ALASKA STATE LEGISLATURE
SENATE RESOURCES COMMITTEE
March 4, 2002
3:40 p.m.

MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Gary Wilken, Vice Chair
Senator Rick Halford
Senator Robin Taylor
Senator Ben Stevens
Senator Kim Elton
Senator Georgianna Lincoln

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 343
"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

SENATE BILL NO. 308
"An Act relating to the Alaska coastal management program and the responsibilities of the Alaska Coastal Policy Council."

MOVED CSSB 308(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

SB 343 - No previous action to consider.

SB 308 - No previous action to consider.

WITNESS REGISTER

Mr. Darwin Peterson
Staff to Senator Torgerson

Alaska State Capitol
Juneau AK 99801-1182
POSITION STATEMENT: Commented on SB 343 for the sponsor.

Mr. Tom Lakosh
P.O. Box 100648
Anchorage AK 99501
POSITION STATEMENT: Commented on SB 343.

Mr. Larry Dietrick, Director
Division of Spill Prevention and Response
Department of Environmental Conservation
410 Willoughby Ave., Ste. 105
Juneau AK 99801
POSITION STATEMENT: Supported SB 343.

Mr. Breck Tostevin, Assistant Attorney General
Department of Law
1031 W 4th Ave #200
Anchorage, AK 99501
POSITION STATEMENT: Commented on SB 343.

Mr. Doug Mertz
Counsel to the Regional Citizens Advisory Council
POSITION STATEMENT: Supported SB 343.

Ms. Marilyn Crockett, Deputy Director
Alaska Oil and Gas Association
121 W. Fireweed Lane #207
Anchorage AK
POSITION STATEMENT: Supported SB 343.

Mr. Ross Coen
Alaska Forum For Environmental Responsibility
P.O. Box 82718
Fairbanks AK 99708
POSITION STATEMENT: Opposed SB 343.

Mr. Jim Carter, Executive Director
Cook Inlet Regional Citizens Advisory Council (CIRCAC)
POSITION STATEMENT: Supported SB 343.

Mr. Dennis Dooley
3724 Campbell Airstrip Rd.
Anchorage AK 99504
POSITION STATEMENT: Commented on SB 343.

Mr. Gary Carlson, Senior Vice President
Forest Oil Corporation
310 K St No. 700

Anchorage AK 99501
POSITION STATEMENT: Supported SB 343.

Mr. Walt Parker
No address provided
POSITION STATEMENT: Opposed SB 308.

Mr. Ken Donajkowski
Manager for Permitting
Phillips Alaska, Inc.
POSITION STATEMENT: Supported SB 308.

Mr. Patrick Galvin, Director
Division of Governmental Coordination
Office of the Governor
P.O. Box 110020
Juneau AK 99811-0020
POSITION STATEMENT: Supported SB 308.

Mr. John Shively
Alaska N. W. Natural Gas Transportation Company
1336 W. 12th Ave.
Anchorage, AK 99501
POSITION STATEMENT: Supported SB 308.

ACTION NARRATIVE

TAPE 02-6, SIDE A
Number 001
#SB343

SB 343-BEST AVAILABLE TECHNOLOGY:DISCHARGE PLAN

CHAIRMAN JOHN TORGERSON called the Senate Resources Committee meeting to order at 3:40 p.m. and announced SB 343 to be up for consideration. He said that Tom Lakosh, the person who filed the lawsuit that this legislation would overturn, will comment after a brief explanation.

MR. DARWIN PETERSON, staff to Senator Torgerson, explained:

> The State of Alaska is widely recognized as having one of the most comprehensive oil spill prevention and response requirements in the world. This recognition is due to actions taken by the legislature and ADEC [Alaska Department of Environmental Conservation] to ensure that companies operating in Alaska have taken the appropriate steps to prevent discharges and have

access to the resources necessary to rapidly respond and clean up discharges should they occur.

Alaska law and regulation require vessels and facilities to have oil discharge prevention and contingency plans approved by ADEC. Plan holders are required to utilize best available technology as part of these plans. The regulations governing determinations of 'best available technology' [BAT] were developed through a comprehensive stakeholder process and were adopted by ADEC in 1997. Since that time over 100 C Plans have been approved implementing the BAT requirement.

As a result of these requirements and industry efforts, significant advances have been made in technologies utilized and in place in Alaska. The regulations have served Alaska well in the five-year period they have been in effect.

On February 1, 2002, the Alaska Supreme Court struck down two provisions in the regulations ruling that these provisions were inconsistent with that Court's interpretation of the legislature's intent. At the same time, the Court emphasized the limited scope of its ruling and acknowledged that the legislature had vested ADEC with broad discretion to define BAT.

This ruling jeopardizes timely issuance of new plans and timely renewals of existing plans. Immediate action by the legislature is needed to address this ruling to ensure continued plan administration and preclude negative consequences on development of the state's resources. SB 343 affirms the 1997 regulations and the three-tiered process encompassed in them do, in fact, meet legislative intent with regard to BAT and are consistent with the statute. The bill also affirms the validity of the regulations and the C-Plans.

