

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

February 2, 2018

1:04 p.m.

**MEMBERS PRESENT**

Representative Andy Josephson, Co-Chair  
Representative Geran Tarr, Co-Chair  
Representative John Lincoln, Vice Chair  
Representative Harriet Drummond  
Representative Justin Parish  
Representative Chris Birch  
Representative DeLena Johnson  
Representative George Rauscher

**MEMBERS ABSENT**

Representative David Talerico  
Representative Mike Chenault (alternate)  
Representative Chris Tuck (alternate)

**COMMITTEE CALENDAR**

HOUSE BILL NO. 322

"An Act relating to penalties for discharges of oil and other pollution violations; relating to oil discharge prevention and contingency plans for commercial motor vehicles transporting crude oil; and providing for an effective date."

HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 322

SHORT TITLE: OIL SPILLS/POLLUTION: PENALTIES; PREVENTION

SPONSOR(s): RESOURCES

01/31/18	(H)	READ THE FIRST TIME - REFERRALS
01/31/18	(H)	RES, FIN
01/31/18	(H)	RES AT 1:00 PM BARNES 124
01/31/18	(H)	Scheduled but Not Heard
02/02/18	(H)	RES AT 1:00 PM BARNES 124

**WITNESS REGISTER**

KRISTIN RYAN, Director

Division of Spill Prevention and Response  
Department of Environmental Conservation  
Anchorage, Alaska

**POSITION STATEMENT:** Provided a PowerPoint presentation entitled, "Spill Penalties Overview," dated 2/2/18, and brief discussion of HB 322.

THOMAS ATKINSON, Staff  
Representative Andy Josephson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided a Sectional Analysis of HB 322 on behalf of Representative Josephson, co-chair of the House Resources Standing Committee, sponsor.

#### **ACTION NARRATIVE**

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**CO-CHAIR ANDY JOSEPHSON** called the House Resources Standing Committee meeting to order at 1:04 p.m. Representatives Josephson, Drummond, Parish, Birch, Johnson, Rauscher, Tarr, and Lincoln were present at the call to order.

CO-CHAIR JOSEPHSON introduced Representative Lincoln, Vice Chair.

#### **HB 322-OIL SPILLS/POLLUTION: PENALTIES; PREVENTION**

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CO-CHAIR JOSEPHSON announced that the first order of business would be HOUSE BILL NO. 322, "An Act relating to penalties for discharges of oil and other pollution violations; relating to oil discharge prevention and contingency plans for commercial motor vehicles transporting crude oil; and providing for an effective date."

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KRISTIN RYAN, Director, Division of Spill Prevention and Response (SPAR), Department of Environmental Conservation (DEC), provided a PowerPoint presentation entitled, "Spill Penalties Overview," dated 2/2/18. She informed the committee the SPAR's mission is to respond to spills of oil and other hazardous substances with the intent to protect the environment and public health (slide 2). The division publishes an annual report to

the legislature of the data it collects on responses - such as location and costs - and general information on contaminated sites in Alaska. She said SPAR usually responds to approximately 2,000 spills per year, many of which do not warrant field inspection by the division, but are requests for technical assistance. The largest spill reported in 2017 was from a boat that sank in the Aleutians; she advised process water is a hazardous spill of slurry used in a mining operation (slide 3).

REPRESENTATIVE PARISH asked for the amount of the spill associated with the aforementioned sinking in the Aleutians.

MS. RYAN said 87,000 gallons. She said sinking boats are common, as are releases at mines and at oil and gas exploration and production sites.

REPRESENTATIVE BIRCH questioned whether penalties are intended as punishment or are collected to recover the cost of the spill.

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MS. RYAN advised authorizing statute requires SPAR to regulate certain companies to prevent spills and respond when they occur; the regulated companies are required to have the financial ability to clean up a spill, and penalties come into play if the state deems a penalty should be assessed for causing damage or harm to the environment. After a spill is cleaned up, there can be residual contamination and penalties are used as deterrents against future releases.

CO-CHAIR TARR recalled a natural gas spill by Hilcorp in Cook Inlet last year and asked whether that release was reflected in the statistics on slide 3.

MS. RYAN noted there were many questions raised last year about DEC penalties related to past releases; HB 322 would increase the penalty amounts DEC could levy, but would not change what actions are or are not violations. A natural gas release is deemed as a hazardous substance by DEC.

CO-CHAIR TARR surmised the natural gas release was included in the 62,527 [gallons] hazardous substances spilled as shown on slide 3.

MS. RYAN said, "Correct, I'm not sure we can capture natural gas in a gallon, so I don't think that is reflected in that number but that's, that's where you would expect it to be, yes."

