

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON OIL AND GAS**

March 22, 2002

8:40 a.m.

MEMBERS PRESENT

Representative Hugh Fate, Vice Chair
Representative Fred Dyson
Representative Mike Chenault
Representative Vic Kohring
Representative Gretchen Guess
Representative Reggie Joule

MEMBERS ABSENT

Representative Scott Ogan, Chair

OTHER LEGISLATORS PRESENT

Representative Ken Lancaster

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 343(RES)

"An Act clarifying the term 'best technology' required for use in oil discharge prevention and contingency plans; affirming existing Department of Environmental Conservation regulations defining 'best technology' and oil discharge prevention and contingency plans approved using those regulations; and providing for an effective date."

- MOVED CSSB 343(RES) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: SB 343

SHORT TITLE: BEST AVAILABLE TECHNOLOGY: DISCHARGE PLAN

SPONSOR(S): RESOURCES

Jrn-Date	Jrn-Page		Action
02/27/02	2319	(S)	READ THE FIRST TIME - REFERRALS
02/27/02	2319	(S)	RES
03/04/02		(S)	RES AT 3:30 PM BUTROVICH 205
03/04/02		(S)	Moved CS(RES) Out of Committee

03/04/02		(S)	MINUTE(RES)
03/04/02		(S)	MINUTE(RES)
03/06/02	2386	(S)	RES RPT CS 6DP 1NR SAME TITLE
03/06/02	2386	(S)	DP: TORGERSON, TAYLOR, HALFORD,
03/06/02	2386	(S)	STEVENS, WILKEN, LINCOLN; NR: ELTON
03/06/02	2387	(S)	FN1: ZERO(DEC)
03/13/02		(S)	RLS AT 11:00 AM FAHRENKAMP 203
03/13/02		(S)	MINUTE(RLS)
03/13/02	2416	(S)	RULES TO CALENDAR 3/13/02
03/13/02	2417	(S)	READ THE SECOND TIME
03/13/02	2417	(S)	RES CS ADOPTED UNAN CONSENT
03/13/02	2417	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/13/02	2417	(S)	READ THE THIRD TIME CSSB 343(RES)
03/13/02	2417	(S)	PASSED Y17 N1 E1 A1
03/13/02	2418	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
03/13/02	2420	(S)	TRANSMITTED TO (H)
03/13/02	2420	(S)	VERSION: CSSB 343(RES)
03/15/02	2538	(H)	READ THE FIRST TIME - REFERRALS
03/15/02	2538	(H)	O&G, RES
03/22/02		(H)	O&G AT 8:00 AM CAPITOL 124

WITNESS REGISTER

SENATOR JOHN TORGERSON
Alaska State Legislature
Capitol Building, Room 427
Juneau, Alaska 99801

POSITION STATEMENT: Presented SB 343 on behalf of the Senate Resources Standing Committee, sponsor, which he chairs.

KURT FREDRIKSSON, Deputy Commissioner
Office of the Commissioner
Department of Environmental Conservation (DEC)
410 Willoughby, Suite 303
Juneau, Alaska 99801-1795

POSITION STATEMENT: Testified in support of SB 343 as an appropriate response to the recent supreme court ruling.

MARILYN CROCKETT, Deputy Director
Alaska Oil and Gas Association (AOGA)

121 West Fireweed, Number 207
Anchorage, Alaska 99503

POSITION STATEMENT: Testified in support of SB 343 in order that the legislature can clarify the legislative intent.

DOUG MERTZ

Prince William Sound Regional Citizens' Advisory Council (RCAC)
319 Seward Street
Juneau, Alaska 99801

POSITION STATEMENT: Expressed concern about the amount of discretion under SB 343; requested amending it to specify that there shall be a conference on best available technology every five years.

SUSAN SCHRADER

Alaska Conservation Voters (ACV)
P.O. Box 22151
Juneau, Alaska 99802

POSITION STATEMENT: Testified in opposition to SB 343.

