

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

February 12, 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
Representative David Talerico

MEMBERS ABSENT

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."

- MOVED CSHB 322(RES) OUT OF COMMITTEE

PRESENTATION(S): ALASKA NATIVE VILLAGE CORPORATION ASSOCIATION

- HEARD

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
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
02/09/18	(H)	Heard & Held
02/09/18	(H)	MINUTE (RES)
02/12/18	(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: Answered questions during the hearing of HB 322.

EMILY NAUMAN, Attorney
 Legislative Legal Counsel
 Legislative Legal Services
 Legislative Affairs Agency
 Juneau, Alaska

POSITION STATEMENT: Answered a question during the hearing of HB 322.

HALLIE BISSETT, Executive Director
 Alaska Native Village Corporation Association
 Anchorage, Alaska

POSITION STATEMENT: Co-provided a PowerPoint presentation entitled, "Alaska Native Village Corporation Association" [undated].

NATHAN MCCOWAN, Chair
 Board of Directors
 Alaska Native Village Corporation Association; President/CEO
 St. George Tanaq Corporation
 Anchorage, Alaska

POSITION STATEMENT: Co-provided a PowerPoint presentation entitled, "Alaska Native Village Corporation Association" [undated] and answered questions.

CURTIS MCQUEEN, Director

Board of Directors
Alaska Native Village Corporation Association; President/CEO
Eklutna Inc.

Anchorage, Alaska

POSITION STATEMENT: Provided comments during the presentation by the Alaska Native Village Corporation Association.

JENNINE JORDAN, Vice President

Gana-A'Yoo, Limited

Anchorage, Alaska

POSITION STATEMENT: Speaking on behalf of the Unalakleet Village Corporation, provided comments during the presentation by the Alaska Native Village Corporation Association.

FRITZ SHARP, President

Twin Hills Village Corporation

Twin Hills, Alaska

POSITION STATEMENT: Provided comments during the presentation by the Alaska Native Village Corporation Association.

BERTHA CAVANAUGH

Kake, Alaska

POSITION STATEMENT: Expressed concerns about the village of Kake.

JACKIE MARTIN, Vice President

Kake Tribal Corporation

Kake, Alaska

POSITION STATEMENT: Provided comments during the presentation by the Alaska Native Village Corporation Association.

ACTION NARRATIVE

[1:04:24 PM](#)

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

HB 322-OIL SPILLS/POLLUTION: PENALTIES; PREVENTION

[1:04:50 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."

[1:05:55 PM](#)

REPRESENTATIVE PARISH moved Amendment 1 to HB 322, labeled, 30-LS1015\O.12, Nauman, 2/8/18, which read:

Page 2, line 27:
Delete "\$20"
Insert "\$40"

Page 2, line 30:
Delete "\$5"
Insert "\$10"

Page 3, line 1:
Delete "\$2"
Insert "\$4"

[1:06:02 PM](#)

REPRESENTATIVE TALERICO objected.

REPRESENTATIVE PARISH explained Amendment 1 increases the amounts of penalties to reflect the rate of inflation.

[1:06:39 PM](#)

A roll call vote was taken. Representatives Drummond, Parish, Josephson, and Tarr voted in favor of Amendment 1. Representatives Talerico, Lincoln, Birch, and Johnson voted against it. Therefore, Amendment 1 failed to be adopted by a vote of 4-4.

[1:07:47 PM](#)

REPRESENTATIVE PARISH moved Amendment 2, labeled 30-LS1015\O.13, Nauman, 2/8/18, which read:

Page 4, line 7:
Delete "\$1,000"
Insert "\$2,000"
Delete "\$200,000"
Insert "\$400,000"

1:07:56 PM

REPRESENTATIVE TALERICO objected. He said previous testimony on the bill revealed the responsibility to clean up an oil spill is held by the company and the people who caused the spill. Furthermore, the fee structure is put in place to cover the state's cost and he opined few transporters would choose to spill oil. The state has provisions in place that require a responsible party to clean up a spill and he said he did not support the fee increases in the proposed amendment.