CO-CHAIR JOSEPHSON directed attention to the bill on [page 5, line 3] which included a reference to AS 46.14, the section on air quality, and asked whether the increase in fines may affect air quality.

MS. RYAN said yes. [AS 46.03.760(e)] is DEC's penalty authority and covers many penalties for DEC programs; the changes proposed by the bill primarily impact spills and penalties associated with spills. However, some other releases into the environment that would be violations are also affected. She expressed her belief that AS 46.14 is related to passenger vessel discharges, and a few other areas not related to spills of oil or petroleum are affected.

CO-CHAIR JOSEPHSON asked whether DEC would inspect a spill equal to the size of the spill in Bethel [date not provided] of several thousand gallons of fuel.

MS. RYAN explained an inspection is dependent upon whether the contractors conducting the cleanup of a spill are known to DEC, and whether DEC is assured of compliance, as was the case in Bethel. She said when possible, DEC will monitor a situation via telephone and avoid an inspection to save money.

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CO-CHAIR TARR returned to the issue of reporting a release of natural gas and expressed her understanding DEC would have a formula to convert, calculate, and report a release of natural gas. She suggested the addition of a reporting mechanism is warranted in order to represent and evaluate the extent of an ongoing problem.

MS. RYAN advised the aforementioned incident in Cook Inlet was the first natural gas release from an underwater pipeline into a waterbody, and deemed by DEC to be hazardous to the environment, because natural gas does not normally exist in the aquifer. She was unsure whether the incident was included in the statistics shown on slide 3, but assumed not as the release was significant, so including it would have yielded a larger 2017 spill volume total. Ms. Ryan said DEC will find a way to report the release of natural gas should incidents continue; although DEC's decision to label the release as a hazardous substance was

controversial, DEC believes it has the statutory authority to do so. She continued to slide 4, which illustrated a decline in the release of volumes of petroleum products; she attributed the decline both to self-policing by industry and a response to DEC regulations. Ms. Ryan said the companies that are regulated by DEC exhibit good records of compliance. Slide 5 illustrated a decline in the number of spills from 1996-2017.

REPRESENTATIVE BIRCH questioned the need for an increase in fines when there has been a decline in the number and volume of spills under the present regulations.

MS. RYAN advised the administration has no position on the bill at this time. She opined DEC's penalty amounts - written in the '70s and '80s - are antiquated and are not commensurate with the potential harm caused by a release into the environment.

REPRESENTATIVE BIRCH asked for an accounting of penalties assessed, the fines collected, the number of spills, and where the fines are deposited after they are recovered.

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MS. RYAN explained collected penalties are deposited into the Oil and Hazardous Substance Release Prevention and Response Fund (Response Fund), which is an account that pays for the division's services and from which the legislature allocates the division's operating budget. She offered to provide information on penalty amounts that have been collected; however, due to the way the statutes are written, "it's not the easiest path for us to go down, to issue penalties and fines, and the amounts are pretty small."

REPRESENTATIVE BIRCH asked for an estimate of the amount recovered in a certain period of time.

MS. RYAN estimated under \$100,000 per year, and said she would provide the requested information.

CO-CHAIR TARR surmised with fewer spills, the existing penalties are not sufficient to cover the cost of the cleanup of a spill.

MS. RYAN further explained the amounts DEC charges for penalties are very low; in fact, in the case of a substantial release, DEC would be limited in recovering [costs] and penalizing a company for a release that harmed the environment.

CO-CHAIR TARR concluded DEC would be responsible for the cleanup and the state would pay the cost.

MS. RYAN agreed that if a responsible party did not pay for the cost to cleanup a spill and the state completed the cleanup, DEC's penalty authorities would probably be inadequate to recoup the state's costs.

REPRESENTATIVE RAUSCHER asked what constitutes a spill.

MS. RYAN said, "There are varying levels of reporting, depending on who you are." Companies that are regulated by DEC are expected to report everything, and very small volumes are reported monthly; larger spills, depending on the type of substance and location, have a different timeline. [DEC's] generic authority directs that a spill of a hazardous substance into the environment is a spill, and that is the broad authority of the department.

REPRESENTATIVE RAUSCHER asked whether the spills indicted on slide 6 could have been of "a quart or less."

MS. RYAN said no, and offered to provide specific information.

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REPRESENTATIVE BIRCH related his experience is that a spill of a teaspoon or more would be reported by Alyeska Pipeline Service Company. He then inquired as to the value of the Response Fund.

MS. RYAN stated the Department of Revenue manages the revenue streams into the Response Fund which is held in two accounts: a response account for emergency responses capped at \$50 million, and a prevention account to pay for SPAR's daily operating costs. She offered to provide the quarterly report of each account to the committee.

