

Under its general powers, ADEC may at reasonable times, 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 ADEC regulation. AS 46.03.020(6). Additionally, ADEC holds the power to conduct investigations, hold hearings, and compel the attendance of witnesses and the production of

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accounts, books, and documents by the issuance of a subpoena.⁶ AS 46.03.020(7). These powers give ADEC the authority needed for the required compliance evaluation tools listed above.

To enter property, Alaska law requires either consent or a warrant. ADEC policy is to attempt to obtain access to a facility or site by consent. If consent cannot be obtained, ADEC can obtain an administrative search warrant under AS 46.03.860 to validate its statutory right to enter. States whose law requires a search warrant before entry sufficiently conform with the requirement that states have authority to enter and investigate compliance. 40 C.F.R. § 271.15(c). The Alaska Constitution is more protective of personal privacy than the U.S. Constitution. Its version of the Fourth Amendment protects “other property” in addition to “persons, houses, papers, and effects” from unreasonable searches and seizures.⁷ The Alaska Constitution also contains an express right to privacy,⁸ unlike the U.S. Constitution.

In ADEC permits, the permittee also agrees to consent to ADEC inspector entry. Thus, if a permittee denies consent to enter, then the permittee has violated their permit, which forms a basis for a warrant application. ADEC’s Enforcement Manual describe ADEC practices and procedures for entry and inspection, which include presenting credentials whether or not identification is requested.⁹

X. Enforcement Authority

State law provides authority to:

- a. Abate violations of any aspect of the hazardous waste program;
- b. Apply sanctions to violations, including the following:
 - i. Injunctive relief, without the necessity of a prior revocation of the permit;
 - ii. Civil penalties;
 - iii. Criminal penalties for criminally negligent violations; and
 - iv. Criminal penalties against persons who with criminal negligence makes a false statement or representation in an application, label, manifest, record,

⁶ Those subpoenas can be enforced in court through contempt proceedings. AS 44.62.590(b); Alaska Civil Rule 45(g).

⁷ Compare Alaska Const. art 1, § 14, with U.S. Const. amend. IV.

⁸ Alaska Const. art. 1, § 22.

⁹ ADEC Compliance and Enforcement Manual (May 17, 2016), at 3-2.

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report, permit, or other document filed, maintained, or used for purposes of compliance with laws or regulation applicable to hazardous waste.

- c. Apply maximum civil and criminal penalties which meet the required amounts under 40 C.F.R. § 271.16, and which represent an actual and substantial economic deterrent to the violations for which they are assessed. Each day of continuing violation is a separate offense for which civil and criminal penalties may be obtained.

Federal Authority: 42 U.S.C. § 6928

State Authority: Civil: AS 46.03.760(e), AS 46.03.765, AS 46.03.810, AS 46.03.820

Criminal: AS 46.03.790, AS 12.55.035, AS 12.55.135

Remarks of the Attorney General:

As required by 40 C.F.R. § 271.16, ADEC holds the authority to enforce an authorized RCRA-C program. Its enforcement authority takes three main forms: civil injunctive relief, civil damages, and criminal enforcement.

a. Criminal Enforcement

Federal regulation requires that a state have authority to obtain criminal remedies against any person who knowingly transports any hazardous waste to an unpermitted facility; who treats, stores, or disposes of hazardous waste without a permit; who knowingly transports, treats, stores, disposes, recycles, causes to be transported, or otherwise handles any used oil in violation of standards for management of such used oil; or who makes any false statement or representation in any document filed, maintained, or used for purposes of program compliance (including for used oil). 40 C.F.R. § 271.16(a)(3)(ii). Criminal fines must be recoverable in at least the amount of \$10,000 per day for each violation, and imprisonment for at least six months must be available. *Id.* The maximum criminal fines must be assessable for each instance of violation, and if the violation is continuous, must be assessable to the maximum amount for each day of violation. 40 C.F.R. § 271.16(b)(1). The degree of knowledge or intent required under state law for establishing violations cannot be greater than that required when the United States brings an action. 40 C.F.R. § 271.16(b)(2). ADEC's criminal authorities exceed these minimum requirements.

Under AS 46.03.790, a person is guilty of a Class A misdemeanor if, with criminal negligence, they violate ADEC statutes, regulation, orders, permits, approvals, acceptances, or terms or conditions of a permit, approval, or acceptance issued by ADEC under AS Chapter

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46.03, which includes the hazardous waste program. AS 46.03.790(a)(1). It is also a Class A misdemeanor for a person, with criminal negligence, to make a false statement or representation in any document filed, maintained, or used for purposes of compliance with state hazardous waste statutes or regulations. AS 46.03.790(a)(3).

Each day of a violation is considered a separate violation. AS 46.03.790(c). Upon conviction of a Class A misdemeanor, Alaska law provides for a fine of up to \$25,000 for an individual or \$500,000 for an organization. AS 12.55.035(b)(5), (c)(1)(B). For an organization, the court may impose a larger fine representing three times the pecuniary gain enjoyed or sought by the defendant, or the loss caused (or sought to be caused) by the defendant to another. AS 12.55.035(c)(2), (3). Upon conviction of a Class A misdemeanor, a person may be sentenced to a definite term of imprisonment of not more than one year. AS 12.55.135(a).

