

SB

375

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

TO: Senate Resource Committee Members February 21, 1986
FROM: Senate Resource Committee Staff *MSK*
RE: SB 375 "An Act relating to the release of oil and hazardous substances; and providing for an effective date."

This bill is the Senate companion legislation to HB 470. CSHB 470 (Resources) is currently in a subcommittee of the House Finance committee. Attached is a marked copy of the house bill that shows the differences between the House CS and SB 375. It is anticipated that today's hearing on the bill will be limited to public testimony.

When this bill comes back to the committee at its next hearing as a proposed committee substitute, it is anticipated these amendments will be among those included unless there is specific objection. Attached is additional material that has come in since the last hearing.

Oil Pollution Control Programs in Alaska
Legislative and Fiscal History

1976. SB 406, "An Act relating to oil terminal facilities and the marine transportation of crude oil, refined petroleum products or their by-products", was passed by the legislature (ch 266, SLA 1976). SB 406 created a revolving loan fund within the Dept. of Environmental Conservation to implement statutory provisions regarding oil spill containment and cleanup.

All penalties recovered under AS 30.25.140 - .150 were paid to the department to be deposited in the Coastal Protection Fund. The fund also received assessments from oil tankers based on the degree of risk of an oil spill that each tanker presented.

1977. The Oil Spill Mitigation Account was established under AS 46.03.758(k) (ch 129, SLA 1977). This paragraph, located in the section entitled "Civil penalties for discharges of oil", provides 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 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."

1978. The U.S. Supreme Court ruled in Ray v. Atlantic Richfield Co. that states could not regulate the design or construction of oil tankers. On the basis of that ruling, the U.S. District Court for the District of Alaska, in Chevron v. Hammond, ruled that the state's assessment program under AS 30.25 was unconstitutional. The Coastal Protection Fund was also found to be invalid because of a violation of dedicated fund provisions, in which risk charges collected by the state were dedicated to the fund.

1979. Governor Hammond introduced HB 205, "An Act relating to the prevention and control of oil pollution". Attached to the bill was a fiscal note providing for \$350.0 in program receipts for state oil spill cleanup expenses. Program receipts were based upon the levying of an assessment on oil terminal facilities. This assessment provision was later deleted from the committee substitute for HB 205.

1979 (Continued). The legislature appropriated \$991.0 (based on program receipts) for administration of the Oil Pollution Control program and the Coastal Protection Fund (\$6000.0). Only a small amount of program receipts were collected, however, because of the Chevron v. Hammond decision. The decision did not, however, appreciably reduce the department's responsibilities for oil pollution control established under SB 406. The department's FY80 budget request for \$450.0 was reduced to \$250.0.

1980. CSHB 205 was passed by the legislature (ch 120, SLA 1980). Attached to the bill was a fiscal note for \$1542.6, of which \$1000.0 was for an oil spill reserve and \$542.6 was for personal services, travel, contractual, commodities and equipment expenses associated with the establishment of AS 46.04 (Oil Pollution Control).

The fiscal note stated that "It is recommended 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. Costs recovered from the spiller or from federal funds will be deposited in the general fund so that the net cost to the state should be less than the one million dollars."

The oil spill reserve exists only as the intent language stated in the fiscal note.

1981. The legislature appropriated \$250.0 to the oil spill reserve.

1983. The state recovered \$350.0 in a settlement with Alyeska Pipeline Co. for two spills that occurred in 1979.

1984. The legislature appropriated \$250.0 to the oil spill reserve. The state received a \$597.9 reimbursement from the federal government for expenses incurred by the state in cleaning up the Nome oil spill.

1985. The department requested \$550.0 for FY86 to bring the oil spill reserve back to the \$1000.0 level. No money was appropriated.

1986. The department requested \$300.0 to be appropriated to the oil spill reserve in the FY87 budget.

HB 470 and SB 375, both entitled "An Act relating to the release of oil and hazardous substances", are introduced. The bills would establish two new chapters within AS 46. AS 46.08 would establish the Oil and Hazardous Substance Release Response Fund, and AS 46.09 would establish a Hazardous Substance Release Control chapter.

Reserve for Emergency Operating Expenses Account
Legislative History

1980. The Reserve for Emergency Operating Expenses Account (Rainy Day Fund) was established in AS 37.05.159. Paragraph (e) specifies that the governor may transfer up to \$5 million during a fiscal year from the Rainy Day Fund to the Fire Suppression Fund to pay the costs of fire suppression. Paragraph (f) specifies that the governor may transfer up to \$5 million during a fiscal year from the Rainy Day Fund to the Disaster Relief Fund.

1982. Paragraph (e) was amended (ch 30, SLA 1982) to allow the governor to transfer up to \$9 million during a fiscal year from the Rainy Day Fund to the Fire Suppression Fund. Language was added, stating that "The fund may not be used for capital expenditures."

1982. In Opinion #13, the Attorney General determined that AS 37.05.159 "Does not represent an unconstitutional dedication of public funds under sec. 7, art. IX, of the state constitution, since money once it is appropriated loses its character as revenue for purposes of the dedicated funds prohibition."

1985. OMB Associate Director Jay Hogan wrote a memorandum to DNR Commissioner Esther Wunnicke stating that "As of March 1985, the Fire Suppression Fund account in the Department of Natural Resources (DNR) will be converted from a noncontinuing to a continuing operating account. Balances at the end of each fiscal year will carry forward to the next fiscal year."

On July 1 of each fiscal year, the State Accountant will review the balance carried forward from the prior fiscal year and then make a transfer from the Rainy Day Fund to the Fire Suppression Fund in the amount necessary to bring the balance to the \$9,000,000 level."

These fund procedures are not mandated by statute, however, and neither the Fire Suppression Fund nor the Disaster Relief Fund requires that any money necessarily be transferred by the governor from the Rainy Day Fund to these funds.

1986. HB 470 and SB 375, both of which would establish an Oil and Hazardous Substance Release Response Fund, are introduced. Both bills would amend AS 37.05.159 by adding a new paragraph (g) that would allow the governor to transfer money from the Rainy Day Fund to the response fund. CSHB 470 would allow the governor to transfer \$1,000,000 during a fiscal year from the Rainy Day Fund to the response fund, and SB 375 would allow the governor to transfer a maximum of \$10,000,000.

Position Title Ecologist II			No. of Positions One	Range/Step 1B A	Borg. Unit GGU	Class. 128	Approv.	Disapp.																									
Time Status Full Time	Staff Months 12	IRP Number	Location Juneau		Election District																												
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**Req. For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Water Quality Management

FY 87

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 Revised Date

Position Title Clerk Typist III			No. of Positions One	Range/Step B A	Barg. Unit GGU	Clav. 144	Approv.	Disapp.
Time Status Full Time	Staff Months 12	BP Number	Location Juneau		Election District			
			Justification					
Type of Expenditure		Amount	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. We expect to fill this position on October 1, 1987. Funding for nine months has been requested for FY 87.					
1	2	3						
Salary	14.7							
Benefits	5.3							
Premium Pay								
Other								
Total Personal Services		20.0						
Taxes								
Contractual		3.5						
Commodities		1.5						
Equipment		2.0						
Other								
Total Cost		27.0						
Receipt Code	Funding Source							
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	G. P. Match 1003							
	General Funds 1004	27.0						
	I-A Receipts 1005							
	Program Receipts 1020							
	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

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 Revised Date

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Org. Unit GGU	Class Log	Appoint. Log	Disapp. Log																																				
Time Status Perm. Part Time			Location Juneau		Election District																																							
Staff Month 6			SF Number																																									
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**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southeast Region

FY 87

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 Revised Date

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Borg. Unit GGU	Org. 124	Appov.	Disapp.																									
Time Status Full Time	Staff Months 12	RP Number	Location Anchorage		Election District																												
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Agency	<u>Environmental Conservation</u>
BRU	<u>Environmental Quality</u>
Component	<u>Southcentral Region</u>

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Bng. Unit GGU	Gov.	Approv.	Disapp.
Time Status	Staff Months	RP Number	Location	Division District	148			
Full Time	12		Fairbanks					

Type of Expenditure		Amount
1	2	3
Salary	32.1	
Benefits	9.2	
Premium Pay		
Other		
Total Personal Services		41.3
Travel		5.0
Contractual		5.0
Commodities		3.5
Equipment		2.0
Other		
Total Cost		56.8

Receipt Code	Funding Source	Amount
	Federal Receipts 1002	
	G. F. Match 1003	
	General Funds 1004	56.8
	I-A Receipts 1005	
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	CIP Receipts 1061	
	Other	

Per BAA Use Only
 Key Number _____

Justification

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.

We expect to fill this position on October 1, 1987.

Funding for nine months has been requested for FY 87.

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Northern Region

FY 87

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 Revised Date

Board of Game postpones decision on wolves until spring

Continued from Page C-1

me absurd," Johnson said. "This is just another example."

In the Madison case a year ago, the state Supreme Court ruled that all Alaskans qualify as subsistence hunters, trappers and fishermen; and that all Alaskans have a priority over sportsmen or commercial fishermen when it comes to harvesting the state's resources.

In the Eluska case this past spring, the state Court of Appeals ruled subsistence activities cannot be restricted unless they threaten the conservation of wild resources. Alaskans caught hunting, fishing or trapping out of season can claim subsistence as a defense — unless the state has specifically provided for subsistence harvests, the appeals court added.

Board member Kirk Gay earlier this week raised questions about the subsistence

use of wolves. His query started Spengler thinking and led to her warning.

All of which happened despite Gay's doubts there is such a thing as a subsistence harvest of wolves.

"It's all related to a commercial value, one way or another," said the Anchorage big-game guide. "If a guy can afford an airplane, my gosh, he probably couldn't qualify for subsistence."

"The whole thing is very frustrating," said board member Vic Van Ballenberghe, who first proposed the end of land-and-shoot in eight of the 26 game management units that divide the state.

The game board tentatively agreed to continue a land-and-shoot ban on the North Slope (Game Management Unit 26). And it tentatively agreed, for the first time, to end land-and-shoot on the Kenai Peninsula (Units 7 and 15), around the Wrangell/St. Elias National Park and Preserve

(Unit 11), and on the west side of Cook Inlet (Unit 14). But final action must await the board's spring meeting.

Wolf harvests by aerial trappers are relatively small in all of these areas.

The board refused to block land-and-shoot where wolf harvests are significant: in the Nelchina Basin (Unit 13), in the Susitna Basin (Unit 16), and in the southeast Brooks Range (Unit 25A).

Board members expressed fears that if land-and-shoot is ended in those areas wolf numbers could increase rapidly. That, in turn, could lead to a decline in moose and caribou.

Eventually, Gay said, moose and caribou populations could drop to the point where the board would be inundated with pleas to shoot wolves from airplanes to help restore moose and caribou numbers.

The board has found itself in the middle of bitter de-

bates about such aerial hunting programs in the past, he said.

As long as wolf populations are stable — and state wildlife biologists say they are — there is no need to end land-and-shoot, Gay said.

Many people who testified before the board last week reflected that view.

But Van Ballenberghe, wildlife professor at the University of Alaska-Fairbanks, said land-and-shoot is unnecessary in much of Southcentral. Enough wolves would be taken to hold the population stable without land-and-shoot, he said.

The practice should be eliminated because it is offensive to some people, said Van Ballenberghe.

Many people who testified before the board also expressed that opinion.

Land-and-shoot wolf hunting was the main topic on the board's agenda for its eight day meeting in Anchorage

Section

B

Lawmakers review bill on subsistence

by Beth Barrett
Times Juneau Bureau

JUNEAU — A legislative committee today endorsed a bill that would return first preference in the harvesting of fish and game for subsistence uses to rural Alaskans.

The Senate State Affairs Committee adopted the bill as an alternative to a similar measure by Gov. Bill Sheffield, which was passed by the House last year but stalled in the Senate.

The new proposal, released last month by committee chairman Mitch Abood, R-Anchorage, will undergo a series of public hearings later this month.

The bill would make urban residents eligible for Tier 2 hunts, in which Alaskans would be allowed to apply for certain hunts based on residency, their need for the game, and the availability of other resources.

Subsistence is expected to be one of the most volatile and important issues of this legislative session. The state's original laws granting priority subsistence rights to rural residents were

struck down as unconstitutional, and broad groups of Alaskans became eligible to take fish and game.

Abood said he wants the new proposal substituted for last year's unsuccessful measure.

Sens. Bill Ray of Juneau and Vic Fischer of Anchorage, the two Democrats on the Senate State Affairs Committee, had raised concerns about the measure, saying the bill in its current form leaves too much to interpretation.

"I'm concerned about someone defining the words later on to mean something entirely different," Fischer said before the bill was adopted.

Ray said he wanted certain user groups, such as personal use groups, better defined in the bill.

Unless the state passes a law that meets the federal Alaska National Interest Lands Conservation Act of 1980, the Department of Interior has said it will take over fish and game management on federal lands in Alaska June 1.

Judge grants subsistence rights on any fresh water fishing stream

By RONNIE CHAPPELL
Daily News reporter

KENAI — Alaska residents are entitled to subsistence fish on any fresh water stream that supports a sport or commercial fishery, Superior Court Judge Elaine Andrews has ruled.

Under present state law, subsistence fishermen would have first right to catch fish in some of the state's premier salmon streams, including the Kenai, Anchor and Susitna Rivers.

In a January 17 decision, Andrews dismissed charges against Sterling resident Donald Skuse who was cited last summer for "snagging" six red salmon in the Moose River, a tributary of the Kenai.

Snagging — the jerking of a large treble-hook through a group of schooled fish — is a highly efficient "rod and reel" technique that has been outlawed in Alaska.

When caught, Skuse told an undercover Fish and Wildlife Protection Officer that he was "snagging" for subsistence

purposes.

Skuse prevailed in court, Andrews said, because the state failed — as required by law — to provide him with an "adequate" Kenai River subsistence fishery. If the state had provided that fishery, it could have regulated its location, time, bag limits and means of take, she said.

The state argued that Skuse could have satisfied his subsistence needs by sport fishing on the Kenai River or

See Back Page, JUDGE

Judge

Continued from Page A-1

participating in other subsistence and personal use fisheries available on the Kenai Peninsula.

In the past, subsistence fishing in Cook Inlet has been limited to gillnetting in salt water. The state has also allowed for "personal use" dip net fisheries on the Kasilof and Kenai Rivers.

Andrews' decision means that subsistence fishing must be allowed on every stream in Alaska, said one Fish and Game official who asked not to be identified. "The way I read this, I could go down to the Anchor River between weekends and snag all I want."

The Anchor River is one of the first salmon streams in Alaska to open each summer to sport fishing. The king salmon fishery is so popular and so limited that it is open only three weekends a year.

The decision could also create problems on the Kenai River, where creation of a subsistence fishery will increase competition for a limited number of fish.

In recent years, the river has been the scene of a bitter salmon allocation fight between Anchorage sportsmen and Cook Inlet commercial fishermen. The anglers want to increase the number of king salmon they can catch by decreasing the fishing time given Kenai Peninsula set-netters.

"If this decision had to be rendered, it's good it was rendered while the subsistence question is before the legislature," said Russ Redick, executive director of the Alaska Sportfishing Association. "The idea that every fish stock in every stream has to be open to subsistence is ridiculous. We've got to move on from this. That's why we need a rational decision out of the legislature."

Lawmakers are considering a variety of bills amending the state's 1978 subsistence law. Most would restrict subsistence to rural residents or give the Boards of Fisheries and Game increased authority to restrict subsistence users.

Gov. Bill Sheffield tried to win passage of a subsistence bill last year after the Alaska Supreme Court ruled that urban Alaskans with no traditional dependence on fish and game are entitled to subsistence hunt and fish.

reflect those of the Daily News-Miner.

FRID 1/26/86

Toward a real solution

We think you'll find interesting reading on the facing page today. We invited three Fairbanksans to share their opinions on the subsistence issue, examining the aspects of it that have created the controversy Alaska faces today.

As you read their views, we'd like to toss in our own.

It's clear to us that Alaska will not be able to find a long-term resolution to the subsistence question until the conflict between federal and state law is resolved.

The federal law—the Alaska National Interest Lands Conservation Act—requires us to give a subsistence priority to rural residents. The state Constitution requires us to treat all Alaskans equally, and further says that fish and wildlife resources are reserved to the people for common use.

If we seek to comply with the federal mandate, any legislation we muddle together is going to perpetuate the inequity, and thus the problem.

Since our congressional delegation advises against lobbying for changes in the act, it's clear we'll have to go to the courts in our efforts to dispense with a discriminatory ruling.

Until Alaska does that, we're only going to succeed at coming up with such a complex tangle of laws and regulations that discriminate against urban Alaskans and create such a maze of requirements for rural Alaskans that the issue will continue to divide us.

At least two of the gubernatorial candidates in the forthcoming election have said that they would challenge the federal law in court, if elected. Short of electing a governor that will do this, the legislators could direct the administration to mount a court challenge.

It is federal interference of a dangerous,

By JOE VOGLER

Subsistence is an insidious and divisive measure of the United States government, designed and intended to divide Alaskans.

It is nothing less than racial discrimination with a "rural" veil, which hides nothing of its ugly nature and purpose.

It violates Article I of Section 3 of the Alaskan Constitution, "no person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex or nation-

al origin." It violates Article VIII of Section 3, "Wherever occurring in the natural state, fish, wildlife and waters are reserved to the people for common use."

Its ugly purpose was revealed in the testimony at the hearing of the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries, House of Representatives, 96th Congress, First Session on HR 39,

Guest Opinion

NR 2219 on March 10, 1979, in Fairbanks, Alaska.

After a long opening statement by Mr. William Williams, president, Tanana Chiefs Conference, in which he mentions the lifestyle of the Native people, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights of the United Nations which the United States signed Oct. 5, 1977, he requested some kind of federal administration oversight as a means of protection, (Page 1328 and 1329). On page 1330, Williams made it very clear that the final access to game as it became scarcer was to be, "finally only Native."

On page 1331, he argued that "Let us, the original users have the last chance and then when it gets low let us cut everybody off . . ."

It was then that Mr. Dingel read from the Alaska Native Claims Settlement Act, "all aboriginal titles, if any . . . and including any aboriginal hunting or fishing rights that may exist are hereby extinguished," Section 4, b. 85 st. 688. And continued, "Now, that is the law and I understand that is the compact between the government and

the Natives of Alaska. Now am I in error to read that as a clear statement that with regard to subsistence hunting, it is the position of both the federal government and the state, which was a participant to it and the Native peoples of Alaska that the Native peoples as regards subsistence hunting are treated just like anybody else? Am I in error?"

Williams: "I think you are in error."

Dingel: "Am I in error? What other section do you cite then, please?"

After some more disagreement, Dingel remarked about Williams' offer to research the question and send him a personal answer, "I think it would be very helpful. Maybe somebody around here knows what the answer to that question is. I always understood when that question was voted on that we had decided the question of Native rights in Alaska for all purposes, including hunting and fishing. It was represented on the floor, I was there."

A little later, from Rep. Don Young: "I will say this and I think we have to keep this in mind, the concept of subsistence was not to be based upon racial qualifications. Subsistence is a rural question, and it is very clear in the Huckaby Bill, because it is rural residents of Alaska, including Natives and non-Natives. That makes it a non-racial issue, and I hope we keep it at that

level, because it is the only way it will survive. That is a fact of life."

I would ask if the subsistence right to hunt walrus, polar bear and whales, which is not available to rural living non-Natives, doesn't make a farce of this position of Rep. Young? There, it isn't a question of rural, it is race and race alone. See Sunday News-Miner, Oct. 27, 1985, Section D, Outdoors Page 3 for an article on this subject.

Now, I would ask you to examine the Declaration of Policy and the Alaskan Native Claims Settlement Act. "Section 2, Congress finds and declares that (b) the settlement should be accomplished rapidly with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participations by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationship between the United States Government and the state of Alaska."

With this clear Declaration of Policy, the act was passed Dec. 18, 1971.

It is no wonder that Dingel, who was also a member of that Con-

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divisive nature

gress, was perplexed by Williams' testimony.

With this act of 1971 in force, the Congress of 1980 passed the Alaska National Interest Lands Conservation Act of Dec. 2, 1980, with Title VIII dealing with subsistence and the trouble started.

How Congress could square this section with Section 2 of Article IV of the Constitution is beyond me. No other states' citizens are thus divided. Where are the Zobel on this matter? How does it provide for the equal protection clause of Section I, Article XIV?

With all of the problems of integrating two societies and peoples, Alaska has had less problems in my observations and I know there have been many instances of discrimination against Native peoples.

Then with the settlement spelling out a rejection of reservations and special privileges, a later Congress injects this explosive matter. It is nothing less than a deliberate and criminal act of the federal government to provoke trouble and to promote dissension. King George was more honest with his scalp bounty system, even if a lot more bloody, but the final act of this congressional criminal act may be no less bloody and the damage to Alaskan harmony and interracial relations may be very serious and long-lasting.

It is more federal interference and is of a most despicable and dangerous nature. A governor with

any courage or principles would have totally rejected this concept and have fought it in the courts. Both Govs. Hammond and Sheffield have embraced it to their shame and to the great detriment of Alaska.

It is time for a governor of Alaska to tell the federal government to mind its own business and let us mind ours. There, I took more than my usual three words to outline their destination!

Finally, I have killed many moose and have known many who hunted moose and they were all hunting for meat for their family freezer or locker, regardless of where they lived.

And for those who would hang their subsistence hats on Section 4 of Article VIII, "... subject to preferences among beneficial uses," I would cite the example given in the minutes of the Constitutional Convention regarding this clause: It would apply to prohibiting the hunting and fishing on a certain lake or area if it were especially suited for a scientific study purpose! That would be a preferential use!

Let us put the Feds back in their constitutional cage. I have been very successful in my courtly encounters with the borough and the state government. And I am now busy getting the attention of the federal government and herding it toward the cage. Wish me well.

Long-time Alaskan Joe Vogler is head of the Alaskan Independence Party.

Rural economy must be protected

By JIM KOWALSKY

Urban Alaskans too often want to think of subsistence in their own terms. Too few critics are willing to consider rural harvest of wild resources as an economic activity, a system that is the very basis for life in rural Alaska.

Subsistence is much more than a weekend moose hunt for sport or a two-week outdoor vacation after which the hunter returns to a regular job. It is a cultural tradition, but most importantly it is an economic reality. It is a seasonal round of harvests with community-wide participation. Rural communities could not exist without fish, game and edible plants.

The rural subsistence economy needs protection under law just as access to economic markets is regulated in the urban business world. The best way to protect the rural economy is by a legal subsistence priority for rural residents. People who live in the villages and depend on the resources for food would have harvest priority in times when the resources are in short supply.

Subsistence is an extensive network of non-commercial distribution of products through community and family sharing. It is supported by the traditional system of rural local land use and occupancy. The traplines, fish and hunting camps, set net sites, trails and game areas used by rural kinship groups and communities to support this system are other major elements of it. The use and occupancy of lands generally is subjected to local traditional customs and laws which define access but are not usually codified.

Rural subsistence is also a mixed economy, combining food harvests

with the small amount of available cash. The head of a village household pieces together as many opportunities as possible throughout the year. These could include a short summer wage job, perhaps collection of a little unemployment, putting out and tending nets for subsistence and maybe commercial salmon, picking large quantities of berries, hunting for moose in the fall, setting out traps in early winter, use of food stamps part of the winter, the sale of handcrafted products, winter hunting for a whole assortment of small game, and trapping for beaver and muskrat in spring.

The village family pieces together and utilizes a whole mix of activities to gain cash and to harvest locally available large and small game, fish and other wild food products. The harvest is shared with those who have no meat or are too old to hunt or fish.

Some of the pieces of this economy seem small and insignificant to urban Alaskans. But together they sustain life in the Bush. A recent study by Robert J. Wolfe and Robert J. Walker shows that dependence on subsistence increases with the distance from a city. Their study, "Subsistence Economies in Alaska: Productivity, Geography and Development Impacts," points out Minto residents harvest 22 times more fish, game and edible resources per capita than Fairbanks residents—933 pounds and 22 pounds respectively. People in Stevens Village on the Yukon harvest 48 times more (at 1,058 pounds per capita) than people in Fairbanks. And in Hughes on the Koyukuk, the people take in 68 times more fish and game per capi-

Guest Opinion

ta (at 1,498 pounds) than people in Fairbanks.

My use of these examples is not meant to imply that hunting and fishing is not an important activity for many urban Alaskans, which it certainly is. Rather, the data demonstrates that it is the economic characteristics and therefore the basic economy of entire Alaskan urban and rural communities and regions which differ so dramatically.

Wolfe and Walker show a direct relationship between remoteness in Alaska and dependence on subsistence. They also show that people depend less on subsistence in communities that have a high non-Native population, a relatively high community income and access to roads. That subsistence contributes to the well-being of much of our state is a fact generations of Native Alaskans have always known.

It is impossible for me—a white, middle-income urban Alaskan concerned about his family—to imagine any other urban resident purposely damaging another Alaskan's economic system.

Access to rural subsistence must be limited in times when the resources are in short supply. This concept of limited access to an economic resource is not new. Commercial salmon and halibut fishermen are subject to limited entry permits, as are sport hunting

guides, taxi cab drivers and tavern owners.

Dozens of business and commercial activities are regulated by laws that limit access. Subsistence is the work and business of rural Alaskan communities, and the subsistence priority is the ultimate "local hire." Urban society has taken extraordinary measures to protect its specific economic interests. Why, then, shouldn't the rural economy—a productive sector of Alaska—be afforded the same kind of protection?

The issue will be addressed in this session of the Alaska Legislature. Two bills—one by Republican Sen. Mitch Abood of Anchorage and the other by Gov. Bill Sheffield—have been filed. Abood's lengthy, complex proposal equivocally construes "rural" and "preferences" in terms so broad that it misses the mark entirely. It would cause terrible injustice to the rural economy.

On the other hand, Gov. Sheffield has proposed simply to insert into state law a clear subsistence priority for rural Alaskans. It would identify subsistence areas of Alaska on a case-by-case basis only when the need arises. It would also restore urban hunters' access to caribou, bison and sheep populations recently denied them.

Most importantly, the frail rural economy would receive the same kind of economic protections that urban Alaskan society has so eagerly arranged for itself and so blandly takes for granted.

Jim Kowalsky is director of wildlife and parks for the Tanana Chiefs Conference, Inc., of Fairbanks. TCC is a regional non-profit Native corporation for Interior Alaska. Kowalsky directs the subsistence advocacy program.

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Subsistence: a hard *Equal treatment should be keystone of any law*

By SAM HARBO

Should a Native elder in a small village receive hunting and fishing privileges that don't go to an equally deserving, low-income Native elder in North Pole or Delta? Should a wealthy government worker in a rural village get special privileges to hunt on public lands, privileges that aren't available to a low-income resident of a nearby larger community? They might, depending on what the Alaska Legislature does this session.

I believe the vast majority of Alaskans support subsistence privileges for those individuals and families whose continued existence and well-being depend on wild-caught fish and game. That is, for those individuals and families having a food dependence on those resources. So why the subsistence controversy? Because the current law and some of the proposed modifications to it are not based on need. Nor do they provide adequate protection for fish and game resources, because the current definition of subsistence uses can be interpreted to include uses outside the established regulations.

The current law gives a subsistence priority to those individuals having "customary and traditional" use of fish and game. Trying to develop a workable definition of those words has been one of the most elusive tasks the Alaska Boards of Fisheries and Game have ever faced. The courts fared no better; the Alaska Supreme Court finally resolved the matter by going to the legislative record established when the state bill was passed, interpreting "customary and traditional" by determining which groups of users the legislators specifically said would have the priority. The Chitina dipnetters gained near immortality by being named as a qualified group.

Why the controversy over subsistence in Alaska?

As Alaskans grapple to establish a fair state law in the face of federal intervention, the News-Miner asked three contributors to offer their views on the subsistence issue, its cause and solutions.

Offered today are the views of Alaskan Independence Party head Joe Vogler, former state Board of Game member Sam Harbo and Tanana Chiefs Conference subsistence advocacy director Jim Kowalsky.

Guest Opinion

tration, argue that we should keep "customary and traditional" as the basis for defining subsistence. But they would limit "customary and traditional" only to people living in rural communities in which the personal and family consumption of fish and game is a significant part of that community's economy. All individuals in a community so designated would get the priority. None of the individuals in communities not so designated would get the priority. An all-or-nothing approach.

Taking an all-or-nothing community approach is extremely unfair. Very wide ranges of income and great differences in dependence on fish and game exist among families in nearly all communities. How would we treat, for example, the communities of Barrow, Bethel, Cordova, Dillingham, Galeana, Glennallen, Haines, Kotzebue, Nenana, Nome, Tanana, Tok and Wrangell? None of those communities have only families with low incomes and great dependence on fish and game. Nor do any of those communities have only families with substantial incomes and very little dependence on fish and game.

believe preemption is inevitable.

If the state makes a successful, good-faith effort to provide the subsistence privilege to those individuals truly dependent on fish and game, but in the process also gives the privilege to those who qualify in nonrural areas, then at least we have ensured that the protected group under federal law is also protected under state law.

If a noncompliance case is then brought against the state, would a court rule against the state solely because we also protected subsistence uses in nonrural areas? I doubt it. If they do, then we seriously need to consider what it is the federal law actually is protecting—and why the rural designation is in federal law. Is it there as a result of effective lobbying during the chaotic last hours of ANILCA's passage?

We must keep in mind that if "rural" were not in the federal law, we would not even consider putting it in state law—because to do so is unjust. And for that very reason it was not there when the state law passed.

Advocates of the community approach argue that the patterns of sharing in a community dictate that the subsistence privilege must be on a community basis. Also, how would a community elder who is dependent on fish and game, but who

Prior to the Supreme Court action, about the only thing generally agreed to was that need was not a basis for granting the priority. However, even today some participants in the subsistence debate argue as if need were a basis; after all, it seems so logical that it should be.

If the subsistence priority is not based on need, on what is it based? Don't ask the Boards of Fisheries and Game; they couldn't figure it out. Nor did the attorney general's office. Again, the Alaska Supreme Court helped. Their decision, influenced by the legislative record, led the boards to conclude that any Alaska resident taking fish and game primarily for his/her own and his/her family's consumption, regardless of need, qualified for the subsistence priority. Such broad inclusion resulted in the illogical and very unfair Tier 2 hunts that we experienced last fall—hunts such as the subsistence bison hunt at Delta and the subsistence full-curl ram Dall sheep hunt near Tok. Obviously, the law must be modified.

Some advocates of change, including the current state adminis-

The all-or-nothing community approach would violate the one principle that must apply if a subsistence law is to be fair and just, and hence acceptable: all families similarly situated with respect to their use of and dependence on fish and game must be treated equally.

Fairness, justice and equal treatment—the public must believe those are occurring, otherwise we will continue to have substantial discord over the subsistence issue, as well as disrespect for and disregard of wildlife regulations. An essential element in a fair approach is that people similarly dependent on fish and game are treated the same, regardless of where they reside. Obviously I strongly disagree with those who advocate inserting the word rural into subsistence priority legislation.

Advocates of the rural provision claim we must comply with the federal law. That law restricts the priority to rural residents, without adequately defining rural. Without compliance, the advocates claim, federal preemption of state management on federal lands will occur. That is a worry, but I don't

is physically unable to procure those resources, be provided for if the priority were not community-wide? Those are real concerns, but they can be addressed adequately in an individual, need-based approach.

Sharing preceded the law and will continue regardless of whether or not a community has a privileged status. And the needs of subsistence-dependent, but physically impaired, elders, regardless of where they reside, can be provided for in a manner similar to that for blind Alaska residents—someone can be permitted to hunt and fish for them.

Although there are many different arguments raised in the subsistence debate, the most consequential one has to do with fairness, justice and equal treatment. A subsistence law having those attributes will be accepted by the people of the state. We cannot continue with subsistence regulations that destroy the social fabric of our state.

A retired associate professor of econometrics at the University of Alaska-Fairbanks, Sam Harbo served on the state Board of Game for more than 10 years.

ADN 1-31-86

Natives granted hunting rights to ducks, geese

Judge rules Indians, Eskimos
can take birds for food any time

By CRAIG MEDRED
Daily News reporter

Eskimos and Indians can hunt ducks, geese and swans for food at any time in Alaska, U.S. District Court Judge James A. von der Heydt has ruled.

Officials of the U.S. Fish and Wildlife Service said Thursday that they are still trying to determine the implications of the ruling.

"This does impact migratory birds statewide," said agency spokesman George Sura. "I've heard it called a mixed

bag. I don't know how it helps us. Obviously the service, in the long haul, is looking for a clear statutory basis for issuing subsistence regulations."

Von der Heydt ruled Monday that Alaska Natives are not bound by the federal Migratory Bird Treaty Act that bans spring and summer hunting, outlaws egg gathering, limits the weapons hunters can use, and sets bag limits for legal fall hunts.

The judge said the migrato-

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Judge rules Eskimos, Indians allowed to hunt

Continued from Page A-1

ry bird act was superceded by a clause in the Alaska Game Law of 1925 that says no regulations shall "prohibit any Indian or Eskimo, prospector or traveler, to take animals or birds during the closed season when he is in absolute need of food and other sufficient food is not available."

Von der Heydt's decision may have left open the possibility the agency could in some way regulate subsistence harvests under the terms of the Fish and Wildlife Improvement Act of 1978.

The ruling came in a suit filed by the Alaska Fish and Wildlife Federation and Outdoor Council. The groups sought to stop spring hunting of geese and egg gathering on the Yukon-Kuskokwim Delta.

Geese populations have

plummeted there over the past decade. Hardest hit have been cackling Canada geese, which have declined from an estimated 380,000 in 1965 to about 25,000 today. Populations of Pacific white-fronted geese, emperor geese and Pacific black brant that breed on the delta have also declined sharply.

State and federal biologists blame the declines on the reduction in goose wintering areas in the Lower 48, increases in the number of predators on the breeding grounds, poor weather, and spring killing by subsistence hunters.

The delta's human population has increased 42 percent in the past 20 years. This, the biologists say, has meant increased hunting of the geese. The growing use of motorboats and all-terrain vehicles

in spring hunts has led to more disturbances of nesting birds, biologists say.

Spring hunting and egg gathering have been limited for the past two years by a voluntary agreement among the Association of Village Council Presidents, the Alaska Department of Fish and Game, the U.S. Fish and Wildlife Service, the California Department of Fish and Game and two California sportsmen's groups.

But the wildlife federation and the outdoor council challenged those agreements, arguing that they didn't do enough to protect geese that have been creeping closer and closer to endangered species status.

"Initial reports indicate that the cooperative plan has been successful," von der Heydt said in his decision. "Appar-

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ducks, geese, swans for food at any time

ently, this has led to a major decline in the subsistence harvest of each of the species in question. The plan has also reduced egg-gathering activities. Of equal importance, because of the involvement of the Native community in the plan, increasing enforcement, including the issuance of citations, has occurred."

Native leaders on the delta said they will continue to abide by the cooperative agreements in an attempt to rebuild the geese populations.

"Hopefully, they want to see some increase in the size of the bird population," said Harold Sparck, executive director of Nunam Kitlutsisti, an Eskimo environmental group in Bethel.

"The chairman of our board, the guy who worked on this thing for the last 12 years, he

said this was also a good opportunity to thank the courts for giving social justice to the village Eskimos after 25 years of harassment," Sparck said.

Over the years, there have been various attempts by the Fish and Wildlife Service to end spring hunting on the delta. Those efforts came to an end in 1975, however, after a year of threats, confrontation and some gunfire between delta residents and service agents.

"This lawsuit probably will have no bearing on the cooperative agreement to manage the renewable resource," said Gene Pertola, president of the Bethel-based association of village presidents.

"I feel that it's probably a monumental decision in terms of the management of migratory birds in Alaska," added

Dave Cline, regional representative of the National Audubon Society. "I won't say that I don't have any worries, but I think it helps rather than hinders efforts to build a cooperative agreement. The (Native) groups that we have been working with have never asked for unregulated harvests.

"The people have dramatically reduced egg gathering. They have tried to not kill cackling geese. They are trying to cooperate, at least the majority of them."

But Cline added the situation could get messy if Alaska Natives took the decision literally and "thumbed their nose" at conservation needs.

"That's the worst that could happen," Cline said. "I would think that would be a serious mistake."

Malone says politics can't solve subsistence woes

By ROSEMARIE ALEXANDER
Clarion Correspondent

JUNEAU — Unless Alaskans learn to tolerate a variety of lifestyles, subsistence will always be a problem, says former Rep. Hugh Malone.

"We think that tolerance exists, but it doesn't," he said in an interview Monday.

The Kenai Democrat served in the House of Representatives during several subsistence battles. But this year, it's critical the Legislature get a new law on the books.

"What is the Legislature going to do with Judge Andrews' decision on snagging?" he asked. If her rule stands, he said, every commercial and sport fishing river and stream will also have to have a subsistence fishery.

Under the recent court ruling, charges of snagging red salmon were dismissed against Sterling resident Donald Skuse because he said he relied on the fish for food. District Court Judge Elaine Andrews cited the 1985 Alaska Supreme Court Madison decision which defines fishing for "personal consumption" as "subsistence," making it a priority over other uses.

"That's going to make a big difference in the management of the Kenai River and all the river fisheries on the Kenai Peninsula," Malone said. "We're going to have to adopt regulations for subsistence and make those work."

The recent Skuse decision prompted senators to add a provision in House Bill 288 stating that subsistence is not a defense for

violating fish and game laws.

State Fish and Game Subsistence Director Steve Behnke said it is one of the few provisions in a Senate bill that may stand, once the bill starts moving through committees.

"We in the department are interested in seeing some kind of provision like this," he said in an interview. It would be helpful to the boards in preventing court challenges like the Skuse case, he said.

But Behnke never had a chance to tell that to the Senate State Affairs committee Tuesday. A statewide teleconference was short-lived when Chairman Mitch Abood decided the new bill had too many problems.

The bill defines subsistence as "non-commercial, customary and traditional

uses" for personal consumption by a rural Alaskan who lives in an area where subsistence "is a significant characteristic of the economy." It also requires that a person live in area twelve consecutive months.

That cuts out urban natives who rely on fish and game for their food, said Juneau Sen. Bill Ray. "There are several hundred people living in the Juneau Native village who have a subsistence way of life," Ray objected, pounding the table. "That's all they do...Are you going to say that those people don't have the same opportunity?"

"I'm not saying that. The Supreme Court said that," Abood answered.

The Alaska National Interest Lands Act

See SENATE, back page

...Senate subsistence bill moves

Continued from Page 1

(ANILCA) limits subsistence to rural Alaskans. State law does not mention rural, and in 1985, the Alaska Supreme Court extended subsistence to all residents.

The Senate version of HB 288 gives the Boards of Fish and Game authority to identify the kind and estimate the amount of fish and wildlife that can be used for subsistence in a rural area. If a species is not identified as a necessary part of living off the land, anyone can hunt or fish it under sport regulations.

In determining any restrictions, the boards must be "consistent with sustained yield, sound management, and the maintenance of healthy fish stocks and game populations," according to the bill. Only the words sustained yield are used in current statutes and sound management may not pass federal standards, Behnke said.

Abood said it's all a matter of common sense. The Anchorage Republican called it "all a matter of whose sound management is being gored." Alaska Federation of Natives President Janie Leask warned

senators that only urban Alaskans will suffer the consequences if a subsistence bill is not passed.

"Rural people are protected by ANILCA," she said. "If the state does not bring the law into compliance, the federal government will take over management of federal lands, and that management provides a subsistence priority. It's the urban Alaskans (who will suffer), through the Madison decision, which classifies everybody as a subsistence user," she said.

She predicted that pressure will mount on the Kenai, considered the most popular salmon fishing river in Alaska. The Skuse case sets a precedent, she said, "that snagging and set-net fishing for Cook Inlet salmon stocks normally harvested by sport fishermen in freshwater rivers is protected by the Madison subsistence priority."

Leask and AFN counsel Don Mitchell raised enough questions about the State Affairs bill that Abood booted it to Senate Resources committee. "We worked on it during the interim. We took public testimony — hundreds of hours of it — and we still come back to the same things we cannot resolve," Abood said.

Peninsula
Clarion
2-5-86

Subsistence fish, game

JUNEAU (AP)—A subsistence hunting and fishing bill was approved for further action Tuesday by the Senate State Affairs committee, which bowed to time pressure and passed what members said was a bill that may be imperfect, but one that will do the job.

However, a spokesman for Gov. Bill Sheffield said he is worried that

even if the bill adequately defines who qualifies for subsistence rights, it may raise questions about what fish and game they can take.

The legislation (HB 288), an amended version of Sheffield's proposed bill, passed the committee by a 3-1 vote. It must be considered in two other Senate committees, Natural Resources and Judiciary, before it is brought to

the Senate floor.

Committee Chairman Sen. Mitch Abood, R-Anchorage, said the measure is "a darn good bill" that meets federal requirements and reinstates subsistence rights for rural Alaskans.

"We've had this bill, we've been working on it all summer . . . we've had hundreds and hundreds of hours of testimony on it. We still come back to the same things we cannot resolve," Abood said.

bill rushed out by

The committee debated down to the minute the bill passed issues including how to define rural and how much responsibility to give the fish and game boards for deciding which species can and cannot be taken under subsistence rules.

Sen. Bill Ray, D-Juneau, voted against the bill's passage.

Ray said he objects to basing subsistence rights solely on the basis of rural residency, without extending the rights to Native urban dwellers

who live in Anchorage, Fairbanks or Juneau but who have retained the tradition of hunting and fishing for all their food.

Abood said there is no way a subsistence bill can please everyone. He said he wanted to get the bill on its way so the Legislature can pass it this session, but he expects it to have a bumpy ride.

The United States Department of Interior has told the state it must pass a law that complies with federal subsistence standards by June 1, or the department will take over

fish and game management on federal lands now managed by Alaska.

"I think everybody's going to get a lick in on the thing . . . I imagine if that happens, we'll miss the June 1 deadline," Abood said. "I'm very disappointed and frustrated."

The Alaskan Federation of Natives expressed concern about a clause that allows the state to determine which of similar species can be taken in subsistence hunting and fishing. Don Mitchell, AFN counsel, said the clause opens the

committee

potential that the state could keep subsistence hunters from using species that are popular among commercial or sport fishermen.

Jim Ayers, legislative liaison for the governor, said that clause also worries the administration, which believes the bill may not comply with federal requirements that subsistence rules be very specific.

"This (bill) means you can shift them (subsistence rights holders) to wherever and whatever you think they ought to eat," Ayers said. "This could cause some real problems for rural Alaskans."

Sheffield's staff also wants the Legislature to define terms that could require fish and game officials to base subsistence take allowances on "sound management." That term could upgrade the conventional requirement that all stock beyond what's needed for "sustained yield," or a level population, is eligible for subsistence harvest.

Other clauses added by the committee would give military personnel hunting rights on military property and invalidate subsistence as a defense against prosecution for the illegal taking of fish or game.

The bill also mandates that the fisheries and game boards install a system of subsistence permits whenever the boards need to reduce the harvests permitted for nonsubsistence hunters and fishermen.

Ayers said he hopes problems with the bill can be resolved quickly, before the Department of Fish and Game has to set up rules for spring fishing that would be similar to the hunting regulations put in place last year. Those regulations set up a two-tiered licensing system that gave different rights to urban and rural residents.

The subsistence issue was rekindled by a court decision last year that said virtually all Alaskans can qualify for subsistence hunting and fishing.

**ALTERNATIVES FOR THE IDENTIFICATION/CLASSIFICATION
OF HAZARDOUS WASTES IN ALASKA**

**Final Report
January 24, 1986**

Prepared for

**Alaska Department of Environmental Conservation
Division of Environmental Quality
Juneau, Alaska 99811**

Prepared by

**ICF Northwest
Richland, Washington 99352**

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EXECUTIVE SUMMARY

Alaska Senate Bill 503 (SB 503) expresses the intent of the Alaska legislature that the Alaska Department of Environmental Conservation (ADEC) obtain from the U.S. Environmental Protection Agency (EPA) authorization to administer and enforce a hazardous waste program in Alaska. SB 503 instructs ADEC to evaluate the most appropriate mechanisms by which to identify a waste characteristic of toxicity, persistence, or carcinogenicity and other characteristics identified as hazardous by EPA. To meet this legislative mandate, a study was undertaken to evaluate various approaches to identifying hazardous wastes and to recommend an optimum program to ADEC on which to base their hazardous waste regulations.