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MS. RYAN returned attention to slide 6 which was a map of spill locations. She advised the location of a spill - marine, land, and underground - is paramount to SPAR's response and impacts the cleanup method (slide 7). Ms. Ryan said oil and petroleum products and other hazardous substances are considered harmful to human health and the environment, thus SPAR seeks to avoid human contact through skin, inhalation, and ingestion, and to protect the environment (slide 9). Slide 10 was a photo of a

release of home heating oil. Slide 11 provided examples of spill impacts to the environment and she said SPAR and companies want to avoid releases. Slide 12 was a photo of a tanker truck rollover. Ms. Ryan said the bill would require commercial trucks hauling crude oil to have contingency plans; a contingency plan is SPAR's way to know a company is preventing spills and what it would do in the case of a spill, including the availability of equipment, equipment operators, and other information.

CO-CHAIR JOSEPHSON added that currently, if one is transporting a refined product, there is no requirement for a contingency plan.

MS. RYAN confirmed SPAR does not regulate trucks hauling refined fuel products; however, companies are required to have insurance and meet certain safety standards established by the Department of Transportation & Public Facilities (DOTPF). Contingency plans are not required for trucks carrying refined fuel or crude oil. The bill would require SPAR to regulate the transportation of crude oil.

CO-CHAIR JOSEPHSON related concern from some, questioning whether it is fair - as affects companies' economics - to [regulate] crude oil in a different manner.

MS. RYAN observed crude oil is thicker and can be easier to pick up, but it is also more persistent and more toxic in the environment thus, from SPAR's perspective, crude oil presents more risks to the environment and human health than refined fuel. This is the basis of SPAR's concern about the increasing occurrences of crude oil hauled by tanker [truck].

REPRESENTATIVE DRUMMOND expressed dismay about the absence of regulation over spills of refined products such as jet fuel, aviation gas, and gasoline.

CO-CHAIR JOSEPHSON clarified SPAR does not require contingency plans for refined products and asked whether contingency plans are required by DOTPF or the U.S. Department of Transportation.

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MS. RYAN said no; however, DOTPF does require insurance. Furthermore, the trucking companies, in response to increasing spills from fuel trucks, have been working with SPAR to reduce accidents; accidents are usually due to operator error, so

additional driver training has reduced the number of accidents. She pointed out after the closure of a refinery on the North Slope, the number of [tanker trucks] carrying refined fuel across the state has increased.

CO-CHAIR TARR noted the industry is regulated through mechanisms such as the Clean Water Act, stormwater pollution prevention plans, which work to capture discharges. She asked for clarification on the aforementioned tankers.

MS. RYAN said the increased transportation of refined fuel by truck is commonly occurring across the state. She agreed the industry complies with many requirements, but not contingency plans; further, if a spill occurs, SPAR requires an adequate response from the company. She pointed out the response standard exists, but not the prevention aspect of contingency plans.

MS. RYAN clarified federal and state regulations require oil tanker vessels in Prince William Sound to be double-hulled, but her reference [during today's hearing] was to tanker trucks.

REPRESENTATIVE BIRCH pointed out Alaska is transporting refined low-sulfur fuel from Valdez to the North Slope even though it can be produced on the North Slope with modest changes to the "sulfur requirements." He urged for sanity in this regard.

MS. RYAN said the U.S. Environmental Protection Agency (EPA) requires low-sulfur fuel and companies on the North Slope chose not to meet the new standard, and instead to buy refined fuel from Valdez, and truck the fuel to the North Slope.

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REPRESENTATIVE BIRCH suggested Alaska should seek a waiver from EPA for low-sulfur fuel. He directed attention to HB 322 [on page 4, lines 19-20] which read:

(4) the need for enhanced civil penalty to deter future noncompliance.

REPRESENTATIVE BIRCH questioned whether SPAR has encountered willful noncompliance with state regulations that would warrant increasing a penalty from \$5,000 per day to \$25,000 per day.

MS. RYAN said she could not recall an incident of a company paying a penalty and continuing its violations. However, the

penalties are "pretty small, compared to modern economics" and present no concerns for a company. She returned to slide 13, which listed socio-economic examples of spill impacts. Instances where the state has taken a lead role - when the responsible party was unable to pay - have cost the state about \$12 million in the current fiscal year and "penalties could help us in those scenarios, we think." The current fine and penalty structure addresses less than 5 percent of the average oil spill response and cleanup costs (slide 14).

CO-CHAIR JOSEPHSON returned attention to the Response Fund "spill portion," which has a balance of about \$44 million, and asked whether the aforementioned \$12 million will be paid from the Response Fund.