CO-CHAIR TARR directed attention to the bill on page 4, line 7, that read:

assessed by the court of not less than \$1,000 [\$500]
nor more than \$200,000

CO-CHAIR TARR expressed her understanding the penalty addressed by Amendment 2 applies when a company has been found liable - through civil action - to have acted irresponsibly and caused a spill.

1:10:34 PM

KRISTIN RYAN, Director, Division of Spill Prevention and Response, Department of Environmental Conservation, said Representative Tarr is correct and the aforementioned penalty would come into effect after the state has found the spiller has harmed the environment in a manner to warrant a penalty.

REPRESENTATIVE PARISH explained Amendment 2 is also to adjust the amount of the fines to reflect inflation. He opined civil penalties based on compliance are appropriate because companies are responsible for a maximum return to their investors; however, it is the responsibility of the legislature to ensure the public and the state's environment are protected. He spoke in favor of keeping civil penalties from eroding [due to inflation] so they are effective to address violations.

CO-CHAIR JOSEPHSON referred to testimony provided by Kara Moriarty [President/CEO of the Alaska Oil and Gas Association] during a previous hearing [on 2/9/18] and remarked:

... she noted that depending on the fiscal year, the number of spills that belong to the oil and gas industry are in the 24-29 percent range, but in terms

of volume, they're only in the 2 percent range. ... My concern is that other industries are not paying [for] their clean up, in fact, the cost is being borne by the oil industry through the SPAR fund. ... Here's what she said: ... DEC usually recovers full cost from the oil and gas spills, it's not true of the other industries.

CO-CHAIR JOSEPHSON opined given [liability] would be proven in a court of law, and the proposed penalty is "true to really the inflationary rate, ... it merits the committee's serious consideration."

[1:14:15 PM](#)

A roll call vote was taken. Representatives Drummond, Parish, Tarr, and Josephson voted in favor of Amendment 2. Representatives Rauscher, Talerico, Lincoln, Birch, and Johnson voted against it. Therefore, Amendment 2 failed to be adopted by a vote of 4-5.

[1:15:18 PM](#)

CO-CHAIR TARR moved Amendment 3, labeled 30-LS1015\0.16, Nauman, 2/10/18, which read:

Page 7, line 28:
Delete "\$1,000"
Insert "\$500"
Delete "the initial"
Insert "each"

Page 7, lines 28 - 29:
Delete ", and may not exceed \$24 a gallon of oil discharged"

Page 8, line 6:
Delete "extent"
Insert "volume, extent,"

[1:15:31 PM](#)

REPRESENTATIVE JOHNSON objected.

CO-CHAIR TARR directed attention to the bill on page 7, [lines 27-30], which read:

(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

CO-CHAIR TARR explained the first change within Amendment 3 is a reduction from \$1,000 to \$500 of the minimum administrative penalty on the initial violation currently defined in the bill. The second change deletes "the initial" and inserts "each" thus the penalty would be assessed for each violation. She related the Department of Environmental Conservation (DEC) advised that a fine of \$1,000 is too high for a small spill, and DEC seeks to assess each violation rather than only the initial violation because without the changes made by Amendment 3, there is a conflict with the language [on page 7, line 25] in subsection (a). Also, DEC advised the penalty that "may not exceed \$24 a gallon of oil discharged" is not necessary because the proposed bill has a maximum penalty of \$10,000 and she gave an example. Finally, she directed attention to page 8, line 6, which read:

(5) the extent and seriousness of the discharge, including the potential ...

CO-CHAIR TARR further explained Amendment 3 adds "volume, extent" to replace "extent" which asserts DEC's ability to calculate the volume of the spill. She restated the four changes within Amendment 3.

[1:20:34 PM](#)

REPRESENTATIVE BIRCH said he was opposed to the bill due to its inconsistency. He asked whether the \$24 a gallon penalty would be assessed against a person or persons who commit a serious discharge, for example, the school district in Bethel that accidentally spilled 3,000 gallons of crude oil.

MS. RYAN restated the question. She said if the bill is enacted [DEC] would consider the criteria put forth in the bill and determine if a penalty were warranted. The criteria to be analyzed includes gross negligence, cause, and harm to the environment, and if the volume level were sufficient, DEC would have administrative penalty authority to evaluate a possible penalty.

