



March 31, 2015

The Honorable Steve Thompson & Mark Neuman
Co-Chairs, House Finance Committee
State Capitol
Juneau, AK 99801

Dear Representatives Thompson & Neuman:

Thank you for hearing House Bill 158 – Refined Fuel Surcharge; Motor Fuel Taxes – on March 25th. During the hearing some questions arose that required additional information. The Department (DEC) has responded to those questions below. If you would like additional information, or have additional questions, we are happy to assist.

Can we see a report on the activities and functions of the Spill Prevention and Response Division over the past few years? (Rep. Thompson)

Please see the enclosed ‘Overview of the Spill Prevention and Response Division.’

Please also see the Biennial Report of the Oil & Hazardous Substance Release Prevention & Response Fund (O&HSRP&RF or Response Fund) available at this link (Please note the report is 574 pages):

<http://dec.alaska.gov/spar/rfa/docs/budget/biennial/Oil%20%20Hazardous%20Substance%20Release%20Prevention%20%20Response%20Fund%20-%20Fiscal%20Years%202013-2014%20Biennial%20Report.pdf>

How much did we spend on the most significant spills? (Rep. Gara)

The top spill sites active in FY2015 by total expenditure are shown in the table below. Please note these are the direct costs only, and do not reflect any of the indirect costs related to the spills.

Sites	Outstanding balance	Total Expenditure	Cost Recovered	Status
Aniak Airport	\$6,801,627.38	\$6,839,720.48	\$38,093.10	Settlement documents drawn to pay the outstanding expenditure.
River Terrace Laundry	\$4,223,172.79	\$6,503,477.78	\$2,280,304.99	Litigation matter. Placed a lien on the property and awaiting sale of the property to recover cost. (State Lead site)

Adak Naval Air Station Base Realignment and Closure	\$3,319,672.98	\$3,339,391.79	\$19,718.81	Currently drafting COBC (Compliance Order by Consent) with RP (Responsible Party) to recover outstanding balance.
Zipmart Store	\$2,504,078.38	\$3,257,701.09	\$753,622.71	We have recorded Lien against the RP. Settled with RP and received payment. Awaiting sale of property.
Flint Hills Refinery	\$2,251,971.99	\$4,438,244.77	\$2,186,272.78	Pending settlement matter, in the process of recovering outstanding balance.

The cost of a spill does not provide the entire picture. Overall, oil spills tend to cost most, but the state gets reimbursed when responding to oil spills. Since the State of Alaska has imposed prevention laws and regulations the frequency of large spills has decreased. Other than large marine vessels in innocent passage, the State of Alaska regulates all oil exploration, production, and transportation. If a company DEC regulates has a release, they are required by law to adequately respond. If the Spill Prevention and Response Division (SPAR) feels their response is inadequate, they have the capacity to take over the response but the responsible party must reimburse DEC for our expenses by law. Therefore, any SPAR expense related to a spill of a regulated company is recovered and the fund is sustained.

On the other hand, SPAR's responses to unregulated entities result in much more difficult cost recovery. These range from home owners to mines, small businesses (dry cleaners are particularly problematic), fishing vessels, and trucking companies. DEC is only able to recover a percentage of our costs for these entities and with complicated contaminated sites it takes many years. In some cases, we are unable to identify a responsible party, the responsible party has passed away, or the responsible party is simply unable to pay. DEC attempts to recover costs from everyone but with limited success. Some of these are very expensive as well, such as dry cleaners, but the majority are small fuel spills. So in terms of the costs that are draining the O&HSRP&RF's Prevention Account, refined fuel spills are more costly, primarily because industries and individuals SPAR does not regulate cause the majority of spills and don't have the resources to reimburse us.

Who is responsible for a spill at an airport? The airline or the airport? (Rep. Neuman)

This is a common scenario during most spills. For example, a truck roll over involves the company hauling the fuel, the company that owns the truck, and the company they are hauling the fuel for. There are similar issues with boats that are usually operated by a company that doesn't own the boat and another company that owns the product being transported. Planes and airports are similar.

By law, they are all considered potentially responsible parties (PRP's). For purposes of liability, Department of Law works with all the companies to determine which entity is responsible for what. This process can take years, which is one reason it is difficult to track cost recovery. If one of the responsible parties doesn't immediately step up to run response operations, SPAR does it

and recovers costs after the fact. Most companies prefer to do it themselves so they can control costs. Our threat of taking a response over is usually an incentive for the PRP's to quickly work together to establish a unified response. For example, one of the recent truck rollovers on the Dalton Highway resulted in the fuel buyer (an oil company) establishing the response command since they were the most experienced in that type of work. Afterward, they worked with the other PRP's to allocate cost responsibility. Most companies know punishment is greater if they wait as is cost to contain and clean up a spill. Prevention is by far cheaper than response but once a response has started, quick recovery is far cheaper than a protracted cleanup.

