

**ALASKA STATE LEGISLATURE**  
**HOUSE RESOURCES STANDING COMMITTEE**

April 14, 2014

1:34 p.m.

**MEMBERS PRESENT**

Representative Eric Feige, Co-Chair  
Representative Dan Saddler, Co-Chair  
Representative Peggy Wilson, Vice Chair  
Representative Mike Hawker  
Representative Craig Johnson  
Representative Kurt Olson  
Representative Paul Seaton  
Representative Scott Kawasaki  
Representative Geran Tarr

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 325

"An Act increasing the balance of the oil and hazardous substance release prevention and response fund required to suspend the surcharge levied on oil produced in the state; increasing the amount of the surcharge levied on oil produced in the state that may be appropriated to the oil and hazardous substance release prevention account; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 325

SHORT TITLE: OIL SPILL PREVENTION FUND

SPONSOR(s): REPRESENTATIVE(s) MUNOZ

02/21/14	(H)	READ THE FIRST TIME - REFERRALS
02/21/14	(H)	RES, FIN
03/17/14	(H)	RES AT 1:00 PM BARNES 124
03/17/14	(H)	Heard & Held
03/17/14	(H)	MINUTE(RES)
04/14/14	(H)	RES AT 1:00 PM BARNES 124

## WITNESS REGISTER

REPRESENTATIVE CATHY MUNOZ  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As co-prime sponsor, introduced the proposed committee substitute, Version U, for HB 325.

KRISTIN RYAN, Director  
Division of Spill Prevention and Response  
Department of Environmental Conservation (DEC)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions related to HB 325, Version U.

KARA MORIARTY, President/CEO  
Alaska Oil and Gas Association (AOGA)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to HB 325 and in opposition to Version U of HB 325.

## ACTION NARRATIVE

[1:34:39 PM](#)

**CO-CHAIR DAN SADDLER** called the House Resources Standing Committee meeting to order at 1:34 p.m. Representatives Olson, Seaton, Tarr, Saddler, and Feige were present at the call to order. Representatives Kawasaki, Hawker, Johnson, and P. Wilson arrived as the meeting was in progress.

### HB 325-OIL SPILL PREVENTION FUND

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CO-CHAIR SADDLER announced that the only order of business is HOUSE BILL NO. 325, "An Act increasing the balance of the oil and hazardous substance release prevention and response fund required to suspend the surcharge levied on oil produced in the state; increasing the amount of the surcharge levied on oil produced in the state that may be appropriated to the oil and hazardous substance release prevention account; and providing for an effective date."

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CO-CHAIR FEIGE moved to adopt the proposed committee substitute (CS), Version 28-LS1486\U, Nauman, 4/13/14, as the working document. There being no objection, Version U was before the committee.

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REPRESENTATIVE CATHY MUNOZ, Alaska State Legislature, as co-prime sponsor, explained the changes made by Version U to the original bill. She reminded members that the idea for the legislation came out of the "budget subcommittee" for the Department of Environmental Conservation (DEC) operating budget. Over the past two years, the spill prevention and response (SPAR) funds and the health of those funds have been a central topic of discussion and presentations. The original bill began to address the funding issues with the "SPAR account." Version U adds new language to the title on page, 1, lines 3-7, as well as new language to Sec. 3 on page 2, lines 24-28. Additionally, Version U adds new sections 4-10, which are amendments from Representative Seaton, beginning at the bottom of page 2 through line 4 of page 4.

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REPRESENTATIVE SEATON, a co-sponsor of the bill, explained the changes made in Version U address things that were brought up by the committee. A new provision allows DEC to collect fees for contingency plans (C-Plans) as a way to make this sustainable. A great amount of time is spent on analyzing oil spill contingency plans and currently there is no charge for that. Version U, Sec. [8], says that the user submitting a plan should pay for that evaluation. This more broadly distributes the costs and the financing that is necessary for spill prevention and response. There has been a lot of questioning that all the revenue to support spill response has come from only one thing, the production of crude oil, which this addresses. Version U, Sec. 7, requires that C-Plans be submitted in [a word searchable] electronic format, which makes it available to the department for review of the plan as well as available to the public. The public does not just mean "mom and pop in North Pole or Glennallen." It also means mariners and captains. Right now if someone from a pilots association wants to review a plan for adequacy and for comment, he/she would have to go into the main office and sit down with a paper copy.