MR. TOM LAKOSH said he could provide a dissertation on why this bill will not revise the proposed or desired negative effect on resource development, but he would rather say that the permitting system was so convoluted before the new regulations were written, and afterward as well. He said the Supreme Court decision neither made the situation worse nor corrected it. He proposed the creation of a DEC response authority to provide spill response services and a permit package that would allow applicants to provide more comprehensive and response capabilities than they could otherwise afford or arrange logistically. The authority

would conduct research to improve response capability under problematic conditions in the Alaskan environment and would develop a statewide system of response. It would have regulatory authority similar to the Federal Republic of Germany.

The response agency would provide fee-generating services like the Alaska Railroad does. It would develop its own response depots, subcontract with established spill response providers and streamline terminal facilities that utilize expensive transportation corridors. The ability of the authority to gauge and organize subcontractors that utilize the best tactics and equipment will help ensure that fly-by-night permitees and contractors won't be used. A centralized system would ensure a more economic distribution of response resources along entire transportation corridors and at individual locations. Current equipment and personnel would be more effectively utilized and gaps in protection would be minimized. Redundant and ineffective equipment would be reallocated to where it was designed to operate. He suggested the use of 470 Funds for capital and operational costs for DEC response authority that provides BAT response and coverage in unprotected areas or other problematic circumstances. He suggested that the authority would maintain a centralized system of publicly and privately owned response depots or ones appropriately positioned in hazardous substance transportation corridors. He advised that the response authority must be authorized to purchase and operate capital equipment and contract for operating for total response services.

MR. LAKOSH suggested that the main source of funding would be a charge for services, but the establishment of an authority would require an initial capitalization that could be prorated from the 470 Fund. He proposed that $5 million be appropriated for the purpose of technology assessment and design and $25 million to start the response depots and get the one-stop permit shopping system in place. The $30 million could be repaid to the 470 Fund once the payment for services generates a sufficient amount to maintain operating and capital improvement budgets. The legislation should clarify what BAT really is. The response authority should:

- maximize the ability to safely work in high seas;
- substantially improve spill recovery rates in and improve the ability of skimmers to work in high water and to improve the ability to respond without causing additional impacts to resources;
- minimize the health and safety impacts of response to the spill and spill responders and the public;
- provide response capability in unprotected areas;
- define problematic response circumstances;
- develop logistic and technical solutions to response limitations; and

- expedite permitting and coordinate communications with response depots, contractors and aerial surveillance.

MR. LAKOSH said, "These policies have been adopted in one shape or another, but had never been put into a comprehensive system."

He said this system would allow respondents to amortize their costs of equipment by more efficiently distributing them among a greater number of permitees. The public would be assured of more competence and more capable responses statewide and DEC could help amortize the cost of equipment already acquired.

MR. LARRY DIETRICK, Director, Division of Spill Prevention and Response, DEC stated support for SB 343 and said:

> The department is responsible for approving oil discharge prevention and contingency plans for over 120 facilities in Alaska. These facilities include oil terminals, pipelines, exploration and production facilities, tank vessels, oil barges, nontank vessels and the railroad.
>
> The Department of Environmental Conservation has been working with the Department of Law since the recent Supreme Court ruling to devise a remedy that meets the requirements of the court. At issue is the legislative intent for meeting the 'best available technology' statutory requirement. The court noted that when an agency has adopted regulations under a delegation of authority from the legislature, and using the process prescribed by the Administrative Procedure Act, we presume that the regulations are valid and the review is limited to whether the regulations are consistent with and reasonably necessary to carry out the purposes of the statutory provisions and whether the regulations are reasonable and too arbitrary.
>
> The legislature established what are arguably the toughest response planning standards in the world. When reviewing a contingency plan, DEC has interpreted the statute to mean that meeting Alaska's tough response planning standards also satisfies the best available technology requirement if the equipment is proven, reliable and appropriate for its intended use and the magnitude of the spill it is 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 and that agency judgment in this regard deserves considerable deference 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 intent and lies within the limits of authority delegated by the legislature. It is not an expansive inquiry and recognizes the task of defining best available technology is well outside the scope of the judiciary's responsibility and falls squarely within DEC's areas of authority and expertise.

Because ‘best available technology’ was not defined by the legislature, the court has interpreted the statutory language to mean that the legislature intended to impose two separate requirements, which precludes DEC from relying on the response planning standards, or performance standards established in regulations to establish BAT.