MS. RYAN advised SPAR can use prevention account money to pay for cleanup, and pays for small spills out of its operating budget, but cleanup for big spills comes from the response account.

CO-CHAIR JOSEPHSON surmised if the Response [Fund] account balance reaches \$50 million, the funding stops.

MS. RYAN said correct. The [Response Fund] account is funded by a surcharge on oil of a penny per barrel.

CO-CHAIR JOSEPHSON suggested the bill could replenish [the account and keep the balance at \$50 million] so oil companies would not have to pay a surcharge for spills for which they are not responsible.

MS. RYAN said yes.

REPRESENTATIVE RAUSCHER questioned whether the state sues offenders for costs uncollected through [fines], penalties, and the recovery of cleanup costs, and if not, "why?"

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MS. RYAN said SPAR holds statutory authority to pursue recouping its costs, but the amounts are so low, complete recovery of costs is not assured. In further response to Representative Rauscher, she said recovery would be civil action through the court process.

CO-CHAIR JOSEPHSON inquired as to whether the bill creates a new set of administrative penalties so that SPAR does not have to "go to the court in the first instance?"

MS. RYAN stated the bill follows examples from other divisions within DEC that have administrative penalty authority; for example, SPAR would have the authority to issue a ticket for serious and repeat offenses, and the penalty would be administered by DEC rather than through the court system - which is less expensive - and an administrative penalty would be limited by the bill to a spill of 18,000 gallons or less in volume.

REPRESENTATIVE RAUSCHER asked whether the bill affects one who spills fuel oil on the neighboring property.

MS. RYAN said the bill increases penalty authority for refined fuel spills. In further response to Representative Rauscher, she said the bill would direct that a spill of 500 gallons of refined fuel would receive an administrative penalty.

CO-CHAIR JOSEPHSON noted one may also bring a cause of action for nuisance and trespass, seeking damages in addition to the penalties imposed by the state.

MS. RYAN acknowledged often neighbors seek damages in court.

REPRESENTATIVE PARISH returned attention to the second bullet point on slide 14 and asked how the state comes to be the leading investigator and responsible party for cleaning up a spill.

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MS. RYAN said the state becomes the leading investigator and is authorized to use state funds only when statutory criteria are met, such as a response to an imminent threat, or a serious threat to the environment or to public health. An additional criterion requires cost recovery, thus if there is a viable responsible party it behooves the company to pay for cleanup directly. She gave an example of a situation which threatened a neighborhood in Wrangell and on which the state has spent several million dollars to contain the contamination.

REPRESENTATIVE PARISH asked whether other state funds have been used in spill response or mitigation.

MS. RYAN said SPAR used to have undesignated general funds (UGF) to pay for engineering work for leak detection that was related to pipelines; however, to reduce state cost, SPAR eliminated UGF, cut several positions and combined programs, and now relies on the prevention accounts.

REPRESENTATIVE LINCOLN asked how often SPAR leads cleanup efforts.

MS. RYAN advised rarely; 95 percent of the time the responsible party is the lead. If the responsible party is an oil company, SPAR is assured the cleanup will be done right; however, if the responsible party is a homeowner, SPAR will work with the homeowner because they are not a knowledgeable party, their insurance will not help them, and the costs are very high.

REPRESENTATIVE LINCOLN questioned whether HB 322 seeks to deter homeowners and private citizens from taking risks by increasing fines and penalties.

MS. RYAN opined the bill would not have an impact on homeowners; releases by homeowners are always unintended and the actual cost of response acts as a huge deterrent.

REPRESENTATIVE LINCOLN returned attention to the third bullet point on slide 14 [the current fine and penalty structure addresses less than 5 percent of the average oil spill response and cleanup costs] and asked if this applies to instances in which the state is the lead in the cleanup.

MS. RYAN said correct.

REPRESENTATIVE LINCOLN surmised there may be some recovery of costs through lawsuits and court settlements that would augment the fine and penalty structure.

MS. RYAN agreed and will provide additional information.

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REPRESENTATIVE BIRCH questioned whether there is the potential of any of the fines being levied against a homeowner or a commercial enterprise. He gave examples of spills because of theft or vandalism.

MS. RYAN directed attention to the criteria in the bill that must be considered to determine a penalty; one of the criterion

is to consider what economic benefit occurred as a result of the spill, for example, a company that caused a release by deciding to save money. She said a homeowner would not meet the criterion related to economic benefit.

CO-CHAIR JOSEPHSON recalled Ms. Ryan estimated SPAR collected approximately \$100,000 per year in fines and penalties and asked how much of that was collected from individuals who were responsible for a spill.