REPRESENTATIVE BIRCH surmised DEC would make a subjective determination, not based on the adverse impact of a spill, or the clean-up cost, but upon whether a regulator chooses to assess a penalty.

MS. RYAN disagreed and advised the point of the proposed legislation is to clarify the standards applied by DEC. The aforementioned section of the bill is utilized for serious or repeat violations, and the example of the school district in Bethel was not a repeat violation. [DEC] seeks guidance from the legislature and does not wish to make subjective decisions.

REPRESENTATIVE BIRCH opined [a serious discharge] is "always in the eye of the beholder," and he provided an example.

CO-CHAIR JOSEPHSON recalled testimony from Ms. Ryan that in the examples of the Hilcorp [2016 oil spill on the North Slope and 2017 natural gas release and oil leak in Cook Inlet], DEC could have sought penalties through the court but declined to do so.

MS. RYAN advised Hilcorp experienced two releases, one of natural gas and another of oil. A liquid volume was not calculated in the natural gas release because DEC does not have a process to determine the volume of a natural gas release and thereby determine a penalty. In further response to Co-Chair Josephson, she said the release of oil during the aforementioned spill was three gallons and penalties were not pursued.

[1:26:07 PM](#)

CO-CHAIR JOSEPHSON questioned whether an administrative penalty could be appealed to the Office of Administrative Hearings, Department of Administration.

MS. RYAN said correct; as the bill is written, decisions assessing administrative penalties would be appealed to an administrative law judge and not through the judicial system. In further response to Co-Chair Josephson, she confirmed any administrative penalty levied would be subtracted from a civil penalty assessed by the court.

REPRESENTATIVE RAUSCHER inquired as to the meaning of "penalty against a person" in the language of the bill.

MS. RYAN deferred the question to the Department of Law.

REPRESENTATIVE RAUSCHER said his experience on the North Slope is that very small oil discharges are reported, and he strongly cautioned if penalties are increased, oil companies may decide not to report spills. He opined the present system is working.

CO-CHAIR JOSEPHSON stated the following points:

- current law requires companies to report oil spills, which is unchanged by HB 322
- [Fiscal note identifier: HB322-DEC-SPAR-02-01-2018] indicates increased cost to industry of \$75,000
- 2 percent of [reported spills] are on the North Slope
- the cost of cleaning up spills exceeds SPAR's fund, so the industry is "covering more than its share"
- Alaska residents are paying for clean up through a general fund

[1:30:58 PM](#)

REPRESENTATIVE RAUSCHER stated he has not received the information he requested on the size, type, and status of spills.

CO-CHAIR JOSEPHSON pointed out the information provided in a response document from [Ms. Ryan, Director, Spill Prevention and Response] DEC, dated 2/7/18, which was posted on the bill action status inquiry system (BASIS).

CO-CHAIR JOSEPHSON, in response to Representative Rauscher's previous question, read from [AS 46.04.918] as follows:

"person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, partnership, association, firm, trust, estate or any other entity.

[1:32:32 PM](#)

EMILY NAUMAN, Attorney, Legislative Legal Counsel, Legislative Legal Services, Legislative Affairs Agency, advised the citation for the applicable statute is AS 46.03.918 and the definition as read by Co-Chair Josephson is correct.

[1:34:38 PM](#)

REPRESENTATIVE LINCOLN referred to an incomplete response from DEC for background documentation to support its \$75,000 estimated cost to the industry of the proposed legislation.

[1:35:07 PM](#)

CO-CHAIR JOSEPHSON returned attention to DEC's abovementioned response document, which addressed the estimated cost on page 3.

[1:36:00 PM](#)

The committee took a brief at-ease at 1:36 p.m.

[1:39:36 PM](#)

REPRESENTATIVE JOHNSON maintained her objection to Amendment 3.

[1:39:40 PM](#)

A roll call vote was taken. Representatives Lincoln, Drummond, Parish, Tarr, and Josephson voted in favor of Amendment 3. Representatives Johnson, Rauscher, Talerico, and Birch voted against it. Therefore, Amendment 3 was adopted by a vote of 5-4.