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REPRESENTATIVE SEATON explained Version U, Sec. 9, is a deletion of authority for the funding of local emergency planning committees. Version U, Sec. 10, is the elimination of two programs that authorize payment from the spill fund -- one for the committees and the other for bulk fuel tank repairs, both of which are no longer considered to be targets for spill prevention and response.

REPRESENTATIVE SEATON noted Version U, Sec. 5, [adds the language]: "a refiner of crude oil or an importer of petroleum products refined from crude oil for resale shall report the volume of refined crude oil imported or refined to the department". He said this sets up the charge that is found [on page 2, Sec. 3, lines 24-25], which sets up a system to accomplish broadening of the base of the tax so it is not only on crude oil. A refiner of crude oil or an importer of refined products would pay a tax of one-half cent per gallon. Since the tax would be on products refined within the state as well as imported there would be no competitive advantage of importing fuel over refining it in-state.

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CO-CHAIR SADDLER inquired whether there are any products produced in Alaska refineries that would not be covered by Sec. 3. He said he wants to ensure that this section covers all refinery products.

REPRESENTATIVE SEATON answered this section would apply to all refined products as currently written. However, exclusion mechanisms could be looked at, he offered, such as excluding motor fuel taxes.

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CO-CHAIR FEIGE drew attention to the pie chart titled "FY 2009-2013 Number of Spills by Product Type," provided as an attachment to the 3/26/14 letter to the committee from Kristin Ryan of DEC. He said his intent would be to match the percentage of income collected to fund this operation with the way the money is distributed for spills. He inquired what the ratio of revenue would be between the refiners and crude oil producers that would be generated under Version U for supporting the Division of Spill Prevention and Response.

REPRESENTATIVE SEATON deferred to DEC to provide an answer.

KRISTIN RYAN, Director, Division of Spill Prevention and Response, Department of Environmental Conservation (DEC), understood Co-Chair Feige to be asking whether Version U spreads the income sources out more similar to how the spills are occurring, by type of product. She said Version U would add the fee for C-Plan work, which is mainly done on crude and non-crude. She said she could not give a specific number of how that would be spread out, but both would be captured under that new fee authority. Also under Version U, the refined fuel tax would capture non-crude, but the majority of the response fund would still be funded by the crude oil per barrel surcharge. It would be more equitable than it is now, which is the entire fund being based on crude oil, but it would not be matched exactly.

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CO-CHAIR FEIGE asked whether the division has a breakdown of how much of the revenue is projected to come from the seven-cent provision and the half-cent provision.

MS. RYAN replied she does not, at this point, have that information. Increasing the surcharge on crude oil to seven cents would add \$4.6 million and the new fee on petroleum refined products is as yet unknown. She deferred to the Department of Revenue (DOR) to provide an answer, but understood that in a letter to Representative Seaton, DOR states a range between \$3.2 million and \$11.16 million.

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REPRESENTATIVE SEATON added to Ms. Ryan's response, saying that it depends on how broadly [the new fee] is spread; for example, if it is spread to all refined fuels or if motor fuels are eliminated. He read from the last two paragraphs of a letter written to him by DOR on 3/7/14, which state:

The 2009 DNR Annual Report reported annual fuel sales volumes between 1995-2008, including gasoline, aviation gasoline, kerosene type jet fuel, propane, No. 1 Distillate, No. 2 Fuel Oil, and No. 2 Diesel Fuel. On average, DNR estimated that 1.5 billion gallons of fuel were sold in Alaska per year, which would generate \$7.3 million in revenues on average.

