

ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE

February 9, 2018

1:06 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Harriet Drummond
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

HOUSE BILL NO. 305

"An Act relating to oil and hazardous substances and waiver of cost recovery for containment and cleanup of certain releases; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 322

SHORT TITLE: OIL SPILLS/POLLUTION: PENALTIES; PREVENTION

SPONSOR(s): RESOURCES

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|----------|-----|---------------------------------|
| 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 |
| 02/02/18 | (H) | Heard & Held |
| 02/02/18 | (H) | MINUTE (RES) |
| 02/05/18 | (H) | RES AT 1:00 PM BARNES 124 |
| 02/05/18 | (H) | Heard & Held |
| 02/05/18 | (H) | MINUTE (RES) |
| 02/07/18 | (H) | RES AT 6:30 PM BARNES 124 |
| 02/07/18 | (H) | -- MEETING CANCELED -- |
| 02/09/18 | (H) | RES AT 1:00 PM BARNES 124 |

BILL: HB 305

SHORT TITLE: OIL/HAZARDOUS SUB.: CLEANUP/REIMBURSEMENT

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

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| 01/24/18 | (H) | READ THE FIRST TIME - REFERRALS |
|----------|-----|---------------------------------|

01/24/18 (H) RES, FIN
02/09/18 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

AVES THOMPSON, Executive Director
Alaska Trucking Association, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition during the hearing of HB 322.

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

POSITION STATEMENT: Answered questions during the hearing of HB 322.

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

POSITION STATEMENT: Testified in opposition during the hearing of HB 322.

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

POSITION STATEMENT: Introduced HB 305 on behalf of the House Rules Committee, sponsor by request of the governor.

FABIENNE PETER-CONTESSE

Juneau, Alaska

POSITION STATEMENT: Testified in support during the hearing of HB 305.

ACTION NARRATIVE

[1:06:10 PM](#)

CO-CHAIR ANDY JOSEPHSON called the House Resources Standing Committee meeting to order at 1:06 p.m. Representatives Josephson, Parish, Talerico, Rauscher, Lincoln, Johnson, and Tarr were present at the call to order. Representative Birch arrived as the meeting was in progress.

HB 322-OIL SPILLS/POLLUTION: PENALTIES; PREVENTION

[1:06:44 PM](#)

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."

[1:08:04 PM](#)

AVES THOMPSON, Executive Director, Alaska Trucking Association, Inc., paraphrased from the following written testimony [original punctuation provided]:

Thank you. Co-Chairs and members of the committee, I am Aves Thompson, Executive Director of the Alaska Trucking Association. The Alaska Trucking Association is a state wide organization representing the interests of our nearly 200 member companies from Barrow to Ketchikan. Freight movement is an essential element of our economy and impacts all of us each and every day.

Relative to contingency plans in Section 13-18 in HB322, 49 CFR part 130, already prescribes contingency plans for the motor transport of oil. I'll read some highlights from Part 130 regarding contingency plans for oil bulk transport.

Contingency Plans for Oil bulk transport:

49 CFR 130. Oil spill prevention and response plans Prescribes prevention, containment and response planning requirements of the Department of Transportation applicable to transportation of oil by motor vehicles and rolling stock.

49 CFR 130.2 Scope (a) The requirements of this part apply to --- 1. Any liquid petroleum oil in a packaging having a capacity of 3,500 gallons or more; and 2. Any liquid petroleum or non-petroleum oil in a quantity greater than 42,000 gallons per packaging.
49 CFR 130.3 General Requirements No person may offer or accept for transportation or transport oil subject to this part unless that person--- (a) Complies with

this part; and (b) Has been instructed on the applicable requirements of this part

49 CFR 130.31 Response Plans (a) No person may transport oil subject to this part unless that person has a current basic written plan that: goes on with a list of requirements

The Alaska Trucking Association believes that since the federal requirements already prescribe a contingency plan for oil transporters of both crude and refined product, sections 13-18 in HB322 are not necessary.

Secondly, to dispel the notion that drivers transporting oil are irresponsible, please note the following training and retraining requirements to drive such a rig. These men and women are highly trained professionals who are committed to safety not only for themselves but for other motorists as well. Our drivers have families who live, work and play in Alaska and want their outdoor experience to be free of contaminated soil or streams. They are as concerned about their environment as you are. Without truck drivers driving trucks, Alaska would stop..

Hazardous Materials Driver Requirements

First, the driver will have to pass the test for their hazardous materials endorsement (49 CFR 383). The HME is required for all loads of placarded hazmat, which includes all bulk transport of petroleum products. To obtain an HME, a CDL holder must: a) demonstrate that they can safely and competently transport hazardous

materials and are aware of the specific safety requirements for doing so and b) pass a fingerprint-based background check administered by the Transportation Security Administration that checks the driver against:

- Immigration databases,
- Identification database,
- The FBI's NCIC database of all known criminals and arrestees in the United States, and
- The Terrorist Watch List

If the driver fails any of these checks (criminal disqualifying factors available at 49 CFR 1572.103), the endorsement is not issued.