[1:40:53 PM](#)

REPRESENTATIVE BIRCH moved Amendment [4], labeled 30-LS1015\O.10, Nauman, 2/8/18, which read:

Page 1, lines 1 - 3:

Delete "**relating to oil discharge prevention and contingency plans for commercial motor vehicles transporting crude oil;**"

Page 9, line 4, through page 12, line 16:

Delete all material.

Renumber the following bill sections accordingly.

Page 12, line 23:

Delete "Section 20"
Insert "Section 14"

Page 12, line 24:

Delete "sec. 21"
Insert "sec. 15"

[1:41:10 PM](#)

CO-CHAIR TARR objected for discussion purposes.

REPRESENTATIVE BIRCH explained Amendment 4 is in response to previous testimony from the Alaska Trucking Association, Inc., and others, that portions of HB 322 are unnecessary, burdensome, and duplicative because there are existing federal contingency plans related to the transportation of oil. Amendment 4 would reduce the duplicative components that the bill would impose on industry and which were previously revealed to DEC.

CO-CHAIR TARR agreed that industry should not be burdened with duplicative legislation; however, DEC needs access to the available safety information, and both of these goals can be accomplished by a forthcoming amendment.

REPRESENTATIVE PARISH urged for an explicit agreement of cooperation between companies transporting crude oil and DEC, which Amendment 4 lacks.

[1:44:57 PM](#)

CO-CHAIR JOSEPHSON said a forthcoming amendment cites AS 46.04, in which contingency plans are established in existing law for oil terminal facilities, pipelines, and tanker vessels; however, the state does not commonly review extant plans. He referred to testimony [during the hearing of HB 322 on 2/9/18] from Mr. Thompson, [executive director, Alaska Trucking Association], who acknowledged a willingness to share the contingency plans, although Mr. Thompson cautioned he had not consulted with the members of the association in this regard. Co-Chair Josephson said, "... the state doesn't know much about these response plans, and that's the term DOT federal uses. I'm going to be opposing the amendment."

[1:47:06 PM](#)

A roll call vote was taken. Representatives Birch, Johnson, Rauscher, and Talerico voted in favor of Amendment 4. Representatives Lincoln, Drummond, Parish, Tarr, and Josephson voted against it. Therefore, Amendment 4 failed to be adopted by a vote of 4-5.

[1:47:59 PM](#)

REPRESENTATIVE PARISH moved Amendment 5 labeled 30-LS1015\O.17, Nauman, 2/12/18, which read:

Page 1, line 2:

Delete "**discharge prevention and contingency**"
Insert "**spill response**"

Page 9, line 4, through page 12, line 16:

Delete all material and insert:

"* **Sec. 13.** AS 46.04 is amended by adding a new section to read:

Sec. 46.04.057. Oil spill response plans for commercial motor vehicles. (a) If a person is required to submit an oil spill response plan under federal law, the person may not operate a commercial motor vehicle transporting crude oil on a highway or road maintained by the state unless the person has submitted to the department, and the department has received, the oil spill response plan required under federal law.

(b) Failure of a holder of a response plan submitted to the department under this section to comply with the plan or to have access to the quality or quantity of resources identified in the plan or to respond with those resources within the shortest possible time in the event of a spill is a violation of this chapter for purposes of AS 46.03.760(a), 46.03.765, 46.03.790, and any other applicable law. If the holder of a response plan submitted to the department under this section fails to respond to and conduct cleanup operations of an unpermitted discharge of crude oil with the quality and quantity of resources identified in the plan and in a manner required under the plan, the holder is strictly liable, jointly and severally, for the civil penalty assessed under AS 46.03.758, 46.03.759, or 46.03.760 against any other person for that discharge.

(c) In this section, "commercial motor vehicle" has the meaning given in AS 19.10.399."

Page 12, line 23:

Delete "Section 20"
Insert "Section 15"

Page 12, line 24:

Delete "sec. 21"
Insert "sec. 16"

1:48:13 PM

REPRESENTATIVE BIRCH objected to Amendment 5, noting his concern about the duplicative nature of Alaska's regulatory environment. He expressed his understanding there are existing federal requirements for contingency plans which may be duplicated.