BRECK C. TOSTEVIN, Assistant Attorney General
Environmental Section
Civil Division (Anchorage)
Department of Law
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994

POSITION STATEMENT: Testified on SB 343.

TOM LAKOSH

P.O. Box 100648
Anchorage, Alaska 99510

POSITION STATEMENT: Testified on SB 343, requesting that it be amended and cautioning against haste.

ROSS COEN

Alaska Forum for Environmental Responsibility
P.O. Box 82718
Fairbanks, Alaska 99708

POSITION STATEMENT: Testified in opposition to SB 343.

DARWIN PETERSON, Staff
to Senator John Torgerson
Alaska State Legislature
Capitol Building, Room 427
Juneau, Alaska 99801

POSITION STATEMENT: Answered questions on behalf of the Senate Resources Standing Committee, sponsor of SB 343, which Senator Torgerson chairs.

ACTION NARRATIVE

TAPE 02-17, SIDE A
Number 0001

VICE CHAIR HUGH FATE reconvened the House Special Committee on Oil and Gas meeting at 8:40 a.m. Present at the call back to order were Representatives Fate, Chenault, Kohring, and Joule; Representatives Guess and Dyson joined the meeting in progress. [For the overview by XTO Energy, see the 8:07 a.m. minutes for this date.]

SB 343-BEST AVAILABLE TECHNOLOGY:DISCHARGE PLAN

VICE CHAIR FATE announced that the committee would hear CS FOR SENATE BILL NO. 343(RES), "An Act clarifying the term 'best technology' required for use in oil discharge prevention and contingency plans; affirming existing Department of Environmental Conservation regulations defining 'best technology' and oil discharge prevention and contingency plans approved using those regulations; and providing for an effective date."

Number 0050

SENATOR JOHN TORGERSON, Alaska State Legislature, chair of the Senate Resources Standing Committee, sponsor of SB 343, explained that the bill responds to the Alaska Supreme Court's February 1, 2002, ruling in Lakosh v. DEC by clarifying and affirming the "best available technology" (BAT) requirement for oil spill contingency plans ("C Plans"). It accomplishes three things: clarifies that the 1997 negotiated rulemaking regulations that established a three-tiered approach for BAT determinations is a correct interpretation of the statute; affirms the continued validity and effect of the 1997 regulations utilized in approving over 100 C Plans since April 1997; and affirms the continued effect of C-Plan approvals issued under the 1997 regulations and ensures that plan holders can continue to operate under those approvals.

SENATOR TORGERSON said the bill doesn't eliminate or weaken the BAT requirement, which has been part of the "contingency statute" since 1980, long before the Exxon Valdez spill. In

1990, the legislature amended the existing law to avoid rigorous oil response-planning standards, he said, but the legislature didn't address the relationship between the planning standards and the best available technology. He remarked, "This bill would ensure the 1997 consensus criteria developed in the negotiated rulemaking and that has been used for making best available technology determinations for the last five years, criteria that [have] ... resulted in major improvements to oil spill prevention and response." He informed members that technical questions could be addressed by staff member Darwin [Peterson] or consultant Patrick Coughlin.

Number 0290

KURT FREDRIKSSON, Deputy Commissioner, Office of the Commissioner, Department of Environmental Conservation (DEC), came forward to testify, noting that he'd provided written testimony. He told members DEC is responsible for reviewing and approving oil discharge prevention and contingency plans for more than 120 facilities in Alaska, including oil terminals, pipelines, exploration [and] production facilities, tank vessels, oil barges, nontank vessels, and the railroad.

MR. FREDRIKSSON said DEC supports passage of SB 343 as an appropriate response to the recent supreme court ruling on "best available technology" that's described in C Plans. At the heart of the court's ruling is the legislative intent for best available technology requirements. He told members:

Following the Exxon Valdez oil spill, the legislature established the toughest spill-response planning standards in the world; DEC interpreted the statute to mean that meeting Alaska tough response-planning standards also satisfies the "best available technology" requirement if the equipment has proven reliable and appropriate for its intended use and [the] magnitude of the spill it's addressing. This interpretation was developed through an extensive workgroup process when the regulations were developed in 1997.