While states may be authorized by the EPA to implement and administer regulations under the Resource Conservation and Recovery Act (RCRA), a precondition of authorization is that the state program be at least as stringent as the federal program. Therefore, in addition to being one alternative which a state can apply, the federal definition of hazardous waste is the baseline which must be met or exceeded by all states.

In order to identify candidate systems for defining hazardous wastes, a review was conducted of literature describing proposed and existing systems for defining hazardous wastes, classifying toxic substances, and establishing criteria for environmental media. Of the over 100 papers reviewed, 92 were found to be of some relevance to the study. These papers were abstracted and an annotated bibliography prepared.

Of the 50 state programs, 33 were reviewed during the course of the study. It was determined that 14 of the states had originally developed definitions different from that of the EPA. However, as authorization progressed, eight of these states elected to adopt the EPA definition. Ten states were required by statute to adopt the federal definition by reference. Reasons for implementing the federal definition included belief that it would facilitate obtaining authorization, desire to maintain continuity with neighboring states, lack of resources to develop an alternate definition, and satisfaction with the adequacy of

the federal definition. Of the six states that are utilizing their own definition, three employ only minor modifications, and three have significantly different approaches. Five of the six fully intend to maintain their different approaches in the future even though it has complicated the authorization process and required significant resources to pursue. In all cases, these five states felt the federal definition was inadequate.

The federal definition of hazardous wastes will undergo a major change in the next year. When the EPA promulgated the current definition, they acknowledged that the approach taken was incomplete, but would get the RCRA program underway while a more comprehensive approach was developed. The 1984 amendments to RCRA have provided legislative mandates prompting completion of the development process. As a consequence, a new definition will be proposed in the near future. The definition will encompass a much broader set of wastes and will be based on a risk assessment methodology applied to solid waste management.

During the study, 42 alternative systems were identified for defining, classifying, or ranking hazardous wastes. Each such system was summarized in a profile that characterizes its treatment of genetic effects, acute toxicity, chronic toxicity, bioaccumulation and persistence, and degree of hazard. Each approach was compared to the proposed new federal definition in each category. Since the federal program is the required minimum, all other approaches were discarded if they did not meet or exceed the stringency of the proposed federal criteria. In this way, a subset of candidate systems was identified for further analysis.

The candidate systems were analyzed to determine the broadest definition which was technically defensible. Based on this consideration, it was determined that the proposed federal definition is the premier approach for genetic effects and chronic toxicity. It also meets the desired objectives of a degree-of-hazard concept by virtue of the landfill ban regulations. The approach to acute toxicity and bioaccumulation/persistence were conceptually correct, but incomplete because they fail to address impacts on aquatic life such as commercially valuable fishes. Small quantity exemptions cannot be technically justified with the current data base. Large volume waste exclusions are

defensible since a separate regulatory program is in place to address these materials.

Alternatives to the federal definition were also characterized with respect to their effects on the authorization process, resource requirements, and costs. Implementation of lower small quantity exemptions would have the greatest potential impact on state resources and costs. Expansion of the bioaccumulation/persistence criteria could also be highly impactful depending on the nature of wastes not currently managed as hazardous. Proposed changes in acute toxicity criteria will have little real impact on the program.

An analysis of resource requirements revealed that Alaska would need a staff of 20 to implement an authorized state program at the previous small quantity exemption level of 1,000 kg/month. The new threshold of 100 kg/month could increase staff requirements even further.

It was concluded that Alaska should undertake four study efforts:

- 1) Determine the volume and distribution of wastes produced by generators of less than 1,000 kg/month and recommend an appropriate exemption quantity less than or equal to the federal limit of 100 kg/month based on potential risks;
- 2) Identify volumes and characteristics of wastes not currently regulated as hazardous to facilitate estimation of costs and benefits associated with any modifications to the federal definition;
- 3) Evaluate the degree to which input parameters to the EPA model for defining hazardous wastes represent conditions found in Alaska; and
- 4) Develop an approach for selection of criteria related to bioaccumulation/persistence hazards to aquatic life resulting from long-term leaching into surface waters.

It is recommended that Alaska:

- 1) Adopt by reference the federal definition of hazardous wastes with the addition of a 500 mg/l 96-hr LC₅₀ aquatic toxicity criteria to the mammalian criteria applied by EPA;
- 2) After authorization, consider reduction in the small quantity generator exemption levels and addition of criteria for antimony, beryllium, cobalt, copper, molybdenum, nickel, thallium, vanadium, and zinc pending results of waste characterization studies; and
- 3) Retain the ability to list wastes as hazardous as a means of managing wastes with constituents for which criteria have yet to be established.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

CSSB 503 - AN ACT RELATING TO HAZARDOUS WASTE AND CERTAIN PUBLIC CONTRACTS CONCERNING HAZARDOUS WASTE; CHANGING PENALTIES FOR ENVIRONMENTAL POLLUTION VIOLATIONS; AND PROVIDING FOR AN EFFECTIVE DATE."

SECTIONAL ANALYSIS.

Section 1. Regulation of hazardous Waste

- (a) This section directs the Department of Environmental Conservation to adopt regulations for the management of hazardous waste. These regulations must meet the minimum Environmental Protection Agency's requirements as well as regulate those hazardous wastes that are toxic, persistent, or carcinogenic. The federal program ignores the carcinogenic and toxic effects of a waste on human health and the environment. Regulations should be developed no later than July 1 1986 and effective on July 1, 1987.
- (b) Mining waste, oil and gas production wastes are temporarily excluded in this section until federal studies on these wastes have been completed. DEC will consider the report results in the development of regulations for these wastes.
- (c) This section instructs the state to take actions necessary to receive EPA authorization for the hazardous waste program.
- (d) The quantities of waste which will be managed as hazardous are established in this section.
- (e) This section requires the Department to conduct an education program about the regulations for those affected.

Section 2. Transportation of hazardous waste.

Before a hazardous waste can be transported, a manifest (already required under federal law) which includes information about the type of material, disposal site, and handling procedures must be sent to DEC. DEC then sends a copy of this manifest to the highest local elected official and the local and state public safety agencies.

Section 3. Temporary collection of hazardous waste.

This section institutionalizes the very successful program currently offered by DEC, known as "hazardous waste clean-ups." Temporary collection and transfer operations will be held for small quantity and household generators of hazardous waste four times a year.

SECTIONAL ANALYSIS OF SB 503 CONTINUED.

Section 4. Hazardous waste management facilities and sites.

This section outlines the criteria and public comment procedures DEC should use to determine hazardous waste management sites and facilities in Alaska. Recommendations to the Governor and Legislature should be submitted not later than July 1, 1987. Final sites and facilities should be submitted two years later.

Section 5 - 8. Penalties for violations.

These sections include the technical amendments on criminal and civil penalties which are needed to satisfy the federal requirements to obtain final authorization of the state's hazardous waste program.

Section 9. Definitions.

This section defines various terms found in the legislation.

Section. 10. Hazardous waste contracts.

This section prohibits a legislative staff member from soliciting or receiving a contract concerning hazardous waste from a state agency following the session during which the staff member worked for the legislature.



REPLY TO
ATTN OF:

U.S. ENVIRONMENTAL PROTECTION AGENCY

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

February 21, 1986

The Honorable Arliss Sturgulewski
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski,

The Environmental Protection Agency (EPA) strongly supports SB375 which would establish a Hazardous Substance Response Fund in Alaska. Other than oily substances, the State currently lacks legislation that allows for a mechanism to expend funds in containing and cleaning up releases of hazardous substances. This not only is a positive addition, but indeed a necessary one to Alaska Statute 46.

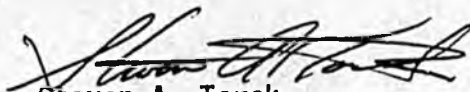
At the first Senate Resource Committee hearing concerning this bill, we heard supporting testimony from a number of interests, including Commissioner Ross of the Department of Environmental Conservation, the Fairbanks Northstar Borough, the Alaska Health Project, and a small business in Anchorage. We also heard other testimony that existing Federal programs (to address these issues) was sufficient. We feel however, that not just in Alaska, but nationwide, the Federal programs designed to address environmental quality are best implemented, and in fact rely upon, a cooperative effort with state and local governments.

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), DEC has received two grants to assist EPA in investigating sites which may have had inappropriate hazardous waste management practices in the past. A scoring system enables EPA to prioritize these sites on a national level. Present guidelines however indicate that most Alaska sites probably will not rank high enough to receive further funding for remedial action. This does not mean these sites are of no concern; however, some other mechanism would have to be utilized to assure clean up. Your bill would provide the State of Alaska this mechanism. Even if a site is ranked on the National Priority List, the state must have a mechanism to match payments of up to 50% of cost incurred. Your bill also provides this match capability.

Due to the delay and uncertainty of CERCLA reauthorization, EPA's investigative and response capabilities have drastically decreased. Except for emergency situations, little money is currently available. At the same, our list of potential sites in Alaska is increasing, thus creating an even greater need for State involvement in the Superfund process.

We appreciate the opportunity to comment on this legislation. We encourage its early enactment, and intend to coordinate our efforts with DEC for an effective program in Alaska. Please contact me should you have questions or if we can be of any assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Steven A. Torok', with a stylized flourish at the end.

Steven A. Torok
Air/Waste Coordinator



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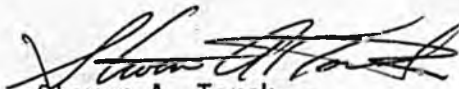
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Steven A. Torok
Air/Waste Coordinator



UNITED FISHERMEN OF ALASKA

Jack Cadigan
Executive Director
907-586-2820
1-800-478-FISH

February 14, 1986

Representative Mike Davis
Pouch V
Juneau, Alaska 99811

Dear Representative Davis,

Thank you for asking the United Fishermen of Alaska to comment on CSHB 470 and SB 375, both of which would establish an Oil and Hazardous Substance Release Response Fund. The UFA recognizes the need for a readily available funding source to respond to releases of oil and hazardous substances, and commends your leadership role in addressing this issue.

The UFA and member organizations are fully aware of the importance of maintaining unpolluted waters in Alaska in order for the fishing industry to prosper. Releases of oil or hazardous substances into rivers and open waters may directly impact the state's fisheries and, as a consequence, may adversely affect the livelihood of Alaska's fishermen.

Passage of these bills would provide much greater assurance to the commercial fishing industry that Alaska's fisheries will continue to be a major statewide industry.

Sincerely,

Jack Cadigan
Bob Blake



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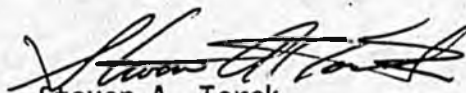
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Steven A. Torok
Air/Waste Coordinator

February 6, 1986

Mr. Ralph W. Tarr
Solicitor-Designate
Office of the Solicitor
Department of the Interior
C St. between 18th & 19th Sts., N.W.
Room 6348
Washington, D.C. 20240

Dear Mr. Tarr:

On September 23, 1985, William Horn, Assistant Secretary, Department of the Interior, informed Governor Sheffield that a determination had been made that Alaska's subsistence program is no longer in compliance with the requirements of the Alaska National Interests Lands Conservation Act, Title VIII ("ANILCA"). That determination was based on an analysis of Madison v. Alaska Department of Fish and Game, 696 P.2d 168 (Alaska 1985).

In response to the ANILCA ramifications of Madison, as well as the allocation disruptions it mandated, Governor Sheffield had introduced a bill into the State House of Representatives during the 1985 session, House Bill No. 288. That bill would have inserted the word "rural" into the State statutory definition of subsistence uses, and clarified the authority of the State Board of Fisheries to authorize and regulate "personal use fishing," as distinct from "subsistence fishing."

The Alaska Senate did not act on the bill during 1985, but recently the Senate State Affairs Committee passed on a Senate Committee Substitute for House Bill 288, to the Senate Resources Committee. A copy of that February 3, 1986, Senate Committee Substitute is also attached.

Since the Department of the Interior will eventually be reviewing whatever bill is enacted into law, as indicated by Bill Horn's September 1985 letter, your view on the fundamental requirements of ANILCA, and how the Senate Committee Substitute corresponds to those requirements, would assist us in giving the most correct advice to the Legislature and the Governor. In particular, it would be useful to have an assessment from your office on the following issues:

1. Does ANILCA require that "subsistence uses" be limited to customary and traditional uses of fish and game by residents of rural Alaska? It appears that ANILCA § 803 so defines the term.
2. Does ANILCA require that takings for subsistence uses as defined in ANILCA be afforded a priority over takings for other uses whenever it is necessary to restrict the harvest to protect the resource or the continuation of subsistence uses? It appears that ANILCA § 804 establishes that standard.
3. Does ANILCA require that the priority operate to provide reasonable opportunity for all subsistence uses even if that means restricting or eliminating takings for other purposes before any subsistence use is restricted? ("Restrict" is not here intended to include reasonable regulation.) It has been suggested that the extent of the priority may vary, depending upon a balancing of the importance of subsistence uses against the importance of non-subsistence uses. However, the legislative history appears to indicate otherwise. See, for example, 126 Cong. Rec. H10647 (Nov. 12, 1980).
4. Do the provisions of ANILCA § 804 apply to each fish stock and game population which is the subject of subsistence uses? It appears that legislative history mandates that subsistence uses are stock and population specific. See, for example, 126 Cong. Rec. H29279 (Nov. 12, 1980).
5. Does ANILCA authorize a durational rural residency requirement in identifying who may engage in subsistence uses? It appears that legislative history indicates otherwise. See, for example, Senate Report No. 96-413, 96th Cong., 1st Sess. 233 (1979).
6. Does ANILCA require that subsistence uses be identified and regulated on a community or area basis? It appears that legislative history indicates that ANILCA does not intend for subsistence to be identified and regulated on an individual basis. See, for example, 126 Cong. Rec. H10546 (Nov. 12, 1980).

7. Does ANILCA authorize only "important" subsistence uses to be subject to the protections of the subsistence law? It appears that ANILCA § 803 and § 804 require that all subsistence uses of a fish stock or game population be authorized, rather than only "important" subsistence uses.
8. Is the subsistence priority in ANILCA limited to a priority over other consumptive uses, or would it include a priority over other takings, such as catch-and-release fishing? It appears that ANILCA § 804 simply refers to "taking."
9. Does ANILCA require that fish stocks and game population can be harvested for subsistence uses only by people living in the immediate vicinity of the stocks and populations? It appears that such an interpretation would not take into account the customary and traditional patterns of use of residents of certain rural communities and areas who travel some distance to hunt or fish at certain times of the year.
10. Would defining "subsistence uses" in terms of individual need be consistent with ANILCA? It appears that legislative history indicates otherwise. See, for example, 126 Cong. Rec. H10546 (Nov. 12, 1980).

Your assessment of these specific questions would be of great assistance to us. Since it is not possible to predict how quickly the Senate will act, as prompt a reply as is feasible would be appreciated.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

cc: Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Bill Horn
David Gayer
Sharon Allender

February 6, 1986

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ATTORNEY GENERAL

cc: Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Bill Horn
David Gayer
Sharon A'lender

January 28, 1986

MARUO

SUBJECT: CSHB 470 (Resources)

TO: Rep. Mike Davis

FROM: Ed Hein, LAA *EH*

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) 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

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 or

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 ardous substance is released shall report the release to the depart-
4 ment 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.

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

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 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.

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 (5) "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).

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
POUCH O, JUNEAU, ALASKA 99811

Telephone: (907)
Address:

465-2600

February 10, 1986

The Honorable Arliss Sturgulewski
Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Sturgulewski:

Thank you for providing me with an opportunity to comment on SB 375, proposed legislation establishing a State Oil and Hazardous Substance Release Response Fund. Enclosed is a fiscal note, along with associated forms. 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, 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 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 are unavailable for this purpose. I propose to add one and one-half positions in Anchorage for the South-central Region, a full-time position in Fairbanks for the Northern Region, and a half-time position in Juneau for Southeastern Alaska.

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 approved, this federally funded position would work closely with any positions established as a result of SB 375.

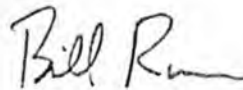
February 4, 1986

As you know the 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 sites. EPA has lent DEC an employee to manage these contracts for the past several months, until we establish a position to manage these site investigations ourselves. The EPA position will be reassigned in May of this year.

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 as proposed in SB 375 would provide a vehicle to allow more rapid cleanup of sites not eligible for Superfund monies.

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

Sincerely,



Bill Ross
Commissioner

Enclosures

cc: The Honorable Mike Davis
The Honorable Richard Schultz
The Honorable Adelheid Herrmann
Jim Ayers, Director of Legislative Relations
Office of the Governor

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 375
 Title : An Act Relating to the
Release of Oil and Hazardous
Substance
 Sponsor : Senate Resources Committee
 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		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						
TOTAL OPERATING		290.2	334.3	334.3		

CAPITAL						
RESPONSE FUND (non-lapsing)	1,000.0	(replenishment to 1,000.0 level)				
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		1290.2	334.3	334.3		
FEDERAL FUNDS						
OTHER						
TOTAL						

*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 : *Ralph N.* 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)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 375

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

182.7

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. 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 management will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs.

25.0

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.

48.5

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.

22.0

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

12.0

290.2

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.

Request For New Position

Page 4 of 8
Revised Date

FY 87

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Borg. Unit GGU	Gov.	Approv.	Disapp.																										
Time Status	Staff Months	RP Number	Location		Election District	Exp.																												
Perm. Part Time	6		Juneau																															
			Justification																															
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For B&M Use Only Key Number																																		

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southeast Region

FY 87

Page 5 of 8
 Revised Date

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Barg. Unit GGU	Gov.	Approv.	Disapp.	
Time Status Full Time	Staff Months 12	RP Number	Location Anchorage	Election District	148				
Type of Expenditure			Justification						
Amount			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. We expect to fill this position on October 1, 1986. Funding for nine months has been requested for FY 87.						
1		2							3
Salary		28.1							
Benefits		8.3							
Premium Pay									
Other									
Total Personnel 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						
			I-A Receipts 1005						
			Program Receipts 1028						
			CMP Receipts 1061						
			Other						
			51.9						
For B&M Use Only Key Number _____									

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southcentral Region

FY 87

Page 6 of 8
 Revised Date

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Borg. Unit GG	Gov.	Appov.	Disapp.
Time Status Full Time	Staff Months 12	RP Number	Location Fairbanks	Election District		1987		
Type of Expenditure			Justification					
1	2	3	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. We expect to fill this position on October 1, 1987. Funding for nine months has been requested for FY 87.					
Salary	32.1							
Benefits	9.2							
Pension Pay								
Other								
Total Personal Services		41.3						
Travel		5.0						
Contractual		5.0						
Commodities		3.5						
Equipment		2.0						
Total Cost		56.8						
Receipt Code	Funding Source							
	Federal Receipts	1002						
	O. P. Match	1003						
	General Funds	1004	56.8					
	I-A Receipts	1005						
	Program Receipts	1006						
	CSP Receipts	1061						
	Other							
Per BSM Use Only								
Key Number								

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Northern Region

FY 87

Page 8 of 8
 Revised Date

SUGGESTED LEGISLATIVE HISTORY FOR PROPOSED AMENDMENT TO H.B. 470

This provision of the statute is intended to facilitate agreements of indemnification within the private sector regarding clean up of toxic and hazardous substances. It clarifies that a hazardous waste clean up contract is not a "construction contract" and therefore is not subject to the restrictions upon indemnification agreements found in A.S. 45.45.900. The statute provides certainty for parties who voluntarily enter into indemnification agreements, and therefore will allow parties to freely negotiate such protections as between themselves. Typically, such an indemnification clause will be negotiated between the private party responsible for the creation and discharge of the hazardous private substance (e.g., an oil company which has oil contaminated with PCB's) and the private party hired by that company to clean up or eliminate the hazardous substance. Such clauses will operate in lieu of liability insurance, which is at present exceptionally difficult to acquire in this area.

It also is important to confirm what the provision does not do. The provision does not provide in any way for an exemption from liability for mishandling of hazardous substances. Any injured party -- members of the public, the State, or other companies -- will have all their rights to pursue their full legal remedies. The provision will operate, in effect, to enhance legal remedies for injured persons by facilitating an additional layer of "deep pockets" behind the clean up company. Moreover, the provision does not require any entity, private or public, to enter into an indemnification agreement. The statute confirms that such agreements are legal, but preserves the complete freedom of all parties to decline to enter into such an agreement.

SCH:sj
(19/32)

Proposed amendments to CSHB 470.

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

①

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

Page 9, Line 26

②

The governor may transfer \$1,000,000

Page 9

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 release response fund, whichever is appropriate.

... substance
Rest of section

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.

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;

Page 6, Line 13

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

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

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.

Page 7, Line 1

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

(1) after consulting the Environmental Protection Agency 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).

Introduced: 1/30/86
Referred: Resources and
Finance

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2

SENATE BILL NO. 375

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
substances; and providing for an effective date."

7

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-

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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

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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,

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Introduced: 1/30/86
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FOURTEENTH LEGISLATURE - SECOND SESSION

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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) 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

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;

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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

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 or

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, liquefied 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 ardous substance is released shall report the release to the depart-
4 ment 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.

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

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 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.

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 Except as provided in (b) of this section, a person in charge of a
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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.~~ *New language*

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 (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 or

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

2 Sec. 46.09.060. COMPACTS AUTHORIZED. The governor may enter
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7 other persons and municipalities, in order to

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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 (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 (5) "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~~ \$1,000,000
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

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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
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22 ous substance requiring prompt action to avert environmental danger or
23 damage;

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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 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 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,
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12 complying with the requirement for which a violation is charged.

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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.

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

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9 permit, approval, or acceptance, or term or condition of a permit,
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11 AS 46.09 is guilty of a class B misdemeanor.

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

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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. 4. AS 46.03.758(k) is repealed.~~
9 * Sec. 15. This Act takes effect immediately in accordance with AS 01.-
10 10.070(c).

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : 2/14/86

REQUEST

Bill/Resolution No. : SB 375
 Title : An act Relating to the Release
of Oil and Hazardous Substance
 Sponsor : Senate Resources Committee
 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		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						
TOTAL OPERATING		290.2	334.3	334.3		

CAPITAL						

REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		290.2	334.3	334.3		
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS : *5.0 FTE

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 : 2/14/86
 Approved by Commissioner : Bill Rm Date : 2/14/86
 Agency : Department of Environmental Conservation

Distribution (by Agency preparing fiscal note) :

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

Offered: 2/10/86
Referred: Finance

MARKED TO
SHOW AMENDMENTS

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 tigations, 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 emergency
28 response employers in developing safety education programs under AS
29 18.60 for employees who may be called upon to respond to a release of

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

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

24 (3) "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 (4) "department" means the Department of Environmental
29 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

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

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

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

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

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

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

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

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

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

1 and cleanup of the release unless the commissioner determines
2 (1) after consulting the Environmental Protection Agency or
3 appropriate public safety agencies, that containment or cleanup is
4 technically infeasible;
5 (2) that containment or cleanup would cause greater en-
6 vironmental damage than the release would cause if unabated; or
7 (3) that containment or cleanup would pose a greater threat
8 to human life or health than the release itself.
9 (e) The commissioner shall enter into agreement with the En-
10 vironmental Protection Agency, and may enter into agreements with
11 other persons and municipalities, in order to
12 (1) facilitate a coordinated and effective hazardous sub-
13 stance release response in the state;
14 (2) provide for cooperative hazardous substance release
15 notification procedures; or
16 (3) provide for cooperative review of hazardous substance
17 release response contingency plans submitted to the department.
18 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
19 request the governor to determine that an actual or imminent release
20 of a hazardous substance constitutes a disaster emergency under
21 AS 26.23. If the governor declares a disaster emergency under AS 26.-
22 23, the commissioner may assist the adjutant general in the relief of
23 the emergency.
24 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.
25 The commissioner may contract with a person or a municipality for
26 personnel, equipment, or services that may be useful to carry out the
27 requirements of this chapter. If the commissioner determines that it
28 is infeasible to contract with a person or a municipality, the commis-
29 sioner 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-
9 ment, or removal of a hazardous substance, the restoration of the

1 environment to its former state, and incidental administrative costs;

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

4 (4) "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 (5) "release" means an intentional or unintentional release
15 into the environment of the state.

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

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

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

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

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

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

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

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

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

29 (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 land 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:

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

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

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

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

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

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

29 (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).

CSHB 470 (Finance)
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CSHB 470 (Finance)
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. CSHB 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'. CSHB 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.

CSHB 470 (Finance)
Question and Answer Overview

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How does the funding mechanism of the response fund work?

The response fund will be capitalized during FY 87 through reappropriations from the oil spill reserve, a transfer from the oil spill mitigation account, and a one-time reappropriation from the Rainy Day Fund to bring the initial balance of the response fund to the \$1,000,000 level.

Future funding will rely solely upon legislative appropriations. However, money recovered by the state for containment and cleanup expenses, as well as money received as penalties, fines, and damages associated with a release or threatened release, will be placed in an account within the general fund called the oil and hazardous substance mitigation account.

The legislature may appropriate money from the mitigation account to the response fund for the purposes outlined in AS 46.08. Money not appropriated to the response fund within one year lapses back to the general fund.

What level of accounting oversight is provided for?

The response fund is administered by ADEC, and the department must develop procedures governing the expenditure of, and accounting for, money expended from the fund. The commissioner must also submit a fiscal report regarding the response fund to the legislature no later than the 10th day of each regular legislative session.

The report shall list the amount of money received and expended during the preceding fiscal year, a summary of municipal participation in responses funded by the fund, a summary of department activities in responses funded by the fund, and the projected cost for the next fiscal year of monitoring, operating, and maintaining sites where response has been initiated.

How does the response fund affect businesses and local communities?

The commissioner shall enter into agreement with EPA, and may enter into agreement with a municipality, public or private corporation, or other entity 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, or for the cooperative review of hazardous substance release response contingency plans submitted to the department.

How can a municipality be reimbursed for responding to a release?

The department may reimburse a municipality for actual expenses incurred in response to a release or threatened release of oil or a hazardous substance if the municipality had previously entered into an agreement with the commissioner under provisions in AS 46.09, and if the commissioner determines that the expenses were for a necessary emergency first response to a release or threatened release that posed an imminent and substantial threat to the public health or welfare or to the environment.

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.

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CSHB 470 (Finance)
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, and may be used only for those purposes outlined in AS 46.08.040. The fund may not be used for capital improvements except for improvements to real property such as dikes and retaining walls.

Sec. 46.08.020. (a) 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.

(b) Establishes the Oil and Hazardous Substance Release Mitigation Account. Money received by the state from persons responsible for the containment and cleanup of oil or a hazardous substance, including money received from fines, penalties, and damages, shall be deposited in the general fund and credited to the mitigation account. The legislature may annually appropriate to the fund from this account a sum equal to the amount of money recovered during the calendar year preceding the legislative session in which the appropriations are to be made.

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

Sec. 46.08.040. Lists acceptable expenditures from the fund. Expenditures may be made to contain, cleanup, and take other necessary action to abate releases or threatened releases of oil or hazardous substances that pose an imminent and substantial threat to the public health or welfare or to the environment, provide matching funds to participate in federal oil discharge and 'Superfund' (CERCLA) programs, and recover costs to the state or a municipality resulting from the release or threatened release of oil or hazardous substances.

Sec. 46.08.050. Outlines accounting procedures of the fund. ADEC must maintain accounting records and develop procedures governing the expenditure of, and accounting for, money expended from the fund.

Sec. 46.08.060. (a) No later than the 10th day of each regular legislative session, the commissioner must submit a fiscal report to the legislature. 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. The report must also include a summary of the department's fund-related activities during the preceding fiscal year, and the projected costs for the next fiscal year of monitoring, operating, and maintaining sites where response has been initiated.

(b) As part of the department's on-going site investigation program, the report must also include a summary of oil spill or hazardous waste sites identified by the department, the immediate and long-term threats posed by these sites, and the appropriate actions and estimated cost of abating these threats.

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.

(c) The department may reimburse a municipality for actual expenses incurred in response to a release or threatened release of oil or a hazardous substance if the municipality had previously entered into an agreement with the commissioner under AS 46.09.020(e), and if the commissioner determines that the expenses were for a necessary emergency first response to a release or threatened release that posed an imminent and substantial threat to the public health or welfare or to the environment.

Sec. 46.08.080. The commissioner may adopt regulations necessary to implement 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) A person in charge of a unit from which a hazardous substance is released must promptly notify ADEC of the release.

(b) Notwithstanding (a) of this section, persons may enter into agreements with the commissioner for the periodic reporting of a controlled release of hazardous substances if the release is not into water.

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 or a greater threat to human life or health than the release itself.

(b) The commissioner shall develop guidelines prescribing general procedures and methods for containing and cleaning up releases of hazardous substances.

(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 either directly or by contract.

(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 shall enter into agreement with the EPA, and may enter into agreements with municipalities or other persons, including a public or private corporation or an entity within an unincorporated community, 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 municipality or a person, including a public or private corporation or an entity within an 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. For the purposes of this chapter, the governor may enter into agreements, arrangements, or compacts with other states or countries.

Sec. 46.09.060. 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. Municipalities are granted the authority to exercise those powers necessary to implement the provisions of this chapter and AS 46.08.

Sec. 46.09.070. 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 3.

Sec. 26.23.050. (b) In the event 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.

* Section 4.

Sec. 26.23.230. (1) The definition of "disaster" is expanded to include the release of a hazardous substance.

* Section 5.

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

* Section 6.

Sec. 45.45.900. Clarifies that an oil or hazardous substance cleanup contract is not a construction contract, and is therefore not subject to the restrictions upon indemnification agreements found in this section. This provision allows an indemnification agreement to be negotiated between the parties responsible for a release of oil or a hazardous substance and the parties contracting to cleanup the release. However, this provision does not mandate that such an agreement be entered into between the parties. Nor does this provision provide in any way for an exemption from liability for negligence or gross misconduct resulting from cleanup activities conducted under authority of the contract.

* Section 7.

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

* Section 8.

Sec. 46.03.745. Except for a controlled release approved by the commissioner under AS 46.09.010(b), a person may not cause or permit the release of a hazardous substance.

* Section 9.

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

* Section 10.

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

* Section 11.

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

* Section 12.

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

* Section 13.

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

* Section 14.

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.

* Section 15.

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 shall be deposited in the general and credited to the Oil and Hazardous Substance Release Mitigation Account.

* Section 16.

Sec. 46.04.090. (b) Inspection and enforcement employees of the department designated by the commissioner are peace officers in the performance of their duties under this chapter.

* Section 17.

Not later than January 1, 1987, the commissioner of environmental conservation shall develop guidelines under AS 46.09.020.

* Section 18.

Not later than October 1, 1987, the commissioner of environmental conservation shall adopt regulations under AS 46.09.070.

* Section 19.

During FY 87, the governor may transfer from the reserve for emergency operating expenses account to the oil and hazardous substance release response fund amounts that, when added to the amounts appropriated, reappropriated or transferred to the response fund in laws enacted by the legislature during the 1986 regular legislative session, do not exceed \$1 million.

* Section 20.

The oil spill mitigation account (AS 46.03.758(k)) is repealed.

* Section 21.

Sec. 01.10.070. (c) Sections 1 - 18 and 20 of this Act take effect immediately.

* Section 22

Section 19 of this Act takes effect July 1, 1986.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 470 (Fin)
 Title : An Act Relating to the Release
of Oil and Hazardous Substances
 Sponsor : Rep. Mike 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	0	100.8	132.2	132.2	132.2	132.2
TRAVEL	0	13.0	15.0	15.0	15.0	15.0
CONTRACTUAL	0	21.0	21.0	21.0	21.0	21.0
SUPPLIES	0	8.5	10.0	10.0	10.0	10.0
EQUIPMENT	0	6.0	2.0	2.0	2.0	2.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	149.3	180.2	180.2	180.2	180.2

CAPITAL						

REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	149.3	180.2	180.2	180.2	180.2
FEDERAL FUNDS						
OTHER						
TOTAL	0					

POSITIONS : *3.0 FET

FULL-TIME	0	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : _____ Phone : _____
 Division : _____ Date : _____

Approved by Commissioner : _____ Date : _____
 Agency : _____

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. _____

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

TOTAL
REQUEST

Funding for nine months of personal services is requested for FY 87,

100.8

A. Response Capability

1. Two 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 in Anchorage for the South-central Region but would be available to respond to emergencies throughout the state. The new position form total reflects funding for one position and should be doubled to reflect the two positions.

2. One administrative assistant position to assist program staff by preparing contract documents for municipalities, by tracking and recording expenditures of the fund and by preparing the fiscal reports required by the Legislature.

B. Support Costs

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

13.0

2. Contractual funds of about 7.0 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.

21.0

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

8.5

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

6.0

149.3

Position Title Administrative Assistant II			No. of Positions One	Range/Step 14 A	Barg. Unit GGU	Gov. LCS	Approv.	Disapp.																									
Time Status Full Time	Staff Months 12	WP Number	Location Juneau		Election District																												
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>2</td> </tr> <tr> <td>Salary</td> <td>21.2</td> </tr> <tr> <td>Benefits</td> <td>6.8</td> </tr> <tr> <td>Premium Pay</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td>28.0</td> </tr> <tr> <td>Travel</td> <td>3.0</td> </tr> <tr> <td>Contractual</td> <td>11.0</td> </tr> <tr> <td>Commodities</td> <td>1.5</td> </tr> <tr> <td>Equipment</td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Cost</td> <td>45.5</td> </tr> </tbody> </table>			Type of Expenditure	Amount	1	2	Salary	21.2	Benefits	6.8	Premium Pay		Other		Total Personal Services	28.0	Travel	3.0	Contractual	11.0	Commodities	1.5	Equipment	2.0	Other		Total Cost	45.5	Justification This new position will assist the program staff by preparing documents necessary to contract for services to contain and clean up hazardous substances, by recording and tracking expenditures from the response fund and preparing the fiscal reports required to report program activities to the Legislature. This person will also maintain records describing incidents and spills from across the State and other data necessary to obtain cost-recovery from responsible parties. We expect to fill this position on October 1, 1986. Funding for nine months has been requested for FY 87.				
Type of Expenditure	Amount																																
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	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 Environmental Field Officer III			No. of Positions Two	Range/Step 18 A	Org. Unit GGII	Org.	Appov.	Disapp.
Time Status Full Time	Staff Months 12	RP Number	Location Anchorage		Section District	FAC		
Type of Expenditure			Justification					
1	2	3	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 accidents involving spills of hazardous material, especially in confined areas. This person will take samples and other information necessary to take enforcement actions under federal or state laws. We expect to fill this position on October 1, 1986. Funding for nine months has been requested for FY 87.					
Salary	28.1							
Benefits	8.1							
Pension Pay								
Other								
Total Personnel Services		36.4						
Travel		5.0						
Contractual		5.0						
Commodities		3.5						
Equipment		2.0						
Total Cost		51.9						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. P. Match 1003							
	General Funds 1004	51.9						
	I-A Receipts 1005							
	Program Receipts 1020							
	CIP Receipts 1061							
	Other							
For BDD Use Only Key Number								

**Request For
New Position**

Agency Environmental Conservation
 ORU Environmental Quality
 Component Southcentral Region

FY 87

Page 6 of 8
 Revised Date

CAPITALIZATION OF OIL SPILL AND HAZARDOUS SUBSTANCE RELEASE
RESPONSE FUND, HB 470

AS INTRODUCED:

- \$1 million original capitalization from Rainy Day Fund
- Automatic annual transfers from Rainy Day Fund to maintain \$1 million balance

PROPOSED CS TO HB 470 (FIN) FUND CAPITALIZATION:

- \$1 million capitalization (outlined below)
- No automatic transfers from Rainy Day Fund
- Balances in future years maintained through annual capital budget appropriations

Existing Oil Spill Fund balance	\$ 300,000 ¹
Obligated monies FY 86	<u>- 100,000²</u>
SUBTOTAL	200,000
Proposed FY 87 Capital Budget Approp.	300,000 ³
Oil Spill Mitigation Account Balance (receipts from responsible party reimbursements)	19,000 ⁴
Additional Mitigation Account Deposits by 6/86	<u>300,000⁵</u>
TOTAL	819,000
One-time Transfer from Rainy Day Fund	<u>181,000⁶</u>
FUND GRAND TOTAL	\$1,000,000

¹ This requires that language be placed in HB 574, an Act making operating appropriations and transfers of operating appropriations, or other appropriate legislation to transfer the balance of the fund to the newly established fund.

² These monies are currently obligated and expected to be paid out in FY 86 by the Department to pursue responsible parties in oil spills.

³ The Governor has proposed a \$300,000 appropriation to the oil spill fund in HB 500 (budget bill). This appropriation would also be transferred to the newly established fund.

- 4 The Oil Spill Mitigation Account is an account within the general fund to which reimbursements, fines, penalties and damages are credited. Currently, these funds remain available for reappropriation by the Legislature for oil spill related projects through the end of each calendar year.
- 5 The Department of Environmental Conservation is currently pursuing several actions against responsible parties. The Commissioner's office has indicated that by June 30, it is expected that at least \$300,000 will accrue to the Account as a result of their enforcement actions.
- 6 Section 19 provides for a one-time transfer from the Rainy Day Fund. While the exact figure is unknown, the Governor may only transfer an amount not to exceed \$1 million when added to the total of the above referenced transfers and appropriations.

Oil Pollution Control Programs in Alaska
Legislative and Fiscal History

1976. SB 406, "An Act relating to oil terminal facilities and the marine transportation of crude oil, refined petroleum products or their by-products", was passed by the legislature (ch 266, SLA 1976). SB 406 created a revolving loan fund within the Dept. of Environmental Conservation to implement statutory provisions regarding oil spill containment and cleanup.

All penalties recovered under AS 30.25.140 - .150 were paid to the department to be deposited in the Coastal Protection Fund. The fund also received assessments from oil tankers based on the degree of risk of an oil spill that each tanker presented.

1977. The Oil Spill Mitigation Account was established under AS 46.03.758(k) (ch 129, SLA 1977). This paragraph, located in the section entitled "Civil penalties for discharges of oil", provides 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 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."

1978. The U.S. Supreme Court ruled in Ray v. Atlantic Richfield Co. that states could not regulate the design or construction of oil tankers. On the basis of that ruling, the U.S. District Court for the District of Alaska, in Chevron v. Hammond, ruled that the state's assessment program under AS 30.25 was unconstitutional. The Coastal Protection Fund was also found to be invalid because of a violation of dedicated fund provisions, in which risk charges collected by the state were dedicated to the fund.

1979. Governor Hammond introduced HB 205, "An Act relating to the prevention and control of oil pollution". Attached to the bill was a fiscal note providing for \$350.0 in program receipts for state oil spill cleanup expenses. Program receipts were based upon the levying of an assessment on oil terminal facilities. This assessment provision was later deleted from the committee substitute for HB 205.

1979 (Continued). The legislature appropriated \$991.0 (based on program receipts) for administration of the Oil Pollution Control program and the Coastal Protection Fund (\$6000.0). Only a small amount of program receipts were collected, however, because of the Chevron v. Hammond decision. The decision did not, however, appreciably reduce the department's responsibilities for oil pollution control established under SB 406. The department's FY80 budget request for \$450.0 was reduced to \$250.0.

1980. CSHB 205 was passed by the legislature (ch 120, SLA 1980). Attached to the bill was a fiscal note for \$1542.6, of which \$1000.0 was for an oil spill reserve and \$542.6 was for personal services, travel, contractual, commodities and equipment expenses associated with the establishment of AS 46.04 (Oil Pollution Control).

The fiscal note stated that "It is recommended 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. Costs recovered from the spiller or from federal funds will be deposited in the general fund so that the net cost to the state should be less than the one million dollars."

The oil spill reserve exists only as the intent language stated in the fiscal note.

1981. The legislature appropriated \$250.0 to the oil spill reserve.

1983. The state recovered \$350.0 in a settlement with Alyeska Pipeline Co. for two spills that occurred in 1979.

1984. The legislature appropriated \$250.0 to the oil spill reserve. The state received a \$597.9 reimbursement from the federal government for expenses incurred by the state in cleaning up the Nome oil spill.

1985. The department requested \$550.0 for FY86 to bring the oil spill reserve back to the \$1000.0 level. No money was appropriated.

1986. The department requested \$300.0 to be appropriated to the oil spill reserve in the FY87 budget.

HB 470 and SB 375, both entitled "An Act relating to the release of oil and hazardous substances", are introduced. The bill would establish two new chapters within AS 46. AS 46.08 would establish the Oil and Hazardous Substance Release Response Fund, and AS 46.09 would establish a Hazardous Substance Release Control chapter.

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
• Commercial Printing Company • Fairbanks Daily News-Miner • The Letter Shop • Diesel Fuel Dump, Kotzebue • Liquid Air, Inc.	• Fairbanks City Dump, 2nd Ave. • Juneau Landfill • Alaska Battery Enterprises • Alaska Gold • Big Hurrah Gold Mine • Earth Movers of Fairbanks • Fairbanks Sand & Gravel, Inc. • Alaska Electroplating & Bumper Repair, Anchorage • Alaska Husky Battery, Inc. • Pacific Airmotive Corp. • Red Devil Mine Waste Ponds • Tesoro Alaska Petroleum • Chevron USA Alaska • Crowley Environmental Services • Kenai Landfill • M & H Enterprises • Russian Creek/Bell Flats • Rogers & Babler, Inc. • International Airport Landfill • North Pole Refinery	• Fairbanks North Star Borough Landfill • Nome City Dump • City Dump, Fort Yukon • Nome Barrel Dump • Sagwon Airstrip Dump • Mukluk Dump • Sand Dune Landfill • Putuigayuk Landfill • ARCO - Prudhoe Bay Site • Mukluk Freightlines • Municipal Utilities System • University of Alaska, Fairbanks • Alaska Railroad, Fairbanks • White Pass/Yukon Railroad • Alaska Pollution Control • Old Kenai Dump • Frontier Tanning	• Old Creosote Plant • Union Oil of California • Alaska Railroad, Anchorage

SUMMARY MATRIX

	None Priority	Low Priority	Medium Priority	High Priority	Site Is Inactive/Abandoned	Site Is a Landfill/Dump	Site Contains PCBs	Site Contains Only Waste Oil	Site Contains Drilling Muds	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 Hurrah 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 Only Waste Oil	The Site is a Soil 1-2 Person Operation	COMMENTS
Diesel Fuel Oump, 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 Airmotive 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 reinjected 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 FUNDS

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	Administrative costs Monitoring beyond the active use of the site
ALASKA	....	....	....
ARIZONA	Hazardous Waste Trust Fund	F, F(s), P	Operation, maintenance, perpetual care, matching federal superfund monies
ARKANSAS	....	....	....
CALIFORNIA	Hazardous Substances Account	Fu, P, T(g), P	Match federal superfund monies, cleanup, incident contingency fund, victim compensation fund, health studies, emergency equipment
COLORADO	Emergency Response Cash Fund	F, P	Emergency response
CONNECTICUT	Emergency Spill Response Fund	F(g), L, R, Fu	Oil and hazardous spills
DELAWARE	Hazardous Substances Spill Fund	L*	Contain and cleanup spills
FLORIDA	Hazardous Waste Management Trust Fund Inland Spill Fund	F(p), T(g), L, R, P T	Reduce hazard at abandoned sites, monitoring Cleanup underground petroleum storage tanks
GEORGIA	Hazardous Waste Trust Fund	F(o), H*	Maintenance of abandoned sites
HAWAII	....	....	....
IDAHO	....	....	....
ILLINOIS	Hazardous Waste Fund	F(o)	Take action against long-term danger, research and development of recycling
INDIANA	Hazardous Substances Emergency Trust Fund Environmental Management Special Fund	T(o) F, P	Emergency response, match under superfund Multipurpose environmental response

	Hazardous Waste Remedial Fund	F(o),F(t)	Cleanup, emergency response, superfund match, postclosures, 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
LOUISIANA	Hazardous Waste Protection Fund Abandoned Hazardous Waste Site Fund Environmental Emergency Response Fund	B*,L,Fe R,excess \$,L Fe,R,L,P	Perpetual care, assure financial responsibility Match federal funds, cleanup at abandoned sites Environmental emergency responses, match federal funds
MAINE	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(t)(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

ALABAMA	Hazardous Waste Emergency Fund	L,R,P	Cleanup, disposal, containment
ALASKA	Hazardous Waste Remedial Fund Environmental Protection and Spill Compensation Fund	T(g),L,P P	Emergency response Oil spills only
ARIZONA	Hazardous Waste Fund Oil Pollution Protection Fund	F(o) P,L,R,P	Perpetual care Oil and hazardous substances spills
ARKANSAS	****	****	****
CALIFORNIA	Hazardous Waste Facility Management Special Account Emergency Response Spill Fund	F(p),F(q) L,P,R	Administration, closure, abatement, grants Emergency response to spills
COLORADO	Controlled Industrial Waste Fund	L	Emergency response
CONNECTICUT	Hazardous Waste Account	F(g)	Perpetual care
DELAWARE	Solid Waste Abatement Fund	P,R,H	Emergency situations, spills
FLORIDA	Hazardous Substance Emergency Fund Feasibility Study for State Superfund	L,H	Abandoned site spills
GEORGIA	Hazardous Waste Contingency Fund	L,F(g)(g')	Emergencies at permitted landfills
HAWAII	****	****	****
ILLINOIS	Hazardous Waste Trust Fund Perpetual Care Trust Fund	H* F(o) "	Cleanup, perpetual care Containment of abandoned site
INDIANA	Disposal Facility Response Fund	L,P	Match federal superfund monies
IOWA	****	****	****
KANSAS	Oil and Hazardous Spill Contingency	L, L	Response to spills, hazardous substances
KENTUCKY	****	****	****
LOUISIANA	****	****	****

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 \$597,896.07 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.