CO-CHAIR TARR directed attention to Amendment 5, on page 1, lines 11-13, which read in part:

... the person has submitted to the department, and the department has received, the oil spill response plans ...

CO-CHAIR TARR said although [DEC] should have an approval mechanism due to its expertise, industry testimony showed concern that an additional approval process by DEC would be burdensome; however, Amendment 5 directs industry to provide copies of existing plans for DEC to have on file, which would be adequate in an incident, but not burdensome.

REPRESENTATIVE PARISH said Amendment 5 has a narrow focus: applies only to commercial motor vehicles transporting crude oil on a highway or a road maintained by the state; requires companies to submit copies of existing oil spill response plans - which industry acknowledged could be provided - to DEC; reduces work by DEC employees. In addition, the amendment stipulates that contingency plans should be followed, and he pointed out the plans are not reviewed, which is not adequate oversight.

REPRESENTATIVE BIRCH, due to the clarification Amendment 5 does not create a hurdle for industry, withdrew his objection.

1:54:01 PM

REPRESENTATIVE TALERICO objected to Amendment 5. He directed attention to Amendment 5 on page 1, lines 18-20, which read in part:

... If the holder of a response plan submitted to the department under this section fails to respond to and conduct cleanup operations of an unpermitted discharge of crude oil with the quality ...

REPRESENTATIVE TALERICO urged for clarification of the cumbersome language that implies someone would get a permit for the discharge of crude oil. Representative Talerico then removed his objection. There being no further objection, Amendment 5 was adopted.

CO-CHAIR JOSEPHSON returned attention to the bill, as amended.

REPRESENTATIVE TALERICO said Alaska currently has a successful [oil spill prevention and reporting] process and industry reports any spills that take place. He cautioned against adding to industry's burden and expense related to the clean up of spills; in fact, every drop of product is valuable and thus is accounted for. He said he did not support the bill.

REPRESENTATIVE BIRCH objected to the bill's introduction as a committee bill and to the muddled nature of the bill, such as references to economic savings, a competitive advantage gained by noncompliance with standards, the lack of details, and further confusing and contradictory concerns. He said the bill is "a solution in search of a problem" and noted crude oil spills are less than 2 percent of the total spills and are declining due to good management by companies. He cautioned adding layers of regulatory components to business adds to cost and reduces Alaska's competitiveness in attracting resource development. Further, there will be unintended consequences to costs that can be collected by DEC.

[1:59:56 PM](#)

REPRESENTATIVE JOHNSON said she would vote against the bill for the following reasons: industry testimony related to increases in oil taxes; her objection to the introduction of the bill as a committee bill at a time when industry representatives were present; the bill adds to the uncertainty of ongoing changes to industry regulations; the bill is not an independent "rewrite of spills and clean up"; her objection to the random procedure; in the interest of showing stability for the industry.

CO-CHAIR JOSEPHSON described the committee bill process as a procedure allowed by Alaska law, and utilized in the House less in the 30th Alaska State Legislature than in the two previous legislatures. Further, the introduction of the bill was fully transparent to industry and the scheduling of hearings is not orchestrated, but is affected by many factors, and he gave an example. He agreed with Representative Birch there is evidence the oil and gas industry has a good record, but recalled

previous testimony by the Alaska Oil and Gas Association that other industries are not as compliant.

REPRESENTATIVE LINCOLN said he shared some concerns about the bill and supported the improvements made by committee amendments.

[2:05:23 PM](#)

REPRESENTATIVE DRUMMOND restated the reason for HB 322 is the lack of [spill] regulation of commercial trucks transporting crude oil, compared to spill regulation of oil drilling facilities and oil tankers; in fact, the bill addresses a new section of industry. Further, Amendment 5 "contributed considerably to the clarity of this bill."

REPRESENTATIVE RAUSCHER cautioned the intent of the bill is to recover costs for the state; however, the bill puts limitations on companies that are addressing problems very well and are already concerned about the environment. He questioned whether the bill would increase revenue or act as a deterrent.

