

EPA RESPONSE TO COMMENTS
ADMINISTRATIVE ORDER ON CONSENT
ANCHORAGE TERMINAL RESERVE

KATHRYN HART:

Comment: I noticed that the EPA ID # listed on the AOC is different from the EPA ID # listed in the CERCLIS database for this site. Why the discrepancy, and which one is correct?

Response: Both numbers are correct. The AOC is issued by EPA under authority of both RCRA and CERCLA. The EPA ID # AKD 98176 7403 is the RCRA facility identification. To clarify the joint authorities, we have also added the CERCLIS I.D. # to the caption.

DANA OLSON:

Comment Summary: The commenter generally appears concerned about compliance with standards for public process.

General Response: The standards for public process concerning the Administrative Order on Consent (AOC) for the Anchorage Terminal Reserve are defined in the statutes and regulations supporting issuance of the AOC by the U.S. Environmental Protection Agency (EPA). In particular, these standards are defined by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*, and the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 *et seq.* CERCLA Section 122(i)(1), for example, requires publication in the *Federal Register* and an opportunity for public comment on all settlements where a federal agency proposes to compromise costs incurred under CERCLA Section 107. This public process does not apply in the present context because the proposed AOC for the Anchorage Terminal Reserve does not propose to compromise EPA costs incurred under CERCLA Section 107. On the other hand, RCRA Section 7003(d) requires a “reasonable opportunity to comment” on any proposed settlement of any claim arising under RCRA Section 7003. In satisfaction of this public process requirement, EPA published notice that the Anchorage Terminal Reserve AOC would be available for public review and comment, and allowed at least 30 days for such public review.

Comment: I am contesting the public process standard.

Response: The commenter has failed to identify any particular public process standard that he is contesting. The public process standards identified above are established by federal statute and not subject to EPA discretion. CERCLA regulations (40 C.F.R. 300.430(c)) do require that EPA prepare a Community Relations Plan (CRP), based upon community interviews and other relevant information, for purposes including ensuring the public of appropriate opportunities for involvement in site-related decisions. EPA will be preparing such a plan (see AOC para. 57) and welcomes further public input throughout the site investigation and other work under the AOC.

Comment: The state can not waive cost bond requirements under Alaska oil and gas commission.

Response: The Anchorage Terminal Reserve AOC has no relation to waiver of such bond requirements.

Comment: Where is the enforcement of public process standards? Will EPA correct the problem?

Response: If the “problem” concerns state waiver of bond requirements related to oil and gas, the comment is unrelated to the Anchorage Terminal Reserve AOC. Moreover, the commenter does not identify any particular public process standards where enforcement is appropriate.

Comment: Should corporations and commissions created by the state legislature for the apparent purpose of violating “public process” mandated by the state legislature be invalidated or fixed? I ask EPA to make a finding of its interpretation.

Response: Public process requirements established by state law should be interpreted by the state office responsible for ensuring compliance with such requirements. The comment also supplies no specific facts upon which EPA might find that a violation of state law has occurred.

Comment: I have seen several different EPA standards for reviewability—public trust standard, public interest standard, and public involvement standard. Shall EPA apply a different standard and hold me to it?

Response: Again, the context upon which any EPA standard might be applied to the commenter is entirely unclear from the comments provided, but in any event appears unrelated to the Anchorage Terminal Reserve AOC.

Comment: I was denied the standard that Alaska Railroad fuel spill was reviewed under. Is EPA prepared to invalidate the state template standards under the Clean Air Act?

Response: Standards under the Clean Air Act are not at issue for this AOC.

Comment: The public has a right of disclosure to require EPA to provide notice before public comment or I allege EPA process violates 1st amendment free speech & assembly of the people.

Response: As described in the General Response above, the standards for public process related to the Anchorage Terminal Reserve AOC are defined by federal statutes and regulations. EPA is not aware that compliance with these requirements gives rise to any violation of constitutional rights.

FLINT HILLS RESOURCES:

Comment: Existing Data. A significant amount of investigation and remediation data concerning several of the leased properties has already been generated. In order to avoid any duplication of efforts and cost, the commenter believes that this data needs to be carefully considered as part of the investigation process conducted under the AOC.