The court has ruled in the absence of any further supporting legislative history clarifying the intent. Clearly the court in their ruling has invited the legislature to clarify their intent if they so choose. We believe it is the legislature's prerogative to clarify the intent and appreciate your efforts to expedite a solution. The department believes that any legislation should meet the following goals:

- First and foremost, because of the timing of the release of the court decision and the time remaining during this session, it is imperative that any legislation be limited to only what is necessary to address the court ruling. There is simply not enough time to entertain other changes to the statute and do credible research and coordination with the regulated community and other stakeholders.
- Second, to ensure continued operation of Alaska's facilities and eliminate the cloud of uncertainty from the court ruling regarding the validity of existing plan approvals made since 1997, the legislation must be passed this session.
- Third, the legislation must validate the existing regulations and preserve the approach used for

making BAT determinations as envisioned by the 1997 Task Force.

- Fourth, the legislation must sustain the same level of rigor for plan review as now practiced and not diminish the existing response capability.
- Fifth, the legislation must continue to support the ability of the department to evaluate new technologies and make BAT findings.

SB 343 meets these goals and provides straightforward language clarifying the legislative intent. This language validates the interpretation made by the department in the 1997 regulations. We believe this language is responsive to the Supreme Court ruling and eliminates the existing ambiguity and therefore is an acceptable remedy.

This bill does not reduce the rigor of existing contingency plan review or diminish the response readiness and capability of industry.

Legislative clarification of the law will validate the BAT approach taken by the 1997 negotiated rulemaking process, and affirm the continued effect of the contingency plan approvals issued under those regulations. No revisions to the existing stringent regulations will be necessary. The legislation is also narrowly focused on language that is responsive to the court ruling.

This bill will also reaffirm the importance of continuing research into best available technologies via studies, findings and conferences every five years to ensure that oil discharge prevention and contingency plans employ technologies that continue to keep Alaska in the forefront of environmental protection worldwide. It also eliminates the cloud of uncertainty, which now exists.

Subject to some edits, which the Department of Law will discuss, the department supports SB 343.

4:10 p.m.

SENATOR ELTON asked what happens to plans that are “in the pipeline” awaiting approval by the department. He asked, "Are they just on hold until this legislation passes or doesn't pass?"

MR. DIETRICK replied that since the Supreme Court ruling, DEC has

been looking at administrative, regulatory and statutory remedies to comply with the ruling. The first step it took was the administrative regulatory approach and it has proposed regulations that are out for public review now. He explained:

> Basically, we're maintaining that the plans continue to be valid at this time. The Supreme Court did not say they were invalid. We believe that could potentially be challenged. The Supreme Court has yet to remand the decision back to the Superior Court and whether or not there are some additional actions that may come up that would further question the findings. That's what's causing the uncertainty.

DEC has advised all plan holders in the state of their options. One would be to perform the best available technology requirements that the court required up front right now even though [DEC] hasn't gone through the rule making process. That would be a risk that the plan holders would assume, because if the regulations turn out to be something else, they would have spent some time and energy perhaps needlessly.

Second, they could wait until the regulations are promulgated. The regulations are out for public notice now. Plan holders would have 60 days after the regulations come out to take steps to amend the plans to comply with the regulations. DEC feels the regulatory approach may not be the absolute fix to the Supreme Court question and that a statutory change is much more certain.

SENATOR ELTON said Mr. Dietrick testified that the bill doesn't reduce the rigor of existing contingency plans, but some may characterize the regulations as having reduced the rigor of the legislative language that was adopted in the 1990s. He asked if the department is comfortable with the existing approach that would be codified by this approach that uses a pool of technologies rather than the best technology.

MR. DIETRICK replied that the department participated in a very extensive rule making task force process in 1997 and is just saying that it's incumbent on DEC to meet the obligation. If [DEC] wanted to deviate from that and make it more rigorous, it would want to do that with all the players at the table. Otherwise the 1997 process that everyone validated is the process that DEC needs to continue until it goes through another rule making process to increase the intensity, if that is the desire.

SENATOR ELTON asked if he is considering this legislation as a stopgap until DEC gets more rigorous regulations.

MR. DIETRICK replied that DEC would follow the same review

process that was developed in 1997 with the same degree of rigor. If someone wanted to make the process more rigorous, they would have to go through another 1997 style process to do that. He maintained, "This legislation preserves the status quo since 1997."

CHAIRMAN TORGERSON said there has been a motion filed in the Supreme Court that would throw out the C Plans as they are today.

MR. DIETRICK replied that there has been a rehearing request made to the Supreme Court and the Department of Law could provide more specifics on it.

SENATOR TAYLOR said he remembered going through this whole process and he was concerned about using the phrase "best available technologies" for fear it would be a never-ending target out in the future so that if somebody invented new technology six months after a plan came out, the plan would have to be modified and new equipment purchased. The five-year review process reassured him. He is concerned now that the Supreme Court has basically said that best available technology cannot be defined in a vacuum by itself. In essence, they are saying to the Supreme Court that they can define it that way because of the rigorous standards the state has set up. He is not sure they are truly answering their question. It is a definition that comes out of the process after analyzing various technologies and he wants to make sure there isn’t another appeal after this one.