CO-CHAIR TARR recalled DEC reported even though there are currently fewer spills, and spills of lower volumes, the assessment of fines and penalties enacted in 1977 or 1989 will not recoup DEC's costs accrued when an operator is unable to pay clean-up costs. She provided examples of prices affected by inflation and noted a penalty of \$20 per gallon of oil entering an anadromous stream would be insufficient to recoup the costs to clean up a spill if the state assumes responsibility in its role as the "final entity." Further, the legislature has directed DEC to recover its costs and needs the resources to do so.

REPRESENTATIVE PARISH said penalties should not be allowed to erode to one-quarter of their value without concern by the legislature. He urged for the state to move beyond trust as related to contingency plans, and provided information on the adverse effects of very small amounts of crude oil and refined fuels on salmon.

[2:11:34 PM](#)

CO-CHAIR TARR moved to report HB 322, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

[2:11:48 PM](#)

REPRESENTATIVE TALERICO objected.

A roll call vote was taken. Representatives Drummond, Parish, Lincoln, Tarr, and Josephson voted in favor of HB 322, as amended. Representatives Birch, Johnson, Rauscher, and Talerico voted against it. Therefore, CSHB 322 was reported out of the House Resources Standing Committee by a vote of 5-4.

[2:12:45 PM](#)

The committee took an at-ease from 2:12 p.m. to 2:16 p.m.

PRESENTATION(S): ALASKA NATIVE VILLAGE CORPORATION ASSOCIATION:

[2:16:33 PM](#)

CO-CHAIR JOSEPHSON announced that the final order of business would be a presentation by the Alaska Native Village Corporation Association.

[2:16:46 PM](#)

HALLIE BISSETT, Executive Director, Alaska Native Village Corporation Association (ANVCA), introduced a PowerPoint presentation entitled, "Alaska Native Village Corporation Association." Ms. Bissett informed the committee ANVCA was created in 2008 by The Kuskokwim Corporation (TKC).

[2:18:27 PM](#)

NATHAN MCCOWAN, Chair, Board of Directors, Alaska Native Village Corporation Association, and President/CEO, St. George Tanag Corporation, added ANVCA has 176 members - all of which were formed pursuant to the Alaska Native Claims Settlement Act (ANCSA) -, has a nine-member board of executive/directors, and has partner organizations that are non-member entities with like interests (slide 1).

CO-CHAIR TARR asked for clarification on the members of ANVCA.

MR. MCCOWAN explained there were 220 original ANCSA corporations; however, after ANCSA was amended, mergers during the late 1970s and early 1980s reduced the total number to 176 corporations. In further response to Co-Chair Tarr, he clarified all of the remaining 176 corporations are

participating members of ANVCA. The organization was originally created so that village corporation CEOs could meet and share best practices, and since then ANVCA has grown to be the primary advocate for village corporations. The vision of ANVCA is to educate, share with, and advocate for the success of village corporations throughout the state (slide 2). Mr. McCowan noted village corporations can be large or small and represent a very large portion of the Alaska economy. In fact, economic activity is underreported by village corporations of under 500 shareholders (slide 3). Slide 4 listed board members; slide 5 listed ongoing programs such as networking with public and private industry, legislation, committee work, and annual conferences; slide 6 listed advocacy - the first of which is ANCSA land solution - and he explained ANCSA created 44 million acres of land entitlement and when lands were conveyed in the 1970s the Bureau of Land Management (BLM), U.S. Department of the Interior (DOI), was not required to disclose existing contamination. In the 1980s, villages became aware of problems with contaminated land, and in the 1990s BLM reported 635 sites with preexisting contamination not caused by the village or regional entity. Over the past 10 years, ANVCA has raised this issue at the state and federal levels in order to achieve a long-term solution, which may include identifying contamination, remediation, and land trades.