The court recognized that this approach has considerable merit, but only to the extent that the legislature actually granted DEC authority to define best available technology in terms of reliance on ... the response-planning standards. The court has raised a rather narrow question regarding whether or not our

regulatory interpretation meets the legislature's intent in dealing with this issue.

The court has interpreted the current statute to mean that the legislature intended to impose two separate best available technology requirements that [preclude] DEC from ... relying on the response-planning standards or performance standards established in regulations to satisfy the best available technology requirements. In their ruling, the court has invited the legislature to clarify its intent for best available technology. SB 343 would clarify the legislature's intent, consistent with our current way of doing business.

Number 0519

MR. FREDRIKSSON advised the committee that DEC believes any legislation should meet the following five goals: first, it must be limited to what is necessary to address the court ruling; second, to eliminate the cloud of uncertainty from the court ruling regarding the validity of existing plan approvals made since 1997 for Alaskan facilities, it must be passed this session; third, it must validate existing regulations and preserve the approach used for making BAT determinations as envisioned by the 1997 taskforce; fourth, it mustn't diminish the existing response capability in support of Alaska's facilities today; and fifth, it must continue to support [DEC's] evaluation of new technologies and "best available" findings.

MR. FREDRIKSSON said SB 343 meets the foregoing five goals and provides straightforward language that clarifies the legislative intent. It also validates the best available technology approach taken by the department in the 1997 negotiated rulemaking process, and affirms the continued effect of C Plans approved by the department to date. He offered his belief that the bill doesn't reduce the rigor of existing C-Plan review or diminish the response readiness and capability of industry. He said the bill provides for the department's periodic examination of new technologies to keep Alaska in the forefront of environmental protection statewide. He reiterated DEC's support for SB 343.

Number 0692

MARILYN CROCKETT, Deputy Director, Alaska Oil and Gas Association (AOGA), came forward to testify, noting that AOGA is

a trade association whose 19 member companies "represent the majority of oil and gas activities in Alaska." Its membership includes the in-state producers, the three in-state refiners, and Alyeska Pipeline [Service Company]; all must have oil discharge prevention and contingency plans in place and therefore are heavily vested in this issue. She agreed that the heart of the matter is to respond to the supreme court's decision that eliminated two sections in [DEC's] regulations dealing with BAT determinations; those were promulgated by the department in 1997 after a stakeholder group was established. She said AOGA participated along with others including municipalities, environmental groups, and the RCACs [Regional Citizens' Advisory Councils]. Ms. Crockett stated:

We supported the regulations at that time, and we continue to support them today, including this specific provision in the regulations for the "best available technology" conference; there seems to have been some questions about whether industry supports that conference, and we do, in fact, support the conference that's required by the regulations, which we support.

MS. CROCKETT said the court decision has placed everyone - including AOGA's members, the department, and the public - in a tenuous position because of the inability to complete C-Plan renewals or new plan approvals. Potentially, the department, instead of being able to focus on getting the best C Plans possible, will have to go through a rulemaking process that will divert its attention; she suggested that absent the specific legislative intent provided by SB 343, that rulemaking process later could be called into question through litigation, which AOGA hopes to avoid.

Number 0875

MS. CROCKETT emphasized that AOGA's only objective in encouraging support of SB 343 is to clarify the legislative intent. She explained:

We are in no way supportive of any attempt to reduce the requirements of the department, nor are we asking ... to be relieved of many of the requirements. This is a very simple and straightforward matter, from our point of view, and it's to respond to the supreme court decision by saying that the process that the department has used following the stakeholder efforts,

is, in fact, the process that the legislature intended.