Finally, if the surcharge was only placed on motor fuel subject to the motor fuel tax, it may generate about \$3.2 million per year. This is based on an

average of 600,000 total gallons of motor fuel reported on tax returns each year according to DOR's Annual Reports from FY 2005 to FY 2013.

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REPRESENTATIVE SEATON calculated that if motor fuel was excluded, the total would be \$7.3 million minus \$3.2 million, for about \$4 million per year. He said the purpose of looking at this was to address concerns expressed by the committee about other people who have spills, such as spills at mines. Mines are generally fuel intensive, so this half-cent [tax] would also capture that. Bulk fuel storage for electric generation is another -- bulk fuel tanks have been a subject of spills, so the half cent per gallon would also bring those players into the funding stream for spill prevention and response. Limiting the tax to importers and refiners of distillate fuels is an easy way to broaden the base of the tax and make all people that are subject to spills contribute without getting into a very costly collection mechanism. He offered that the committee could cut down or cut out certain segments if it wishes.

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[Co-Chair Saddler turned the gavel over to Co-Chair Feige.]

[1:52:51 PM](#)

CO-CHAIR FEIGE understood the Division of Spill Prevention and Response expects a significant shortfall starting next year.

MS. RYAN answered the expected shortfall for the division is approximately \$6 million a year.

REPRESENTATIVE SEATON reiterated that two elements were really questioned. First, what things can be cut out of the spill prevention response funding that should no longer be there? Version U eliminates two. Second, can the revenue base be broadened? That is accomplished by the distillate fuel provision. He requested the committee provide other suggestions for ways it would like to approach this. He pointed out that letting the general fund pay for it means taking the shortfalls out of savings.

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REPRESENTATIVE HAWKER opined that it is still a bill that says "tax one industry segment more to pay for every other segment." There is no analysis that matches costs and expenses, which is something that should be done. This is an approach that says to tax the guys with the deepest pockets without taking a serious look at reducing the state's administrative burden. There is nothing for better management. Before taxes are raised to pay for an inefficient operation, more information is needed by the committee. There must be internal changes in management and operations before taxes are increased.

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REPRESENTATIVE P. WILSON pointed out that the division is mandated to take care of many things for which there are no ways to receive funds. For example, things are washing up on Alaska's shores from the recent Japanese tsunami that the division must deal with and expend funds for. She requested Ms. Ryan to address this issue.

MS. RYAN first related that the administration is not supportive of an increased tax on the petroleum refineries in the state. However, in reply to Representative P. Wilson's question, she said the division is not responding to the Japanese tsunami debris unless a hazardous substance is involved; it is considered garbage that does not need to be responded to as an emergency situation. An emergency situation that triggers the division's response would be something that is a threat to the environment or human or animal health. However, there are plenty of activities to which the division must respond and for which the division is unable to recover its costs. The division bills out about \$3.5 million every year to try to recover some of its response costs, but only about half of that comes back in. As a new director, she has taken it upon herself to try to find ways to be more efficient with the division's cost recovery. For example, this weekend a vandal took the cap off an oil tank at the Prospector Hotel in Juneau, spilling the oil into the sewer drain and out into Gastineau Channel. The division will recover some of its costs assuming the hotel's insurance company decides to pay. However, there are many times when the division is unable to find the responsible party for an oil slick, yet the division must do something about it. She further noted that foreign flagged vessels are not regulated by the division and are not required to have the financial assurance to clean up, so if the division has to respond to them it is very expensive. She further explained that the division does many prevention activities and some of the administrative

costs that Representative Hawker is concerned about can be clearly tied to improving response and are worthwhile; for example, the division requires industry to participate in drills to prove that they can respond. Other administrative costs in the department are more related to leases and keeping the lights on, so there are different kinds of administrative costs.

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REPRESENTATIVE OLSON inquired how much the division has spent on the Flint Hills pollution cleanup. He understood a charge was paid to the division.

MS. RYAN confirmed the division is using the response account for Flint Hills. She believed \$2.9 million has been charged to the response account to oversee and assess the different aspects of that contamination plume. Flint Hills has repaid about \$1 million and has refused to pay any further, so the division is in court with them.

