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HB 470  
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HOUSE  
COMMITTEE REPORT

2/10

Date referred: 1/13/86

FURTHER REFERRALS: FINANCE

DATE: Feb 7, 1986

The RESOURCES Committee has considered HB 470

"An Act relating to the release of oil and hazardous substances; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 470 (RES)  same title
- new title

and recommends do pass

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note/s Sup 82
  - new fiscal note
  - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Jenkins Roger L. Jenkins

Sund John Sund

Thompson James W. Thompson

Herrmann Adelheid Herrmann

Wallis F. Kay Wallis

Cato Bitter Cato

Wm Pearce (No Rec)

Dick Shultz (No Rec)

M.W. Miller (No Rec)

Miller (NP)

Dick Shultz  
Co-Chairman Shultz

HB 470 AMENDMENT #1

page 4, line 21

46.09.080  
Sec. 46.08.080 is amended to read:

not made  
page 8

Sec. 46.08.080. REGULATIONS. The commissioner shall adopt regulations necessary to implement the provisions of this chapter. Regulations shall include criteria directing the commissioner when to commence containment and cleanup activities. The department shall adopt these regulations not later than October 1, 1987.

HB 470 AMENDMENT #2

page 6, line 17

Sec. 46.09.020 (b) is amended to read:

adopted

(b) The commissioner shall develop [ADOPT] guidelines prescribing general procedures and methods to be used in the containment and cleanup of a hazardous substance [AND IN THE DISPOSAL OF WASTE FROM THE CONTAINMENT OR CLEANUP]. The department shall develop these guidelines not later than October 1, 1987.

January

HB 470 AMENDMENT #3

page 8, line 18

46.08.080  
Sec. 46.09.080 is amended to read:

page 4  
line 15

Sec. 46.09.080. REGULATIONS. The commissioner shall adopt regulations necessary to implement the provisions of this chapter. The department shall adopt these regulations not later than October 1, 1987.

Proposed amendments to CSHB 470 (Resources), drafted by Rep. Mike Davis with members of the House Resources Committee.

*Page 4 Line 18*  
Page 1, Line 29

A new subsection (d) is added to Sec. 46.08.010 to read:

*27*  
*28*  
(d) For the purposes of this section, a capital improvement includes a building, but does not include a dike, retaining wall, or other improvement to real property necessary to implement the provisions of this chapter.

Page 2, Line 27

Sec. 46.08.040(3) is amended to read:

*27 amended*  
*28*  
(3) help the Department of Labor to assist [employers] emergency response personnel in developing safety education programs under AS 18.60 for employees who may be called upon to respond to a release of oil or a hazardous substance;

Page 6, Line 15

Sec. 46.09.020(b) is deleted and rewritten to read:

(b) The commissioner shall develop guidelines prescribing general procedures and methods to be used in the containment and cleanup of hazardous substances. The commissioner shall develop these guidelines not later than January 1, 1987.

Page 13, Line 21

*26*  
Sec. 15 is deleted.

Hein ✓  
2/6/86

Original sponsors: Davis, Koponen,  
Hurley, et al

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 470 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the release of oil and hazardous  
7 substances; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 46 is amended by adding a new chapter to read:

10 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

11 Sec. 46.08.005. PURPOSE. The legislature finds and declares  
12 that the release of oil or hazardous substances into the environment  
13 presents a real and substantial threat to the public health and wel-  
14 fare, to the environment, and to the economy of the state. The legis-  
15 lature therefore concludes that it is in the best interest of the  
16 state and its citizens to provide a readily available fund for the  
17 payment of the expenses incurred by the Department of Environmental  
18 Conservation in the protection of the environment of the state from  
19 the release of oil or hazardous substances.

20 Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in  
21 the state general fund the oil and hazardous substance release re-  
22 sponse fund. The fund shall be administered by the commissioner of  
23 environmental conservation, but the commissioner of revenue shall be  
24 the custodian of the fund.

25 (b) Money from an appropriation made to the fund remaining in  
26 the fund at the end of a fiscal year remains available for expenditure  
27 in successive fiscal years.

28 (c) The fund shall be used for actual expenses incurred under  
29 AS 46.08.040. The fund may not be used for capital improvements.

1           Sec. 46.08.020. FINANCING OF THE FUND. The legislature may  
2 appropriate from the following sources to the fund:

3           (1) money received from federal, state, or other sources or  
4 from a private donor;

5           (2) money recovered or otherwise received from parties  
6 responsible for the containment and cleanup of oil or a hazardous  
7 substance at a specific site, but excluding funds from performance  
8 bonds and other forms of financial responsibility held in escrow  
9 pending satisfactory performance of a privately financed response  
10 action;

11           (3) fines, penalties, or damages recovered under this  
12 chapter or other law for costs incurred by the state as a result of  
13 the release or threatened release of oil or a hazardous substance.

14           Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS  
15 SUBSTANCE RELEASES. It is the intent of the legislature and declared  
16 to be the public policy of the state that funds for the abatement of a  
17 release of oil or a hazardous substance will always be available.

18           Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval  
19 of the governor, the commissioner may use money from the fund to

20           (1) contain and clean up releases or threatened releases of  
21 oil or a hazardous substance;

22           (2) undertake plans, inspections, sampling, tests, inves-  
23 tigation, public notification, damage assessment, surveys, analyses,  
24 engineering, construction, operations, and maintenance necessary or  
25 appropriate to contain and clean up releases or threatened releases of  
26 oil or hazardous substances;

27           (3) help the Department of Labor to assist employers in  
28 developing safety education programs under AS 18.60 for employees who  
29 may be called upon to respond to a release of oil or a hazardous

1 substance;

2 (4) provide matching funds for participation in federal oil  
3 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-  
4 hensive Environmental Response, Compensation and Liability Act of  
5 1980); and

6 (5) recover the cost to the state or to a municipality of a  
7 containment and cleanup resulting from the release or the threatened  
8 release of oil or a hazardous substance.

9 Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall  
10 maintain accounting records showing the income and expenses of the  
11 fund.

12 (b) By July 1 of each year, the department shall determine the  
13 projected cost for the following fiscal year of monitoring, operating,  
14 and maintaining sites where response has been completed or is expected  
15 to be continued during the fiscal year.

16 (c) The commissioner shall consult with the commissioner of  
17 revenue and the governor before adopting regulations governing fund  
18 accounting. The department shall develop procedures and adopt rules  
19 governing the expenditure of, and accounting for, money expended from  
20 the fund, and may not delay implementation of this chapter pending the  
21 effective date of the procedures and rules.

22 (d) The proper state officer shall pay disbursements from the  
23 fund on presentation of vouchers signed by the governor or the gover-  
24 nor's authorized representative.

25 Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner  
26 shall submit a report to the governor and to the legislature not later  
27 than the 10th day following the convening of each regular session of  
28 the legislature. The report may include information considered sig-  
29 nificant by the commissioner but must include:

1 (1) the amount of money expended under AS 46.08.040 during  
2 the preceding fiscal year; and

3 (2) the amount and source of money received and money  
4 recovered during the preceding fiscal year as specified in AS 46.08.-  
5 020.

6 Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)  
7 The commissioner shall seek reimbursement promptly under this section,  
8 AS 46.03.760(e), or federal law for the cost incurred in the cleanup  
9 or containment of oil or a hazardous substance that has been released.

10 (b) The attorney general, at the request of the commissioner,  
11 may seek to recover money expended by the department under this chap-  
12 ter or other law to contain and clean up oil or a hazardous substance  
13 that has been released or to control the threatened release of oil or  
14 a hazardous substance.

15 Sec. 46.08.080. REGULATIONS. The commissioner shall adopt  
16 regulations necessary to implement the provisions of this chapter.

17 Sec. 46.08.900. DEFINITIONS. In this chapter

18 (1) "commissioner" means the commissioner of environmental  
19 conservation;

20 (2) "containment and cleanup" includes the direct and  
21 indirect efforts associated with the prevention, abatement, contain-  
22 ment, or removal of a hazardous substance, the restoration of the  
23 environment to its former state, and incidental administrative costs;

24 (3) "department" means the Department of Environmental  
25 Conservation;

26 (4) "employee" means a person who works for an employer in  
27 a place that is not used primarily as a personal residence;

28 (5) "employer" means a person, including the state and a  
29 political subdivision of the state, who has one or more employees

1 working in a place that is not used primarily as a personal residence;

2 (6) "fund" means the oil and hazardous substance release  
3 response fund;

4 (7) "hazardous substance" means

5 (A) an element or compound that, when it enters into  
6 or on the surface or subsurface land or water of the state,  
7 presents an imminent and substantial danger to the public health  
8 or welfare, or to fish, animals, vegetation, or any part of the  
9 natural habitat in which fish, animals, or wildlife may be found;  
10 or

11 (B) a substance defined as a hazardous substance under  
12 state or federal law or by regulations adopted under state or  
13 federal law;

14 (8) "oil" means petroleum products of any kind and in any  
15 form, whether crude, refined, or a petroleum by-product, including  
16 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily  
17 refuse, oil mixed with other wastes, liquified natural gas, propane,  
18 butane, and other liquid hydrocarbons regardless of specific gravity;

19 (9) "release" means an intentional or unintentional release  
20 into the environment of the state.

21 \* Sec. 2. AS 46 is amended by adding a new chapter to read:

22 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

23 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)

24 Except as provided in (b) of this section, a person in charge of a  
25 vehicle, vessel or container from which, or a place at which, a haz-  
26 ardous substance is released shall report the release to the depart-  
27 ment and appropriate public safety agencies promptly after learning of  
28 the release.

29 (b) The commissioner may enter into an agreement with a person

1 for the periodic reporting of a controlled release of a hazardous  
2 substance if the release is not into water.

3 Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS  
4 SUBSTANCE. (a) A person who causes a release of a hazardous sub-  
5 stance shall make reasonable efforts to contain and clean up the  
6 hazardous substance promptly after learning of the release, unless the  
7 commissioner determines

8 (1) after consulting the Environmental Protection Agency or  
9 appropriate public safety agencies, that containment or cleanup is  
10 technically infeasible;

11 (2) that containment or cleanup would cause greater en-  
12 vironmental damage than the release would cause if unabated; or

13 (3) that containment or cleanup would pose a greater threat  
14 to human life or health than the release itself.

15 (b) The commissioner shall adopt guidelines prescribing proce-  
16 dures and methods to be used in the containment and cleanup of a  
17 hazardous substance and in the disposal of waste from the containment  
18 or cleanup.

19 (c) If the commissioner determines that the containment or  
20 cleanup of a hazardous substance undertaken is inadequate, the commis-  
21 sioner may direct the person undertaking the containment or cleanup to  
22 cease and may undertake the containment or cleanup directly or by  
23 contract.

24 (d) If it appears to the commissioner that the cause or respon-  
25 sibility for the release of a hazardous substance is unclear or unex-  
26 plained, the commissioner may immediately undertake the containment  
27 and cleanup of the release unless the commissioner determines

28 (1) after consulting the Environmental Protection Agency or  
29 appropriate public safety agencies, that containment or cleanup is

1 technically infeasible;

2 (2) that containment or cleanup would cause greater en-  
3 vironmental damage than the release would cause if unabated; or

4 (3) that containment or cleanup would pose a greater threat  
5 to human life or health than the release itself.

6 (e) The commissioner shall enter into agreement with the En-  
7 vironmental Protection Agency, and may enter into agreements with  
8 other persons and municipalities, in order to

9 (1) facilitate a coordinated and effective hazardous sub-  
10 stance release response in the state;

11 (2) provide for cooperative hazardous substance release  
12 notification procedures; or

13 (3) provide for cooperative review of hazardous substance  
14 release response contingency plans submitted to the department.

15 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may  
16 request the governor to determine that an actual or imminent release  
17 of a hazardous substance constitutes a disaster emergency under  
18 AS 26.23. If the governor declares a disaster emergency under AS 26.-  
19 23, the commissioner may assist the adjutant general in the relief of  
20 the emergency.

21 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.  
22 The commissioner may contract with a person or a municipality for  
23 personnel, equipment, or services that may be useful to carry out the  
24 requirements of this chapter. If the commissioner determines that it  
25 is infeasible to contract with a person or a municipality, the commis-  
26 sioner may establish and maintain containment and cleanup personnel,  
27 equipment, and supplies necessary to carry out the requirements of  
28 this chapter.

29 Sec. 46.09.050. PEACE OFFICERS. Employees of the department

1 designated by the commissioner as enforcement officers in the imple-  
2 mentation of this chapter are peace officers of the state.

3 Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter  
4 into supplementary agreements, reciprocal arrangements, and compacts  
5 with another state or country for the implementation of this chapter  
6 subject to the approval of the Congress of the United States, if  
7 required, under the Constitution of the United States.

8 Sec. 46.09.070. MUNICIPALITIES. (a) If a provision of this  
9 chapter or of a regulation adopted by the commissioner under this  
10 chapter conflicts with the charter, ordinance, or regulation of a  
11 municipality, the provision of this chapter or of the regulation  
12 adopted by the commissioner under this chapter prevails.

13 (b) Authority to contain, clean up, or prevent a release or  
14 threatened release of oil or of a hazardous substance, and to exercise  
15 other powers necessary to implement AS 46.08 - AS 46.09, are granted  
16 to municipalities that do not otherwise have that authority. Except  
17 as provided in (a) of this section, a municipality may exercise its  
18 police power within the area of the municipality.

19 Sec. 46.09.080. REGULATIONS. The commissioner shall adopt  
20 regulations necessary to implement the provisions of this chapter.

21 Sec. 46.09.900. DEFINITIONS. In this chapter

22 (1) "commissioner" means the commissioner of environmental  
23 conservation;

24 (2) "containment and cleanup" includes the direct and  
25 indirect efforts associated with the prevention, abatement, contain-  
26 ment, or removal of a hazardous substance, the restoration of the  
27 environment to its former state, and incidental administrative costs;

28 (3) "department" means the Department of Environmental  
29 Conservation;

1 (4) "hazardous substance" means

2 (A) an element or compound that, when it enters into  
3 or on the surface or subsurface land or water of the state,  
4 presents an imminent and substantial danger to the public health  
5 or welfare, or to fish, animals, vegetation, or any part of the  
6 natural habitat in which fish, animals, or wildlife may be found;  
7 or

8 (B) a substance defined as a hazardous substance under  
9 state or federal law or by regulations adopted under state or  
10 federal law;

11 (5) "release" means an intentional or unintentional release  
12 into the environment of the state.

13 \* Sec. 3. AS 26.23.050(b) is amended to read:

14 (b) Whenever, and to the extent that, money is needed to cope  
15 with a disaster, the first recourse shall be to funds regularly appro-  
16 priated to state and local agencies. The second recourse shall be to  
17 funds available in the disaster relief fund or the oil and hazardous  
18 substance release response fund, as appropriate. If money available  
19 from these sources is insufficient, and if the governor finds that  
20 other sources of money to cope with the disaster are not available or  
21 are insufficient, the governor may, notwithstanding any limitation  
22 imposed by AS 37.07.080(e), transfer and spend money appropriated for  
23 other purposes or, in situations involving natural disasters, borrow  
24 from the United States government or other public or private sources  
25 for a term not to exceed two years.

26 \* Sec. 4. AS 26.23.230(1) is amended to read:

27 (1) "disaster" means the occurrence or imminent threat of  
28 widespread or severe damage, injury, or loss of life or property  
29 resulting from any natural or nonmilitary man-made cause including,

1 but not limited to, fire, flood, earthquake, landslide, mudslide,  
2 avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL  
3 OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT  
4 DANGER OR DAMAGE], volcanic activity, epidemic, air contamination,  
5 blight, infestation, explosion, riot, equipment failure, or shortage  
6 of food, water, fuel, or clothing, or the release of oil or a hazard-  
7 ous substance requiring prompt action to avert environmental danger or  
8 damage;

9 \* Sec. 5. AS 37.05.159 is amended by adding a new subsection to read:

10 (g) Notwithstanding the provisions of (b) of this section and  
11 AS 37.07.080(e), the governor may transfer \$1,000,000 during a fiscal  
12 year from the reserve for emergency operating expenses account to the  
13 oil and hazardous substance release response fund (AS 46.08).

14 \* Sec. 6. AS 44.19.050 is amended to read:

15 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,  
16 "disaster" means the occurrence or imminent threat of widespread or  
17 severe damage, injury, or loss of life or property resulting from any  
18 natural or man-made cause including, but not limited to, fire, flood,  
19 earthquake, landslide, avalanche, wind-driven water, weather condi-  
20 tion, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING  
21 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air  
22 contamination, blight, infestation, explosion, [OR] riot, or the  
23 release of oil or a hazardous substance requiring prompt action to  
24 avert environmental danger or damage.

25 \* Sec. 7. AS 46.03.290(a) is amended to read:

26 (a) When the department finds that an actual or imminent dis-  
27 charge of oil, a hazardous substance, or low level radioactive mate-  
28 rials to the air, water, land or subsurface land of the state poses an  
29 immediate threat to the public health or welfare, or the environment

1 of the state, it may issue an order declaring an emergency and direct-  
2 ing a person or persons to take action the department believes neces-  
3 sary to meet the emergency, and protect the public health, welfare, or  
4 environment.

5 \* Sec. 8. AS 46.03.760(a) is amended to read:

6 (a) A person who violates or causes or permits to be violated a  
7 provision of this chapter other than AS 46.03.250 - 46.03.314, or a  
8 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of  
9 the department, or a permit, approval, or acceptance, or term or  
10 condition of a permit, approval, or acceptance issued under this  
11 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the  
12 state for a sum to be assessed by the court of not less than \$500 nor  
13 more than \$100,000 for the initial violation, nor more than \$5,000 for  
14 each day after that on which the violation continues, and that shall  
15 reflect, when applicable,

16 (1) reasonable compensation in the nature of liquidated  
17 damages for any adverse environmental effects caused by the violation,  
18 that shall be determined by the court according to the toxicity,  
19 degradability and dispersal characteristics of the substance dis-  
20 charged, the sensitivity of the receiving environment, and the degree  
21 to which the discharge degrades existing environmental quality;

22 (2) reasonable costs incurred by the state in detection,  
23 investigation, and attempted correction of the violation;

24 (3) the economic savings realized by the person in not  
25 complying with the requirement for which a violation is charged.

26 \* Sec. 9. AS 46.03.765 is amended to read:

27 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-  
28 tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09  
29 or of a regulation, a lawful order of the department, or permit,

1 approval, or acceptance, or term or condition of a permit, approval,  
2 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.  
3 In actions brought under this section, temporary or preliminary relief  
4 may be obtained upon a showing of an imminent threat of continued  
5 violation, and probable success on the merits, without the necessity  
6 of demonstrating physical irreparable harm. The balance of equities  
7 in actions under this section may affect the timing of compliance, but  
8 not the necessity of compliance within a reasonable period of time.

9 \* Sec. 10. AS 46.03.780(a) is amended to read:

10 (a) A person who violates a provision of this chapter, [OR]  
11 AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this  
12 chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an  
13 order, permit, or other determination of the department made under the  
14 provisions of this chapter, [OR] AS 46.04. or AS 46.09, respectively,  
15 and thereby causes the death of fish, animals, or vegetation or other-  
16 wise injures or degrades the environment of the state is liable to the  
17 state for damages.

18 \* Sec. 11. AS 46.03.790(a) is amended to read:

19 (a) Except as provided in (d) - (f) of this section, a person  
20 who negligently violates a provision of this chapter, [OR] AS 46.04,  
21 or AS 46.09, or of a regulation, lawful order of the department, or  
22 permit, approval, or acceptance, or term or condition of a permit,  
23 approval, or acceptance issued under this chapter, [OR] AS 46.04, or  
24 AS 46.09 is guilty of a class B misdemeanor.

25 \* Sec. 12. AS 46.03.790(b) is amended to read:

26 (b) Except as provided in (d) - (f) of this section, a person  
27 who knowingly violates a provision of this chapter, [OR] AS 46.04, or  
28 AS 46.09, or of a regulation, lawful order of the department, or  
29 permit, approval, or acceptance, or term or condition of a permit,

1 approval, or acceptance issued under this chapter, [OR] AS 46.04, or  
2 AS 46.09 is guilty of a class A misdemeanor.

3 \* Sec. 13. AS 46.03.790(d) is amended to read:

4 (d) Notwithstanding (a) and (b) of this section, a person who  
5 fails to provide or falsely states information required under AS 46.-  
6 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,  
7 upon conviction, is punishable by a fine of not more than \$25,000, or  
8 by imprisonment for not more than one year, or by both. Each unlawful  
9 act constitutes a separate offense.

10 \* Sec. 14. AS 46.04.010 is amended to read:

11 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-  
12 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-  
13 760(e), AS 46.08.070, or from an applicable federal fund, for the  
14 expenses it incurs in cleaning up or containing a discharge of oil.  
15 If the department obtains reimbursement for a portion of its expenses  
16 from a federal fund, the remainder of the expenses incurred may be  
17 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by  
18 the department under this section shall be deposited in the general  
19 fund and may be appropriated by the legislature to the oil and hazar-  
20 dous substance release response fund (AS 46.08).

21 \* Sec. 15. AS 46.03.758(k) is repealed.

22 \* Sec. 16. This Act takes effect immediately in accordance with AS 01.-  
23 10.070(c).

January 28, 1986

SUBJECT: CSHB 470 (Resources)

TO: Rep. Mike Davis

FROM: Ed Hein, LAA *EJH*

Enclosed is the draft committee substitute requested on your behalf by Jonathan Sperber. He asked whether the draft allows the Department of Environmental Conservation to contract with municipalities and entities in unincorporated communities.

Proposed Sec. 46.09.020(e) provides that the commissioner may enter into agreements with "other persons or municipalities." Proposed Sec. 46.09.040 provides that the commissioner may contract with a person or a municipality. Under existing law, AS 01.10.060, "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person. This definition applies in this bill and appears to cover virtually any "entity" that is organized in an unincorporated community, such as a fire department, for example.