MS. CROCKETT suggested this is a time-critical issue because some companies have projects for which they cannot get C-Plan approval or consistency determinations because of the inability to get the plans approved. She encouraged moving SB 343 out of committee that day.

Number 0933

REPRESENTATIVE DYSON announced that he had to testify before another committee at 9 a.m. Because he planned to vote for the bill, he asked to hear next from anybody who planned to testify against it.

VICE CHAIR FATE agreed, offering his belief that two testifiers had concerns.

Number 0998

DOUG MERTZ, Prince William Sound Regional Citizens' Advisory Council (RCAC), came forward to testify, noting that the RCAC is a coalition of 18 municipalities and other groups in the area affected by the Exxon Valdez oil spill. He said the RCAC understands the need for the legislation to clarify the intent with regard to the BAT, but has some real concerns. Principally, the bill as written gives DEC an enormous amount of discretion on how to implement the BAT requirement. Throughout the bill, it says "may" find, prepare, require, administer, and enforce; this provides, by implication, the choice not to do those things. Therefore, DEC could "make it terribly onerous or can make it a meaningless walkthrough, or anything in between."

MR. MERTZ mentioned reference to the 1997 regulations that were done cooperatively, which he said almost everybody is still pleased with. He expressed particular concern that DEC can effectively gut those under this bill. He explained that one "leg" that makes those regulations meaningful is the requirement of a conference on BAT every five years at which the industry, DEC, and other "interested and expert parties" would come together to find a consensus on what the current BAT is. However, DEC hasn't held that conference in the past when the deadline has come.

Number 1101

MR. MERTZ said that right now [DEC] supports [the conference] and has an appropriation request for it, and that industry and "basically everybody" is supporting it. He therefore requested a reference to that regulatory requirement in the bill, to be placed in the findings section, as suggested in a letter provided to the committee from Mr. [John] Devens [Executive Director, Prince William Sound RCAC]. That would clarify that DEC really does have to hold this conference, as its own regulations now say.

Number 1180

REPRESENTATIVE GUESS asked whether, if the statute were to specify [a conference every five years], the state perhaps would be unable to review the best available technology within a shorter amount of time.

MR. MERTZ answered that the current law and that proposed in the bill give DEC authority to make an interim definition at any time if new technology comes along that clearly is superior to "what they had a consensus on the last time that they met and conferred and declared something to be a BAT." However, he said the every-five-year conference would be the opportunity and the place where all parties would know they'd reexamine it all.

REPRESENTATIVE DYSON expressed appreciation for the work of the RCAC.

Number 1270

SUSAN SCHRADER, Alaska Conservation Voters (ACV), came forward to testify in opposition to SB 343, noting that her written testimony was in members' packets. She advised the committee that ACV respectfully disagrees with the views of DEC and the administration, and with the assistant attorney general's interpretation of the [Lakosh v. DEC] court decision. She explained that ACV believes the bill does two things: it creates a major disincentive for the oil industry to put money into research and development for BAT technology, and it provides a "major way to let DEC off the hook" for taking a close look at alternative technologies. She said:

Our reading of the bill suggests that under the bill's language, simply the first technology that [an] applicant proposes in a C Plan to meet the response-planning standard could easily be written off by DEC as best available technology - that that would meet

the definition of "best available technology." And ... in our view, this is not looking for best available technology; it's looking merely for whatever will meet the planning standard, second-best available technology, or bare-minimum technology, as the case may be, depending on DEC's wishes.

We would suggest that at this point there are draft regulations out for comment to address the court decision, that that process be continued. We think it's appropriate for DEC's regulatory process to address the court decision. We further disagree with statements from the administration that there must be a statutory response to the court decision. We believe it can be handled in regulation. And we think that DEC needs to make and take a complete look at all the alternatives, to do the alternative analysis before determining best available technology. And ... that type of analysis needs to have ... plenty of opportunity for public review and comment.