WEST VIRGINIA

WISCONSIN

Hazardous Waste Fund
Hazardous Substances Spill Fund

F(o), R
L, R

Closing and long-term care
Cleanup and disposal

WYOMING

Key:

N - bond supported
N* - bond forfeiture
F - Fees
F(o) - Depending on method of disposal
Fe - Federal funds or grants
g - Generator
g* - Out-of-state generator
L - Legislative appropriations
L* - Emergency appropriations
L** - 50 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(g) - Depending on method of disposal

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

February 19, 1985

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 6921.

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)

January 28, 1986

SUBJECT: CSHB 470 (Resources)

TO: Rep. Mike Davis

FROM: Ed Hein, LAA *EHA*

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

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

organized under state law.

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 -

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

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

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

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February 19, 1985

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note.

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(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)

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
POUCH O, JUNEAU, ALASKA 99811

Telephone: (907)

Address:

465-2600

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 . 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 -

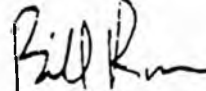
January 16, 1986

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,


for 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

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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.

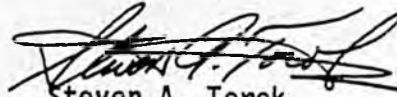
Very instrumental in this program is the ability to efficiently and effectively manage operations. The authority to recoup costs is, in itself, a key point. One suggestion we have is to provide for a mechanism that will determine what incidents are eligible for these funds. Subsequent regulations could 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", with a stylized flourish at the end.

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

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.

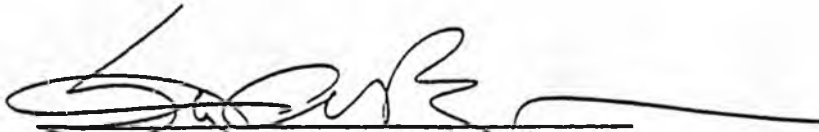
BE IT FURTHER RESOLVED that the Alaska Municipal League requests the Alaska Legislature to establish a Hazardous Substances Response Fund to provide funds for matching purposes for participation in Superfund clean-ups, to provide funds for clean-up of hazardous waste sites not eligible for federal clean-up 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,

A handwritten signature in cursive script, reading "Bill Sheffield".

Bill Sheffield
Governor

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



December 20, 1985

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

Dear Representative Davis:

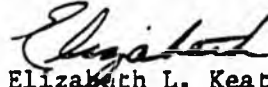
Jonathan Sperber has reviewed with me your Hazardous Substance handling. I favor such legislation.

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



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

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.

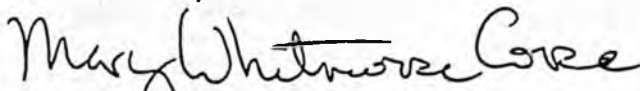
The League of Women Voters of Alaska recommends additions to the legislation based on the National League of Women Voters position on hazardous waste. Full legal fees should be awarded the Attorney General's office if an enforcement action under H.B. 470 goes to court and the state wins the enforcement 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

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 printed 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.

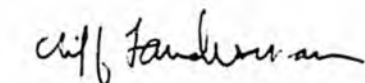
Of course, the most important part of a state response fund is clear legislative direction to the executive branch to pursue reimbursement from responsible parties. This fund would allow prompt state action if necessary for the sake of human safety and the integrity of the environment; it would in no 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.

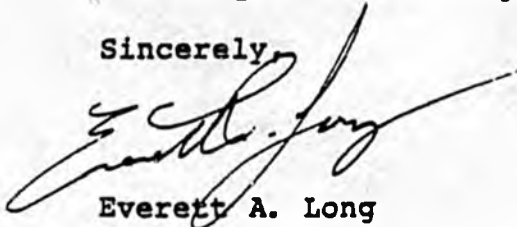
Once the equipment, and the basic training are completed for the response team, I'm not sure how future maintaining of that team is funded. Is it possible that some sort of matching funds be developed to keep these valuable teams operational. Of interest, Anchorage is developing a similar concept.

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.

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", written in dark ink.

Everett A. Long

cc: FNSB Haz-Mat Task Force



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,

Tim Holder
Coastal Management Planner

TH/il

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:

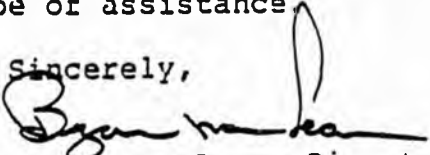
Thank-you for including us on your mailing list of organizations concerned about the management and treatment/disposal of hazardous waste. We appreciate the opportunity to review the legislation you propose to introduce in the upcoming legislative session.

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 8, 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 35-08 ("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 35-08 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 Mac Lean, 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 General's 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.

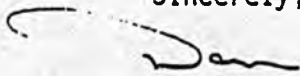
Also, if the funds set aside as a separate entity of the general fund the oil and substance response fund could be partially self-perpetuating through the interest income it may derive.

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.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don", with a long, sweeping horizontal stroke extending to the left.

Don Penner
Director of Community Development



**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/mmb
rj4-1

Municipality of Anchorage



P.O. BOX 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4860

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,

cc: Rep. Don Clocksin
Rep. Mike Szymanski

Municipality of Anchorage
Comments on the Oil and Hazardous Substances
Response Fund Bill

Sec. 46.08.050. Financing the Maintenance 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.

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]

~~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]

~~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.]

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 26.23-040.

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):

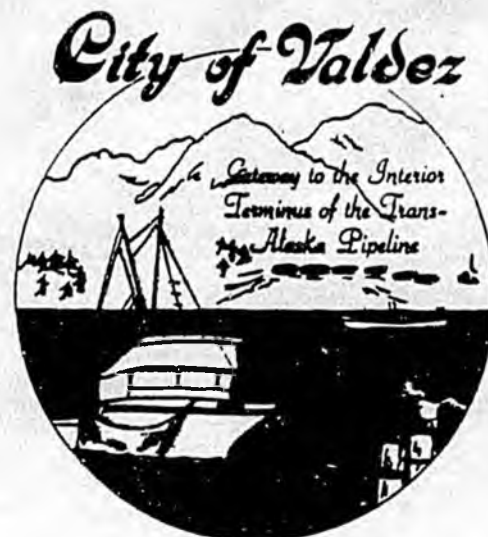
(1) "catastrophic release of hazardous substances" means any ~~discharge which~~ [release or threatened release exceeding the response capabilities of a local jurisdiction and for which the highest local elected official and] the governor determines represents a grave and substantial threat to the public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

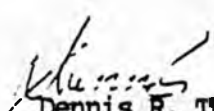
I agree with Chief McAlisters' comments on cost. The program could become very costly and cumbersome with some high side boards.

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 *TMV*

This bill does many things that I think would be benifical 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 V
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.

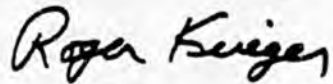
Knowing the amount of electrical transformers in our area with PCB contamination, and multiplying these times the communities in Alaska, I feel this type of substance is far more a concern then most substances as defined in the EPA-Resource Conservation and recovery act of 1976.

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
page3

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.

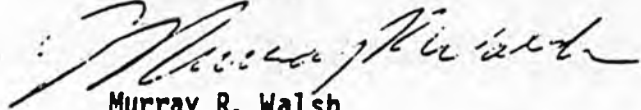
As an overall summary, I would say that your bill as it stands is a good one and should be enacted if a more comprehensive solution is not possible. I would, however, urge a more comprehensive approach that includes:

- 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

DEC NEWS

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

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

-MORE-

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

-MORE-

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."

#

HB 470
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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.

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.

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.

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 3.

Sec. 26.23.230. (1) 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.

* 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.

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		5.5	53.5	53.5		
SUPPLIES		23.5	23.5	23.5		
EQUIPMENT		14.0	2.0	2.0		
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		329.7	371.6	371.6		

CAPITAL						

REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		7.0*	7.0	7.0		
FEDERAL FUNDS						
OTHER						
TOTAL						

*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 : [Signature] 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)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 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 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

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 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																																							
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**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Water Quality Management

FY 87

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Revised Date _____

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

Agency Environmental Conservation
BRU Environmental Quality
Component Water Quality Management

FY 87

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Revised Date _____

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Barg. Unit GGU	Gov. 148	Approv.	Disapp.
Time Status Full Time	Staff Months 12	RP Number	Location Anchorage		Election District			
			Justification					
Type of Expenditure		Amount		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. We expect to fill this position on October 1, 1986. Funding for nine months has been requested for FY 87.				
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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						
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Total Cost		51.9						
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**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Southcentral Region

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FY 87

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**Request For
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Agency Environmental Conservation
 BRU Environmental Quality
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**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Northern Region

Page _____ of _____
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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, Koponen, 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						
TOTAL OPERATING	-0-	10.0	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		10.0				
TOTAL	-0-	10.0	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	0				-	
PART-TIME	0					
TEMPORARY	0					

ANALYSIS : Attach a separate page if necessary

Prepared by : Bob Bacolas, Director

Division : Labor Standards and Safety

Phone : 465-4870

Date : 1/21/86

Approved by Commissioner : Jim Robison

Agency : Labor

Date : 1/21/86

Distribution (by Agency preparing fiscal note) :

Legislative Finance

Legislative Sponsor

Requester

Office of Management and Budget

Impacting Agency

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 Materials 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.

FILE
SIB 375

①

HB 470: ISSUES & DISCUSSION

1) Issue: For what purpose should the fund be used?

Alternatives:

- (1) emergency/acute oil spill and hazardous substance release.
- (2) site investigation and cleanup.
- (3) combination as envisioned in current version of bill.

Discussion:

Proposed fund should be strictly limited to emergency or acute response to oil spill or hazardous substance releases, capital, nonlapsing in nature.

Concomitantly, one position should be added to DEC's operating budget specifically to continue their existing program of inspecting, investigating, sampling and analyzing hazardous waste sites. The new position would catalogue and prioritize sites according to level of hazard and recommend for consideration by the Legislature, capital cleanup funds in future budgets. Employee would also work closely with federal Corps of Engineers personnel to coordinate their cleanup efforts.

Language authorizing legislative appropriations from federal, private or other sources would assure that the State is receptive to such receipt and mission and specific projects could be further authorized if needed either through legislation or RP.

Department Concern:

Without the ability to use a portion of the fund for contract investigation, they will be unable to pursue the responsible party and eventually clean up spill or release. A prime example is the Nome oil spill. The Department will argue for the ability to utilize a portion of the fund for some site investigation. Without this ability, they cannot support the bill.

- 2) Issue: How should the fund be composed? How should it be capitalized? Should the Legislature place a cap on its size? Should there be an automatic transfer mechanism?

Alternatives:

- 1/31/02
10:44 AM
- (1) Rainy Day Fund
 - (2) Transfers and reappropriations
 - (3) Capital budget appropriation

Discussion:

To assure maximum legislative review and oversight of the fund in accordance with its intended purpose, the Legislature should capitalize the fund one time with

subsequent capital appropriations based on fund use. The new, combined, oil spill and hazardous substance release fund should be patterned after the successful oil spill fund which was originally capitalized at about the \$1.5 million mark. The proposed \$1 million capitalization of HB 470 can occur by utilizing four sources of existing funding. First, transfer any remaining monies in the existing oil spill fund to the new fund. This amount should approximate \$150-200,000 in June 1986. Second, appropriate at least \$300,000 to existing fund as proposed in the Governor's capital budget. Third, the existing oil spill mitigation account currently has approximately \$19,000 sitting in it for possible appropriation by the Legislature or it lapses to the general fund. Department sources indicate that by June 1986 this account will accrue an additional \$300,000, also available for appropriation. Of the three actions, as much as \$800,000 could be realized. The remaining \$200,000 to fully capitalize the new fund at the \$1 million mark could come from two sources: One, capitalize Governor's request at \$500,000 level; or two, authorize the Governor to transfer/allocate, on a one-time basis, the difference between that amount created by the combination of the above mentioned sources and the Rainy Day Fund, up to a total not to exceed \$1 million. No further withdrawals from the Rainy Day Fund would be authorized. The Department can support this approach.

3) Issue: Municipal interest - Should the legislation

authorize reimbursements? Should legislation provide guidelines for when/how reimbursements to municipalities should occur? Leave to Department or direct them to develop?

Discussion:

Bill currently provides a mechanism whereby the Department can contract with municipalities to provide emergency response with Departmental review. Also, provides that the Attorney General can assist in the collection of cleanup costs from responsible parties. Bill prohibits fund use for purchase of capital items with some exceptions.

The municipalities currently support the bill because they expect to see some ongoing reimbursement from the State for their first response. With a limit on the amount of funds available being subject to legislative appropriations, some erosion of support may occur.

At least three funding reimbursements should be discussed:

- (1) Where a municipality's first response team responds to an emergency requiring immediate action. The result would be that the municipality would respond and perhaps contract for actual cleanup.

Apply or use the mechanism to recover \$ rather than \$.

Do we need to do more separate section or burden on them to apply? (Gov. may reimburse municipalities' first enter into cleanup agreement.)

*Guidelines
+ criteria*

*Not is
what
agreement
would do
No. No
projects
might contract
for services*

There is general agreement that this type of response activity is eligible for reimbursement.

(2) Is the payroll of municipal employees, either first responders or other reimbursable? There is no agreement here.

(3) Should the fund be used to buy rolling stock, i.e., fire trucks, ambulances, etc..or other response related equipment? There is no clear agreement here, although HB 470 as before the Committee has language which would prohibit the funds use for "capital improvements." Clearer guidance should be given here.

4) Issue: CIRI Amendment - Indemnification. Two legal opinions are attached which discuss the issue. Additionally, a proposed letter of intent is attached.

5) Issue: Definitions - Concern is that current definition in HB 470 is not specific enough. Is it too broad? What laws are included in the umbrella of "state or federal law or by regulations adopted under state or federal law"?

Discussion:

Attached is a legal description of what is covered. One option would be to reference each state and federal statute with a proviso that would allow for the

addition or inclusion of future federal or state laws in this area. A problem with a string such as this is that it might polarize constituencies for or against the bill. A second option would be to use the broad definitions and during further discussion or debate to include the actual statute references with short titles and partial lists of substances for members. Such lists then become part of the legislative history but do not inordinately clutter the statute.

6) Issue: Fiscal Notes, DEC and Labor

Discussion:

DEC - Propose paring down to two (2) environmental field officers to investigate reports of spilled substances, monitor cleanup, etc... Costs associated with each of these positions approximates \$51.9, total \$103.8.

Other proposed positions in the fiscal note of the Department included a person to write regs, cleanup and containment procedures and negotiate contracts, and a clerk typist.

Propose that DEC spread this management responsibility over existing personnel.

*need atleast
-3- FBY
SC + Anchorage
S.E.*

The Department feels strongly that because of the regulations and guidelines required in the current draft, they need a full-time professional position to coordinate this activity. They could, absent these requirements, otherwise spread the administrative burden over their current staff in oil spill response with the addition of one half-time equivalent. The Department will speak to this.

Labor - The Department's fiscal note responds to the requirement that they develop safety education programs for employers of emergency response employees. Labor proposes the use of \$10,000 to send existing employees to the EPA's hazardous materials incidence operations training course and to purchase training manuals for ongoing training.

Discussion:

Should the Department of Labor be responsible for training?

At least one municipality recommended that DEC should use fund monies to contract "with a person, or a municipality of the state for personnel, equipment, or services necessary to carry out all training,..."

7) Issue: Should DEC personnel be designated as peace officers?

Discussion:

Suggest this section be deleted.

MEMORANDUM

TO: Rep. Pat Pourchot
FROM: Staff
RE: HB 470
DATE: February 25, 1986

In preparation for the Finance Subcommittee meeting on HB 470, February 25, 1986, in addition to each member's bill file, copies of the following are provided:

- Department of Environmental Conservation fiscal note;
- legislative and fiscal history of the Oil Pollution Control Program;
- letter from Alaska Miners Association;
- proposed amendment from Cook Inlet Region Incorporated re: indemnification protection;
- letter from Division of Retirement and Benefits re: DEC employees as peace officers; and
- DEC Hazardous Waste Management Program overview.

Additionally, to frame the meeting, the Commissioner of DEC has been asked to respond specifically to the following:

- State and departmental policy re: hazardous waste;
- State and departmental plan for dealing with hazardous waste;
- schedule for implementing policy;
- SB 503 implementation;
- what is a hazardous substance as envisioned in this bill;
- FY 87 budget increments as they relate to the above;

- other bills which should be considered in the subcommittee's review of HB 470;
- the CIRC amendment and the broad issue of indemnification and the state's liability;
- federal monies; which federal programs might be used to match or offset state dollars;
- effect on municipal governments and question of reimbursements; and
- the proposed funding mechanism for the fund.

Finally, Jay Hogan, Director of Budget Review, OMB, will discuss the Rainy Day Account, how it works, the "continuing" nature of other appropriations from the fund, and alternative funding mechanisms for HB 470.

The second hearing of the subcommittee has been scheduled for Friday, February 28, from 8:00 a.m. to 10:00 a.m. in Capitol Room 17.

(B) a person repairing his own or a family member's motor vehicle;
 (4) "repair" or "repairs" means the improvement, adjustment, replacement, examination, diagnosis, maintenance, servicing, removal or installation of any component or part of a motor vehicle, but does not include towing or the supply of motor fuel to a motor vehicle. (§ 1 ch 146 SLA 1976; am § 21 ch 144 SLA 1977)

Effect of amendment. — The 1977 amendment, in paragraph (2), substituted "AS 28.35.260" for "AS 28.10.650," "under AS 28.10" for "with the Department of Public Safety under AS 28.10.040," and "jurisdiction" for "state."

Article 10. Miscellaneous.

Section

900. Indemnification agreements contra to public policy

Sec. 45.45.900. Indemnification agreements contra to public policy. A provision, clause, covenant, or agreement contained in, collateral to, or affecting any construction contract which purports to indemnify the promisee against liability for damages for (1) death or bodily injury to persons, (2) injury to property, (3) design defects or (4) any other loss, damage or expense arising under (1), (2), or (3) of this section from the sole negligence or wilful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to the promisee, is against public policy and is void and unenforceable; however, this provision does not affect the validity of any insurance contract, workers' compensation or agreement issued by an insurer subject to the provisions of AS 21. (§ 1 ch 155 SLA 1975; am § 60 ch 94 SLA 1980)

Effect of amendment. — The 1980 amendment substituted "workers'" for "workmen's" near the end of the section

former AS 45.47.010, which was redesignated as AS 45.45.900 by the 1980 amendment.

Editor's note. This section derives from

Chapter 50. Competitive Practices and Regulation of Competition.

Article

1. Trademarks (§§ 45.50.010 — 45.50.200)
2. Log Brands (§§ 45.50.210 — 45.50.325)
3. Authorship (§§ 45.50.330 — 45.50.460)
4. Unfair Trade Practices and Consumer Protection (§§ 45.50.471 — 45.40.561)
5. Monopolies; Restraint of Trade (§§ 45.50.562 — 45.50.596)
6. Deceptive Advertising of Civil Defense Aids (§§ 45.50.600 — 45.50.606)
- 7-12. [Reserved]
13. Alaska Gasoline Products Leasing Act (§§ 45.50.800 — 45.50.850)
14. [Reserved]
15. Miscellaneous (§ 45.50.900)

TEXT OF PROPOSED AMENDMENT TO H.B. 470

A.S. 45.45.900 is amended by adding at the end thereof the following language:

" , or a provision, clause, covenant, or agreement of indemnification respecting the handling, containment or cleanup of oil or hazardous substances as defined in A.S. 46."

CIRI

SUGGESTED LEGISLATIVE HISTORY FOR PROPOSED AMENDMENT TO H.B. 470

This provision of the statute is intended to facilitate agreements of indemnification within the private sector regarding clean up of toxic and hazardous substances. It clarifies that a hazardous waste clean up contract is not a "construction contract" and therefore is not subject to the restrictions upon indemnification agreements found in A.S. 45.45.900. The statute provides certainty for parties who voluntarily enter into indemnification agreements, and therefore will allow parties to freely negotiate such protections as between themselves. Typically, such an indemnification clause will be negotiated between the private party responsible for the creation and discharge of the hazardous private substance (e.g., an oil company which has oil contaminated with PCB's) and the private party hired by that company to clean up or eliminate the hazardous substance. Such clauses will operate in lieu of liability insurance, which is at present exceptionally difficult to acquire in this area.

It also is important to confirm what the provision does not do. The provision does not provide in any way for an exemption from liability for mishandling of hazardous substances. Any injured party -- members of the public, the State, or other companies -- will have all their rights to pursue their full legal remedies. The provision will operate, in effect, to enhance legal remedies for injured persons by facilitating an additional layer of "deep pockets" behind the clean up company. Moreover, the provision does not require any entity, private or public, to enter into an indemnification agreement. The statute confirms that such agreements are legal, but preserves the complete freedom of all parties to decline to enter into such an agreement.

SCH:sj
(19/32)

MEMORANDUM

State of Alaska

TO: Commissioner Bill Ross
Department of Environmental
Conservation

DATE: February 27, 1986

FILE NO: 366-354-86

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General

SUBJECT: Proposed amendment
to CSHB 470 (Res)
and state and
municipal liability

By: Joseph W. Geldhof
Assistant Attorney General
Dept. of Law

By memorandum dated February 25, 1986 you requested our review and counsel pertaining to House Bill 470, an act related to the release of oil and hazardous substances. Specifically, you wanted to know if passage of the act would alter municipal or state liability compared to current law. You also sought our review of a proposed amendment to the act which would change law found at AS 45.45.900. This proposed amendment addresses indemnification arrangements related to the cleanup of hazardous substances.

I.

ALTERATION OF LIABILITY

The proposal in CSHB 470 (Res) to create an oil and hazardous substance release response fund in and of itself does not change or shift liability for the use, transportation or improper disposal of oil or hazardous substances. The provisions related to the fund are embodied section 1 of the bill and, if established, would be embodied in a new chapter of Title 46.

Section 2 of the proposed legislation would create another new chapter in Title 46 pertaining to hazardous substance release control. Certain provisions within this section provide additional reporting requirements for persons using or transporting hazardous substances when a hazardous substance is released. Specifically, the proposed AS 46.09.010 would require in part that:

...a person in charge of a 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.

The act would also require at proposed AS 46.09.020 that:

A person who causes a release of a hazardous substance shall make reasonable efforts to contain and cleanup the hazardous substance promptly after learning of the release...

Commissioner Bill Ross
Department of Environmental
Conservation
AG File No. 366-354-86

February 27, 1985
Page 2

Neither of these two proposed provisions dramatically shifts liability compared to current state or federal law. Current state law at AS 46.03.90 et seq. and AS 46.03.296 in particular give the Department of Environmental Conservation reasonably stringent control over the disposal and transportation of hazardous waste. The proposed act makes explicit the extent and degree to which the regulated community will be required to comply with state law related to hazardous wastes. In practical terms, the enforcement standards for certain conduct are more clearly articulated through the proposed legislation. The application of sanctions as outlined in AS 46.03.760 - 790 to certain conduct is also more obvious.

In terms of liability, passage of CSHB 470 (Res) would establish statutory reporting and cleanup requirements which persons, and organizations (including, as appropriate, municipalities) would be required to follow in addition to the more general requirements now found in AS 46.03 and 04.

Another aspect of the proposed legislation which may modestly alter liability is the definition for hazardous substance found at line 4 on page 9 of the bill. Hazardous substance is arguably defined more broadly than the current definition of "hazardous waste" found in AS 46.03.900. Either of these definitions would require technical analysis by DEC during application. Still, our sense is that the proposed definition for "hazardous substance" is or has a potential to be more inclusive. Thus, we believe that the proposed definition for "hazardous substance" may potentially expand liability for persons or organizations using, transporting or disposing of hazardous substances.

The remaining portions of the proposed act deal with administration of the fund and technical amendments to existing law which apply the current sanctions found in AS 46.03 to regulated activities under the proposed act.

II.

PROPOSED AMENDMENT REGARDING CONTRACTOR INDEMNIFICATION

A proposed amendment to CSHB 470(Res) is being circulated which would alter current law found at AS 45.45.900. The current statute states:

Indemnification Agreements Contra to Public Policy. A provision, clause, covenant, or agreement contained in, collateral to, or affecting any construction contract which purports to indemnify the

promisee against liability for damages for (1) death or bodily injury to persons, (2) injury to property, (3) design defects or (4) any other loss, damage or expense arising under (1), (2), or (3) of this section from the sole negligence or wilful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to the promisee, is against public policy and is void and unenforceable; however, this provision does not affect the validity of any insurance contract, workers' compensation or agreement issued by an insurer subject to the provisions of AS 21.

The proposed amendment would add the following language to the existing statute: ", or a provision, clause, covenant, or agreement of indemnification respecting the handling, containment or cleanup of hazardous substances as defined in A.S. 46."

This proposed language has been offered by an organization which is interested in cleaning up oil and hazardous substances in Alaska to avoid a literal application of the prohibition found in AS 45.45.900. While application of AS 45.45.900 to the cleanup or containment of oil or hazardous substances is by no means certain, the fear exists that any and all indemnification agreements pertaining to containment and cleanup of oil or hazardous substance may not be binding.

This might create a problem because responsible persons and organizations interested in providing services to control or cleanup hazardous substances may be reluctant to engage in such activity because of the apparent prohibition on indemnification agreements found in AS 45.45.900. If the control and cleanup activity is characterized as a construction agreement, a literal reading of the current statute implies that the cleanup contractor cannot be indemnified by the entity seeking containment and cleanup of the release. The question of indemnification is particularly important because procurement of liability insurance by a cleanup contractor is virtually impossible to obtain in the context of hazardous release cleanup operations and very expensive in the context of oil spills.

What the amendment proposes is language which would create an opportunity for a firm, person, or organization which created the oil or hazardous substance problem or for the entity seeking cleanup of the release to contractually indemnify a cleanup contractor. This does not absolve the cleanup contractor from liability. It merely creates a situation where the person responsible for the release or spill (or the organization

Commissioner Bill Ross
Department of Environmental
Conservation
AG File No. 366-354-86

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Page 4

attempting to cleanup the mess, i.e. state or municipality) and the cleanup contractor can allocate the liability between themselves without fear that the current AS 45.45.900 will be interposed as a defense.

For example, a corporation (SPILLEZE) is responsible for the release of 1000 gallons of toxic substance. SPILLEZE retains a contractor (KLEENEZE) for containment and cleanup of the toxic substance. KLEENEZE will typically seek an indemnification agreement from SPILLEZE for any liability arising out of the containment and cleanup activity not associated with the KLEENEZE's willful misconduct.

In certain circumstances a firm or person responsible for releasing oil or hazardous substances will sign such an indemnification agreement with a responsible containment and cleanup contractor. Enactment of the proposed amendment would afford an opportunity to execute indemnification agreements in these circumstances.

This analysis may be slightly different the situation where the state seeks a contractor to contain and cleanup an oil or hazardous substance release. Recently the Alaska Supreme Court stated in Rogers and Babler, a Division of MAPCO Alaska, Inc. v. State of Alaska, _____ P.2d _____ No. 3018, Jan. 31, (Alaska 1986):

We are not inclined to accept a reading of the statute that would invalidate the indemnity provisions in every contract entered into between the state and construction contractors. We think AS 45.45.900 should come into effect only when it is determined, as between the state and the contractors, that the state is solely negligent.

Thus, the supreme court of Alaska, at least with respect to the state, is suggesting that the apparent prohibition on indemnification agreements in construction contracts found at AS 45.45.900 will only apply when the promisee is completely negligent and seeks to hold an innocent promisor accountable.

Under these circumstances, enactment of this amendment may not be necessary but it would probably reduce the legal uncertainty for responsible containment and cleanup contractors and encourage their participation in this difficult business. Passage of this amendment would create an opportunity for arms length bargaining regarding the question of liability. If the department wants to encourage this type of contractual discussion, enactment of this amendment seems appropriate.

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Page 5

If the state ever engages the services of a containment and cleanup contractor we trust DEC will work closely and cooperatively with the Department of Law regarding the terms of any proposed indemnification agreement.

III.

CONCLUSION

Two provisions in section 2 of CSHB 470 (Res) would create specific statutory presumptions for persons using or transporting oil or hazardous substances. As such, liability for these particular activities is spelled out with greater specificity, although not necessarily increased. The proposed amendment pertaining to indemnification would merely afford an opportunity for a considered debate on the allocation of liability by removing the apparent statutory bar to indemnification agreements in construction contracts related to cleanup and containment of oil spills and release of hazardous substances.

JWG:rn

cc: G. Thomas Koester
Art Peterson
Doug Mertz
Rep. Mike Davis

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : 2/14/86**REQUEST**

Bill/Resolution No. HB 470 (KQ)
 Title : An Act Relating to the Release
of Oil and Hazardous Substances

Sponsor : Rep. Mike 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		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						
TOTAL OPERATING		290.2	334.3	334.3		

CAPITAL						

REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		290.2	334.3	334.3		
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS : *5.0 FTE

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

ANALYSIS : Attach a separate page if necessaryPrepared by : S.W. HungerfordDivision : Environmental QualityPhone : 465-2666Date : 2/14/86Approved by Commissioner : Bill K.Agency : Department of Environmental ConservationDate : 2/14/86

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

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

182.7

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. 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 management will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs.

25.0

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.

48.5

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.

22.0

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

12.0

290.2

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	Eng. Unit GGU	Gov. Leg.	Approv.	Disapp.
Time Status Full Time	Staff Months 12	RP Number	Location Juneau		Election District			
			Justification					
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 1802							
	O. P. Match 1003							
	General Funds 1004		74.9					
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1051							
	Other							
For EAM Use Only Key Number _____								

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

FY 87

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 Revised Date _____

Position Title Clerk Typist III			No. of Positions One	Range/Step 8 A	Bmg. Unit GGU	Gov. 123	Approv.	Disapp.																									
Years Status Full Time	Staff Months 12	RP Number	Location Juneau		Election District																												
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**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Water Quality Management

FY 87

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 Revised Date _____

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 1B A	Borg. Unit GGII	Gov. 143	Appr. 143	Disapp. 143																									
Time Status Perm. Part Tim	Staff Months 6	RP Number	Location Juneau		Division District																												
<table border="1"> <thead> <tr> <th>Type of Expenses</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>2</td> </tr> <tr> <td>Salary</td> <td>18.7</td> </tr> <tr> <td>Benefits</td> <td>5.6</td> </tr> <tr> <td>Premium Pay</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Annual Salary</td> <td>24.3</td> </tr> <tr> <td>Travel</td> <td>5.0</td> </tr> <tr> <td>Contractual</td> <td>5.0</td> </tr> <tr> <td>Commodities</td> <td>3.5</td> </tr> <tr> <td>Equipment</td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Cost</td> <td>39.8</td> </tr> </tbody> </table>			Type of Expenses	Amount	1	2	Salary	18.7	Benefits	5.6	Premium Pay		Other		Total Annual Salary	24.3	Travel	5.0	Contractual	5.0	Commodities	3.5	Equipment	2.0	Other		Total Cost	39.8	Justification 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.				
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**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southeast Region

FY 87

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 Revised Date

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Bug. Unit GGU	Gov. Leg.	Approv.	Disapp.																									
Time Status Full Time	Staff Months 12	RP Number	Location Anchorage		Election District																												
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**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southcentral Region

FY 87

Page 6 of 8
 Revised Date _____

Position Title Environmental Field Officer III			No. of Positions One	Ranger/Step 18 A	Bmg. Unit GGU	Gov.	Approv.	Disapp.
Time Status Perm. Part Time	Staff Months 6	RP Number	Location Anchorage		Election District	Leg.		
			Justification 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.					
Type of Expenditure		Amount						
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 Com		39.8						
Receipt Code		Funding Source						
	Federal Receipts	1002						
	G. F. Match	1003						
	General Funds	1004						
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1061						
	Other							
		39.8						
For B&M Use Only Key Number _____								

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southcentral Region

FY 87

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 Revised Date

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Brg. Unit GGH	Gov. Leg.	Appov. 	Blasov. 																									
Time Status Full Time	Staff Months 12	RP Number 	Location Fairbanks	Election District 																													
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**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Northern Region

FY 87

Page 8 of 8
Revised Date _____

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, Koponen, 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						
TOTAL OPERATING	-0-	10.0	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		10.0				
TOTAL	-0-	10.0	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS : Attach a separate page if necessary

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

Phone : 465-4370
 Date : 1/21/86
 Date : 1/21/86

Distribution (by Agency preparing fiscal note) :

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Research
 Comptroller General

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 45.08.040(3).

The \$5000 travel monies will be used to send two industrial health consultants to the Environmental Protection Agency's (EPA's) Hazardous Materials 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.

CAPITALIZATION OF OIL SPILL AND HAZARDOUS SUBSTANCE RELEASE
RESPONSE FUND, HB 470

AS INTRODUCED:

- \$1 million original capitalization from Rainy Day Fund
- Automatic annual transfers from Rainy Day Fund to maintain \$1 million balance

PROPOSED CS TO HB 470 (FIN) FUND CAPITALIZATION:

- \$1 million capitalization (outlined below)
- No automatic transfers from Rainy Day Fund
- Balances in future years maintained through annual capital budget appropriations

Existing Oil Spill Fund balance	\$ 300,000 ¹
Obligated monies FY 86	<u>- 100,000²</u>
SUBTOTAL	200,000
Proposed FY 87 Capital Budget Approp.	300,000 ³
Oil Spill Mitigation Account Balance (receipts from responsible party reimbursements)	19,000 ⁴
Additional Mitigation Account Deposits by 6/86	<u>300,000⁵</u>
TOTAL	819,000
One-time Transfer from Rainy Day Fund	<u>181,000⁶</u>
FUND GRAND TOTAL	\$1,000,000

¹ This requires that language be placed in HB 574, an Act making operating appropriations and transfers of operating appropriations, or other appropriate legislation to transfer the balance of the fund to the newly established fund.

² These monies are currently obligated and expected to be paid out in FY 86 by the Department to pursue responsible parties in oil spills.

³ The Governor has proposed a \$300,000 appropriation to the oil spill fund in HB 500 (budget bill). This appropriation would also be transferred to the newly established fund.

- 4 The Oil Spill Mitigation Account is an account within the general fund to which reimbursements, fines, penalties and damages are credited. Currently, these funds remain available for reappropriation by the Legislature for oil spill related projects through the end of each calendar year.
- 5 The Department of Environmental Conservation is currently pursuing several actions against responsible parties. The Commissioner's office has indicated that by June 30, it is expected that at least \$300,000 will accrue to the Account as a result of their enforcement actions.
- 6 Section 19 provides for a one-time transfer from the Rainy Day Fund. While the exact figure is unknown, the Governor may only transfer an amount not to exceed \$1 million when added to the total of the above referenced transfers and appropriations.

Offered: 2/10/86
Referred: Finance

gms w/ 

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 * *mitigation*
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
21 oil or a hazardous substance;

22 (2) undertake plans, inspections, sampling, tests, inves-
23 *collapse* 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 emergency
28 response employers in developing safety education programs under AS
29 18.60 for employees who may be called upon to respond to a release of

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

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

24 (3) "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 (4) "department" means the Department of Environmental
29 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

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

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

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

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

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

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

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

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

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

1 and cleanup of the release unless the commissioner determines

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

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

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

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

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

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

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

18 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
19 request the governor to determine that an actual or imminent release
20 of a hazardous substance constitutes a disaster emergency under
21 AS 26.23. If the governor declares a disaster emergency under AS 26.-
22 23, the commissioner may assist the adjutant general in the relief of
23 the emergency.

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

1 environment to its former state, and incidental administrative costs;

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

4 (4) "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 (5) "release" means an intentional or unintentional release
15 into the environment of the state.

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

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

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

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

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

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

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

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

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

29 (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 land 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:

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

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

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

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

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

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

29 (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).

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 3/12/86

REQUEST

Bill/Resolution No. : CSSB 375 (Res)
 Title : An Act Relating to the Release
of Oil and Hazardous Substances
 Sponsor : Senate Resources Committee
 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	0	100.8	132.2	132.2	132.2	132.2
TRAVEL	0	13.0	15.0	15.0	15.0	15.0
CONTRACTUAL	0	21.0	21.0	21.0	21.0	21.0
SUPPLIES	0	8.5	10.0	10.0	10.0	10.0
EQUIPMENT	0	6.0	2.0	2.0	2.0	2.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	149.3	180.2	180.2	180.2	180.2

CAPITAL						

REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	149.3	180.2	180.2	180.2	180.2
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS : *3.0 PFT

FULL-TIME	0	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : DEPARTMENT OF ENVIRONMENTAL CONSERVATION Phone : 465-2600
 Division : _____ Date : 3/12/86
 Approved by Commissioner Arthur Ellis Ruppel Date : 3/13/86
 Agency : CHAIRMAN-SENATE RESOURCES COMMITTEE

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. CSSB 375 (Res)

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

100.8

A. Program Management

1. An administrative assistant to prepare guidelines and contracts, help initiate appropriate cost-recovery actions, coordinate training, maintain records and prepare reports to the legislature.

Response Capability

2. Two 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 position in Anchorage for the Southcentral Region; and 2) one position in Fairbanks for the Northern Region.

B. Support Costs

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

13.0

2. Contractual funds of about 7.0 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.

21.0

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.

8.5

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

6.0

149.3

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 Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Org. Unit (40)	Dev.	Appov.	Disapp.
Time Status Full Time	Shift Months 12	BP Number	Location Fairbanks	Section Number	Exp.			
Type of Expenditure			Justification					
1	2	3	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. We expect to fill this position on October 1, 1987. Funding for nine months has been requested for FY 87.					
Salary	32.1							
Benefits	9.2							
Premium Pay								
Other								
Total Personal Services		41.3						
Trip		5.0						
Car rental		5.0						
Com. facilities		3.5						
Supplies		2.0						
Total Cost		56.8						
Receipt Code	Position Receipt							
	Federal Receipt	1002						
	G. P. Receipt	1003						
	General Funds	1004	56.8					
	F-A Receipts	1005						
	Program Receipts	1006						
	CIP Receipts	1007						
	Other							
For DDM Use Only								
Key Number								

**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Northern Region

FY 87

Page 8.7 of 85
 Revised Date

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Org. Unit GGU	Off.	Approv.	Disapp.																										
Time Status Full Time	Start Month 12	RP Number	Location Anchorage	Section District		Off.																												
			Justification																															
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>2</td> </tr> <tr> <td>Salary</td> <td>28.1</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>Total Personnel Services</td> <td>36.4</td> </tr> <tr> <td>Travel</td> <td>5.0</td> </tr> <tr> <td>Contractual</td> <td>5.0</td> </tr> <tr> <td>Communication</td> <td>3.5</td> </tr> <tr> <td>Equipment</td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Cost</td> <td>51.9</td> </tr> </tbody> </table>			Type of Expenditure	Amount	1	2	Salary	28.1	Benefits	8.3	Premium Pay		Other		Total Personnel Services	36.4	Travel	5.0	Contractual	5.0	Communication	3.5	Equipment	2.0	Other		Total Cost	51.9	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. We expect to fill this position on October 1, 1986. Funding for nine months has been requested for FY 87.					
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For BDM Use Only Key Number																																		

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southcentral Region

FY 87

Page 4 of 5
 Revised Date

Position Title Administrative Assistant II			No. of Positions One	Range/Step 14 A	Barg. Unit GGU	Gov. U28	Approv.	Disapp.																																						
Time Status Full Time	Staff Months 12	RP Number	Location Juneau		Election District																																									
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**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Water Quality Management

Page 5 of 5
Revised Date _____

FY 87

CAPITALIZATION OF OIL SPILL AND HAZARDOUS SUBSTANCE RELEASE
RESPONSE FUND, HB 470

AS INTRODUCED:

- \$1 million original capitalization from Rainy Day Fund
- Automatic annual transfers from Rainy Day Fund to maintain \$1 million balance

PROPOSED CS TO HB 470 (FIN) FUND CAPITALIZATION:

- \$1 million capitalization (outlined below)
- No automatic transfers from Rainy Day Fund
- Balances in future years maintained through annual capital budget appropriations

Existing Oil Spill Fund balance	\$ 300,000 ¹
Obligated monies FY 86	<u>- 100,000²</u>
SUBTOTAL	200,000
Proposed FY 87 Capital Budget Approp.	300,000 ³
Oil Spill Mitigation Account Balance (receipts from responsible party reimbursements)	19,000 ⁴
Additional Mitigation Account Deposits by 6/86	<u>300,000⁵</u>
TOTAL	819,000
One-time Transfer from Rainy Day Fund	<u>181,000⁶</u>
FUND GRAND TOTAL	\$1,000,000

¹ This requires that language be placed in HB 574, an Act making operating appropriations and transfers of operating appropriations, or other appropriate legislation to transfer the balance of the fund to the newly established fund.

² These monies are currently obligated and expected to be paid out in FY 86 by the Department to pursue responsible parties in oil spills.

³ The Governor has proposed a \$300,000 appropriation to the oil spill fund in HB 500 (budget bill). This appropriation would also be transferred to the newly established fund.

CAPITALIZATION OF OIL SPILL AND HAZARDOUS SUBSTANCE RELEASE
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- 4 The Oil Spill Mitigation Account is an account within the general fund to which reimbursements, fines, penalties and damages are credited. Currently, these funds remain available for reappropriation by the Legislature for oil spill related projects through the end of each calendar year.
- 5 The Department of Environmental Conservation is currently pursuing several actions against responsible parties. The Commissioner's office has indicated that by June 30, it is expected that at least \$300,000 will accrue to the Account as a result of their enforcement actions.
- 6 Section 19 provides for a one-time transfer from the Rainy Day Fund. While the exact figure is unknown, the Governor may only transfer an amount not to exceed \$1 million when added to the total of the above referenced transfers and appropriations.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate Committee on Resources

March 12, 1986

COMMITTEE ON RESOURCES LETTER OF INTENT FOR CSSB 375 (Resources)

To encourage responsible, experienced Alaskan companies to enter the oil and hazardous substance cleanup business and to facilitate the goals of cleaning up these substances, it is the intent of the Legislature to clarify the definition of "construction contracts" in AS 45.45.900. The provision in CSSB 375 (Resources) addresses an ambiguity in the current statute which prohibits indemnification agreements in construction contracts by specifically exempting hazardous waste cleanup contracts from this definition.