"Municipality" is likewise defined in AS 01.10.060 and

- One of two -

Rep. Mike Davis  
Jan. 28, 1986  
Page 2

*organized under state law.*

includes all forms of local government. This definition took effect January 1, 1986, and applies to this bill.

Thus, in my opinion, the bill provides the authority to contract that you desire.

If you have further questions or comments, feel free to contact me at your convenience.

*X X X*

- two of two -

Proposed CS for HB 470 (Resources)

Page 5, Line 16

Corrects a typographical error, in which the word 'or' had inadvertently been omitted.

Page 7, Line 7

Expands language allowing the commissioner to enter into agreements with other persons and municipalities.

Page 7, Line 12

Allows the commissioner to enter into agreements with other persons and municipalities in order to provide for cooperative review of hazardous substance release response contingency plans submitted to the department.

Page 8, Line 12

New language, stating that the authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement AS 46.08 - AS 46.09, are granted to municipalities that do not otherwise have that authority.

Page 9, Line 10

Corrects a typographical error, in which a definition was numbered incorrectly.

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 470 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the release of oil and hazardous  
7 substances; and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 46 is amended by adding a new chapter to read:

10 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

11 Sec. 46.08.005. PURPOSE. The legislature finds and declares  
12 that the release of oil or hazardous substances into the environment  
13 presents a real and substantial threat to the public health and wel-  
14 fare, to the environment, and to the economy of the state. The legis-  
15 lature therefore concludes that it is in the best interest of the  
16 state and its citizens to provide a readily available fund for the  
17 payment of the expenses incurred by the Department of Environmental  
18 Conservation in the protection of the environment of the state from  
19 the release of oil or hazardous substances.

20 Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in  
21 the state general fund the oil and hazardous substance release re-  
22 sponse fund. The fund shall be administered by the commissioner of  
23 environmental conservation, but the commissioner of revenue shall be  
24 the custodian of the fund.

25 (b) Money from an appropriation made to the fund remaining in  
26 the fund at the end of a fiscal year remains available for expenditure  
27 in successive fiscal years.

28 Sec. 46.08.020. FINANCING OF THE FUND. The legislature may  
29 appropriate from the following sources to the fund:

1 (1) money received from federal, state, or other sources or  
2 from a private donor;

3 (2) money recovered or otherwise received from parties  
4 responsible for the containment and cleanup of oil or a hazardous  
5 substance at a specific site, but excluding funds from performance  
6 bonds and other forms of financial responsibility held in escrow  
7 pending satisfactory performance of a privately financed response  
8 action;

9 (3) fines, penalties, or damages recovered under this  
10 chapter or other law for costs incurred by the state as a result of  
11 the release or threatened release of oil or a hazardous substance.

12 Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS  
13 SUBSTANCE RELEASES. (a) It is the intent of the legislature and  
14 declared to be the public policy of the state that funds for the  
15 abatement of a release of oil or a hazardous substance will always be  
16 available.

17 (b) Notwithstanding the establishment of the fund under AS 46.-  
18 08.010, the commissioner shall, to the extent available, prefer funds  
19 appropriated to the department in the abatement of a release of oil or  
20 a hazardous substance. If appropriated funds are not available, then  
21 the commissioner may use money from the fund or, if the governor  
22 issues a proclamation of a disaster emergency under AS 26.23, funds  
23 available for disaster relief under AS 26.23.050 may be used in the  
24 abatement of a release of oil or a hazardous substance.

25 Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval  
26 of the governor, the commissioner may use money from the fund to

27 (1) contain and clean up releases or threatened releases of  
28 oil or a hazardous substance;

29 (2) undertake plans, inspections, sampling, tests,

1 investigations, surveys, analyses, engineering, construction, opera-  
2 tions, and maintenance necessary or appropriate to contain and clean  
3 up releases or threatened releases of oil or hazardous substances;

4 (3) <sup>assist</sup> facilitate the efforts of the Department of Labor under  
5 AS 18.60 to assist employers to develop safety education programs for  
6 employees who may be called upon to respond to a release of oil or a  
7 hazardous substance;

8 (4) provide matching funds for participation in federal oil  
9 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-  
10 hensive Environmental Response, Compensation and Liability Act of  
11 1980); and

12 (5) recover the cost to the state or to a municipality of a  
13 containment and cleanup resulting from the release or the threatened  
14 release of oil or a hazardous substance.

15 Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall  
16 maintain accounting records showing the income and expenses of the  
17 fund.

18 (b) By July 1 of each year, the department shall determine the  
19 projected cost for the following fiscal year of monitoring, operating,  
20 and maintaining sites where response has been completed or is expected  
21 to be continued during the fiscal year.

22 (c) The commissioner shall consult with the commissioner of  
23 revenue and the governor before adopting regulations governing fund  
24 accounting. The department shall develop procedures and adopt rules  
25 governing the expenditure of, and accounting for, money expended from  
26 the fund, and may not delay implementation of this chapter pending the  
27 effective date of the procedures and rules.

28 (d) The proper state officer shall pay disbursements from the  
29 fund on presentation of vouchers signed by the governor or the

AS 46.03.758

(g) Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. In determining whether mitigating circumstances exist, the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply. If mitigating circumstances are proven by a preponderance of the evidence, the court may reduce or totally eliminate the penalty, in accordance with the purposes of this section.

(h) A person otherwise liable for penalties under (e) of this section is not liable if he demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

- (1) an act of God;
- (2) an act of a third person with intent to cause a discharge, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) — (3) of this section;
- (3) a negligent or intentional act of the State of Alaska or the United States; or
- (4) an act of war.

(i) Notwithstanding AS 46.03.875, a person liable under this section is not also liable for the discharge of oil under AS 46.03.760(a). A person causing or permitting a discharge of oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than \$500 for the discharge.

(j) The court may reduce the penalty imposed under this section if the person charged demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) — (3) of this section.

\*

(k) Penalties received by the state under this section shall be deposited in the general fund and credited to a special account called the "oil spill mitigation account". The legislature may annually appropriate from the oil spill mitigation account a sum equivalent to the amount of penalties received under this section for the calendar year preceding the legislative session in which the appropriation is made, the appropriations to be made for the purpose of restoring and enhancing environments affected by oil pollution, including but not limited to the funding of aquaculture projects.

(l) As used in this section,

February 6, 1986

SUBJECT: CSHB 470 (Resources)

TO: Rep. David Thompson

FROM: Ed Hein, LAA *EH*

You have asked whether proposed AS 46.08.010(b), which appears at page 1, lines 25 - 27 of CSHB 470 (Resources) (2/6/86 draft), violates the prohibition against dedicated funds in Alaska Constitution, Art. IX, sec. 7. You also have asked whether the bill's language is binding on future legislatures.

The language in question is an anti-lapse clause, which should be read as if it included the phrase, "Notwithstanding the provisions of AS 37.25.010." Subsection (b) is an exception to the requirement of AS 37.25.010 that one-year appropriations lapse on June 30 of the fiscal year for which appropriated. If an appropriation to the response fund did not specify a lapse date or make reference to AS 37.25.010, subsection (b) would control.

Subsection (b) does not violate the dedicated fund prohibition because that applies only to state revenue placed in a fund automatically, without being appropriated. Money in the response fund must have been appropriated to it. The response fund is not a dedicated fund.

If you have further questions, feel free to contact me at your convenience.

c.c.: Rep. Richard Shultz

Proposed amendments to CSHB 470

Page 1, Line 28

Sec. 46.08.010. A new subsection (c) is added to read:

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. The fund may not be used for capital improvements.

# 2  
adopted

Page 2, Line 29

Sec. 46.08.040. Subsection (2) is amended to read:

(2) undertake plans, inspections, sampling, tests, investigations, public notification, damage assessment, surveys, analyses, engineering, construction, operations, and maintenance necessary or appropriate to contain and cleanup releases or threatened releases of oil or hazardous substances;

# 3  
adopted

Page 6, Line 13

Sec. 46.09.020 (a) (1) is amended to read:

(1) after consulting the Environmental Protection Agency ~~or~~ and other public safety agencies, as appropriate, that containment or cleanup is technically infeasible; or

# 6

Page 6, Line 17

Sec. 46.09.020 (b) is amended to read:

(b) The commissioner shall adopt [regulations] guidelines prescribing procedures and methods to be used in the containment and cleanup of a hazardous substance and in the disposal of waste from the containment or cleanup.

# 11

Page 7, Line 1

Sec. 46.09.020 (d) (1) is amended to read:

(1) after consulting the Environmental Protection Agency ~~or~~ and other public safety agencies, as appropriate, that containment or cleanup is technically infeasible; or

Page 9, Line 12

Sec. 26.23.050 (b) is amended to read:

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to funds regularly appropriated to state and local agencies. The second recourse shall be to funds available in the disaster relief fund or the oil and hazardous substance release response fund, as appropriate. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding any limitation imposed by AS 37.07.080(e), transfer and spend money appropriated for other purposes or, in situations involving natural disasters, borrow from the United States government or other public or private sources for a term not to exceed two years.

Page 9, Line 24

Sec. 37.05.159 (g) is amended to read:

(g) Notwithstanding the provisions of (b) of this section and AS 37.07.080(e), the governor may transfer [a maximum of \$10,000,000] \$1,000,000 during a fiscal year from the reserve for emergency operating expenses account to the oil and hazardous substance release response fund (AS 46.08).

1 governor's authorized representative.

2 Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner  
3 shall submit a report to the governor and to the legislature not later  
4 than the 10th day following the convening of each regular session of  
5 the legislature. The report may include information considered sig-  
6 nificant by the commissioner but must include:

7 (1) the amount of money expended under AS 46.08.040 during  
8 the preceding fiscal year; and

9 (2) the amount and source of money received and money  
10 recovered during the preceding fiscal year as specified in AS 46.08.-  
11 020.

12 Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a)  
13 The commissioner shall seek reimbursement promptly under this section,  
14 AS 46.03.760(e), or federal law for the cost incurred in the cleanup  
15 or containment of oil or a hazardous substance that has been released.

16 (b) The attorney general, at the request of the commissioner,  
17 may seek to recover money expended by the department under this chap-  
18 ter or other law to contain and clean up oil or a hazardous substance  
19 that has been released or to control the threatened release of oil or  
20 a hazardous substance.

21 Sec. 46.08.080. REGULATIONS. The commissioner shall adopt  
22 regulations necessary to implement the provisions of this chapter.

23 Sec. 46.08.900. DEFINITIONS. In this chapter

24 (1) "commissioner" means the commissioner of environmental  
25 conservation;

26 (2) "containment and cleanup" includes the direct and  
27 indirect efforts associated with the prevention, abatement, contain-  
28 ment, or removal of a hazardous substance, the restoration of the  
29 environment to its former state, and incidental administrative costs;

1 (3) "department" means the Department of Environmental  
2 Conservation;


3 (4) "employee" means a person who works for an employer in  
4 a place that is not used primarily as a personal residence;

5 (5) "employer" means a person, including the state and a  
6 political subdivision of the state, who has one or more employees  
7 working in a place that is not used primarily as a personal residence;

8 (6) "fund" means the oil and hazardous substance release  
9 response fund;

10 (7) "hazardous substance" means

11 (A) an element or compound that, when it enters into  
12 or on the surface or subsurface land or water of the state,  
13 presents an imminent and substantial danger to the public health  
14 or welfare, or to fish, animals, vegetation, or any part of the  
15 natural habitat in which fish, animals, or wildlife may be found;

16   
17 (B) a substance defined as a hazardous substance under  
18 state or federal law or by regulations adopted under state or  
19 federal law;

20 (8) "oil" means petroleum products of any kind and in any  
21 form, whether crude, refined, or a petroleum by-product, including  
22 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily  
23 refuse, oil mixed with other wastes, liquified natural gas, propane,  
24 butane, and other liquid hydrocarbons regardless of specific gravity;

25 (9) "release" means an intentional or unintentional release  
26 into the environment of the state.

27 \* Sec. 2. AS 46 is amended by adding a new chapter to read:

28 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

29 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)

1 Except as provided in (b) of this section, a person in charge of a  
2 vehicle, vessel or container from which, or a place at which, a haz-  
3 arduous substance is released shall report the release to the depart-  
4 ment <sup>#9</sup> promptly after learning of the release.

5 (b) The commissioner may enter into an agreement with a person  
6 for the periodic reporting of a controlled release of a hazardous  
7 substance if the release is not into the water of the state. <sup>delete</sup>

8 Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS  
9 SUBSTANCE. (a) A person who causes a release of a hazardous sub-  
10 stance shall make reasonable efforts to contain and clean up the  
11 hazardous substance promptly after learning of the release, unless the  
12 commissioner determines

13 (1) after consulting the Environmental Protection Agency,  
14 that containment or cleanup is technically infeasible; or <sup>#6</sup>

15 (2) that containment or cleanup would cause greater en-  
16 vironmental damage than the release would cause if unabated.

17 (b) The commissioner shall adopt <sup>regulations</sup> ~~regulations~~ prescribing proce-  
18 dures and methods to be used in the containment and cleanup of a  
19 hazardous substance and in the disposal of waste from the containment  
20 or cleanup. <sup>#12</sup>

21 (c) If the commissioner determines that the containment or  
22 cleanup of a hazardous substance undertaken is inadequate, the commis-  
23 sioner may direct the person undertaking the containment or cleanup to  
24 cease and may undertake the containment or cleanup directly or by  
25 contract.

26 (d) If it appears to the commissioner that the cause or respon-  
27 sibility for the release of a hazardous substance is unclear or unex-  
28 plained, the commissioner may immediately undertake the containment  
29 and cleanup of the release unless the commissioner determines

1 (1) after consulting the Environmental Protection Agency,  
2 that containment or cleanup is technically infeasible; or

3 (2) that containment or cleanup would cause greater en-  
4 vironmental damage than the release would cause if unabated.

5 (e) The commissioner shall enter into agreement with the En-  
6 vironmental Protection Agency, and may enter into agreements with  
7 other persons ~~and municipalities~~ in order to

8 (1) facilitate a coordinated and effective hazardous sub-  
9 stance release response in the state;

10 (2) provide for cooperative hazardous substance release  
11 notification procedures; or

12 ~~(3) provide for cooperative review of hazardous substance~~  
13 ~~release response contingency plans submitted to the department.~~

14 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may  
15 request the governor to determine that an actual or imminent release  
16 of a hazardous substance constitutes a disaster emergency under  
17 AS 26.23. If the governor declares a disaster emergency under AS 26.-  
18 23, the commissioner may assist the adjutant general in the relief of  
19 the emergency.

20 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.  
21 The commissioner may contract with a person or a municipality for  
22 personnel, equipment, or services that may be useful to carry out the  
23 requirements of this chapter. If the commissioner determines that it  
24 is infeasible to contract with a person or a municipality, the commis-  
25 sioner may establish and maintain containment and cleanup personnel,  
26 equipment, and supplies necessary to carry out the requirements of  
27 this chapter.

28 Sec. 46.09.050. PEACE OFFICERS. Employees of the department  
29 designated by the commissioner as enforcement officers in the

1 implementation of this chapter are peace officers of the state.

2 Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter  
3 into supplementary agreements, reciprocal arrangements, and compacts  
4 with another state or country for the implementation of this chapter  
5 subject to the approval of the Congress of the United States, if  
6 required, under the Constitution of the United States.

7 Sec. 46.09.070. MUNICIPALITIES. (a) If a provision of this  
8 chapter or of a regulation adopted by the commissioner under this  
9 chapter conflicts with the charter, ordinance, or regulation of a  
10 municipality, the provision of this chapter or of the regulation  
11 adopted by the commissioner under this chapter prevails.

12 (b) Authority to contain, clean up, or prevent a release or  
13 threatened release of oil or of a hazardous substance, and to exercise  
14 other powers necessary to implement AS 46.08 - AS 46.09, are granted  
15 to municipalities that do not otherwise have that authority. Except  
16 as provided in (a) of this section, a municipality may exercise its  
17 police power within the area of the municipality.

18 Sec. 46.09.080. REGULATIONS. The commissioner shall adopt  
19 regulations necessary to implement the provisions of this chapter.

20 Sec. 46.09.900. DEFINITIONS. In this chapter

21 (1) "commissioner" means the commissioner of environmental  
22 conservation;


23 (2) "containment and cleanup" includes the direct and  
24 indirect efforts associated with the prevention, abatement, contain-  
25 ment, or removal of a hazardous substance, the restoration of the  
26 environment to its former state, and incidental administrative costs;

27 (3) "department" means the Department of Environmental  
28 Conservation;

29 (4) "hazardous substance" means

1 (A) an element or compound that, when it enters into  
2 or on the surface or subsurface land or water of the state,  
3 presents an imminent and substantial danger to the public health  
4 or welfare, or to fish, animals, vegetation, or any part of the  
5 natural habitat in which fish, animals, or wildlife may be found;  
6 or

7 (B) a substance defined as a hazardous substance under  
8 state or federal law or by regulations adopted under state or  
9 federal law;

10  "release" means an intentional or unintentional release  
11 into the environment of the state.

12 \* Sec. 3. AS 26.23.230(1) is amended to read:

13 (1) "disaster" means the occurrence or imminent threat of  
14 widespread or severe damage, injury, or loss of life or property  
15 resulting from any natural or nonmilitary man-made cause including,  
16 but not limited to, fire, flood, earthquake, landslide, mudslide,  
17 avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL  
18 OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT  
19 DANGER OR DAMAGE], volcanic activity, epidemic, air contamination,  
20 blight, infestation, explosion, riot, equipment failure, or shortage  
21 of food, water, fuel, or clothing, or the release of oil or a hazard-  
22 ous substance requiring prompt action to avert environmental danger or  
23 damage;

24 \* Sec. 4. AS 37.05.159 is amended by adding a new subsection to read:

25 (g) Notwithstanding the provisions of (b) of this section and  
26 AS 37.07.080(e), the governor may transfer a maximum of \$10,000,000  
27 during a fiscal year from the reserve for emergency operating expenses  
28 account to the oil and hazardous substance release response fund  
29 (AS 46.08).

1 \* Sec. 5. AS 44.19.050 is amended to read:

2       Sec. 44.19.050.     DEFINITION.     In AS 44.19.048 and 44.19.049,  
3 "disaster" means the occurrence or imminent threat of widespread or  
4 severe damage, injury, or loss of life or property resulting from any  
5 natural or man-made cause including, but not limited to, fire, flood,  
6 earthquake, landslide, avalanche, wind-driven water, weather condi-  
7 tion, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING  
8 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air  
9 contamination, blight, infestation, explosion, [OR] riot, or the  
10 release of oil or a hazardous substance requiring prompt action to  
11 avert environmental danger or damage.

12 \* Sec. 6. AS 46.03.290(a) is amended to read:

13       (a) When the department finds that an actual or imminent dis-  
14 charge of oil, a hazardous substance, or low level radioactive mate-  
15 rials to the air, water, land or subsurface land of the state poses an  
16 immediate threat to the public health or welfare, or the environment  
17 of the state, it may issue an order declaring an emergency and direct-  
18 ing a person or persons to take action the department believes neces-  
19 sary to meet the emergency, and protect the public health, welfare, or  
20 environment.

21 \* Sec. 7. AS 46.03.760(a) is amended to read:

22       (a) A person who violates or causes or permits to be violated a  
23 provision of this chapter other than AS 46.03.250 - 46.03.314, or a  
24 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of  
25 the department, or a permit, approval, or acceptance, or term or  
26 condition of a permit, approval, or acceptance issued under this  
27 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the  
28 state for a sum to be assessed by the court of not less than \$500 nor  
29 more than \$100,000 for the initial violation, nor more than \$5,000 for

1 each day after that on which the violation continues, and that shall  
2 reflect, when applicable,

3 (1) reasonable compensation in the nature of liquidated  
4 damages for any adverse environmental effects caused by the violation,  
5 that shall be determined by the court according to the toxicity,  
6 degradability and dispersal characteristics of the substance dis-  
7 charged, the sensitivity of the receiving environment, and the degree  
8 to which the discharge degrades existing environmental quality;

9 (2) reasonable costs incurred by the state in detection,  
10 investigation, and attempted correction of the violation;

11 (3) the economic savings realized by the person in not  
12 complying with the requirement for which a violation is charged.

13 \* Sec. 8. AS 46.03.765 is amended to read:

14 Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdic-  
15 tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09  
16 or of a regulation, a lawful order of the department, or permit,  
17 approval, or acceptance, or term or condition of a permit, approval,  
18 or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.  
19 In actions brought under this section, temporary or preliminary relief  
20 may be obtained upon a showing of an imminent threat of continued  
21 violation, and probable success on the merits, without the necessity  
22 of demonstrating physical irreparable harm. The balance of equities  
23 in actions under this section may affect the timing of compliance, but  
24 not the necessity of compliance within a reasonable period of time.

25 \* Sec. 9. AS 46.03.780(a) is amended to read:

26 (a) A person who violates a provision of this chapter, [OR]  
27 AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this  
28 chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an  
29 order, permit, or other determination of the department made under the

1 provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively,  
2 and thereby causes the death of fish, animals, or vegetation or other-  
3 wise injures or degrades the environment of the state is liable to the  
4 state for damages.

5 \* Sec. 10. AS 46.03.790(a) is amended to read:

6 (a) Except as provided in (d) - (f) of this section, a person  
7 who negligently violates a provision of this chapter, [OR] AS 46.04,  
8 or AS 46.09, or of a regulation, lawful order of the department, or  
9 permit, approval, or acceptance, or term or condition of a permit,  
10 approval, or acceptance issued under this chapter, [OR] AS 46.04, or  
11 AS 46.09 is guilty of a class B misdemeanor.