Number 1494

BRECK C. TOSTEVIN, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law, testified via teleconference. He paraphrased his written testimony [in packets] as follows:

I'd like to cover two topics in my testimony. The first is the reasoning and effect of the supreme court's recent decision concerning the statutory "best available technology" requirement for oil-spill C Plans. And the second is how this legislation responds to the supreme court's decision in a focused and measured way.

The legislation before you today seeks to clarify the statutory requirement that oil spill contingency plans use best available technology, in light of the Alaska Supreme Court's ruling in the Lakosh v. DEC case. The best available technology requirement had been in place since 1990 for response equipment which [is] used in C Plans. And because of the addition of oil-spill prevention to the C-Plan statute in 1990, the BAT requirement ... became applicable to prevention equipment at that point. In addition, the 1990 amendments added the rigorous oil-spill response-

planning standards to the C-Plan statute, but the legislature did not address the relationship between those planning standards and the BAT requirement.

In its recent ruling, the Alaska Supreme Court found two parts of DEC's regulatory ... criteria for determining whether a C Plan uses best available technology ... to be inconsistent with the statute. And these regulatory criteria were developed as part of the 1997 negotiated rulemaking, and that included numerous stakeholders from throughout the state with a broad range of interests.

In the Lakosh case, the Alaska Supreme Court was confronted with a general challenge to the regulations. The court's ruling was a narrow legal decision which focused on the language of the regulations, as opposed to a technical determination of whether any particular piece of equipment or technology is indeed "best available."

In finding parts of the regulations inconsistent with the statute, the court relied upon the dictionary definition of the term "best," and concluded that in the absence of legislative history to the contrary, the BAT regulations could not ... rely on the stringent response-planning standards in determining BAT or rely on performance standards, which are set in regulation, for determining BAT for oil-spill prevention technology. The Alaska Supreme Court concluded that while reliance on performance standards for determining BAT had considerable ... theoretical merit and was used in other federal environmental statutes in lieu of the one-size-fits-all technological rule, the absence of specific legislative history on the interplay between those standards and the BAT requirement led the court to its conclusion that the criteria were inconsistent with the statute.

Number 1658

MR. TOSTEVIN continued:

Now, given that the Alaska Supreme Court's ruling overturning the 1997 workgroup's use of the statutory response-planning standard and the performance

standards in determining best available technology, the BAT statutory requirement is ripe for legislative clarification.

The legislation you have before you today would restore the regulatory criteria adopted in the 1997 negotiated rulemaking and that has been utilized in approving over a hundred C Plans since April of 1997. This legislation does not weaken the best available technology requirement, but rather is an effort to restore the consensus criteria that [have] been used for making BAT determinations for the last five years, criteria that [have] resulted in major improvements in oil-spill prevention and response. ...

Senate Bill 343 accomplishes three things. It clarifies that the 1997 negotiated rulemaking regulations, which establish a three-tier approach for making BAT determinations, is a permissible interpretation of the statute. Second, it affirms the continued validity and effect of the 1997 regulations. If Senate Bill 343 is enacted, DEC would not be required to revise its BAT regulations. And third and finally, the legislature would affirm the continued effect of contingency plan's approvals issued under the 1997 regulations, and assure that the plan holders can continue to operate under those approvals.

Number 1741

MR. TOSTEVIN responded to testimony that this gives too much discretion to DEC; he said as currently written, the statute simply says the C Plan must use best available technology, without defining what it is. Thus the legislation is an attempt to clarify that the regulations' approach is a permissible interpretation of the statute. He said the role of the C-Plan review process is to provide a certain amount of discretion to DEC in making those determinations. This legislation attempts to allow the 1997 criteria to be used. In essence, he said, it doesn't diminish the statutory requirement at all.

Number 1830

TOM LAKOSH testified via teleconference, noting that he was the successful pro per litigant before the supreme court in this matter. He told members that the parties' positions really aren't that far apart; it's just a matter of having "more timely

reviews of plans consistent with other sections of the statute, which you're not considering here today," and implementing the breakthrough technology and integrating it into systems in an orderly and incremental manner.