The provision does not require any entity, public or private, to enter into an indemnification agreement. It is not intended to hold any party harmless or exempt parties from liability for mishandling of oil or hazardous substances. The intent is to provide a mechanism for the allocation of liability among parties by allowing them to enter into contracts which provide protections and clear lines of responsibility.

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

CSHB 470 (FIN)
Highlights of Subcommittee Charge

The charge to the subcommittee:

- 1) Look at the proposed funding mechanism for the fund;
- 2) Look at the fiscal note;
- 3) Look at the possible federal funds available for hazardous waste cleanup.

The response:

The Finance Committee Substitute

- 1) Eliminates the automatic yearly transfer from the Rainy Day Fund;
- 2) Limits the use of the fund to emergency responses and investigations of sites which pose an imminent and substantial threat to human health or welfare or to the environment;
- 3) Provides for a detailed report to the Legislature on the use of the fund;
- 4) Calls for a yearly list of sites which require further action and their associated costs;
- 5) Provides direction and criteria for Department on reimbursements made from the fund to municipalities; and
- 6) Tightens the definition of "hazardous substance" to mean those substances contained in the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, while maintaining the commissioner's flexibility in responding to elements which pose an imminent and substantial threat.

The fiscal note. The new fiscal note reflects the minimum level of staffing required to implement the new program. It reduces the original request by almost \$150,000 and reduces the required positions from five to three.

Fund capitalization. Under the Finance CS transfers from the Rainy Day Account to the Response Fund for initial capitalization would be minimized. Instead of the \$1 million initial transfer originally proposed, the CS proposes to utilize existing oil spill fund and mitigation account balances and capital appropriations for most of the initial capitalization. A maximum of \$200,000 is estimated to be needed as a one-time transfer from the Rainy Day Account.

Federal monies. The Department of Defense has been spending approximately \$25 million yearly in hazardous waste cleanup activities throughout the state. The positions authorized in the fiscal note will coordinate with DOD to assure the optimum use of the federal funds. Additionally, should the federal "Superfund" (C.E.R.C.L.A.) be reauthorized and funded, the fund could be used to match federal receipts.

The following represents the subcommittee's changes to the Resources' CSHB 470:

pg. 1, line 7 - title change to include repeal of oil spill mitigation account

pg. 1, line 24 - removes reference to Commissioner of Revenue as custodian of the fund.

This is consistent with subcommittee action regarding the funding mechanism.

pg. 2, lines 14-20 - establishes a new oil spill and hazardous substance release mitigation account within the general fund and authorizes the deposit of monies recovered from responsible parties in oil spills or hazardous substance releases, fines, penalties or damages to be deposited in the general fund but credited to the new mitigation account.

This language mirrors the existing oil spill mitigation account which this bill repeals.

pg. 2, line 25 - removes language requiring approval of the governor.

pg. 2, line 27 - pg. 3, line 2 - under Purposes of the Fund, authorizes commissioner to take necessary actions to protect the public health, welfare or the environment from imminent or substantial threats from the release or threatened release of oil or hazardous substances.

Removes safety education programs for emergency response employers by Department of Labor as a use of the fund.

pg. 3, lines 13-16 - removes requirement that commissioner of DEC adopt regulations governing accounting of fund. Instead, requires that the department develop guidelines.

Removes reference to state disbursement officer. This section was no longer required because the Rainy Day Fund is no longer used as an annual funding source for the new fund.

pg. 3, line 18 - removes requirement that the commissioner report to the governor.

pg. 3, line 27 - pg. 4, line 14 - under Report to the Legislature, adds to the report requirements:

- summary of municipal participation in responses funded by the fund;

- summary and description of the responses funded from the fund;
- summary of hazardous waste sites identified by the department which require action but which pose no imminent or substantial threat and a breakdown of the proposed departmental action and the estimated cost.

pg. 4, line 24 - pg. 5, line 5 - under Reimbursement for Containment and Cleanup, establishes parameters under which municipalities may be reimbursed for actual expenses, above and beyond normal operating expenses for abatement activities.

Requires an agreement between DEC and municipalities and the commissioner must determine that the expenses were necessary due to the emergency nature of the municipality's response.

pg. 5, line 6 - changes shall to may, adopt regulations as necessary.

pg. 5, line 17 - adds oil to definition of "containment and cleanup" (technical).

pg. 6, lines 1-3 - under Definitions, removes section which would have defined hazardous substance as any substance so defined in any federal or state act or regulation and more narrowly defines it to conform to the federal definition contained in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

pg. 8 - removes section designating DEC enforcement officers as "peace officers."

pg. 9, lines 23-25 - under Definitions, conforms language to definition of hazardous substance.

pg. 14, lines 22 and 23 - changes language to make deposit language consistent with language elsewhere in bill.

Requires that when the department is reimbursed for cleanup expenses, the monies are deposited to the general fund and credited to the newly created oil and hazardous substance release mitigation account.

pg. 14, lines 25-27 - amends current statute which provides that DEC inspection and enforcement employees are peace officers to include Chapter 9 hazardous substance release control enforcement employees.

pg. 15, lines 5-11 - provides the mechanism whereby the governor is authorized to transfer amounts that when added to amount appropriated, reappropriated or transferred to the response fund from the Rainy Day Fund do not exceed \$1 million for FY 87 only.

pg. 15, line 12 - repeals current oil spill mitigation account.

pg. 15, lines 13 and 14 - makes all sections effective
immediately except the provision for the Rainy Day Fund
transfer.

pg. 15, line 15 - makes the Rainy Day Fund transfer section
effective July 1, 1986.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



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Senate Committee on Resources

TO: Senate Resource Committee Members March 12, 1986
FROM: Senate Resource Committee Staff *MSK*
RE: SB 375 "An Act relating to the release of oil and hazardous substances; and providing for an effective date."

This bill is the Senate companion legislation to HB 470. HB 470 is currently in the House Finance committee. In this packet is a proposed committee substitute which is identical to the House Finance Committee Substitute. A subcommittee of the House Finance Committee has done extensive work on the bill and there know seems to be general concurrence in the House.

The memo in this packet from Mark Boyer details the changes between this CS and the version that the committee considered before. Also included in this packet is an updated packet of information relevant to the CS before the committee. A table of contents for that packet is on the first page of that packet.

Oil spill fund
200,000

Offered: 2/10/86
Referred: Finance

MARKED TO
SHOW AMENDMENTS

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 tigations, ~~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 emergency
28 response employers in developing safety education programs under AS
29 18.60 for employees who may be called upon to respond to a release of

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

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

24 (3) "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 (4) "department" means the Department of Environmental
29 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

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

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

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

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

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

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

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

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

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

1 and cleanup of the release unless the commissioner determines

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

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

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

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

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

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

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

18 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
19 request the governor to determine that an actual or imminent release
20 of a hazardous substance constitutes a disaster emergency under
21 AS 26.23. If the governor declares a disaster emergency under AS 26.-
22 23, the commissioner may assist the adjutant general in the relief of
23 the emergency.

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

1 environment to its former state, and incidental administrative costs;

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

4 (4) "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 (5) "release" means an intentional or unintentional release
15 into the environment of the state.

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

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

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

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

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

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

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

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

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

29 (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 land 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:

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

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

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

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

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

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

29 (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).

Via Earl B. (ind)

Comments on House Bill No. 470

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

Sec. 46.08.005. PURPOSE. Does this bill include funds for the natural release of oil or hazardous substances into the environment? Natural releases include but are not limited to the following: 1) natural oil seepages; 2) natural gas seepages; 3) volcanic eruptions including the expulsion of gaseous compounds, thermal waters with various deleterious solutes, and volcanic fragments; 4) surface oxidation and weathering of metallic mineral deposits and thus release of elements and compounds to the air and surface waters; 5) subsurface oxidation and weathering of metallic mineral deposits thereby the release of elements and compounds to groundwater.

Sec. 46.08.010. FUND ESTABLISHED. Does the Commissioner of the Department of Environmental Conservation have the discretion to determine what constitutes an oil or hazardous waste "expenditure"? Can this money be utilized to "educate" the general public with respect to activities or industries that are involved in the utilization of natural resources?

Under Sec. 46.08.040, PURPOSES OF THE FUND, the Commissioner of DEC has unlimited discretion to "undertake plans, inspections, sampling, tests, investigations, etc," to clean up releases or THREATENED releases of oil or hazardous substances. As noted below under the definition of hazardous substances, this is a Carte Blanche to attempt to "control" all human as well as natural events that may be deleterious to man or beast in Alaska.

Sec. 46.08.050. RECORDS OF THE FUNDS. Recording only the income and expenses of the fund does not provide the Governor, the Legislature, or the general public with a guide to the effectiveness of the activities conducted thru the fund. A "Cost/Benefit Analysis" should be completed for any State expenditure and this analysis should be conducted at the rate of interest received from the Permanent Fund.

Sec. 46.08.060. REPORT TO THE LEGISLATURE. Any report to the legislature is meaningless without a Cost/Benefit Analysis as mentioned above.

Sec. 46.08.070. REIMBURSEMENT FOR CONTAINMENT AND CLEANUP. How are natural contaminants going to be segregated from man induced contaminants? How much of the "hazardous waste" represents a real and substantial threat to public health and how much may be induced into the environment by human versus other natural events?

Sec. 46.08.900. DEFINITIONS. The definition of hazardous substance is vague and open-ended. All elements of the Periodic Table are hazardous if ingested or absorbed by man or by "fish, animals, vegetation, etc." Conversely, animals (including man), and plants need a variety of elements to survive. Man receives these elements thru the food chain but also from areas in the earth's crust which contain anomalously high concentrations of these elements, the anomalies are called mineral deposits. Both the human and non-human natural depletion of a given mineral deposit will result in the release of elements to the environment that exceed levels necessary for normal biological activity

and may result in levels deleterious to some biological activity. The inclusion of all elements or minerals (a naturally occurring compound) in the definition of hazardous substance could do substantial damage to the Alaskan Mineral industries, as well as to all humans that depend on these mineral industries for the sustenance of civilization.

Sec. 46.09.050. PEACE OFFICERS. This section provides employees of DEC with police powers and can it be assumed that employees of DEC will have been formally trained accordingly?

Comments on H.B. 470

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

The following comments are made in the context that both physical environment and economic environment are necessary and are important to man's high level of society.

As stated by John Wolfe in his book, "Mineral Resources, A World Review," 1984.

"In attacking the mineral industries, the preservationists ignore the tradeoffs. Without mining, there can be no civilization as we know it and the earth cannot support a population of seven to eight billion people. By piling regulation after regulation and tax after tax on one side of the balance, there has to be something stacked on the other side to keep things even. This something is price or inflation. In North America in 1960, every man thought an automobile was "right". In the future it will become a "privilege". A plethora of regulators and regulations constitute a major source of damage to the economic environment."

The purpose of the bill as stated, "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," generally appears to be an approach for a safeguard to take action to prevent environmental catastrophes.

Several thoughts arise. Some are:

1. Where do private industries or operating government agencies mesh with the proposed program time-wise as they are involved in meeting their clean-up responsibilities?
2. How do any existing regulations pertinent to the topic coordinate with the proposed program?
3. Under what conditions and determined by whom does financial reimbursement for a "threatened release of oil or a hazard" become a fact?
4. In what way will regulations be proposed to assure that such meets the intent of the law? Too often we see regulations imposed that law makers state, "that is not the intent of the law".

Sec. 46.08.040 PURPOSES OF THE FUND (page 2). The purpose of the fund has been greatly expanded to what appears will be the creation of additional bureaucratic units for investigations, design, construction, administration, etc. This adds additional layers of expansion in the government agencies.

5. Sec. 46.08.900 DEFINITIONS (pages 4 and 5).

(2) "restoration of the environment to its former state".

This is impossible, although it can be made to be acceptable to surrounding conditions.

(7) "hazardous substance".

"(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;"

As I interpret the above definition, it is a very general statement that could preclude any resource development involving use of water and land. As an example: Well publicized in the media are the problems existing with waste water quality with reference to placer mining. Regulations generated by using the foregoing definition could stop all placer mining operations, as well as other activities. At present, the multitude of regulations by EPA, DEC and Fish and Game would be further expanded by this bill and create greater bureaucratic expansion in the state.

To encourage resource development utilization and diversification of industry, it is essential that a clear definition be given of hazardous substances so that the possibility of misunderstandings are minimum, both by the private segment and by those drafting and enforcing regulations.

The continuous and constant badgering through regulations that are not realistic and balanced cause even the strongest of people in private industry, the people who are fundamental to our free enterprise system, to become frustrated, depressed and consider "walking away".

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

Such definitions of regulations should be stated so that the public will know what factors are being dealt with.

All in all, if the bill is to proceed, it seems to me that HB 470 should be completely revamped to accomplish its stated objective of "funding", to define more clearly the factors and topics involved, to show the coordination of responsibilities with other agencies, to present pertinent existing regulations of other agencies, to indicate the increased number of regulations and personnel involved and how this bill gives a balance to physical environment and economic environment.

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Pouch O • Juneau, Alaska 99811

Bill Sheffield, Governor • Bill Ross, Commissioner

Alaska's Hazardous Waste Management Program

NOVEMBER 1985

OVERVIEW

Alaskans are becoming increasingly concerned about the problems that may result from improper disposal of hazardous waste. Many useful and convenient products found in Alaskan homes and businesses, such as pesticides, paint strippers, and stain removers, are potentially hazardous. Hazardous wastes can also be generated by commercial and manufacturing operations. If improperly handled, transported, or disposed, some hazardous wastes may cause severe environmental damage or health problems.

Fortunately, Alaska has avoided many of the waste problems of other states. Alaskans now have the opportunity to learn from the experience of others, and to develop a model hazardous waste program that will meet Alaska's unique needs and minimize the potential risks associated with hazardous waste. The Department of Environmental Conservation is conducting a six-point program to improve management of hazardous waste.

The Alaska Hazardous Waste Program began in July 1981 with enactment of Alaska's hazardous waste law (AS 46.03.299-314). In 1984, the Alaska Legislature amended and strengthened this law, expanding DEC's responsibilities and activities in hazardous waste management.

The goal of the Hazardous Waste Program is to protect the environment and the public health by minimizing the release of hazardous waste into Alaska's water, soil and air. The program is made up of several discrete elements, all of which are designed to help achieve this goal. The major program elements are described below, including a summary of the projects and activities currently in progress, and those planned for the future.

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) AUTHORIZATION

The Resource Conservation and Recovery Act of 1976 (RCRA) is the federal hazardous waste law. RCRA gives the U.S. Environmental Protection Agency (EPA) authority to regulate the treatment, storage and disposal of hazardous waste. In Alaska, DEC and EPA jointly operate the hazardous waste management program through a cooperative agreement, including inspections and compliance reviews of EPA-regulated hazardous waste generators, transporters, treaters and storage facilities. DEC also drafts appropriate enforcement documents, reviews permit applications, assists EPA in drafting permits, and administers a medical monitoring and safety program.

EPA can authorize a state to conduct the RCRA program. DEC is now preparing to request authorization for this program as directed by the Alaska State Legislature in 1984 (AS 46.03.299). To assume this program DEC must

develop hazardous waste regulations which are at least as stringent as the federal regulations. The statute provides that the State regulations be adopted by July 1, 1986, and take effect July 1, 1987.

DEC is currently drafting regulations for State management of the Hazardous Waste Program. The regulations will be designed to track hazardous waste in Alaska from its initial generation to its ultimate disposal (the hazardous waste "manifest tracking system"). The regulations will cover hazardous waste, not otherwise exempted by law, that is generated in any month by a single generator, in an amount of 220 pounds or more, or 2.2 pounds if it is an acute hazardous waste. In addition, DEC has negotiated a contract to evaluate the appropriateness of identifying hazardous waste by such characteristics as toxicity, persistence and carcinogenicity.

These activities, along with DEC's cooperative efforts with EPA, continue to enhance the State's ability to conduct an authorizable hazardous waste program. The major advantage of adopting State regulations and achieving EPA authorization is to provide the Alaskan public and industry with more direct and accessible assistance in controlling and managing hazardous waste in Alaska.

SPRING CLEANUP

DEC has sponsored a Spring Cleanup of hazardous waste for the past three years. DEC provides this service so that households and small businesses can properly dispose of their hazardous waste, such as some paints, pesticides and varnishes. In 1983, cleanups were held in Anchorage and Fairbanks. Juneau was added in 1984, and Kenai in 1985. Public response to this popular project has been enthusiastic. The amount of waste brought in for disposal during Cleanup has nearly doubled each year. In addition to providing proper disposal of hazardous waste, Spring Cleanup has provided DEC with information on the amount of waste generated in the State. The 1984 hazardous waste legislation (AS 46.03.309) established cleanup as a mandatory project of the Hazardous Waste Program.

Because public involvement has increased so dramatically and because testing and disposal costs have risen rapidly, funding for Spring Cleanup has become an issue. In 1985, the project was funded at \$85,000, but actual costs were much higher. The four municipalities where 1985 cleanups were conducted helped to pay some of the additional costs. Currently a study of the 1985 cleanup data is being conducted to help determine how best to collect and pay for disposal of wastes in future cleanups. DEC would like to be able to expand this service to more communities in the future, in response to the many requests that have been received from all areas of Alaska.

WASTE DISPOSAL STUDY

man
In order to begin the process to evaluate and select potential sites for hazardous waste management facilities in Alaska, a contractor is preparing an assessment of the most appropriate and feasible types of in-state facilities. DEC has contracted with Environmental Resource Management (ERM) to conduct an in-depth study on hazardous waste in Alaska. Included in this "Waste Disposal Study" will be: an inventory of reported hazardous waste in Alaska; a survey of reported hazardous waste generators; waste projections; a review of technologies available to recycle, treat or dispose of waste; transportation analysis; and needs analysis. This survey will be completed in January 1986, and DEC will publicize the results and make the report widely available. This will provide factual information for management of hazardous waste.

SITING OF HAZARDOUS WASTE MANAGEMENT FACILITIES

The 1984 hazardous waste legislation (AS 46.03.313 and 314) directs DEC to evaluate and select potential sites for hazardous waste management facilities within the State. Currently, Alaska's hazardous wastes are shipped out of state to an approved disposal facility in Oregon. Other disposal methods include on-site storage, neutralization, incineration and the DEC-sponsored Spring Cleanup for small quantity wastes. In evaluating and selecting potential in-state sites, DEC will consider many factors, including economic feasibility, intrinsic suitability, the risk and effect for residents and local communities, and consistency with existing and planned local land use.

DEC will pursue an aggressive public awareness campaign throughout the entire site selection process, and will actively encourage public involvement and participation. DEC will hold public hearings and will consider the testimony submitted at those hearings in any reports on management sites and facilities.

DEC has contracted for a study to analyze other states' siting regulations and recommend approaches appropriate to Alaska. Regulations on evaluation and selection of hazardous waste facilities and sites, including procedures for reviewing applications to operate such facilities, will be drafted. The regulations will be adopted by July 1, 1986.

As required in the statute, by July 1, 1987, DEC will submit to the governor and the legislature a preliminary report including proposals for siting, financing and operating hazardous waste management facilities in the State. By July 1, 1989, DEC will submit a final report identifying the sites selected and making recommendations on the previous proposals for financing and operating these facilities. A key issue to be addressed is what the State's role will be in developing and operating any site(s).

TRANSPORTATION NOTIFICATION

As hazardous wastes are transported to various destinations around the state, accidents can occur in which dangerous chemicals can be spilled. In recognition of this possibility, the 1984 hazardous waste legislation includes a section (AS 46.03.308) which requires prior notification of communities through which hazardous wastes will be transported. With the information in this notification, emer-

gency response teams confronted with an accident involving hazardous waste can determine the safest, most effective approach to rescue and cleanup efforts.

In accordance with the law, DEC will develop and manage the notification process. DEC has sent a letter to affected hazardous waste handlers and all mayors in Alaska soliciting their participation in the development of regulations covering transportation notification. Draft regulations are scheduled for early 1986, with a projected approval date of July 1986.

"SUPERFUND"

The "Superfund" Project is the common name for the investigative and "remedial" work being done under the federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). This program element deals with hazardous materials that have already been introduced into the environment due to past disposal practices. This is different from RCRA projects which are designed to prevent pollution in the present and future. If investigation shows that the public health or environment is threatened by improperly disposed hazardous waste, "Superfund" can pay for cleanup of those sites. Funds for cleanup can come from a number of sources, but the cost is generally charged to the responsible parties.

Over the past several years EPA has developed an inventory of suspected historical hazardous waste sites. This inventory comprises the Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS). EPA has prepared a list of approximately 100 potentially contaminated sites in Alaska. Roughly half of these sites are being investigated by the U.S. Department of Defense. DEC is investigating 28 of these sites, while EPA will study the rest. DEC and EPA work together under a cooperative agreement to conduct preliminary assessments, site investigations and followups. Site investigations may disclose actual contamination, causing the site(s) to be listed as a federal Superfund site. There are currently no federal Superfund sites in Alaska.

FOR FURTHER INFORMATION

Defense Dept. - Beginning looking for military sites
Contact DEC Hazardous Waste Program staff at any of the following offices:

Department of Environmental Conservation
Pouch O, Juneau, Alaska 99811
Phone: 465-2666

Department of Environmental Conservation
437 E Street, Suite 200
Anchorage, Alaska 99501
Phone: 274-2533

Department of Environmental Conservation
State Office Building
675 7th Avenue, Station K
Pouch 1601
Fairbanks, Alaska 99707
Phone: 452-1714

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF



POUCH V
JUNEAU, ALASKA, 99811
(907) 465-4907

Senate Committee on Resources

TO: Senate Resource Committee Members February 5, 1986
FROM: Senate Resource Committee Staff *ME*
RE: SB 375 "An Act relating to the release of oil and hazardous substances; and providing for an effective date."

This bill is the Senate companion legislation to HB 470. The attached information which address HB 470 applies equally to SB 375 now. Additional information will be supplied prior to public hearing on SB 375.

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.

DEC NEWS

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

Bill Sheffield, Governor

Bill Ross, Commissioner

Joe Ferguson, Information Officer

FOR IMMEDIATE RELEASE

FEBRUARY 5, 1986

Department of Environmental Conservation Commissioner Bill Ross today outlined the State's hazardous waste program at a meeting of the Senate Resources Committee. The Commissioner said, "The State is moving into the lead on hazardous waste issues." Ross said that reasons for this were increased public concern and a series of actions directed in 1984 by the Legislature in Senate Bill 503. He said, "Though the primary regulatory authority for hazardous waste management is federal legislation, the State government's greater role in waste management will help ensure Alaskans are protected.

Ross said the State faces several key policy questions about hazardous waste management, including how much responsibility the State wants to take for the management of hazardous wastes; whether the State is willing to assume the associated costs; and whether hazardous waste can be properly disposed of without a State role. He said, "Federal statutes establish new liability for all generators of hazardous waste. The State and municipalities will be affected, along with large and small businesses. We need to consider how we can best manage this liability."

-MORE-

In his review of DEC's hazardous waste effort, Ross outlined a six point program that will fulfill the Legislature's directives. He said, "The goal is to protect the environment and public health by minimizing the release of hazardous waste into Alaska's land, air, and water. We are at a key point now: all elements of the program are under development."

The six point program described by the Commissioner includes both regulatory elements and assistance to waste generators, especially technical assistance related to waste disposal. Program elements include:

I. Resource Conservation and Recovery Act (RCRA) authorization--The State will apply for authorization to assume federal responsibilities for regulating hazardous waste storage, transportation, and disposal. The federal program includes a "manifest system", or mandatory recording and tracking of hazardous wastes.

II. Spring Cleanups--The Department will continue to sponsor a disposal program, as in the past three years, for unregulated generators -- particularly for households.

III. Waste Disposal Study--An analysis is currently being conducted of the volume and nature of hazardous wastes generated in Alaska. Resulting information is essential to future planning for proper disposal.

IV. Siting Facilities--The Legislature directed DEC to review the options for siting facilities for safe disposal of Alaska's hazardous wastes. These could be either private or state-operated facilities. The

Department's two tasks related to siting are developing regulations to govern sites and looking into selection of potential sites.

V. Transportation Notification--The 1984 legislative mandate provides for notification of communities when hazardous wastes are being transported through their local areas. DEC has started to develop regulations to implement this directive.

VI. Cleanup of Past Disposal Sites--DEC, EPA, and the U.S. Department of Defense are now investigating approximately 100 potentially contaminated sites in Alaska. These sites appear on a nationwide EPA inventory list of sites where hazardous wastes may have been improperly disposed of in the past. If the site investigations disclose actual contamination, sites could be listed for federal Superfund cleanup.

Commissioner Ross said that the major costs of the program to the State will appear in fiscal year 1988, but that the department is asking the Legislature for some additional funding this year. "The State's program is a comprehensive one. When effectively put in place and administered, it can accomplish adequate environmental and public health protection for Alaskans. The costs to accomplish this need to be fully discussed, because no one wants or should expect that we can manage such wastes "half-way." I am glad that the Senate Resources Committee is providing the initial forum to begin this discussion."

#

[NOTE: A MORE COMPLETE SUMMARY OF THE SIX-POINT PROGRAM IS ATTACHED.]

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: 2/14/86

REQUEST

Bill/Resolution No.: HB 470
 Title: An Act Relating to the Release
of Oil and Hazardous Substances
 Sponsor: Rep. Mike 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		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						
TOTAL OPERATING		290.2	334.3	334.3		

CAPITAL						

REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND		290.2	334.3	334.3		
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

*5.0 FTE

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

ANALYSIS : Attach a separate page if necessary

Prepared by: S.W. Hungerford Phone: 465-2666
 Division: Environmental Quality Date: 2/14/86

Approved by Commissioner: Bill Date: 2/14/86
 Agency: Department of Environmental Conservation

Distribution (by Agency preparing fiscal note):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 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 fund created by this proposed legislation, several new positions would be required.

TOTAL
REQUEST

Funding for nine months is requested for FY 87

182.7

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. 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 management will be necessary to conduct hearings on regulations, investigate incidents and participate in training programs.

25.0

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.

48.5

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.

22.0

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

12.0

290.2

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	Brg. Unit GGU	Gov.	Apprv.	Disapp.
Time Status Full Time	Start Months 12	BP Number	Location Juneau		Election District	LAG		
Type of Expenditure			Justification					
I 2			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.					
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						
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							
	CMP Receipts 1061							
	Other							
For BSM Use Only Key Number _____								

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Water Quality Management

FY 87

Page 3 of 8
 Revised Date

Position Title Clerk Typist III			No. of Positions One	Range/Step R A	Borg. Unit GGU	Gov.	Approv.	Disapp.
Time Status Full Time	Full Months 12	RP Number	Location Juneau	Election District		Lab.		
Type of Expenditure			Justification					
1	2	3	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. We expect to fill this position on October 1, 1987. Funding for nine months has been requested for FY 87.					
Salary	14.7							
Benefits	5.3							
Premium Pay								
Other								
Total Personal Services		20.0						
Total								
Contractual		3.5						
Commodities		1.5						
Equipment		2.0						
Other								
Total Cost		27.0						
Project Code	Funding Source							
	Federal Receipts	1002						
	G. F. Match	1003						
	General Funds	1004	27.0					
	I-A Receipts	1005						
	Program Receipts	1020						
	CIP Receipts	1061						
	Other							
For RAM Use Only								
Key Number								

**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Water Quality Management

FY 87

Page 4 of 8
 Revised Date

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Div. Unit GCU	Off.	Appcat.	Disapp.
Time Status	Staff Months	RP Number	Location	Section District	Log.			
Perm. Part Time	6		Juneau					
Type of Expenditure			Justification					
1	2	3	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.					
Salary	18.7							
Benefits	5.5							
Pension Pay								
Other								
Total Current Services		24.3						
Traavel		5.0						
Contractual		5.0						
Commodities		3.5						
Equipment		2.0						
Total Cost		39.8						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. P. 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

FY 87

Page 5 of 8
 Revised Date

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Borg Unit GGU	Gov. 186	Approv.	Disapp.																									
Time Status Full Time	Staff Months 12	RP Number	Location Anchorage		Election District																												
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>2</td> </tr> <tr> <td>Salary</td> <td>28.1</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>Total Personal Services</td> <td>36.4</td> </tr> <tr> <td>Travel</td> <td>5.0</td> </tr> <tr> <td>Contractual</td> <td>5.0</td> </tr> <tr> <td>Commodities</td> <td>3.5</td> </tr> <tr> <td>Equipment</td> <td>2.0</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Cost</td> <td>51.9</td> </tr> </tbody> </table>			Type of Expenditure	Amount	1	2	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	Justification 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. We expect to fill this position on October 1, 1986. Funding for nine months has been requested for FY 87.				
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	Other																																
For B&M Use Only Key Number _____																																	

**Request For
New Position**

Agency Environmental Conservation
BRU Environmental Quality
Component Southcentral Region

FY 87

Page 6 of 8
Revised Date

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Borg. Unit GGU	Gov.	Approv.	Disapp.																									
Time Status Perm. Part Time	Staff Number 6	RP Number	Location Anchorage		Election District	Leg.																											
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Commodities	3.5																																
Equipment	2.0																																
Other																																	
Total Cost	39.8																																
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For BAM Use Only Key Number																																	

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Southcentral Region

Page 7 of 8
 Revised Date

FY 87

Position Title Environmental Field Officer III			No. of Positions One	Range/Step 18 A	Borg Unit GGD	Gov.	Appov.	Disapp.
Time Status Full Time	Staff Months 12	RP Number	Location Fairbanks	Election District		LAG		
Justification			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. We expect to fill this position on October 1, 1987. Funding for nine months has been requested for FY 87.					
Type of Expenditure			Amount					
1			2					
Salary			32.1					
Benefits			9.2					
Premium Pay								
Other								
Total Personnel Services			41.3					
Total			5.0					
Contractual			5.0					
Commodities			3.5					
Equipment			2.0					
Other								
Total Cost			56.8					
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. P. Match 1003					
			General Funds 1004					
			I-A Receipts 1005					
			Program Receipts 1020					
			CIP Receipts 1061					
			Other					
			56.8					
For BAM Use Only Key Number _____								

**Request For
New Position**

Agency Environmental Conservation
 BRU Environmental Quality
 Component Northern Region

FY 87

Page 8 of 8
 Revised Date

PROPOSED AMENDMENT TO HOUSE BILL NO. 470

The amendment, a copy of which is attached, will facilitate the goals of clearing up oil and hazardous substances in Alaska. A key factor in achieving this goal will be the participation of responsible, experienced Alaskan companies in the business of managing and eliminating hazardous substances in Alaska. As everyone is aware, this area has very serious problems of undefined and substantial liability exposure. Even more problematic is the fact that liability insurance simply is not available. Established Alaskan firms, nevertheless, will enter into the business if they can receive broad indemnification protection from the entities which created the hazardous substances (e.g., oil and mining companies, government agencies).

Under the present state of the law, however, such Alaskan companies are deterred from entering the business because of an ambiguity in A.S. 45.45.900 (copy attached). That statute makes void certain indemnification agreements in "construction contracts," and leaves the definition of such contracts extremely broad and ambiguous. For example, a hazardous substance clean-up contract typically would involve erection of a clean-up facility and excavation of materials on behalf of the owner. This conceivably could be construed as a "construction contract" and therefore void the protection of an indemnification provision from the owner.

The proposed amendment will remove this cloud of uncertainty and allow responsible Alaska companies the opportunity to enter into this business. The result will be an effective waste management and clean-up program by the private sector in Alaska.

SCH:sj
(19/12)

TEXT OF PROPOSED AMENDMENT TO H.B. 470

A.S. 45.45.900 is amended by adding at the end thereof the following language:

", or a provision, clause, covenant, or agreement of indemnification respecting the handling, containment or cleanup of oil or hazardous substances as defined in A.S. 46."

(B) a person repairing his own or a family member's motor vehicle:
 (4) "repair" or "repairs" means the improvement, adjustment, replacement, examination, diagnosis, maintenance, servicing, removal or installation of any component or part of a motor vehicle, but does not include towing or the supply of motor fuel to a motor vehicle. (§ 1 ch 146 SLA 1976; am § 21 ch 144 SLA 1977)

Effect of amendment. — The 1977 amendment, in paragraph (2), substituted AS 28.10.650 for "AS 28.10.640," and AS 28.10.650 for "AS 28.10.650," "under AS 28.10" for "with the Department of Public Safety under AS 28.10.640," and "jurisdiction" for "state."

Article 10. Miscellaneous.

Section

45. Indemnification agreements contra to public policy

Sec. 45.45.900. Indemnification agreements contra to public policy. A provision, clause, covenant, or agreement contained in, collateral to, or affecting any construction contract which purports to indemnify the promisee against liability for damages for (1) death or bodily injury to persons, (2) injury to property, (3) design defects or (4) any other loss, damage or expense arising under (1), (2), or (3) of this section from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants or independent contractors who are directly responsible to the promisee, is against public policy and is void and unenforceable; however, this provision does not affect the validity of any insurance contract, workers' compensation or agreement issued by an insurer subject to the provisions of AS 21. § 1 ch 155 SLA 1975; am § 9 ch 94 SLA 1980

Effect of amendment. — The 1980 amendment substituted "workers' compensation" for "workmen's" near the end of the section. Former AS 45.45.010, which was redesignated as AS 45.45.900 by the 1980 amendment.
Editor's note. This section derives from

Chapter 50. Competitive Practices and Regulation of Competition.

Article

1. Trademarks (§§ 45.50.010 — 45.50.060)
2. Log Brands (§§ 45.50.210 — 45.50.325)
3. Authorship (§§ 45.50.330 — 45.50.460)
4. Fair Trade Practices and Consumer Protection (§§ 45.50.471 — 45.50.591)
5. Monopolies, Restraint of Trade (§§ 45.50.562 — 45.50.596)
6. Deceptive Advertising of Civil Defense Aids (§§ 45.50.600 — 45.50.606)
7. 12. Reserved
8. Alaska Gasoline Products Leasing Act (§§ 45.50.800 — 45.50.850)
9. Reserved
10. Miscellaneous (§§ 45.50.900)

HAZARDOUS SUBSTANCES MANAGEMENT:
LAWS, REGULATIONS, AND ENFORCEMENT
IN THE FAIRBANKS NORTH STAR BOROUGH

DRAFT

prepared by
Marlis Williams

for the
Fairbanks North Star Borough
Environmental Services Division

July, 1985

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EXECUTIVE SUMMARY

Since 1983, the Fairbanks North Star Borough has been studying the issue of hazardous materials management in the Fairbanks area. An initial report, prepared in 1984 by the Mayor's Commission on Hazardous Materials, recommended, among other things, that the Borough require all users, generators, or handlers of large quantities of hazardous substances within the Borough to obtain an annual permit prior to being allowed to conduct such activities. This recommendation was made by the commission after a limited investigation revealed an apparent gap in applicable regulations.

Borough staff therefore developed a draft ordinance intended to establish such a permit program. However, testimony received during a public hearing on the ordinance, held by the Borough's Pollution Control Commission, indicated that there were adequate regulations already existing, but currently unenforced due to a lack of funding. Because of the conflicting opinions regarding existing laws and regulations, it was decided to conduct a more in depth legal review of this subject. This report is a compilation of that review.

The report begins with an overview of the regulatory framework governing the phases of handling, storing, transporting, and disposing of hazardous substances in the Fairbanks North Star Borough (FNSB), and then discusses definitional difficulties. Applicable laws and regulations are described and an attempt is made to assess these laws and regulations in terms of enforcement levels for each of the four mentioned phases.

It is concluded that the combination of existing regulations with the Alaska Department of Environmental Conservation's proposed regulatory network is probably sufficient, except for definitional gaps of what comprises a "hazardous substance"; but that for transportation routing or storage siting and permitting, Borough level rule-making and enforcement control may be indicated.

ISSUES

Do existing federal, state, and local laws and regulations governing hazardous substances management, as they apply to the Fairbanks North Star Borough, adequately cover the hazardous management phases of handling, storage, transportation, and disposal?

Are existing federal, state, and local laws and regulations now in place being adequately enforced?

BRIEF ANSWERS

Yes. It appears that sufficient laws and regulations exist to cover these four hazardous substances management phases. RCRA¹ covers the handling, transportation, and disposal of hazardous wastes. HMTA shares transportation jurisdiction with RCRA, but more broadly, covers all hazardous substances. OSHA provides for work-related handling and storage regulation. Under CERCLA, the clean-up of any accidental spill or unauthorized disposal must be paid for by the responsible party. State and local fire and building codes govern storage and handling phases of hazardous materials. Therefore, rather than adding an additional comprehensive layer of regulations at the Borough level, the need for local controls particularly in the areas of storage siting/permitting and transportation routing, should be expressed as pockets reserved for local rule-making within a uniform state-wide scheme of hazardous substances management.

No. While this report reflects only limited investigation into enforcement levels of existing hazardous substances management laws and regulations, it appears that, at this time, enforcement lags in all four phases. RCRA's regulatory agency, the U.S. Environmental Protection Agency (EPA), is thinly staffed in Alaska. The Alaska Department of Environmental Conservation (ADEC) is in the process of assuming regulatory control, but does not expect completion until 1987. The Alaska Department of Labor is responsible for OSHA enforcement, but their focus is limited to employee safety. Both state and local fire marshals cite shortages of funding, training, and staffing, and lack of clear-cut standards, as reasons for insufficient enforcement. Since the Alaska Transportation Commission (ATC) was disbanded in 1984, enforcement of regulations under HMTA has dwindled to one state trooper assigned by the Department of Public Safety (DPS) to hazardous materials transportation regulatory enforcement. ADEC is responsible for the transport and disposal of hazardous wastes only. (Obviously, even with full enforcement, much would depend on whether the transporter labeled his load a hazardous material or a hazardous waste.) Because of lack in enforcement, there is no "negative incentive" within the Borough to make it unprofitable for companies and individuals to engage in illegal and dangerous activities involving hazardous substances.

¹ Full names and citations for federal laws will be included in the discussion portion of this report.

OVERVIEW

	STORAGE	HANDLING	TRANSPORT	DISPOSAL
FEDERAL	RCRA OSHA CERCLA	RCRA OSHA CERCLA	RCRA OSHA CERCLA HMTA	RCRA OSHA CERCLA
STATE	EPA/ADEC (if waste) USDOT (if work-related) Fire marshall (if complaint)	Same as Storage	DPS (if "substances") ADEC (if "waste")	ADEC
LOCAL	*possible need for local storage permitting	*need for clearer fire code standards	*adopt federal amendments *possible need for local routing	
OTHER	1)*generally, clearer definition of "hazardous substances" needed 2)*visible & well-funded emergency response system			

RCRA	HMTA	OSHA	CERCLA	Building & Fire Codes
Handling	Transport	Handling	Spills/Un-authorized	Handling
Storage		Storage	Disposal	Storage
Transport				
Disposal				
Wastes	substances	substances	substances	substances
EPA/(ADEC)	USDOT/DPS ADEC (if "waste")	OSHA/USDOT	EPA/(ADEC)	DPS/Fire Marshals

OBSERVER-WITNESS SIGN-UP SHEET

SUBJECT(S): *Hazardous Waste*

[illegible]

TESTIMONY FOR SENATE RESOURCE COMMITTEE
HEARING ON HAZARDOUS MATERIALS 2/5/86 1:30 p.m.

GOOD AFTERNOON! MY NAME IS HEATHER STOCKARD, AND I AM DIRECTOR OF ENVIRONMENTAL SERVICES FOR THE FAIRBANKS NORTH STAR BOROUGH. I WOULD LIKE TO ADDRESS YOU TODAY ON SEVERAL ITEMS OF CONCERN TO THE BOROUGH IN THE AREA OF HAZARDOUS MATERIALS.

FIRST, THOUGH, I WOULD LIKE TO BRING TO YOUR ATTENTION THE SIX RESOLUTIONS PASSED IN NOVEMBER BY THE ALASKA MUNICIPAL LEAGUE RELATING TO HAZARDOUS MATERIALS. WITHOUT SPENDING A GREAT DEAL OF TIME ON THIS SUBJECT, I WOULD JUST LIKE TO MENTION THAT THESE RESOLUTIONS SUMMARIZE MANY OF OUR CONCERNS IN THIS AREA. THESE RESOLUTIONS ARE:

A RESOLUTION SUPPORTING ADOPTION AND ENFORCEMENT OF HAZARDOUS MATERIAL TRANSPORTATION LEAD AGENCY AND REGULATIONS;

A RESOLUTION SUPPORTING STATE ASSUMPTION OF THE HAZARDOUS WASTE PROGRAM AND REQUESTING ADEQUATE FUNDING LEVEL;

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

A RESOLUTION REQUESTING THAT THE LEGISLATURE AND GOVERNOR FULLY FUND THE ANNUAL HAZARDOUS WASTE CLEANUP PROGRAM SPONSORED BY THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION;

A RESOLUTION SUPPORTING STATEWIDE HAZARDOUS MATERIAL DISCLOSURE LEGISLATION; AND

A RESOLUTION SUPPORTING THE EXPANSION OF THE ADEC SOLID WASTE MATCHING GRANT PROGRAM.

IN MY TESTIMONY, I WOULD LIKE TO ADDRESS FURTHER THE AREAS OF: ANNUAL HAZARDOUS MATERIALS CLEANUP, HAZARDOUS SUBSTANCE RESPONSE FUND, AND HAZARDOUS MATERIALS DISCLOSURE LEGISLATION.

THE ANNUAL HAZARDOUS MATERIALS CLEANUP PROGRAM HAS PROVIDED A REASONABLE MEANS FOR COMMUNITIES TO DEAL WITH THE PROBLEM OF DISPOSING OF SMALL QUANTITIES OF HAZARDOUS MATERIALS. IN THE PAST THIS PROGRAM HAS BEEN FUNDED BY THE LEGISLATURE AND SERVED HOUSEHOLDS, SMALL BUSINESSES, AND GOVERNMENT AGENCIES. IN RECENT YEARS, HOWEVER, FUNDING LEVELS HAVE NOT BEEN ADEQUATE, AND THE MUNICIPALITIES HAVE BEEN ASKED TO CONTRIBUTE FUNDS TOWARD THE COST OF THIS CLEANUP. WE SUPPORT THE CONTINUATION OF THIS PROGRAM, AND ASK THAT THE LEGISLATURE FULLY FUND THIS PROGRAM.

THIS YEAR, ADEC PROPOSES TO RESTRICT THE SCOPE OF THIS PROGRAM TO HOUSEHOLDS ONLY, AND MAKE NO PROVISIONS FOR SMALL BUSINESSES AND GOVERNMENT AGENCIES. WE FEEL THAT THESE RESTRICTIONS IGNORE AN EXISTING PROBLEM, AND THAT CONSISTENT PROGRAM GUIDELINES SHOULD BE ESTABLISHED AND ADHERED TO. IF THE LEGISLATURE FEELS THAT A FINANCIAL CONTRIBUTION FROM THE MUNICIPALITIES IS NECESSARY, THE LOCAL GOVERNMENTS NEED TO BE ALERTED TO THAT FACT A MINIMUM OF FOURTEEN MONTHS IN ADVANCE SO THAT A REQUEST FOR FUNDS MAY BE INCLUDED IN THE NORMAL BUDGET PROCESS.

IF THE STATE MAKES THE DECISION NOT TO PROVIDE SERVICE FOR BUSINESSES OR GOVERNMENT AGENCIES, A NUMBER OF ORGANIZATIONS, INCLUDING VARIOUS STATE AGENCIES WILL BE LEFT WITH A PROBLEM THEY ARE NOT PREPARED TO COPE WITH. FOR THIS REASON, WE WOULD ENCOURAGE THE STATE TO FACILITATE HAZARDOUS MATERIAL COLLECTION ON A FEE BASIS FOR SMALL QUANTITY GENERATORS AND GOVERNMENT AGENCIES, IF OTHER ALTERNATIVES ARE NOT AVAILABLE.