12 \* Sec. 11. AS 46.03.790(b) is amended to read:

13 (b) Except as provided in (d) - (f) of this section, a person  
14 who knowingly violates a provision of this chapter, [OR] AS 46.04, or  
15 AS 46.09, or of a regulation, lawful order of the department, or  
16 permit, approval, or acceptance, or term or condition of a permit,  
17 approval, or acceptance issued under this chapter, [OR] AS 46.04, or  
18 AS 46.09 is guilty of a class A misdemeanor.

19 \* Sec. 12. AS 46.03.790(d) is amended to read:

20 (d) Notwithstanding (a) and (b) of this section, a person who  
21 fails to provide or falsely states information required under AS 46.-  
22 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,  
23 upon conviction, is punishable by a fine of not more than \$25,000, or  
24 by imprisonment for not more than one year, or by both. Each unlawful  
25 act constitutes a separate offense.

26 \* Sec. 13. AS 46.04.010 is amended to read:

27 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-  
28 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-  
29 760(e), AS 46.08.070, or from an applicable federal fund, for the

1 expenses it incurs in cleaning up or containing a discharge of oil.  
2 If the department obtains reimbursement for a portion of its expenses  
3 from a federal fund, the remainder of the expenses incurred may be  
4 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by  
5 the department under this section shall be deposited in the general  
6 fund and may be appropriated by the legislature to the oil and hazar-  
7 dous substance release response fund (AS 46.08).

8 \* Sec. 14. AS 46.03.758(k) is repealed.

9 \* Sec. 15. This Act takes effect immediately in accordance with AS 01.-  
10 10.070(c).

HB 470  
Question and Answer Overview

Why is there a need for the Oil and Hazardous Substance Release Response Fund?

Releases of oil and hazardous substances pose a direct threat to the public health, environment, and economy of the state. HB 470 would provide ADEC with the statutory authority and readily available funding necessary to contain and cleanup releases of these materials. The response fund would allow ADEC to respond to future releases of oil and hazardous substances, as well as to cleanup existing sites.

What is the relationship between the response fund and the federal 'Superfund' program?

The 'Superfund' is directed toward the nationwide cleanup of existing sites. The Environmental Protection Agency evaluates these sites on a national priority basis to determine which sites will receive federal funding. Because this ranking system is biased in favor of densely populated areas, Alaska is expected to receive only slight assistance from the 'Superfund'. HB 470 does make provision, however, for the federal requirement that states provide matching funds of between 10 percent and 50 percent of site cleanup costs in order to receive 'Superfund' money.

Who decides which sites will be cleaned up?

The commissioner of ADEC is given the authority to determine which sites will be cleaned up. The commissioner may also, by regulation, develop criteria for prioritizing the cleanup of existing sites. It is the intent of this legislation, however, that money in the response fund always remain available for the containment and cleanup of future releases of oil and hazardous substances.

When would the response fund be used?

Persons responsible for the release of oil or hazardous substances must notify ADEC of the release and then begin containment and cleanup efforts. ADEC may use money from the response fund for these purposes, however, if the responsible party's containment and cleanup efforts are inadequate or if the cause of the release is unclear or unexplained.

How does the funding mechanism of the response fund work?

The Oil and Hazardous Substance Release Response Fund is modeled after the Disaster Relief Fund and the Fire Suppression Fund. These three funds are also similar in that they are all directed toward the abatement of emergency situations. The response fund allows the governor to transfer up to \$10 million during a fiscal year from the emergency operating expenses account to the fund, and money remaining in the fund at the end of a fiscal year remains available for expenditure in successive fiscal years.

The response fund may also receive legislative appropriations based on federal grants, money recovered from responsible parties for containment and cleanup, money recovered from responsible parties for fines, penalties or damages, and other sources.

What level of accounting oversight is provided for?

The response fund is administered by ADEC, although the commissioner of the Dept. of Revenue is custodian of the fund. Accounting records are maintained by ADEC, and the commissioner of ADEC must consult with the Governor and the commissioner of the Dept. of Revenue before adopting regulations governing fund accounting. The commissioner must also submit a fiscal report regarding the response fund to the Governor and the Legislature no later than the 10th day of each regular legislative session.

How does the response fund affect businesses and local communities?

The commissioner may enter into agreements with businesses, municipalities, and other entities in order to facilitate a coordinated and effective oil and hazardous substance release response in the state. Agreements may also be entered into that provide for oil and hazardous substance release notification procedures.

What provisions are made for the training and safety of workers cleaning up these materials?

Money from the response fund may be used to facilitate the efforts of the Department of Labor to assist employers in developing safety education programs for employees who may be called upon to respond to a release of oil or a hazardous substance.

HB 470  
Sectional Analysis

\* Section 1.

Chapter 8. Oil and Hazardous Substance Releases.

Sec. 46.08.005. Statement of purpose declaring the release of oil or hazardous substances into the environment to be a threat to the public health and welfare, environment, and economy of the state. Concludes that it is in the best interest of the state to have funds readily available for ADEC to respond to releases of these materials.

Sec. 46.08.010. Establishes the Oil and Hazardous Substance Release Response Fund. The fund is administered by ADEC, although the Dept. of Revenue is custodian of the fund.

Sec. 46.08.020. Lists sources from which the legislature may appropriate money to the fund. Sources include the state and federal governments, money recovered from parties responsible for a release of oil or hazardous substances for containment and cleanup expenses, and fines, penalties, or damages received from a party responsible for such a release.

Sec. 46.08.030. (a) Statement of legislative intent that funds for the abatement of a release of oil or a hazardous substance will always be available.

(b) The commissioner shall use money appropriated to the department for response to releases of oil or hazardous substances before using money in the fund for such purposes. Money may also be available to respond to a release through the Disaster Relief Fund if the governor proclaims such a release to be a disaster emergency under AS 26.23.

Sec. 46.08.040. Lists acceptable uses of money from the fund, subject to the approval of the governor. These uses are to contain and cleanup releases or threatened releases of oil or hazardous substances, conduct work associated with such a release or threatened release, assist the Dept. of Labor in working with employers to develop employee safety education programs, provide matching funds for federal oil discharge and 'Superfund' (CERCLA) programs, and recover costs resulting from the release or threatened release of oil or hazardous substances.

How does the response fund affect existing state programs?

The state is attempting to gain federal authorization to establish a state-controlled hazardous waste management program (RCRA). Negotiations between the state and the Environmental Protection Agency would not be affected by establishment of the response fund. Industry requirements regarding RCRA authorization would also remain unaffected by creation of the fund.

The Oil Spill Mitigation Account would be repealed immediately upon the effective date of the Oil and Hazardous Substance Release Response Fund.

(c) The commissioner, upon determining that containment and cleanup activities by a responsible party are inadequate, may order the person to cease the activity and ADEC may then take over the containment and cleanup operation.

(d) The commissioner may immediately undertake the containment and cleanup of a release if the cause of the release is unclear or unexplained. The same restrictions delineated in (a) of this section apply in this situation.

(e) The commissioner may enter into agreements with persons, including public or private corporations, municipalities, and unincorporated communities, in order to facilitate a coordinated and effective hazardous substance response in the state, provide for cooperative hazardous substance release notification procedures, or provide for cooperative review of hazardous substance contingency plans submitted to the department.

Sec. 46.09.030. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency, the commissioner may assist the adjutant general (Division of Emergency Services) in the relief of the emergency.

Sec. 46.09.040. The commissioner may contract with a person, including a public or private corporation, municipality or unincorporated community, for personnel, equipment, or services in order to carry out the purposes of this chapter. If such a contract is infeasible, the commissioner may establish and maintain personnel, equipment, and supplies for containment and cleanup purposes.

Sec. 46.09.050. ADEC employees designated by the commissioner as enforcement officers for the purposes of this chapter are also peace officers of the state.

Sec. 46.09.060. For the purposes of this chapter, the commissioner may enter into agreements, arrangements, or compacts with other states or countries.

Sec. 46.09.070. In the event of a regulatory conflict between the state and a municipality regarding the containment and cleanup of releases, the provisions of this chapter or regulations adopted by the commissioner prevail.

Sec. 46.09.080. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.09.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

Sec. 46.08.050. Delineates accounting procedures of the fund. Accounting records are maintained by ADEC, and by July 1 of each year the department must determine projected costs of the fund for the next fiscal year. The commissioner must adopt rules governing fund accounting, but shall consult with the governor and the commissioner of the Dept. of Revenue before adopting regulations in this regard.

Sec. 46.08.060. No later than the 10th day of each regular legislative session, the commissioner must submit a fiscal report to the legislature and the governor. The report must include the amount of money expended from the fund, and the amount and source of money recovered or received by the fund, during the previous fiscal year.

Sec. 46.08.070. (a) The commissioner is directed to seek reimbursement for costs incurred in the containment or cleanup of releases.

(b) At the request of the commissioner, the attorney general may attempt to recover money expended by the department in responding to releases or threatened releases of oil or hazardous substances.

Sec. 46.08.080. The commissioner shall adopt regulations in order to carry out the provisions of this chapter.

Sec. 46.08.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

\* Section 2.

#### Chapter 9. Hazardous Substance Release Control.

Note: AS 46.09 is modeled after AS 46.04 (Oil Pollution Control).

Sec. 46.09.010. A person in charge of a unit from which a hazardous substance is released must promptly notify ADEC of the release. Persons may, however, enter into agreements with the commissioner for the periodic reporting of a controlled release of hazardous substances if the release is not into the waters of the state.

Sec. 46.09.020. (a) A person responsible for a release must make reasonable efforts to contain and cleanup the release unless the commissioner determines that containment and cleanup is either technically infeasible, or that such action would create greater environmental harm than the release itself.

(b) The commissioner must adopt regulations prescribing procedures and methods for containing and cleaning up releases and for disposing of wastes from a release.

(c) The commissioner, upon determining that containment and cleanup activities by a responsible party are inadequate, may order the person to cease the activity and ADEC may then take over the containment and cleanup operation.

(d) The commissioner may immediately undertake the containment and cleanup of a release if the cause of the release is unclear or unexplained. The same restrictions delineated in (a) of this section apply in this situation.

(e) The commissioner may enter into agreements with persons, including public or private corporations, municipalities, and unincorporated communities, in order to facilitate a coordinated and effective hazardous substance response in the state, provide for cooperative hazardous substance release notification procedures, or provide for cooperative review of hazardous substance contingency plans submitted to the department.

Sec. 46.09.030. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency, the commissioner may assist the adjutant general (Division of Emergency Services) in the relief of the emergency.

Sec. 46.09.040. The commissioner may contract with a person, including a public or private corporation, municipality or unincorporated community, for personnel, equipment, or services in order to carry out the purposes of this chapter. If such a contract is infeasible, the commissioner may establish and maintain personnel, equipment, and supplies for containment and cleanup purposes.

Sec. 46.09.050. ADEC employees designated by the commissioner as enforcement officers for the purposes of this chapter are also peace officers of the state.

Sec. 46.09.060. For the purposes of this chapter, the commissioner may enter into agreements, arrangements, or compacts with other states or countries.

Sec. 46.09.070. In the event of a regulatory conflict between the state and a municipality regarding the containment and cleanup of releases, the provisions of this chapter or regulations adopted by the commissioner prevail.

Sec. 46.09.080. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.09.900. Definitions in this chapter are largely based on definitions in AS 46.03 and AS 46.04.

\* Section 13.

Sec. 46.04.010. ADEC is directed to promptly seek reimbursement for expenses incurred in the containment or cleanup of oil discharges, and the commissioner may request the attorney general to assist in the recovery of funds from responsible parties. Money received by ADEC under this section may be appropriated by the legislature to the response fund.

\* Section 14.

Sec. 46.03.758. (k) The Oil Spill Mitigation Account is repealed.

\* Section 15.

Sec. 01.10.070. (c) Immediate effective date.

\* Section 3.

Sec. 26.23.230. (l) The definition of "disaster" is expanded to include the release of a hazardous substance.

\* Section 4.

Sec. 37.05.159. (g) The governor may transfer a maximum of \$10 million during a fiscal year from the reserve for emergency operating expenses account to the fund.

\* Section 5.

Sec. 44.19.050. The definition of "disaster" is expanded to include the release of a hazardous substance.

\* Section 6.

Sec. 46.03.290. (a) Departmental findings regarding the declaring of an emergency are expanded to include oil and hazardous substances.

\* Section 7.

Sec. 46.03.760. (a) Provides for civil liabilities for persons violating provisions of AS 46.09.

\* Section 8.

Sec. 46.03.765. The superior court has jurisdiction to enjoin a violation of AS 46.09.

\* Section 9.

Sec. 46.03.780. (a) Liability to the state for damages for injury or degradation to the environment in violation of AS 46.09.

\* Section 10.

Sec. 46.03.790. (a) A person who negligently violates a provision of AS 46.09 is guilty of a class B misdemeanor.

\* Section 11.

Sec. 46.03.790. (b) A person who knowingly violates a provision of AS 46.09 is guilty of a class A misdemeanor.

\* Section 12.

Sec. 46.03.790. (d) A person who fails to provide or falsely states information required under AS 46.09 is guilty of a misdemeanor and, upon conviction, may be punished by a fine of not more than \$25,000 or by imprisonment for not more than one year, or both.

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 470

NOTE: In the 1987 Budget, the agency also requested one additional position, funded by Federal Superfund (CERCLA) dollars, to manage contracts to perform investigations of sites where hazardous materials may have been inappropriately managed or disposed. This position would also negotiate for federal dollars to clean up sites which are eligible for the Superfund, to supplement the State monies in this response fund.

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HR 470

In order to manage a program which responds to both immediate and long-term releases of oil and hazardous substances and make effective use of the funds created by this proposed legislation, several new positions would be required. TOTAL REQUEST

Funding for nine months is requested for FY 87 210.7

## A. Program Management

1. A program person to develop regulations, negotiate contracts, initiate appropriate cost-recovery actions, coordinate training and report to the legislature.

2. An administrative assistant to monitor contracts, track and record expenditures from the fund, maintain records describing incidents across the State and other data necessary to obtain cost recovery and to prepare reports to the legislature.

3. A clerk/typist to provide clerical support and enter data into computer files.

## Response Capability

1. Three environmental field officer positions to investigate reports of spilled materials, monitor cleanup activities, work with community government and safety agencies on plans for responding to local emergencies involving chemical spills/fires. The field officers would be assigned as follows: 1) one and one-half positions in Anchorage for the Southcentral Region; 2) one position in Fairbanks for the Northern Region; and 3) a half-time position in Juneau for the Southeast Region.

## B. Support Costs

1. Travel funds of 5.0 per technical and field officer position and 3.0 for the administrative position will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs. 28.0

2. Contractual funds of about 5.0 per position are required to pay office costs including telephones, Xeroxing, word processing, utilities, janitorial costs, printing and advertising costs and registration fees for training courses. An additional 20.0 is requested for use in contracting with approved laboratories for analyses of hazardous materials/wastes which are beyond the technical and safety limitations of the Department's laboratory. 53.5

3. Funds for office supplies amounting to about 1.5 are requested for each position; 2.0 is requested to replace expendable field sampling and safety supplies for each field officer; and 5.0 is requested to repair laboratory testing equipment and replace supplies. 23.5

Equipment funds of about 2.0 are requested for desks, chairs, partitions, bookshelves and similar items necessary to equip the office of each position. 14.0

329.7

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 170

In order to manage a program which responds to both immediate and long-term releases of oil and hazardous substances and make effective use of the fund created by this proposed legislation, several new positions would be required. TOTAL REQUEST

Funding for nine months is requested for FY 87 210.7

## A. Program Management

1. A program person to develop regulations, negotiate contracts, initiate appropriate cost-recovery actions, coordinate training and report to the legislature.

2. An administrative assistant to monitor contracts, track and record expenditures from the fund, maintain records describing incidents across the State and other data necessary to obtain cost recovery and to prepare reports to the legislature.

3. A clerk/typist to provide clerical support and enter data into computer files.

## Response Capability

1. Three environmental field officer positions to investigate reports of spilled materials, monitor cleanup activities, work with community government and safety agencies on plans for responding to local emergencies involving chemical spills/fires. The field officers would be assigned as follows: 1) one and one-half positions in Anchorage for the Southcentral Region; 2) one position in Fairbanks for the Northern Region; and 3) a half-time position in Juneau for the Southeast Region.

## B. Support Costs

1. Travel funds of 5.0 per technical and field officer position and 3.0 for the administrative position will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs. 28.0

2. Contractual funds of about 5.0 per position are required to pay office costs including telephones, Xeroxing, word processing, utilities, janitorial costs, printing and advertising costs and registration fees for training courses. An additional 20.0 is requested for use in contracting with approved laboratories for analyses of hazardous materials/wastes which are beyond the technical and safety limitations of the Department's laboratory. 53.5

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Equipment funds of about 2.0 are requested for desks, chairs, partitions, bookshelves and similar items necessary to equip the office of each position. 14.0

329.7

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : HB 170  
 Title : An Act Relating to the  
Release of Oil and Hazardous  
Substances  
 Sponsor : Rep. M. Davis  
 Requestor : \_\_\_\_\_  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : Environmental Conservation  
 BRU : Environmental Quality  
 \_\_\_\_\_  
 Components : Director's Office  
 \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		210.7	264.5	264.6		
TRAVEL		28.0	28.0	28.0		
CONTRACTUAL		53.5	53.5	53.5		
SUPPLIES		23.5	23.5	23.5		
EQUIPMENT		14.0	2.0	2.0		
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>329.7</b>	<b>371.6</b>	<b>371.6</b>		

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		7.0*	7.0	7.0		
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

\*6.0 FTE

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : S.W. Hungerford  
 Division : Environmental Quality

Phone : 465-2666  
 Date : 1/17/86

Approved by Commissioner : \_\_\_\_\_  
 Agency : Dept. of Environmental Conservation

Date : 1/17/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 470

NOTE: In the 1987 Budget, the agency also requested one additional position, funded by Federal Superfund (CERCLA) dollars, to manage contracts to perform investigations of sites where hazardous materials may have been inappropriately managed or disposed. This position would also negotiate for federal dollars to clean up sites which are eligible for the Superfund, to supplement the State monies in this response fund.

Position Title Ecologist II			No. of Positions One	Range/Step 18 A	Barg. Unit GGU	Gov.	Approv.	Disapp.
Time Status Full Time	Staff Months 12	RP Number	Location Juneau		Election District	Leg.		
<b>Justification</b>								
Type of Expenditure			Amount					
1	2	3						
Salary	28.1							
Benefits	8.3							
Premium Pay								
Other								
Total Personal Services		36.4						
Travel		5.0						
Contractual		25.0						
Commodities		6.5						
Equipment		2.0						
Other								
Total Cost		74.9						
Receipt Code		Funding Source						
		Federal Receipts 1002						
		G. F. Match 1003						
		General Funds 1004 74.9						
		I-A Receipts 1005						
		Program Receipts 1028						
		CIP Receipts 1061						
		Other						
<div style="border: 1px solid black; padding: 5px; display: inline-block;">           For B&amp;M Use Only            Key Number _____         </div>								

This new position will be responsible for writing regulations related to implementation of this bill, including procedures to be used in containment and cleanup of a hazardous substance, reporting the release of a hazardous substance, use of the response fund, procedures to assess fines, penalties and recovery of costs. This person will also negotiate contracts to contain and clean up incidents requiring immediate response, determine liability for incidents, initiate appropriate actions to recover costs or other penalties, coordinate a training and safety program for field staff and report program activities to appropriate State and federal agencies and the State Legislature.

We expect to fill this position on October 1, 1986. Funding for nine months has been requested for FY 87.

**Request For  
New Position**

Agency Environmental Conservation  
 BRU Environmental Quality  
 Component Water Quality Management

Page \_\_\_\_\_ of \_\_\_\_\_  
 Revised Date \_\_\_\_\_

**FY 87**

Position Title Administrative Assistant II			No. of Positions One	Range/Step 14 A	Barg. Unit GGU	Gov.	Approv.	Disapp.																									
Time Status Full Time	Staff Months 12	RP Number	Location Juneau	Election District	Leg.																												
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**Request For  
New Position**

Agency Environmental Conservation  
BRU Environmental Quality  
Component Water Quality Management

**FY 87**

Page \_\_\_\_\_ of \_\_\_\_\_  
Revised Date \_\_\_\_\_

Position Title <b>Clerk Typist III</b>			No. of Positions <b>One</b>	Range/Step <b>8 A</b>	Barg. Unit <b>GGU</b>	Gov. <b>LEG</b>	Approv.	Disapp.																																															
Time Status <b>Full Time</b>	Staff Months <b>12</b>	RP Number	Location <b>Juneau</b>		Election District																																																		
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Type of Expenditure	1	2	3																																																				
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## Request For New Position

Agency Environmental Conservation  
BRU Environmental Quality  
Component Water Quality Management

Page        of  
Revised Date

**FY 87**

Position Title <b>Environmental Field Officer III</b>			No. of Positions <b>One</b>	Range/Step <b>18 A</b>	Barg. Unit <b>GGU</b>	Gov.	Approv.	Disapp.																																													
Time Status Perm. Part Time	Staff Months <b>6</b>	RP Number	Location <b>Juneau</b>		Election District	Leg.																																															
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## Request For New Position

Agency Environmental Conservation  
BRU Environmental Quality  
Component Southeast Region

Page \_\_\_\_\_ of \_\_\_\_\_  
Revised Date \_\_\_\_\_

**FY 87**

Position Title <b>Environmental Field Officer III</b>			No. of Positions <b>One</b>	Range/Step <b>1B A</b>	Barg. Unit <b>GGU</b>	Gov. <b>LEA</b>	Approv.	Disapp.	
Time Status <b>Full Time</b>	Staff Months <b>12</b>	RP Number	Location <b>Anchorage</b>		Election District				
Type of Expenditure			Justification						
		Amount	<p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p> <p>We expect to fill this position on October 1, 1986.</p> <p>Funding for nine months has been requested for FY 87.</p>						
<b>1</b>	<b>2</b>	<b>3</b>							
Salary	28.1								
Benefits	8.3								
Premium Pay									
Other									
Total Personal Services		36.4							
Travel		5.0							
Contractual		5.0							
Commodities		3.5							
Equipment		2.0							
Other									
Total Cost		51.9							
Receipt Code	Funding Source								
	Federal Receipts	1002							
	G. F. Match	1003							
	General Funds	1004							51.9
	I-A Receipts	1005							
	Program Receipts	1028							
	CIP Receipts	1061							
	Other								
For B&M Use Only Key Number									

**Request For  
New Position**

Agency Environmental Conservation  
 BRU Environmental Quality  
 Component Southcentral Region

Page \_\_\_\_\_ of \_\_\_\_\_  
 Revised Date \_\_\_\_\_

**FY 87**

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**Request For  
New Position**

Agency Environmental Conservation  
BRU Environmental Quality  
Component Northern Region

Page	of
Revised Date	

**FY 87**

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## Request For New Position

Agency Environmental Conservation  
BRU Environmental Quality  
Component Southcentral Region

**FY 87**

Page \_\_\_\_\_ of \_\_\_\_\_  
Revised Date \_\_\_\_\_

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. 470

The Department of Environmental Conservation, as the administrator of the "Oil and Hazardous Substance Release Response Fund" will transfer funding by Reimbursable Services Agreement to the Department of Labor. This will allow the Department of Labor to meet its responsibilities under the proposed Section 46.08.040(3).