MS. RYAN said the amount is small. Homeowners are reluctant to report a spill because SPAR is required to recover its costs, and the delay in reporting affects the outcome of the cleanup. As director, she said she has never penalized a homeowner, and none of the aforementioned \$100,000 was related to a homeowner spill. For a homeowner, paying to cleanup a spill is the penalty.

MS. RYAN directed attention to slide 15 and observed there are two companies that are moving oil by tanker truck from Nikiski to the refinery, crossing several waterbodies. There have been no compliance issues with BlueCrest Energy Inc. (BlueCrest), and the bill would require the companies to file a contingency plan.

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CO-CHAIR JOSEPHSON questioned whether drafting a contingency plan is a burden.

MS. RYAN explained a contingency plan contains two main aspects, one is a prevention plan such as how to mitigate the risks of a certain route, and BlueCrest has a prevention plan. Also, a contingency includes the actions that would be taken after an oil spill: how to clean it up; the location of equipment; the deployment of booms in water. The point of a contingency plan is to be prepared for what could happen; she opined they are not a significant amount of work and are a part of good business practice. The bill requires companies to provide plans to DEC - in a specific format - and to drill and exercise the plans to prepare for implementation.

CO-CHAIR TARR asked whether travel by the tanker trucks is limited by restrictions such as the time of day.

MS. RYAN said limitations on travel are outside the bounds of a contingency plan and deferred to DOTPF. Ms. Ryan stated another provision of HB 322 would include produced water when SPAR

calculates the volume of a spill for a penalty. Slide 16 provided two examples, and she explained as fields have matured on the North Slope, more saltwater is pulled out of the reservoir with the oil. In current statute, saltwater cannot be considered by SPAR as a factor in the penalty volume, yet saltwater is toxic to the tundra environment and hard to wash away. [SPAR] feels the damage to the environment caused by produced water is significant and should be considered in the volume calculations for penalties.

CO-CHAIR JOSEPHSON asked how this aspect of the bill compares with that of other states.

MS. RYAN was unsure and will provide the information.

CO-CHAIR JOSEPHSON returned attention to slide 16 and the example of produced water in penalty volume. He asked whether the responsible parties [in the examples] could have been penalized administratively under HB 322.

MS. RYAN said correct, noting that volumes in the example would have been at the threshold where the penalties would be less. For example, there have been recent spills with "a couple gallons of oil but hundreds of thousands of gallons of produced water ... the formula has shifted on what's being spilled."

REPRESENTATIVE PARISH asked for a comparison of the impact of a gallon of produced water to that of a gallon of oil.

MS. RYAN stated the proportion of salt in produced water varies by each spill and there is no standard; further, SPAR lacks good tools for the cleanup of highly saline water.

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THOMAS ATKINSON, Staff, Representative Andy Josephson, Alaska State Legislature, on behalf of Representative Josephson, co-chair of the House Resources Committee, sponsor, provided a PowerPoint presentation entitled, "HB 322 The Spill Bill." Mr. Atkinson informed the committee the first change proposed by the bill is to Section 1, on page 1, line 7, which deletes text "recent information discloses that." On page 2, there are changes to grammar, and on line 15, "but not punitive" would be deleted because civil and administrative penalties could be considered punitive. On line 16, "civil" would be deleted because the bill proposes to add administrative penalties, and on line 17, "judicial" would be deleted because fines would be

judicial fines assessed by a court or administrative fines assessed by the department (slide 1). Section 2 would increase penalties for non-crude oil spills over 18,000 gallons into aquatic environments or on public land. Section 2 read:

Sec. 2. AS 46.03.758(b) is amended to read: (b) The [NO LATER THAN THE 10TH DAY AFTER THE CONVENING OF THE SECOND SESSION OF THE TENTH ALASKA LEGISLATURE, THE] department shall establish in [SUBMIT TO THE LEGISLATURE] regulations [ESTABLISHING] the following schedule of fixed penalties for discharges of oil: (1) subject to (2) of this subsection, the penalties for the following categories of receiving environments may not exceed

(A) \$20 [\$10] per gallon of oil that [WHICH] enters an anadromous stream or other freshwater environment with significant aquatic resources;

(B) \$5 [\$2.50] per gallon of oil that [WHICH] enters an estuarine, intertidal or confined saltwater environment; and

(C) \$2 [\$1] per gallon of oil that [WHICH] enters an unconfined saltwater environment, public land or freshwater environment without significant aquatic resources;

(2) for discharges of oil that are caused by the gross negligence or intentional act of the discharger, or when the court finds that the discharger did not take reasonable measures to contain and clean up the discharged oil, the penalty shall be determined by multiplying the penalty established under (1) of this subsection by a factor of five.