REPRESENTATIVE OLSON asked what Flint Hills was paying into the fund when it was in full operation.

MS. RYAN answered [\$1 million] is the total generated.

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CO-CHAIR FEIGE returned to the pie chart titled "FY 2009-2013 Number of Spills by Product Type" and observed that 74 percent of spills were noncrude oil, 3 percent were process water, 3 percent crude oil, and 20 percent hazardous substances. He inquired whether these hazardous substances are from a wide variety of industry or concentrated in a particular industry.

MS. RYAN responded the hazardous substance responses are primarily related to the seafood and mining industries. However, she continued, to have a true sense of the division's costs the time that the division spends on spills needs to be seen. Many releases and spills require very little time on the division's part; for example, process waters cannot be cleaned up, so there is no five-year-long cleanup process for those, whereas there is for oil. In particular, solvents like dry cleaning chemicals are very expensive to clean up. So, while this is a good snapshot of the numbers, it is not completely representative of the money spent by the division responding to those spills. She said she is calculating that data now but does not have it available for today.

CO-CHAIR FEIGE requested this information be provided to the committee as soon as available because the crux of all of this is really how the money from the response and prevention fund is expended and matching that up with the revenue sources.

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REPRESENTATIVE SEATON allowed there is the question of matching up the people being taxed with where the spills are being generated. Regarding DOR's 3/7/14 letter to him, Representative Seaton clarified the letter was a response to him; the administration did not ask for this legislation and is opposed to any tax increases on crude oil, refined products, or other things. He pointed out that if the state was looking at a shortfall of \$6 million, and the committee did not want to increase the crude oil tax, adopting only the half cent per gallon tax would bring in \$7.3 million. He said he has worked for a while trying to eliminate [pollution] sources. Last year derelict vessel legislation was passed outlawing the storing of vessels and barges in state waters. When such vessels sink within the three-mile limit the state becomes responsible and half the time it is a non-responsible party and the state cannot recover any of its expenditures [for cleanup], so the bill was a preventative measure. He expressed his hope that the committee will consider the several different mechanisms in this bill and think about how to spread the revenue collections from the people or industry that are causing spills and how to collect that revenue.

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REPRESENTATIVE SEATON continued, pointing out that collecting a C-Plan fee is easiest for the department and does not create some of the expenses talked about by Representative Hawker. There is a lot of expense reviewing these contingency oil spill plans, which are necessary, but the state does not collect any money for. The first thing is to stop digging a hole and one way to stop digging this hole is by having C-Plans [electronically] submitted to make analysis easier and to collect a fee for the administration required to look at them. This bill puts forth a number of mechanisms for the legislature to look at for solving the problem. The sponsors are not saying that all of the proposals must be in the bill. Community emergency responses and bulk fuel replacements are two good things to remove from the spill prevention and response fund because they should be done through a capital improvement

project. People with cars are also liable for spills, so there probably has to be some contribution there, too. It is not being said that this bill is the ultimate; rather, it gives a range of things the sponsors see as feasible. This bill can stimulate conversation about how to solve this problem by having people view it on BASIS during the interim and think about it.

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REPRESENTATIVE TARR said she likes the range of options under consideration in the bill. She concurred that user groups such as motorists are not currently contributing. There may be concern about whether a half cent per gallon is the right amount, but the forthcoming information from Ms. Ryan about costs associated by user group will provide direction. If something is not done this year there will be a cost of \$6 million next year that will have to be paid from the general fund, which may cause other priorities to not be met. She supported the concept of the motor fuel tax if it could be accomplished this year, even if it is a reduced amount because every little bit will help to fill next year's gap.

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CO-CHAIR FEIGE opened public testimony on HB 325.

[Co-Chair Feige returned the gavel to Co-Chair Saddler.]