The \$5000 travel monies will be used to send two industrial health consultants to the Environmental Protection Agency's (EPA's) Hazardous Material Incidence Operations training course. It is estimated that it will cost \$2,500 each. The course is held at EPA's New Jersey training facility. This will assure that the Department's Occupational Safety and Health Consultation Section will have persons with knowledge to assist employers set up training programs.

The \$5000 in commodities will be used to purchase books and other written materials and films or video tapes recommended by EPA that can be loaned out to employers who need audio visual materials for their training classes.

This fiscal note assumes, though the bill has an "immediate effective date", the funding for the above will not be available until FY 87.

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill Resolution No.: HB 470  
 Title: An Act Relating to the Release of Oil and Hazardous Substances  
 Sponsor: DAVIS, NOBONEN, etc.  
 Requestor: House Resources  
 Date of Request: 1/14/86

**FISCAL DETAIL**

Agency Affected: Labor  
 BRU: Occupational Safety and Health  
 Components: Occupational Safety and Health

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL		5.0				
CONTRACTUAL						
SUPPLIES		5.0				
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>10.0</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER		10.0				
<b>TOTAL</b>	<b>-0-</b>	<b>10.0</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS :**

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

**ANALYSIS :** Attach a separate page if necessary

Prepared by: Bob Macotas, Director  
 Division: Labor Standards and Safety  
 Approved by Commissioner: Jim Robison  
 Agency: Labor

Phone: 465-4870  
 Date: 1/21/86  
 Date: 1/21/86

Distribution (by Agency preparing fiscal notes):

- Legislative Finance
- Legislative Sponsor
- Requester
- Director of Management and Services
- Director of Administration

TC-3924

PRELIMINARY ASSESSMENT OF 45 POTENTIAL HAZARDOUS  
WASTE SITES IN THE STATE OF ALASKA

by

Tetra Tech, Inc.

for

Alaska Department of Environmental Conservation  
Juneau, Alaska 99811

December, 1984

Tetra Tech, Inc.  
11820 Northup Way, Suite 100  
Bellevue, Washington 98005

TABLE 1. PRIORITY ACTION RANKINGS

None: No further action required	Low: Inspect on a time-available basis	Medium: Inspection required	High: Inspection required immediately
<ul style="list-style-type: none"> <li>• Commercial Printing Company</li> <li>• Fairbanks Daily News-Miner</li> <li>• The Letter Shop</li> <li>• Diesel Fuel Dump, Kutzebue</li> <li>• Liquid Air, Inc.</li> </ul>	<ul style="list-style-type: none"> <li>• Fairbanks City Dump, 2nd Ave.</li> <li>• Juneau Landfill</li> <li>• Alaska Battery Enterprises</li> <li>• Alaska Gold</li> <li>• Big Hurrah Gold Mine</li> <li>• Earth Movers of Fairbanks</li> <li>• Fairbanks Sand &amp; Gravel, Inc.</li> <li>• Alaska Electroplating &amp; Bumper Repair, Anchorage</li> <li>• Alaska Husky Battery, Inc.</li> <li>• Pacific Almutive Corp.</li> <li>• Red Devil Mine Waste Ponds</li> <li>• Tesoro Alaska Petroleum</li> <li>• Chevron USA Alaska</li> <li>• Crowley Environmental Services</li> <li>• Kenai Landfill</li> <li>• M &amp; H Enterprises</li> <li>• Russian Creek/Bell Flats</li> <li>• Hagers &amp; Babler, Inc.</li> <li>• International Airport Landfill</li> <li>• North Pole Refinery</li> </ul>	<ul style="list-style-type: none"> <li>• Fairbanks North Star Borough Landfill</li> <li>• Nome City Dump</li> <li>• City Dump, Fort Yukon</li> <li>• Howe Barrel Dump</li> <li>• Sagwon Airstrip Dump</li> <li>• Mukluk Dump</li> <li>• Sand Dune Landfill</li> <li>• Putullgayuk Landfill</li> <li>• ARCO - Prudhoe Bay Site</li> <li>• Mukluk Freightlines</li> <li>• Municipal Utilities System</li> <li>• University of Alaska, Fairbanks</li> <li>• Alaska Railroad, Fairbanks</li> <li>• White Pass/Yukon Railroad</li> <li>• Alaska Pollution Control</li> <li>• Old Kenai Dump</li> <li>• Frontier Lanning</li> </ul>	<ul style="list-style-type: none"> <li>• Old Creosote Plant</li> <li>• Union Oil of California</li> <li>• Alaska Railroad, Anchorage</li> </ul>

## SUMMARY MATRIX

	None Priority	Low Priority	Medium Priority	High Priority	Site Is Inactive/Abandoned	Site Is a Landfill/Dump	Site Contains PCBs	Site Contains <u>Only</u> Waste Oil	The Site Is a Small 1-2 Person Operation	COMMENTS
Fairbanks City Dump	●				●	●				The inventory at the dump is unknown. There is no monitoring system.
Fairbanks North Star Borough Landfill		●				●				The landfill does not accept hazardous wastes. There may be hazardous wastes.
Nome City Dump		●				●				This site is an open dump.
City Dump, Fort Yukon		●				●				Municipal wastes and petroleum products are stored at this site.
Juneau Landfill	●					●				The landfill contains radioactive wastes.
Nome Barrel Dump		●			●					Approximately 1,000 deteriorating barrels are stored at this site.
Sagwon Airstrip Dump		●			●			●		Approximately 3,000 deteriorating drums are stored at this site.
Mukluk Dump		●			●	●		●		Drilling materials are suspected at this site.
Sand Dunes Landfill		●			●	●		●		Small quantities of hazardous materials are suspected at the site.
Putuligayuk Landfill		●				●		●		Oily wastes are suspected at this landfill.
Alaska Battery Enterprises		●							●	This facility recycles its wastes.
Alaska Gold		●					●			This site may contain PCB transformers.
ARCO, Prudhoe Bay Site		●			●	●		●		Drilling muds are at this site.
Big Hurran Gold Mine		●			●					The site once contained 18 drums of cyanide.
Commercial Printing Company	●									There is no problem at this site. This site is owned by Fairbanks Daily News.
Earth Movers of Fairbanks		●						●		This site generates 300 gallons/month of waste oil.
Fairbanks Daily News Miner	●									There is no problem at this site.
Fairbanks Sand and Gravel, Inc.		●						●		This site generates waste oil which is stored in 55-gallon drums.
Mukluk Freight Lines		●							●	Miscellaneous drilling chemicals were stored at this site.
Municipal Utilities System		●					●			This site contains 40-45 PCB capacitors.
The Letter Shop	●									This facility generates waste rags.
University of Alaska, Fairbanks		●			●	●				The site is a 1/2-acre landfill containing laboratory wastes.
Alaska Railroad, Fairbanks		●				●	●			The site contains a landfill and at least 10 PCB transformers.

## SUMMARY MATRIX

	None Priority	Low Priority	Medium Priority	High Priority	Site Is Inactive/Abandoned	Site Is a Landfill/Dump	Site Contains PCBs	Site Contains <u>Only</u> Waste Oil	The Site Is a Small 1-2 Person Operation	COMMENTS
Diesel Fuel Dump, Kotzebue	●									The City of Kotzebue is underlain with diesel fuel.
Alaska Electroplating and Bumper Repair		●								Facility generates approximately 500 gallons of dilute HCL/month.
Alaska Husky Battery, Inc.		●								This facility generates less than 200 gallons/month of dilute HCL.
Pacific Automotive Corporation		●		●						Location of the facility is not known.
Red Devil Mine Waste Ponds		●		●						Mercury and arsenic contamination are present at this abandoned mine.
Tesoro Alaska Petroleum Company		●						●		This facility is a large refinery. Wastes include oily materials.
Old Creosote Plant, Whittier			●	●						Creosote and waste oil contaminate this site.
White Pass and Yukon Railroad			●	●						There is no information about this site.
Alaska Pollution Control			●					●		The facility stores waste oil. The storage capacity is 50,000 gallons.
Chevron USA Alaska Ref.		●								This facility is a refinery. It generates miscellaneous oily wastes.
Crowley Environmental Services		●					●			This facility once stored hazardous wastes for disposal.
Kenai Landfill		●			●					The Kenai landfill has accepted hazardous wastes in the past.
Liquid Air, Inc.	●									This facility generates lime as its only waste.
M & M Enterprises		●							●	This facility is a scrap metal recycler. Batteries are recycled.
Russian Creek and Bell Flats Subdivision		●		●						At one time there were 300 drums suspected of containing tar at this site.
Old Kenai Dump			●	●	●					The inventory at this abandoned dump is unknown.
Rogers & Babler, Inc.		●						●		Waste oil is generated at this site.
Union Oil of Calif., N. Kenai				●						This facility is a chemical manufacturing plant.
Frontier Tanning			●						●	This facility uses an on-site leach field for disposal of tanning wastewater.
International Airport Landfill		●		●	●					The inventory of wastes at this facility is unknown.
North Pole Refinery		●						●		All waste fuel/oils are either re-refined or re-injected into the pipeline.
Alaska Railroad, Anchorage				●	●	●				Facility generates caustics. On-site landfill and past spill history.

## RECOMMENDATIONS

As a result of this study, it is recommended that the five sites ranked "None" priority be removed from the ERRIS list. A site inspection should be performed, on a time-available basis, on the 20 sites ranked "Low" priority. The 17 sites in the "Medium" priority group should receive prompt site inspection.

There were three sites ranked in the "High" priority group: Old Creosote Plant, Whittier; Union Oil of California, North Kenai; and the Alaska Railroad, Anchorage. Creosote and waste oil tank bottoms are present in the soil and in a pond at the Old Creosote Plant in Whittier. The Union Oil of California chemical manufacturing facility in North Kenai has had large chemical spills and has disposed of hazardous wastes on-site. The Alaska Railroad in Anchorage has discharged hazardous materials on-site and houses an abandoned on-site landfill. It is recommended that these three sites receive the highest priority for inspection.

## HAZARDOUS WASTE TRUSTS

State or Other Jurisdiction	State Hazardous Waste Trust and Spill Funds	Source of Fund	Major Scope of Fund
ALABAMA	Hazardous Waste Management Fund Perpetual Care Fund	F(a) F(a)	Administrative costs Revolving beyond the active use of the site
ALASKA	....	....	....
ARIZONA	Hazardous Waste Trust Fund	F, F(a), P	Operation, maintenance, perpetual care, matching federal superfund monies
ARIZONA	....	....	....
CALIFORNIA	Hazardous Substances Account	F, B, T(g), P	Match federal superfund monies, cleanup, incident contingency fund, victim compensation fund, health studies, emergency equipment
CONNECTICUT	Emergency Response Cash Fund	F, P	Emergency response
CONNECTICUT	Emergency Spill Response Fund	F(g), F, B, Fc	Oil and hazardous spills
DELAWARE	Hazardous Substances Spill Fund	F <sup>a</sup>	Contain and cleanup spills
FLORIDA	Hazardous Waste Management Trust Fund Inland Spill Fund	F(p), T(g), F, B, P T	Reduce hazard at abandoned sites, monitoring Cleanup underground petroleum storage tanks
GEORGIA	Hazardous Waste Trust Fund	F(a), B <sup>a</sup>	Maintenance of abandoned sites
HAWAII	....	....	....
ILLINOIS	....	....	....
ILLINOIS	Hazardous Waste Fund	F(a)	Take action against long-term danger, research and development of recycling
INDIANA	Hazardous Substances Emergency Trust Fund Environmental Management Special Fund	T(a) F, P	Emergency response, match under superfund Multipurpose environmental response

1 TEXAS	Hazardous Waste Emergency Fund	L, R, P	Cleanup, disposal, containment
1 YORK	Hazardous Waste Remedial Fund Environmental Protection and Spill Compensation Fund	T(g), L, P P	Emergency response Oil spills only
01 CALIFORNIA	Hazardous Waste Fund Oil Pollution Protection Fund	F(o) P, L, R, P	Perpetual care Oil and hazardous substances spills
02 IOWA	....	....	....
0	Hazardous Waste Facility Management Special Account Emergency Response Spill Fund	F(p), F(g) L, P, R	Administration, closure, abatement, grants Emergency response to spills
40 WA	Controlled Industrial Waste Fund	L	Emergency response
12 GJ	Hazardous Waste Account	F(g)	Perpetual care
5 ALABAMA	Solid Waste Abatement Fund	P, R, B*	Emergency situations, spills
16 ISLAND	Hazardous Substance Emergency Fund Feasibility Study for State Superfund	L, B	Abandoned site spills
03 CALIFORNIA	Hazardous Waste Contingency Fund	L, F(g)(g')	Emergencies at permitted landfills
04 IOWA	....	....	....
WISCONSIN	Hazardous Waste Trust Fund Perpetual Care Trust Fund	B* F(o)	Cleanup, perpetual care Containment of abandoned site
AS	Disposal Facility Response Fund	L, P	Match federal superfund monies
0	....	....	....
00 CT	Oil and Hazardous Spill Contingency	L, C	Response to spills, hazardous substances
00 MA	....	....	....
007 MD	....	....	....

	Hazardous Waste Remedial Fund	F(o),F(L)	Cleanup, emergency response, superfund match, postclosure, maintenance, disposal alternatives
KANSAS	Perpetual Care Trust Fund Hazardous Waste Cleanup Fund	F(o),L, L,Fo	Cleanup and monitoring Cleanup, emergency response, legal costs, match superfund
KENTUCKY	Hazardous Waste Management Fund	F(g)(o),R	Emergency response, postclosure, monitoring, and maintenance
KENTUCKY	Hazardous Waste Protection Fund Abandoned Hazardous Waste Site Fund Environmental Emergency Response Fund	B*,J,Fe R,excess \$,L, Fe,R,I,P	Perpetual care, assure financial responsibility Match federal funds, cleanup at abandoned sites Environmental emergency response, match federal funds
KYINE	Hazardous Waste Fund	B,F(g),F(L*)	Emergency response
MAINE	Oil Disaster Containment Cleanup and Contingency Fund Hazardous Substance Control Fund	F(o),P,R F(o)(p),L	Oil and petroleum products spills Hazardous substances in water cleanup
MASSACHUSETTS	Oil Spills Cleanup Fund	B,L,R	Contain and remove oil and hazardous waste spills, match superfund
MICHIGAN	Disposal Facility Trust Fund Hazardous Waste Service Fund	F,(o) L,R	Long-term care of closed facilities Emergency response
MINNESOTA	Environmental Response, Compensation and Compliance Fund	T(g),L,F,R,P	Emergency response, cleanup, match superfund, alternative water supplies
MISSISSIPPI	Hazardous Waste Fund	F(o)	Perpetual care, county reimbursement
MISSOURI	Hazardous Waste Fund	F(L)(p),Fe(g),L	Administrative costs, cleanup
NEBRASKA	Resource Indemnity Fund	L**	Match federal superfund
NEBRASKA	....	....	....
NEVADA	State Emergency Fund	L	Emergency response
NEW HAMPSHIRE	Hazardous Waste Cleanup Fund	T(g),F,P,L	Cleanup, administrative costs
NEW JERSEY	Spill Compensation Fund	B,T(o),L,P	Cleanup of spills

WEST VIRGINIA

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MISSOURI

Hazardous Waste Fund  
Hazardous Substances Spill Fund

F(o),R  
L,R

Closing and long-term care  
Cleanup and disposal

MICHIGAN

\*\*\*\*

\*\*\*\*

\*\*\*\*

Key:

B - Bond supported

B\* - Bond forfeiture

F - Fees

(d) - Depending on method of disposal

Fc - Federal funds or grants

g - Generator

g\* - Out-of-state generator

L - Legislative appropriations

L\* - Emergency appropriations

L\*\* - 60 percent of interest from tax on minerals

o - Operator

P - Penalties

p - permit

R - Reimbursements

T - Taxes

t - transporter

t\* - Out-of-state transporters

T(d) - Depending on method of disposal

Source: Compiled by the Council of State Governments, November, 1981; Updated May 5, 1984

# MEMORANDUM

State of Alaska

TO: Bill Ross  
Commissioner

DATE: February 19, 1985

FILE NO:

TELEPHONE NO: 465-2640

FROM: Keith Kelton  
Director  
Division of Environmental Quality

SUBJECT: Spill Expense Reserve Account  
History and Status Report

In 1976, the Alaska Legislature passed its first major legislation addressing the problem of oil spills. It required oil spill contingency plans, proof of financial responsibility for cleanup efforts, as well as provisions for charges against terminal users and oil tankers based on the degree of spill risk their equipment and operations presented. Funds collected from the program were to be used to develop a contingency fund to meet cleanup costs in the event of a major spill. The fund was struck down by the courts, leaving the other two provisions intact.

In order to maintain the State's oil pollution control program, a new bill, HB 205, was introduced by the 1979 Legislature. This legislation extended the contingency plans and financial responsibility to offshore exploration and production facilities, and oil barges. The new legislation was to correct the defects in the 1976 law and ensure that Alaska had a strong program for preventing and mitigating the effects of an oil spill. Chapter 120, SLA 80, Section 53 provided \$1,542,600 for HB 205 (FY 80), and provided a \$1 million expense reserve and a fiscal note to start and fund the Oil Pollution Control Program. The Spill Expense Reserve was to pay costs directly involved in the abatement, containment, and removal of a discharge of oil or hazardous substances: the fiscal note provided for staff, equipment, and training.

House Journal Supplement No. 43 indicated that, "the cleanup reserve be maintained by capital appropriation at the \$1 million level. The balance of the reserve should carry over from year to year. Subsequent budget requests may be less than \$1 million." An additional \$250,000 was appropriated in 1981 and another \$250,000 in 1984.

Since the inception of the program, hundreds of spills have been cleaned up. Most of the expenses are charged directly to the spiller. When the spiller was unknown or the spill incident required immediate emergency action, the spill reserve was used to fund the cleanup work.

Some spills involve action by the courts and the Attorney General's Office. The account balance on January 31, 1985, was \$410,080.74. There are several spills that are still in the litigation or pre-litigation stages and may require sizable funding. The Nome Gasoline Spill has cost over \$680,000 to date.

On December 27, 1984, we received a reimbursement of \$597,396.07 for spill expenses from the U.S. Coast Guard for the Nome Spill; this is the first time that the state has received federal funds for reimbursement of spill expenses.

On July 14, 1983, a settlement/agreement was reached between the State and the Alyeska Pipeline Service Company on the two spills that occurred over four years prior, the Atigun Pass Spill and the Mile Post 734 Spill. The settlement was for \$350,000.

AS 46.03.758(k) states that: "penalties received by the state under this section shall be deposited in the general fund and credited to a special account called the 'oil spill mitigation account.' The legislature may annually appropriate from the spill mitigation account a sum equivalent to the amount of penalties received under this section for the calendar year preceding the legislative session in which the appropriation is made, the appropriation to be made for the purpose of restoring and enhancing environments affected by oil pollution, including but not limited to the funding of aquaculture projects."

Amount expended in FY 84	\$ 785,112.62
Amount expended for FY 85 to date	69,827.18
	TOTAL \$ 854,939.80

Amount recovered FY 84	354,541.73
Amount recovered FY 85 to date	608,885.58
	TOTAL \$ 963,427.31

We are asking for a capital appropriation of \$550.0 for FY 86 to bring the Spill Reserve Account back up the \$1.0 million level.

3) "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act;

(14) "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas);

33 USC 1321.

42 USC 8921.

42 USC 7412.

15 USC 2606.

(15) "navigable waters" or "navigable waters of the United States" means the waters of the United States, including the territorial seas;

(16) "natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

16 USC 1801 note.

(17) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(18) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States;

(19) "otherwise subject to the jurisdiction of the United States" means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided by international agreement to which the United States is a party;

(20)(A) "owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility, and (iii) in the case of any abandoned facility, any person who owned, operated, or otherwise controlled activities at such facility immediately prior to such abandonment. Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility;

CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980)

RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE

RESOLUTION NO. 86-07

A RESOLUTION REGARDING HAZARDOUS WASTE SITE INVESTIGATIONS  
AND A STATE HAZARDOUS SUBSTANCES RESPONSE FUND.