When ADEC pursues criminal penalties under Alaska hazardous waste law, the knowledge or intent required is “criminal negligence,” AS 46.03.790(a), defined as when a person fails to perceive a substantial and unjustifiable risk, AS 11.81.900(a)(4). This is a lower degree of knowledge or intent than the “knowingly” scienter that the United States must provide when it brings a criminal enforcement action, *see* 42 U.S.C. § 6928(d)–(f), and so Alaska law exceeds the minimum requirement.

b. Civil Injunctive Relief

Federal regulation requires that a state have authority to restrain any person by order or suit from engaging in authorized activity which is endangering or causing damage to public health or the environment. 40 C.F.R. § 271.16(a)(1) (noting that examples include an administrative cease and desist order, or the ability to seek a temporary restraining order). It also requires that a state have authority to sue to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without needing a prior revocation of the permit. 40 C.F.R. § 271.16(a)(2).

ADEC meets these requirements with nuisance abatement authority, administrative emergency powers, and temporary, preliminary, and permanent injunction authority.

Under AS 46.03.810, a person is guilty of creating or maintaining a nuisance if they place anywhere within 200 feet of a public highway, or anywhere under their ownership or control, any matter or thing that would in any way endanger the health of the community. AS 46.03.810.

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A person who neglects or refuses to abate the nuisance upon order of an ADEC officer is guilty of a misdemeanor and liable for damages for the expense of abating the nuisance.

Under AS 46.03.820, ADEC's Commissioner can order a person to discontinue activity that presents an imminent or present danger to public health or would be likely to result in irreversible damage to the environment. Upon receipt of such an order, the person must immediately discontinue the activity, even if the person exercises their right to a hearing to challenge the basis for the order. AS 46.03.820(a). The Attorney General can enforce compliance with the order through court action. AS 46.03.820(d).

In addition, under AS 46.03.765, Alaska courts have jurisdiction to enjoin a violation of Alaska hazardous waste statutes, regulations, orders, permits, approvals, acceptances, or terms or conditions of a permit, approval, or acceptance issued by ADEC under the hazardous waste program. In such an action, ADEC can request temporary or preliminary relief "upon a showing of an imminent threat of continued violation, and probable success on the merits." *Id.* There is no requirement that ADEC first revoke a permit, or exhaust any other administrative enforcement actions, before seeking civil injunctive relief. This authority also satisfies the requirement that a state have authority to enjoin any threatened or continuing violation of requirements in certain enforceable documents, and compel compliance. 40 C.F.R. § 271.16(e)(1).

c. Civil Damages

Federal regulation requires that a state have authority to access or sue to recover in court civil penalties for any program violation in the amount of at least \$10,000 per day. 40 C.F.R. § 271.16(a)(3). The maximum civil penalty must be assessable for each instance of violation, and if the violation is continuous, must be assessable to the maximum amount for each day of violation. 40 C.F.R. § 271.16(b)(1). The burden of proof required under state law for establishing violations cannot be greater than that required when the United States brings an action. 40 C.F.R. § 271.16(b)(2). ADEC does not possess administrative penalty authority for its RCRA-C program,¹⁰ but it has the authority to recover penalties in court.

Under AS 46.03.760(e), ADEC can bring suit to recover civil damages for violations of Alaska hazardous waste statutes, regulations, orders, permits, approvals, acceptances, or terms or

¹⁰ *C.f. Akiak Native Cmty. v. United States*, 625 F.3d 1162, 1171 (9th Cir. 2010) ("There is no requirement in the [Clean Water Act] or its regulations that state officials have the authority to impose an administrative penalty . . . Since Alaska law enables the State to sue permit violators, there is no reason to conclude that Alaska lacks adequate enforcement remedies.").

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conditions of a permit, approval, or acceptance issued by ADEC under the hazardous waste program.¹¹ Such damages must be not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$10,000 for each subsequent day of violation. *Id.* Unlike in the realm of criminal enforcement, ADEC need not prove a particular mental state in order to recover civil damages. Such damages can reflect several factors: reasonable compensation for environmental harm; ADEC's response costs; economic savings from the violations; and the need for an enhanced civil penalty to deter future non-compliance. *Id.* This authority also satisfies the requirement that a state have authority to sue to recover civil penalties for violations of requirements in certain enforceable documents. 40 C.F.R. § 271.16(e)(2).

ADEC also has various other administrative enforcement mechanisms available to it, such as Compliance Letters, Notices of Violation, Settlements, and Compliance Orders by Consent. These are described in the Program Description. While ADEC often uses these mechanisms as a first response to certain violations, there is no requirement in state law that ADEC first exhaust such mechanisms before seeking civil or criminal penalties or injunctive relief, as described above. Nor is ADEC required to revoke a violator's permit before pursuing civil and criminal remedies.

ADEC's enforcement authority includes the power to take legal action against sister state agencies. Alaska Constitution Art. III, Sec. 16; *see, e.g., Legislative Council v. Knowles*, 988 P.2d 604, 609 n. 22 (Alaska 1999).

d. Public Participation

Federal regulation requires that the state enforcement program provide for public participation, either through intervention of right in any civil action by any affected citizen, or through a combination of ADEC being responsive to citizen complaints, not opposing permissive intervention efforts, and providing public notice and comment for proposed settlements. 40 C.F.R. § 271.16(d)(1)–(2).

Alaska's Rules of Civil Procedure fulfill the requirement in the first option. Under the rules governing Alaska's courts, intervention of right is available when the applicant claims an interest relating to the subject of the action and the applicant is so situated that the disposition of

¹¹ While AS 46.03.760(a), which authorizes a more narrow range of civil damages, also applies to violations of AS 46.03, the reference in AS 46.03.760(e) to Alaska's hazardous waste statutes in AS 46.03.250 – AS 46.03.313 is more specific, and hence supersedes the general application of AS 46.03.760(a).

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the action may impair or impede the applicant's ability to protect that interest. Alaska Rule of Civil Procedure 24(a). This meets the first option for the state to allow intervention of right in any civil action by any citizen having an interest which is or may be affected. 40 C.F.R. § 271.16(d)(1).