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KARA MORIARTY, President/CEO, Alaska Oil and Gas Association (AOGA), stated AOGA does not support HB 325 or Version U of HB 325. She noted AOGA is the professional trade association for the majority of oil and gas exploration, production, marketing, transportation, and refining activities in Alaska. She said AOGA has been engaged in the policy decisions surrounding the oil and hazardous release response fund, referred to as the "470 Fund," since its inception and AOGA supported modifications in 1994 and 2006 to determine how the surcharge was distributed. For the last 25 years the oil and gas industry has been the only industry to make any contributions to this fund and both versions of this bill only continue that policy. The bill proposes to increase the surcharge to seven cents [per barrel] and attempts to add a surcharge for in-state refineries and importing refined products, but AOGA does not see that as noncrude, AOGA still sees it as crude. It is already challenging at best to operate a refinery in Alaska and AOGA does not see an additional surcharge as improving the business climate for refining. Regarding fees for

C-Plans, Ms. Moriarty noted the language states "may", not "shall", and the fee is undefined so it is unknown what that means. All industries in Alaska submit several plans to different agencies for review - whether C-Plans, plans of operation, plans of development, permits to drill - and she is unsure AOGA could support a policy that has a fee associated with all these individual plans. While AOGA appreciates the work to tighten up what this fund is used for, because it has been abused in the past, the majority of the volumes reported are outside of the oil and gas industry. However, in AOGA's view, this policy continues to look to only one solution by continually adding additional taxes on the oil and gas industry.

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REPRESENTATIVE TARR asked whether AOGA has taken a position on the provision for a motor fuel tax, which would be consumer driven revenue that consumers are not currently paying and which would expand the base of people paying into the fund.

MS. MORIARTY replied AOGA cannot support this provision because it would still be adding a tax on a refined product. Consumers may or may not recognize what that is going for. She said AOGA would have to evaluate how it is administered, but AOGA cannot support it as currently written.

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REPRESENTATIVE P. WILSON understood Ms. Moriarty to be saying AOGA wants it to be more fair and more user based, but disagrees with having private people [also pay the surcharge].

MS. MORIARTY responded that as currently written the surcharge is not on private, a refinery would be paying the surcharge for each gallon of refined product or imported product. So, it is not a consumer tax, it is an oil and gas industry tax that is being put on the refineries in addition to the producers.

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REPRESENTATIVE SEATON inquired whether AOGA has a position on the bill's provision to eliminate expenditures from the fund for emergency planning communities and bulk fuel tank repairs.

MS. MORIARTY answered AOGA does not have a position specifically on those two things, but applauds tightening the reins. Over the past 25 years the fund has been used for a wide variety of

things that may not necessarily be related to oil spill response and preparedness. Any effort to continue tightening the purpose and expenditures would be supported by AOGA.

REPRESENTATIVE SEATON requested that over the interim AOGA look at the fund's expenditures and specifically tell committee members which of those should not have been spent.

MS. MORIARTY agreed to look at that and to work with Ms. Ryan on her report on user group categories.

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CO-CHAIR SADDLER kept public testimony open and requested the departments to provide the committee with updated fiscal notes over the interim.

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REPRESENTATIVE TARR requested Ms. Ryan's thoughts on the challenge of determining a per-barrel equivalent on the other categories, given that is how the surcharge is levied on oil. She further asked whether members should be thinking about gas development and the inclusion of a surcharge when rewriting the statutes related to gas development.

MS. RYAN qualified she may not completely understand the question, but said if there was only the surcharge on oil, the division estimates that approximately 9 cents per barrel would be needed to fill the gap in the prevention account. There may be other industries that need to be considered, she allowed. Regarding all the costs in the division, she does not yet have very good statistics to go on, but is getting there. However, the division spends a lot on contaminated sites. The division's budget includes all the work to oversee contaminated sites and many of those sites do not have owners and can cost a lot to clean up; it is always a debate about what industry would be the responsible party in such cases. In regard to equalizing the fund sources with a spill, it is usually a petroleum product, which is the reason for focus on a petroleum product format. Other states also use that as a source of revenue for this work.

REPRESENTATIVE TARR observed that the pie charts include mining. Given there is not a per-barrel equivalent, she asked whether the division has thought about an annual fee as a mechanism for other industries to be contributing toward the fund.