Of course, because the driver is also operating a tank trailer, a tank endorsement will also be required. The tank endorsement requires the driver to demonstrate that they know how to safely operate a tank vehicle. Tank vehicles differ from traditional Class 8 box trucks in 2 important respects: they have a higher center of gravity and are subject to "slosh" (yes, that's the technical term for it) where breaking or accelerating the vehicle causes the liquid in the tank to move in the opposite direction. This slows acceleration and means that stopping distances are longer. After a driver obtains a tank endorsement, their motor carrier must also administer a road test to that driver to double check that the driver can safely operate a tank vehicle and understands the differences to operate safely. (49 CFR 391.31)

Switching over to training, all drivers operating trucks carrying hazmat must have several types:

- General awareness (49 CFR 172.704(a)(1)): Which includes knowledge of how to respond to an emergency, where on the shipping paper to find contact info for safety and environmental remediation in the case of a release, and how to most efficiently
- inform enforcement or emergency response of the hazardous items in the load should a clean up become necessary.
- Function-specific (172.704(a)(2): Means requiring the driver to learn the specific safety and welfare requirements that attach to trucks transporting hazardous materials. Drivers in the tank field will have driver-specific training, tanker-specific training, and, sometimes training on the specialty type of tank they're operating.
- Safety training (172.704(a)(3)): Which specifically includes "emergency response information," and "measures to protect the employee" from a release.
- Security-awareness training (172.704(a)(4)): General security training is required for all loads of hazardous materials The Transportation Security Administration has developed a sample training that is widely used.
- In-depth security training (172.704(a)(5): If the petroleum load qualifies as a Class 3 Flammable Liquid in Packing Group I or II (some petroleum products do, some don't. Almost all crude oil does now, by DOT rule), the motor carrier must also develop a security plan. This security plan requires the motor carrier to ensure they are securely:
 - o Hiring and vetting employees - The background check on the HME takes care of this for drivers
 - o Protecting their facilities - In responsible plans, this includes protection from

terrorists getting in and spills getting it and o En-route security - Generally requiring "constant attendance" of the load, which defends against accidental releases.

There are other required trainings that might come in to play for loading (PHMSA), unloading (PHMSA), transport of hazardous waste (EPA), and others.

Not only are there state and federal regulations governing the transport of oil, companies that contract with the motor carriers place strict environmental requirements on the motor carrier which many times far exceed the regulatory requirements. Insurance companies place additional requirements on motor carriers to manage the risk involved in such activities. Only the best survive in such a competitive market place.

We urge that Sections 13-18 be stricken from HB322 as duplicative and unnecessary. Thank you for your attention.

[1:14:45 PM](#)

CO-CHAIR JOSEPHSON asked whether the two companies that are trucking crude oil in Alaska are not required to have contingency plans.

MR. THOMPSON expressed his belief [Title 49 Code of Federal Regulations (CFR) Part 130: Oil Spill Prevention and Response Plans] specifically requires that they do.

CO-CHAIR JOSEPHSON questioned whether said contingency plans are "not copied to [the Department of Environmental Conservation (DEC)]."

MR. THOMPSON advised CFR requires the contingency plans to be maintained at the principal place of business and at the location from where the trucks are dispatched.

CO-CHAIR JOSEPHSON surmised DEC does not receive the contingency plans required by CFR.

MR. THOMPSON said correct. He restated the plans are available at the principal place of business and at the point of dispatch.

CO-CHAIR JOSEPHSON asked Mr. Thompson if he agreed the bill does not impact the regulation on the transportation of refined fuel.

MR. THOMPSON said yes. He remarked:

My understanding is that this bill deals, deals with the transport of crude oil. However, throughout the hearings I've heard several references to refined product, and what about this and what about that, and I just, so that's the reason that I mention that the transport of refined product. Part 130 requires, in my understanding of the law, requires that there be a [contingency] plan for both crude oil and refined product.

CO-CHAIR JOSEPHSON agreed there has been varied discussion in this regard and media reports on a related topic.

CO-CHAIR TARR asked if there is a jurisdictional issue [between DEC and the federal government] over the responsibility for a cleanup of a spill.

[1:19:10 PM](#)

KRISTIN RYAN, Director, Division of Spill Prevention and Response, DEC, said she was unaware of an existing jurisdictional issue. The state is allowed to enforce or implement federal standards; for example, the Department of Transportation & Public Facilities (DOTPF) or DEC could request a copy of the contingency plans for review.

CO-CHAIR TARR acknowledged requiring trucking companies to produce a new plan would be duplicative, but suggested a company could share its existing plan with DEC, although both jurisdictions would need a physical copy of the contingency plan. She asked whether DEC has the ability to request access to the contingency plans.