MR. DIETRICK responded that they believe the second sentence answers that question with a degree of certainty that makes the department comfortable. He stated, "The intent is to provide that certainty in this bill to remove the ambiguity that you are talking about."

SENATOR TAYLOR said, "I want it clear in this record that that language does provide a definition of 'best available technology' and that is not some vague standard and I want it clearly understood that we intended that to be the case."

MR. DIETRICK said that is the intent.

CHAIRMAN TORGERSON noted that two short amendments were proposed to delete "modified or" and insert "until it" and delete "technologies" and insert "technology."

MR. BRECK TOSTEVIN, Assistant Attorney General, Department of Law, said he wanted to cover two topics: the reasoning behind and the effect of the Supreme Court's decision concerning the best available technology requirement for contingency plans; and how the legislation responds to the Supreme Court's decision in a focused and measured way. He told the committee:

SB 343 seeks to clarify the statutory requirement that C Plans use best available technology in light of the Alaska Supreme Court's February 1 ruling in the Lakosh v. DEC case.

The best available technology requirement has been in place since 1980 for response equipment used in C-plans. Because of the addition of oil spill prevention to the C-plan statute in 1990, the BAT requirement was expanded to prevention as well. In addition, the 1990 amendments added the rigorous oil spill response planning standards in AS 46.04.030(k) to the C-plan statute, but the legislature did not address the relationship between the planning standards and BAT.

In its recent ruling, the Court found two parts of DEC's regulatory criteria for determining whether an oil discharge prevention and contingency plan uses best available technology to be inconsistent with statute. These regulations were developed as part of a negotiated rulemaking in 1997 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 focusing on the language of the regulations as opposed to a technical determination of whether any particular equipment or technology is indeed best available. In finding parts of the regulations inconsistent with 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 plannning standards for oil spill response technologies in determining BAT or rely on performance standards set forth in regulation for determining BAT for oil spill prevention technologies.

The Alaska Supreme Court concluded that while reliance on performance standards for determining BAT had considerable theoretical merit and are used in other federal environmental statutes in lieu of one-size fits all technological rules, the absence of specific legislative history on interplay between these standards and the BAT requirement led the Court to the

conclusion that the 1997 BAT regulatory criteria should be invalidated as inconsistent with statute.

Given the Alaska Supreme Court's ruling overturning the 1997 workgroup's use of the statutory response planning standards and regulatory oil spill prevention 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 by the 1997 negotiated rulemaking group and that has been utilized in approving over 100 C-plans since April 1997. This legislation does not weaken the best available technology requirement but, rather, is an effort to restore the consensus criteria that has been used for making BAT determinations for the last five years: criteria that has resulted in major improvements in oil spill prevention and response.

SB 343 accomplishes three things. It clarifies that the 1997 negotiated rulemaking regulations, which established 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 SB 343 is enacted, DEC would not be required to revise its BAT regulations. Third and finally, the legislation would affirm the continued effect of contingency plan approvals issued under 1997 regulations and ensure that plan holders could continue to operate under those approvals.

There are two technical drafting amendments that we recommend in sections 2 and 4. The first is to the second sentence of the amended language in section 2 [bottom of page 3, top of page 4]. The change would be to insert the word ‘any’ after ‘that’ and change ‘technologies’ to ‘technology’ and the word ‘are’ to ‘is’ so that the sentence reads:

> The department may find that any technology meeting the response planning standards in (k) of this section or a prevention performance standard established under AS 46.04.070 is best available technology.

Again, the purpose of the amended language is the same as the original language, which is to allow DEC to use

the criteria adopted in the 1997 regulations at 18 AAC 75.445(k)(1)-(3) to determine BAT.

The second correction would be to the transition provision in section 4 of the bill on page 4, lines 21 -27 that ensures the continued validity of existing contingency plan approvals. The amendment would be to delete the words 'modified or' and insert 'until it' before the word 'expire' so that the sentence reads: 'the plan holder may continue to operate under that plan until the plan is revoked under AS 46.04.030(f) or until it expires, whichever first occurs.' As currently written, this section could be read to imply that a modified plan does not remain in effect and would not be covered by section 4. Such an unintended interpretation would clearly be incorrect. The amendment would clarify that a modified plan which utilized the 1997 regulations would remain in effect under this legislation and the plan holder could continue to operate under the original approved plan, as modified.

SENATOR TAYLOR asked why they didn't just delete the word "best". Mr. Lakosh thinks it means the cutting edge of science and that's the standard the department has set. He noted, "By us adopting it, it becomes the best because they go straight to the dictionary to define best and we're defining 'best' by the standard we've already set, which is existing technology within current plans."

He suggested inserting something like "useful technology" or any other technology that the department feels meets a certain standard.

MR. TOSTEVIN said the legislative approach here is to attempt to define the parameters of what "best" means and to clarify that "best" can rely on the response planning standards. The workgroup regulations say, "if the technology as a whole meets the response-planning standard and is reliable and appropriate for its intended use as well." It's focused on a certain type of spill technology near open water and also on the size of the spill.