MS. RYAN replied most spills are fuel, whether they happen in a village, mine site, or boat. The division has never looked at going after specific subgroups, but if such a thing were to be implemented, the most economical way would be to do it at the wholesale level because it is the same product, but just being spilled by different industries. The assumption is that the cost would be passed on to the spiller.

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REPRESENTATIVE MUNOZ thanked the committee for continuing the conversation on this issue. She said she has enjoyed working on the DEC budget subcommittee and she appreciates the work of committee members in trying to find a solution to this issue. "For two years now," she said, "we've put intent language in the operating budget asking the department to come back with solutions on how to deal with the long-term viability of the spill response division." The bill is really the beginning of a conversation that will continue over the interim.

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REPRESENTATIVE SEATON, addressing AOGA's comment regarding fees "may" rather than "shall" be collected for approving a plan, said he wants people to know their comments are being listened to. He requested that next year DEC provide an analysis to the committee for a fee schedule that would be appropriate to propose. Since some C-Plans may be on marine waters and some on land, the fee will not be the same for every C-Plan. He further requested that DEC provide a recommendation to the committee on whether the language should be "shall" or "may".

MS. RYAN explained that C-Plan work is done by the division's [Industry Preparedness & Pipeline Program], which has an annual budget of about \$5 million. She guessed that about 60-65 percent of this section's work is based on C-Plans, so about \$3 million is being spent out of the prevention account to do C-Plan work. These contingency plans are very time consuming, with some way more time consuming than others; for example, there is full-time staff whose work is only on the Valdez Marine Terminal. So, she said, there would have to be a graduated rate depending on how complicated the plan is. However, there are only 137 C-Plans, so fees would not solve the problem but they would generate some revenue.

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REPRESENTATIVE TARR, regarding contaminated sites and sites for which it is difficult to locate the owners for billing cost recovery, asked whether it would be appropriate to separate cleanup costs such that costs for contaminated sites for which a responsible party cannot be found would come from the general fund and a date could be determined for when this separation would begin.

MS. RYAN concurred there would be some mechanisms to look at in this regard. The point has been brought up before that the fund should not be used and especially for state contaminated sites. Many state contaminated sites were cleaned up using the fund, but that is not done anymore and now the division asks for capital appropriations to handle state sites. The division spends several million dollars a year overseeing federal sites and other sites and there might be another mechanism that could be used for these sites.

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REPRESENTATIVE SEATON related it has been said that throughput in the Trans-Alaska Pipeline System (TAPS) is going to be increasing and so everything will take care of itself. When the departments next address the committee, he would like for them to base it on the 10-year forecast from the Department of Revenue. Currently, the spring forecast is for an oil price in 2014 of \$106, rising to \$131 in 2023; yet the unrestricted petroleum revenue is forecast to drop from \$4.6 billion in 2014 to \$3.4 billion in 2023. Despite a rising price, this is due to the volume decrease. Since the current structure is based on cents per barrel, it is going downhill fast. He requested the Department of Natural Resources and the Department of Revenue to provide data that coincides with the scenario of increasing throughput, saying that right now the departments are showing a declining production with a slowing of the decline.

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REPRESENTATIVE P. WILSON queried whether there is any mechanism for getting reimbursement from the federal government when the state cleans up federally contaminated sites.

MS. RYAN responded the division cost recovers from the federal government in a lot of cases. In the contaminated sites program alone, about \$4 million per year is generated in federal receipt authority. However, the division probably spends another \$3 million that the federal government will not pay for. Sometimes

a lot of pre-work has to go into a site. Recently a settlement was reached for a site in Aniak that was a federal mistake. It took the division eight years to get to the point where the federal government agreed it is the responsible party and is going to pay. During that whole time, the prevention account had to pay those costs plus the legal costs of the negotiations.

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CO-CHAIR SADDLER confirmed no one else wished to testify at this time, but held open public testimony.

CO-CHAIR SADDLER held over HB 325 for continued work during the interim.

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**ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:34 p.m.