MS. RYAN agreed DEC expertise could help companies with the contingency plans and would benefit from an awareness thereof.

CO-CHAIR TARR remarked:

If these [contingency] plans are already being prepared, you know, and they don't have a need to prepare a new [contingency] plan but instead ... share that [contingency] plan with DEC so that they can ... take a look at it, and make sure everything looks

correct, does that address your concern about duplication of effort?

MR. THOMPSON pointed out transporters of bulk oil products adhere to strictly-enforced spill reporting requirements that would provide specific information following a spill. He opined there would not be "too much objection to sharing those plans" but acknowledged he has not discussed this topic with ATA members. He referred to [Title 49 Code of Federal Regulations (CFR) Part 130.31 Response Plans], which states the specific elements of the [contingency] plan. Further, he noted the federal regulation applies to interstate and intrastate carriers at various levels of volume. He concluded submitting a contingency plan to another level of review would be duplicative and unnecessary.

CO-CHAIR TARR surmised the contingency plans would be the same whether they are prepared for state or federal government. In addition, DEC needs access due to the preventative nature of a contingency plan. She restated the idea of sharing information rather than duplicating work.

[1:25:46 PM](#)

MR. THOMPSON inquired as to whether the bill envisions another level of review and approval of the contingency plans by the state.

CO-CHAIR JOSEPHSON stated

... I don't intend to offer any amendments to change [contingency] plans relative to refined or non-crude

oil truck traffic. It's not in the bill now, and the discussion is ... the genesis of it is, I suppose, the bill, but it's not part of the bill.

MS. RYAN said the fact that companies hauling oil and refined fuel in Alaska have already crafted prevention and response plans is "exciting news to us and we're really looking forward to working with the companies to make sure that maybe we can participate when they're, they're conducting their drills and exercises of those plans which are, which looks like is also required by the federal law, so hoping to be in a more collaborative role in the future" She pointed out DEC functions in an approval role and reviews prevention, contingency, and response plans, so DEC would seek to "add some value there," especially because the plans are not submitted to a federal agency for approval.

[1:29:01 PM](#)

REPRESENTATIVE BIRCH observed the bill is clearly duplicative and confusing. He directed attention to the bill on page 7 [beginning on line 22, and continuing to page 9, lines 1-3], which read:

(a) In addition to the actions available under AS 46.03.758 - 46.03.760, the department may assess an administrative penalty against a person who causes or permits a serious discharge or repeat discharges of oil not permitted under applicable state or federal law. (b) An administrative penalty assessed under this section may not be less than \$1,000 nor more than \$10,000 for the initial violation, and may not exceed

\$24 a gallon of oil discharged. When assessing a penalty under this section, the department shall consider (1) the effect of the discharge on the public health or the environment;

(2) reasonable costs incurred by the state in the detection, investigation, and attempted correction of the discharge; (3) any previous history of compliance or noncompliance by the person with this chapter, AS 46.04, AS 46.09, and AS 46.14; (4) the need to deter future discharges; and (5) the extent and seriousness of the discharge, including the potential for the discharge to threaten public health or the environment. (c) If a person fails to pay an administrative penalty assessed under this section, the department may bring an action to collect the penalty. The amount of the penalty is not subject to review by the court in an action to collect the penalty described in this section. (d) In a collection action under (c) of this section, the court shall award the prevailing party full reasonable attorney fees and costs incurred in the collection action. (e) Action under this section by the department does not limit or otherwise affect the authority of the department to otherwise enforce this chapter, AS 46.04, AS 46.08, AS 46.09, AS 46.14, or regulations adopted under those statutes, or to recover damages, restoration expenses, investigation costs, court costs, attorney fees, or other necessary expenses. The court shall set off against a judicial civil assessment subsequently awarded under AS 46.03.758, 46.03.759, or 46.03.760 an amount ordered

to be paid under this section by the same person for the same discharge. (f) For the purpose of determining the volume of discharged oil under this section, the department shall include the produced water, if any, that was mixed with the discharged oil at the time of the discharge. (g) The department shall annually increase the amounts of the administrative penalties authorized in (b) of this section by a percentage equal to the percentage of increase in all items of the Consumer Price Index for all urban consumers for Anchorage, Alaska. The index for January of 2018 is the reference base index. (h) In this section, (1) "discharge" means entry of oil into or on the water or public land of the state, regardless of causation, except discharges into an enclosed and impervious oil spill containment area; (2) "oil" means crude oil, petroleum, and any substance refined from petroleum.