MR. DOUG MERTZ, Prince William Sound Regional Citizens Advisory Council (RCAC), said this group exists in the area that was affected by the Exxon Valdez spill. It was one of the entities involved in creating the existing regulations and approach to implementing the BAT standard. The Advisory Council's position on this bill is that the concept of best available technology is an extremely beneficial one, not only because it provides us with

the best prevention and response, but also because it demonstrates to the world that Alaska is the best there is at extracting and moving oil and other petroleum products in an environmentally safe and sound manner. They understand the concern caused by the recent Supreme Court decision, the uncertainty among plan holders and people who have applied for plan approval as to what this means for them, and they understand the need for certainty. The Advisory Council has no objection to the way this bill sets out the manner in which DEC would continue to apply the concept of best available technology as long as DEC has a sufficient basis for declaring that that certain technologies are the best available technology when it does so. DEC based its determination on an every five-year conference on best available technology that included not only the regulators and industry, but also everybody who could define what is the best technology for this purpose. He added:

> The system of regulations that is set up in the bill this would perpetuate makes sense only if an event such as this conference actually occurs every five years or some other logical period of time and is actually funded and happens in a way that people have confidence that what comes out of it, hopefully, the consensus among all participants truly does represent the wisest judgment of everybody involved on what is best available technology. Our own preference is that the bill actually refers to such a conference, which is now in the regulation, but not in the statute, that this bill put into statute the department's ability to hold these every five-year conferences. A bill like this continuing that promise should be coupled with adequate funding and the authority to actually hold the conference as soon as possible.
>
> Our other concern is one that has been alluded to already by Mr. Dietrick that this bill is a vehicle for maintaining the current process and the current commitment to the highest quality of spill prevention and spill response and we are concerned that as it goes through the legislative process it could be amended to either remove or weaken the best available technology standard as it actually is implemented. That is something that would be a grave error, we believe, particularly with the atmosphere in Washington D.C. and with the concern about how Alaska implements its oil spill laws and how Alaska goes about extracting resources here. We can't afford as a state in the views of the rest of the world to lower our standards. We must maintain the highest standard, which means we

> really should be maintaining visibly our commitment to doing the best possible job of applying technology to oil spill prevention and response.

4:30 p.m.

SENATOR ELTON asked if, under this bill and existing law, a five-year conference to examine best available technology isn't held, that will cloud existing or future plans.

MR. MERTZ replied there is no end to the creativity of lawyers.

TAPE 02-6, SIDE B

MR. MERTZ said if the conference was ignored for a long time that would make the requirement more vulnerable.

CHAIRMAN TORGERSON asked if C-Plans are reviewed every three years and whether different ideas are laid on the table.

MR. MERTZ replied yes.

CHAIRMAN TORGERSON asked if the Council knows about all the C-Plans from the other places. He remarked, "You have an ongoing process that you're ignoring."

MR. MERTZ replied, "The problem there is if you rely solely on the individual C-Plan approval process, that's when you went back to the situation in the Supreme Court."

CHAIRMAN TORGERSON said:

> You're hinting that the other person doesn't know about this other person's technology, so we've got to have a conference to sit down and talk about it and I'm telling you I don't know if you really need to do that. You already review each other's plans…I find your 'no objections, as long as we get the money for our conference,' to be somewhat of an overqualified statement in support of the bill.

MS. MARILYN CROCKETT, Deputy Director, Alaska Oil and Gas Association (AOGA), said that all of the producers in Cook Inlet and the North Slope and the operators of the crude oil pipelines and three state refineries are all members of AOGA. They clearly have a vested interest in this particular issue. On February 1, the Supreme Court overturned two provisions in DEC's regulations that govern how best available determinations are made. The court did not take issue with other sections in those regulations, only those two. Over 100 C-Plans have been approved under the 1997

regulations.

> This decision has placed everyone from my membership and others in the regulated community to the department in an extremely tenuous position. Companies who are seeking new plan approvals and those going through the renewal process on their existing plans, all of which incorporate best available technology, are faced with the prospect of unnecessary delays and uncertainties. In fact, the department will instead have to refocus its resources away from the immediate process of working with plan holders to ensure appropriate provisions are in place and instead go through another rule making process, which at the end of the day, absent legislative intent language could be called into question, as well.
>
> While the Supreme Court decision emphasized the limited scope of its ruling and acknowledged that it had vested the department with broad discretion on how to define BAT, the Court, however, was unable to point to specific legislative intent which justified the approach in the '97 regulations and it's this lack of specificity that's the heart of the matter before you today. In our view, SB 343 provides the specificity the Court was searching for when they considered this matter. With a very limited amendment to AS 46.04.030 (e), the legislature makes it clear that the regulatory approach taken by the department after extensive stakeholder deliberation meets the legislature's expectations when it vested this authority in this department....