MR. LAKOSH noted that he'd sent suggested amendment language to the committee [in an e-mail dated March 18, 2002] to emphasize that the parties really aren't that far apart and that it would be "much more appropriate for this committee to provide a solution for the court as far as a reasonable interpretation of law, rather than one that is clearly still at odds with entire ... other sections of the statute and constitutional mandates."

MR. LAKOSH informed members of what he was hoping to obtain from the still-pending [court] case: for the breakthrough-technology symposium and analysis process to happen every two years instead of every five, to be more consistent with statutory language for adoption of BAT response and prevention equipment at the time of permit renewal. In addition, he was hoping the committee could amend the bill to clarify "exactly what we're looking for in best technology."

Number 1960

MR. LAKOSH said the equipment deemed best elsewhere, worldwide, isn't designed for Alaska's severe conditions. He explained:

The best response inventory in the state, held by Alyeska [Pipeline Service Company], is quite ... an array of equipment, but because ... of the products that they selected and the way that they have to be operated, they ... have to stop responding in seas over six feet because of hazard to crews of operating the types of equipment that require over-the-board crane operations and so forth. The best technology that they have there can work in ten-foot seas, but it can only operate at ... its maximum capacity ... for 15 minutes, because it then would have to stop to lighter "storage."

We have virtually no ability ... to respond to the response-planning-standard levels in broken ice or sheet ice. And ... despite the improvements that we had, we're still a very long way from trying to eliminate the types of hazards to our resource use that our constitution was specifically designed to prohibit, ... because there's no difference between an

oil spill and a fish trap, that our Article VIII ... specifically tried to make it impossible to ever allow again ... where one ... user of a natural resource, whether they're transporting a hazardous cargo through or otherwise exploiting the environment, has the right to exploit it to the exclusion of everyone else. And that's exactly what a catastrophic oil spill does.

And we all know the seas get higher than six feet. We all know that there's ice out in front of the glaciers and in Cook Inlet and on the North Slope and on the ... rivers along the TAPS [Trans-Alaska Pipeline System] right-of-way. We now have a 25-year-old pipeline, ... TAPS. We have 40-year-old pipelines on the peninsula. We have aging platforms and underwater pipes.

Number 2096

MR. LAKOSH continued:

And now is not the time to shy away from the problem that is confronting the legislature at this time, ... that DEC has been caught not enforcing the law. And this legislation does not wipe away the damages sustained by the Alaska citizens for the last 21 years. ... The best clause in this legislation actually grew out of the circumstance that arose from Chevron [U.S.A., Inc.] v. Hammond, where in fact ... the state tried to set what [were] clear limits for double-hulled tankers; the industry balked, even though they had promised us the best technology in double-hulled tankers in their right-of-way leases. And so, we were ... stuck with having to try and enforce the "through ... best technology" provision in our statute that was passed in '80, repassed in 1990.

But what the legislature doesn't seem to comprehend, and no one is really setting forth, is that our standards have always been highest. The ... response-planning standards ... and spill-prevention measures that were put in place along the pipeline were supposed to be the best, and ... they were supposed to recover 200,000 barrels of oil in 48 hours, which, if you ... average out, is exactly the same or more demanding than the present regulatory standard of 300,000 barrels in 72 hours.

Number 2185

MR. LAKOSH continued:

So ... I beg the committee ... to not make a hasty move to try and correct a situation that is near resolution between the parties in any event. The comments of the Alaska Conservation Voters clearly [indicate] that there's an ongoing regulatory process. The prior negotiated process ... didn't involve all of the parties, and there was obviously no attention paid to the very clear statement that won me the case in the supreme court: this regulation is inconsistent with statute; you cannot put this into play. ...

Unfortunately, it took five judges of the supreme court ... to drive that point home. And now that we have that point home and we know that we have to face an additional 250 to 500 permittees in the nontank-vessel category, I think it's time that we sat down among the affected communities and allowed this process to go forward with ... a rewriting of the regulations, not simply to try and make up for the poor job that DEC's done in advancing technologies over the last 21 years, but also to try and make the system more streamlined for industry.