WHEREAS, nearly 100 potential hazardous waste sites have been identified in the State of Alaska by the U.S. Environmental Protection Agency and the Alaska Department of Environmental Conservation for investigation as to possible Superfund sites under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and

WHEREAS, these potential hazardous waste sites are a possible threat to the public health and environment in each of the communities they are located and are spread throughout the State of Alaska, impacting numerous local governments, and

WHEREAS, the U.S. Environmental Protection Agency and Alaska Department of Environmental Conservation have initiated preliminary assessments and site investigations at many of these locations, and the Department of Army and Air Force are conducting similar investigations under the Defense Environmental Restoration Program (DERP) for clean-up of hazardous waste sites at abandoned and active facilities, and

WHEREAS, none of the involved agencies have made adequate efforts to include participation by affected local governments in conducting preliminary assessments, site investigations, or emergency or remedial clean-up actions, and

WHEREAS, it is the right and responsibility of affected local governments to know about and participate in any such determinations, and

WHEREAS, local governments do not have the financial capability or technical expertise to assume responsibility for any hazardous waste sites found in a community, and

WHEREAS, many potential hazardous waste sites will not be cleaned up by the Superfund program, even though a potential threat to the health and environment exists, since the Hazard Ranking System used by the U.S. Environmental Protection Agency is biased against Alaska sites due to low populations exposed;

NOW THEREFORE, BE IT RESOLVED that the Alaska Municipal League requests the U.S. Environmental Protection Agency, Alaska Department of Environmental Conservation, and Department of Defense to establish procedures to involve affected local governments in all phases of evaluating potential hazardous waste sites identified under CERCLA.

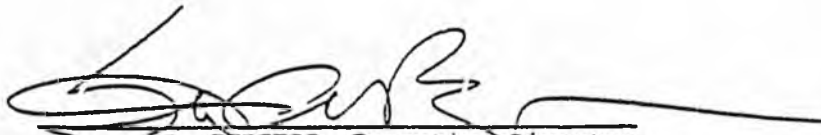
BE IT FURTHER RESOLVED that the Alaska Municipal League requests the Alaska Legislature to establish a Hazardous Substances Response Fund to provide funds for matching purposes for participation in Superfund clean-ups, to provide funds for clean-up of hazardous waste sites not eligible for federal clean-up actions, and for instances when an emergency response is appropriate.

Adopted this 16th day of November 1985.



LEO B. RASMUSSEN, President

ATTEST:



SCOTT A. BURGESS, Executive Director

ALASKA FEDERATION OF NATIVES, INC.  
1984 ANNUAL CONVENTION

RESOLUTION NO. 84-30

TITLE: HAZARDOUS MATERIALS INDEMNITY

WHEREAS, Widespread contamination with polychlorinated biphenyls (PCBs) occurred between 1971 - 1983 at an abandoned U.S. Air Force White Alice Site at Aniak; and

WHEREAS, Costs for health hazard assessment, environmental monitoring and environmental clean-up have been excessive, estimated at greater than \$1.0 million, and are continuing; and

WHEREAS, 68 White Alice sites exist in Alaska, many of which can be expected to have toxic or hazardous materials on site similar to those found at the Aniak site; and

WHEREAS, These White Alice sites may be turned over to the State or local ownership in the future, as was the Aniak White Alice site,

NOW THEREFORE BE IT RESOLVED that the Alaska Federation of Natives urges the State of Alaska to develop a comprehensive strategy to ensure that future White Alice sites or other federal lands or facilities which have been conveyed or may be conveyed to State or local ownership in the future do not contain toxic or hazardous materials and

BE IT FURTHER RESOLVED that the Alaska Federation of Natives urges representatives of the U.S. Department of Defense, Legislature, Governor's office, Department of Environmental Conservation, Department of Health and Social Services, Department of Community and Regional Affairs, and the State's Congressional Delegation meet to ensure that adequate procedures are developed to protect the State from hazardous materials and to indemnify the State in the event that investigation, sampling, monitoring, and disposal program at federal sites conveyed to State or local ownership become necessary in future.

RESOLUTIONS COMMITTEE RECOMMENDATION: DO PASS

CONVENTION ACTION: PASSED



BILL SHEFFIELD  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

October 7, 1985

The Honorable Mike Davis  
Chairman, House Special Committee  
on Oil and Gas  
Alaska State House  
Pouch V  
Juneau, AK 99811

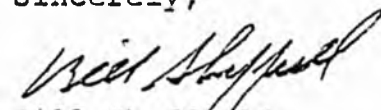
Dear Representative Davis:

Thank you for the opportunity to review your proposal to establish an emergency fund to pay for containing or cleaning up unpermitted discharges of oil and hazardous substances. Since access to federal funds may not be as prompt as required, and since the availability of federal funds depends on a priority system which may be inappropriate to deal with any particular incident in Alaska, I believe State emergency response funds as you have proposed are appropriate.

I have asked the Attorney General and the Commissioner of Environmental Conservation to review the draft legislation, and have directed them to work with you and the Committee as you refine this legislation.

Thank you again for your letter.

Sincerely,

  
Bill Sheffield  
Governor

cc: Attorney General Hal M. Brown  
Department of Law  
Commissioner Bill Ross  
Department of Environmental  
Conservation

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

**DEPARTMENT OF LAW**

OFFICE OF THE ATTORNEY GENERAL

October 15, 1985

Johnathan Sperber  
House Special Committee on Oil and Gas  
Pouch V  
Juneau, Alaska 99811

Re: Proposed legislation  
pertaining to oil and  
hazardous substance  
response fund

Dear Mr. Sperber:

Thank you for sending the most recent version of the proposed act which would establish an oil and hazardous substance response fund.

We certainly support the concept embodied in this legislation. Our principle concern regarding this piece of legislation is that it not run afoul of the constitutional prohibitions against "dedicated funds". In its current form, we do not believe the proposed bill runs afoul of the dedicated fund provision.

We will be working closely with the Department of Environmental Conservation supporting this measure as it moves through the legislature.

Sincerely,

HAROLD M. BROWN  
ATTORNEY GENERAL

By: 

Joseph W. Geldhof  
Assistant Attorney General

JWG:rn

cc: Stan Hungerford  
Molly McCammon  
Doug Mertz

BILL SHEFFIELD, GOVERNOR

**DEPT. OF ENVIRONMENTAL CONSERVATION**

OFFICE OF THE COMMISSIONER  
POUCH O, JUNEAU, ALASKA 99811

Telephone: 19071  
Address:

465-2500

January 16, 1986

The Honorable Mike Davis  
Chairman  
House Committee on Oil and Gas  
Pouch V  
Juneau, AK 99811

Dear Representative Davis:

Thank you for continuing to provide us with an opportunity to work with you on your proposed legislation establishing a State Oil and Hazardous Substance Response Fund. Enclosed are a fiscal note along with associated forms, as you requested, and a comment on the current draft of the bill. As you predicted, administration of this fund will require additional staff. I have requested nine month funding in FY 87 with full funding in subsequent years.

The fiscal note requests a program manager to establish and manage the program, one administrative assistant to help with administration of contracts and fiscal matters, and one clerk typist to provide clerical support. We anticipate that it would take at least one year to establish the program. After that, management of this program will require a reassessment of how the activities and workload should be integrated with other closely related federal and State programs.

I also am requesting additional field staff to respond to incidents involving materials which are sufficiently dangerous to require trained investigators for safety reasons. We have found that well-trained investigators are needed to manage cleanup efforts efficiently, even those conducted through contractors. Current staff available for this purpose is severely limited. I propose to add one and one-half positions in Anchorage for the Southcentral Region, a full-time position in Fairbanks for the Northern Region, and a half-time position in Juneau.

As the Legislature considers providing increased resources at the State level for cleanup of hazardous substances, you might be interested to know we are also increasing our involvement in the federal "Superfund" program. The Governor's FY 87 operating budget includes an increment for a new federally funded position. If funded and your legislation is passed, this federally funded position would work closely with the positions established as a result of your legislation. As you know, the

The Honorable Mike Davis

- 2 -

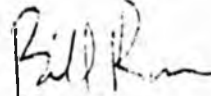
January 16, 1986

U.S. Environmental Protection Agency awarded us \$300,000 of their FY 85 appropriation to investigate about a dozen sites which may have had inappropriate management of hazardous waste in the past. They are offering \$500,000 in FY 86 to investigate about fifteen more. EPA has lent an employee to manage these contracts for the past several months, until we establish our own position to manage these site investigations ourselves.

The federal Superfund program is likely to provide limited resources for cleanup of many of these sites, even if problems are discovered. Funding under the federal Superfund requires a ranking high enough to place the site on a national priority list. This ranking gives great weight to the population of areas affected by a site, and probably could be expected to result in very few Alaska sites being eligible for federal cleanup. Consequently, the State fund would provide a vehicle to allow more rapid cleanup of sites not eligible for Superfund sites.

Thank you for the opportunity to provide this information. My staff is available to continue working with you as the proposal moves through the legislative process.

Sincerely,



Bill Ross  
Commissioner

Enclosures

cc: Jim Ayers, Director of Legislative Relations  
Office of the Governor

Technical Comments on ProposedOil and Hazardous Substance Release Fund

Section 46.04 of the proposed legislation is modeled after the Department of Environmental Conservation's existing oil pollution statutes contained in AS 46.04. However, two elements from 46.04 dealing with contingency plans and financial responsibility were not extended. There may be merit in classifying activities or facilities which should have contingency plans and financial responsibility for hazardous substances. This may be more appropriately done by local governments.

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF FISH AND GAME**

**OFFICE OF THE COMMISSIONER**

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802  
PHONE: 907 / 465-4100

December 19, 1985

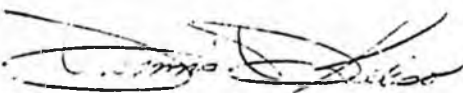
The Honorable Mike Davis  
Chairman, House Special Committee  
on Oil and Gas  
Alaska State House  
Pouch V  
Juneau, AK 99811

Dear Representative Davis:

Thank you for the opportunity to review your proposed legislation dealing with an Oil and Hazardous Substance Release Response Fund. I would like to commend you for taking a leadership role on this important issue. As the Governor stated in his letter of October 7, it is very appropriate for the state to have a fund of this type.

The Department of Environmental Conservation has the expertise most applicable to this proposal. However, if I or my department can be helpful in this regard, feel free to call me.

Sincerely,

  
Don W. Collinsworth  
Commissioner

cc: Bill Ross, Commissioner  
Department of Environmental Conservation

Bill No. House Bill 470

Date January 22, 1986

Title "An Act relating to the release of oil and hazardous substances."

Contact: Richard Arab  
(907) 465-4856  
Eileen Plate  
(907) 465-2700

This legislation will provide a reliable funding source to assist the Department of Environmental Conservation (DEC) regulate and help in the clean-up of oil or hazardous substances into the environment. It does not add additional requirements to the laws on how these substances have to be handled. However, it should do much to assist in the clean-up of such substances by providing the monies necessary to accomplish proper clean-up. A fund made up of State and Federal monies, private donations, and fines levied against parties responsible for hazardous waste spills will be used by DEC to perform various tasks involved in the clean-up of oils or hazardous substances.


Under the provisions of this bill, one of the tasks this fund can be used for is to help the Department of Labor assist employers to develop safety education programs for employees who may be called upon to respond to a release of oil or a hazardous substance. The department currently provides safety and health training upon request. However, we have only limited resources and materials relating to hazardous waste clean-up. The department could, therefore, use the monies that may become available from the fund to better train our industrial hygienists and to purchase training materials and films so that we can assist employers to develop safety education programs for employees.

This bill meets the objectives of the Occupational Safety and Health program in that it will assist in assuring that persons involved in clean-up of oil and hazardous waste are properly trained to safely do this work. This should, in turn, prevent occupational injuries and illnesses.

The bill places the responsibility of providing the training on the employer. This will assure that the employer has the flexibility to tailor training to meet his/her need. The department will assist the employer by providing advice and by making available materials and training films on loan. This will assist the employer, employees and the department to work as a team to assure that clean-up of oil and hazardous substances is accomplished in a safe and healthful manner.

The Department supports House Bill 470.

APPROVED:

  
Jim Rodison, Commissioner  
Department of Labor

POSITION PAPER/Department of Labor



REPLY TO  
ATTN OF: A00/J

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION X  
ALASKA OPERATIONS OFFICE  
3200 HOSPITAL DRIVE  
SUITE 101  
JUNEAU, ALASKA 99801  
January 21, 1986

The Honorable Mike Davis  
Alaska State House  
Pouch V  
Juneau, AK 99811

Dear Representative Davis:

We have reviewed the proposed legislation introduced this month that would establish two new chapters within Alaska Statute 46: Water, Air, Energy & Environmental Conservation. Since the State currently lacks a mechanism to expend funds to contain and cleanup releases of hazardous substances other than oily substances, these chapters creating a Response Fund and addressing Hazardous Substance Release Control will certainly be a positive addition.

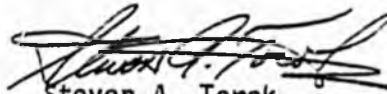
Very instrumental in this program is the ability to efficiently and effectively manage operations. The authority to recoup costs is, in itself, a key point. One suggestion we have is to provide for a mechanism that will determine what incidents are eligible for these funds. Subsequent regulations could define criteria for determining when the fund is to be utilized.

Some question was raised as to the definition of hazardous substance, and whether by being so general, it indeed unintentionally excluded some hazardous materials. It is our opinion that this is not the case. By using the "federal" definition, your bill not only encompasses the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) and an extensive listing under 40 CFR Part 302, but also the Water Pollution Control, Solid Waste Disposal, Clean Air, and the Toxic Substances Control Acts.

While this bill covers immediate response, there is another concern that warrants similar attention. Under CERCLA, the Department of Environmental Conservation has received two grants to assist EPA in investigating suspected hazardous waste sites throughout the state. A scoring system enables EPA to prioritize these sites on a national level. Present federal guidelines however, indicate that most Alaska sites probably will not rank high enough to receive further funding (Superfund) for remedial action. Consequently, other mechanisms are needed to allow for appropriate remedial actions at these sites.

As written, HB 470 appears consistent with EPA policy. We fully support this measure and intend to coordinate efforts with DEC for an effective program. We appreciate the opportunity to comment on this most needed legislation. Please contact me if you have any questions on our comments or if we can be of any assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Torok", written over a horizontal line.

Steven A. Torok  
Air/Waste Coordinator



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

IN REPLY REFER TO:

NORTHERN ALASKA ECOLOGICAL SERVICES  
Room 222, Federal Building, Box 20  
101 12th Avenue  
Fairbanks, Alaska 99701-6267  
September 5, 1985

Mr. Jonathan Sperber, Committee Aide  
House Special Committee on Oil and Gas  
State of Alaska  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Sperber:

I have reviewed the proposed provisions of legislation for the Oil Discharge Response Fund, Hazardous Substance Control, and Hazardous Substances Response Fund. In general, these are excellent pieces of legislation for protecting Alaska's environment. The following are some specific comments and recommendations for your consideration.

I recommend that "acts of God" should be further defined to explicitly exclude blowouts. Currently some oil exploration on the North Slope is being conducted in gas-rich areas that are very vulnerable to blowouts. Blowouts present very high risks to human safety and often result in environmental disasters. Oil companies should remain fully liable for any oil spills that occur as a result of blowouts, as an impetus to assure that safety and prevention are foremost in the exploration operations.

The FWS also recommends that "containment and cleanup" be further defined to include (1) revegetation of lands on which vegetative cover is destroyed and (2) erosion control where cleanup or containment procedures induce or enhance erosion. In the case of a large-scale oil or hazardous waste spill, a provision for long-term monitoring of chronic effects on vegetation, fish and/or wildlife would be valuable and certainly justified.

I was pleased to have the opportunity to review this draft legislation and would be happy to discuss any of my comments further. If you have any questions, please contact me at 456-0323.

Sincerely yours,

*Elaine Snyder-Conn*

Elaine Snyder-Conn  
Resource Contaminant Biologist

cc: H. Metsker, USFWS  
R. Jacobsen, USFWS  
L. Dietrich, ADEC



December 20, 1985

Representative Mike Davis  
P.O. Box 81435  
Fairbanks, Alaska 99708

Dear Representative Davis:

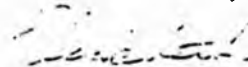
Jonathan Sperber has reviewed with me your Hazardous Substance handling. I favor such legislation.

My initial concern expressed to Jonathan was that such legislation not hamper subsistence lifestyles. I see that it does not. I appreciate your sensitivity to the concerns of all Alaskans in the exercise of your office.

I wish you and yours pleasant and peaceful holidays.

Sincerely,

FAIRBANKS NATIVE ASSOCIATION, INC.

  
Elizabeth L. Keating  
Executive Director

ELK/ab

cc: File



# CITY OF NOME

P.O. BOX 281 - NOME, ALASKA 99762  
TELEPHONE (907) 443-5242

December 27, 1985

Representative Mike Davis  
Pouch V  
Juneau, AK 99811

Dear Representative Davis:

We are in support of legislation on

1. Oil and hazardous substance response fund
2. Hazardous substance release control
3. Related statutory changes.

We appreciate your informing us of the legislation in your letter of November 25.

Sincerely,

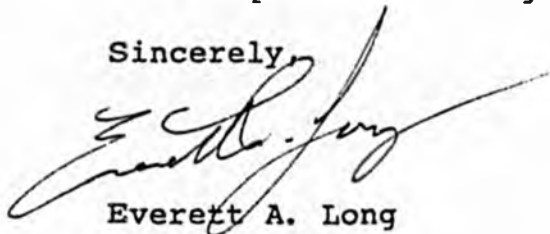
A handwritten signature in cursive script that reads "Tim Holder".

Tim Holder  
Coastal Management Planner

TH/il

As a professional firefighter, I find it encouraging that you have taken an interest in a common problem firefighters must share.

Sincerely,

A handwritten signature in cursive script, appearing to read "Everett A. Long". The signature is written in dark ink and is positioned above the printed name.

Everett A. Long

cc: FNSB Haz-Mat Task Force

# *League of Women Voters of Alaska*

January 21, 1986

Representative Mike Davis  
Chairman, House Special Committee on Oil and Gas  
Alaska State House  
Pouch V  
Juneau, Alaska 99811

Dear Representative Davis:

The League of Women Voters of Alaska commends you on authorship of House Bill 470. There is a demonstrated need for a fund that can be used to respond to hazardous substance release in addition to oil spills. The bill reflects careful analysis of the necessity for containment of hazardous materials, creates a mechanism by which the state can respond to hazardous substance releases and copes with the constitutional prohibition of dedicated funds.

The League of Women Voters of Alaska recommends additions to the legislation based on the National League of Women Voters position on hazardous waste. Full legal fees should be awarded the Attorney General's office if an enforcement action under H.B. 470 goes to court and the state wins the enforcement action. All decisions to respond to a spill or release are based on the Commissioner of Environmental Conservation's discretion. Two mechanisms for citizen access to due process should be included. First, the legislation should provide for citizens to sue in state courts to stop hazardous releases from waste sites that endanger their health. Under most state law a citizen can only sue to stop an action after harm is done. The citizen provision will assist in enforcement action. Second, a mechanism should be included by which citizens can bring a suit against the state of Alaska if the state does not respond to a clean up request in a statutorily established process. This would allow the citizens to seek relief from the court system.

HB470 is especially timely given the scope of present and potential problems with containment and clean up of existing sites. For instance a list presently being investigated by the Alaska Department of Environmental Conservation and U.S. Environmental Protection Agency, lists 101 sites suspected to contain hazardous wastes. Given the EPA's



---

# Alaska Health Project

Providing information about hazardous materials on the job and in the community.  
417 West Eighth Avenue, Anchorage, Alaska 99501 (907) 276-2864

---

January 9, 1986

Representative Mike Davis  
Pouch V  
Juneau, Alaska 99811

Dear Representative Davis:

Alaska Health Project is a non-profit organization dedicated to providing information and education in the area of hazardous materials on the job and in the community. We appreciate the opportunity to express our opinion on your legislation addressing state response to hazardous substances releases.

Alaska Health Project has been closely following the development of a hazardous substance response fund in Alaska. We appreciate your efforts in this area and give you our support for the expansion of AS 46 to include: AS 46.08: Oil and Hazardous Substance Response Fund; and AS 46.09: Hazardous Substance Release Control. The limitations in both the existing state oil and hazardous substance clean-up fund and the federal Superfund program underscore the need for the legislation you propose.

In addition, we appreciate the broad scope and applicability of the proposed fund. We strongly endorse use of the fund to facilitate Department of Labor efforts to provide technical assistance and safety education to employers and employees called upon to respond to hazardous substances releases.

Our major concern is with regard to the definition of a hazardous substance as written in Sections 46.08.080 and 46.09.090. We feel that new language should be added to make certain that hazardous substance also means hazardous waste, toxic substance (such as PCBs) and hazardous material. We understand the proposed intent of the bill is to include all such releases, but we believe that the current definition of hazardous substance does not support this intended purpose.

Please keep us informed of the progress of this legislation. We are available to review additional drafts, if appropriate.

Sincerely,

David Wigglesworth  
Occupational Health Specialist

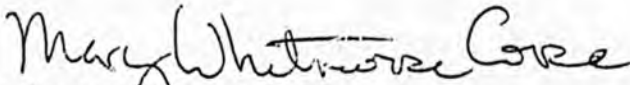
cc: Jonathan Sperber



priorities nationwide, none of these sites will likely be addressed by federal Superfund dollars.. It may become necessary for the legislature to establish a mandatory schedule for clean up as the present schedule for investigating the 101 sites will take place over the next fifteen years. Fifteen years may present a real and substantial threat to the public health, to the environment, and to the economy of the state. HB470 could provide a mechanism for addressing this problem. However, the situation may be so grave that additional legislative action may be necessary.

While the League urges additions to HB470 we congratulate you on addressing the serious and complicated problem of hazardous substance escapement.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mary Whitmore Core". The signature is written in dark ink and is positioned above the typed name.