Would jet fuel used on a domestic flight be taxed despite whether they were a carrier under the Alaska International Airport System? (Rep. Pruitt)

The Department of Revenue will be providing a response to this question.

Why wasn't SPAR money able to be used concerning the Flint Hills contamination?

DEC is using money from the Response Fund to address Flint Hills Refinery contamination. To date, \$4,193,002.75 has come from the Response Account, while \$229,106.94 has come from the Prevention Account.

Why not just increase the per barrel oil surcharge?

This a policy decision. The majority of spills are refined fuel as well as the majority of contaminated sites. The proposed surcharge in HB158 spreads the cost across all spillers since the oil industry is only responsible for a small portion of these spills.

What are the statutes pertaining to the requirements for DEC to respond to a spill? If DEC is called is the department required to respond? If so how does DEC gauge the initial response to a spill or report of a spill? (Rep. Gattis)

AS 46.04.020 (d) states "the department shall provide for the immediate containment or cleanup of an oil discharge of unexplained origin..."

AS 46.08.030 states "It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available."

If there is a responsible party, they are required to respond and report the spill as described below.

All spills, even in de minimus amounts, are reportable to the State under AS 46.03.745. Reporting requirements are set in 18 AAC 75.300. Those requirements are detailed below.

Hazardous Substance Releases (AS 46.03.745)

Any release of a hazardous substance must be reported as soon as the person has knowledge of the discharge.

Oil/Petroleum Releases (AS 46.03.740)

To Water: Any release of oil to water must be reported as soon as the person has knowledge of the discharge.

To Land: Any release of oil in excess of 55 gallons must be reported as soon as the person has knowledge of the discharge. Any release of oil in excess of 10 gallons but less than 55 gallons must be reported within 48 hours after the person has knowledge of the discharge. A person in charge of a facility or operation shall maintain, and provide to the Department on a monthly basis, a written record of any discharge of oil from 1 to 10 gallons.

To impermeable secondary containment areas: Any release of oil in excess of 55 gallons must be reported within 48 hours after the person has knowledge of the discharge.

The vast majority of spills are addressed by the spiller without DEC involvement. It's important that the Department be notified of all spills because multiple small spills from a facility/operation may trigger concerns that should be addressed to avoid a potentially larger spill. Given the number of very small spills that are reported to the State, the Department must manage its limited spill response resources efficiently and strategically based on the potential risk of harm to human health and the environment. This means that the Department does not actively respond to every spill reported. In cases where the Department is notified of a small spill but a response is not feasible or advisable, staff provide the spiller with technical guidance for necessary cleanup.

What state petroleum standards are more stringent than federal standards? (Rep. Wilson)

The EPA has not established cleanup levels for petroleum hydrocarbons because these substances are not regulated under the Comprehensive Environmental Response Compensation and Liability Act. Therefore, the state has established cleanup levels for petroleum ranges that address releases of refined fuels. These cleanup levels are established in regulation at 18 AAC 75.341(d) and 18 AAC 75.345(b)(1). Please see the enclosed 'ADEC Cleanup Levels Established for Petroleum for Soil and Groundwater.'

The Alaska Water Quality Standards contain petroleum criteria for total aromatic hydrocarbons (TAH) and total aqueous hydrocarbons (TAqH); state standards are found in 18 AAC 70.020(b)(5) for fresh water and 18 AAC 70.020(b)(17) for marine water protecting the uses for aquaculture and growth and propagation of fish, shellfish, other aquatic life and wildlife. Alaska's TAH and TAqH numeric criteria were set in 1979 based on toxicity tests of Alaskan aquatic species implemented following federal narrative criteria (1986 Gold Book), which are required for states to adopt under Clean Water Act section 304(a). Alaska's numeric criteria is more stringent than other states numeric criteria for petroleum, but are not directly comparable to any federal numeric water quality criteria under the Clean Water Act.

We hope these responses prove useful to the Committee, please feel free to follow up with us if you require additional information or have additional questions.

Sincerely,



Alice Edwards
Deputy Commissioner

Enclosures: ADEC Cleanup Levels Established For Petroleum for Soil and Groundwater
Overview of the Spill Prevention and Response Division.