Alaska Oil and Gas Association

AOGA

121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114
Kara Moriarty, President/CEO

AOGA Testimony

HB 322 – House Resources Committee

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Co-Chair Josephson, Co-Chair Tarr, members of the Committee, thank you for the opportunity to testify on and share our concerns with HB 322. For the record, my name is Kara Moriarty and I am the President/CEO of the Alaska Oil & Gas Association, commonly referred to as "AOGA." AOGA is a private trade association that represents the majority of oil and gas producers, explorers, refiners, and transporters of Alaska's oil and gas. This testimony reflects the opinion of our membership.

First, thank you for allowing us additional time to analyze this legislation. Second, we welcome the opportunity to share with you and the public our commitment to safety and our diligence to prevent and prepare for the unfortunate incident of a spill, and to discuss our procedures and responsibilities if a spill occurs.

We all agree that the State of Alaska must be prudent and prepare for hazardous spills of all kinds. But I'm sure you all recognize that the oil and gas industry is already prepared with a robust response capability in the event an industry-related spill occurs. Companies that engage in or intend to undertake oil and gas exploration, development, production, or transport activities are required to by federal and state regulators to have current contingency plans in place, sufficient spill response equipment available at a moment's notice, and exercise both plan and equipment regularly. The annual cost for each operator to purchase and maintain equipment and carry out oil spill response drills ranges from $1.8 to $8 million annually.

Further, oil and gas companies belong to not-for-profit spill response cooperatives, such as Cook Inlet Spill Prevention and Response, Inc. (CISPRI) and Alaska Clean Seas (ACS). These are full-response organizations that provide the personnel, materials, equipment, and training to members for responding to an oil spill. Membership fees start at $500,000 for producers and $100,000 for non-producers, with a $20,000 – $50,000 annual fee. Daily exercise or development fees range from $1,250 – $2,500.

More specifically, Alyeska Pipeline Service Company conducted over 200 total drills and exercises between the pipeline and their Ship Escort/Response Vessel System, commonly referred to as "SERVS." As you may know, SERVS exists for prevention and response in Prince William Sound and Alyeska spends more than $100 million annually on prevention and response readiness. Drills and exercises along the 800-mile pipeline are additional investments.

In the event that the Department of Environment Conservation (DEC) Spill Prevention and Response Division (SPAR) responds to an oil spill, DEC almost always recovers the full cost of the response. The same cannot be said for non-oil industry facilities.

Before we discuss the legislation before us, I'd like to remind the committee of important statistical trends in the number and volume of oil spills in Alaska, especially as it related to oil and gas. According to most recent DEC SPAR Annual Report, you can see the 22-year average for the number of total spills and the volume of the spills across the state. You can see the trend is going in the right direction for both categories.

Then if you look at the spills specifically by facility type, you will see that oil and gas industry related facilities for the last three fiscal years averaged only about a quarter of the spills. I say roughly only because DEC reported facility types in a different manner for the last three years. However, if you look at the period from FY 10 – 14, you would find that oil and gas exploration and production accounted for 29% of the spill volume by facility.

Getting even more granular when thinking about the industry I represent, crude oil spills from FY 15 – FY17 accounted for under 2% of all spills in Alaska by volume. Of course, we would all prefer that figure to be zero, and we strive for zero spills every day.

Section 5 of HB 322 would force DEC to include produced water in the calculations of a spill. There is often a very small amount of crude in the produced water, but again, the trend line is the same as before, the volume and number of produced water spills is also trending downward.

So, this begs the question, what is the purpose of this bill? If the purpose of the bill is to set higher fines and penalties to deter spills, I would argue, for the oil and gas industry, we do not need fines and penalties to encourage us to be diligent. Why do I say that?

We are Alaskans. We are environmentalists by choice and by regulation. We want to protect the beautiful lands and wildlife that many subsist from or recreate within. We are raising our families here and we care about our backyard. In addition to the intrinsic and environmental reasons, companies also have a direct economic incentive not to have a spill incident. Our companies strive for the safest, most

efficient operations possible, and any spill is treated as a serious event that takes away time and resources from our main purpose- producing, refining, and transporting oil.

The cost of prevention, clean-up, and restoration is already a tremendous deterrent for our industry. It is not unreasonable to expect the costs for clean up to exceed what any fine or penalty that may be assessed. So, for the oil and gas industry it is hard to imagine a scenario when the fine is less than compliance, thereby requiring the need to double, or in some cases triple the fines and penalties that are proposed in HB 322.