REGARDING THE OIL AND HAZARDOUS SUBSTANCE RESPONSE FUND, WE SUPPORT THE ADOPTION OF SB 375 OR OTHER LEGISLATION COMPARABLE TO HB 470. THIS LEGISLATION WOULD BE OF GREAT BENEFIT TO THE STATE AND MUNICIPALITIES IN DEALING WITH SITUATIONS WHICH CURRENTLY

"FALL THROUGH THE CRACKS" OF EXISTING PROGRAMS. MY ONLY COMMENT ON THIS LEGISLATION IS THAT WE WOULD LIKE TO SEE ADDITIONAL CLARIFICATION OF PROVISIONS WHICH WOULD ALLOW FOR REIMBURSEMENT TO LOCAL EMERGENCY RESPONSE AGENCIES FOR EXPENSES INCURRED IN THE EMERGENCY CLEANUP OF A HAZARDOUS SUBSTANCE. IT IS THESE LOCAL AGENCIES THAT ARE MOST LIKELY TO DEAL WITH SPILLS, AS MORE OFTEN THAN NOT, EMERGENCIES DO NOT OCCUR MONDAY THROUGH FRIDAY FROM 8 TO 4:30.

THE BOROUGH ALSO SUPPORTS THE ADOPTION OF ENABLING LEGISLATION WHICH WOULD ALLOW MUNICIPALITIES TO ENACT HAZARDOUS MATERIALS DISCLOSURES REGULATIONS OR COMMUNITY RIGHT-TO-KNOW REGULATIONS. LAST SUMMER, THE BOROUGH FUNDED AN OVERVIEW STUDY OF THE EXISTING STATE, FEDERAL, AND LOCAL REGULATIONS DEALING WITH HAZARDOUS MATERIALS. THIS STUDY FOUND SUBSTANTIAL GAPS IN EXISTING LAWS DEALING WITH HAZARDOUS MATERIALS STORAGE AND HANDLING, AS WELL AS DEFICIENCIES IN THE ENFORCEMENT OF LAWS RELATING TO TRANSPORTATION OF HAZARDOUS MATERIALS. WHILE HANDLING AND STORAGE REGULATIONS MAY BEST BE HANDLED ON A LOCAL LEVEL WITH SOME STATE DIRECTION TO ENSURE CONSISTENCY, THE BOROUGH WOULD SUPPORT ADDITIONAL FUNDING FOR THE DEPARTMENT OF PUBLIC SAFETY TO ALLOW FOR ADEQUATE ENFORCEMENT OF EXISTING LAWS AND REGULATIONS DEALING WITH THESE CONCERNS.

IN SUMMARY, THERE IS CURRENTLY NO ONE AGENCY WHICH HAS RESPONSIBILITY FOR HAZARDOUS MATERIALS CONCERNS. WE WOULD SUPPORT A MINIMUM NUMBER OF AGENCIES BEING INVOLVED IN THESE ISSUES TO ALLOW FOR MAXIMUM EFFICIENCY AND COMMUNICATION. WE ALSO FEEL THAT RESPONSIBILITY FOR HAZARDOUS MATERIALS FUNCTIONS SHOULD BE CLEARLY DELINEATED. FOR EXAMPLE, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHOULD BE RESPONSIBLE FOR LONG-TERM CLEANUP PROJECTS, SITING OF HAZARDOUS WASTE FACILITIES, AND OVERALL MANAGEMENT OF HAZARDOUS WASTES. THE DEPARTMENT OF PUBLIC SAFETY SHOULD BE RESPONSIBLE FOR ENFORCEMENT OF RELATED LAWS, COORDINATION OF EMERGENCY RESPONSE WITH LOCAL AGENCIES, TRANSPORTATION RELATED

ISSUES, STORAGE AND HANDLING ISSUES, AND COORDINATION OF STANDARDIZED TRAINING FOR RESPONSE TEAMS.

THE AREA OF HAZARDOUS MATERIALS AND WASTE IS ONE OF EXTREME IMPORTANCE TO THE FAIRBANKS NORTH STAR BOROUGH. I APPRECIATE THE OPPORTUNITY TO COMMENT ON THESE SUBJECTS TODAY.

THANK YOU.

DISCUSSION

A report concerning laws governing hazardous substances management, must necessarily begin with the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 USC Section 6901 et seq. (1976 & Supp. V 1981). RCRA is Congress's primary effort to confront the problem of hazardous substances management. However, other federal laws are also available. In the area of hazardous substances transport, the Hazardous Materials Transportation Act ("HMTA"), 49 USC Section 1801 et seq. (1976 Supp. V 1981) is of the most importance. Further relevant federal laws include the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "Superfund"), 42 USC Section 6901 et seq. (Supp. V. 1981), and the Occupational Safety and Health Act of 1974 ("OSHA"), _____ USC ____ ().

In order to keep this report to a manageable scope, discussion of federal hazardous substances management regulations, other than the federal laws mentioned above, are excluded. Thus, this report does not discuss the Clean Air and Clean Water Acts, the Safe Drinking Water Act, or the Toxic Substances Control Act, although any of these laws could be vehicles for hazardous substances management. For general discussion, see Epstein, Hazardous Wastes in America (1982). A specific bibliography containing references to legal journal articles and congressional material concerning hazardous materials is contained in Danner, Federal Regulations of Non-nuclear Hazardous Wastes, 46:3 Law and Contemp. Probl. 285 (1983). A copy of that bibliography is included in Appendix B in this report.

Definitions

The law uses interchangeably the terms; hazardous "waste", "materials", and "substances". It must be known what chemicals and compounds are considered hazardous in order to properly understand who has control jurisdiction over the substances' handling, storage, transport, and disposal within the Borough. Conversely, the handlers, storers, transporters, and disposers must know what is being controlled. Thus, a clear definition of a "hazardous substance" is needed, but is as yet to be provided. Nor is there a clear differentiation between "waste" and "substance".

EPA regulations found in 40 CFR Part 261 and patterned after the general definition of the "hazardous" waste contained in Section 3001 of the RCRA of 1976, states that a substance will be considered a hazardous waste if it meets any of the following criteria:

1. The waste exhibits any of the characteristics of a hazardous waste, i.e., ignitability, corrosivity, reactivity, or extraction procedure toxicity.
2. The waste is listed by EPA as a hazardous waste, or as a mixture of solid waste and a listed hazardous waste. (The burden of proof is placed on the generator to show the listed waste is not hazardous).

3. The waste is a sludge, spill residue, ash, emission control dust or leachate generated from the treatment, storage, or disposal of the hazardous waste.

Furthermore, EPA has compiled additional lists which categorize hundreds of wastes as hazardous, acutely hazardous or toxic.

Hazardous Substances Management Laws and Regulations

Resource Conservation and Recovery Act (RCRA)

Enacted in 1976, RCRA's primary purpose is to promote the re-cycling and the environmentally safe collection and disposal of solid waste (Section 6902 (c)). Utilizing its rule-making authority under RCRA, the Environmental Protection Agency has generated an elaborate, complicated, and confusing set of regulations binding states and private industry.

RCRA was designed to deal with the problems of existing and future waste manufacture, transportation, use, storage, and disposal. The Act attempts to lay out its comprehensive waste management program with the assumption that the states would ultimately be delegated the administrative, financing, and enforcement responsibilities for the program.

Under EPA regulations, waste generators must determine whether or not a waste appears on the EPA list of materials which are considered hazardous wastes, or must test the waste to determine if the material has any of the "hazardous waste" specified characteristics (40 CFR Part 262.11). If so, the waste generated comes under RCRA and the generator, transporter, storer, or disposer must comply with RCRA regulations. Once a generator has determined that the material is, in fact, a "hazardous waste", the RCRA hazardous waste regulations require a "cradle to grave" tracking system that follows the waste through transportation, storage, and disposal.

However, since the "specific characteristics" definition of what is and is not a hazardous waste is hazy under RCRA and EPA regulations, there exists a gap at the very beginning, in that some wastes, which should be, are not included in this regulation. Moreover, the initial decision of whether or not to comply with RCRA is largely left with the waste generator. If the generator decides the "waste" is really not a "waste", but a material of economic viability, it falls outside the RCRA and EPA controls, at least until there is an incident. A waste "generator" is broadly defined under RCRA regulations as any person whose act or process produces hazardous waste, or whose act first causes a hazardous waste to be subject to regulation (40 CFR Part 260.10).

The authority to regulate storage and disposal of hazardous waste is found in Sections 3004 and 3005 of RCRA. These sections

are general and brief, providing merely the basis for broad regulatory discretion by the EPA and qualified state agencies. EPA regulations require that all storage (temporary or long term) and disposal facilities apply for a permit. Relevant exemptions include transporters storing manifested wastes for less than 10 days (40 CFR Part 264.1), or generators with on-site accumulations of hazardous waste for up to 90 days (40 CFR Part 122.23). RCRA provides further for EPA on-site inspections, and for civil and criminal enforcement mechanisms, including immediate injunctions and orders to eliminate existing hazards.

Subtitle C of RCRA requires EPA to promulgate criteria for identifying the characteristics of hazardous waste (Section 6901), and to establish standards applicable to waste generators (Section 6926), transporters (Section 6923), and owners and operators of hazardous waste treatment, storage, and disposal facilities (Section 6924). RCRA also requires EPA to promulgate regulations requiring "[each] person owning or operating a facility for treatment, storage, or disposal of hazardous waste identified and listed" under Subtitle C to have a permit (Section 6925). RCRA requires EPA to promulgate guidelines to assist states in the development of hazardous waste programs and further provides that EPA may authorize a state to administer and enforce a hazardous waste program pursuant to Subtitle C (Section 6926).

Under Subtitle C, Alaska is to develop a hazardous waste management program for approval by EPA. Alaska must demonstrate compliance with the following RCRA regulations in order to assume responsibility for administering the program without EPA intervention:

Section 3003: Identification of listing of hazardous waste criteria are set forth for EPA to identify and list hazardous wastes, taking into account such characteristics as toxicity, persistence and degradability in nature, potential for accumulation in tissues, flammability, corrosiveness and reactivity.

Sections 3002 and 3003: Standards for generators and transporters - RCRA requires that these regulations include requirements for records keeping, labeling, packaging, transportation and use of a manifest tracking system.

Section 3004: Standards for owners/operators of treatment, storage, and disposal facilities - these standards are to include requirements for record-keeping, compliance with a manifest system, operation procedures, siting and facility construction criteria, emergency response contingency plans, and additional qualifications as to ownership, continuity of operation, training of personnel and financial responsibility.

Section 3005: Permit procedures for treatment, storage and

disposal (TSD) facilities now in existence and for any future facilities - existing facilities have to file for a permit, but can continue operations until such time as a final decision is made on their permit application.

Section 3006: State authorization - if a state wants to administer its own hazardous waste management program, it must apply to EPA for interim and final authorization to do so. To qualify for interim authorization, which would allow the state to administer an EPA-approved program for two years, the state must have a program "substantially equivalent" to the federal program in place within 90 days of issuance of the final regulations. During this two year period, the state can upgrade its program to qualify for final authorization, making certain that it remains "equivalent" to the federal program, is consistent with federal/state programs applicable in other states, and provides adequate enforcement of compliance with RCRA requirements.

Section 3009: Relationship to state laws - this section preempts any state or local requirements which are less stringent than the federal regulations in effect for hazardous waste management.

State hazardous waste program requirements are outlined in 40 CFR Part 123.31 to 123.39. Alaska's waste management statute, A.S. 46.03.299, requires the Alaska Department of Environmental Conservation (ADEC) to establish a hazardous waste program "substantially equivalent to" RCRA, to establish criteria to identify the characteristics of hazardous waste, to enumerate specific hazardous wastes and identify the sources, and to determine maximum acceptable (non-hazardous) levels of hazardous waste and to exempt such small-time generators, transporters, storers, and disposers from ADEC provisions.

A.S. 46.03 also provides that no person may transport, store, or dispose of a hazardous waste "unless that person first secures a permit from ADEC and submits to ADEC any reports or manifests that ADEC may require for handling the hazardous waste." Currently, there are no active hazardous waste disposal sites in Alaska. All hazardous waste is either treated on-site or transported to a commercial disposal facility in the lower 48. ADEC regulates hazardous waste transport (but not the everyday inter- and intra-state transport of hazardous materials). ADEC is currently conducting a study designed to locate a site for an Alaska disposal facility by 1987.

Pursuant to this Chapter and to 18 AAC Chapter 75, promulgated thereunder, ADEC must also be notified of any hazardous substance discharge at or from a hazardous waste storage or disposal facility, and must receive interim and final clean-up reports. Violators are subject to criminal and civil penalties. Local control is not preempted, so long as it is as stringent as or

more stringent than the state requirements of 18 AAC Chapter 75.

ADEC has worked on the adoption of a comprehensive hazardous waste management program since 1981; basically, the mechanism for uniform state enforcement of hazardous waste management laws and regulations is in place. However, implementation of such a uniform state program is still in the developmental process and as yet unsanctioned by the EPA. Until these regulations have been finalized and adopted, and then approved by EPA, it is that agency that will be responsible for the enforcement of RCRA regulations in Alaska, including the right to inspect facilities, and the duty to cite violators of RCRA's record-keeping, reporting and labeling requirements. The ADEC target date for adoption of proposed regulations is July, 1986, and for the beginning of ADEC enforcement is July, 1987.

In summary, RCRA-mandated regulations are very comprehensive and provide excellent coverage in all phases of hazardous waste management. However, these regulations cover wastes only, not hazardous materials. Additionally, EPA is currently the enforcement agency for these regulations in Alaska, and the lack of a strong EPA presence in the state results in limited enforcement of the RCRA requirements. ADEC is currently moving to adopt and enforce their own regulations. But such enforcement is not scheduled to begin for almost two years, with the level of enforcement undoubtedly dependent on budgetary considerations.

Hazardous Materials Transportation Act (HMTA)

Although transportation is generally defined broadly to include several modes, the focus of this report will be on truck movement alone, since that is the main area of concern in the Fairbanks area. Section 3003 of RCRA requires that EPA, after consulting with the U.S. Department of Transportation (USDOT) and the states, promulgate regulations and establish standards applicable to the transport of hazardous waste. The standards must include record-keeping, labeling, manifests, and delivery to only licensed disposal facilities. EPA must coordinate with USDOT and make its regulations "consistent with" the requirements of the Hazardous Materials Transportation Act (HMTA). HMTA is a primary federal law which applies to the transportation of hazardous materials. This law also authorizes the Secretary of Transportation to designate hazardous materials, and to promulgate regulations governing the transport and handling of such materials.

Regulations promulgated under HMTA are found in 49 CFR Parts 171 to 177. The general requirements specify that a hazardous material may not be transported unless it is "properly classed, described, packaged, marked, and labeled" as required under the regulations. Notification and reports of certain hazardous materials incidents is also required. The regulations further contain hazardous materials tables which designate individual materials according to hazard class, and specify packaging,

labeling, and transportation requirements for each substance.

Succeeding parts of the HMTA regulations have special operating, handling, and loading requirements for different shipping modes, including via highway. HMTA establishes a central system for reporting of transportation accidents. The 1974 Transportation Safety Act contains a title devoted to hazardous materials transportation which provides for the designation and listing of hazardous materials and the establishment of handling criteria. USDOT's hazardous materials regulations apply to carriers, shippers, and container manufacturers, and include special loading and unloading requirements for certain substances, including explosive and non-explosive materials, flammable liquids, flammable solids, and compressed gases. In addition, regulations for managing accident situations involving each of these types of substances are specified.

The HMTA highway regulations also incorporate by reference additional regulations originally promulgated under the Department of Transportation Act, 49 USC 1655 (). These regulations include rules for driving, maintenance, and inspection of motor vehicles in general, and for driving and parking those vehicles carrying hazardous materials (49 CFR Parts 392-397). Failure to comply with these requirements can result in substantial civil penalties or criminal fines, imprisonment or both (RCRA, Section 6928).

Thus, a substantial body of federal requirements applies to the transportation of hazardous materials. Federally, EPA and USDOT have joint jurisdiction over the transportation of hazardous substances. This double jurisdiction, however, does not appear to translate into extra vigorous enforcement here in Alaska. The Federal Highway Administration's Bureau of Motor Carrier Safety is the main enforcement body for those hazardous materials regulations specific to highway transportation. The Federal Highway Administration (FHWA) is divided into 10 regions. The state of Alaska is part of Region X, headquartered in Portland, Oregon. The FHWA investigator for Alaska works from a satellite office in Anchorage. This investigator inspects vehicles all over the state to determine compliance with the hazardous materials regulations. There is a priority work program through which inspections are scheduled only when non-compliance is suspected.

By state law, Alaskan transporters are required to obtain permits or licenses to haul hazardous materials shipments. State troopers are authorized to stop and inspect vehicles carrying hazardous materials, to check manifests and/or cargoes for violations. Labelling and containerization are regulated as well, with placarding requirements used to identify the category of the hazard for emergency personnel (18 AAC Chapter 75).

Locally, the Alaska Department of Public Safety (DPS) has only one state trooper in the Fairbanks North Star Borough assigned to the enforcement task of 13 AAC 04.250(a). ADEC is in charge of the transport of hazardous waste and is not involved in the regulation of hazardous materials transportation. Alaska has incorporated some of the USDOT materials transportation rules into its own regulations. 3 AAC 62 adopts Title 49 of the Federal Motor Carrier Safety regulations. These 1978 regulations were adopted in Alaska in 1980. However, they were adopted without amendments and are therefore outdated. According to 17 AAC 02.40, hazardous materials transportation must comply with federal Interstate Commerce Commission (ICC) regulations (49 CFR).

Alaska's public safety regulations also include rules for vehicles transporting hazardous materials or compressed gas fuel (13 AAC 04.250). These rules state that a person moving a vehicle transporting an explosive or flammable liquid, a compressed gas, or other hazardous material upon a highway or vehicular way or area shall comply with the applicable regulations of the United States Department of Transportation. The federal regulations apply to any movement, regardless of the distance of the movement (13 AAC 04.250(a)). In addition to incorporating the USDOT rules, the Alaska regulations require shippers to notify the state troopers at least 24 hours in advance of the intent to transport explosives, flammables, or other hazardous materials on a highway or vehicular area, and to obtain permission from the troopers before the transport (13 AAC 04.250 (b)). However, the pre-notification requirement is not enforced. Transporters of hazardous materials may voluntarily call the Department of Public Safety as a courtesy to notify it of a future shipment, but there is no established procedure to ensure that advance notification is done.

Therefore, unless a violation is flagrant and obvious, it appears that a transporter of hazardous materials need only to label his load something other than "hazardous waste" in order to be fairly assured that no local or state enforcement, of the ample hazardous substances transportation laws and regulations currently in place under HMTA, will interfere with the movement of his cargo.

Theoretically, Alaska regulates hazardous materials transport by substantially relying on the adoption of USDOT rules, which appear to be quite sufficient, with two notable exceptions. One of these exceptions concerns the routing of hazardous materials through populated areas. Federal Department of Transportation regulations concerning the routing of hazardous materials are limited to restricting travel routes away from heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys (49 CFR Part 397.9). This may not be sufficient in the Fairbanks area. One solution to this problem has been to form a subcommittee of the technical group involved in coordinating local transportation planning (FMATS Technical

Committee) whose purpose is to regularly review and designate appropriate routes for hazardous materials transportation within the community. The other concern is the updating of the adopted regulations, as mentioned above. The regulations need to be amended to say "as amended" in order to incorporate subsequent changes in the federal regulations.²

The Alaska Department of Public Safety (DPS) has principal enforcement authority for the regulation of the transportation of hazardous materials. Formerly, DPS utilized the troopers stationed at the highway weight stations to enforce these regulations. However, since the Alaska Department of Commerce (DOC) assumed scalehouse duties, these efforts have ceased. DOC has neither authorization nor expertise for such inspections. Thus, the sole DPS-trained enforcement officer, who inspects pursuant to 5 AAC 62, acknowledges that he can only respond to complaints or obvious and flagrant violations.³

There appears to be very little concern to-date in Fairbanks that almost nothing has been done to enforce hazardous substances transport laws since the Alaska Transportation Commission was disbanded. Senator Joe Josephson of Anchorage, concerned about railroad transport of hazardous materials through populated Anchorage areas, is currently making a push in Juneau for state (ADEC) enforcement, in order to reduce this problem in Anchorage. There are no such efforts in Fairbanks.^{4,5} Given the potential for disaster in this phase of hazardous materials management, the lack of enforcement in this area should be of grave concern to the Fairbanks North Star Borough and the state alike.

It is concluded that the HMTA regulations provide excellent coverage of the transportation of hazardous materials. However, there is inadequate enforcement of these regulations, both statewide and locally. Because of the lack of enforcement there is no guarantee that shippers are abiding by the HMTA regulations.

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

While "handling" can be thought of as a function of transport,

² Conversation with Dick Jackson, Community Safety Director, Fairbanks North Star Borough.

³ Conversation with Ellis Armstrong, Alaska State Troopers.

⁴ Conversation with Mark Boyer, State Senator Bettye Fahrenkamp's office.

⁵ Conversation with Dick Jackson, Community Safety Director, Fairbanks North Star Borough.

storage, and disposal of hazardous substances, and while the laws governing "handling" are therefore necessarily incorporated in laws governing those activities, CERCLA covers the "handling" phase of hazardous materials management. CERCLA, commonly known as the "Superfund" legislation, is intended to pay immediately for clean-up response when hazardous materials are released into the environment. Under CERCLA, the definition of hazardous substances is broadened beyond the definition prescribed in the Clean Water Act. The federal government is authorized to recoup its expenses from the responsible party. In a case where this responsible party is unknown or unwilling to act, states are required to pay for 10% of the cost of clean-up at privately owned sites and for 50% at publicly owned sites. States must also assume 10% of the long-term operation and management costs. Additionally, states must assure that a disposal site is available for waste which will be removed during a clean-up operation.

Thus, RCRA (preventive measures for safe future disposal of hazardous waste) and CERCLA (clean-up of existing spills or improper disposal of hazardous substances which upon illegal discharge becomes waste) form the basis of current federal authority to regulate disposal of non-nuclear hazardous waste.

CERCLA provides authority for emergency responses to releases of hazardous wastes from inactive sites, spills, etc., and establishes liability for those responsible for releasing such hazardous waste into the environment. This liability can include costs incurred by the government in clean-up and removal of the hazardous substances, and in natural resource restoration. If those responsible for a release are unable or unwilling to pay, the federal or state government may file a claim against the fund to recoup clean-up costs. Thus, the fund serves as only a supplement for those instances in which responsible parties cannot be identified or held liable. CERCLA's standard of liability has been determined by the courts to be one of strict liability (absence of fault does not matter). Federal or state government, or any other harmed person, may recover response costs from generators and transporters of hazardous substances, and from owners and operators of disposal areas.

Article 2 of Chapter 75 of the Alaska Administrative Code contains Alaska's regulations governing reporting, clean-up and disposal of discharges of hazardous substances. Under these regulations, any discharge of a hazardous substance must be immediately reported to ADEC (18 AAC 75.080). These regulations also require the parties responsible for the discharge to dispose of the material using methods approved by one of ADEC's regional supervisors (18 AAC 75.140). However, at this time ADEC refers enforcement of CERCLA programs to EPA, pursuant to 40 CFR Part 300.⁶

⁶ Conversation with Jeff Mach, Alaska Department of Environmental Conservation, Northern Regional Office.

Alaska's emergency response laws generally place primary responsibility on local authority. In order to supplement federal and state plans for preventing and responding to spills of hazardous substances, emergency preparedness personnel within the Fairbanks North Star Borough are currently developing their own hazardous materials emergency response system. This is a cooperative effort between the Borough, the City of Fairbanks, the University of Alaska, and state and local fire departments.

Occupational Safety and Health Act (OSHA)

The Occupational Safety and Health Act is concerned with employee safety in the workplace and in work-related operations. It authorizes the Occupational Safety and Health Administration (OSHA) to set up standards for occupational hazards, including hazards associated with the handling of hazardous substances.

A hazard communications rule, published in the November 25, 1983 Federal Register, requires employers to inform workers of the presence of hazardous chemicals in the workplace and to train the workers in proper protection methods. However, this law applies only to chemical manufacturers and importers, who must comply with OSHA standards by May, 1986 (29 CFR Part 1910, Subpart Z).

The Alaska Health and Safety Act (A.S. 18.60.010 et seq.) states that it is "necessary to undertake a program to reduce the incidence of work-related accidents and health hazards in the state"... [which] impose a substantial burden upon, and are a hindrance to, the people of the state." To accomplish this program, an employer is required to maintain records, inspect for and report the causes and prevention of occupational illnesses and injuries, and to "furnish to each of his employees ... a place of employment . . . free from recognized hazards ... " (A.S. 18.60.075(a)(4)). Under this act, the Alaska Department of Labor (DOL) is charged with the rule-making tasks.

DOL may enter work areas to inspect and investigate at any reasonable time (A.S. 18.60.083). However, to be in compliance with the extensive protection that Alaskans are afforded under the Alaska Constitution (Article I, Sections 14 & 22), the agency must obtain a search warrant before inspecting and investigating business premises for violations.⁸ The state is not responsible for every violation of this statute. However, once an inspection has been undertaken, and a violation discovered, the state then has the duty to enforce safety provisions thereunder.

⁷ Conversation with Dorman Steele, Community Safety Office, Fairbanks North Star Borough.

⁸ Woods & Rohde, Inc. v. State Department of Labor, 565 P.2d 138 (Alaska 1977).

⁹ Wallace v. State, 557 P.2d 1120 (Alaska 1976).

Further, if the inspection reveals a violation of this Employee Health and Safety Title, the department must issue a citation to the employer (Section 18.60.091), and is authorized to impose a civil penalty for non-compliance (Section 18.60.095), subject to court review if the employer objects in a timely fashion (Section 18.60.093 (d)). Finally, under A.S.18.60.096., the department may "issue orders restraining a particular condition or practice in any place of employment that constitutes danger which could reasonably be expected to immediately cause death or serious harm", until the condition or practice is avoided, corrected, or removed. The state attorney general can seek an injunction in superior court to enforce a restraining order issued under this section.

The author of this report was unable to ascertain the current level of DOL enforcement activity. However, it appears that because some Borough concerns are generated by potentially illegal storage of hazardous substances in the Borough or in Borough-bordering work-related areas, the DOL, under Alaska Health and Safety Act jurisdiction, could possibly be enlisted as a potent enforcement tool.

Building and Fire Codes

The State of Alaska has adopted various sections of the 1979 Uniform Building Code (13 AAC 50.020), and the 1979 Uniform Fire Code (13 AAC 50.025). The state fire marshal's office can enforce violations of these codes when found. Pursuant to Title 70 of the Alaska statutes, the fire marshal's office may enter any building in order to inspect the property or abate a fire hazard and may require the owner of a commercial building or public property to abate a fire hazard which exists in violation of law or regulations. Further, the Department of Public Safety is authorized by Alaska Administrative Code to adopt rules and regulations of the fire and building codes in order to protect life and property from fire and explosion, by establishing minimum standards for

... fire detection and life safety criteria and commercial, industrial, business, institutional, and other public buildings ... [and] any activity in which combustible or explosive materials are stored or handled in commercial quantities ... (A.S.18.70.080)

Enforcement of the regulations adopted by the Department of Public Safety are vested in that department, and in the fire chief of each city fire department, as well as in all state peace officers (A.S. 18.70.090). Thus, the fire chief in each city can enforce state fire standards¹⁰ independently of any delegation by the fire marshal's office.

¹⁰ State v. Jennings, 585 P2d 248 (1976).

However, enforcement of statewide fire and building codes does not currently appear to be an effective mechanism by which the state has addressed the issue of public protection from hazardous materials mismanagement. Enforcement is reported to be hampered by vague standards, insufficient training, and lack of manpower.^{11,12} Inspections are done on a complaint or occupancy rating, rather than a routine basis. Pursuant to A.S. 18.70.080, and to 18 AAC 50.010.027, all buildings are classified as to the occupancy ratings pursuant to the Uniform Building Code of 1979. It is this rating list that the state fire marshal's office uses to prioritize its inspection resources.¹³

In sum, enforcement of the Uniform Building and Fire Codes is thin, and reactive rather than preventive. Further, when Alaska adopted the 1979 Uniform Fire Code, hazardous substances storage permitting was specifically excepted, presumably because at that time, the state did not feel that this state fire marshal's office has the expertise to issue such permits (13 AAC 50.025). Adoption of this previously omitted section of the fire code is now needed.¹⁴ Additionally, there is a vagueness problem in that the fire code states simply that materials be stored in a "safe manner." There are no enunciated standards of what is to be considered "safe". Under 13 AAC 50.070 (9), a reasonably prudent person's standard is to be applied. Because of this ambiguity, the fire marshal's office is less likely to pursue code violation cases as vigorously as they might if there was a greater certainty in their actions being upheld in a court of law.

Other Laws Governing Hazardous Substances

Besides the statutes and administrative regulations discussed, common-law and judge-made law governs specific cases and can create a basis for liability as an alternate to local rule-making. The Borough can choose to sue one or more of the known offenders. Common law can be an important tool for remedying hazardous substances problems. The most useful common-law doctrines include nuisance, and strict liability for abnormally dangerous activities. In a negligence action, the key would be the reasonableness of the act under the circumstances and the foreseeability of a particular harmful result. (Obviously, the more hazardous a particular substance, the more a reasonable person would do to protect others.) Remedies may include compensation for harm done, and/or injunctions to prevent further

¹¹ Conversation with Jay Morris, City of Fairbanks Fire Department.

¹² Conversation with Edith Curry, State Fire Marshal's Office.

¹³ Ibid.

¹⁴ Conversation with Ernie Misewicz, State Fire Marshal's Office.

anticipated harm. Attorneys' fees would likely be awarded as well, under a "private attorney general" theory, because a positive result would be beneficial to an entire class of people (presumably all Borough residents).

However, this remedy is more reactive, then preventive. While it may establish liability after a hazardous material incident, it does very little to prevent such an incident from occurring. Thus, in terms of the protection of public health and safety, it would not be nearly as effective as properly enforced laws and regulations.

CONCLUSION

The State of Alaska recognizes the need to regulate the management of hazardous substances, and has its own or has adopted federal laws regulating such materials. Included in these laws are definitions of "hazardous wastes" and "hazardous materials", authority for state planning and management activities, permit and licensing procedures for disposal and storage facilities, transportation regulations, and manifest systems for tracking hazardous wastes and materials, and emergency response activities.

On the federal level, several comprehensive laws cover every phase of hazardous substances management. RCRA controls hazardous waste from cradle (generation) to grave (disposal); HMTA controls the transport of hazardous substances; OSHA the storage and handling of hazardous substances at the workplace or in work-related operations; and CERCLA, accidental spills or unauthorized disposal of hazardous substances. Sanctions are provided by every one of the laws reviewed.

Some regulatory gaps do exist. The definition of "hazardous substances", "wastes", and "materials" is confusing and vague and should be tightened. Fire code standards likewise are too vague and need tightening. State transportation regulations, which reference federal regulations, need to include amendments to those federal regulations since adoption, to incorporate subsequent legislation. Routing of hazardous materials is almost fully unregulated and would lend itself to local regulation. The same is true for permitting or siting of storage facilities. Other than these gaps, there appear to be in place ample laws and regulations governing hazardous substances management.

Enforcement, however, is less pervasive. The U.S. Environmental Protection Agency (EPA) and the Alaska Department of Environmental Conservation (ADEC) watch over disposal, and ADEC accepts responsibility for the transport of hazardous wastes. Hazardous materials transport, however, is thinly enforced within the Fairbanks North Star Borough by one Alaska Department of Public Safety (DPS) trooper trained in this type of enforcement. If work-related, the Alaska Department of Labor (DOL) will inspect and enforce employee safety-related OSHA regulations relative to storage and handling of hazardous substances. OSHA requires that employees be informed of the hazard of such substances and trained in their handling. State and local fire marshals are responsible for enforcement of fire and building codes, but lack firm guidelines, funding, training and staffing to do a preventive rather than a merely reactive enforcement job.

Yet, enforcement of hazardous substances laws and regulations is vital because such laws and regulations will only be useful and will only gain public support when the public is assured that illegal actions taken by some hazardous substances handlers will not be condoned by the government. Strict enforcement of the existing laws is necessary to provide "negative incentives" to make it unprofitable for a company

or an individual to engage in illegal actions. Obviously the optimal situation would be to place all enforcement powers for the enforcement of hazardous substances management in one state agency.

ADEC is in the process of taking over a comprehensive hazardous waste management program from EPA. Completion of this task will provide state control over any substance characterized as a hazardous waste. A crucial part of implementing such regulations is an agreement of which state or local agency is to cover which activity, and the creation of a viable inspection and enforcement process using a sufficient number of trained personnel. The laws and regulations largely do exist. Until bite is put into them, little progress toward greater public safety from the dangers of hazardous substances can be expected.

Meanwhile, local clean-up and emergency response efforts already address hazardous substance spills from improper handling, storage, transport and disposal of hazardous substances. These efforts should be continued, and should be highly visible and well funded.

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40 CFR 260.10 ('Waste generator' defined)

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A.S. 46.03.302(a) (ADEC is to issue permits for transport, storage, and disposal of hazardous waste)

A.S. 46.03.020 (10) (A)

A.S. 46.03.755

A.S. 18.60. et seq. (Alaska Health and Safety Act)

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Uniform Fire Code of 1979

APPENDICES

APPENDIX A

JUNE/JULY 1985 INTERVIEWS
CONDUCTED WITH:

Ellis Armstrong, Alaska Department of Public Safety

Mark Boyer, State Senator Bettye Fahrenkamp's Office

Edith Curry, State Fire Marshal's Office

Dick Jackson, Fairbanks North Star Borough, Division of Community
Safety

Jeff Mach, Alaska Department of Environmental Conservation, Northern
Regional Office

Ernie Misewicz, State Fire Marshal's Office

Jay Morris, City of Fairbanks Fire Department

Jim Nuddell, formerly of Alaska Transportation Commission

Dorman Steele, Fairbanks North Star Borough, Division of Community
Safety

**REPORT
FROM
MAYOR'S COMMISSION
ON
HAZARDOUS MATERIALS**

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THE MAYOR'S COMMISSION

On May 28, 1983 in the early morning hours, a patrolman discovered a vapor cloud rising from a truck tanker. Appropriate agencies were notified for emergency response. It was found that the tank was loaded with concentrated hydrochloric acid, a strong corrosive agent. Residents and workers were evacuated from the area threatened by the vapor cloud while emergency responders from several agencies and public works personnel controlled the vapor cloud and ground-spill, and eventually emptied the leaking tanker. The incident itself caused no injuries and no residual environmental or material damage; however, the duration of the incident was greatly extended by the lack of necessary equipment to transfer the acid to a safe tanker. In recognition of the potential severity of this incident and some of the problems which surfaced as a result of it, Mayor Bill Allen of the Fairbanks North Star Borough appointed a "Blue Ribbon" Commission to study hazardous materials in the Borough. (Appendices A and B)

The Mayor charged the Commission with four specific tasks:

1. Inventory hazardous materials present and being transported within the Borough;
2. Evaluate the resources on hand and determine if any more are needed to mitigate the effects of incidents involving these materials;
3. Identify agencies involved in hazardous materials or incidents arising from them including enforcement;
4. Recommend specific actions to make the use, storage, and transportation of hazardous materials within the Borough safer for the population.

The Commission held meetings June through December of 1983. Regular Commission members did some individual research and data collection, especially in inventory and regulation review. Other individuals were invited to participate by the Mayor, and specialists in technical areas of interest were invited to provide input to the Commission. The State Commissioners of those State Departments which deal with hazardous materials were invited by the Mayor to meet with some of the Hazardous Material Commission members for a mutual briefing and information gathering session. The work of the Mayor's Commission was facilitated by Robert Cavanaugh, FNSB Division of Emergency Services.

BACKGROUND

Like many light industrial/residential communities, Fairbanks has experienced a slow, steady increase in materials which are potentially hazardous to the environment, to the health of workers and residents, and to the facilities or equipment involved in storage or transfer of these materials. The mining and construction industries have a tremendous demand for explosives which are transported and stored within the Borough. The growing population is escalating its dependence on non-solid fuels causing a great increase in liquid and gaseous fuel transport and storage in the Borough. The infant agricultural industry is beginning to bring more bulk quantities of potentially hazardous materials into the Borough. Support services for oil and gas development require bulk storage and transport of many products which are not normally associated with a community profile such as Fairbanks'. The local military bases continue to transport and store within the Borough all the materials necessary for support of their total activity. And finally, the consumers, businesses, schools, health agencies and other institutions are utilizing the many products on the market which, in quantity, can be extremely hazardous. Hazardous materials are not new to Fairbanks, nor are incidents involving the storage, transportation and use of them (Appendices C and D). Several factors make hazardous materials of more concern now than in the past: the population density and the resultant potential impact of an incident; the sheer increase in volume and variety of materials in the Borough; and the lack of knowledge and control of these substances. The fact that the Fairbanks North Star Borough has not had a serious hazardous materials incident resulting in loss of life, significant property loss or environmental quality damage is largely a matter of luck and the activities of individual agencies working on their own to address perceived needs within their own domain.

Dialogue on some hazardous material concerns was initiated through the efforts of the FNSB Emergency Services Office and the Interior Fire Chiefs in 1982. Members of interested agencies and institutions in the community, especially in emergency service and education, gathered for a series of meetings in which resources were inventoried for mutual access, some specialists were identified for possible inclusion in a Borough-wide hazardous response team, and discussion was generated on the advisability of establishment of a team and van for Borough-wide response through the Division of Emergency Services. Another special concern of the group was the accumulation of hazardous materials within the schools and at the University. As a result of this stimulus, concerned school district staff worked with fire department officials in each school jurisdiction to inventory hazardous materials within each building, identify materials for disposal and make recommendations for safer storage

and handling of those materials to be kept on site. On completion of this the University of Alaska contracted a private firm to dispose of all the unwanted materials from all schools within the community. Also in the summer of 1982 the Borough Environmental Services Division arranged for a gathering and disposal center of unknown or unwanted potentially hazardous materials for the public. These were the first truly coordinated efforts in the community related to the control of hazardous materials.

On the State level there appears to be a significant increase in concern about hazardous materials. The current legislature enacted a bill protecting the rights and safety of workers handling hazardous materials (Appendix E) and is considering several others. The State Department of Environmental Conservation has proposed a new set of regulations for the control of hazardous waste, and the Department of Public Safety has continued to train its personnel and commit them to enforcement of existing regulations as resources permit. On the State level as on the local level, there appears to be such a multiplicity of responsibility as to render nearly impossible the tasks of smooth, efficient planning and control of hazardous materials and incidents relating to them (Appendix F).

Throughout the nation individuals and agencies are recognizing the necessity for actively addressing hazardous materials concerns. The utter magnitude and complexity of the problem prohibit a single solution approach.

More than a quarter million individual shipments of hazardous materials move through the nation's transportation network each day by all modes: rail, highway, air, pipeline, and water. A study by the Department of Transportation predicts that total traffic in hazardous materials will increase by 100 percent within 12 years. It is estimated that hazardous materials currently constitute 20 percent of all goods shipped by all modes within the United States. More than 200,000 bulk shipments, of acids, corrosives, gases, pesticides, and other hazardous materials and wastes are in transit within this country each day. In the U.S. and Canada there are approximately 200,000 companies that one way or another are involved in the manufacturing, packaging, shipping, and transportation of hazardous materials (Hazardous Materials Emergencies Response and Control; J.R. Cushman, 1983; Technomic Publishing Co.)

Public safety, environmental, consumer, health, labor, and industrial organizations have begun to address the problem. As

with local and state situations, education is the first step, followed by joint commitment, resolution and action.

INVENTORY

In developing an inventory of hazardous materials, the first task was to adopt a standard definition of hazardous materials which all members could access, use and apply to other concerns. The Commission adopted the Title 49 of the Code of Federal Regulations definition and classification system for hazardous materials (Appendix G). All references to hazardous materials throughout this document will assume that definition and classification. Members of the Commission were charged with developing an inventory of hazardous materials within their domains. The Fairbanks Fire Department was able to supply an inventory from inspections of known hazardous material suppliers/storers. The University provided the Commission with its inventory gathered as a result of the chemical clean-up done in 1982. Eielson Air Force Base provided a list of hazardous materials which are transported by rail, highway and non-military air systems. The Alaska Railroad provided computer print-outs of compiled way-bills and was able to combine the data to give daily transit figures. These lists were compared to other known inventories, such as in the schools and in private merchandizing and were then pooled to give a Borough-wide inventory.

The list does not include locations of materials, and in most cases it does not include quantities. It was determined by the Commission that the quantities and locations of the materials vary greatly with seasonal demand. The list does not include private supplies, commercial supplies of materials outside of the City of Fairbanks, unknown hazardous materials within the City or small retail quantities of hazardous materials which are known but are impractical to inventory such as pharmaceuticals, small laboratories, retail hardware, sporting, home and garden supplies

The inventory is divided into two parts: a basic identification by hazard class, including product name, descriptor and DOT identification number (Appendix H); and an estimated daily transit and storage inventory (Appendix I). Some items are listed twice in the product list due to cross classification. Estimating rail volume and air volume of bulk shipments is relatively easy due to the limited number of companies involved. Estimating truck volume over the highway, on the other hand, is very difficult due to the number of carriers, relative lack of control and the variety of products carried. When compared to other communities in the nation, Fairbanks has a distinct advantage in potential maintenance of hazardous material inventory records due to limited rail and air bulk traffic. With only two incoming truck routes, maintenance of highway hazardous

material traffic is possible if it were a priority. It is the opinion of the Commission that maintenance of a highway traffic inventory in and of itself is not a necessary or effective use of resources, as the problem can be approached from many other, more effective angles.

In light of difficulties the Commission encountered in putting together a complete inventory, the Commission recommends that a system needs to be established to maintain inventories of hazardous materials within the Borough, and that this be tied into a proposed permit system and include at least an annual update by the Borough's Environmental Services Division. Emergency services agencies must also be kept up to date on available information.

RESOURCES

Using the DOT identification number, the guide for emergency response for each inventoried substance was studied. The following is a general list of materials, techniques and/or resources needed to control different kinds of accidents involving the substances on the inventory. Different materials under different accident conditions would, of course, require different combinations of resources and/or techniques. It must be understood that the following list does not include materials necessary for clean-up and restoration except for emergency needs and personnel.

Notification and Dispatch--includes an easily accessed system for notification, coordination and dispatch of emergency responders and appropriate agencies.

As most of the emergency responders and concerned agencies in the Borough have separate phone notification systems and have separate dispatch centers, there is currently no available system for coordination of multi-agency response, the singular exception being the sharing of a mutual aid frequency by most area fire departments. In light of this lack of coordination, the Commission recommends the development of an easily accessed Borough-wide computerized system for notification, dispatch and coordination of all emergency incidents.

Command and Control--includes procedures for orderly, efficient incident management ranging from a small single unit response to a major multi-agency disaster.

While the Emergency Services Division does have a well-developed disaster plan, the Commission has discovered an example of what appears to be a confusing multiplicity of state agencies which are responsible for various facets of hazardous material incident response and control (see Appendix F). The Commission strongly recommends that the Mayor seek to have this

situation corrected.

Fire Suppression--includes equipment and trained personnel available for prevention of, or suppression of major and/or multiple fires resulting from explosion or spread of flammable material.

Through the Fairbanks Areawide Mutual Aid Pact, most of the firefighting equipment and personnel resources in the Borough are available for major incidents. Such resources appear to be adequate at their current levels and are continuously being upgraded to meet developing needs through planned acquisitions (Appendix J).

Emergency Medical Resources--need to be adequate in capacity, supplies, and training to deal with hazardous material incidents occurring in either densely or sparsely populated areas.

To date, hospital and emergency services mass casualty drills have been effective in maintaining operational readiness on a mass scale. Development of the coordinated non-areawide Borough ambulance services and centralized dispatch will facilitate effective utilization of all emergency medical services in case of major emergency.

Evacuation and/or Isolation Procedures--need to be ready for activation to include an area at least one half mile in all directions including (and especially in) the most populated parts of the Borough.