MR. ATKINSON stated [subparagraphs] (A) and (B) are related to aquatic releases and [subparagraph] (C) relates to releases into an unconfined saltwater environment or public land. He pointed out penalties in existing law are more severe for a release into an anadromous stream, or other freshwater environment with significant aquatic resources; fines decrease as the receiving environments are less biologically important. Also, the existing penalties were first imposed in 1977 and have been undercut by inflation; for example, the 2018 equivalent for the 1977 penalty of \$10 is \$39.70, and the bill proposes penalties of \$20 (slide 2).

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CO-CHAIR JOSEPHSON called attention to slide 2, noting the penalties would be higher if adjusted to actual inflation from 1977.

CO-CHAIR TARR questioned whether the penalty amounts are supported by DEC.

MR. ATKINSON confirmed the amount of the penalties in [Section 2] were suggested by DEC. Continuing to Section 3, he said the intent of Section 3 is to automatically inflation adjust penalties annually to the Consumer Price Index (CPI), Bureau of Labor Statistics, U.S. Department of Labor.

REPRESENTATIVE BIRCH questioned whether Alaska Statutes contain other instances of penalties that are annually adjusted.

CO-CHAIR JOSEPHSON provided the example of Senate Bill 91 [passed in the Twenty-Ninth Alaska State Legislature] and the value of property relative to C felonies.

MR. ATKINSON offered to provide additional examples.

CO-CHAIR TARR expressed her belief [automatic inflation adjusting] will be pursued by various divisions that seek to avoid the necessity of legislation solely to address administrative tasks.

REPRESENTATIVE JOHNSON cautioned the CPI does not always increase. She stated her understanding the bill would double the base amount of the [penalties] and then use the base to adjust to CPI. She asked for the basis upon which the penalties were doubled.

CO-CHAIR JOSEPHSON suggested DEC may wish to comment.

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REPRESENTATIVE PARISH returned attention to Section 2 (slide 2) and said although the proposed [base] penalties are doubled, they approximate one-half of what the inflation-adjusted amount would be.

REPRESENTATIVE BIRCH restated his objection to the introduction of HB 322 as a committee bill. He directed attention to the bill on page 4, line 8, which read in part:

nor more than \$25,000[\$5,000] for each day after

REPRESENTATIVE BIRCH remarked:

... the daily fine rate can be a maximum of \$25,000 rather than \$5,000, so somebody suggested \$25,000, which is five times \$5,000 and ... where did that come from?

There followed brief discussion on the drafting of the bill and the source of proposed fines that double and/or increase by five-fold.

MR. ATKINSON responded that in general the proposed penalty amounts came from DEC and some were adjusted by Representative Josephson's staff to reflect the CPI. The only proposed penalties that were quintupled came from DEC and are related to continuing spill violations by a responsible party, not to an initial violation. In further response to Representative Birch, he restated the quintupled penalties were proposed by DEC.

REPRESENTATIVE JOHNSON surmised the quintupling of the penalty is explained on line 19, [paragraph 4] which read:

(4) the need for an enhanced civil penalty to deter future noncompliance.

REPRESENTATIVE JOHNSON recalled discussion [unrelated to HB 322] that concluded increasing penalties is not a deterrent to criminal behavior.

MR. ATKINSON continued to Section 4, noting the civil penalties in Section 4 were enacted in 1989 and are unchanged. He pointed out the 1989 \$8.00 penalty for a spill under 420,000 gallons - when based on the CPI calculator for 2018 - equals \$15.64, and would be rounded up in the bill to \$16.00; similarly, the 1989 \$12.50 penalty for a spill exceeding 420,000 gallons would be raised to \$25.00 (slide 4).

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REPRESENTATIVE PARISH asked where the bill reflects the cost of environmental damages to the fishing industry and supporting data.

MR. ATKINSON said he did not provide data in this regard.

There followed a brief discussion on civil action brought by the state that does or does not address environmental damages.

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REPRESENTATIVE PARISH recalled following the Exxon Valdez oil spill in 1989 there were certain direct costs to the state for damages and cleanup, and considerable costs to members of the public, which can be mitigated by civil court action. He asked whether the state can seek redress for indirect costs, for example, job training for those whose jobs were displaced by a spill.

CO-CHAIR JOSEPHSON advised under [Alaska Statutes: AS 09. Code of Civil Procedure], after proving liability, a person can seek compensatory damages; however, the bill does not directly address this question.

MR. ATKINSON returned attention to the sectional analysis and said Section 5 calculates penalty amounts by counting produced water mixed with crude oil, as crude oil, and directs DEC to increase civil penalties annually as indicated by the CPI (slide 5). Section 6 addresses penalties unchanged since 1976 related to the illegal discharges of oil and crude oil under 18,000 gallons, including discharges of other hazardous substances. The bill would double the maximum penalty for the initial violation, quintuple the maximum penalty for continuing violation, and allow a court to increase the maximum penalty. A comparison of 1976 and 2018 equivalent penalty amounts for certain violations was provided (slide 6).