REPRESENTATIVE BIRCH said imbedded in the proposal is a definition of a refined oil product. He directed attention to Section 10 [on page 6, beginning on line 25, and continuing to page 7, lines 1-5] which read:

(g) As used in this section, "economic savings" means the economic benefit of noncompliance [THAT SUM WHICH A PERSON WOULD BE REQUIRED TO EXPEND FOR THE PLANNING, ACQUISITION, SITING, CONSTRUCTION, INSTALLATION AND OPERATION OF FACILITIES NECESSARY TO EFFECT COMPLIANCE] with the standard violated. When determining an "economic savings," the court may consider (1) deferred and avoided costs of compliance

with the standard violated; (2) a competitive advantage gained by noncompliance with the standard violated; and (3) income derived as a result of noncompliance with the standard violated from operations that were not authorized or permitted.

REPRESENTATIVE BIRCH questioned the clarity of the aforementioned language because it does not refer to quantities, time limits, or "how that's going to be calculated." He asked Mr. Thompson how the proposal would be assessed.

MR. THOMPSON opined there is no standard methodology to determine the economic benefit of noncompliance, and expressed his interest in knowing how that would be calculated. Also, the provision related to indexing of the penalties to a cost of living allowance seems new to state government, and he questioned its place in the bill.

CO-CHAIR JOSEPHSON advised indexing [to a consumer cost index] is found in Alaska law in the labor code related to minimum wage, and in the criminal code, thus the bill is not "inventing the concept of indexing." Furthermore, the term "economic savings" already exists in AS 46.03, the statute under discussion.

[1:33:05 PM](#)

REPRESENTATIVE PARISH returned attention to [Title 49 Code of Federal Regulations (CFR) Part 130.31 Response Plans], which is divided into two tiers: [subsection (a)], transport of oil when there is a contingency plan retained on file; [subsection (b)], transport of a quantity greater than 1,000 barrels or 42,000

gallons, and in the latter case, the contingency plan must be submitted to the Federal Highway Administrator, Washington, D.C. He asked for the extent of the burden on ATA members to provide copies to the state.

MR. THOMPSON said [subsection] (a) refers to cargo tanks carrying greater than 3,500 gallons and [subsection] (b) refers to volumes of 42,000 gallons, which could not be legally transported by a tanker truck.

REPRESENTATIVE PARISH restated his question relative to [subsection] (a).

MR. THOMPSON said, "I don't believe that would be terribly difficult. I don't want to speak for my membership at this point, as I pointed out, I, we haven't discussed that particular aspect of it. I guess my concern would be the review and approval aspects of that process."

REPRESENTATIVE LINCOLN asked whether the current contingency plans are reviewed and approved by a government agency.

MR. THOMPSON advised the contingency plans are required to be prepared and maintained at certain locations and are subject to inspections by enforcement officers - both state and federal - which are also known as compliance reviews.

REPRESENTATIVE LINCOLN said, "Is that a yes or a no on review and approval?"

MR. THOMPSON further explained an initial review and approval would take place at the time of inspection, and corrective

action could be required; however, there is no advance submittal or approval required by federal regulation.

[1:38:20 PM](#)

CO-CHAIR JOSEPHSON stated in [AS] Title 46, the penalties are more severe for the spillage of crude oil than for non-crude oil; he expressed his understanding Mr. Thompson testified the state is not allowed to approve the contingency plans for non-crude oil, but can inspect and review the plans. However, the bill is related to crude oil transportation along the Kenai River, where no contingency plans for trucks carrying crude oil are required, and he asked for affirmation.

MR. THOMPSON said contingency plans are required for crude oil transport by the code of federal regulation. He added, "Now whether the state comes to look at those or not, in an enforcement proceeding ... they're certainly available for inspection and if they're found wanting, then I'm sure that penalties would, would follow."

CO-CHAIR JOSEPHSON surmised the position of ATA is that contingency plans are inspected at the time of a penalty, but are not reviewed before an accident.

MR. THOMPSON said, "Yes, that's not my interpretation Mr. Chairman, that's what the federal regulation says, and we try to abide by the regulations."

REPRESENTATIVE PARISH pointed out the federal definition of oil means "oil in, of any kind, or in any form, including but not limited to petroleum, fuel sludge - I'm sorry - fuel oil,

sludge, oil refuse, and oil mixed with wastes other than dredged spoil." He surmised there are already contingency plans on file at the principal places of business of all truckers who are in compliance, and that Mr. Thompson said it would not be a considerable burden to provide copies to the state.

MR. THOMPSON opined it would not be a huge burden to share reports. He restated he does not have permission from ATA membership to issue a commitment on this issue on their behalf. He restated his concern is related to an additional review and approval process.

CO-CHAIR JOSEPHSON remarked:

Your position, for the association, is that the State of Alaska should not play a role in needing to approve crude trucking contingency plans, ... that we should be powerless in terms of that issue.

MR. THOMPSON stated if federal regulations are met, that is meeting the law as currently written.

CO-CHAIR JOSEPHSON returned attention to the provision in the bill related to consumer price indices, and pointed out AS 46.03.758 was written in the Tenth Alaska State Legislature, circa 1979. He asked whether Mr. Thompson's position is that fines assessed in 1977-79 should not increase due to inflation.