[2:25:02 PM](#)

MR. MCCOWAN continued, noting BLM updated its report in 1998 to identify 650 sites that require remediation, and in 2016 identified 537 sites that require remediation (slides 17 and 18). Although sites have been identified, Congress has not appropriated money for remediation. He said ANVCA suspects contaminated sites are underreported due to their location and their liability; after an accurate total, the solution for each site must be determined. Therefore, ANVCA has created a strategic task force with the U.S. Environmental Protection Agency (EPA), DOI, and the Department of Environmental Conservation (DEC) to continue work in Washington, D.C. and Juneau to develop assessment criteria to prioritize sites, especially those near human habitation (slide 19).

CO-CHAIR TARR returned attention to slide 16 and inquired as to the timeline of the BLM recommendations outlined in 1998.

MR. MCCOWAN pointed out the 1998 report identified 650 sites, and some were cleaned up; however, there are disincentives to villages that report sites because of the liability to the

village, and he questioned the accuracy of the number of sites identified 20 years ago.

CO-CHAIR TARR directed attention to slide 18 which noted little action has been taken by BLM on its 1998 report, and asked whether any of the recommended infrastructure is in place.

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MR. MCCOWAN responded, "pieces and parts of all of these six [recommendations] were attempted but none of them were fulfilled according to what were the recommendations of the 1998 report." For example, a comprehensive inventory of contaminated sites has not been completed because of the disincentives for village corporations to report sites due to the liability issue.

CO-CHAIR JOSEPHSON asked whether there is an exemption for village corporations - on liability - to alleviate their concerns.

MR. MCCOWAN advised there is no way for a village to abrogate its responsibility back to the federal government; however, the commissioner of DEC has granted some waivers at his/her discretion.

REPRESENTATIVE BIRCH questioned whether villages can return portions of [entitlement] land.

MR. MCCOWAN said there is not a mechanism for a village to select another site but ANVCA seeks this option as a part of the solution. Some sites are too expensive to clean up, thus land exchanges would be an option, but if sites can be remediated and funds are provided village corporations would do so.

REPRESENTATIVE BIRCH appreciated ANVCA's support for the Stand For Alaska [coalition].

REPRESENTATIVE PARISH asked how much it would cost to clean up the sites where possible.

MR. MCCOWAN said hundreds of millions of dollars; for example, on St. George Island there were three to four acres of oil spills that were cleaned up at a cost of \$15 million. Further, some sites are more remote, and the contaminants are not simple petroleum.

2:35:15 PM

REPRESENTATIVE PARISH inquired as to the proportion of sites that represent a health burden to communities and to the local ecology.

MR. MCCOWAN was unsure; he pointed out ANCSA land selections must be at the site of a village, so if there is contamination, it is proximate to a village, thus many sites pose dire health effects to villagers, and few can be ignored.

[2:36:48 PM](#)

MS. BISSETT added that ninety-four sites are located within two miles of food and water sources.

CO-CHAIR JOSEPHSON asked for the origin of the contamination of non-North Slope sites.

MR. MCCOWAN answered the contamination primarily began in the World War II era and continued through the Cold War by agencies such as the White Alice Communications System, U.S. Air Force; radar installations; agencies predating the National Oceanic and Atmospheric Administration, U.S. Department of Commerce; the U.S. Coast Guard; the U.S. Department of Defense.

[2:38:17 PM](#)

CURTIS MCQUEEN, Director, Board of Directors, Alaska Native Village Corporation Association, and President/CEO, Eklutna Inc., informed the committee the depletion of king salmon in Cook Inlet can be connected with the former village of Eklutna and the Eklutna River. He expressed the corporation's support of Joint Base Elmendorf-Richardson although the site of former U.S. Army Camp Mohawk is now a Formerly Used Defense Sites (FUDS) site with identified solvents that are moving toward the mouth of the river, which is a valued salmon stream. He said contamination of the river will impact Eklutna residents and others. He estimated the cost of clean up to be multimillions of dollars, and said Eklutna is supporting the U.S. Army Corps of Engineers to seek additional funding.

CO-CHAIR TARR returned attention to slide 16, recommendation 3, which read:

3. Apply EPA policies to ANCSA landowners, not to impose landowner liability to federal transferees for contamination existing at the time of conveyance,

where to landowner has not contributed to the contamination;

CO-CHAIR TARR questioned whether this item is a priority.