Response: The AOC (para. 44) requires the Alaska Railroad Corporation (ARRC) to produce a Site Background Report that will review existing environmental data generated in the past. If past data meet the quality assurance/quality control (QA/QC) criteria as described in the AOC and under current EPA QA/QC guidelines, these data will be considered as part of the investigation and decision-making process. For those data that do not meet EPA's QA/QC criteria, the data may still be considered usable for screening purposes to help in the identification of contaminated areas during the remedial investigation.

Comment: Access and Coordination. We understand that Alaska Railroad and/or EPA will need access to FHR properties to allow for investigation and remediation work. FHR is agreeable to providing reasonable access, provided that all individuals agree to adhere to the security, safety and other restrictions applicable to FHR employees and contractors and agree to use best efforts to avoid disruption to FHR's leasehold activities.

Response: EPA appreciates the cooperative spirit indicated by FHR and certainly shares the concern of FHR for the safety and security of all employees and contractors required for implementing the AOC. Reserving all access authorities provided by law, EPA anticipates that any access to FHR leaseholds needed to carry out the AOC work will be arranged through agreements with the Alaska Railroad Corporation that should accommodate FHR's business activities and avoid unnecessary disruptions.

Comment: Copies of Communications/Involvement in Meetings. Upon request by any leaseholder,

EPA and Alaska Railroad should place that party on the copy list for all written and electronic communications concerning specified portions of the Site. This would include routine correspondence, progress reports, interim action planning, workplans, etc. Third parties should also be given notice of and allowed an opportunity to observe conference calls and meetings pertaining to specified leaseholds. Please consider this a request from FHR to be copied on any communications concerning FHR leaseholds.

Response: EPA understands that many parties may be interested in receiving information concerning specified leaseholds located within the Site. EPA will work with the Alaska Railroad Corporation to establish a system for sharing such information as efficiently as possible. This may include the use of mailing lists, email distribution, website postings, and the placement of materials in local information repositories. As work under the AOC goes forward, EPA also expects to share information through technical or public meetings, and will provide advance notice of such meetings as appropriate and in consideration of expressed interests from any party.

Comment: Operable Units. The site is exceedingly large, spanning from Reeve Boulevard to the Port of Anchorage. There is little or no relationship between many of the parcels other than the fact that Alaska Railroad is a common owner of the overall site. We encourage EPA to develop a process- using operable units or some similar approach- to ensure that decisions can be made and resources can be expended and tracked with respect to precise geographic areas.

Response: There are many potential sources at this site, with varying amounts of existing information on the characterization of each source and the contaminants involved. The object of this Order is to fully characterize the sources of contamination and determine the potential threat to human health and the environment. This will be followed by a review of potential remedial options that are protective, implementable, and cost effective. As indicated in the Statement of Work (p.3), investigation work under the AOC may proceed in phases, with a potential for interim actions and remedial actions with associated monitoring. The purpose of creating Operable Units is to better enhance the response action effectiveness by combining areas that are geographically proximal, have similar contaminants, concern like transport media, or use similar treatment technologies. Creation of an Operable Unit should, therefore, improve our ability to be protective, implement remedial technology, and be cost effective. To that end, EPA will consider Operable Units or a similar consolidation of investigation or remedial efforts.

Comment: Interim Actions. FHR would like to receive advance notice and opportunity to participate in the decision-making process regarding interim actions in any FHR leasehold areas.

Response: EPA will endeavor to provide FHR with advance notice and opportunity to comment upon proposed interim actions in any FHR leasehold areas, consistent with CERCLA regulations in the National Contingency Plan, 40 C.F.R. 300.415(n) and the possible need for any time-critical response.

Comment: Work Performed Under State Oversight. To our knowledge, ADEC has historically overseen investigation and remediation activities in the leasehold areas held by FHR. Most or all of the contamination existing on properties held by FHR involves releases of petroleum products. We believe the State contaminated sites program- which specifically addresses petroleum- is well - suited for addressing these types of issues and areas. We would like to see EPA give appropriate consideration, under the CERCLA/RCRA process, for areas that may be successfully investigated and remediated under active oversight from the ADEC contaminated sites program. If an area receives a "No Further Action" or similar determination from ADEC, that area should not be subject to continuing active studies by EPA.

Response: This Order includes the investigation of petroleum product releases. EPA anticipates that ADEC will participate with EPA in the execution of this Order. If past tank closures or remedial measures were conducted under ADEC protocols with adequate confirmation sampling to determine a clean closure, EPA would certainly take that information into account in determining whether any further action is required for that particular source in question.