If the intent of the bill is to incentivize better behavior by potential repeat offenders, it would be helpful to know what specific examples lead to the assertion that HB 322 will reduce the number and volume of spills. Ultimately, we believe that fewer spills is the goal of all Alaskans, but we struggle to understand how HB 322 will accomplish this goal without specific examples justifying its necessity.

There is also the potential for this bill to be perceived as a revenue generator for SPAR. As a brief reminder to the committee, the SPAR division was funded entirely by the oil and gas industry until the passage of a bill that assesses just under one penny per gallon of wholesale refined fuel products, with several products excluded.

As you know, the state has an Oil and Hazardous Substance Release Response Fund, commonly referred to as the "470 fund." The fund is the primary source of revenue for the SPAR division to ensure that Alaska is prepared and capable of responding to spills and other hazardous materials. This fund allows SPAR to conduct three main activities; prevention, initial response and contaminated site cleanup, which includes reviewing discharge prevention and contingency plans; conducting training, response drills, inspections, and tests; and verify an organization's proof of financial responsibility to clean up spills.

Despite the stated purpose of cleaning up and preventing spills, the fund has historically been appropriated to non-spill projects such as campgrounds, state airports, tank farm remediation, privately owned greenhouses, and new ferries. Fortunately, under the current leadership of DEC, these types of expenditures are no longer being made, but the corpus of the fund may have been unnecessarily reduced during years when these types of expenditures were authorized. Additionally, AOGA has identified efficiencies for SPAR to consider internally that to our knowledge have yet to be adopted. These efficiencies could potentially save the state more than the projected fiscal note. We also believe that if DEC is looking for additional revenue for SPAR, those revenues should be collected from all parties that utilize functions of the Division.

In addition to the questions we have already asked above, I'd like to highlight a few portions of the bill that cause us the most concern.

There has been an argument made that this bill is needed because penalties have not increased for some time and that there should be an adjustment tied to inflation. Again, we struggle with understanding why increasing fines or making them subject to change based on inflation will change behavior, given that the cost of cleanup and remediation is already a powerful deterrent. And while it's certainly within your purview to instill an automatic tax increase every year, we hope you will fully consider the implications of such a policy.

At the very beginning of the bill, it states that based on information gathered this bill is necessary. We would ask the committee to identify what specific information drew them to this conclusion.

As previously mentioned, Section 5 expands the definition of oil spills to include produced water. Claims have been made that produced water is just as damaging to the environment as straight crude oil. While produced water typically does contain small amounts of crude – which the percentage of crude oil can be determined – produced water clearly does not cause the same level of damage as pure crude, and we do not agree they should be treated the same for the purposes of this bill.

Section 10 is also a concern as we see this as a subjective and ambiguous section that could lead to a series of issues, not the least of which is the intrusive nature as to how this could be implied, and the eventual request for confidential financial records to determine the economic benefit of noncompliance.

The new administrative penalties in Section 12 are extremely unclear and another subjective section which gives the department the potential for broad enforcement and penalty assessment discretion. This additional authority granted to DEC to issue new administrative penalties without clear parameters for how that is administered leaves us questioning how, when, or why these penalties would be assessed.

Sections 13 – 15 expand the need for commercial motor vehicles to obtain contingency plans approved by DEC if they are transporting crude oil. Because this bill expands the definition of oil to include processed water, such as drilling water or wastewater, this bill will apply to vehicles on the North Slope and Cook Inlet as their tankage contents include small amounts of crude oil. These sections provide no additional protection, since companies who operate these types of vehicles already must comply with federal Department of Transportation regulations requiring response plans found in 49 CFR 130.31.

Further, the bill could increase the duties of SPAR division staff by requiring additional contingency plan reviews, which makes us concerned that the fiscal note does not include additional staff to accommodate the added workload. It has been the recent experience of some of my member companies

that the current staff are struggling to meet the timelines for current levels of contingency plan renewals and applications for facilities and regular operations. Because contingency plans are already required by the federal DOT and this section would require duplicative plans to be filed and reviewed with the State, we respectfully ask that this section be removed from the bill. Finally, if this section were to remain in the bill, we would ask for clarifying language explicitly stating that if DEC does not approve the contingency plans for commercial vehicles on time, then transportation can continue under federal DOT mandates.

In closing, AOGA is opposed to this bill. We urge you to reconsider moving this bill forward and to work with the industry and DEC to find alternative ways to meaningfully incentivize compliance of environmental safety provisions in Alaska.

Thank you for the opportunity to testify and I welcome questions from the committee.