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REPRESENTATIVE JOHNSON pointed out most oil spills are not as catastrophic as the oil spill in 1989; she provided an example of a relatively small accident that a small company could afford to clean up, but cautioned that a \$25,000 daily penalty could bankrupt a small operation in a short period of time.

MR. ATKINSON said the penalty applies to all spills, but the bill "allows a court to increase maximum penalty to deter future spills." Therefore, the court is not required to increase the maximum and can review efforts to stop the spill by the responsible party; however, a large company, when oil prices are high, may decline to respond when penalties are low. In further response to Representative Johnson, he restated the maximum

penalty does not have to be applied, but the minimum does; the proposed minimum is \$1,000 for the entire spill.

REPRESENTATIVE RAUSCHER questioned whether the bill would apply to a gas leak in Cook Inlet.

MS. RYAN said DEC has concluded a gas leak in Cook Inlet is a release of a hazardous substance into the environment thus the bill would allow DEC to apply penalties.

CO-CHAIR JOSEPHSON asked whether DEC sought to apply the existing minimum \$500 fines during the release [of gas] in Cook Inlet that occurred about one year ago.

MS. RYAN said DEC did not seek penalties. In further response to Co-Chair Josephson, she confirmed because natural gas is a hazardous substance when released into a waterbody, DEC has the authority to issue penalties.

CO-CHAIR JOSEPHSON recalled Hilcorp tried to act responsibly.

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MS. RYAN noted existing statute directs DEC to consider certain criteria when calculating penalties, such as the intent of the responsible party to stop the spill; in the aforementioned example, Hilcorp acted as a responsible operator and thus DEC found no grounds to initiate penalties.

CO-CHAIR JOSEPHSON recalled winter weather conditions affected the response to the release.

REPRESENTATIVE RAUSCHER inquired as to the identity of the person referred to [in the bill on page 4, line 2].

MS. RYAN deferred to the Department of Law; from the perspective of DEC, the responsible party is the owner of the product released.

REPRESENTATIVE RAUSCHER asked whether [Section 6, subsection (a)] allows for the state to be charged.

MS. RYAN acknowledged sometimes the state is the responsible party; for example, the Department of Transportation & Public Facilities may be responsible for a fuel spill and she opined DEC holds the authority to penalize sister agencies.

REPRESENTATIVE PARISH directed attention to the bill on [page 4, lines 10-16, which read:

- (1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, which shall be determined by the court according to the toxicity, degradability, and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;
- (2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation;

REPRESENTATIVE PARISH expressed his belief the term "reasonable" is used to protect against the assessment of unreasonable fines, which may be subject to custom. He asked whether the fines assessed by DEC err on the side of aggression or caution.

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MS. RYAN opined DEC is very reasonable in its assessment of penalties; in fact, last year \$82,000 in penalties was received by DEC; [the penalties in the bill] recommended by DEC were based on models by other states and are below those of EPA.

CO-CHAIR JOSEPHSON asked whether other jurisdictions impose additional fines after a [responsible party] fails to respond to an initial violation.

MS. RYAN said correct, for the purpose of encouraging the responsible party to stop a release.

REPRESENTATIVE LINCOLN returned attention to slide 3 of the earlier SPAR presentation and asked whether large spills are defined as over 18,000 gallons.

MS. RYAN said yes. In further response to Representative Lincoln, she explained processed water is associated with mining activities and is used in a slurry to remove elements from rock; produced water comes up in the wellhead during oil exploration.

REPRESENTATIVE LINCOLN observed there are many incremental changes in the bill which are hard to evaluate because their effects are compounded; he asked for modeling of the changes in

a combined way, "so that we can have a better understanding of the, the magnitude of the changes taken together."

MS. RYAN said SPAR has good historical data on spills and offered to provide data on penalties that have been assessed. She added the existing statute as written is complicated which has necessitated HB 322 include multiple similar changes.

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REPRESENTATIVE BIRCH surmised the state entrusts Alyeska Pipeline Service Company (APSC) and the Trans-Alaska Pipeline System (TAPS) to transport its royalty share of oil; in the case of a crude oil spill, he asked how the royalty share is represented "in the fining process, or the penalty process."

MS. RYAN said ownership of the oil is not complicated by the royalty portion that goes to the state and which is accounted for by the Department of Revenue; DEC regulates APSC and the oil companies that are the responsible parties managing exploration, production, and processing of the product, and that own and hold the contingency plans.

REPRESENTATIVE BIRCH concluded the shared ownership of the oil is not a factor when penalties are considered by DEC.