MR. MCCOWAN said this is one of ANVCA's federal priorities and ANVCA is working with the federal delegation to provide a shield from liability, and remove the disincentive to reporting, in order to gather the necessary information on how to address each site. Mr. McCowan said the next step is to work with federal and state governments to craft a legislative strategy and communicate with relevant departments, pushing to concentrate on the six recommendations of BLM's 1998 report. He acknowledged BLM has done a fairly good job over the last two years and expects additional progress will be made. In fact, as a for-profit corporation, ANVCA can explore other solutions such as using [Brownfield environmental remediation] clean-up credits.

REPRESENTATIVE DRUMMOND asked for a description of a clean-up credit.

MR. MCCOWAN explained if a corporation spends \$1 million to clean up a site, the \$1 million can be used as a depletion credit to shield future income. In response to Representative Rauscher, he said the concept is in its infancy and ANVCA has not brought forward any active tax proposals, but seeks to find alternative funding sources in addition to support from state and federal governments.

CO-CHAIR JOSEPHSON expressed surprise at the ANCSA contaminated lands inventory shown on slide 22, and noted before 1965, there were no national [environmental] laws.

MR. MCCOWAN said ANVCA is asking the legislature to amend AS 46.03.822 which would create a shield for liability not dependent upon the discretion of the commissioner of DEC. In addition, ANVCA seeks to work with state agencies to prioritize the clean up of ANCSA contaminated lands closest to human habitation.

CO-CHAIR JOSEPHSON questioned whether a change in state legislation can fix the threat of liability.

MR. MCCOWAN advised both a national and state fix are required.

MR. MCQUEEN expressed support for [the oil and gas] industry, acknowledging that protections are also part of the industry.

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JENNINE JORDAN, Vice President, Gana-A'Yoo, Limited, informed the committee Gana-A'Yoo is the village corporation for Galena, Koyukuk, Nulato, and Kaltag. Speaking on behalf of Unalakleet Native Corporation, she said a White Alice site left contamination in Unalakleet. From 1958-78 the U.S. Air Force operated the North River Radio Relay Station for defense and civilian communications. After the military activity ended, debris and 55-gallon drums were left on the tundra affecting food and water sources. Residents now suffer from previously-unknown diseases such as Parkinson's Disease, and the residents are concerned about additional threats to their health, even though the site was cleaned up.

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FRITZ SHARP, President, Twin Hills Village Corporation, said Twin Hills Village Corporation is one of the smaller corporations formed after 1971, and it would not be able to study any contamination found on its land.

REPRESENTATIVE BIRCH asked whether contaminated land has been identified in Twin Hills.

MR. SHARP said when the airport was built, a large drum fell off the barge and leaked 3,000 gallons in Togiak Bay; also, the pipeline from the tank farm to the school leaked for many years. After a hard rain and high tide at the landing, an oil sheen can be seen.

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BERTHA CAVANAUGH, Secretary, Kake Tribal Corporation, said the City of Kake was a fishing town that became a logging town after the corporations were formed. However, now it is economically poor and there are some homeless people from the village. The Kake Tribal Corporation built a new tank farm, but the old tank farm needs to be cleaned up and the town does not have the needed funds. She said local residents could provide labor to clean up the site after state or federal funding is found.

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JACKIE MARTIN, Vice President, Kake Tribal Corporation, added the old tank farm in Kake left a lot of oil behind. During her

experience as a federal employee, the federal and state governments worked together to test the watershed in Tanana after the town put oil on the roads to prevent dust. She said the state wanted to test for PCBs and the federal employees conducted the tests; the roads tested positive for PCBs, but not the watershed. Ms. Martin said the federal and state governments can work together on similar contamination problems and expressed her hope for state support.

CO-CHAIR TARR spoke of the need, either by the state or by Tribal colleges, to provide training to village residents so local residents are qualified to work in careers in remediation of contaminated sites, or to maintain tank farms. She asked whether economic development in villages is limited by the presence of contaminated sites.

MS. CAVANAUGH said contaminated sites are not a problem for tourism in Kake. She agreed interested Kake residents could be trained to do environmental work.

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ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:01 p.m.