As evidenced by the hydrochloric acid spill incident, emergency agencies currently rely on inadequate sirens, and the effort is severely hampered by poor public education and practical difficulties in coordination of evacuation with radio and television stations. The Commission strongly endorses the proposed new warning siren system to cover populated areas outside of the cities of Fairbanks and North Pole, as well as within them. Furthermore, the Commission recommends the printing of a clear, concise set of evacuation procedures in the telephone directories .

Full Protective Clothing--provides protection to prevent vapors, liquids and solids from coming in contact with the skin. Such clothing includes helmets, self-contained breathing apparatus, coats, pants, rubber boots and gloves customarily worn by firefighters.

Fire departments routinely provide such protective clothing for their personnel.

Special Protective Clothing--clothing specially designed to protect against a specific hazard, such as a vinyl or rubber acid suit necessary for handling very corrosive or toxic materials.

(See below).

Extinguishing agents--needed agents include water, dry chemical agents, carbon dioxide, foam and dry sand.

(See below).

Containment/Diking materials--large quantities of nonporous materials for diking, blocking storm drains and controlling run-off. Sometimes in conjunction with diking, sand, non-combustible absorbent material or specialized materials are needed, and if properly used can facilitate later clean-up.

(See below).

Leak-controlling Devices--includes sealant materials, cannister repair kits, containment drums, non-reactive transfer pump, fittings and tank.

(See below).

Monitoring Devices--includes flammable gas detectors, radiological monitoring equipment, poisonous gas detectors, weather and wind monitoring equipment.

(See below).

Clean-up--includes removal or neutralizing material or resulting by-products including water run-off, contaminated soil, equipment and clothing. Clean-up by emergency response agencies normally includes only those measures designed to protect everyone involved from further contamination and does not include environmental restoration.

A complete list of specialized materials needed to provide the above functions has been compiled (Appendix K). While many fire departments and separate agencies have some of this equipment, there is no central, available repository of all such equipment. Many departments have deployed the equipment throughout their facilities to meet their own needs, not the needs of a Borough-wide hazardous material response team. In light of this, the Commission recommends that the Mayor support the efforts of the Emergency Services Division to procure and completely equip a hazardous material response vehicle.

Furthermore, the Commission strongly recommends that some mechanism be established within the Borough to regularly continue the review of hazardous material resources and concerns. This would best be accomplished by an existing board or regular commission.

The Commission has adopted the philosophy that principal responsibility for hazardous materials must be borne by the suppliers and users. To achieve this: The Commission recommends that the Borough adopt and fund a system through the Environmental Services Division (Appendix L) requiring users, generators, and handlers of large quantities or specifically

dangerous materials to secure a permit (not to include regular fuel distributors). Such permits should be contingent upon a requirement for training of personnel, posting of safety and incident procedures in house and with the Environmental Services Division, maintaining a current inventory of materials with the Environmental Services Division, and having on hand the necessary materials/equipment to handle incidents including emergency material transfer to safe storage. Containment/control equipment should be available in-house or by contract with a local company/agency which specializes in such activities. Users/handlers should be allowed to have no more of these materials on hand than they can handle safely. To assure distribution of hazardous material information to appropriate agencies, the Environmental Services Division will pass related permit information to the Emergency Services Division which will be responsible for its dissemination.

With the acknowledgement that even in the safest and most prepared environment, accidents may happen and that in an emergency the most valuable resources available are the volunteers and experts alike who will commit themselves to the tasks at hand, The Commission recommends that the Mayor support Senate Bill 26, commonly known as the "Good Samaritan" bill for hazardous material responders (Appendix M)

AGENCY INVOLVEMENT

The Commission interviewed representatives from the state agencies and studied regulations which have a significant role in the control of hazardous materials and their transit within the state. In studying the state agencies the Commission found the following:

Department of Environmental Conservation

At the request of the Commissioner of the Alaska Department of Environmental Conservation (ADEC), members of the Hazardous Materials commission reviewed the proposed regulations of hazardous waste. The regulations as proposed would close many of the gaps existing in the federal regulations in regard to such substances as dioxin, and the allowable quantities of many substances are lower than in federal regulation. It has been noted by the Commission that implementation of the regulations has been postponed until December, 1984, and that they are undergoing revision. The regulations as originally proposed have excellent provisions for monitoring waste. The Commission supports the regulations as proposed and recommends that the Mayor endorse them and the necessary resources to enforce them.

Alaska Transportation Commission

The Commission examined "The Motor Carrier Safety Regulations 3AAC 62" section on highway transportation of hazardous materials. It was discovered that these regulations, which duplicate Title 49 of the Code of Federal Regulations, were developed in 1978 and finally adopted in 1980; while current for 1978, they do not include a provision for subsequent federal revision. Since 1978 there have been such substantial changes in the federal code that an interstate carrier can be meeting federal standards and breaking Alaskan law at the same time. It should also be noted that all training of public safety and emergency response personnel is based on the current revised federal code. Due to the obvious chaos created by different standards as well as severe potential for antiquation in an area which changes constantly with new technology and products, the Commission strongly recommends that the Mayor support revision of 3AAC 62 to include "Title 49 of the Code of Federal Regulations as amended," thereby allowing updates as necessary.

The Commission briefly reviewed state and federal regulations on interstate air, water, and rail transportation. These were thought to be generally adequate with the exception that the limiting quantities specified are larger than those which would be desirable for local regulation. It was the consensus of the Commission that any changes in these regulations would be impractical since the federal level promulgates these regulations. Local control of these substances can come through permitting.

Department of Public Safety

The Commission studied the role of the Alaska Department of Public Safety in relation to hazardous materials both in enforcement of State transportation and storage regulations. The transportation regulations all fall within the "Motor Carrier Safety Regulations" for which the Alaska State Troopers have the principal enforcement responsibility and authority. Most inspection and enforcement of 3AAC 62, outdated as it may be, occurred by the Troopers at the weigh stations until recently when the Department of Commerce assumed responsibility for the weigh-ins. Since staff of the Department of Commerce do not have the authority to enforce public safety regulations, nor do they have specific training in inspection procedures related to hazardous material requirements, there is no REGULAR on-going program or commitment of staff specifically designated for enforcement of such regulations. Alaska State Troopers are called in when Commerce or other individuals witness gross violations, and troopers may randomly inspect trucks; however due to personnel cut-backs, such activities fall far short of the need, and in the opinion of several individuals interviewed, it is only a matter of time until safety violations result in a hazardous materials incident. It is the consensus of the

Commission that the trucking industry must be expected to comply with hazardous material safety regulations and to this end it strongly recommends that the Mayor endorse efforts at the State level to restore adequate Trooper personnel for the purpose of regular, on-going truck inspections and enforcement of hazardous material regulations.

While the inspection and enforcement of transportation regulations falls under the purview of the Troopers, the inspection and enforcement of building regulations falls under the State Fire Marshal's Office. Prior to 1979 the State had adopted as its code the 1970 Uniform Building Code which did not specifically address the special emergency needs for storage of hazardous materials. Many facilities in the Borough and State were built during this period. In 1979 the State adopted major portions of the Uniform Fire Code under 13AAC 50.025 (Appendix N). Most facilities built under the previous codes were grandfathered in when the newer regulations were promulgated; however there has been some case-by-case reevaluation and upgrading of standards. The State codes are coming up for revision again this year and there are indications that the revised Uniform Fire Code will be adopted. Under State statute the Fire Marshal's Office is empowered to enforce violations of Code when it finds them, but as in the case of the Troopers and vehicle violations, it is necessary to have personnel out in the field doing inspections to assure compliance with regulations. In addition to inspection and enforcement of codes, the Fire Marshal's Office has many other assigned duties, several of which enjoy a higher priority. Because of these other demands, the staff cannot even say with confidence that the codes are adequate because they aren't out in the field inspecting enough to get a good feel for the needs of the community. The Commission recommends that the Mayor support increased state funding for enough staff in the State Fire Marshal's office to enable a regular, on-going program of inspections and hazardous material code enforcement.

Department of Transportation

The Commission interviewed a representative from the Alaska State Department of Transportation (ADOT) to gather information about road standards, designation of truck routes, maintenance and planning as they apply to routes of heavy highway use and transport of hazardous material. It was found that very rarely are roads designed specifically as truck routes, but all roads are designed with traffic projections based on a complex profile of the community and its growth patterns. Designation of truck routes is usually requested and described by local authorities for ease of traffic management. (A notable exception to this is the current request for a new truck route between the refinery in North Pole and the Richardson Highway.) Percent of truck traffic does affect the road design. Roads have a nominal 20 year design life, and most are rehabilitated in 10 years. There are no special standards for roads which will carry hazardous material

traffic or, for that matter, school bus traffic. Any roads constructed with federal aid money must comply with minimum standards at the time of their construction. While most truck routes in the Fairbanks North Star Borough do meet the minimum standards extant at their time of construction or upgrade, it is possible that several now carry more truck traffic than that for which they were designed; specific data on this question was not available. The ADOT develops a regular program of road maintenance and rehabilitation and is responsive to public requests for improvement or upgrading. To coordinate road and Borough planning, there is an ADOT representative on the Borough Platting Board, and all local road planning is done by policy and technical committees set up through the Fairbanks Metropolitan Area Transportation Study (FMATS). These committees are composed of Borough, ADOT, ADEC and City of Fairbanks' representatives. In consideration of this information the following recommendations have been adopted by consensus of the Commission:

a) that the Borough Assembly work with the Fairbanks and North Pole City Councils in developing ordinances which establish, designate, and call for enforcement of specific routes for the hauling of bulk quantities of the following substances by vehicles not on a regular route of delivery in the immediate area: poisons, corrosives, explosives, environmentally hazardous substances (use Title 49 definitions). Such establishment process must include evaluation of the roads composing the routes and their compliance with current standards for proposed use.

b) that the Mayor see that either the FMATS technical committee include a representative of a public safety agency familiar with hazardous material concerns or that a required step in local transportation planning guarantee consideration of public and environmental safety in regard to hazardous material transportation, especially in areas where hazardous material users or generators are involved.

c) that the Mayor request ADOT to evaluate all existing designated truck routes as to whether their current use is in keeping with their design standards.

d) that the Borough Assembly and Mayor indicate to ADOT that they feel that current truck routes in the Borough should be given a priority for maintenance and improvement.

Furthermore, as it was pointed out that the route for trucks to and from the North Pole refinery from 12-mile Richardson to North Pole is State maintained and not under the Federal aid system, and is probably sub-standard for its use, and as this road is considered to have the highest fuel-hauling rate in the Borough, it has been targeted by members of the Commission as a likely scene for a serious accident/incident. In light of this, the Commission urges the Mayor to take whatever action is necessary to assure that planning and development of a safe alternate route is a priority.

SPECIFIC BOROUGH CONCERNS

Planning and Zoning

The Commission studied the proposed Comprehensive Land Use Plan, current planning and zoning procedures and ways to address hazardous materials concerns within the existing structures of the Borough. The following are recommendations arising from these considerations:

a) In order to avoid such needless escalation of hazardous material risk within the Borough as the placement of the new North Pole High School next to the refinery, and to assure that there are mechanisms in place which guarantee the consideration of emergency services and hazardous materials concerns, the Commission recommends that ~~representatives~~ of emergency services, knowledgeable in hazardous materials concerns, be assigned to the Planning Commission and the Platting Board. Furthermore, all long-range development plans such as the Industrial Siting Study should be required to pass a review by public safety/emergency services representatives during the developmental stages.

b) In order to assure compliance with hazardous material concerns expressed in the proposed Comprehensive Land Use Plan and expressed by this Commission, the Commission recommends a zoning ordinance to limit all additions to existing facilities storing or handling hazardous materials (definition must be included) until such additions go through a recommended process of evaluation, compliance and permitting. The Commission also recommends an ordinance to redefine "Unrestricted" land use to exclude use, storage, or handling of hazardous materials (definition needed) without a permit. (This will address both the current situation as well as the future, after enactment of Comprehensive Plan.) Furthermore, any conditional or other use permits for facilities not requiring major capital improvements should not be granted "in perpetuity" but have time limits on them for review.

c) To tighten existing State codes, the Commission recommends adoption of a zoning ordinance requiring compliance with existing Uniform Fire Codes for all new installations involved with hazardous material storage or handling in the Borough.

Chlorine

The Commission also addressed other specific hazardous material concerns such as the movement of large amounts of chlorine around the Borough. Chlorine probably presents as big a potential hazard to the community as any other single material in the area. Large cylinders of pressurized chlorine are regularly moved on the roads around Fairbanks between the railroad industrial area and incoming roads en route to the sewage

treatment plant (where about 40 1-ton cylinders are regularly stored), water treatment plant, water stations and swimming pools at the University and near the schools. The Commission recommends that an ordinance be passed such that any movement of 150 pounds or more of chlorine in a single shipment within the Borough requires prior notification of the appropriate public safety agencies and be restricted to agreed upon routes.

Railroad Industrial Area

The Commission requested that K.A. Smith and Ernie Misewicz prepare a study of the railroad industrial area, its current facilities, capacities and the residential areas surrounding it. Railroad freight volume is up 15% in the past four years, and vehicular traffic and land development are continuing despite the efforts of public safety officials to halt it (Appendix D). Many problems exist there. While each in itself presents a significant hazard, when taken all together in a worst case scenario, the result is well beyond the emergency resources of the community. Most of these facilities are not dependent on neighboring ones and would lend themselves well to separation beyond safe distances. The problem which the Commission designated as most serious and which should have the highest priority for solution is the use and storage of compressed flammable gasses, such as LPG, in the area near residences, schools and other hazardous material areas (Appendix F). These facilities present not only the greatest threat to the community but they happen to be probably the easiest to move. The Commission recommends that the Borough mandate that all compressed flammable gas facilities be removed from the railroad industrial area within five years. Concurrent with this, the Borough should forbid expansion of existing facilities or construction of new ones in the area. The Borough should, furthermore, regulate flowthrough of compressed flammable gas in some reasonable and just manner, so that the major risks which are associated with the transportation and transfer of such materials are kept at least within current levels. In order to facilitate timely moving of the facilities, it is recommended that the Borough provide incentives (tax or land) for these facilities to relocate and that the Borough mandate buffer zones around such facilities and develop an industrial park for them (perhaps near the airport, with a re-routed rail spur).

There are a significant number of other facilities in the railroad area which also handle corrosives, such as hydrochloric acid, liquid flammables, and materials whose fire-products are toxic, such as plastics and foam insulation. While these individually do not represent a single-event threat of the magnitude of compressed flammable gas, their presence in the area, without isolation from each other and from dense population, does evoke serious hazardous material concerns. The Commission recommends that the Borough forbid any such new facilities or expansion of existing facilities in the railroad industrial area. The Borough should, as with compressed gas facilities, regulate flowthrough/production of these facilities

by means of a reasonable formula (Appendix Q). The Borough should encourage the relocation of these facilities to a new industrial area, conforming to the requirements of the Uniform Fire Code.

The Happy and Moose Creek Sidings

The Alaska Railroad is no longer unloading hazardous material shipments in the Railroad Industrial area. All such shipments are being unloaded at Happy Siding, on Sheep Creek Road, or at Moose Creek. It was decided that the Moose Creek siding was preferable as a temporary unloading area for highly hazardous materials, including explosives. The Commission recommends that a bunkered railroad siding should be constructed within the Borough with adequate storage facilities. The site should be selected as part of the Borough's Industrial Siting Project.

Schools and University

The University of Alaska, Fairbanks, and the Fairbanks North Star Borough School District are to be commended for their activities directed toward the safe handling and storage of hazardous materials. While both have made significant inroads into cleaning out stockpiles of hazardous materials, developing working inventories, and raising the consciousness of staff members using hazardous substances, there continues to be a need for on-going purchase control of hazardous materials. The Commission recommends that the University have one person designated to review and evaluate need and quantities for purchase of hazardous materials. The Commission also recommends that the school district have a person so designated who should also oversee safety procedures, inventory and storage on a regular basis. The Commission believes very strongly that its philosophy, wherein users of hazardous materials must be accountable for them and incidents arising from them, should apply equally to the educational sector of the community as to the commercial sector.

Public Education

a) The Commission recommends that public education be designated as a priority in order to gain public support for controls which must, in good conscience, be developed and upheld; in order to make individuals and businesses more safety conscious in their handling and storage of hazardous materials; and in order to make the public more aware of the need for immediate cooperation in case of emergency.

b) The Commission recommends the continuance on a regular basis of the hazardous materials clean-up program started last summer.

c) The Commission recommends a study and promotion of possible public education campaigns such as general reference booklets, on emergency actions, along with accompanying television and radio advertising.

Coordination of Hazardous Material Concerns in the Future

The Commission has found that there are many agencies and individuals who are concerned about hazardous material safety in the Borough and are committed to making the community safer in this respect. Rather than creating a new board or commission to carry on overseeing activities, the Commission recommends that the coordination of activities directed toward hazardous material safety be included, with appropriate financial support, under the umbrella of an existing board or department. The Commission recommends a periodic review of inventory, controls, resources, and identified high risk situations by an identified watch-dog organization. Above all the Commission reiterates its belief that the role of the Borough lies primarily in coordinating related activities to reduce duplication in planning, setting acceptable parameters, and being prepared in event of catastrophic accident, AND that it is the role of the producers, transporters and consumers of hazardous materials to protect themselves and others by establishment of safe handling and storage procedures and by having on hand required materials and equipment for the control of incidents.

SUMMARY

The Mayor's Blue Ribbon Commission on Hazardous Materials met for approximately seven months in 1983 hearing the testimony of many individuals concerned directly or indirectly with hazardous materials, their production, transportation, storage, consumption and disposal. Arising from this study are many recommendations to the Mayor, some in the form of local ordinance and some in the form of matters to be directed to the state legislature or state commissions.

The following is a list of the recommendations:

Highway Traffic Inventory -- It is the opinion of the Commission that maintenance of a highway traffic inventory in and of itself is not a necessary or effective use of resources, as the problem can be approached from many other, more effective angles.

Borough Inventory of Hazardous Materials -- The Commission recommends the establishment of a system to maintain inventories of hazardous materials within the Borough, and that this be tied into the proposed permit system and include at least an annual update by the Borough's Environmental Services Division. Emergency service agencies must also be kept up to date on available information.

State Regulation -- The Commission has discovered an example of a confusing multiplicity of state agencies which are responsible for various facets of hazardous materials incidents response and control. The Commission recommends that the Mayor seek to have this situation corrected.

Centralized Dispatch -- The lack of centralized dispatch could hamper effective and timely utilization of all emergency resources. The Commission recommends the development of an easily accessed Borough-wide central computerized system for notification and dispatch of all emergency incidents.

Public Warning System -- As evidenced by the hydrochloric acid spill incident which spotlighted the current reliance on inadequate sirens, poor public education, and practical difficulties in coordination of evacuation with radio and television stations, the Commission recommends the installation of the proposed new warning siren system to cover populated areas outside of the cities of North Pole and Fairbanks, as well as within them.

Evacuation Information -- The Commission recommends the printing of a clear and concise set of evacuation procedures in the telephone directories with other emergency information.

1
Materials Needed for Response -- The Commission recommends that the Mayor support the efforts of the Emergency Services Division to procure and completely equip a hazardous response vehicle.

8
Coordination of Resources and Concerns -- The Commission recommends that some mechanism be established within the Borough to regularly continue the review of hazardous material resources and concerns. This would best be accomplished by an existing board or regular commission.

9
Permit System -- The Commission recommends that the Borough adopt a system through the Environmental Services Division requiring users, generators, and handlers of large quantities of specifically dangerous materials to secure a permit (not to include regular fuel distributors). Such permits should be contingent upon a requirement for training of personnel, posting of safety and incident procedures in house and with the Environmental Services Division, maintaining a current inventory of materials with Environmental Services, and having on hand the necessary materials/equipment to handle incidents including emergency material transfer to safe storage. Containment/control equipment should be available in-house or by contract with a local company/agency which specializes in such activities. Users/handlers should be allowed to have no more of these materials on hand than they can handle safely. To assure distribution of hazardous material information to appropriate agencies, the Environmental Services Division will pass related permit information to the Emergency Services Division which will be responsible for its dissemination.

10
State Legislation -- The Commission recommends that the Mayor support Senate Bill 26, known as the "Good Samaritan" bill for hazardous material incident responders.

11
D. E. C. Proposed Regulations -- The Commission supports the regulations as proposed and recommends that the Mayor endorse them and the necessary resources to enforce them.

ATC

12
~~Public Safety~~ Motor Vehicle Regulations -- the Commission recommends that the Mayor support revision of 3AAC 62 to include "Title 49 of the Code of Federal Regulations as amended" thereby allowing updates as necessary.

13
Alaska State Trooper Personnel Needs -- It is the consensus of the Commission that the trucking industry must be expected to comply with hazardous material safety regulations and to this end it recommends that the Mayor endorse efforts at the State level to restore adequate Trooper personnel for the purpose of regular, on-going truck inspections and enforcement of hazardous material regulations.

14
Fire Marshal's Personnel Needs -- The Commission recommends

that the Mayor support increased state funding for enough staff in the State Fire Marshal's office to enable a regular, on-going program of inspections and hazardous material code enforcement.

15 **Designation of Truck Routes** -- The Commission recommends that Mayor encourage the Borough Assembly to work with the Fairbanks and North Pole City Councils in developing ordinances which establish, designate, and call for enforcement of specific routes for the hauling of bulk quantities of the following substances by vehicles not on a regular route of delivery in the immediate area: poisons, corrosives, explosives, environmentally hazardous substances (use Title 49 definitions). Such establishment process must include evaluation of the roads composing the routes and their compliance with current standards for proposed use.

16 **Fairbanks Municipal Area ^{TRANSPORTATION} ~~TRANSIT~~ Study Planning** -- The Commission recommends that the Mayor see that either the FMATS Technical Committee include a representative of a public safety agency familiar with hazardous material concerns or that a required step in local transportation planning guarantee consideration of public and environmental safety in regard to hazardous material transportation, especially in areas where hazardous material users or generators are involved.

17 **Evaluation of Existing Truck Routes** -- The Mayor should request DOT to evaluate all existing designated truck routes as to whether their current use is in keeping with their design standards.

18 **Maintenance of Truck Routes** -- The Borough Assembly and Mayor should indicate to DOT that they feel that current truck routes in the Borough should be given a priority for maintenance and improvement.

19 **Truck Route for Refinery Traffic** -- The Commission urges the Mayor to take whatever action is necessary to assure that planning and development of a safe alternate route is a priority.

20 **Planning Commission and Platting Board Membership** -- The Commission recommends that representatives of emergency services, knowledgeable in hazardous materials concerns, be assigned to the Planning Commission and the Platting Board.

21 **Industrial Siting Study Review** -- That all long-range development plans such as the Industrial Siting Study be required to pass a review by public safety/emergency services representatives during the developmental stages.

22 **Zoning Ordinance for Unrestricted Land Use** -- The Commission recommends a zoning ordinance to limit all additions to existing facilities storing or handling hazardous materials (definition must be included) until such additions

go through a recommended process of evaluation, compliance and permitting. The Commission also recommends an ordinance to redefine "Unrestricted" land use to exclude use, storage, or handling of hazardous materials (definition needed) without a permit. (This will address both the current situation as well as the future after enactment of Comprehensive Plan.) Furthermore, any conditional or other use permits for facilities not requiring major capital improvements should not be granted "in perpetuity" but have time limits on them for review. (Refer also to recommendation of permit system.)

23 Zoning Ordinance for Uniform Fire Code -- The Commission recommends adoption of a zoning ordinance requiring compliance with existing Uniform Fire Codes for all new installations involved with hazardous material storage or handling in the Borough.

24 Ordinance for Transportation of Chlorine -- The Commission recommends that an ordinance be passed such that any movement of 150 pounds or more of chlorine in a single shipment within the Borough requires prior notification of the appropriate public safety agencies and be restricted to agreed upon routes.

25 Ordinance to Control and Relocate Flammable Gas Facilities -- The Commission recommends that the Borough mandate that all compressed flammable gas facilities be removed from the railroad industrial area within five years. Concurrent with this, the Borough should forbid expansion of existing facilities or construction of new ones in the area. The Borough should, furthermore, regulate flowthrough of compressed flammable gas in some reasonable and just manner, so that the major risks which are associated with transportation and transfer of such materials are kept at least within current levels. In order to facilitate timely moving of the facilities, it is recommended that the Borough provide incentives (tax or land) for these facilities to relocate and that the Borough mandate buffer zones around such facilities and develop an industrial park for them (perhaps near the airport, with a re-routed rail spur).

26 Ordinance to Control and Encourage Relocation of Flammable Liquid and Corrosives Facilities -- The Commission recommends that the Borough forbid any such new facilities or expansion of existing facilities in the railroad industrial area. The Borough should, as with compressed gas facilities, regulate flowthrough/production of these facilities by means of a reasonable formula. The Borough should encourage the relocation of these facilities to a new industrial area, conforming to the requirements of the Uniform Fire Code.

27 Railroad Off-loading Facilities -- The Commission concluded that the Moose Creek siding was preferable as a temporary unloading area for highly hazardous materials, including

explosives. The Commission recommended that a bunkered railroad siding should be constructed within the Borough with adequate storage facilities. The site should be selected as part of the Borough's Industrial Siting Project.

28 University Purchasing -- The Commission recommends that the University have one person designated to review and evaluate need and quantities for purchase of hazardous materials.

29 School District Safety Personnel -- The Commission recommends that the school district have a person designated to review and evaluate need and quantities for purchase of hazardous materials, and to oversee safety procedures, inventory and storage on a regular basis.

30 509-A Public Education -- The Commission recommends that public education be designated as a priority in order to gain public support for controls which must, in good conscience, be developed and upheld; in order to make individuals and businesses more safety conscious in their handling and storage of hazardous materials; and in order to make the public more aware of the need for immediate cooperation in case of emergency.

31 Hazardous Materials Clean-Up -- The Commission urges the continuance on a regular basis of the hazardous materials clean-up program started last summer.

32 Public Education Strategies -- The Commission recommends a study and promotion of possible public education campaigns such as general reference booklets on emergency actions along with accompanying television and radio advertising.

33 Coordination of Activities -- The Commission recommends that the coordination of activities directed toward hazardous material safety be included, with appropriate financial support, under the umbrella of an existing board or department. The Commission recommends a periodic review of inventory, controls, resources, and identified high risk situations by an identified watch-dog organization.

Recommended Operational Philosophy -- Above all the Commission reiterates its belief that the role of the Borough lies primarily in coordination of activities to avoid duplication in planning, setting acceptable parameters and being prepared in event of catastrophic accident, AND that it is the role of the producer, transporter and consumer of hazardous materials to protect themselves and others by establishment of safe handling and storage procedures and by having on hand required materials and equipment for the control of incidents.

P R E S S R E L E A S E

MAYORS APPOINT COMMISSION ON HAZARDOUS MATERIALS

As a result of the acid and PCB spills which occurred over the Memorial Day weekend, North Star Borough Mayor Bill Allen and City of Fairbanks Mayor Bill Walley today announced the appointment of a commission to study the public safety problems associated with the storage, handling, and transportation of hazardous materials within the Borough.

This commission has been charged to inventory the kinds of hazardous materials present or being transported within the Borough, determine the location of these kinds of materials, outline what equipment and other items are needed to mitigate the effects of accidents involving these materials, and to recommend actions which can be taken to make their use, storage, and transportation safer for Borough residents.

Members of the Commission are Chairperson Deborah Pomeroy, Mike Brallier, Captain Bob Palmer, Whitey Gregory, John Kairis, Bud Sands, Bernie Saupe, Bill Shechter, and K.A. Smith.

A request is being made to Governor Sheffield to provide representatives from the Departments of Public Safety and Environmental Conservation, and the Alaska Division of Emergency Services to assist the Commission in their study.

June 8, 1983
4:00 PM

LIST OF APPOINTEES TO
THE MAYOR'S COMMISSION ON
HAZARDOUS MATERIALS

<u>NAME</u>	<u>REPRESENTING</u>
Mike Brallier	Spenard Builder's Supply
Capt. Bob Palmer	Eielson Air Force Base
Whitey Gregory	Sourdough Express
Deborah Pomeroy, Chairperson	Chemistry Teacher/Fire Chief
Richard Joy	Environmental Engineer
Penny Morgan	Northern Alaska Environ. Cen.
Bud Sands	Fire Training Officer
Bernie Saupe	Chevron Oil Distributors
Bill Shechter	Fire Chief
K.A. Smith	Alaska Railroad
Bob Hall	Alaska Transportation Comm.

Resource Persons:

- Jay Morris, Ass't. Fire Chief, Fairbanks
- Lob Cavanaugh, Emergency Services Director
- Tom Dome, Alaska Railroad HAZMAT Officer
- Lt. John Shover, Alaska State Troopers
- Scott Waggoner, Alaska State Troopers
- Charity Fechter, Alaska DOT/PF
- Ernie Misewicz, Alaska Fire Marshal's Office
- Vern Long, Alaska Fire Marshal's Office
- R.H. Franklin, Mammoth of Alaska
- Rick Navin, FNSB Land Management
- Chris Ballard, FNSB Planning Div.
- Jim Lee, FNSB Planning Div.
- John Hensley, Division of Emerg. Svcs.

HAZARDOUS MATERIALS INCIDENTS

1982 and 1983

DATE	NATURE OF INCIDENT	LOCATION
1-19-82	Small vehicle fuel tank leak 10 gal.	416 - 3rd Street
*1-20-82	Liquid propane leak from 30,000 gal rail car	Van Gas - ARRA
2-4-82	Chlorene gas leak	Hamme Pool
2-23-82	Propane tank valve leak	506 Gaffney
3-12-82	Chlorene gas leak	Hamme Pool
3-13-82	Chlorene gas leak	Hamme Pool
4-7-82	Small vehicle fuel tank leak	Barnette St. garage
4-25-82	Small vehicle accident - tank leak 15 gal.	1200 Cowles
5-3-82	Small vehicle fuel tank leak	122 Noble
5-15-82	Fuel oil spill less than 3 gal.	Flipper's
5-24-82	Propane tank valve leak	1241 McCarthy
5-27-82	Small vehicle accident - tank leak 5 gal.	1/4 mi. Richardson
6-22-82	Benzene cylinder explosion	Borough Baler
6-24-82	Small vehicle fuel tank leak - 1 gal.	516 - 2nd
6-25-82	Small vehicle fuel tank leak	500 - 2nd
6-26-82	Small vehicle fuel tank leak	548 - 2nd
6-28-82	Alaska Railroad engine, diesel fuel leak 30 gal.	Driveway St.
7-13-82	Small vehicle fuel tank leak 2 gal.	814 - 6th
8-7-82	Small vehicle accident - fuel tank leak 10 gal.	College & Antoinette
8-25-82	55 gal. drum of tar on fire	1316 Sedrock
8-25-82	Small vehicle fuel line leak 2 gal.	600 - 14th
9-10-82	Propane leak from appliance	26th & Lathrop
9-18-82	Small vehicle fuel tank leak 2 gal	500 Old Steese
9-24-82	Smoke grenade	Lathrop High
9-30-82	Tear gas in building	223 - 2nd Ave.
10-7-82	Diesel fuel spill in road 30 gal	30th & Cushman
10-15-82	Gasoline pump hose break at filling sta. 5 gal.	30th & Cushman
11-16-82	Leaking propane tank valve	525 - 5th Ave.
11-17-82	Small vehicle fuel tank leak	Barnette St.
1-9-83	Propane tank valve leak	Bentley Mall
1-13-83	Gasoline spill at service station 1 gal.	College & Illinois
1-21-83	Propane gas venting from vehicle tank	500 - 5th Ave.
1-28-83	Gasoline spill at service station 30 gal	1800 Airport
2-22-83	Propane gas leak at bulk plant	2250 Cushman
2-24-83	Oxygen tank leak	100 - 10th
*4-1-83	Chlorene leak	Hamme Pool
4-10-83	Small vehicle fuel tank leak 2 gal.	501 - 3rd Ave.
4-13-83	Diesel tanker overturned 125 gal.	Steese & Richardson
4-22-83	Small vehicle fuel tank leak	2500 Cushman
4-22-83	Fuel oil tank rupture 50 gal.	517 Craig St.
4-30-83	Fuel tank explosion - welding	1915 Cushman
5-17-83	Explosives discovered on private property	642-28th
*5-28-83	HCI tank car leak	ARRA
5-28-83	PCB transformer leak	10th & Lacey
*5-28-83	Propane liquid leak - ruptured tank filler	1454 Cushman
6-4-83	Propane tank punctured	3rd & Steese
6-6-83	2400 gal diesel tanker overturned 70 gal.	College & Steese
6-9-83	Small veh. fuel tank leak 5 gal.	8th & Bonnifield
6-21-83	Propane gas leak in building	1267 Airport
6-24-83	JP-4 tanker leak 2 gal.	Airport Rd.
7-12-83	Propane leak in building	Bentley Mall
7-12-83	Small vehicle fuel tank leak 1 gal.	510 Gaffney
7-18-83	Small vehicle fuel tank leak	500 2nd Ave.
7-20-83	Small vehicle fuel tank leak 1 gal.	600 7th Ave.
8-4-83	Small vehicle fuel tank leak 5 gal.	1420 Cushman
9-3-83	Small vehicle fuel tank leak	2500 Cushman
9-10-83	Small vehicle fuel tank leak	5th & Lacey
9-17-83	Pressurized diesel fuel leak in building/explosion	GVEA
10-9-83	Gasoline bulk tank leak 20 gal.	Steese & Minnie
10-16-83	Gasoline spill at service station 2 gal.	2600 Cushman

* Considered to have been serious incident

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Reported Oil & Hazardous Substances Spills

in the

Fairbanks North Star Borough, 1982 and 1983

<u>DATE</u>	<u>SUBSTANCE</u>	<u>LOCATION</u>
<u>1982</u>		
01/05	300-500 gal. Jet A	N. P. Refinery
01/08	800-1000 gal. #2 Diesel	Interior Energy
01/27	1 qt. PCB Dielectric Fluid	Ft. Wainwright
01/27	RR Boxcar exploded — contained various hazardous materials	Eielson AFB
02/03	Large quantity Ammonium Nitrate	Happy Siding
02/04	50-75 gal. Jet B	Fbks. Int'l Airport
02/09	650 gal. Jet B	Fbks. Int'l Airport
02/22	3-5 gal. Ronnel Pesticide	FNSB Offices
02/24	125 gal. Jet A	N. P. Refinery
02/26	800-1200 lbs. Ammonium Nitrate	Happy Siding
03/18	100 gal. Diesel	Moose Creek Dam
06/12	72 gal. Gasoline	Peedle Rd.
06/29	Various Pesticides and Chemicals	Wescott Gardens
07/22	10,000 gal.+ Kerosene/Naptha	N. P. Power Plant
08/20	400-500 gal. Diesel	21 Mi. Old Rich.
09/28	2-3 gal PCB Dielectric Fluid	UAF
11/05	300 gal. JP-4	N. P. Refinery
11/06	25,000 gal. Isopropanol	Eielson AFB
11/11	900-1000 gal. Jet A	N. P. Refinery
12/30	3000 gal.+ Diesel	Fbks. Int'l Airport
<u>1983</u>		
02/04	125 gal. Gasoline	Eielson AFB
02/04	50 gal. #2 Fuel Oil	Alaskaland
02/13	Unknown amount Diesel	Eielson AFB
04/05	200 gal. Diesel/Asphalt	Texaco Bulk/Fairbanks
04/13	120 gal. #2 Fuel Oil	Rich. Hwy & Airport Rd.
04/22	less than 1/2 gal. PCB Dielectric Fluid	McCallum & Moore Sts.
04/22	50-100 gal. Heating Fuel	525 Craig St.
05/28	less than 1/2 gal. PCB Dielectric Fluid	10th Ave. & Lacey St.
05/28	100 gal. Hydrochloric Acid	Minnie Str.-ARR area
06/03	100 gal. Gasoline	5th & Rich Hwy. N.P.
06/05	500+ gal. Gasoline	5th & Rich Hwy. N.P.
06/06	30 gal #2 Fuel Oil	College Rd. & Steese
06/08	80 gal. JP-4	8th & Snowman N. P.
08/25	Unknown amount- Jet A & JP-4	N. P. Refinery
09/02	100 gal. Diesel	Eielson AFB
09/03	2000 gal. Gasoline	5th & Rich Hwy. N.P.
09/09	150 160 JP-4	Ft. Wainwright Hangars
09/20	50 gal. Diesel	Fbks. Int'l Airport
09/26	1-2 qt. PCB Dielectric Fluid	Eielson AFB
10/25	500 gal. #2 Fuel Oil	Eielson AFB
10/25	950 gal. #2 Fuel Oil	9 Mile CBR
11/05	Unknown amount (less than 15 gal.) PCB	Fbks. Int'l Airport
11/07	less than 1/2 gal. PCB Dielectric Fluid	7th Ave. & Perry St.



LAWS OF ALASKA

1983

Source

CSSB 79 (Res)

Chapter No.

93

AN ACT

Relating to toxic and hazardous substances in the workplace;
and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 9

Approved by the Governor: July 25, 1983
Actual Effective Date: Sections 1, 3, and 4 take effect
July 26, 1983; and Section 2 takes effect July 1, 1984

Chapter 93

AN ACT

Relating to toxic and hazardous substances in the work-
place; and providing for an effective date.

* Section 1. AS 18.60.030 is amended by adding new paragraphs to read:
(12) annually publish a list of toxic and hazardous
substances;

(13) maintain a current set of OSHA form 20's or equivalent
information for toxic and hazardous substances, and other information
relevant to toxic and hazardous substances;

(14) assist employers, upon request, to identify and obtain
information on toxic and hazardous substances and develop employee
safety education programs.

* Sec. 2. AS 18.60 is amended by adding new sections to read:

Sec. 18.60.065. IMPORTATION OF TOXIC AND HAZARDOUS SUBSTANCES.
Toxic and hazardous substances imported into the state shall be accom-
panied by a federal Occupational Safety and Health Administration
(OSHA) form 20 or equivalent information. This requirement does not
apply to a substance for which the in-state purchaser has already
received the most current information.

Sec. 18.60.036. EMPLOYEE SAFETY EDUCATION PROGRAMS. (a) An
employer shall conduct a safety education program for an employee
before the employee performs a new work assignment that may result in
the employee being exposed to a toxic or hazardous substance for which
the employee has not received safety instruction as provided under (b)

Chapter 93

of this section.

(b) An employee safety instruction program shall inform the employee of

(A) the location, properties, and known or suspected acute and chronic health effects of the hazardous or toxic substances to which the employee is exposed in the workplace;

(B) the nature of the operations that could result in exposure to hazardous or toxic substances, as well as any necessary handling or hygienic practices or precautions; and

(C) the location, purpose, proper use, and limitations of personal protective equipment used in the workplace.

Sec. 18.60.067. INFORMATION PROVIDED ON EMPLOYER'S REQUEST. (a)

An employer shall make available to an employee on request a copy of the most recent OSHA form 20 or equivalent written information for a toxic or hazardous substance to which the employee may be exposed. If the employer does not have the copy or information requested, the employer shall request a copy from the department or the manufacturer of the substance within three state government working days after receiving the request.

(b) If the copy or information requested under (a) of this section is not made available to the employee within 15 calendar days after the request is received, the employer shall take measures to assure that employees are not exposed to the substance to which the copy or information pertains until the copy or information is made available to the employee who made the request. This subsection applies only to substances for which an OSHA form 20 or equivalent information is required under OSHA regulations. This subsection does not alter, deny, or abrogate any right an employee may have under law to refuse to work under hazardous circumstances.

Chapter 93

Sec. 18.60.068. POSTING OF INFORMATION IN WORKPLACE. (a) The department shall print and make available to employers posters that contain notice of the provisions of this chapter relating to toxic and hazardous substances.

(b) An employer whose employees are or may be exposed in the workplace to a toxic or hazardous substance shall display the following information in a manner designed to notify the employees:

(1) a poster printed by the department under (a) of this section; and

(2) an OSHA form 20 or equivalent information for each toxic or hazardous substance to which an employee may be exposed in the workplace

(A) under normal conditions of work; or

(B) during a reasonably foreseeable emergency, including equipment failure and rupture of containers.

(c) Instead of posting the information required under (b)(2) of this section, an employer may post a list of the chemical name and product name of each toxic or hazardous substance to which an employee may be exposed in the workplace, together with an identification of a location, in or near the workplace and accessible to employees, where an employee may inspect the information listed under (b)(2) of this section.

* Sec. 3. AS 18.60.105 is amended by adding new paragraphs to read:

(6) "be exposed" means to ingest, inhale, or absorb through the skin or eyes a substance, or fumes or other potentially harmful aspect of a substance;

(7) "OSHA" means the federal Occupational Safety and Health Administration;

(8) "toxic or hazardous substance" includes

Chapter 93

(A) a chemical listed in 29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, "General Industry Standards", Occupational Safety and Health Administration;

(B) a chemical listed in "Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment", American Conference of Governmental Industrial Hygienists (Latest Edition);

(C) a substance for which an OSHA form 20 or equivalent information is required under OSHA regulations; and

(D) a substance determined by the department, in accordance with the Administrative Procedure Act (AS 44.62), to be a health hazard to an employee who is exposed to the substance, including a carcinogen, reproductive toxin, irritant, corrosive, sensitizer, hepatotoxin, nephrotoxin, neurotoxin, agent that acts on the hematopoietic system, agent that damages the lungs, a cutaneous hazard and an eye hazard;

(9) "toxic or hazardous substance" does not include

(A) substances that because of their physical state, volume, or concentration do not pose a health hazard upon exposure;

(B) substances that are goods, food, drugs, cosmetics, or tobacco products intended for personal consumption; or

(C) substances in transit;

(10) "transit" means conveyed in a sealed or unopened container by a mode of transportation.

* Sec. 4. AS 18.60.105 is amended by adding a new subsection to read:

(b) In AS 18.60.030(14), 18.60.065 - 18.60.068, and 18.60.105-

(a)(9)

(1) "employee" means a person who works for an employer,

Memorandum of Understanding
between
The Department of Health and Social Services
Department of Military Affairs
Department of Environmental Conservation
and the
Department of Labor
Concerning Emergency Response to Peace Time
Radiation Incidents and Accidents

PURPOSE

The purpose of this agreement is to delineate areas of responsibility thereby clarifying individual agency's roles to ensure cooperation and mutual assistance between responsible Departments in responding to radiation incidents and accidents. Proper implementation should ensure that each Department's statutory responsibilities are met.

AGENCY RESPONSIBILITY

A. Health and Social Services

Under AS 18.45 and AS 18.60, the Alaskan Department of Health and Social Services is responsible for radiation safety dealing with exposure to the general public. This responsibility covers all ionizing and non-ionizing sources of radiation in the State.

B. Military Affairs

Under AS 26.20 and AS 26.30, the Department of Military Affairs has responsibility for planning and coordinating response to radiation incidents which result from detonation of nuclear weapons.

C. Environmental Conservation

Under AS 46.03, the Department of Environmental Conservation has the responsibility for environmental radiation matters relating to the contamination of air, water, soil or subsurface soil of the State.

D. Department of Labor

The Department of Labor under AS 18.60 is responsible for occupational radiation exposure resulting from both ionizing and non-ionizing radiation sources.

Alaska is not an agreement State under the Atomic Energy Act. Consequently, primary authority of the above State agencies is limited in the case of radioactive materials under the jurisdiction of the NRC. For the purposes of this agreement this distinction will not be made in responding to an accident or incident necessary to protect the health, property and environment of the people of Alaska until such time as the NRC can respond to the incident and assume control.

RESPONSIBILITY

It is Agreed:

A. The Department of Health and Social Services has lead agency responsibility in responding to radiation incidents and accidents.

B. It is the responsibility of the Department of Health and Social Services to coordinate response to peacetime radiation incidents and accidents.

C. Each Department will provide personnel and funds to the extent possible to respond to radiation incidents and accidents.

D. Each Department will support their respective employees in terms of salary, travel, per diem and overtime costs while responding to radiation emergencies.

E. Individuals responding to radiation emergencies at the request of the Department of Health and Social Services will do so with the full authority of the Department of Health and Social Services when acting within the scope of instructions.

F. Public information concerning a nuclear accident, incident or event will be released by the Department having jurisdiction.