MS. CROCKETT continued:

> I want to make it absolutely clear here today that the only objective being sought by the Alaska Oil and Gas Association and its members is legislative affirmation of the rules, which are in place today. SB 343 does not in any way diminish the department's authorities in determination of BAT nor does it reduce the requirements on plan holders. It simply provides DEC with the flexibility and ownership to administer the program and provides the ability to recognize best available technology with respect to diverse environmental and operational considerations that exist throughout the state. Further, it affirms the validity of existing C-Plans, which have been approved under the

> regulations and removes the obstacles facing pending approval. In summary, action by the legislature through SB 343 is critical to continue C-Plan administration within the state. It clearly responds to the uncertainty voiced by the Supreme Court by specifying the legislature's intent with regard to best available technology requirements in C-Plans.

MS. CROCKETT said they supported SB 343 along with the two clarifying amendments.

MR. ROSS COEN, Alaskan Forum For Environmental Responsibility, opposed SB 343, because it contains two messages. The first is if you don't win, change the rules, even if that means undercutting the environmental standards promised to the people of Alaska. When the Supreme Court ruled that the ADEC's regulations for determining BAT in oil spill contingency plans were not consistent with state statute, one would assume the logical solution would be to amend the regulation or take the necessary steps to comply with state law. Instead, he said this bill attempts to change the rules. He commented:

> Next, it should be noted that immediately following the Exxon Valdez, the 16th legislature strengthened the statute that governed oil spill contingency plans by mandating that such plans must provide for the best technology available. This was certainly a popular and politically expedient stance at the time considering the public outrage over the Exxon Valdez. SB 343 retracts that mandate and effectively steps back from the forthright stance taken by the 16th legislature. This bill frees ADEC from matching that high standard. To claim on lines 25 - 26 on page 2, "that the Supreme Court's ruling has little or no positive benefits to the environment or the state," is laughable on its face. The additional comment period for the proposed changes to their oil pollution control regulations that bring them into compliance with the Supreme Court's decision in Lakosh v. Adak. SB 343 absolved ADEC of that responsibility."

MR. COEN said it appears that ADEC is playing both sides of the fence. In a March 1 teleconference with the Prince William Sound RCAC, Larry Dietrick admitted that the ADEC cooperated with the AOGA to write the bill they are discussing. On one hand, ADEC is asking for public comment on how to comply with the court's ruling and at the same time it helped to write this bill, which would remove its responsibility for complying with the court's ruling.

It is my understanding that the Prince William Sound RCAC advocates an ADEC sponsored conference that would help establish BAT requirements. I support such requirements and agree with Prince William Sound RCAC that any downturn in BAT requirements is not acceptable. Finally, it occurred to me that should this bill fail the committee and both bodies of the legislature, that the real motivation of the legislators to supports its passing have little to do with environmental protection and almost certainly nothing to do with giving a helping hand to ADEC.

MR. JIM CARTER, Executive Director, Cook Inlet Regional Citizens Advisory Council, supported SB 343.

This legislation is intended to answer the recent Supreme Court decision in which it said that Alaska statutes required ADEC to individualize assessments for the oil spill contingency plans and to insure that each plan incorporates the best technologies now available. We understand that the bill's purpose is not to do away with the requirement of best available technology of spill contingency plans, but to give ADEC the flexibility to prescribe what technologies meet certain standards. We do not disagree with the bill's purpose. We do, however, have the following concern. We believe that it is essential that the bill recognize that in order to carry out its duty to designate best available technology, DEC must have the tools to keep up with this changing field. The idea of a periodic conference in cooperation with industry and others at which a consensus would develop on best available technology was incorporated into regulations and in place and to date has not been [indisc]. Such a conference based on five-year time frame would have occurred [indisc]. We're hopeful that the legislature will see fit to fund such a conference in FY 2003.

MR. DENNIS DOOLEY, Anchorage resident, said he comes to this topic with 30 years history that commenced in 1973 when SOHIO financed his Masters' Degree or which he studied the topic of the limitations of marine transportation on the West Coast. As a budget analyst under the Egan Administration, he developed a paper, which illustrated that the state's anticipation of revenues from the wellhead values were wildly optimistic. Later, in 1976, working as a special assistant to Walt Parker, Highway Commissioner, he was directed to reevaluate the circumstances on the West Coast. In 1977, working for the Pipeline Surveillance

Office, he was assigned primary responsibility for reviewing Alyeska's Oil Spill Contingency Plan for the pipeline and the marine transportation system. He did a 1,100-page assessment of options and environmental risks ranging from British Columbia to the Panama Canal. He listed other personal qualifications, but said his point is that industry from the get-go continually claimed that the minimum standards suggested over the intervening period of time would diminish the opportunities for development and were too expensive. A key review of the transportation system in 1990 showed the failure of all involved in transportation, including federal agencies, state oversight and the industry to actively and diligently pursue the best design and operational standards appropriate for the system. He has found that the condition today has changed very much. He commented, "ADEC's professional laziness was enhanced by political pressure and insured that an incident similar to Exxon Valdez would happen at some time." He thought this legislation misleads the public into thinking the State of Alaska is performing its oversight task.