MS. RYAN pointed out all the oil in TAPS is comingled and APSC is the responsible party in the case of a release.

CO-CHAIR TARR returned attention to the bill in Section 2, which relates to non-crude discharges over 18,000 gallons, Section 4, which relates to crude discharges over 18,000 gallons, and Section 6, which relates to crude discharges under 18,000 gallons; she clarified a responsible party is penalized in one applicable category, but not in each of the categories.

MS. RYAN said correct.

MR. ATKINSON returned attention to [the bill on page 4, line 19, which read:

(4) the need for an enhanced civil penalty to deter future noncompliance.

MR. ATKINSON said the aforementioned language mirrors language on page 6, lines 22-23, related to spills addressed in Section

9, thus there is already an enhanced civil penalty to deter future noncompliance.

MR. ATKINSON continued to Section 7, which is a conforming amendment (slide 7). Section 8 affects penalties unchanged since enacted in 1984 by doubling the minimum penalty for discharges of hazardous wastes, doubling the maximum penalty for initial violation, and multiplying the maximum penalty for continuing violation by 2.5 (slide 8). Section 9 affects civil penalties enacted by a voter initiative in 2006 by doubling the maximum penalty for discharges under 18,000 gallons from cruise ships, doubling the maximum penalty for the initial violation, and multiplying the maximum penalty for continuing violation by 2.5 (slide 9).

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CO-CHAIR JOSEPHSON noted an error on slide 9: 1984 penalties should read 2006 penalties.

REPRESENTATIVE RAUSCHER inquired as to where new language is found in HB 322.

CO-CHAIR JOSEPHSON said new subsections are added in Sections 3, 5, and 11, and Section 12 is a new section.

MR. ATKINSON continued to Section 10 which describes factors a court may consider when determining economic benefits of noncompliance, such as deferred and avoided costs of compliance, competitive advantage gained, and income derived.

CO-CHAIR JOSEPHSON advised "economic savings" is a legal term of art and opined its usage in HB 322 is not the first occurrence in Alaska law.

MS. RYAN nodded in affirmation.

REPRESENTATIVE JOHNSON questioned whether it is common for responsible parties to decline to clean up spills "under our fine schedule or fee schedule."

CO-CHAIR JOSEPHSON called attention to reports in the media [documents not provided].

REPRESENTATIVE JOHNSON opined committee members seek to know the vision behind a committee bill. She expressed her understanding the bill changes fees and sets higher caps on penalties, and

asked who wrote the bill and why; she pointed out the bill would not fix the shortfall in the state's revenue and asked for the purpose of the bill.

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CO-CHAIR JOSEPHSON explained it was brought to his attention the affected statutes need updating.

MR. ATKINSON continued to Section 11 and remarked (slide 10):

I did want to bring the committee's attention to line 12 on page 7, "other penalties assessed for the same violation" ... and the idea there is that the court must take into consideration, actually not just take into consideration any administrative penalties levied by the department, but must offset the court's civil penalty; in other words, subtract the administrative penalty from the civil penalty.

CO-CHAIR JOSEPHSON pointed out also on page 7, [line 7] in subsection (h), are included opportunities to argue for factors to mitigate penalties.

MR. ATKINSON continued to Section 12 which is a new section to authorize DEC to assess new administrative penalties in addition to civil penalties for serious or repeated illegal discharges, as defined elsewhere in statute. For the initial violation, DEC could penalize a responsible party no less than \$1,000, no more than \$10,000, and no more than \$24 per gallon spilled. He restated the new penalty amounts were suggested by DEC. Further, the bill describes factors that must be considered by DEC, allows DEC to sue a responsible party for nonpayment, prohibits a court from adjusting administrative penalties, requires the award of prevailing party's attorney's fees and collection costs, and must subtract administrative penalties from any civil penalty. Section 12 incorporates previous provisions such as including water mixed with oil to determine spill volume, directs DEC to inflation-proof administrative penalties, and for Section 12 only, defines oil to include crude, petroleum, and any substance refined from oil (slide 11). Sections 13-18 are related to the trucking of crude, and require commercial motor vehicles used to transport crude oil to have an approved contingency plan (slide 12). Section 19 repeals legislative disapproval of regulations governing civil penalties for oil discharges - which is a separation of powers issue - and repeals prohibition against punitive penalties for illegal

discharges of ballast water, pesticides, paints, underground storage tanks, cruise ships, and illegal drug sites (slide 13). Finally, Sections 20-22 provide authority to DEC to adopt regulations before the bill takes effect, and if enacted, the bill would take effect 1/1/19.

[HB 322 was held over.]

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#### **ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:03 p.m.