It's clear ... that the type of response system that is necessary to address the some-thousand vessels and numerous pipelines, platforms, and other production facilities ... that the department has ... to permit is, in itself, ... an inherent monopoly; it's like a cable company or a telephone company ... or a circumstance where you have to cover such [a] wide area with such a capital-intensive infrastructure that ... to try and allow ... competitive private services to fill the niches will invariably lead to a misallocation of resources ... by overreplication of the equipment. That drives the average cost of coverage high.

The response capability in the state today does not cover ... the permittees, and leaves them exposed because they are not capable of responding in severe Alaska conditions. And everybody still has to transport their oil - has to transport their hazardous

cargo - in those conditions. So we need to do a better job both for the industry that must be permitted and the citizens, who deserve the mandated protections of Article VIII and ... the whole system of statutes and regulations that have been built up to support a regular and timely advancement of spill prevention and response technologies.

Number 2365

ROSS COEN, Alaska Forum for Environmental Responsibility, testified via teleconference in opposition to SB 343, noting that his nonprofit organization is dedicated to holding industry and government accountable to environmental laws and regulations. He reported that at this bill's first hearing on March 4 before the Senate Resources Standing Committee, his testimony "apparently caused such a stir that assistant [attorney general] Tostevin was compelled to write the committee's chair and rebut arguments made by myself and other testifiers." Surmising that the present committee would pass the bill regardless of opposing testimony, he offered what he characterized as two broad points:

While the Alaska Department of Environmental Conservation claims that their current BAT standard is adequate, one must consider just how strong that argument is - or is not - when a nonlawyer who researches this issue as an avocation, not a career, is able to argue the case before the Alaska Supreme Court and win. Additionally, I wish to express my frustration that [DEC] is foregoing the opportunity to strengthen BAT requirements and instead is choosing the path of least resistance. Environmental protection has never been achieved by following the path of least resistance. [DEC] should be ashamed.

VICE CHAIR FATE announced that testimony was concluded and requested that any written testimony be submitted. He also noted that Representative Dyson had rejoined the hearing.

Number 2487

VICE CHAIR FATE called an at-ease at 9:18 a.m. He called the meeting back to order at 9:19 a.m.

Number 2496

REPRESENTATIVE KOHRING, noting that Senator Torgerson no longer was present, asked his staff to address the testimony conveying concern about the discretion allowed DEC by use of the word "may" throughout the bill.

Number 2528

DARWIN PETERSON, Staff to Senator John Torgerson, Alaska State Legislature, speaking on behalf of the Senate Resources Standing Committee, sponsor of the bill, which Senator Torgerson chairs, responded:

I believe the intent of the legislation in 1990 was to give DEC that discretion so that they could define what ... the best spill-response and spill-prevention standards are, and use that as their definition for best available technology. They've done a really good job of that; ... we do have the best standards in the world. So, we don't have any illusions that DEC ... would fall back ... on that and ... promulgate regulations that would ... weaken the standards. That's not the intent of this legislation at all.

REPRESENTATIVE KOHRING asked whether it opens up a situation that could be detrimental to the industry by having regulations that would be too stringent or unreasonable to the industry.

MR. DARWIN answered, "We don't believe so." He suggested asking someone from the department. He then reiterated his belief that [DEC] has done a fine job with the regulations. He added that the 1997 negotiated rulemaking process involved all members of the industry, environmental groups, public interest groups, and the department; the standards developed through that are the best available technology, he said.

Number 2612

REPRESENTATIVE DYSON moved to report [CSSB 343(RES)] out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSSB 343(RES) was moved out of the House Special Committee on Oil and Gas.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Oil and Gas meeting was adjourned at

9:21 a.m. [For the overview by XTO Energy, see the 8:07 a.m. minutes for this date.]