MR. THOMPSON acknowledged some things go up, and some don't, and restated his concern about indexing.

[1:43:57 PM](#)

REPRESENTATIVE JOHNSON asked Mr. Thompson if there is confusion as to whether the bill applies to crude oil, all types of oil, or mixed oil products.

MR. THOMPSON remarked:

... there is some blurring of the lines there, I think, in the definitions as to whether this is crude oil ... the co-chairman has made it clear that he believes it is for crude oil only, and I think that was the intent, but there are some definitions that cause one to think that perhaps it might sort of slip over into refined products

CO-CHAIR JOSEPHSON clarified that the contingency plans refer to crude oil transportation; in Section 1, the bill refers to non-crude oil - as in current law - and in Section 5 the bill refers to crude oil. He stated the bill makes no changes relative to the categorizations of oil.

REPRESENTATIVE JOHNSON stated:

... different parts of the bill indicate different things. There's discharged crude oil, to determine, include, so for volume for that includes produced water mixed with the oil. There's also a section that says, "discharged mixed with water or anything that was mixed with the discharged oil," could be listed as the total volume. It talks about anything that ... "there will be damages that will be determined according to toxicity, degradability, dispersal

characteristics of the substance discharged, the sensitivity of the receiving environment and the degree to which the discharge degrades the existing environmental quality," so ... its not really specific as to what that is that's being discharged.

REPRESENTATIVE JOHNSON continued to note definitions of oil and oil discharges and suggested the definitions and references are not just to crude oil.

CO-CHAIR JOSEPHSON acknowledged the existing law requires careful reading and recommended the committee review the PowerPoint presentations provided [at the bill hearing of 2/2/18]. He restated HB 322 makes no changes regarding degradability or other features of the existing law, but updates penalties and adds the contingency plan feature for crude oil.

[1:49:01 PM](#)

REPRESENTATIVE JOHNSON directed attention to the bill on page 2, lines [7-8] which read [in part]:

losses from oil pollution for which, because of its subtle, long-term, or unquantifiable nature

REPRESENTATIVE JOHNSON urged the committee to carefully define terms because of their potential effects on industry.

CO-CHAIR JOSEPHSON pointed out the aforementioned section of the bill has been existing law for decades. Further, AS 46.03 provides that [action by the responsible party] can mitigate its

penalties, which is unchanged by HB 322. The bill is fundamentally about updating 40-year-old [provisions].

CO-CHAIR TARR provided her interpretation of Representative Johnson's concerns.

REPRESENTATIVE BIRCH raised a point of order that invited testimony is open and suggested the committee complete witness testimony before beginning debate on the bill.

REPRESENTATIVE PARISH asked Mr. Thompson whether the following is correct: a contingency plan, filed in accordance with federal code, is not subject to external review unless audited.

MR. THOMPSON said yes. He explained the state and federal governments can review and approve the plans. Firstly, the Federal Motor Carrier Safety Administration, U.S. Department of Transportation (USDOT), has enforcement officers who conduct a review of new entrants to trucking - similar to a compliance review - and corrections can be made at that time. Secondly, the Federal Motor Carrier Safety Administration has enforcement personnel in Alaska who perform compliance reviews at cargo tank facilities to check equipment, drivers' records, and contingency plans, also providing an opportunity for corrective action.

REPRESENTATIVE PARISH questioned whether the aforementioned procedures occur in Alaska.

[1:56:13 PM](#)

MR. THOMPSON said yes. He suggested further information in this regard is available from the division of Measurement Standards

and Commercial Vehicle Enforcement, DOTPF. In further response to Representative Parish, he said he does not monitor the frequency of inspections.

CO-CHAIR JOSEPHSON related DEC's estimate that the bill would cost all industries that transport fuels a [combined total] of an additional \$75,000 annually; he questioned whether industry "[would] survive," after paying an additional \$75,000.

MR. THOMPSON asked for clarification.

CO-CHAIR JOSEPHSON directed attention to [Fiscal Note Identifier: HB322-DEC-SPAR-02-01-2018] which read [in part] [original punctuation provided]:

Change in Revenue:

The amount of revenue generated from existing civil penalty amounts varies significantly from year to year and is dependent on several factors including the number of releases that occur, specific details of the releases, as well as the status and length of civil actions/litigation. Over the past three fiscal years, the Department has received an average of approximately \$150.0 per year associated with civil penalties from releases of oil or hazardous substances. With the increases of penalty amounts provided in the bill and basing estimates on recent data, it is estimated an additional \$74.7 of revenue will be received into the Prevention Account of the Oil and Hazardous Substance Release Prevention and Response Fund, with an annual increase based on average inflation rates.

MR. THOMPSON recalled previous testimony that there are two companies in Alaska transporting crude oil, and [increased costs of] \$37,500 each may be an onerous burden.

