



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Environmental
Conservation

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April 2, 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 April 1st. 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 an audit report of the Spill Prevention and Response (SPAR) Division? (Rep. Wilson)

The last audit of SPAR was in 2008. You can find the report at the following link:

<http://legaudit.akleg.gov/docs/audits/special/dec/30047rpt-2008.pdf>

Are there limits on the use of the response fund once money is appropriated to it?

AS 46.08.040 describes uses of the fund. Subsection (2) specifically says the prevention account may be used to:

- (A) investigate and evaluate the release or threatened release of oil or a hazardous substance, except for [natural disasters] and contain, clean up, and take other necessary action such as monitoring and assessing, to address a release or threatened release of oil or a hazardous substance.
- (B) pay all costs incurred (i) to establish and maintain the oil and hazardous substance response office; (ii) under agreements entered into under 46.04.090 or 46.09.040; (iii) to review Contingency plans; (iv) to conduct training, response exercises, inspections and tests, in order to verify equipment inventories and ability to prevent and respond to spills...(v) to verify or establish proof of financial responsibility.

Wal-Mart inherited contamination at the Muldoon/DeBarr intersection in Anchorage when it bought the property. Who's responsible for paying for that cleanup? (Rep. Pruitt)

In December 2005, prior to the property being sold, Walmart entered into a Prospective Purchaser Agreement (PPA or Agreement) with the state to conduct the environmental cleanup of the property and pay cost recovery totaling \$900,000. We subsequently had a

dispute about some of the money spent under the PPA and settled under an 'Accord and Satisfaction' (Accord) in September 2013 to satisfy the requirements of the PPA.

Cost recovery against the prior owner was not possible as the prior owner corporation was dissolved. Miller, the principal of the company, died and his estate was distributed so there is no recourse for future cost recovery. The existence of prior insurance is not known since the corporation dissolved long ago.

Work required under the Accord included installation and sampling of soil gas probes, soil borings, and monitoring wells on the western portion of the site, including areas next to a church on adjacent property. The Accord had the purpose of prioritizing the remaining environmental work under the former agreement and in so doing, DEC made the decision to suspend cost recovery for time spent by the project manager to ensure that the priority tasks were accomplished. This resulted in approximately \$1,000 not cost recovered.

Following completion of the activities set forth in the Accord, estimated to take place by July 2015, DEC will either issue a Cleanup Complete designation for the Site with or without institutional controls, or if the site is not eligible for either of these designations, will inform Walmart of the additional work required to reach Cleanup Complete, and the PPA will be closed out.

Does the SPAR division get full reasonable attorneys' fees in its cost-recovery actions? (Rep. Gara)

The Department believes we do get full reasonable attorney fees and costs under AS 46.03.822 and under AS 46.03.760(d). We do not have a state court ruling on the issue. AS 46.03.763 allows for full reasonable attorney fees in an action to collect a civil penalty under AS 46.03.758, AS 46.03.759 or AS 46.03.760 for a discharge of oil.

Are regulations sufficient to ensure the State isn't held hostage in fixing cost-recovery problem, or is a change in statute required? (Rep. Pruitt)

The Department does not need better liability authority in statute. AS 46.03.822 goes into great detail about who is liable for a release of hazardous substance. The Department does not believe it could be stricter. As said in testimony, the land owner is responsible even if they didn't cause the contamination. DEC has the authority to pursue other responsible parties if a connection to the release can be clearly made.

AS 46.08.070 already requires DEC to seek reimbursement promptly as does AS 46.04.010. AS 46.08.075 allows the Department of Law to put liens on property to reimburse the Department's expenses.

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