G. Each Department will serve as the contact with their federal counterpart regarding nuclear accidents and incidents i.e. DHSS-FDA & NRC; DHA-FEMA; DEC-EPA; DL-OSHA.

NOTIFICATION

Any agency being notified of a radiation emergency will notify the Department of Health and Social Services as the lead agency. In turn the Department of Health and Social Services will notify designated personnel in all other agencies which are party to this agreement when there exists or has the potential to exist a problem within their area of responsibility.

It is further agreed that an alternate contact for notification and coordination of response will be the Division of Emergency Services, Department of Military Affairs. In keeping with the above, the following notification will be made:

PRIMARY CONTACT

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Radiological Physicist

(Day) 465-3019

(Night) 789-7858 or
789-3431

ALTERNATE CONTACT

DEPARTMENT OF MILITARY AFFAIRS

Division of Emergency Services

24 Hour Contact 248-0055

HAZARDOUS MATERIALS DEFINITIONS

The following definitions have been abstracted from the Code of Federal Regulations, Title 49-Transportation, Parts 100 to 189. Refer to the referenced sections for complete details. NOTE: Rulemaking proposals are outstanding or are contemplated concerning some of these definitions.

HAZARDOUS MATERIAL - Means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce and which has been so designated. (Sec. 171.8)

MULTIPLE HAZARDS - A material meeting the definitions of more than one hazard class is classified according to the sequence given in Sec. 173.2.

HAZARD CLASS	DEFINITIONS
	<u>Explosive</u> - Any chemical compound, mixture, or device, the primary or main purpose of which is to function by explosion, i.e., with substantially instantaneous release of gas and heat, unless such compound mixture, or device is otherwise specifically classified in Parts 170-189. (Sec. 173.50)
<u>CLASS A EXPLOSIVE</u>	Detonating or otherwise of maximum hazard. The nine types of Class A explosives are defined in Sec. 173.53.
<u>CLASS B EXPLOSIVE</u>	In general, function by rapid combustion rather than detonation and include some explosive devices such as special fireworks, flash powders, etc. <u>Flammable hazard.</u> (Sec. 173.88)
<u>CLASS C EXPLOSIVE</u>	Certain types of manufactured articles containing Class A or Class B explosives, or both, as components, but in restricted quantities, and certain types of fireworks. <u>Minimum hazard.</u> (Sec. 173.100)
<u>BLASTING AGENTS</u>	A material designed for blasting which has been tested in accordance with Sec. 173.114a(b) and found to be so insensitive that there is very little probability of accidental initiation or explosion or of transition from deflagration to detonation. (Sec. 173.114a(a)).
<u>COMBUSTIBLE LIQUID</u>	Any liquid having a flashpoint above 100°F. and below 200°F. as determined by tests listed in Sec. 173.115(d). Exceptions to this are found in Sec. 173.115(b)
<u>COMPRESSED GAS</u>	Any material or mixture in a container with an absolute pressure exceeding 40 p.s.i. at 70°F., or an absolute pressure of 104 p.s.i. at 100°F. as determined by appropriate specified tests.

HAZARD CLASS	DEFINITIONS
<u>CORROSIVE MATERIAL</u>	Any liquid or solid that causes visible destruction or irreversible alteration in human skin tissue or a liquid that severely corrodes steel.
<u>ETIOLOGIC AGENT</u>	An "etiologic agent" means a viable micro-organism, or its toxin which causes or may cause human disease.
<u>FLAMMABLE LIQUID</u>	A liquid with a flash point less than 100°F. as measured by tests specified in the DOT regulations. Liquids are not considered to be flammable if they have a vapor pressure over 40 parts per square inch or one or more parts with a flash point of 100°F. or higher.
<u>FLAMMABLE SOLID</u>	Any material other than an explosive which is liable during transport to cause fires through friction or retained heat, or which readily ignites and burns vigorously and persistently. Included in this class are spontaneously combustible and water reactive materials.
<u>ORGANIC PEROXIDE</u>	A derivative of hydrogen peroxides where one or more of the hydrogen atoms have been replaced by organic radicals.
<u>OXIDIZER</u>	A substance that yields oxygen readily and stimulates the combustion of organic materials. Examples are chlorates, permanganates, and inorganic peroxides.
	Poisons are classed into Poison A, Poison B, and Irritating Material.
<u>POISON-A</u>	Gas or liquid which is dangerous to life when mixed with air in even very small quantities.
<u>POISON-B</u>	A substance which is dangerous to life, but does not meet the definition of Class A Poison.
<u>IRRITANT</u>	A liquid or solid substance which give off dangerous or intensely irritating fumes when exposed to air or fire.
<u>RADIOACTIVE MATERIAL</u>	Any material, or combination of materials, that spontaneously emits ionizing radiation, and having a specific activity greater than 0.002 microcuries per gram.
	ORM A, B, or C (Other Regulated Material) is any hazardous material that does not meet the definition of a DOT hazard classification is designated "Other Regulated Material" (ORM).

HAZARD CLASS	DEFINITIONS
<u>ORM-A</u>	A material which has anesthetic, irritating, noxious, toxic or similar properties, and can cause extreme annoyance or discomfort to passengers and crew in the event of leakage during transportation.
<u>ORM-B</u>	A material which is capable of causing significant damage to a transport vehicle or vessel from leakage during transportation.
<u>ORM-C</u>	A material which has other inherent characteristics not described as ORM-A or ORM-B, but which is in other ways unsuitable for shipment if not properly identified or prepared.
<u>ORM-D</u>	A material such as a consumer commodity which presents limited hazards during transportation because of their form, quantity, or packaging.
<u>ORM-E</u>	A material which falls into both DOT and EPA categories and is subject to regulation by both agencies. This classification is also used for hazardous waste.

**HAZARDOUS MATERIALS
IN THE
FAIRBANKS NORTH STAR BOROUGH**

<u>NAME</u>	<u>CLASS</u>	<u>NO.</u>
ALUMINUM CHLORIDE	crystal	1726
ORGANIC PEROXIDE MIXTURE		2756
PROPANOL		1274
SALTPETER		1486
TRIFLOUROBROMOMETHANE		1009
BLASTING AGENTS	nos	blast. ag. ----
2-ETHOXYETHANOL		comb. liq. 1171
CLEANING COMPOUND	160Z	comb. liq. 1142
ETHYLENE GLYCOL		comb. liq. 1153
FUEL OIL		comb. liq. 1993
KEROSENE	including jet fuel	comb. liq. 1223
PAINT REMOVER		comb. liq. 1142
WAX	liquid	comb. liq. 1523
ACETIC ACID	GLACIAL	corrosive 2790
ACID	ACETIC	corrosive 2790
ACID	HYDROCHLORIC	corrosive 1789
ACID	NITRIC other than fum.	corrosive 1760
ACID	nos	corrosive 1760
ACID	SULFURIC	corrosive 1830
ACID	SULFURIC, fuming (20%)	corrosive 1831
ACID	SULFURIC, tech.	corrosive 1830
ADIPYL CHLORIDE		corrosive
AMMONIUM BIFLUORIDE	solid	corrosive 1727
AMMONIUM BIFLUORIDE	solution	corrosive 2817
ANTIMONY PENTACHLORIDE		corrosive 1771
BOMBS	SMOKE	corrosive 2028
BROMINE	*	corrosive 1744
CLEANING COMPOUND	liquid corrosive	corrosive 1760
HYDRAZINE		corrosive 2030
HYDROCHLORIC ACID	solution	corrosive 1789
HYDROGEN FLUORIDE	*	corrosive 1052
HYPOCHLORITE	solution	corrosive 1791
LIME	SODA	corrosive 1907

* = major evacuation required in spill

Hazardous Materials in Fairbanks Area
Sorted by class

December, 1983

NITRIC ACID	40% or less	corrosive	1760
OCTYL TRICHLOROSILANE		corrosive	1801
PAINT STRIPPER		corrosive	1760
PHOSPHORUS OXYCHLORIDE		corrosive	1810
PHOSPHORUS PENTACHLORIDE		corrosive	1806
PHOSPHORUS TRICHLORIDE	*	corrosive	1809
POTASSIUM HYDROXIDE		corrosive	1814
SODA LIME		corrosive	1907
SODIUM HYDROXIDE		corrosive	1823
SULFURIC ACID		corrosive	1830
SULFURIC ACID	*fuming (20%)	corrosive	1831
SULFURIC ACID	tech.	corrosive	1830
TOLUENE	technical	corrosive	1294
ETIOLOGIC AGENTS	n.o.s.	etiolog.	2814
EXPLOSIVES A		expl. A	----
EXPLOSIVES B		expl. B	----
ROCKET	SOLID PROPELLANT	expl. B	----
SMOKELESS POWDER	small arms	expl. B	1325
EXPLOSIVES C		expl. C	----
AMMONIUM NITRATE	FUEL OIL MIXTURE	high exp.	----
ACETYLENE		flam. gas	1001
CYCLOPROPANE		flam. gas	1027
ETHYLENE		flam. gas	1962
FLAMMABLE GAS	n.o.s.	flam. gas	1954
GAS	FLAMMABLE n.o.s.	flam. gas	1954
GAS	LIQUIFIED PETROLEUM	flam. gas	1075
GAS	PROPANE	flam. gas	1075
PROPANE	GAS	flam. gas.	1978
1-PROPANOL		flam. liq.	1274
2-PROPANOL		flam. liq.	1274
ACETONE		flam. liq.	1090
ACRYLONITRILE		flam. liq.	1093
ALCOHOL	denatured	flam. liq.	1095
ALCOHOL	n.o.s.	flam. liq.	1987
ALCOHOL	poisonous, n.o.s.	flam. liq.	1986
ALCOHOL	WOOD	flam. liq.	1230
ANTI-FREEZE	dry or liquid	flam. liq.	1142
AVIATION FUEL	turbine engine	flam. liq.	1863
BENZINE		flam. liq.	1115
CARBON REMOVER		flam. liq.	1132
CHROMATE 84D/47	PRIMER	flam. liq.	1263

Hazardous Materials in Fairbanks Area
Sorted by class

December, '3

DIOXANE		flam. liq.	1165
ETHANOL		flam. liq.	1170
ETHYL MERCAPTAIN		flam. liq.	2363
FLAMMABLE LIQUID	corrosive nos	flam. liq.	2924
FUEL	AVIATION turbine eng.	flam. liq.	1863
GASOLINE	blended	flam. liq.	1203
HEXANES		flam. liq.	1206
HYDRAZINE		flam. liq.	2029
INSECTICIDE	liquid nos	flam. liq.	1993
ISOPROPANOL		flam. liq.	1219
MERCAPTAIN	ETHYL	flam. liq.	2363
MERCAPTAIN	nos	flam. liq.	1228
METHANE	liquid	flam. liq.	1972
METHANOL		flam. liq.	1230
METHYL ETHYL ETHER		flam. liq.	1039
N-BUTYL ALCOHOL		flam. liq.	1120
NAPHTHA		flam. liq.	2553
NAPHTHA	DISTILLATE	flam. liq.	1268
NAPHTHA	PETROLEUM	flam. liq.	1255
NAPHTHA	SOLVENT	flam. liq.	1256
OIL	PETROLEUM	flam. liq.	1270
PAINT		flam. liq.	1263
PETROLEUM	CRUDE OIL	flam. liq.	1267
PETROLEUM	OIL	flam. liq.	1270
PETROLEUM	SPIRITS	flam. liq.	1271
POLISH	FURNITURE	flam. liq.	1142
POLISH	METAL	flam. liq.	1142
POLISH	STOVE	flam. liq.	1142
PRIMER COAT	metal	flam. liq.	1263
SHELLAC		flam. liq.	1263
STYRENE		flam. liq.	2055
TAR	liquid	flam. liq.	1999
TURPENTINE		flam. liq.	1299
XYLENE	(XYLOL)	flam. liq.	1307
XYLOL	(XYLENE)	flam. liq.	1307
ASPHALT		flam. sol.	1993
MAGNESIUM	ALLOY	flam. sol.	1869
MAGNESIUM TURNINGS		flam. sol.	1869
PHOSPHORUS	AMORPHOUS RED	flam. sol.	1338
PHOSPHORUS	WHITE dry	flam. sol.	1381
PHOSPHORUS	WHITE wet	flam. sol.	1381
PHOSPHORUS	WHITE, dry	flam. sol.	1381
PHOSPHORUS	WHITE, in water	flam. sol.	1381
PHOSPHORUS	YELLOW, dry	flam. sol.	1381

Hazardous Materials in Fairbanks Area
Sorted by class

December, 1983

PHOSPHORUS	YELLOW, in water	flam. sol.	1381
PHOSPHORUS PENTASULFIDE		flam. sol.	1340
POTASSIUM METAL		flam. sol.	2257
POWDER	SMOKELESS small arms	flam. sol.	1325
SODIUM		flam. sol.	1429
SODIUM METAL		flam. sol.	1429
WATER REACTIVE SOLIDS	nos	flam. sol.	2813
ALLYL ISOTHIOCYANATE	tear gas	irritant	1545
GRENADE	TEAR GAS	irritant	2017
TEAR GAS		irritant	1693
ACID	HYDROCHLORIC anhyd.	nonfl.gas	1050
AMMONIA	*ANHYDROUS	nonfl.gas	1005
ARGON	compressed	nonfl.gas	1006
BORON TRIFLUORIDE	*	nonfl.gas	1008
CARBON DIOXIDE		nonfl.gas	1013
CARBON DIOXIDE	liquified	nonfl.gas	2187
CHLORINE	*	nonfl.gas	1017
FERTILIZER	AM. SOL.	nonfl.gas	1043
GAS	compressed or liquid	nonfl.gas	1956
GAS	liquified nonflam.	nonfl.gas	1058
GAS	RARE, mixed with o ₂	nonfl.gas	1980
GAS	REFRIGERANT nos	nonfl.gas	1078
HELIUM	compressed	nonfl.gas	1046
HYDROCHLORIC ACID	*anhydrous	nonfl.gas	1050
INSECTICIDE	gas nos	nonfl.gas	1968
NEON	compressed	nonfl.gas	1065
NITROGEN	compressed	nonfl.gas	1066
NITROGEN	cryogenic liquid	nonfl.gas	1977
OXYGEN	compressed	nonfl.gas	1072
OXYGEN	liquid	nonfl.gas	1073
ACID	PERACETIC	org. per.	2131
KETONE	METHYL ETHYL	org. per.	2563
METHYL ETHYL KETONE	PEROXIDE	org. per.	2563
METHYL-ISO-BUTYL KETONE		org. per.	2126
PERACETIC ACID		org. per.	2131
MALATHION		ORM-A	2783
TRICHLOROETHANE		ORM-A	1710
PCB		ORM-E	2315
ACID	NITRIC 70%	oxidizer	2031
ACID	NITRIC fuming	oxidizer	2032

Hazardous Materials in Fairbanks Area
Sorted by class

December, 1983

ALUMINUM PERCHLORATE		oxidizer	----
AMMONIUM NITRATE	FERTILIZER	oxidizer	2067
AMMONIUM PERCHLORATE		oxidizer	1442
CALCIUM CHLORITE		oxidizer	1453
CALCIUM HYPOCHLORITE		oxidizer	1748
HYDROGEN PEROXIDE		oxidizer	2014
MAGNESIUM PERCHLORATE	ANHYDROUS	oxidizer	1475
NITRIC ACID	70%	oxidizer	2031
NITRIC ACID	*fuming	oxidizer	2032
NITRIC ACID	*red fuming	oxidizer	2032
OXIDIZERS	corrosive liquid nos	oxidizer	9193
OXIDIZERS	corrosive solid nos	oxidizer	9194
SODIUM BROMATE		oxidizer	1494
SODIUM PERCHLORATE		oxidizer	1502
INSECTICIDE	gas poisonous nos	poison A	1967
PESTICIDE	liquid poisonous nos	poison A	1995
PESTICIDE	liquid poisonous nos	poison A	2902
PESTICIDE	liquid poisonous nos	poison A	2903
ARSENIC TRICHLORIDE		poison B	1560
CYANIDE		poison B	1588
DINITROBENZENE		poison B	1597
INSECTICIDE	dry nos	poison B	1615
INSECTICIDE	dry nos	poison B	2588
INSECTICIDE	liquid poisonous nos	poison B	2902
MERCURY WASTES		poison B	2025
PESTICIDE	liquid nos	poison B	1996
PESTICIDE	solid nos	poison B	2588
POISON	corrosive liquid nos	poison B	2927
POISON	corrosive solids nos	poison B	2928
POISON	flammable liquid nos	poison B	2929
POISON	flammable solids nos	poison B	2930
RODENTICIDE	nos	poison B	1681
SODIUM CYANIDE		poison B	1689
RADIOACTIVE DEVICE	n.o.s.	radioact.	2911
RADIOACTIVE MATERIAL	fissile, n.o.s.	radioact.	2918
RADIOACTIVE MATERIAL	L.S.A.	radioact.	2912
RADIOACTIVE MATERIAL	L.S.A. solid	radioact.	2914
RADIOACTIVE MATERIAL	limited qty. n.o.s.	radioact.	2910
RADIOACTIVE MATERIAL	n.o.s.	radioact.	9181

Hazardous Materials in Fairbanks Area
Sorted by class

December, 1983

ALASKA RAILROAD TERMINAL

DAILY AVERAGE GALLONAGE IN STORAGE

ALASKA RAILROAD (210,000 (FLAMMABLE COMBUSTIBLE)
TEXACO OIL COMPANY: (10,000 (FLAMMABLE UNDERGROUND)

TEXACO OIL COMPANY:

TOTAL.....408,000 GALLONS (FLAMMABLE AND COMBUSTABLE)

UNION OIL COMPANY:

TOTAL.....290,000 GALLONS (FLAMMABLE AND COMBUSTABLE)

TOTAL.....120,000 (TRUCKS AND TRAILERS)

CHEVRON:

TOTAL.....585,000 GALLONS (FLAMMABLE AND COMBUSTABLE)*

TOTAL..... 8,000 (TRUCKS AND TRAILERS)

PETROLANE:

3-18,000 GALLON

1-30,000 GALLON

TOTAL.....84,000 GALLONS (FLAMMABLE)

YAN GAS:

2-18,000 GALLON

1-20,000 GALLON

1-50,000 GALLON #1

1-50,000 GALLON #2 (COMBUSTABLE)***

TOTAL.....56,000 GALLONS (FLAMMABLE)

GVEA:

TOTAL.....200,000 GALLONS (HAGO COMBUSTABLE)

TOTAL..... 37,000 GALLONS (#1 DSL. COMBUSTIBLE)

HALLIBURTON INDUSTRIES:

1-13,000 GALLON (HYDROCHLORIC ACID .2%)

FLOWLINE-50,000 GALLON (LIQUID PLASTIC-URETHANE)

ALL THE ABOVE HAVE VARYING AMOUNTS OF MOTOR OIL, KEROSENE, PETROLEUM BASE PRODUCTS AND VARIOUS INDUSTRIAL COMPOUNDS STORED IN WAREHOUSE AREAS.

THE FOLLOWING TOTAL NUMBER OF GALLONS TRANSPORTED BY THE ALASKA RAILROAD ARE ESTIMATED GALLONAGE HANDLED INTO THE TERMINAL AND BEYOND THE TERMINAL INCLUDING FAIRBANKS INTERNATIONAL AIRPORT, FORT WAINWRIGHT, EIELSON, AND NORTH POLE REFINERY. THESE TOTALS ARE FOR THE MONTH OF AUGUST 1983.

FLAMMABLE GAS

UNLEADED.....	3,520,000	GALLONS
REGULAR.....	2,970,000	GALLONS
L.P.G.....	30,000	GALLONS
AV-100.....	220,000	GALLONS
JP-4.....	3,220,000	GALLONS

TOTAL: 9,960,000 GALLONS

COMBUSTIBLE

JET-A.....	9,940,000	GALLONS
DSL #2.....	70,000	GALLONS
DSL #4.....	1,060,000	GALLONS
DSL #1.....	220,000	GALLONS

TOTAL: 11,290,000 GALLONS

GRAND TOTAL OF HAZARDOUS PETROLEUM PRODUCTS: 21,250,000 GALLONS

ALL THE ABOVE FIGURES ARE CONSERVATIVE DUE TO THE CONFIDENTIALITY OF SHIPPERS PRODUCTS.

FAIRBANKS INT. AIRPORT INDUS. AREA
AND NORTH POLE REFINERY

TESORO:

TOTAL.....2½ MILLION GALLONS (FLAMMABLE AND COMBUSTABLE)***

UNION:

TOTAL.....40,000 GALLONS (UNDERGROUND FLAMMABLE AND
COMBUSTABLE)

N.P.R.:

TOTAL.....950,000 GALLONS (FLAMMABLE AND COMBUSTABLE)

NORTH STAR TERMINAL:

NO SIGNIFICANT AMOUNT AT THIS TIME.

NORTH POLE REFINERY:

CRUDE....1-218,000 GALLONS
RESID.... 315,000 GALLONS
HAGO.... 525,000 GALLONS
#2..... 567,000 GALLONS
#1..... 987,000 GALLONS
JP-4.....1,260,000 GALLONS
4,872,000 GALLONS AVERAGE MONTH STORAGE.

*** ALMOST 1/2 FULL

FAIRBANKS AREAWIDE MUTUAL AID PACT - 1983

EQUIPMENT AVAILABLE FOR MUTUAL AID

ALASKA DIVISION OF LANDS EMERGENCY 479-4430 BUSINESS 479-2243

- One - 4x4 500 gallon tank pumper
- One - 4x4 300 gallon tank pumper
- One - 4x4 200 gallon tank pumper
- One - 4x2 400 gallon tip on unit
- Two - 4x2 300 gallon tip on units
- One - 4x2 100 gallon tip on unit
- One - 1200 gallon tank pumper
- Two - 400 gallon tank trailers without pumps
- One - 1200 gallon retardant air drop air craft
- One - 400 gallon bucket helicopter
- Four - Forestry fighters (depending on size of fire)

EIELSON AFB EMERGENCY 377-4156, 377-4266 BUSINESS 377-2216
Mutual Aid Requests 377-1200, 377-6119

- One - 2500 gpm CFR, 6100 gallons water, 515 gallons AFFF
- Two - 1500 gpm CFR, 2300 gallons water, 200 gallons AFFF
- One - 5000 gallon tanker with 1000 gpm pump, 750 gpm turret, 800 gallons AFFF
- One - 1500 gpm CFR, with 1500 gallons water, 180 gallons AFFF
- One - 500 gpm pumper, 600 gallons water, 55 gallons AFFF
- Two - CFR dual agent units, 350 lbs dry chemical, 200 lbs Halon 1211
- Two - 750 gpm pumpers with 300 gallons water, 55 gallons AFFF
- One - Rescue Vehicle with EMS Equipment
- Four - Firefighters (depending on incident)

ESTER VOLUNTEER FIRE DEPARTMENT UA HOTLINE 474-1911, Chief Dowling 479-4678

- One - 3600 gallon tanker with 250 gpm pump
- One - 1000 gallon 6x6 tanker with 200 gpm pump
- One - 500 gpm pumper with 500 gallons of water
- Approximately 5 firefighters

FAIRBANKS EMERGENCY 911 or 452-1527 BUSINESS 452-1527 ALARM ROOM 452-1550

- Two - 2000 gpm pumpers with 300 feet of five inch hose
- Two - 1500 gpm pumpers
- One - 1000 gpm pumper with Fire Boss and high Exp. Foam
- Two - 1000 gpm pumper/tankers with 3500 gallons of water each
- One - 100' aerial ladder truck
- One - 10 kw generator/lighting unit truck
- One - Rescue truck with Hurst Tool (Jaws of Life) and Rubber Raft
- One - Riverboat with jet unit
- Four - Ambulances
- Seven - Firefighters depending upon the incident

FORT WAINWRIGHT EMERGENCY AND BUSINESS 353-6619, 353-6968, 353-6561
Fire Chief 353-6785

- Three - 750 gpm pumpers 400 gallons water
- Two - 1250 gpm CFR, 1500 gallons water, 180 gallons AFFF
- One - 2000 gallon tanker with 500 gpm pump
- One - Rescue truck
- Two - Ambulances (5 ambulances available)
- Six - Firefighters depending upon incident

INTERNATIONAL AIRPORT Switchboard 452-2151 Dispatch 456-6620 456-6629
Crash Station 452-6300 & 452-6309

- One - 2000 gpm CFR with 3000 gallon water and 500 gallon AFFF
- One - 1500 gpm with 3000 gallon water and 400 gallon AFFF
- One - 5000 gallon tanker with 500 gpm pump
- One - 1750 gallon tanker with a 750 gpm pump
- One - CFR with 1650 gallons of water and 150 gallons of AFFF
- One - CFR with 50 gallons of pre-mixed solution and 300 lbs. of Super K
- One - CFR with 1500 lbs. dry chemical, 360 gallons water and 36 gallons AFFF
- One - 14' lake boat
- One - 16' river boat with a jet unit
- One - Trackster
- One - Snowmachine
- One - Rescue Truck
- One - Medical Aid Unit
- Two - Firefighters (depending upon the incident)

NORTH POLE EMERGENCY-AST Radio Freq. DISPATCH 488-6902

- One - 1500 gpm 75' aerial telesquirt ladder with 300 gallons water
- One - 1750 gpm pumper with 1000 gallons water
- One - 1000 gpm pumper with 750 gallons water
- One - 2600 gallon tanker with 300 gpm pump
- () - 1000 gallon tanker
- Two - Ambulances
- Approximately 15 firefighters

NORTH POLE REFINERY Contact through North Pole

- One - 1000 gpm pumper with 1000 gallons of 3% foam concentrate
No water is carried. Available only for large petroleum
fire where large quantities of foam are needed. One - two
firefighters depending on the time of day.

NORTH STAR EMERGENCY North Pole Dispatch, . . Chief Lundfeldt 488-9089

- Four - 2000 gallon tankers with 1000 gpm pumps
- One - 4x4 1500 gallon tanker with 200 gpm pump
- One - 2600 gallon tanker with 350 gpm pump
- Approximately 12 firefighters

STEESE EMERGENCY UA HOTLINE, 474-1911 Chief Hazen 452-2786

- One - 1000 gallon engine with 1000 gpm pump
- One - 1000 gallon engine with 1500 gpm pump
- One - 2500 gallon tanker with 450 gpm pump
- One - 1800 gallon tanker with 1500 gpm pump and 50' telesquirt
- Approximately 10 firefighters

UNIVERSITY EMERGENCY UA HOTLINE or 474-1911, Chief Shechter (home) 479-2001
Dispatch 474-7721, Fire Lounge 474-6210

- One - 1500 gpm pumper with a 500 gallon tank
- One - 1000 gpm pumper with a 1000 gallon tank
- One - 1250 gpm pumper with a 1000 gallon tank
- One - 500 gpm pumper/tanker with a 3200 gallon tank
- One - 100 foot aerial ladder truck
- One - 90 gpm brush truck with four-wheel-drive and 250 gallons of
water (summer only)
- Two - Ambulances, one with rescue and Haz. Mat. Equipment
- Seven - Firefighters

Area departments not Mutual Aid Pact members with equipment available for aid to Pact Departments:

CHENA GOLDSTREAM VFD EMERGENCY 455-6608 BUSINESS 479-5672

- Two - 750 gpm 6x6 pumpers, 500 gallons water
- One - 750 gpm pumper, 2700 gallons water
- One - 250 gpm tanker, 1500 gallons water
- One - 250 gpm tanker, 2500 gallons water
- Three - Ambulances

CIVIL DEFENSE EMERGENCY 911 BUSINESS 452-1527, Bob Cavanaugh, Director

- One - Mobile Radio Command Post

INTERIOR RESCUE SERVICE EMERGENCY - North Pole Dispatch Business 452-5391

- One - Ambulance/Rescue unit with Hurst Tool

MOOSE CREEK VFD EMERGENCY North Pole Dispatch Business 372-2423
Chief Jim Cavanaugh

- One - 300 gpm 4 x 4 Brush with 300 gallons water (Portable pump)
- One - 300 gpm tanker with 2600 gallons water
- One - 750 gpm pumper with 175 gallons water

SALCHA RESCUE SQUAD North Pole Dispatch Business 488-3321

- One - Ambulance EMT II level

HAZMAT RESPONSE EQUIPMENT

absorbant	safety	sacks	4
acetylene set	torch		1
air sampler	kit		1
ammonia	bottles	6 gal	
aprons	acid	w sleeves	2
aprons	acid	w/o sleeves	2
armor	body		2
ax	crash	serrated	1
axes	Ziamatic	quick	2
hedges	H ₂ S		25
bags	air		4
bags	canvas		6
bags	plastic	heavy	10
bags	sand		6
banding	equipment		1
banner guard	box		2
barbed wire	copper	20'	1
batteries	"D"	cartons	1
binoculars	10x50		2
blades	hacksaw		6
blanket	disposable		8
bleach	liquid	10 gal	
bolt cutter			1
boots	rubber	pair	8
bottles	air		8
breathing apparatus	4 hour		2
brooms	corn		2
brush	dust		1
brush	wire	long handle	1
camera			1
caps	pipeline		
car wash	attachment		1
cassette	recorder		1
chargers	radio	portable	2
chocks	wheel	assorted	
clamps			
clamps	drum		6
cleaner	hand		2
communications	chemical suit	system	6
cones	traffic	set	4
containers	evidence		2
covers	salvage		6
dearmer			1
detector	carbon monoxide		1
detector	sonic leak		1
detergent			

digger	post hole		1
dike kit	MSA foam		1
dosimeters			8
Drager kit			2
drill	air		1
drums	5 gal		2
drums	55 gal		2
drums	88 gal		2
eductors	foam		2
epoxy	package		5
epoxy	seagoing	package	1
explosimeter	MSA gascope		1
explosimeter	oxygen	analyzer	2
extinguisher	purple K	20#	2
extinguishers	class "D"	30#	2
extinguishers	CO ₂	150 lb	
extinguishers	dry chem	150 lb	
extinguishers	Metal X	150 lb	
fan	explosion proof		1
first aid	kit		1
fittings	PVC pipe		
foam	AFFF		
foam	protein		
fuses	12 B40 DOT	canton	1
galvinometer			1
gas masks	M9		8
generator	3 KW		1
gloves	butyl rubber		
gloves	disposable	box	1
gloves	neoprene	pairs	4
goggles	chemical	splash	3
gun	infrared		1
hacksaw			1
hammer	air		1
hammer	brass	#8	1
hammers	claw		2
handlights	explosion proof		4
hats	safety		8
hole saws	miliford		1
hose	adaptor	garden 1 1/2	1
hose	air	rolls	13
hose	garden	50'	2
humidity	indicator		1
jacks	12 ton		2
jugs	plastic		4
kit	shoring		1
kit	stop-leak		1
kits	chlorine	A,B,C	1
lead sheets	roll		1

library	hazardous	materials	4
lights	Circle D		12
lightsticks	cyalume		1
liners	trash can	cartons	6
lines	life	150'	1
magazine	explosives		1
mallet	rubber		2
manhole tools			1
megaphone	portable		
meters	radiological	alpha	
meters	radiological	beta	
meters	radiological	gamma	
nails	various	box	1
nozzles	1 1/2	foam	2
P-H kit	pool equipment		1
pads	absorbant	rolls	4
piercing	applicators	3'	2
piercing	applicators	6'	2
pipe	PVC	40'	1
pipe plug	inflatable		1
plackards	hazmat		
plaster			
plastic	black	rolls	5
plates	steel	patch	6
plug-n-dike	50#	box	2
plugs	rubber billet		12
plugs	threaded	assorted box	1
plugs	wood billet		12
porta power	set		
pump	non-reactive		2
punch/crowbar	tapered		1
putty			
pyrometer	contact		1
pyrometer	scanning		1
radio telephone			1
radios	VHF	mutual aid	9
recorder	tape		1
reflectors	triangle		12
repair kit	drum		1
respirators	MSA	cartridge	2
resuscitator			1
rods	grounding		6
rolagon	large		2
rolagon	medium		2
rolagon	small		2
rope	truck	150'	4
sandpaper	fine, medium		1
seal	duck		8
seal	duct		
sealers	gasket		3
shears			2

shovels	round point		4
shovels	scoop		4
shovels	square point		4
showers	vehicle	mounted	2
slats	bundles		5
smocks	disposable	w hoods, etc	10
soda ash	sacks		2
sprinkler heads	box		1
squares	plastic/wood		8
squegee/handles			5
steel wool	package		1
string	roll		1
suits	acid-gas	entry	
suits	butyl rubber	w hoods, etc	2
suits	chemical	entry	3
suits	East Wind		3
suits	proximity		6
sulfur sticks			12
tags	contamination		50
tags	evacuation		100
tanks	air	60 min	
tape	aluminum	36 yds	1
tape	duct	rolls	2
tape	lead	36 yds	1
telephone	mobile		1
telescope	tripod		1
thermometer			1
tool box	heavy		1
tool box	light		1
tools	nonsparking	kit	1
trailer	support		1
transfer kit	drum-to-drum		1
tubes	inner		2
vehicle	command		1
vests	orange		10
video equipment	set		1
water			
water drill	Amfire		1
wind socks	with post		4
wind speed	indicator		1
wire	blasting		
wire	field		
wrenches	pipe		2

PACKAGE NAME (2):

Public Works/Environmental/Hazardous Materials Permit Program

STATEMENT OF PURPOSE (3):

The objective of this program is to reduce the likelihood of a catastrophic situation occurring within the Borough involving hazardous materials and to prevent the loss of life and property which might be associated with such an incident.

IDENTIFY RELATIONSHIP TO BOROUGH GOALS & OBJECTIVES (4):

GOAL: II OBJECTIVE: 4 CATEGORY:

DESCRIPTION OF ACTIONS (OPERATIONS) (5):

A program would be established which would require anyone who handles a known hazardous material (above a certain size limitation) to obtain a Borough permit for such activity.

ACHIEVEMENTS/BENEFITS (6):

This program would give public safety agencies and others much more information regarding hazardous materials handling and storage in the Borough. This, in turn, will allow these agencies to do increased preplanning to handle emergency situations regarding these materials and will decrease the likelihood of a major emergency situation developing.

CONSEQUENCES OF NOT APPROVING PACKAGE (7):

Retain the status quo of not knowing what or where hazardous materials are being handled within the Borough. This could lead to a much more severe hazardous materials incident than if this program is enacted.

QUANTITATIVE PACKAGE MEASURES

RESOURCES REQUIRED

(8) DESCRIPTION	84/85	DESCRIPTION	84/85
Permits issued	50	Personal Services:	\$ 63,530
		Commodities:	400
		Contractual Services:	10,010
		Capital Outlay:	4,420
		Program Revenues:	Total Cost: \$ 78,360
			Net Costs:
		Full Time Perm.	NUMBER OF POSITIONS
		Part Time Perm.	Temporary
		1	5
			Term-permanent
		Does this decision package required additional personnel over	
		CURRENT YEAR BUDGET? If so, describe:	
		Yes - New Program - Hazardous Materials Inspector and	
		half-time DA II	

FAIRBANKS NORTH STAR BOROUGH
FY 1984/85 BUDGET
OBJECT ACCOUNT SUMMARY

PROGRAM NAME (1): Public Works/Environmental/Hazardous Mater

Expenditure Code & Object	1982/83 Actual (2)	1983/84 Actual (3)	Mayor's 1984/85 Budget		
			Minimum Level (4)	Maintenance Level (5)	Performance Level (6)
PERSONAL SERVICES					
Permanent Salaries & Wages	N/A	N/A	\$48,870		
Reserve for Comp/Term Adj.			-		
Overtime			-		
Temporary Salaries & Wages			-		
Benefits & Related Costs			14,660		
Subtotal			63,530		
COMMODITIES					
Office Supplies			400		
Operating Supplies			-		
Library Materials			-		
Repair & Maintenance Supplies			-		
Clothing & Personal Supplies			-		
Motor Fuels & Lubricants			-		
Auto & Other Equipment Parts			-		
Subtotal			400		
CONTRACTUAL SERVICES					
Design			-		
Professional Services			-		
Communications			-		
Transportation & Registration			6,010		
Entertainment Expense			-		
Advertising, Printing, Binding			4,000		
Insurance & Bonding			-		
Repair & Maintenance Svc-Building			-		
Repair & Maintenance Svc-Equipment			-		
Rent & Utilities			-		
Other Contractual Services			-		
Subtotal			\$10,010		
CAPITAL OUTLAY					
Building & Structures			-		
Office Furniture & Equipment			\$4,420		
Rolling Equipment			-		
Shop Machinery & Equipment			-		
Land & Landscaping			-		
Books & Periodicals			-		
Other Capital Items			-		
Subtotal			\$4,420		
GRAND TOTAL			\$78,360		
REVENUES			[]		

IRBANKS NORTH STAR BOROUGH

PERSONNEL SUMMARY

DEPARTMENT/DIVISION (1):		1983/84 BUDGET		1983/84 ACTUAL		1984/85 REQUESTED		1984/85 APPROVED		
Public Works/Environmental/SW/Hazardous Materials Program										
EMPLOYEE CLASSIFICATION (3)		(4) RANGE	(5) NO.	(6) SALARY	(7) NO.	(8) SALARY	NO.	SALARY	NO.	SALARY
Hazardous Materials Inspector		16	-	-	-	-	1	\$36,670		
DA II		5	-	-	-	-	.50	12,199		
TOTAL:							1.5	\$48,869		

Appendix L-3

APPROVED BY:
Weather T. Stockard

TELEPHONE: extension 323

Per Sum
Disk

Appendix L-3

DEPARTMENT (1):

Public Works

DIVISION (2):

Environmental

SECTION (3):

Hazardous Materials

SERVICE LEVEL/RANK (4)	ITEM REQUESTED (5)	ITEM TO BE REPLACED Equip (6)	Justification (7)	QUANTITY (8)	UNIT PRICE (9)	TOTAL BUDGET REQUEST (10)
	Office Furniture:		For two new employees			
	Double Pedestal desk			one each	660	660
	Secretarial desk			one each	610	610
	Swivel chairs			two each	375	750
	File cabinet			one each	325	325
	Electronic typewriter			one each	1,370	1,370
	Calculator			one each	160	160
	Book case			one each	200	200
	Side chairs			two each	170	340

Appendix L-4

PREPARED BY:

Heather T. Stockard

TELEPHONE NO.

extension 323

TOTAL:

\$4,415

CRITICAL OPERATIONAL LINKAGES TO OTHER BUDGET UNITS (2):					FINANCE USE ONLY	
BUDGET UNIT (3)	OPERATIONAL LINKAGE (4)	INDICATE SERVICE LEVEL AT WHICH LINKAGE OCCURS (5)	INDICATE SERVICE LEVEL & D. P WHICH ADDITIONAL SUPPORT IS REQUIRED (6)	S.I. APPROVED	COORDINATED	
azardous Materials Permit program	Additional support services for two new employees	proposed service	Payroll and Personnel			
azardous Materials	Address legal questions concerning operation and enforcement of program	proposed servie	Legal			
azardous materials	Exchange of information with Emergency Services concerning location of hazardous material storage facilities	proposed service	Emergency Services			
azardous materials	Collection of permit fees	proposed service	Accounting, Revenue Supervisor			

DEPARTMENT (1): Public Works DIVISION (2): Environmental SECTION (3): Hazardous Materials
DECISION (4) CONTRACTED SERVICE (5) TERM OF CONTRACT (6) 1983/84 (7) (8) 1984/85
PACKAGE FROM TO APPROVED BUDGET REQUEST
& RANK

Appendix L-6	Advertising for Hazardous Materials Permit Program				4,000

DECISION PACKAGE NAME (2)

1984/85 REVENUE WORKSHEET

(3) DEPARTMENT RANK

OF

Public Works/Environmental/Hazardous Materials

INSTRUCTIONS: The following will be used to verify projections for revenue generated by the operating units.
Be specific in the explanations and explain major changes from previous years.

DEPT/DIV/SEC (1)

REVENUE (4)	REVENUE EXPLANATION AND CALCULATION (5)	1981/82 (6) ACTUAL	1982/83 (6) ACTUAL	1983/84 (6) APPROVED	(7) 1984/85 PROJEC
Permit fees	Fees for hazardous materials permits could be set to offset some of the program costs	-	-	-	[]

Appendix L-7

APPROVED BY: Heather T. Stockard

TELEPHONE: extension 323

Rev W/S

DEPARTMENT (1):

Public Works

DIVISION:

Environmental

SECTION:

Hazardous Materials

DECISION PACKAGE	(2) POSITION	(3) LOCATION AND REASON FOR TRIP	(4) DATES OF TRAVEL NO. OF DAYS REQUIRED	(5) COST INFORMATION			
				TRAVEL	PER DIEM	OTHER	TOTAL

Hazardous Materials
InspectorWest Coast - workshop on
hazardous materials

five days

1168

155

400

\$1,72

Hazardous Materials
InspectorAnchorage - coordinate
program with Municipal-
ity of Anchorage

Two trips x one day

404

62

100

56

Hazardous materials
InspectorJuneau - work with ADEC on
start-up of permit sys-
tem

three days

402

63

225

72

Appendix L-8

PREPARED BY:

Heather T. Stockard

TELEPHONE NO.

extension 323

TOTALS:

1,974

310

725

3,009

Introduced: 1/18/83
Referred: Health, Education and Social
Services and Judiciary

1 IN THE SENATE

BY ZIEGLER AND HALFORD

2 SENATE BILL NO. 26

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act providing for immunity from civil liability
7 for certain persons who render services in response
8 to hazardous materials emergencies."

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

10 * Section 1. AS 09.65 is amended by adding a new section to read:

11 Sec. 09.65.091. CIVIL LIABILITY FOR RESPONDING TO HAZARDOUS
12 MATERIAL EMERGENCY. (a) A person who provides care, assistance,
13 advice, or aid upon request of a police agency, fire department,
14 rescue or emergency squad, or other governmental agency in the event
15 of an accident or other emergency involving the use, handling, trans-
16 portation, transmission, or storage of a hazardous material when the
17 circumstances reasonably require prompt decisions and actions is not
18 liable for civil damages as a result of an act or omission in render-
19 ing care, assistance, advice, or aid.

20 (b) This section does not preclude liability for civil damages
21 if the person rendering aid under (a) of this section

22 (1) causes damage as a result of gross negligence or reck-
23 less or intentional misconduct;

24 (2) except for a peace officer, fire fighter, or other
25 public employee whose employment requires responding to an accident or
26 other emergency described in (a) of this section, causes damage as a
27 result of simple negligence in the normal and ordinary course of
28 conducting that person's business or profession;

29 (3) owns, leases, or otherwise controls the facilities or

1 equipment involved in the accident or other emergency;

2 (4) receives or has a legal expectation of receiving from
3 the owner, lessor, or person otherwise in control of or responsible
4 for the hazardous material involved in the accident or other emergency
5 any form of compensation beyond reimbursement for out-of-pocket ex-
6 penses incurred in connection with services rendered.

7 (c) The immunity granted in (a) of this section extends to the
8 employer of the person rendering care, assistance, advice, or aid as
9 described in that subsection and to any other person, employer, part-
10 nership, governmental entity, or corporation legally responsible for
11 the acts or omissions of that person.

12 (d) As used in this section, "hazardous material" means

13 (1) a substance classified as a hazardous material under
14 state or federal law or under a regulation adopted in accordance with
15 state or federal law; or

16 (2) a chemical, petroleum product, gas, or other substance
17 that, if discharged or released, will or is likely to create an immi-
18 nent danger to individuals, property, or the environment.

SPECIAL AREAS WHICH DEAL WITH
HAZARDOUS MATERIALS AND PROCESSES

1979 UNIFORM FIRE CODE
SPECIAL PROCESSES (PART 5)

Article

- 45 Application of Flammable Finishes
- 46 Fruit-Ripening Processes
- 47 Fumigation and Thermal Insecticidal
Fogging except where deleted by 13 AAC 50.025
- 48 Magnesium
- 49 Welding and cutting using Calcium Carbide and Acetylene
- 50 Manufacture of Organic Coatings

SPECIAL SUBJECTS (PART 7)

Article

- 74 Compressed Gases
- 75 Cryogenic Fluids
- 76 Prevention of Dust Explosions
- 77 Explosives and Blasting Agents
- 78 Fire Works
- 79 Flammable and Combustible Liquids except sections that are deleted
by 13 AAC 50.
- 80 Hazardous Chemicals
- 82 Liquefied Petroleum Gases except sections deleted by 13 AAC 50.025.