CO-CHAIR JOSEPHSON said:

... you're conflating all industries that transport this sort of hazardous or fuel material and just the C-plan carriers, and I'm talking about hundreds and hundreds of transporters of all manner, could be airplane companies, could be the railroad, all of them together, according to the department, would pay \$75,000 more under the bill.

REPRESENTATIVE RAUSCHER suggested Representative Johnson was concerned about increased fines and also unseen costs to manage the details of the legislation, which would affect industry profits.

MR. THOMPSON closed, noting there are two carriers currently transporting crude oil: one carrier transports oil from Anchor Point to Nikiski, and the other, located on the Kenai Peninsula, has been transporting crude oil by truck for 30-40 years. He opined this activity has continued safely and conscientiously without significant spills.

REPRESENTATIVE LINCOLN requested additional information from DEC that justifies its estimate of \$75,000.

[2:02:28 PM](#)

KARA MORIARTY, President/CEO, Alaska Oil and Gas Association (AOGA), provided a PowerPoint presentation entitled, "AOGA Alaska Oil and Gas Association HB 322 Testimony," dated 2/7/18. She said AOGA is a private trade association representing the majority of oil and gas producers, explorers, refiners, and transporters of Alaska's oil and gas, and her testimony reflects the opinion of its membership (slide 2). Ms. Moriarty stated the industry is committed to safety and seeks to diligently prevent and prepare for the unfortunate instance of a spill; in fact, the industry is already prepared with a robust response capability in the event of a spill. Companies engaged in, or who intend to undertake oil and gas exploration, development, production, or transportation, are required to have current contingency plans in place, and sufficient equipment available, and to exercise both plans and equipment at an annual cost to each operator of \$2 million to over \$8 million. Further, companies are members of spill response cooperatives such as Cook Inlet Spill Prevention and Response, Inc. (CISPRI), and Alaska Clean Seas (ACS), which provide personnel, equipment, and training for response to an oil spill. Membership fees for oil spill response organization can range from \$500,000 to \$100,000 in addition to annual fees; in fact, Alyeska Pipeline Service Company (APSC) conducted over 200 spill drills and exercises last year. Ms. Moriarty described the procedures and costs attributed to the Ship Escort/Response Vessel System (SERVS), APSC (slide 3). She said if the Division of Spill Prevention and Response (SPAR), DEC, responds to an oil spill, DEC almost always recovers the full cost of the response, which cannot be said for non-oil industry facilities. She directed attention to slide 4, which illustrated the 22-year average for the number and volume of all spills in Alaska is trending down. Slide 5 illustrated about one-quarter of all spills are sourced from

oil-related facilities. From fiscal year 2010 (FY 10) to FY 14, oil and gas exploration and production accounted for 29 percent of the total spill volume by facility. Slide 6 further illustrated crude oil spills from FY 15-FY 17 accounted for less than 2 percent of all spills in Alaska by volume. She pointed out Section 5 of HB 322 would force DEC to include produced water in the calculation of a spill; she acknowledged there can be crude oil in produced water, however, the volumes and number of produced water spills are also trending downward (slide 7).

[2:10:25 PM](#)

MS. MORIARTY observed if the purpose of the bill is to increase fines and penalties to deter spills, there is no reason to do so because the oil and gas industry consists of Alaskans and environmentalists who want to protect Alaska; furthermore, the industry has direct economic incentives to prevent spills. For example, the costs of prevention, cleanup, and restoration are tremendous deterrents for industry and would probably exceed a fine or penalty. Although the intent of the bill may be to incentivize better behavior, AOGA believes fewer spills is the goal of all Alaskans. In addition, there is a perception that the bill is a revenue generator for SPAR, and she noted SPAR is funded by industry and a one penny per gallon assessment on wholesale refined fuel products. The state's oil and hazardous substance release response fund - also known as the "470 Fund" - is the primary source of revenue for SPAR and ensures the state's ability to respond to a spill. Using the 470 Fund, SPAR conducts prevention, initial response, and contaminated site cleanup activities, including reviewing discharge prevention and contingency plans (C-plans), conducting training response drills, and verifying cleanup organizations' proof of financial

ability. She pointed out, although the 470 Fund's purpose is cleaning up and preventing spills, the fund has been appropriated to non-spill projects such as campgrounds, airports, tank farms, and privately-owned facilities, which may have reduced the corpus of the fund during the 1990s. Ms. Moriarty also noted SPAR has not responded to AOGA suggestions that may have preserved the fund. She concluded additional revenue for SPAR should be collected from all affected parties (slide 8).