MR. GARY CARLSON, Senior Vice President, Forest Oil Corporation, said his corporation leases a tract of 200,000 acres in Cook Inlet and another 210,000 acres in the Copper River area. It is one of the companies caught in a dilemma by trying to obtain approval of its C-Plan for a major project. It has invested significant capital to get to this point and has plans to invest up to $150 million in 2002. A majority of the expenditures are to place a Redoubt Shoal field on production. Passage of SB 343 is important for the viability of this project. Forest Oil Corporation supports AOGA's testimony and that of DEC.

SENATOR TAYLOR moved to adopt amendment 1 on page 4, line 1: delete "technologies" and insert "any technology".

There were no objections and it was adopted.

SENATOR TAYLOR moved to adopt amendment 2 on page 4, line 27: delete "modified or" and insert "until it" following "AS 46.04.030(f) or".

There were no objections and amendment 2 was adopted.

SENATOR TAYLOR moved to pass CSSB 343(RES) from committee with individual recommendations. There were no objections and it was so ordered.
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#SB308

SB 308-COASTAL ZONE MGMT PROGRAM/COUNCIL

CHAIRMAN TORGERSON announced SB 308 to be up for consideration.

SENATOR THERRIAULT, sponsor of SB 308, said he started out with legislation that repealed the whole coastal zone management program and eventually boiled it down to four or five different issues. SB 308 contains two of those issues, plus a third one that wasn't contemplated at that time.

Section 1 deals with a ban on the adoption by reference of our state statutes and regulations by coastal districts. This is actually the way the coastal zone system is working now and we are just trying to define that in statute.

Section 2 is the new section that was not discussed a number of years ago. It talks about phasing for the permitting of Alaska North Slope gas pipeline. What that deals with is the project is so large in scope that it's very difficult for anybody actually proposing the gas pipeline to submit all of the paperwork to permit the entire line. They don't know exactly which streams they're crossing, whether they're going to go under or over. It would allow state agencies to perform that work in phases.

Section 3 is conforming language that conforms statutes with changes made in section 4…. It deals with modifications to the petition process. The petition process is the last additional sort of bite of the apple that the person who is opposing a permit has after you've gone through the agency process. You have the ability to have numerous reviews of the agencies as they are making a determination to issue a permit. After that's been finalized, a consistency determination has been made, there was yet this final petition process, which I believe the individuals with the administration will come forward and indicate has been used as a delaying mechanism. All the petitions that have been granted have been either after the time line has nearly run out, they're either removed or they’re found to be without substance and dismissed. So, I believe there is an agreement even by the state administration that section 4 is needed to streamline the process and get to finality.

SENATOR WILKEN moved to adopt the committee substitute to SB 308, version C, dated 3/4/02. There were no objections and it was so ordered.
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#SB343

MR. WALT PARKER interrupted and asked to testify on SB 343.

CHAIRMAN TORGERSON noted that the committee was on another bill, but allowed him to comment briefly.

MR. PARKER opposed SB 343, because he didn't think it would change anything.
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#SB308

The hearing on SB 308 continued.

MR. KEN DONAJKOWSKI, Manager of Permitting, Phillips Alaska, Inc. said:

> Phillips Alaska, Inc., is in support of eliminating individual petitions under the Alaska Coastal Management Program process. This petition process significantly delayed a total of 5 consistency determinations on Phillips projects in the months of December and January just passed. This petition process enables an individual to easily hamper responsible oil and gas development and the Committee substitute for SB 308 appropriately removes this needless component from the ACMP process.

SENATOR ELTON asked if any of the five petitions significantly change the terms under which Phillips had to operate.

MR. DONAJKOWSKI replied that apart from delays, there were no changes whatsoever to those projects.

MR. PATRICK GALVIN, Director, Division of Governmental Coordination, said they are responsible for the implementation of the Alaska Coastal Management Program. He explained:

> The Alaska Coastal Management Program is the state's response to the federal Coastal Zone Management Act, which gives the state the opportunity to develop a plan that the federal government would comply with and provide money for. We have to make sure the plan meets certain federal standards and in light of that when the Alaska program was put into place, it was designed to be decentralized. It was providing most of the power to the local governments instead of retaining it within the state. In order to insure the federal government that the state retained some control over that, the petition process was put into place to allow the