Mary Whitmore Core  
Natural Resource Issues  
Alaska State Board



# Alaska Environmental Lobby, Inc.

204 N. Franklin Street, Suite 3 Juneau, Alaska 99801

907-586-2345

January 20, 1986

Representative Mike Davis  
Pouch V  
Juneau, AK 99811

Dear Representative Davis:

Congratulations on the introduction of HB 470, creating an oil and hazardous substance release response fund. Creation of this fund is an integral part of Alaska's approach to hazardous substances.

As we learn more about the transportation, use and disposal of hazardous substances in our state, we may draw two conclusions. First, Alaska is faced with a wide range of hazardous substance related problems. For instance, a recent report by Tetra Tech identified 45 potential hazardous waste sites in Alaska, 17 of which were determined to be of medium priority; and three of high priority. Second, we are learning that the approach taken by federal programs to address hazardous waste and hazardous substance problems nation-wide often do not fit our young state's needs. The federal "superfund," for example, is of little help to Alaska because of our low population relative to other states. There is little likelihood that any of the sites identified by Tetra Tech will be cleaned up by the EPA.

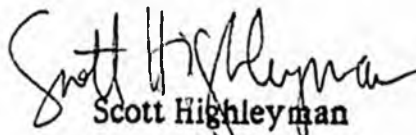
The timely introduction of HB 470, directing the Alaska Department of Environmental Conservation to contain and clean up hazardous releases, speaks directly to these two points. Such a fund would allow the Department, if necessary, to take prompt remedial action to minimize environmental damage to people and the surrounding ecosystem in the occurrence of a hazardous release. At the same time, the approach taken is well suited to the specific nature of Alaska's situation. A state program as outlined in the bill would ensure responsiveness to local hazardous substance problems not afforded by federal programs.

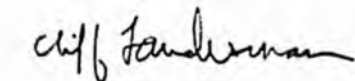
Of course, the most important part of a state response fund is clear legislative direction to the executive branch to pursue reimbursement from responsible parties. This fund would allow prompt state action if necessary for the sake of human safety and the integrity of the environment; it would in no way absolve those responsible for hazardous substance spills from being held accountable. To the contrary, it emphasizes pursuit of guilty parties.

The Alaska Environmental Lobby has two suggestions for improving the effectiveness of HB470. First, we believe the bill should establish a date for promulgation of regulations needed to implement the fund. Specific legislative direction for a time-certain date would clearly underscore the importance and timeliness of the fund. Second, we believe the list of activities which may require funds should include public notification, and education. Public notification would ensure site-specific information to local inhabitants about a spill in their area. Public education would be an important mechanism for briefing local municipalities, boroughs, and others on the purpose and scope of the program.

Thank you for this chance to comment on HB470. We enthusiastically support the bill and appreciate the care you have shown in crafting it.

Sincerely,

  
Scott Highleyman  
Executive Director

  
Cliff Landesman  
AEL volunteer

Everett A. Long  
Member Fairbanks North Star Borough  
Hazardous Material Task Force  
Box 1  
Ester, AK 99725

Representative Mike Davis  
P.O. Box 81435  
Fairbanks, Alaska 99708

December 9, 1985

Dear Mike:

I have read your proposed bill concerning hazardous substance containment and cleanup. I concur with your proposed legislation. We must have the force of this legislation to react to dangerous hazardous material spills, and hopefully prevent serious incidents by having a law with some teeth.

I am a member of a Task Force to develop a Borough wide Haz-Mat Response Team. The Response Team will not be involved in enforcement or clean-up. The team will consist of trained personnel from area fire departments, and trained personnel in the transportation industry, ie, the Alaska Railroad. Our task is like the medical First Responder.

Although we can express concern about Haz-Mat enforcement, our task limits us to being -- first in, attack the immediate threat (fire, spill, toxic, evacuation, etc.) and contain the problem. Funding for initial development is by a State grant to the Borough.

Once the equipment, and the basic training are completed for the response team, I'm not sure how future maintaining of that team is funded. Is it possible that some sort of matching funds be developed to keep these valuable teams operational. Of interest, Anchorage is developing a similar concept.

In the proposed bill, "Oil and Hazardous Substance Response Fund" does "Response" mean only a response "to an incident." Or will it include maintaining the "Response Capabilities," such as the Haz-Mat teams.

If that is too involved to include with your present proposal, maybe it can be dealt with later. In the mean time, I encourage you to continue pushing the present proposal.

BERING STRAITS COASTAL MANAGEMENT PROGRAM

Box 28

Unalakleet, Alaska 99684

(907) 624-3062

December 5, 1985

Representative Mike Davis  
Pouch V  
Juneau, Alaska 99811

Re: Proposed Hazardous Waste Legislation

Dear Mike:

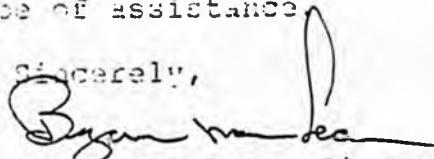
Thank-you for including us on your mailing list of organizations concerned about the management and treatment/disposal of hazardous waste. We appreciate the opportunity to review the legislation you propose to introduce in the upcoming legislative session.

We have completed a preliminary review. There is a definite need for the type of legislation you are proposing and you may count on our support. On page 2, we found Section 46.09.010 a bit cumbersome to comprehend.

Your letter indicated more than just a passing familiarity with the Environmental Restoration Act's mandate to clean up active and abandoned military sites. At a regional level, we are extremely concerned and distressed with the Army Corps of Engineers management of the St. Lawrence Island Clean-up. For your review, I have enclosed a copy of Resolution 35-98 ("A Resolution of The Bering Straits Coastal Resource Service Area Board Requesting The Army Corps Of Engineers To Work With Local Entities In Developing A Mutually Agreeable Set Of Locally Affected Communities And Private Landowners During The Implementation Of The Environmental Restoration Act") that was adopted on November 15, 1985. Resolution 35-98 outlines the Board's concerns and position. We would appreciate any intercession or assistance you may be in a position to provide. Should you require more background or detailed information, I would be pleased to work with your staff.

As you pursue the development of a comprehensive State management policy for hazardous wastes, please feel free to call on us if we can be of assistance.

Sincerely,



Bryan MacLean, Director  
Bering Straits Coastal  
Management Program

JIM D. CLARK  
BOROUGH MANAGER



TELEPHONE  
(907) 246-4224

## *Bristol Bay Borough*

BOX 189 • NAKNEK, ALASKA 99633

December 3, 1985

Representative Mike Davis  
Alaska State Legislature  
P.O. Box 81435  
Fairbanks, AK 99508

Dear Mike:

I have reviewed your proposed legislation, and agree there is a need to strengthen the laws in the containment and cleanup of hazardous wastes.

I have two points that in my opinion should be clarified or given additional thought.

1. Sec. 46.08.030 Financing the Fund, Paragraph 6.

I think it should be made mandatory that the Attorney General or the Department through the Attorney Generals office use any means possible to recover the costs from the perpetrator. "May Recover" as stated, is rather nebulous. Particularly when dealing with the expenditure of public funds to cleanup, or contain a hazardous substance that belonged to a private source.

Possibly, when an individual or firm applies for a permit to store hazardous wastes in particular, that he be required to post a bond to insure that in the event of a spill, or leak that funds will be available for cleanup or damage to persons or the environment.

This way, the use of public funds would only be used in extraordinary cases.

Also, if the funds set aside as a separate entity of the general fund the oil and substance response fund could be partially self-perpetuating through the interest income it may derive.

2. Sec. 46.08.100 Definitions, Page 7, Item 5, Hazardous Substance, Letters "A" & "B".

A smart attorney representing a client perpetrator may put you in a position of the states word against his clients if you get involved in an exotic substance that is not currently listed as a hazardous substance by either the federal government or state regulation.

Perhaps a "catchall" clause such as determined by so and so, etc.

**Fairbanks  
North  
Star  
Borough**

JAN 17 -

Mayor: Juanita Helms

January 14, 1986

Representative Mike Davis  
Pouch V  
Juneau, Alaska 99811

Dear Representative Davis:

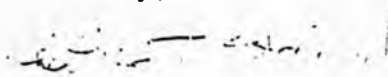
I wanted to thank you for the opportunity to comment on your proposed Hazardous Substance legislation. Overall, we are very pleased with the legislation and would like to offer the following comments:

- 1.) Can provisions for reimbursing local municipalities for costs they might incur in containment or cleanup of hazardous substances be included in this legislation?
- 2.) This legislation allows ADEC to contract with municipalities or persons for cleanup or containment operations. However, it does not appear to allow ADEC to delegate its authority for cleanup or containment of hazardous substances to a municipality. Should the legislation allow such a delegation, within an area where an emergency response authority exists? The language in the legislation at present would result in ADEC taking a leading role in emergency response to hazardous substance spills. Is this the intent of this legislation? Perhaps language should be added to clarify the relationship between ADEC and recognized emergency responders, and their respective roles in the event of a hazardous substance spill.

We feel it would be advisable to allow ADEC to delegate its authority to approved emergency response authorities within their jurisdictions.

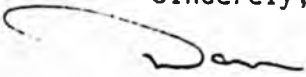
Thanks again for allowing us to review this legislation.

Sincerely,

  
Heather T. Stockard  
Environmental Services Director

HTS/mnb  
rj4-1

Sincerely,

A handwritten signature in black ink, appearing to read "Don", with a large, sweeping flourish at the beginning.

Don Perner  
Director of Community Development

# Municipality of Anchorage



P.O. BOX 6-650  
ANCHORAGE, ALASKA 99502-0650  
(907) 264-4960

TONY KNOWLES.  
MAYOR

INTERGOVERNMENTAL AFFAIRS

January 20, 1986

Rep. Mike Davis  
Pouch V  
Juneau, Alaska

Dear Mike:

The Municipality of Anchorage appreciates the opportunity to review H.B. 470, proposing the establishment of an oil and hazardous substances response fund. The Municipality strongly endorses the concept of the bill, and believes the bill will significantly reduce the potential for a catastrophic hazardous substances incident in the State of Alaska.

Suzanne Tryck of my staff has already delivered to your office detailed comments and suggested language for inclusion in the bill. The most significant provisions contained in these comments are those dealing with the set-aside of funds for training and equipping local public safety agencies and allowing access to the fund by local public safety agencies in the event of a hazardous substance emergency.

These two provisions are of major importance since, in nearly all hazardous substance emergencies, local public safety agencies - namely, fire departments - will be the first responders. The first responders must be prepared to contain any such emergency so as to protect health, property and the environment. The actions taken within the first few hours are critical to the successful control of a hazardous substances emergency. Without properly trained and equipped local public safety agencies, chances of diverting a disaster are greatly diminished.

During my recent visit to Juneau, I discussed this legislation with Representatives Mike Szymanski and Don Clocksin, who I understand are co-sponsoring the bill. The Municipality is prepared to continue to work closely with you, Representatives Clocksin and Szymanski, other members, and their staffs to assure passage of a bill adequately reflecting the concerns of local governments.

Thank you for your continued cooperation in working with us on this important legislation.

Sincerely,



Chip Bennerlein

cc: Rep. Don Clockson  
Rep. Mike Szymanski

Municipality of Anchorage

Comments on the Oil and Hazardous Substances  
Response Fund Bill

**Sec. 46.08.050. Financing the Abatement of Oil or Hazardous Substances**

Add a new paragraph (b) as follows and change existing (b) to (c):

(b) Ten percent (10%) of the fund balance at the beginning of each fiscal year shall be dedicated to local public safety agencies for training, contingency planning and equipment specifically related to developing and maintaining oil and hazardous substance response capabilities. The department shall develop criteria and guidelines for distribution of funds authorized under this Chapter to local public safety agencies within 90 days of enactment. Criteria for distribution of funds shall include, but not be limited to: population at risk, current hazardous substances inventory, current response capabilities, and intended use of funding.

**Sec. 46.09.070. Records of the Fund**

Add a new paragraph (d) as follows and change existing (d) to (e):

(d) The department shall promulgate regulations within 90 days of enactment for authorizing local public safety agencies assuming on-scene control to commit funds for emergency containment and cleanup of oil and hazardous substance releases.

**Sec. 40.08.100. Definitions**

Add to the end of paragraph 5(A) the word "or".

Reword paragraph 5(B) as follows (words in [] added; -- deleted):

(B) a substance defined as a hazardous substance [, hazardous material, hazardous waste, or toxic substance] under [state or] federal law or regulations [adopted in accordance with state or federal law] of the department;

**Sec. 46.09.010. Report of a Release of a Hazardous Substance**

Reword paragraph (a) as follows (words in [] added):

(a) A person who is aware of the release or threatened release of a hazardous substance shall immediately notify the department [and a local public safety agency].

Add a new paragraph (b) as follows and change existing (b) to (c):

(b) The department shall establish and maintain a 24 hour per day duty officer to provide technical guidance and assistance and empowered to authorize expenditures of the fund for containment and cleanup of oil and hazardous substance releases.

# Municipality of Anchorage



P.O. BOX 6-650  
ANCHORAGE, ALASKA 99502-0650  
(907) 264-4960

TONY KNOWLES,  
MAYOR

## INTERGOVERNMENTAL AFFAIRS

January 20, 1986

Rep. Mike Davis  
Pouch V  
Juneau, Alaska

Dear Mike:

The Municipality of Anchorage appreciates the opportunity to review H.B. 470, proposing the establishment of an oil and hazardous substances response fund. The Municipality strongly endorses the concept of the bill, and believes the bill will significantly reduce the potential for a catastrophic hazardous substances incident in the State of Alaska.

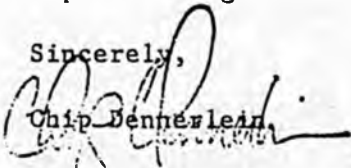
Suzanne Tryck of my staff has already delivered to your office detailed comments and suggested language for inclusion in the bill. The most significant provisions contained in these comments are those dealing with the set-aside of funds for training and equipping local public safety agencies and allowing access to the fund by local public safety agencies in the event of a hazardous substance emergency.

These two provisions are of major importance since, in nearly all hazardous substance emergencies, local public safety agencies - namely, fire departments - will be the first responders. The first responders must be prepared to contain any such emergency so as to protect health, property and the environment. The actions taken within the first few hours are critical to the successful control of a hazardous substances emergency. Without properly trained and equipped local public safety agencies, chances of diverting a disaster are greatly diminished.

During my recent visit to Juneau, I discussed this legislation with Representatives Mike Szymanski and Don Clocksin, who I understand are co-sponsoring the bill. The Municipality is prepared to continue to work closely with you, Representatives Clocksin and Szymanski, other members, and their staffs to assure passage of a bill adequately reflecting the concerns of local governments.

Thank you for your continued cooperation in working with us on this important legislation.

Sincerely,

  
Chip Dennerlein

cc: Rep. Don Clocksin  
Rep. Mike Szymanski

Sec. 46.09.020. Containment and Cleanup of a Released Hazardous Substance

Reword paragraph (a) as follows ([ ] added; -- deleted):

(a) A person causing or permitting the release of hazardous substances shall immediately contain and cleanup the hazardous substances. The department may waive this requirement if [it determines, in consultation with the United States Environmental Protection Agency and local public safety agencies, as appropriate, that]

~~(1) it determines, in consultation with the United States Environmental Protection Agency, as appropriate, that~~ [(1) the] containment or cleanup is technically not feasible; or

(2) the cleanup or containment activities would result in greater environmental damage than the release itself; [; or]

[(3) the cleanup or containment would result in a greater threat to life and human health than the release itself.]

Reword paragraph (d) as follows ([ ] added; -- deleted):

(d) The department shall provide for the immediate containment or cleanup of a hazardous substance release of unexplained origin [or when the person causing or permitting the release is unable or unwilling to immediately take responsibility] unless [the department determines, in consultation with the United States Environmental Protection Agency and local public safety agencies, as appropriate, that]

~~(1) the department determines, in consultation with the United States Environmental Protection Agency, that~~ [(1) the] containment or cleanup of the hazardous substance release is technically not feasible; or

(2) the containment or cleanup activities would result in greater environmental damage than the release itself; [; or]

[(3) the cleanup or containment would result in a greater threat to life and human health than the release itself.]

*Adopted*  
#7  
#8

Add a new paragraph (e) as follows:

(e)(1) A local jurisdiction with capability to assume on-scene control of an oil and hazardous substance emergency shall notify the department of such capability, including a description of response training and equipment. The notification must be provided before a local public safety agency can commit funds for oil and hazardous substance containment and cleanup without prior department authorization;

(2) The department shall establish guidelines and procedures for authorizing other local public safety agencies to commit

funds for emergency containment and cleanup when the local jurisdiction assumes on-scene control;

(3) A local public safety agency that has assumed on-scene control for an oil and hazardous substances emergency shall maintain that responsibility until the incident has been contained and cleanup commenced or until on-scene control has been released to the department.

Change existing paragraph (e) to (f).

#### **Sec. 46.09.030. Catastrophic Hazardous Substance Release**

Add new paragraph (a) as follows:

(a) The department and the Alaska Division of Emergency Services shall develop and maintain a statewide oil and hazardous substances annex to the state emergency operations plan, including guidelines and procedures for determining if a release or threatened release constitutes a catastrophic hazardous substances release. The oil and hazardous substances annex shall be developed within one year of enactment and updated annually.

Change existing paragraph (a) to (b) and reword as follows ([ ] add; -- delete):

(b) The actual or imminent occurrence of a catastrophic release of hazardous substances constitutes a disaster emergency under AS 26.23. The department shall consult and coordinate its duties under this section with the Alaska Division of Emergency Services [.] , and the commissioner may direct the department to perform the duties of the Alaska Division of Emergency Services under AS 26.23-8 ).

Change existing paragraph (b) to (c).

#### **Sec. 46.09.040. Hazardous Substances Containment and Cleanup**

Delete existing sections and add new section as follows:

(a) The department may contract with a person, or a municipality of the state for personnel, equipment, or services necessary to carry out all training, planning, inspecting, sampling, testing, investigating, surveying, analyzing, and engineering activities.

(b) The department shall contract with a person, or a municipality of the state for personnel, equipment, or services necessary for constructing, operating, and maintaining oil and hazardous substance containment and cleanup operations.

#### **Sec. 46.09.050. Peace Officers**

Delete this section.

#### **Sec. 46.09.090. Definitions**

Change paragraph (1) as follows ([] add; -- delete):

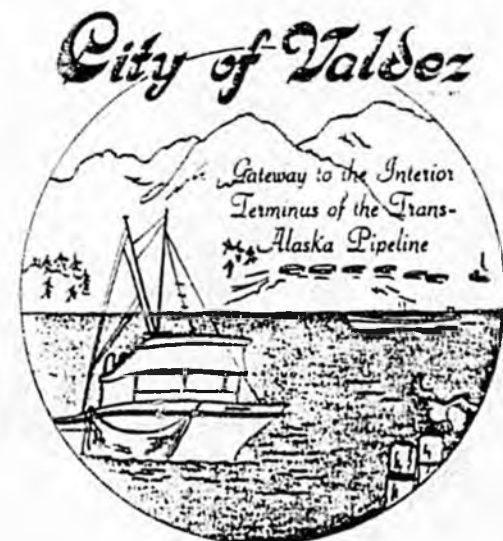
(1) "catastrophic release of hazardous substances" means any discharge which [release or threatened release exceeding the response capabilities of a local jurisdiction and for which the highest local elected official and] the governor determines represents a grave and substantial threat to the public health and safety, economy, or environment of the state;

Add to the end of paragraph 5(A) the work "or".

Reword paragraph 5(B) as follows ([] added; -- deleted):

(B) a substance defined as a hazardous substance [hazardous material, hazardous waste, or toxic substance] under [state or] federal law or regulations [adopted in accordance with state or federal law] of the department;

Office of Community Development  
December 13, 1985



Representative Mike Davis  
Pouch V  
Juneau, AK. 99811

Dear Mike,

Thank you for the opportunity to review proposed AS 46.08 and 46.09. I have asked the City Fire Chief, who is responsible for hazardous waste, to review the draft and I've attached his comments.


I agree with Chief McAlister's comments on cost. The program could become very costly and cumbersome with some high side boards.

The main problem I have is with Sec. 46.09.070. Maybe I'm being somewhat sensitive to this issue as it's a current problem with our local Coastal Zone Management draft, but Title 29 gives the City authority to manage if its ordinances are equal to or more strict than the state law. I do have a problem with the State overriding city ordinances regardless if they are in conflict or not. I suggest that city's (municipalities) be given the option of developing their own hazardous management plan. DEC could approve of the plan and once approved it would be the prevailing ordinance or legislation within that community. The plan would have the obvious coordination language with the necessary state agencies.

Please keep us informed. As a major shipping point for both crude oil and other hazardous material we are very interested in your progress on legislation.

Please let me know if we can provide any further assistance.

Sincerely,  
CITY OF VALDEZ

  
Dennis R. Thomason  
Director, Community Development

DRT/lrf

enclosure

#20Davis.Dec

# MEMO

City of  
Valdez, Alaska Box 307, 99686

To Dennis Thomason

Date December 5, 1985

Subject Proposed Legislation Relating  
to Hazardous Substances

From Tom McAlister *TWN*

This bill does many things that I think would be beneficial to the City of Valdez. To name a few:

1. Provides funds for emergency cleanup.

a) At present the fire department and harbor department pays for materials and manpower used in cleanup activities.

2. Provides for mutual aid agreements and contracts to Municipalities.

3. Provides a means to recover costs from persons responsible.

4. Provides for training.

Disavanges may include a large bureaucracy and a tremendous expense to the state each year if it is fully funded.

If not funded DEC would be shackled with a great statutory responsibility that they cannot carry out as a number of other agencies are at present.

Its going to be interesting to keep an eye on this one and see what the outcome is.



*City of Petersburg*  
*P. O. Box 329*  
*Petersburg, Alaska 99833*

December 11, 1985

Alaska State Legislature  
Representative Mike Davis  
Pouch 7  
Juneau, Alaska 9811

Dear Representative Davis:

Thank you in advance for the opportunity to respond to you and the legislation which you plan to propose in January to the Legislature.