[2:15:03 PM](#)

MS. MORIARTY turned to certain provisions of the bill. [AOGA] questions the necessity of increasing fines or linking penalties to inflation in order to change behavior; she restated the cost of remediation is a deterrent to the industry, and characterized the provision as an automatic tax increase. She asked for clarification of the information that concluded the bill was necessary. Section 5 expands the definition of oil spills to include produced water and she said although produced water contains a small amount of crude oil, it does not create equal damage, and should not be treated as the same. [AGOA] considers Section 10 to be subjective, ambiguous, and open to the abuse of confidential financial records to determine the economic benefit of noncompliance. In Section 12, the proposed administrative penalties are unclear and subjective, and grant DEC broad discretion without limitations. Relative to the need for DEC to approve commercial motor vehicle transportation C-plans for trucks that transport crude, she said the bill - because of the definition of processed water - would apply to vehicles on the North Slope and Cook Inlet, and thus would affect trucks that move drilling water and wastewater. [AOGA's] members believe

the provisions do not provide additional protection because the affected trucking companies already comply with federal regulations. She cautioned the bill could increase the duties of SPAR, although the [attached] fiscal note does not include additional staffing, and AOGA members report SPAR staff may not be able to meet timelines for ongoing operations. [AOGA] agrees with the Alaska Trucking Association that this section should be removed from the bill; if the section is not removed, AOGA urges for an amendment allowing trucking operations to continue under USDOT mandates if DEC causes delays. Ms. Moriarty stated AOGA is not in support of the bill and urged the committee to search for alternatives.

[2:20:54 PM](#)

CO-CHAIR JOSEPHSON recalled past legislation which added a penny to the state gasoline tax as a source to fund SPAR. At that time, Ms. Moriarty's position was that because the oil and gas industry had supported SPAR for years, all industries and the public should share in the cost; subsequent to passage of the legislation, Alaska residents now pay an additional penny for gas to fund SPAR. He questioned why AOGA does not now support an adjustment to fines and penalties that are assessed to industry and to non-crude oil industry parties who are responsible for oil spills.

MS. MORIARTY pointed out AOGA members pay the costs of preparing for oil spill response, and increasing their penalties along with others in the industry is not a deterrent; she restated her request for specific examples to justify additional legislation aimed at repeat offenders.

REPRESENTATIVE PARISH returned attention to slide 7 and asked why the number of spills has increased, and the volume of produced water spilled since [2011] has remained even, although oil production has decreased by approximately two-thirds.

MS. MORIARTY explained more produced water than crude comes from an oil well in a 40-year-old field. In fact, as the production of oil declines, and the amount of produced water increases, the number and volume of produced water spills may correlate, but [slide 7] shows the opposite. In further response to Representative Parish, she said she would provide more information on the impacts of potential harm from produced water.

[2:29:01 PM](#)

REPRESENTATIVE PARISH asked specifically for the factor of harm represented by a gallon of crude compared to produced water.

CO-CHAIR JOSEPHSON opened public testimony. After ascertaining no one wished to testify, public testimony was closed.

REPRESENTATIVE RAUSCHER returned attention to slide 6 and inquired what substances other than crude oil have been spilled.

MS. MORIARTY advised the SPAR spill response report indicates a range of incidents including home heating oil spills or oil spills by industries other than oil and gas industries.

[2:32:36 PM](#)

[HB 322 was held over.]

HB 305-OIL/HAZARDOUS SUB.:CLEANUP/REIMBURSEMENT

[2:32:41 PM](#)

CO-CHAIR JOSEPHSON announced that the final order of business would be HOUSE BILL NO. 305, "An Act relating to oil and hazardous substances and waiver of cost recovery for containment and cleanup of certain releases; and providing for an effective date."

[2:33:18 PM](#)

KRISTIN RYAN, Director, Division of Spill Prevention and Response (SPAR), Department of Environmental Conservation (DEC), introduced HB 305 at the request of the governor. Ms. Ryan informed the committee DEC increased its cost recovery efforts recently, which has created difficulties for homeowners who are responsible for spills of home heating oil. In fact, homeowners are reluctant to contact DEC because they don't want to receive a bill. She said a homeowner is required by state law to pay for the cost to cleanup a spill of a hazardous substance and to repair the environment, which would not be changed by the bill. The change made by HB 305 would be that SPAR would no longer have to bill a responsible homeowner for providing technical assistance. Technical assistance includes supporting a homeowner who is overwhelmed by a situation of which he/she has no expertise, financially or emotionally. Further, homeowners do not have the experience or skill needed to address the problem. After contact by a homeowner, SPAR inspects the site of the spill and provides advice; currently, SPAR is required to send a bill, which prevents homeowners from asking for help.

Ms. Ryan said SPAR seeks relief from its mandate of recovering its expenses of providing assistance to homeowners, which she opined would help homeowners respond to the spill more efficiently, and prevent additional damage due to a delay in reporting a spill. She pointed out SPAR is the only division in DEC that is required to recover its cost - other environmental programs are funded through a permit system - but consumers do pay a "permit fee" when they buy gas and pay almost one penny per gallon for SPAR's assistance. Finally, SPAR has found insurance companies are unwilling to provide insurance to homeowners against home heating oil spills, thus homeowners are faced with an expensive financial burden as the cleanup at a home can cost from \$10,000 to \$60,000, depending on the circumstances, for example, leaks migrating under house foundations are dangerous to dwellers.