Coastal Policy Council, which is the state's body overseeing the program with some authority that local plans were being implemented. During that time, there was no review of the individual projects. When that came about in the mid-80s it wasn't anticipated that the petition process used for the protection of the state's interest and making sure the local plans were being implemented would be used on individual project reviews. It was. So, in 1994, the legislature took legislative action to create a separate petition process for project reviews that said it wasn't going to be basically a complete review of the decision, but would be merely a check on whether the process was fair. It was just a matter of if a person submitted a comment on a consistency review and they felt their comments were not fairly considered, they could ask the Coastal Policy Council to review that and if so, remand it back to the agency to do it again. Since that time, we've dealt with a handful of petitions to clarify how the process worked and since those regulations were put into place basically in the spring of 1999, we've had up until this week 18 petitions that have been submitted by individuals saying that their comments were not fairly considered. Of those 18, 10 were rejected outright by staff saying that they didn't meet the requirements to even file the petition. Of the remaining eight, three of them were withdrawn before a hearing and five of them were dismissed by the Coastal Policy Council. So of the 18 that have been filed since the beginning of FY 2000, none of them have been remanded for consideration by the state agency. While we've come to recognize that the process does not provide an adequate experience for anybody, it's frustration pretty much across the board. Those who file petitions come in hoping to have the entire decision looked at and they're frustrated that all they get is a review of the process and it's a pretty low standard for the state to be able to overcome and say we considered your comment. So at this point, while desiring an opportunity and perhaps coming up with a different vehicle for providing individuals with an opportunity to participate in an appeal, we don't have time for that and we don't oppose eliminating the B1 petitions.

With regard to the phasing issue, a real quick background on that one, the phasing law that's in place now was also adopted in 1994. It was in response to a

court decision that found that a state oil and gas lease needed to be redone because it didn't look at the impacts associated with potential development and the court said that there was no authority in the law to restrict the consistency determination to the lease sale stage or phase of the project. The legislation was drafted in order to allow for the phasing of oil and gas development - so that we could have the lease sale phase separate from the exploration phase, separate from the development phase and each one could be reviewed separately. Because the legislation was written for that purpose, it doesn't really fit any other type of project. When we were looking at the issue of a North Slope Natural Gas Pipeline project and the scale of this type of project, all we recognize is that it was going to demand such a large amount of information that one, the company or the proponent of the project would likely not have the resources to develop all that information up front, because frankly under the Coastal Management Program, until you can get your consistency determination, you can't get any permit for the project.

Two, even if the companies were able to muscle the resources and to generate the amount of information that would be necessary to review the entire project, the state agencies would not be in a position to be able to review it and comprehend the magnitude of the information and give an adequate evaluation of all the issues they normally would look at in the time frames that would be provided.

Three, even if the state agency somehow came up with the resources, the public wouldn't have the ability to be involved in the process because of the magnitude of the information. Given that, we recognize that it would be beneficial to be able to phase this type of review and, as I mentioned before, the phasing statute right now is designed primarily for the lease sale situation. So, it doesn't fit very well with a project of this type. Rather than looking at trying to generate language for a type of project that might fit the gas line and fit other appropriate projects, we recognized that the approach that's taken in this bill is probably the best approach - to say that a natural gas pipe line that goes from the North Slope to market needs to be treated special or differently. It's unique; it's an unprecedented nature. Therefore, it should be phased in

a way that would be appropriate for that type of project. What we want to make clear is that it is the unprecedented size of this project that makes it appropriate to look at phasing. It's not just that it's a large project. We are concerned that just the language alone right now gives the implication that a large project deserves to be faced. We would recommend that the legislature look at including some legislative findings as to the unprecedented nature and size of a natural gas project in order to justify this exception to the phasing law so that it isn't seen as a precedent for just any large project being appropriately phased.

Also, it should be noted that the Coastal Management Program is a very important program to local governments in particular and to members of the public and we are concerned that the title of this bill is quite broad and we would recommend that the title be refined to recognize the changes that are actually being made to the program such that it doesn't allow for any unexpected additional changes to the program that the administration or local governments may be much more opposed to. Thank you.

5:10 p.m.

CHAIRMAN TORGERSON said he wasn't sure there needs to be legislative findings on how big this project is.

SENATOR ELTON agreed and said the specificity of this language would preclude anything else. It would in fact, take a change in legislation if there was interest in phasing another project.

MR. JOHN SHIVELY, Alaska N.W. Natural Gas Transportation Company, supported SB 308 and thanked the sponsor, Senator Therriault, for including the phasing language in section 2, which is of most concern to them. He thought Mr. Galvin explained the problem well.

This is a very complicated project. Ordinarily, before you could get a consistency determination, you have to have every single permit in front of government approved. We don't believe that makes sense and so we support this language and we appreciate the opportunity to testify and would be happy to answer questions.

SENATOR TAYLOR moved to pass CSSB 308(RES) from committee with individual recommendations.

SENATOR THERRIAULT interrupted to explain that the changes in the CS deal with the fiscal impact and there should be a zero fiscal note.

MR. GALVIN explained that the original version had some provisions that would have required additional staff time. This one eliminates those, resulting in a zero fiscal note.

CHAIRMAN TORGERSON asked him to prepare one.

TAPE 02-08, SIDE A

There were no further objections and CSSB 308(RES) passed from committee.
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CHAIRMAN TORGERSON adjourned the meeting at 5:20 p.m.