Basically, the legislation which you are proposing looks very good, and as we both know, the response fund portion of this legislation is very needed.

On December 9, 1985, I attended a Public meeting in Juneau put on by the Alaska Department of Environmental Conservation, Hazardous Waste Division, regarding their upcoming hazardous waste management program. This meeting or any of their other scheduled public meetings would have been a good meeting for you to attend and discuss your proposed legislation with the public in attendance.

ADEC's program, as I am sure you are aware, is designed to develop and adopt state regulations that would be managed and enforced by the department. The goal of ADEC is to eventually have a hazardous waste program ran by the state and to eliminate the Federal Environmental protection agency from the hazardous waste program here in Alaska.

The Super Fund legislation you are proposing appears to me to be similar to the EPA "CERCLA" act of 1980. At this aforementioned public meeting, we discussed this EPA fund and found that our current identified locations of hazardous waste do not qualify as a serious enough threat to health as is needed to receive a portion of this fund. Therefore, this state fund could be a real bonus to us in Alaska. Hopefully, the requirements and or

Alaska State Legislature.  
December 11, 1985  
page2

procedures for acquiring this money for use at hazardous waste sites will not be so burdensome so that any spill or location of waste site regardless of size can rely on these funds if needed.

In some aspects, this proposed legislation already closely coincides with the programs which ADEC has proposed. Further, their direction from the 1984 Alaska legislature, mandated some very specific points. I wonder if your legislation and their proposed programs might be duplicating each others efforts. The director of the hazardous waste division of ADEC who was also at this meeting is Dave Detraillia. A suggestion would be to contact him regarding their efforts if you have not already done so.

In closing, the component which is lacking in your proposal and also lacking in the DEC program is the identification/disposal problems of other hazardous substances such as PCB's and Asbestos. It is a confusing situation when items such as these corner a majority of the public outcry, but are not considered hazardous waste under either EPA or DEC guidelines. PCB's in old electrical transformers, and asbestor insulation will not just dissappear, and the inability to use this proposed state fund for the elimination of this type of hazardous substance in my opinion is a mistake. As the proposed DEC program does not address this problem, and your proposed legislation eliminates them from "Super Fund" use, this type of material will continue to be located around population centers. Small municipalities will continue to be forced to deal with various divisions of EPA for removal, and will never receive any financial assistance in this disposal process.

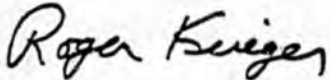
Knowing the amount of electrical transformers in our area with PCB contamination, and multiplying these times the communities in Alaska, I feel this type of substance is far more a concern then most substances as defined in the EPA-Resource Conservation and recovery act of 1976.

I urge you to amend your proposed legislation for the inclusion of PCB and Asbestor removal as a realistic candidate for use of Super Fund money for disposal. Further, I feel direction should be given to ADEC to expand their proposed programs to include all hazardous substances indentification/disposal areas as previously defined by EPA, so that state controls can be placed on all materials which are identified as hazardous, and Federal EPA regulations can be abandoned.

Alaska State Legislature,  
December 11, 1985  
page 3

Again, thank you for the chance to respond and I hope my comments  
will be of value to you.

Sincerely,

A handwritten signature in cursive script that reads "Roger Krieger".

Roger Krieger  
Building Official

RK/ec



CITY/BOROUGH OF JUNEAU  
★ ALASKA'S CAPITAL CITY

Planning Department

December 18, 1985

File No. 2500

Representative Mike Davis  
P.O. Box 81435  
Fairbanks, AK 99708

Re: Oil and Hazardous  
Substance Response Fund

Dear Rep. Davis:

Thank you for the opportunity to review your draft of legislation to create an Oil and Hazardous Substance Response Fund dated November 12, 1985. From the way your letter was addressed, I offer a personal response rather than an official response on behalf of the City of Juneau.

By way of background, let me note that I worked with a consultant to the Department of Environmental Conservation (DEC) on the subject of setting criteria for hazardous waste handling and disposal sites. It was my impression then that DEC was planning to either seek new legislation or enact regulations to set these criteria and a permit system to carry them out. The comments below are based, in part, on the prospect of some sort of permit system for regulating those sites.

I applaud the idea of a fund for DEC to use in reacting to oil and hazardous waste incidents. Using fines and penalties to buttress the fund sounds good too, although this is a bit of a departure from normal state practice where fines and fees are paid into the general fund. DEC should be fully equipped and authorized to assure that all monies intended for the Response Fund actually get there and stay there.

The source of money for the Response Fund is very likely going to be a problem. I gather that some money is available from Superfund but that a state matching share would be needed. As written, your bill is freestanding and does not depend on other programs or laws to function. If, however, a permit system for new and existing oil and hazardous waste facilities (or an improvement to an existing permit system) is established, then an annual fee could be assessed, based on quantities handled. These fees could make up the state share of the Response Fund. DEC could collect the fees as part of annual recertification and even reward good operators with rebates.

Some sort of system seems necessary for DEC to monitor the number of locations and type of facilities. This will allow them to focus their efforts on inspection and compliance. I would urge you to look at coupling the Response Fund to a regulatory system. I think the result will be better regulation and a fund that is self-supporting. The problem will thus be addressed more completely and lastingly.

I do not know what opportunities and amounts are offered by Superfund so the ideas above may not be workable. I also do not know how large our fund should be to prepare for likely emergencies. I would guess, however, that if we could establish a system based on less than one half percent of the operators' revenues that they would adjust easily. If this generates enough money for the state share of the Response Fund, and the administration of it, then you have an industry supported monitoring and emergency response package that stands alone.

A few words about the local government role in this matter should also be offered. Many communities have some sort of engineering or maintenance departments which have equipment and operators. Many of us are also engaged in planning for various forms of disaster. Local government warehouses are likely places for DEC to store special equipment for particular facilities. Finally, some DEC functions, notably subdivision review and air quality, can be turned over to local governments.

A lot of the planning, monitoring and inspection functions could be transferable to local governments as well as the pre-disaster activities. Some of the post-disaster responsibility could be lodged at the local level. The full package should allow for this.

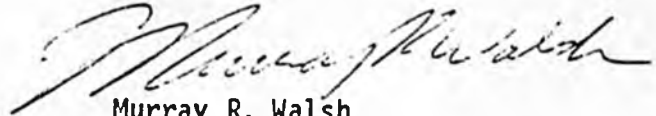
As an overall summary, I would say that your bill as it stands is a good one and should be enacted if a more comprehensive solution is not possible. I would, however, urge a more comprehensive approach that includes:

- criteria for oil and hazardous waste sites and facilities;
- a permit system, with annual renewals, inspections and fees;
- an industry-generated base for the state's share of the Response Fund;
- provision for transfer of responsibilities to local governments; and
- the Response Fund itself.

Rep. Mike Davis  
2500  
Page No. 3

Again, thanks for the opportunity to review this bill and thank you for your interest in this very important environmental concern. I hope my comments are helpful and if I can assist in any other way, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Murray R. Walsh".

Murray R. Walsh  
Planner III

792/52/MW/ym



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

*copy  
George  
Lind W.*

*copy given to  
4/25*

APR 19 1983

OFFICE OF  
SOLID WASTE AND EMERGENCY RES

RECEIVED

APR 21 1983

CONFIDENTIAL

MEMORANDUM

DATE:

SUBJECT: Subtitle C Exclusion of Drilling Fluids  
and Produced Waters

FROM: John H. Skinner *John H. Skinner*  
Director, Office of Solid Waste

TO: Kenneth D. Feigner  
Chief, Waste Management Branch  
E.P.A. - Region X

Your interpretation of the oil and gas waste exclusion in 40 CFR 261-4, as expressed in your February 14, 1983 memorandum to me, is the correct interpretation of the scope of that exclusion. The Agency's policy on oil and gas exploration, development and production wastes, is the same as the policy stated in the preamble to the November 19, 1980 regulations (45 FR 76619) for mining and cement kiln dust wastes. Specifically, wastes such as spent solvents, pesticide wastes, and discarded commercial chemical products, that are not uniquely associated with the exploration, development, or production of crude oil or natural gas or geothermal energy, are not eligible for the exclusion. As you noted, a memorandum from EPA's Office of General Counsel to Region VII on September 2, 1981 confirms that policy.

Although some judgment is required to determine those wastes that are "unique" and those that are not, the interpretation in the last paragraph of your memorandum of February 14, 1982 is consistent with our policy on this issue.

*- Skinner list -*

-2

This exclusion does not, however, apply to solid wastes, such as spent solvents, pesticide wastes, and discarded commercial chemical products, that are not uniquely associated with these mining and allied processing operations, or cement kiln operations. Therefore, should either industry generate any of these non-indigenous wastes and the waste is identified or listed as hazardous under Part 261 of the regulations, the waste is hazardous and must be managed in conformance with the Subtitle C regulations.

It is our opinion that Congress did not intend to exclude absolutely all wastes generated at drilling or exploration sites. It seems apparent in RCRA 3001 that along with the exclusion there is a clear concern with whether the excluded wastes have characteristics which would necessitate their being regulated as hazardous. It is only those wastes "uniquely" associated with the activities under consideration about which there might be any such question. (This same concern was also reflected in EPA's initial proposals to consider these wastes as "special wastes.")

However, for those wastes which are not uniquely associated, it should be clear that the issue of the extent of their hazardousness does not arise. Consistent with our sense of Congressional intent, we feel that EPA is obligated to make it clear that the hazardous wastes in this latter category are regulated as hazardous wastes under RCRA. Please be aware that an August 1981 response from OGC to a question raised by Region 7 on this issue supports this same position.

To summarize, we feel that the exclusion should properly cover soils, muds, fluids, etc., whether they are removed from the earth or added during the drilling or exploration operation. It should not include wastes routinely generated at construction sites, spent solvents from maintenance activities, unused chemical products intended for disposal, unused fuels, or any other wastes which are not unique to the exploration, development or production of crude oil, natural gas, or geothermal energy.

cc: Ron Kreizenbeck, AOD  
Geoff Lewis, OSWER

DHanline:nay:2-9-83

*They get some support  
from Martin et al,  
V. Glass, 571 F. Supp  
1406*



# Alaska State Legislature

Representative Mike Davis

Room V  
Juneau, Alaska 99811  
(907) 465-4930/4941

Interim Office:  
P.O. Box 81435  
Fairbanks, Alaska 99708

February 9, 1986

Mr. Scott Burgess, Executive Director  
Alaska Municipal League  
105 Municipal Way, Suite 301  
Juneau, Alaska 99801

Dear Mr. Burgess,

I am writing to you at the request of the House Resources Committee regarding HE 470, an act relating to the release of oil and hazardous substances.

The bill has several provisions regarding municipalities, a brief description of which follows below:

Section 46.09.020(e) provides that the commissioner of the Dept. of Environmental Conservation may enter into agreements with municipalities in order to

- (1) facilitate a coordinated and effective hazardous substance release response in the state;
- (2) provide for cooperative hazardous substance release notification procedures; or
- (3) provide for cooperative review of hazardous substance release response contingency plans submitted to the department.

Section 46.09.040 provides that the commissioner of the Dept. of Environmental Conservation may contract with a municipality for personnel, equipment, or services that may be useful to carry out the requirements of this chapter.

In order to allow municipalities to enter into these agreements and contractual agreements should they choose to do so, language was placed in Sec. 46.09.070 stating that

" Authority to contain, clean up, or prevent a release or threatened release of oil or of a hazardous substance, and to exercise other powers necessary to implement AS 46.08 - AS 46.09. are granted to municipalities that do not otherwise have that authority."

The question raised by the House Resources Committee is whether or not municipalities, as a result of being granted this authority, would in any way be obligated or compelled to implement this authority. Specifically, this question is directed toward second-class boroughs and home-rule municipalities.

I would appreciate receiving your response to this question as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Mike".

Rep. Mike Davis

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF ENVIRONMENTAL QUALITY  
POUCH O, JUNEAU, ALASKA 99811

Telephone: (907)  
Address:

465-2666

February 7, 1986

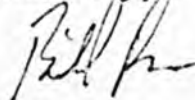
The Honorable Richard Schultz  
Chairman, House Resources Committee  
House of Representatives  
Pouch V  
Juneau, AK 99811

Dear Representative Schultz:

Enclosed is a revised fiscal note for CSHB 470. I have deleted the administrative assistant from the fiscal note due to the reduced administrative burden resulting from the amendments. This fiscal note will be adequate since the scope of the fund has been focused on site investigations and response to small or moderate incidents. Under this approach, major incidents would be addressed through capital appropriations or through funds available for emergencies declared by the Governor.

Thank you again for the opportunity to work with you in refining the proposed legislation.

Sincerely,



Bill Ross  
Commissioner

Enclosure

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 2/4/86

**REQUEST**

Bill/Resolution No. : HB 470  
 Title : An Act Relating to the Release of Oil and Hazardous Substance  
 Sponsor : Representative Mike Davis  
 Requestor : \_\_\_\_\_  
 Date of Request : \_\_\_\_\_

**SCAL DETAIL**

Agency Affected : Environmental Conservation  
 BRU : Environmental Quality  
 Components : Director's Office

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		182.7	227.3	227.3		
TRAVEL		25.0	28.0	28.0		
CONTRACTUAL		48.5	53.5	53.5		
SUPPLIES		22.0	23.5	23.5		
EQUIPMENT		12.0	2.0	2.0		
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>290.2</b>	<b>334.3</b>	<b>334.3</b>		

<b>CAPITAL</b>						
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RESPONSE FUND (non-lapsing) 1,000.0 (replenishment to 1,000.0)

<b>REVENUE</b>						
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND		1290.2	334.3	334.3		
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

\*5.0 FTE

**POSITIONS :**

FULL-TIME		4	4	4		
PART-TIME		2	2	2		
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : Stan Hungerford Phone : 465-2666  
 Division : Environmental Quality Date : 2/4/86

Approved by Commissioner : *Bill Kim* Date : 2/4/86  
 Agency : Department of Environmental Conservation

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : HB 470  
 Title : An Act Relating to the Release of Oil and Hazardous Substances  
 Sponsor : Rep. M. Davis  
 Requestor : \_\_\_\_\_  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : Environmental Conservation  
 BRU : Environmental Quality  
 \_\_\_\_\_  
 Components : Director's Office  
 \_\_\_\_\_  
 \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		210.7	264.6	264.6		
TRAVEL		28.0	28.0	28.0		
CONTRACTUAL		53.5	53.5	53.5		
SUPPLIES		23.5	23.5	23.5		
EQUIPMENT		14.0	2.0	2.0		
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>329.7</b>	<b>371.6</b>	<b>371.6</b>		

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		7.0*	7.0	7.0		
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

\*6.0 FTE

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : S.W. Hungerford Phone : 465-2666  
 Division : Environmental Quality Date : 1/17/86

Approved by Commissioner : *Bill P.* Date : 1/17/86  
 Agency : Dept. of Environmental Conservation

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Position Title <b>Ecologist II</b>			No. of Positions One	Range/Step 18 A	Barg. Unit GGU	Gov.	Approv.	Disapp.																																	
Time Status Full Time	Staff Months 12	RP Number	Location Juneau		Election District	L48																																			
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>2</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>28.1</td> <td rowspan="4"></td> </tr> <tr> <td>Benefits</td> <td>8.3</td> </tr> <tr> <td>Premium Pay</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td><b>Total Personal Services</b></td> <td></td> <td>36.4</td> </tr> <tr> <td>Travel</td> <td></td> <td>5.0</td> </tr> <tr> <td>Contractual</td> <td></td> <td>25.0</td> </tr> <tr> <td>Commodities</td> <td></td> <td>6.5</td> </tr> <tr> <td>Equipment</td> <td></td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td><b>Total Cost</b></td> <td></td> <td>74.9</td> </tr> </tbody> </table>			Type of Expenditure	2	3	Salary	28.1		Benefits	8.3	Premium Pay		Other		<b>Total Personal Services</b>		36.4	Travel		5.0	Contractual		25.0	Commodities		6.5	Equipment		2.0	Other			<b>Total Cost</b>		74.9	<b>Justification</b>  This new position will be responsible for writing regulations related to implementation of this bill, including procedures to be used in containment and cleanup of a hazardous substance, reporting the release of a hazardous substance, use of the response fund, procedures to assess fines, penalties and recovery of costs. This person will also negotiate contracts to contain and clean up incidents requiring immediate response, determine liability for incidents, initiate appropriate actions to recover costs or other penalties, coordinate a training and safety program for field staff and report program activities to appropriate State and federal agencies and the State Legislature.					
Type of Expenditure	2	3																																							
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Benefits	8.3																																								
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	Other																																								
<b>For B&amp;M Use Only</b> Key Number _____																																									

**Request For  
New Position**

Agency Environmental Conservation  
BRU Environmental Quality  
Component Water Quality Management

Page \_\_\_\_\_ of \_\_\_\_\_  
Revised Date \_\_\_\_\_

**FY 87**



Position Title Clerk Typist III			No. of Positions One	Range/Step B A	Barg. Unit GGU	Gov.	Approv.	Disapp.	
Time Status Full Time	Staff Months 12	RP Number	Location Juneau	Election District	Leg				
Type of Expenditure			Justification						
		Amount	<p>This new position will provide clerical support to the new program staff and enter data into computer files established to record program activities. This person will be required to prepare regulations, contract documents and fiscal reports as well as routine correspondence.</p> <p>We expect to fill this position on October 1, 1987.</p> <p>Funding for nine months has been requested for FY 87.</p>						
1	2	3							
Salary	14.7								
Benefits	5.3								
Premium Pay									
Other									
Total Personal Services		20.0							
Travel									
Contractual		3.5							
Commodities		1.5							
Equipment		2.0							
Other									
Total Cost		27.0							
Receipt Code	Funding Source								
	Federal Receipts	1002							
	G. F. Match	1001							
	General Funds	1004							27.0
	I-A Receipts	1005							
	Program Receipts	1028							
	CIP Receipts	1061							
	Other								
For B&M Use Only									
Key Number									

**Request For  
New Position**

Agency Environmental Conservation  
 BRU Environmental Quality  
 Component Water Quality Management

**FY 87**

Page \_\_\_\_\_ of \_\_\_\_\_  
 Revised Date \_\_\_\_\_

Position Title <b>Environmental Field Officer III</b>			No. of Positions <b>One</b>	Range/Step <b>18 A</b>	Barg. Unit <b>GGU</b>	Gov.	Approv.	Disapp.
Time Status <b>Perm. Part Time</b>	Staff Months <b>6</b>	RP Number	Location <b>Anchorage</b>		Election District	<b>48</b>		
Type of Expenditure			Justification					
Amount			<p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p>					
<b>1</b>	<b>2</b>	<b>3</b>						
Salary	<b>18.7</b>							
Benefits	<b>5.6</b>							
Premium Pay								
Other								
<b>Total Personal Services</b>		<b>24.3</b>						
Travel		<b>5.0</b>						
Contractual		<b>5.0</b>						
Commodities		<b>3.5</b>						
Equipment		<b>2.0</b>						
Other								
<b>Total Cost</b>		<b>39.8</b>						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004		<b>39.8</b>					
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For B&M Use Only								
Key Number								

**Request For  
New Position**

Agency Environmental Conservation  
 BRU Environmental Quality  
 Component Southcentral Region

Page      of       
 Revised Date     

**FY 87**



Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Barg. Unit GGU	Gov.	Approv.	Disapp.	
Time Status Perm. Part Time	Staff Months 6	RP Number	Location Juneau		Election District	Leg.			
			Justification						
Type of Expenditure		Amount		<p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p>					
1	2	3							
Salary	18.7								
Benefits	5.6								
Premium Pay									
Other									
Total Personal Services		24.3							
Travel		5.0							
Contractual		5.0							
Commodities		3.5							
Equipment		2.0							
Other									
Total Cost		39.8							
Receipt Code	Funding Source								
	Federal Receipts	1002							
	G. F. Match	1003							
	General Funds	1004							39.8
	I-A Receipts	1005							
	Program Receipts	1028							
	CIP Receipts	1061							
	Other								
For B&M Use Only									
Key Number									

**Request For  
New Position**

Agency Environmental Conservation  
 BRU Environmental Quality  
 Component Southeast Region

Page \_\_\_\_\_ of \_\_\_\_\_  
 Revised Date \_\_\_\_\_

**FY 87**

Position Title <b>Environmental Field Officer III</b>			No. of Positions <b>One</b>	Range/Step <b>18 A</b>	Barg. Unit <b>GGU</b>	Gov.	Approv.	Disapp.
Time Status <b>Full Time</b>	Staff Months <b>12</b>	RP Number	Location <b>Anchorage</b>	Election District		Leg.		
Type of Expenditure			Justification					
		Amount	<p>This new field officer will augment the existing oil spill position to investigate reports of spilled hazardous materials, monitor cleanup activities, and work with community government and local safety agencies on plans for responding to emergencies due to spills or fires involving chemicals. This person will require safety training and equipment to minimize exposure to hazardous chemicals. This person will work with existing staff as a team of two for safety purposes when investigating incidents involving spills of hazardous materials especially in confined areas. This person will obtain samples and other information necessary to take enforcement actions under federal or State laws.</p> <p>We expect to fill this position on October 1, 1986.</p> <p>Funding for nine months has been requested for FY 87.</p>					
<b>1</b>	<b>2</b>	<b>3</b>						
Salary	28.1							
Benefits	8.3							
Premium Pay								
Other								
Total Personal Services		36.4						
Travel		5.0						
Contractual		5.0						
Commodities		3.5						
Equipment		2.0						
Other								
Total Cost		51.9						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004		51.9					
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For B&M Use Only Key Number _____								

**Request For  
New Position**

Agency Environmental Conservation  
 BRU Environmental Quality  
 Component Southcentral Region

Page 1 of 1  
 Revised Date \_\_\_\_\_

**FY 87**

Original sponsors: Davis, Koponen,  
Hurley, et al

IN THE HOUSE

BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 470 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the release of oil and hazardous substances; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 46 is amended by adding a new chapter to read:

CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

Sec. 46.08.005. PURPOSE. The legislature finds and declares that the release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state. The legislature therefore concludes that it is in the best interest of the state and its citizens to provide a readily available fund for the payment of the expenses incurred by the Department of Environmental Conservation in the protection of the environment of the state from the release of oil or hazardous substances.