[2:39:33 PM](#)

REPRESENTATIVE BIRCH directed attention to a summary from DEC to the co-chairs dated 2/7/18 which reported in 2017, there were 37 crude oil spills totaling 1,655 gallons, and 1,503 non-crude oil spills totaling 188,379 gallons [document not provided]. He asked whether homeowner spills are included in the non-crude oil spill summary.

MS. RYAN said yes. She explained SPAR's annual report identifies spills by type of product, and refined fuel is the predominant product spilled. In addition, spills are identified by types of industry and location. Home heating oil tank spills typically account for approximately 2 percent of overall spills, which she cautioned may be seriously underreported.

REPRESENTATIVE BIRCH asked whether DEC would recover costs for a spill, for example, at a school.

MS. RYAN said HB 305 does not affect DEC penalty statutes; however, a spill of any volume could draw a penalty.

REPRESENTATIVE BIRCH asked if, under HB 305, one would not be billed for a call to DEC to report an oil spill, but would be subject to a penalty.

MS. RYAN said HB 305 only addresses cost recovery and does not change DEC's ability to enforce a penalty if warranted.

REPRESENTATIVE PARISH surmised the intent of HB 305 is to reduce homeowners' anxiety - that is related to a spill - by allowing the state to provide assistance without cost; in addition, the state would no longer be compelled to bill a homeowner for assistance.

MS. RYAN said yes.

[2:45:31 PM](#)

REPRESENTATIVE RAUSCHER suggested homeowners have other worries after an oil spill, such as whether their property is condemned.

MS. RYAN said the bill is specific about cost recovery for providing technical assistance; the homeowner is still liable for cleaning up the release. [DEC] maintains a database of sites when contamination remains above cleanup level in order to protect human health.

REPRESENTATIVE RAUSCHER gave an example of a property where monitoring was needed for 10 years.

MS. RYAN explained institutional controls and monitoring are required in difficult situations where the contamination level remains high, or during treatment. If HB 305 becomes law, SPAR would not have to send a bill each year for monitoring reports.

REPRESENTATIVE BIRCH expressed support for the intent and purpose of HB 305; he asked whether callers are identified when assistance is requested.

MS. RYAN acknowledged SPAR frequently provides assistance to anonymous callers.

[2:51:12 PM](#)

The committee took an at-ease from 2:51 p.m. to 2:52 p.m.

[CO-CHAIR JOSEPHSON opened public testimony on HB 322.]

[2:52:31 PM](#)

FABIENNE PETER-CONTESSÉ informed the committee she works for the state and is testifying as a private citizen and a 36-year resident of Juneau. She expressed support for HB 305, which would allow DEC to waive cost recovery for small oil spills in residential units. Ms. Peter-Contesse said the underground oil tank leaked at her home in Juneau and she reported the spill to DEC. She received advice from DEC, hired a contractor to dig out and clean the tank, and began remediation. Remediation cost tens of thousands of dollars for cleanup, equipment, disposal,

and soil testing, none of which was covered by homeowner's insurance. The staff at DEC were "exceptional" and in 2017, she received a bill for their assistance. Ms. Peter-Contesse said she did everything she was advised to do, and staff at DEC said they were required to recover their costs. After receiving more advice and more bills, she decided not to contact DEC further. At that point, "it put a barrier between us and DEC that shouldn't exist." Although she is a responsible homeowner who wishes to clean up the property, she is not willing to continue to communicate with DEC and get charged. She acknowledged the state's fiscal crisis and the need to increase revenue; however, DEC garners no more than \$60,000-\$70,000 per year from cost recovery and residents already pay into the SPAR fund. Ms. Peter-Contesse said the existing statute does not help DEC and the state achieve the goal of cleaning up the oil spill and advising residents how to do so.

[2:57:11 PM](#)

CO-CHAIR JOSEPHSON asked if Ms. Peter-Contesse was levied a penalty for the spill.

MS. PETER-CONTESSSE said no. She was unsure of the regulations addressing residential oil spills.

CO-CHAIR JOSEPHSON observed this is evidence DEC exercises restraint when issuing penalties. He said the foregoing testimony is compelling.

REPRESENTATIVE BIRCH urged for uniformity of laws for those who accidentally spill oil. He said he supported HB 305, and urged the committee to treat responsible parties equitably.

3:00:30 PM

REPRESENTATIVE PARISH asked how much more remediation would have cost without help from DEC.

MS. PETER-CONTESSE said she saved money by getting assistance from DEC and doing most of the work without a contractor. She cautioned getting a bill from DEC may prevent others from doing the right thing.

[HB 305 was held over.]

3:02:42 PM

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:02 p.m.