Sec. 46.08.010. FUND ESTABLISHED. (a) There is established in the state general fund the oil and hazardous substance release response fund. The fund shall be administered by the commissioner of environmental conservation, but the commissioner of revenue shall be the custodian of the fund.

(b) Money from an appropriation made to the fund remaining in the fund at the end of a fiscal year remains available for expenditure in successive fiscal years.

(c) The fund shall be used for actual expenses incurred under AS 46.08.040. The fund may not be used for capital improvements.

Sec. 46.08.020. FINANCING OF THE FUND. The legislature may appropriate from the following sources to the fund:

(1) money received from federal, state, or other sources or from a private donor;

(2) money recovered or otherwise received from parties responsible for the containment and cleanup of oil or a hazardous substance at a specific site, but excluding funds from performance bonds and other forms of financial responsibility held in escrow pending satisfactory performance of a privately financed response action;

(3) fines, penalties, or damages recovered under this chapter or other law for costs incurred by the state as a result of the release or threatened release of oil or a hazardous substance.

Sec. 46.08.030. FINANCING THE ABATEMENT OF OIL OR HAZARDOUS SUBSTANCE RELEASES. It is the intent of the legislature and declared to be the public policy of the state that funds for the abatement of a release of oil or a hazardous substance will always be available.

Sec. 46.08.040. PURPOSES OF THE FUND. Subject to the approval of the governor, the commissioner may use money from the fund to

(1) contain and clean up releases or threatened releases of oil or a hazardous substance;

(2) undertake plans, inspections, sampling, tests, investigations, public notification, damage assessment, surveys, analyses, engineering, construction, operations, and maintenance necessary or appropriate to contain and clean up releases or threatened releases of oil or hazardous substances;

(3) help the Department of Labor to assist emergency response employers in developing safety education programs under AS 18.60 for employees who may be called upon to respond to a release of

oil or a hazardous substance;

(4) provide matching funds for participation in federal oil discharge cleanup activities and under 42 U.S.C. 9607 - 9657 (Comprehensive Environmental Response, Compensation and Liability Act of 1980); and

(5) recover the cost to the state or to a municipality of a containment and cleanup resulting from the release or the threatened release of oil or a hazardous substance.

Sec. 46.08.050. RECORDS OF THE FUND. (a) The department shall maintain accounting records showing the income and expenses of the fund.

(b) By July 1 of each year, the department shall determine the projected cost for the following fiscal year of monitoring, operating, and maintaining sites where response has been completed or is expected to be continued during the fiscal year.

(c) The commissioner shall consult with the commissioner of revenue and the governor before adopting regulations governing fund accounting. The department shall develop procedures and adopt rules governing the expenditure of, and accounting for, money expended from the fund, and may not delay implementation of this chapter pending the effective date of the procedures and rules.

(d) The proper state officer shall pay disbursements from the fund on presentation of vouchers signed by the governor or the governor's authorized representative.

Sec. 46.08.060. REPORT TO THE LEGISLATURE. The commissioner shall submit a report to the governor and to the legislature not later than the 10th day following the convening of each regular session of the legislature. The report may include information considered significant by the commissioner but must include:

(1) the amount of money expended under AS 46.08.040 during the preceding fiscal year; and

(2) the amount and source of money received and money recovered during the preceding fiscal year as specified in AS 46.08.-020.

Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. (a) The commissioner shall seek reimbursement promptly under this section, AS 46.03.760(e), or federal law for the cost incurred in the cleanup or containment of oil or a hazardous substance that has been released.

(b) The attorney general, at the request of the commissioner, may seek to recover money expended by the department under this chapter or other law to contain and clean up oil or a hazardous substance that has been released or to control the threatened release of oil or a hazardous substance.

Sec. 46.08.080. REGULATIONS. The commissioner shall adopt regulations necessary to implement the provisions of this chapter.

Sec. 46.08.900. DEFINITIONS. In this chapter

(1) "capital improvement" includes construction, renovation, repair of, and improvement to, a building, but does not include other improvements to real property, such as construction of a dike or retaining wall;

(2) "commissioner" means the commissioner of environmental conservation;

(3) "containment and cleanup" includes the direct and indirect efforts associated with the prevention, abatement, containment, or removal of a hazardous substance, the restoration of the environment to its former state, and incidental administrative costs;

(4) "department" means the Department of Environmental Conservation;

1 (5) "employee" means a person who works for an employer in  
2 a place that is not used primarily as a personal residence;

3 (6) "employer" means a person, including the state and a  
4 political subdivision of the state, who has one or more employees  
5 working in a place that is not used primarily as a personal residence;

6 (7) "fund" means the oil and hazardous substance release  
7 response fund;

8 (8) "hazardous substance" means

9 (A) an element or compound that, when it enters into  
10 or on the surface or subsurface land or water of the state,  
11 presents an imminent and substantial danger to the public health  
12 or welfare, or to fish, animals, vegetation, or any part of the  
13 natural habitat in which fish, animals, or wildlife may be found;  
14 or

15 (B) a substance defined as a hazardous substance under  
16 state or federal law or by regulations adopted under state or  
17 federal law;

18 (9) "oil" means petroleum products of any kind and in any  
19 form, whether crude, refined, or a petroleum by-product, including  
20 petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily  
21 refuse, oil mixed with other wastes, liquified natural gas, propane,  
22 butane, and other liquid hydrocarbons regardless of specific gravity;

23 (10) "release" means an intentional or unintentional release  
24 into the environment of the state.

25 \* Sec. 2. AS 46 is amended by adding a new chapter to read:

26 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

27 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)  
28 Except as provided in (b) of this section, a person in charge of a  
29 vehicle, vessel or container from which, or a place at which, a

hazardous substance is released shall report the release to the department and appropriate public safety agencies promptly after learning of the release.

(b) The commissioner may enter into an agreement with a person for the periodic reporting of a controlled release of a hazardous substance if the release is not into water.

Sec. 46.09.020. CONTAINMENT AND CLEANUP OF A RELEASED HAZARDOUS SUBSTANCE. (a) A person who causes a release of a hazardous substance shall make reasonable efforts to contain and clean up the hazardous substance promptly after learning of the release, unless the commissioner determines

(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is technically infeasible;

(2) that containment or cleanup would cause greater environmental damage than the release would cause if unabated; or

(3) that containment or cleanup would pose a greater threat to human life or health than the release itself.

(b) The commissioner shall develop guidelines prescribing general procedures and methods to be used in the containment and cleanup of a hazardous substance.

(c) If the commissioner determines that the containment or cleanup of a hazardous substance undertaken is inadequate, the commissioner may direct the person undertaking the containment or cleanup to cease and may undertake the containment or cleanup directly or by contract.

(d) If it appears to the commissioner that the cause or responsibility for the release of a hazardous substance is unclear or unexplained, the commissioner may immediately undertake the containment

and cleanup of the release unless the commissioner determines

(1) after consulting the Environmental Protection Agency or appropriate public safety agencies, that containment or cleanup is technically infeasible;

(2) that containment or cleanup would cause greater environmental damage than the release would cause if unabated; or

(3) that containment or cleanup would pose a greater threat to human life or health than the release itself.

(e) The commissioner shall enter into agreement with the Environmental Protection Agency, and may enter into agreements with other persons and municipalities, in order to

(1) facilitate a coordinated and effective hazardous substance release response in the state;

(2) provide for cooperative hazardous substance release notification procedures; or

(3) provide for cooperative review of hazardous substance release response contingency plans submitted to the department.

Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may request the governor to determine that an actual or imminent release of a hazardous substance constitutes a disaster emergency under AS 26.23. If the governor declares a disaster emergency under AS 26.23, the commissioner may assist the adjutant general in the relief of the emergency.

Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP. The commissioner may contract with a person or a municipality for personnel, equipment, or services that may be useful to carry out the requirements of this chapter. If the commissioner determines that it is infeasible to contract with a person or a municipality, the commissioner may establish and maintain containment and cleanup personnel,

1 equipment, and supplies necessary to carry out the requirements of  
2 this chapter.

3 Sec. 46.09.050. PEACE OFFICERS. Employees of the department  
4 designated by the commissioner as enforcement officers in the imple-  
5 mentation of this chapter are peace officers of the state.

6 Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter  
7 into supplementary agreements, reciprocal arrangements, and compacts  
8 with another state or country for the implementation of this chapter  
9 subject to the approval of the Congress of the United States, if  
10 required, under the Constitution of the United States.

11 Sec. 46.09.070. MUNICIPALITIES. (a) If a provision of this  
12 chapter or of a regulation adopted by the commissioner under this  
13 chapter conflicts with the charter, ordinance, or regulation of a  
14 municipality, the provision of this chapter or of the regulation  
15 adopted by the commissioner under this chapter prevails.

16 (b) Authority to contain, clean up, or prevent a release or  
17 threatened release of oil or of a hazardous substance, and to exercise  
18 other powers necessary to implement AS 46.08 - AS 46.09, are granted  
19 to municipalities that do not otherwise have that authority. Except  
20 as provided in (a) of this section, a municipality may exercise its  
21 police power within the area of the municipality.

22 Sec. 46.09.080. REGULATIONS. The commissioner shall adopt  
23 regulations necessary to implement the provisions of this chapter.

24 Sec. 46.09.900. DEFINITIONS. In this chapter

25 (1) "commissioner" means the commissioner of environmental  
26 conservation;

27 (2) "containment and cleanup" includes the direct and  
28 indirect efforts associated with the prevention, abatement, contain-  
29 ment, or removal of a hazardous substance, the restoration of the

environment to its former state, and incidental administrative costs;

(3) "department" means the Department of Environmental Conservation;

(4) "hazardous substance" means

(A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or

(B) a substance defined as a hazardous substance under state or federal law or by regulations adopted under state or federal law;

(5) "release" means an intentional or unintentional release into the environment of the state.

\* Sec. 3. AS 26.23.050(b) is amended to read:

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to funds regularly appropriated to state and local agencies. The second recourse shall be to funds available in the disaster relief fund or the oil and hazardous substance release response fund, as appropriate. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding any limitation imposed by AS 37.07.080(e), transfer and spend money appropriated for other purposes or, in situations involving natural disasters, borrow from the United States government or other public or private sources for a term not to exceed two years.

\* Sec. 4. AS 26.23.230(1) is amended to read:

(1) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or nonmilitary man-made cause including, but not limited to, fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT DANGER OR DAMAGE], volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, equipment failure, or shortage of food, water, fuel, or clothing, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage;

\* Sec. 5. AS 37.05.159 is amended by adding a new subsection to read:

(g) Notwithstanding the provisions of (b) of this section and AS 37.07.080(e), the governor may transfer \$1,000,000 during a fiscal year from the reserve for emergency operating expenses account to the oil and hazardous substance release response fund (AS 46.08).

\* Sec. 6. AS 44.19.050 is amended to read:

Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049, "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause including, but not limited to, fire, flood, earthquake, landslide, avalanche, wind-driven water, weather condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air contamination, blight, infestation, explosion, [OR] riot, or the release of oil or a hazardous substance requiring prompt action to avert environmental danger or damage.

\* Sec. 7. AS 46.03.290(a) is amended to read:

(a) When the department finds that an actual or imminent

1 discharge of oil, a hazardous substance, or low level radioactive  
2 materials to the air, water, land or subsurface and of the state  
3 poses an immediate threat to the public health or welfare, or the  
4 environment of the state, it may issue an order declaring an emergency  
5 and directing a person or persons to take action the department  
6 believes necessary to meet the emergency, and protect the public  
7 health, welfare, or environment.

8 \* Sec. 8. AS 46.03.760(a) is amended to read:

9 (a) A person who violates or causes or permits to be violated a  
10 provision of this chapter other than AS 46.03.250 - 46.03.314, or a  
11 provision of AS 46.04 or AS 46.09, or a regulation, a lawful order of  
12 the department or a permit, approval, or acceptance, or term or  
13 condition of a permit, approval, or acceptance issued under this  
14 chapter or AS 46.04 or AS 46.09 is liable, in a civil action, to the  
15 state for a sum to be assessed by the court of not less than \$500 nor  
16 more than \$100,000 for the initial violation, nor more than \$5,000 for  
17 each day after that on which the violation continues, and that shall  
18 reflect, when applicable,

19 (1) reasonable compensation in the nature of liquidated  
20 damages for any adverse environmental effects caused by the violation,  
21 that shall be determined by the court according to the toxicity,  
22 degradability and dispersal characteristics of the substance dis-  
23 charged, the sensitivity of the receiving environment, and the degree  
24 to which the discharge degrades existing environmental quality;

25 (2) reasonable costs incurred by the state in detection,  
26 investigation, and attempted correction of the violation;

27 (3) the economic savings realized by the person in not  
28 complying with the requirement for which a violation is charged.

29 \* Sec. 9. AS 46.03.765 is amended to read:

2           Sec. 46.03.765.   INJUNCTIONS.   The superior court has jurisdic-  
3   tion to enjoin a violation of this chapter, [OR] AS 46.04, or AS 46.09  
4   or of a regulation, a lawful order of the department, or permit,  
5   approval, or acceptance, or term or condition of a permit, approval,  
6   or acceptance issued under this chapter, [OR] AS 46.04, or AS 46.09.  
7   In actions brought under this section, temporary or preliminary relief  
8   may be obtained upon a showing of an imminent threat of continued  
9   violation, and probable success on the merits, without the necessity  
10  of demonstrating physical irreparable harm. The balance of equities  
11  in actions under this section may affect the timing of compliance, but  
12  not the necessity of compliance within a reasonable period of time.

13 \* Sec. 10. AS 46.03.780(a) is amended to read:

14           (a) A person who violates a provision of this chapter, [OR]  
15 AS 46.04, or AS 46.09, or who fails to perform a duty imposed by this  
16 chapter, [OR] AS 46.04, or AS 46.09, or violates or disregards an  
17 order, permit, or other determination of the department made under the  
18 provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively,  
19 and thereby causes the death of fish, animals, or vegetation or other-  
20 wise injures or degrades the environment of the state is liable to the  
21 state for damages.

22 \* Sec. 11. AS 46.03.790(a) is amended to read:

23           (a) Except as provided in (d) - (f) of this section, a person  
24 who negligently violates a provision of this chapter, [OR] AS 46.04,  
25 or AS 46.09, or of a regulation, lawful order of the department, or  
26 permit, approval, or acceptance, or term or condition of a permit,  
27 approval, or acceptance issued under this chapter, [OR] AS 46.04, or  
28 AS 46.09 is guilty of a class B misdemeanor.

29 \* Sec. 12. AS 46.03.790(b) is amended to read:

30           (b) Except as provided in (d) - (f) of this section, a person

1 who knowingly violates a provision of this chapter, [OR] AS 46.04, or  
2 AS 46.09, or of a regulation, lawful order of the department, or  
3 permit, approval, or acceptance, or term or condition of a permit,  
4 approval, or acceptance issued under this chapter, [OR] AS 46.04, or  
5 AS 46.09 is guilty of a class A misdemeanor.

6 \* Sec. 13. AS 46.03.790(d) is amended to read:

7 (d) Notwithstanding (a) and (b) of this section, a person who  
8 fails to provide or falsely states information required under AS 46.-  
9 03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and,  
10 upon conviction, is punishable by a fine of not more than \$25,000, or  
11 by imprisonment for not more than one year, or by both. Each unlawful  
12 act constitutes a separate offense.

13 \* Sec. 14. AS 46.04.010 is amended to read:

14 Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The de-  
15 partment shall promptly seek reimbursement [, EITHER] under AS 46.03.-  
16 760(e), AS 46.08.070, or from an applicable federal fund, for the  
17 expenses it incurs in cleaning up or containing a discharge of oil.  
18 If the department obtains reimbursement for a portion of its expenses  
19 from a federal fund, the remainder of the expenses incurred may be  
20 recovered under AS 46.03.760(e) or AS 46.08.070. Money received by  
21 the department under this section shall be deposited in the general  
22 fund and may be appropriated by the legislature to the oil and hazar-  
23 dous substance release response fund (AS 46.08).

24 \* Sec. 15. Not later than January 1, 1987, the commissioner of  
25 environmental conservation shall develop guidelines under AS 46.09.020,  
26 added by sec. 2 of this Act.

27 \* Sec. 16. Not later than October 1, 1987, the commissioner of  
28 environmental conservation shall adopt regulations under AS 46.09.080,  
29 added by sec. 2 of this Act.

1 \* Sec. 17. This Act takes effect immediately in accordance with AS 01.-  
2 10.070(c).  
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DEC NEWS

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PRESS RELEASE FROM THE PUBLIC INFORMATION OFFICE  
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
POUCH O, JUNEAU, ALASKA 99811 (907) 465-2606

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Bill Sheffield, Governor

Bill Ross, Commissioner

Joe Ferguson, Information Officer

FOR IMMEDIATE RELEASE

JANUARY 29, 1986

JUNEAU--DEC Commissioner Bill Ross today testified on behalf of Governor Bill Sheffield before the House Resources Committee in favor of House Bill 470, a measure that would establish an Oil and Hazardous Substance Release Fund to deal with spills of hazardous substances. The bill is sponsored by Rep. Mike Davis of Fairbanks. If passed by the Legislature, it would broaden the State's current Oil Spill Response Fund to allow the cleanup of hazardous substances in addition to oil, gasoline or other petroleum products.

In his testimony, Commissioner Ross indicated the proposed legislation would fill a gap in the State's available tools for dealing with improper hazardous waste disposal or spills. He said, "Access to federal funds for cleanup may not be as prompt as required and funds may not always be available, since the federal ranking system may not assign a sufficiently high priority for many spill occurrences or cleanup needs in Alaska. Federal priorities are weighted toward highly populated areas." Many situations that require prompt, professional response occur in remote areas, adding to the difficulty of cleanup efforts.

Ross explained that HB 470 creates the mechanism for prompt response when spills or improper disposal require either immediate removal or costly

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remedies that cannot be charged to responsible parties or do not clearly fall under the responsibility of existing programs.

Governor Sheffield bases his support for the bill on the success of the existing Oil Spill Response Fund, which will be expanded under this measure to include hazardous waste spills. Ross said the existence of the oil spill fund encourages spillers to act quickly to contain and clean up their spills. "If they wait for DEC to perform the cleanup, it often costs them more in later reimbursement expenses. However, the real usefulness of the fund is to clean up a problem promptly when it is difficult to ascertain who is responsible for a discharge, when the spiller is reluctant to clean up an incident, or when a cleanup has been inadequate. It is important to include hazardous substances under such a program because they may be even more harmful to public health in certain cases than petroleum products," Ross said.

The Commissioner explained that monies used from the fund would be required to be reimbursed, just as the oil spill fund has been in the past. The existing oil spill program has dealt with a number of major events and many smaller incidents in its nine years. Of the \$1.2 million spent, approximately \$1.1 million has been repaid to date by those responsible for spills.

In his testimony regarding funding for the bill, Commissioner Ross said that the Sheffield Administration proposes that the fund be used to

respond to small or moderate emergencies and cleanups, site investigations of major hazardous spill or disposal sites, and for matching funds needed to obtain EPA monies from the federal Superfund program. State funding required to initiate the program could thus be limited to the \$1 million range. He explained, "For large, expensive cleanups where EPA superfund dollars are not available, DEC should not use this emergency fund. A better option would be to seek capital budget appropriations for any major cleanups, thus allowing for the appropriate level of public scrutiny and debate on major projects, or if absolutely necessary, provide statutory authority for the Governor to declare an emergency and tap funds designated for that purpose."

Ross said, "The legislation has strong appeal because it is straightforward, providing the ability to do what has to be done promptly and efficiently, minimizing confusion as to whether there is adequate funding and available staff to do the job. It would give DEC a way to manage and coordinate responses regardless of who is responsible, where the event has occurred, and what has been released. Once proper cleanup has been completed, DEC can levy enforcement penalties and recover expenses charged to the fund."

# # #

HOUSE BILL NO. 470

An Act Relating to the Release of Oil and Hazardous  
Substances; and Providing for an Effective Date

Testimony presented by James M. Posey, ARCO Alaska, Inc.  
to the House Resources Committee, January 29, 1986.

Mr. Chairman and members of the committee, my name is Jim Posey. I am the Manager of Issues Advocacy. I have with me today Mr. Thomas R. Fink, the Environmental Conservation Manager.

We appreciate the opportunity to present this testimony today on this very important piece of legislation. ARCO Alaska, Inc., is a concerned corporate citizen and we consider environmental protection to be a paramount concern in our total activities and encourage environmental statutes that are based on scientific facts and urge that they be adopted and implemented in a sound and cost effective manner.

ARCO Alaska, Inc. has reviewed HB 470 and is of the opinion that it does little to enhance environmental protection, and it circumvents the normal appropriations process.

To the extent that legislators feel that the existing statutory framework should be changed to provide for an oil and hazardous spill fund, modification of existing AS 46, Chapter 04, would seem to be a more appropriate vehicle for expansion to include hazardous substances.

While we recognize that there may be a legitimate need to expand the existing statute to include hazardous substances requiring a spiller to clean those substances up and respond in damages, we do not feel that establishing a fund without adequate safeguards on its expenditures is a wise course or one that enhances environmental protection.

In this time of falling revenues to the State, it is not appropriate to establish a new special purpose fund that would siphon off general revenues that would escape the close scrutiny of the appropriations process.

Therefore, we do not believe that this legislation is necessary or fiscally responsible. Existing state and federal statutes, such as the Superfund (CERCLA), adequately address the environmental concerns for which this bill is intended.