M E M O R A N D U M

TO: Dave McNarey, City Surveyor
THROUGH: John Phillips, City Engineer
FROM: James Morris, Assistant Fire Chief
SUBJECT: Residential Development Adjacent to Industrial Area
DATE: October 3, 1983

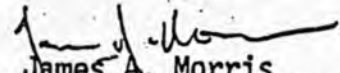
It has recently come to the attention of the Fire Department that a new subdivision is planned for a presently vacant area adjacent to the Alaska Railroad Industrial Area. As you are involved in the planning and approval process for the city for such developments, I am making our concerns known to you.

The Railroad Industrial Area is a site for storage and transfer of many hazardous materials. As the community has grown, the volumes of these commodities has progressively increased vastly beyond the amounts there when this area was originally established. It is no longer out at the edge of town, as the town has now grown and filled in around it.

The acid spill incident of June, 1983 pointed out our suspicion that from time to time certain of these hazardous materials may get loose. When they do, any properties in the immediate area become at risk. The more the immediate vicinity about the area becomes densely developed, the greater the number of potentially exposed individuals and the greater the amount of time evacuation will require.

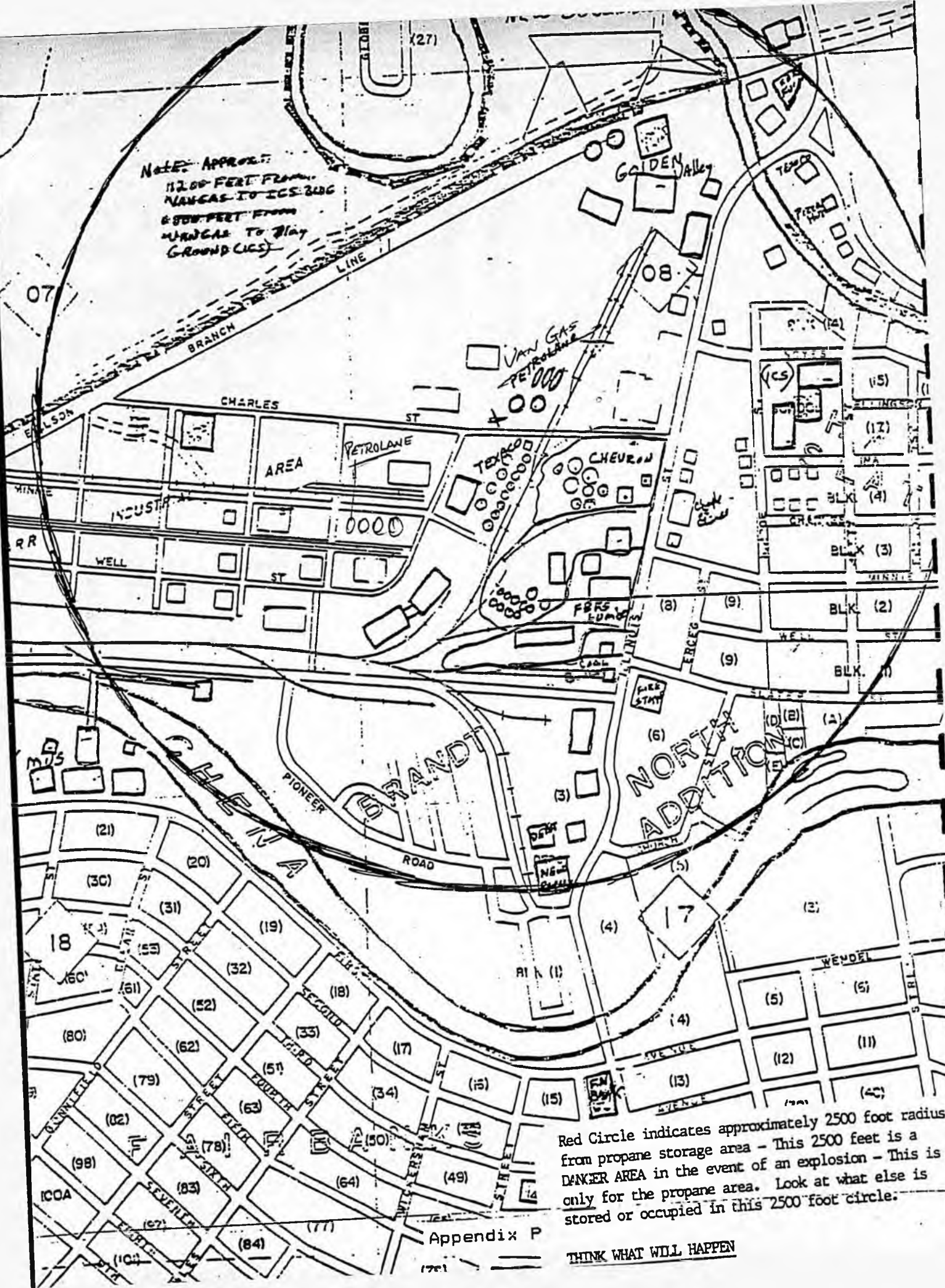
The zone at risk could vary depending upon the incident. In our estimation, a distance of up to 1250 feet from handling and storage of LP gas jumbo cars could be immediately involved in fire if one tank car were to fail and release its contents. If the car were to explode due to exposure from any adjacent fire, huge pieces of the car could be expected to rocket through the air up to 2500 feet away. Similarly, the failure of an acid or ammonia tank car would put an area of up to 2500 feet down wind at risk, with a potentially lethal exposure distance up to 1250 feet away. Already Slaterville, Brant, South Lemeta and the north margin of Townsite are within these bounds. The potential of creating further residential development in this area will only increase the amount of evacuation that will have to be done in a very short period of time should something occur. Since we may only have a few minutes to evacuate these areas, it may well be that we cannot safely provide for all the residents.

Our concern centers on any dense residential development within 1250 feet of hazardous materials handling and storage sites. Development within a zone of 1250 feet to 2500 feet is also a potential problem that should be considered at risk. Should any development be proposed in these areas, please consider our evaluations before approval.


James A. Morris
Assistant Fire Chief

JAM:nba

NOTE: APPROX.
11200 FEET FROM
NAUGAS TO ICS 2406
6800 FEET FROM
NAUGAS TO 2145
(Ground LICS)



Red Circle indicates approximately 2500 foot radius from propane storage area - This 2500 feet is a DANGER AREA in the event of an explosion - This is only for the propane area. Look at what else is stored or occupied in this 2500 foot circle.

Appendix P

THINK WHAT WILL HAPPEN



SAUPÉ ENTERPRISES, INC., dba
Chevron Distributing Co.,
Distributor, Standard Oil Company of California Products
418 Illinois Street, P.O. Box 510, Fairbanks, AK 99701 • Phone 452-1238

January 30, 1984

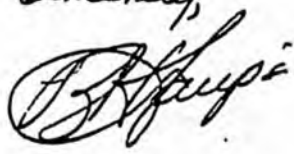
Ms. Deborah Pomeroy, Chairwoman
Mayor's Committee on Hazardous Materials

Dear Deborah;

Because of my vested interest in the petroleum industry and in our "Industrial-Area" location, I obviously cannot support the recommendations our committee is making to the Mayor regarding either:

- A. the recommendation that "compressed-gas" facilities be required to re-locate, and
- B. the suggested restrictions against expansion contemplated against the "flammable-liquids" industry.

While these may represent the "concensus" of the committee, I want the Mayor to be advised (by copy of this letter attached to our report) that those recommendations are by no means "unanimous".

Sincerely,

B. H. Saupé



Fairbanks North Star Borough

Mayor: B.B. Allen

M E M O R A N D U M

TO: Deborah Pomeroy, Chairman
Mayor's Hazardous Materials Commission

FROM: B.B. Allen, Borough Mayor

SUBJECT: Hazardous Materials Commission Report

DATE: April 13, 1984

The purpose of this memorandum is to respond to the report from the Mayor's Hazardous Materials Commission submitted to me the first of February 1984.

My comments address recommendations that you and members of the commission have advanced to me for my consideration. The following is an action plan responding to those recommendations.

Recommendation #1 Highway Traffic Inventory: It is the opinion of the Commission that maintenance of a highway traffic inventory in and of itself is not a necessary and effective use of resources, as the program can be approached from many other and more effective angles.

✓ RESPONSE: I will direct the Division of Environmental Services, Department of Public Works, to establish a system to maintain inventories of hazardous materials in the Borough. The time line established for this system and implementation of procedures will be ninety days from July 1, 1984.

Recommendation #2 Borough Inventory of Hazardous Materials: The Commission recommends that a system needs to be established to maintain inventories of hazardous materials within the Borough, and that this be tied into a proposed permit system and include at least an annual update by the Borough's Environmental Services Division. Emergency services agencies must also be kept up to date on available information.

RESPONSE: The system and procedures has identified an action plan and recommendation #1 will be followed for recommendation #2.

Recommendation #3 State Legislation: The Commission has discovered an example of what appears to be a confusing multiplicity of state agencies which are responsible for various facets of hazardous material incident response and control. The Commission recommends that the Mayor seek to

have this situation corrected.

11/20 Sept 1984
workup
RESPONSE: I will contact the commissioners of the following state departments, Health & Social Services, Military Affairs, Environmental Conservation, Labor, Public Safety and Transportation & Public Facilities, to advise them of the Borough's concern regarding the confusion arising from multiplicity of state agencies which are responsible for various facets of hazardous material incidents, incident response and control. I charged the Mayor's Hazardous Materials Commission to review the Alaska State Statutes that are identified in Appendix F to outline in detail specific areas of confusion for the state administration to address and correct. It appears from the memorandum of understanding among the Department of Health & Social Services, Military Affairs, Environmental Conservation and Labor dealing with radiation incidents and accidents, could be extended to include hazardous materials. I will look further to the Hazardous Materials Commission to provide me with a plan to make recommendations to the various state agencies.

Recommendation #4 Centralized Dispatch: The commission recommends the development of an easily accessed Borough wide computerized system for notification, dispatch and coordination of all emergency incidents.

working
RESPONSE: I will instruct the Director of Emergency Services to develop a plan that will provide a system for notification, dispatch and coordination of all emergency incidents and develop a fiscal note associated with such a plan recommendation.

Recommendation #5 Public Warning System: The Commission endorses the proposed new warning siren system to cover populated areas outside of the cities of Fairbanks and North Pole, as well as within them.

working
RESPONSE: I will instruct the Director of Emergency Medical Services to develop a plan to provide for a warning siren system to cover populated areas of the Fairbanks North Star Borough. The plan will be complete with the identification of equipment and location site and a fiscal note including projected maintenance and operation costs of such a system.

Recommendation #6 Evacuation Information: The Commission recommends the printing of a clear, concise set of evacuation procedures in the telephone directories.

RESPONSE: I charge the Mayor's Hazardous Materials Commission to develop a set of evacuation procedures for publication in the City of Fairbanks Municipal Utilities System and Glacier State Telephone directories. Once these procedures are developed and approved, I will forward same to the general managers of the aforementioned telephone entities to request their consideration of publishing the evacuation procedures as recommended by the Commission.

Recommendation #7 Materials Needed for Response: The commission recommends that the Mayor support the efforts of the Emergency Services

Division to procure and completely equip a hazardous response vehicle.

RESPONSE: \$214,000 was appropriated by the Assembly at its first meeting in February 1984 for the purchase of a hazardous materials van and equipment.

Recommendation #8 Coordination of Resources and Concerns. The Commission recommends that some mechanism be established within the Borough to regularly continue the review of hazardous material resources and concerns. This would best be accomplished by an existing board or regular commission.

Law
RESPONSE: I request the Hazardous Materials Commission to advance a recommendation to my office regarding this matter. Please consider such existing commissions/boards, such as the Civil Defense Advisory Board, Pollution Control Board and the Hazardous Materials Commission. Regardless of your recommendation, I would like for it to include an interface with the Borough's Council on Economic Policy, the two aforementioned advisory boards as well as the Planning Commission and Platting Board. I would like this recommendation on or before July 1, 1984. Also the recommendation should include permanency which would be supported by Borough ordinance.

Law
Recommendation #9 Permit System: The Commission recommends that the Borough adopt and fund a system through the Environmental Services Division requiring users, generators, and handlers of large quantities or specifically dangerous materials to secure a permit (not to include fuel distributors). Such permits should be contingent upon a requirement for training of personnel, posting of safety and incident procedures in house and with the Environmental Services Division, maintaining a current inventory of materials with the Environmental Services Division, and having on hand the necessary materials/equipment to handle incidents including emergency material transfer to safe storage. Containment/control equipment should be available in-house or by contract with a local company/agency which specializes in such activities. Users/handlers should be allowed to have no more of these materials on hand than they can handle safely. To assure distribution of hazardous material information to appropriate agencies, the Environmental Services Division will pass related permit information to the Emergency Services Division which will be responsible for its dissemination.

RESPONSE: I will request the Director of Emergency Services to accomplish the objectives the Commission has outlined for the establishment of a permit system. This report will be due on or before September 1, 1984.

Recommendation #10 State Legislation: The Commission recommends that the Mayor support Senate Bill 26, commonly known as the "Good Samaritan" bill for hazardous material responders.

RESPONSE: I have read Senate Bill 26 sponsored by Senators Ziegler and

Halford which was introduced on January 18, 1984 and refers to Health, Education & Social Services and Judiciary Committees. I will write to Senator Josephson, Chairman of the Senate Health, Education and Social Services Committee advising him of my support for Senate Bill 26. Further, I will communicate with the second referral Committee Chairman, Senator Bill Ray, advising him of my support for the legislation that will be coming to his committee. In addition, I will copy Senators Ziegler and Halford and advise them of my support for their sponsored bill.

Recommendation #11 DEC Proposed Regulations: The Commission supports the regulations as proposed and recommends that the Mayor endorse them and the necessary resources to enforce them.

RESPONSE: I will communicate with the Commissioner of the Department of Environmental Conservation and provide my support to his agency's proposed regulations dealing with hazardous materials, monitoring and waste of such substances. It is noted that the implementation of regulations have been postponed until December 1984 and it is my desire to request that the commissioner advise the Mayor's Hazardous Materials Commission of any change in provisions of the regulations for their review and recommendation to the Mayor's Office.

Recommendation #12 Alaska Transportation Commission Motor Vehicle Regulations: The Commission recommends that the Mayor support revision of 3AAC 62 to include "Title 49 of the Code of Federal Regulations - as amended". thereby allowing updates as necessary.

RESPONSE: I will contact the Commissioner of the Department of Commerce and Economic Development apprising him of my support for the revision of 3AAC 62 to include "Title 49 of the Code of Federal Regulations - as amended," in order to bring our Alaska Statutes in compliance with the Federal Standards Code of Federal Regulations.

Recommendation #13 Alaska State Trooper Personnel Needs. It is the consensus of the Commission that the trucking industry must be expected to comply with hazardous material safety regulations and to this end it recommends that the Mayor endorse efforts at the state level to restore adequate trooper personnel for the purpose of regular, ongoing trucking inspections and enforcement of hazardous material regulations.

RESPONSE: Prior to developing a position on this recommendation, I will contact the Alaska Trucking Association in regard to the non-enforcement of this statute. I think it would be in their best interest from the standpoint of internal housekeeping to support the enforcement of such statutes especially dealing with life/safety matters of unsafe vehicles transporting hazardous materials. I believe the Alaska Trucking Association supports your recommendation, therefore, I will ask for a resolution from that association and send along my letter to the Governor requesting him to restore adequate trooper personnel for the purpose of regular, on

going truck inspection and enforcement of hazardous material regulations as well as copy the Commissioner of Public Safety with my communications to the Governor.

Recommendation #14 Fire Marshal's Personnel Needs: The Commission recommends that the Mayor support increased state funding for enough staff in the State Fire Marshal's office to enable a regular, on going program of inspections and hazardous material code enforcement.

RESPONSE: It appears to me that our concern in regard to the adequacy of the present codes should be more of a concern rather than enforcement at this point in time. Therefore, my priorities would be to contact the Governor and ask that a qualified individual be assigned to the Fairbanks area to look at our hazardous materials situation and make a determination of why there are not existing codes adequate to address concerns in that area. Further, once those concerns are identified, then the individual should also be required to develop a resource needs assessment in regard to proper enforcement of those codes. I believe this approach adds credibility to convincing the Governor for a higher staffing requirement in the Fire Marshal's office in the Fairbanks region.

Recommendation #15 Designation of Truck Routes: The Commission recommends that the Mayor encourage the Borough Assembly to work with the Fairbanks and North Pole City Councils in developing ordinances which establish, designate and call for enforcement of specific routes for the hauling of bulk quantities of the following substances by vehicles not on a regular route of delivery in the immediate area: poisons, corrosives, explosives, environmentally hazardous substances. Such establishment process must include evaluation of roads composing the routes and their compliance with current standards for proposed use.

RESPONSE: In my February 21 meeting with the Commission, I requested that a member of the Commission be prepared to address the Fairbanks Metropolitan Area Transportation Committee at its next meeting to address the designation and enforcement of traffic routes for hauling bulk quantities of hazardous materials. It is the consensus of the FMATS members that the Cities of North Pole and Fairbanks and the State of Alaska adopt the recommendations of the Mayor's Hazardous Materials Commission, then I will support whatever legislation is required to implement that recommendation.

Recommendation #16 FMATS Planning: The Commission recommends that the Mayor see that either the FMATS Technical Committee include a representative of a safety agency familiar with hazardous material concerns or that a required step in local transportation planning guarantee consideration of public and environmental safety in regard to hazardous material transportation especially in areas where hazardous materials users or generators are involved.

RESPONSE: Same as in response for Recommendation #15.

Recommendation #17 Evaluation of Existing Truck Routes: The Commission recommends that the Mayor request ADOT to evaluate all existing designated truck routes as to whether their current use is in keeping with their design standards.

RESPONSE: Same as for Recommendation #15.

Recommendation #18 Maintenance of Truck Routes: The Commission recommends that the Mayor indicate to ADOT that they feel the current truck routes in the Borough should be given priority for maintenance and improvement.

RESPONSE: Same as for Recommendation #15

Recommendation #19 Truck Route for Refinery Traffic: The Commission urges the Mayor to take whatever action is necessary to assure that planning and development of a safe alternate route is a priority.

RESPONSE: Same as for Recommendation #15.

Recommendation #20 Planning Commission and Platting Board Membership: The Commission recommends that representatives of emergency services, knowledgeable in hazardous materials concerns, be assigned to the Planning Commission and the Platting Board.

RESPONSE: While any member of the Borough administration is available to provide input or staff support to the Platting Board and Planning Commission, it is obvious that it is not the Commission's feeling that adequate representation regarding hazardous materials has been available to the Planning Commission. I will take two actions in that regard. First, I will write a letter to the chairperson of the Planning Commission and to the chairperson of the Platting Board advising them of the Mayor's Hazardous Materials Commission's concerns regarding hazardous materials in planning and platting matters and notify them that we have members on the staff knowledgeable in those matters who are available for consultation with their board/commission. Further, we will review Ordinance No. 80-29, which establishes the criteria for membership of the Planning Commission and extend that criteria to include someone knowledgeable in hazardous materials.

Recommendation #21 Industrial Siting Study Review: The Commission recommends that all long-range development plans such as the Industrial Siting Study should be required to pass a review by public safety/emergency services representatives during the development stages.

RESPONSE: From this day forward it is the policy of the Borough that all industrial siting study plans be reviewed by the entity that has been established in Recommendation #8 of the Hazardous Materials Commission to address the concerns of hazardous material sitings within the boundaries of the Fairbanks North Star Borough.

Recommendation #22 Zoning Ordinance for Unrestricted Land Use: The

Commission recommends a zoning ordinance to limit all additions to existing facilities storing or handling hazardous materials until such additions go through a recommended process of evaluation, compliance and permitting. The Commission also recommends an ordinance to redefine "unrestricted" land use to exclude use, storage or handling of hazardous materials without a permit. Furthermore, any conditional or other use permits for facilities not requiring major capital improvements should not be granted "in perpetuity" but have time limits on them for review.

RESPONSE: The Commission's recommendation will be forwarded to Land Resources for their review and comment.

Recommendation #23 Zoning Ordinance for Uniform Fire Code: The Commission recommends adoption of a zoning ordinance requiring compliance with existing Uniform Fire Codes for all new installations involved with hazardous material storage or handling in the Borough.

RESPONSE: Same as for Recommendation #22.

Recommendation #24 Ordinance for Transportation of Chlorine: The Commission recommends that an ordinance be passed such that any movement of 150 pounds of chlorine in a single shipment within the Borough requires prior notification of the appropriate public safety agencies and be restricted to agreed upon routes.

RESPONSE: Same as for Recommendation #15.

Recommendation #25 Ordinance to Control and Relocate Flammable Gas Facilities: The Commission recommends that the Borough mandate that all compressed flammable gas facilities be removed from the railroad industrial area within five years. Concurrent with this, the Borough should forbid expansion of existing facilities or construction of new ones in the area. The Borough should, furthermore, regulate flowthrough of compressed flammable gas in some reasonable and just manner so that the major risks which are associated with the transportation and transfer of such materials are kept at least within current levels. In order to facilitate timely moving of the facilities, it is recommended that the Borough provide incentives (tax or land) for these facilities to relocate and that the Borough mandate buffer zones around such facilities and develop an industrial park for them (perhaps near the airport, with a rerouted rail spur).

RESPONSE: Same as for Recommendation #22.

Recommendation #26 Ordinance to control and encourage Relocation of Flammable Liquid and Corrosive Facilities: The Commission recommends that the Borough forbid any such new facilities or expansion of existing facilities in the railroad industrial area. The Borough should, as with compressed gas facilities, regulate flowthrough/production of these facilities by means of a reasonable formula. The Borough should encourage the relocation of these facilities to a new industrial area, conforming

to the requirements of the Uniform Fire Code.

RESPONSE: Same as for Recommendation #22.

Recommendation #27 Railroad Off Loading Facilities: The Commission recommends that a bunkered railroad siding should be constructed within the Borough with adequate storage facilities. The site should be selected as part of the Borough's Industrial Siting Project.

RESPONSE: Same as for Recommendation #22.

Recommendation #28 University Purchasing: The Commission recommends that the University have one person designated to review and evaluate the need and quantities for the purchase of hazardous materials.

RESPONSE: I will contact the Chancellor of the University of Alaska-Fairbanks and apprise him of the Commission's recommendation and lend my support to such a recommendation.

Recommendation #29 School District Safety Personnel: The Commission recommends that the School District have a person designated to review and evaluate need and quantities for purchase of hazardous materials and to oversee safety procedures inventory and storage on a regular basis.

RESPONSE: I will contact the President of the Fairbanks North Star Borough School Board and inform her of the Commission's recommendation and lend my support to those recommendations.

Recommendation #30 Public Education: The Commission recommends that public education be designated as a priority in order to gain public support for controls which must, in good conscience, be developed and upheld in order to make individuals and businesses more safety conscious in their handling and storage of hazardous materials, and in order to make the public more aware of the need for immediate cooperation in case of emergency.

RESPONSE: ~~I agree with the need.~~
I agree with the need.

Recommendation #31 Hazardous Materials Clean Up: The Commission recommends the continuance on a regular basis of the hazardous materials clean up program started last summer.

RESPONSE: I am not familiar with the clean up program started last summer but support the recommendation to study and promote public education campaigns such as general reference booklets on emergency actions, along with accompanying television and radio advertising.

Recommendation #32 Public Education Strategies: The Commission recommends

a study and promotion of possible public education campaigns such as general reference booklets, on emergency actions, along with accompanying television and radio advertising.

RESPONSE: Same as for Recommendation #30. Also to be included is a speakers bureau of hazardous waste/materials for community education.

Recommendation #33 Coordination of Activities: The Commission recommends that the coordination of activities directed toward hazardous material safety be included, with appropriate financial support, under the umbrella of an existing board or department. The Commission recommends a periodic review of inventory, controls, resources and identified high risk situations by an identified watchdog organization.

RESPONSE: Same as for Recommendation #8. I will also request that the Borough Grants Manager determine sources of funding for this and Recommendations #30 and #32.

Commission Operational Philosophy

I agree the Borough's role is one of coordinating the planning, community education and maintenance of a state of preparedness for the community and interfacing with other government agencies to avoid overlapping and duplication of responsibilities.

Again, the amount of work of the Commission is realized and appreciated. If you have any questions regarding this matter, please do not hesitate to contact me.

BBA:al

Hein
3/8/86



Original sponsors: Davis, Koponen,
Hurley, et al

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 470 (Finance)

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; repealing the oil spill mitigation ac-
8 count; and providing for an effective date."

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

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

11 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

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

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

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. (a) 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 (b) Money received by the state under (a)(2) and (a)(3) of this
15 section shall be deposited in the general fund and credited to a
16 special account called the "oil and hazardous substance release miti-
17 gation account." The legislature may annually appropriate to the fund
18 from this account a sum equal to the amount received under (a)(2) and
19 (a)(3) of this section during the calendar year preceding the legisla-
20 tive session in which the appropriations are to be made.

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

25 Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use
26 money from the fund to

27 △ (1) contain, clean up, and take other necessary action,
28 such as monitoring, assessing, investigating, and evaluating the
29 release or threatened release of oil or a hazardous substance that

all references to DOR and to oversight by persons
are deleted

subsection re: Training "is gone"

1 poses an imminent and substantial threat to the public health or
2 welfare, or to the environment;

3 (2) provide matching funds for participation in federal oil
4 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
5 hensive Environmental Response, Compensation, and Liability Act of
6 1980); and

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

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

13 (b) The department shall ^{had been rego} develop procedures governing the expen-
14 diture of, and accounting for, money expended from the fund, and may
15 not delay implementation of this chapter pending the effective date of
16 the procedures.

17 Sec. 46.08.060. REPORT TO THE LEGISLATURE. (a) The commis-
18 sioner shall submit a report to the legislature not later than the
19 10th day following the convening of each regular session of the legis-
20 lature. The report may include information considered significant by
21 the commissioner but must include:

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

24 (2) the amount and source of money received and money
25 recovered during the preceding fiscal year as specified in AS 46.08.-
26 020;

27 ^{new} (3) a summary of municipal participation in responses
28 funded by the fund;

29 (4) a detailed summary of department activities in

1 responses funded by the fund during the preceding fiscal year, includ-
2 ing response descriptions and statements outlining the nature of the
3 threat; and

4 (5) the projected cost for the next fiscal year of monitor-
5 ing, operating, and maintaining sites where response has been com-
6 pleted or is expected to be continued during the fiscal year.

7 *new* (b) As part of the department's on-going identification efforts
8 associated with oil spill or hazardous waste sites, the commissioner
9 shall include in the report under this section

10 (1) a summary of the sites identified by the department;

11 (2) the immediate and long-term threats to the public
12 health or welfare or to the environment posed by these sites; and

13 *↑* (3) the appropriate actions needed to abate these threats,
14 and their estimated cost.

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

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

24 *↓* (c) The department may reimburse a municipality for actual
25 expenses, other than normal operating expenses, incurred in the abate-
26 ment of a release or threatened release of oil or a hazardous sub-
27 *NEW* stance if

28 (1) the municipality has entered into an agreement with the
29 commissioner under AS 46.09.020(e) before incurring the expenses for

1 which reimbursement is sought; and

2 (2) the commissioner determines that the expenses were for
3 NEW
4 a necessary emergency first response to a release or threatened re-
5 lease that posed an imminent and substantial threat to the public
6 health or welfare, or to the environment.

7 Sec. 46.08.080. REGULATIONS. The commissioner may adopt regu-
8 lations necessary to implement the provisions of this chapter.

9 Sec. 46.08.900. DEFINITIONS. In this chapter

10 (1) "capital improvement" includes construction, renova-
11 tion, repair of, and improvement to, a building, but does not include
12 other improvements to real property, such as construction of a dike or
13 retaining wall;

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

16 (3) "containment and cleanup" includes the direct and
17 indirect efforts associated with the prevention, abatement, contain-
18 ment, or removal of oil or a hazardous substance, the restoration of
19 the environment, and incidental administrative costs;

20 (4) "department" means the Department of Environmental
21 Conservation; *deleted 'employee' and 'employees'*

22 (5) "fund" means the oil and hazardous substance release
23 response fund;

24 (6) "hazardous substance" means

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

1 △J (B) a substance defined as a hazardous substance under
2 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,
3 Compensation, and Liability Act of 1980);

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

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

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

12 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

13 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)
14 Except as provided in (b) of this section, a person in charge of a
15 vehicle, vessel or container from which, or a place at which, a haz-
16 ardous substance is released shall report the release to the depart-
17 ment and appropriate public safety agencies promptly after learning of
18 the release.

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

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

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

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

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

5 (b) The commissioner shall develop guidelines prescribing gen-
6 eral procedures and methods to be used in the containment and cleanup
7 of a hazardous substance.

8 (c) If the commissioner determines that the containment or
9 cleanup of a hazardous substance undertaken is inadequate, the commis-
10 sioner may direct the person undertaking the containment or cleanup to
11 cease and may undertake the containment or cleanup directly or by
12 contract.

13 (d) If it appears to the commissioner that the cause or respon-
14 sibility for the release of a hazardous substance is unclear or unex-
15 plained, the commissioner may immediately undertake the containment
16 and cleanup of the release unless the commissioner determines;

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

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

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

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

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

29 (2) provide for cooperative hazardous substance release

1 notification procedures; or

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

4 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
5 request the governor to determine that an actual or imminent release
6 of a hazardous substance constitutes a disaster emergency under
7 AS 26.23. If the governor declares a disaster emergency under AS 26.-
8 23, the commissioner may assist the adjutant general in the relief of
9 the emergency.

10 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.
11 The commissioner may contract with a person or a municipality for
12 personnel, equipment, or services that may be useful to carry out the
13 requirements of this chapter. If the commissioner determines that it
14 is infeasible to contract with a person or a municipality, the commis-
15 sioner may establish and maintain containment and cleanup personnel,
16 equipment, and supplies necessary to carry out the requirements of
17 this chapter. *deleted 'peace officer'*

18 Sec. 46.09.050. COMPACTS AUTHORIZED. The governor may enter
19 into supplementary agreements, reciprocal arrangements, and compacts
20 with another state or country for the implementation of this chapter
21 subject to the approval of the Congress of the United States, if
22 required, under the Constitution of the United States.

23 Sec. 46.09.060. MUNICIPALITIES. (a) If a provision of this
24 chapter or of a regulation adopted by the commissioner under this
25 chapter conflicts with the charter, ordinance, or regulation of a
26 municipality, the provision of this chapter or of the regulation
27 adopted by the commissioner under this chapter prevails.

28 (b) Authority to contain, clean up, or prevent a release or
29 threatened release of oil or of a hazardous substance, and to exercise

1 other powers necessary to implement this chapter and AS 46.08, are
2 granted to municipalities that do not otherwise have that authority.
3 Except as provided in (a) of this section, a municipality may exercise
4 its police power within the area of the municipality.

5 Sec. 46.09.070. REGULATIONS. The commissioner shall adopt
6 regulations necessary to implement the provisions of this chapter.

7 Sec. 46.09.900. DEFINITIONS. In this chapter

8 (1) "commissioner" means the commissioner of environmental
9 conservation;

10 (2) "containment and cleanup" includes the direct and
11 indirect efforts associated with the prevention, abatement, contain-
12 ment, or removal of a hazardous substance, the restoration of the
13 environment, and incidental administrative costs;

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

16 (4) "hazardous substance" means

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

23  (B) a substance defined as a hazardous substance under
24 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,
25 Compensation, and Liability Act of 1980);

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

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

29 (b) Whenever, and to the extent that, money is needed to cope

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

12 * Sec. 4. 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. 5. AS 44.19.050 is amended to read:

25 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,
26 "disaster" means the occurrence or imminent threat of widespread or
27 severe damage, injury, or loss of life or property resulting from any
28 natural or man-made cause including, but not limited to, fire, flood,
29 earthquake, landslide, avalanche, wind-driven water, weather

1 condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING
2 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air
3 contamination, blight, infestation, explosion, [OR] riot, or the
4 release of oil or a hazardous substance requiring prompt action to
5 avert environmental danger or damage.

6 * Sec. 6. AS 45.45.900 is amended to read:

7 Sec. 45.45.900. INDEMNIFICATION AGREEMENTS CONTRA TO PUBLIC
8 POLICY. A provision, clause, covenant, or agreement contained in,
9 collateral to, or affecting a [ANY] construction contract that [WHICH]
10 purports to indemnify the promisee against liability for damages for
11 (1) death or bodily injury to persons, (2) injury to property, (3)
12 design defects or (4) [ANY] other loss, damage or expense arising
13 under (1), (2), or (3) of this section from the sole negligence or
14 wilful misconduct of the promisee or the promisee's agents, servants
15 or independent contractors who are directly responsible to the prom-
16 isee, is against public policy and is void and unenforceable; however,
17 this provision does not affect the validity of an [ANY] insurance
18 contract, workers' compensation, or agreement issued by an insurer
19 subject to the provisions of AS 21, or a provision, clause, covenant,
20 or agreement of indemnification respecting the handling, containment
21 or cleanup of oil or hazardous substances as defined in AS 46.

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

23 (a) When the department finds that an actual or imminent dis-
24 charge of oil, a hazardous substance, or low level radioactive mate-
25 rials to the air, water, land or subsurface land of the state poses an
26 immediate threat to the public health or welfare, or the environment
27 of the state, it may issue an order declaring an emergency and direct-
28 ing a person or persons to take action the department believes neces-
29 sary to meet the emergency, and protect the public health, welfare, or

environment.

* Sec. 8. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.745. HAZARDOUS SUBSTANCE RELEASE. Except for a controlled release, the reporting of which is the subject of an agreement with the commissioner under AS 46.09.010(b), a person may not cause or permit the release of a hazardous substance as defined in AS 46.09.900.

* Sec. 9. AS 46.03.760(a) is amended to read:

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

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

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

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

* Sec. 10. AS 46.03.765 is amended to read:

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

12 * Sec. 11. AS 46.03.780(a) is amended to read:

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

21 * Sec. 12. AS 46.03.790(a) is amended to read:

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

28 * Sec. 13. AS 46.03.790(b) is amended to read:

29 (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. 14. 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. 15. 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, or 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 credited to a special account called the "oil and hazardous
23 substance release mitigation account".

24 * Sec. 16. AS 46.04.090(b) is amended to read:

25 (b) Inspection and enforcement employees of the department
26 designated by the commissioner are peace officers in the performance
27 of their duties under this chapter, AS 46.09, and AS 46.03.

28 * Sec. 17. Not later than January 1, 1987, the commissioner of environ-
29 mental conservation shall develop guidelines under AS 46.09.020, added by

1 sec. 2 of this Act.

2 * Sec. 18. Not later than October 1, 1987, the commissioner of environ-
3 mental conservation shall adopt regulations under AS 46.09.070, added by
4 sec. 2 of this Act.

5 * Sec. 19. Notwithstanding the provisions of AS 37.05.159(b) and
6 AS 37.07.080(e), the governor may, during the 1987 fiscal year, transfer
7 from the reserve for emergency operating expenses account to the oil and
8 hazardous substance release response fund (AS 46.08) amounts that, when
9 added to the amounts appropriated, reappropriated, or transferred to the
10 response fund in laws enacted by the legislature during the 1986 regular
11 legislative session, do not exceed \$1,000,000.

12 * Sec. 20. AS 46.03.758(k) is repealed. *oil mitigation*

13 * Sec. 21. Sections 1 - 18 and 20 of this Act take effect immediately
14 in accordance with AS 01.10.070(c).

15 * Sec. 22. Section 19 of this Act takes effect July 1, 1986.
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Hein
3/11/86✓

Original sponsor: Resources

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 CS FOR SENATE BILL NO. 375 (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; repealing the oil spill mitigation ac-
8 count; and providing for an effective date."

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

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

11 CHAPTER 08. OIL AND HAZARDOUS SUBSTANCE RELEASES.

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

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

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. (a) 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 (b) Money received by the state under (a)(2) and (a)(3) of this
15 section shall be deposited in the general fund and credited to a
16 special account called the "oil and hazardous substance release miti-
17 gation account." The legislature may annually appropriate to the fund
18 from this account a sum equal to the amount received under (a)(2) and
19 (a)(3) of this section during the calendar year preceding the legisla-
20 tive session in which the appropriations are to be made.

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

25 Sec. 46.08.040. PURPOSES OF THE FUND. The commissioner may use
26 money from the fund to

27 (1) contain, clean up, and take other necessary action,
28 such as monitoring, assessing, investigating, and evaluating the
29 release or threatened release of oil or a hazardous substance that

1 poses an imminent and substantial threat to the public health or
2 welfare, or to the environment;

3 (2) provide matching funds for participation in federal oil
4 discharge cleanup activities and under 42 U.S.C. 9601 - 9657 (Compre-
5 hensive Environmental Response, Compensation, and Liability Act of
6 1980); and

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

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

13 (b) The department shall develop procedures governing the expen-
14 diture of, and accounting for, money expended from the fund, and may
15 not delay implementation of this chapter pending the effective date of
16 the procedures.

17 Sec. 46.08.060. REPORT TO THE LEGISLATURE. (a) The commis-
18 sioner shall submit a report to the legislature not later than the
19 10th day following the convening of each regular session of the legis-
20 lature. The report may include information considered significant by
21 the commissioner but must include:

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

24 (2) the amount and source of money received and money
25 recovered during the preceding fiscal year as specified in AS 46.08.-
26 020;

27 (3) a summary of municipal participation in responses
28 funded by the fund;

29 (4) a detailed summary of department activities in

1 responses funded by the fund during the preceding fiscal year, includ-
2 ing response descriptions and statements outlining the nature of the
3 threat; and

4 (5) the projected cost for the next fiscal year of monitor-
5 ing, operating, and maintaining sites where response has been com-
6 pleted or is expected to be continued during the fiscal year.

7 (b) As part of the department's on-going identification efforts
8 associated with oil spill or hazardous waste sites, the commissioner
9 shall include in the report under this section

10 (1) a summary of the sites identified by the department;

11 (2) the immediate and long-term threats to the public
12 health or welfare or to the environment posed by these sites; and

13 (3) the appropriate actions needed to abate these threats,
14 and their estimated cost.

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

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

24 (c) The department may reimburse a municipality for actual
25 expenses, other than normal operating expenses, incurred in the abate-
26 ment of a release or threatened release of oil or a hazardous sub-
27 stance if

28 (1) the municipality has entered into an agreement with the
29 commissioner under AS 46.09.020(e) before incurring the expenses for

1 which reimbursement is sought; and

2 (2) the commissioner determines that the expenses were for
3 a necessary emergency first response to a release or threatened re-
4 lease that posed an imminent and substantial threat to the public
5 health or welfare, or to the environment.

6 Sec. 46.08.080. REGULATIONS. The commissioner may adopt regu-
7 lations necessary to implement the provisions of this chapter.

8 Sec. 46.08.900. DEFINITIONS. In this chapter

9 (1) "capital improvement" includes construction, renova-
10 tion, repair of, and improvement to, a building, but does not include
11 other improvements to real property, such as construction of a dike or
12 retaining wall;

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

15 (3) "containment and cleanup" includes the direct and
16 indirect efforts associated with the prevention, abatement, contain-
17 ment, or removal of oil or a hazardous substance, the restoration of
18 the environment, and incidental administrative costs;

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

21 (5) "fund" means the oil and hazardous substance release
22 response fund;

23 (6) "hazardous substance" means

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

1 (B) a substance defined as a hazardous substance under
2 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,
3 Compensation, and Liability Act of 1980);

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

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

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

12 CHAPTER 09. HAZARDOUS SUBSTANCE RELEASE CONTROL.

13 Sec. 46.09.010. REPORT OF HAZARDOUS SUBSTANCE RELEASES. (a)
14 Except as provided in (b) of this section, a person in charge of a
15 vehicle, vessel or container from which, or a place at which, a haz-
16 ardous substance is released shall report the release to the depart-
17 ment and appropriate public safety agencies promptly after learning of
18 the release.

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

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

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

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

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

5 (b) The commissioner shall develop guidelines prescribing gen-
6 eral procedures and methods to be used in the containment and cleanup
7 of a hazardous substance.

8 (c) If the commissioner determines that the containment or
9 cleanup of a hazardous substance undertaken is inadequate, the commis-
10 sioner may direct the person undertaking the containment or cleanup to
11 cease and may undertake the containment or cleanup directly or by
12 contract.

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

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

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

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

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

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

29 (2) provide for cooperative hazardous substance release

1 notification procedures; or

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

4 Sec. 46.09.030. DISASTER EMERGENCIES. The commissioner may
5 request the governor to determine that an actual or imminent release
6 of a hazardous substance constitutes a disaster emergency under
7 AS 26.23. If the governor declares a disaster emergency under AS 26.-
8 23, the commissioner may assist the adjutant general in the relief of
9 the emergency.

10 Sec. 46.09.040. HAZARDOUS SUBSTANCES CONTAINMENT AND CLEANUP.
11 The commissioner may contract with a person or a municipality for
12 personnel, equipment, or services that may be useful to carry out the
13 requirements of this chapter. If the commissioner determines that it
14 is infeasible to contract with a person or a municipality, the commis-
15 sioner may establish and maintain containment and cleanup personnel,
16 equipment, and supplies necessary to carry out the requirements of
17 this chapter.

18 Sec. 46.09.050. COMPACTS AUTHORIZED. The governor may enter
19 into supplementary agreements, reciprocal arrangements, and compacts
20 with another state or country for the implementation of this chapter
21 subject to the approval of the Congress of the United States, if
22 required, under the Constitution of the United States.

23 Sec. 46.09.060. MUNICIPALITIES. (a) If a provision of this
24 chapter or of a regulation adopted by the commissioner under this
25 chapter conflicts with the charter, ordinance, or regulation of a
26 municipality, the provision of this chapter or of the regulation
27 adopted by the commissioner under this chapter prevails.

28 (b) Authority to contain, clean up, or prevent a release or
29 threatened release of oil or of a hazardous substance, and to exercise

1 other powers necessary to implement this chapter and AS 46.08, are
2 granted to municipalities that do not otherwise have that authority.
3 Except as provided in (a) of this section, a municipality may exercise
4 its police power within the area of the municipality.

5 Sec. 46.09.070. REGULATIONS. The commissioner shall adopt
6 regulations necessary to implement the provisions of this chapter.

7 Sec. 46.09.900. DEFINITIONS. In this chapter

8 (1) "commissioner" means the commissioner of environmental
9 conservation;

10 (2) "containment and cleanup" includes the direct and
11 indirect efforts associated with the prevention, abatement, contain-
12 ment, or removal of a hazardous substance, the restoration of the
13 environment, and incidental administrative costs;

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

16 (4) "hazardous substance" means

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

23 (B) a substance defined as a hazardous substance under
24 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response,
25 Compensation, and Liability Act of 1980);

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

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

29 (b) Whenever, and to the extent that, money is needed to cope

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

12 * Sec. 4. 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. 5. AS 44.19.050 is amended to read:

25 Sec. 44.19.050. DEFINITION. In AS 44.19.048 and 44.19.049,
26 "disaster" means the occurrence or imminent threat of widespread or
27 severe damage, injury, or loss of life or property resulting from any
28 natural or man-made cause including, but not limited to, fire, flood,
29 earthquake, landslide, avalanche, wind-driven water, weather

1 condition, tsunami, [OIL SPILL OR OTHER WATER CONTAMINATION REQUIRING
2 EMERGENCY ACTION TO AVERT DAMAGE,] volcanic activity, epidemic, air
3 contamination, blight, infestation, explosion, [OR] riot, or the
4 release of oil or a hazardous substance requiring prompt action to
5 avert environmental danger or damage.

6 * Sec. 6. AS 45.45.900 is amended to read:

7 Sec. 45.45.900. INDEMNIFICATION AGREEMENTS CONTRA TO PUBLIC
8 POLICY. A provision, clause, covenant, or agreement contained in,
9 collateral to, or affecting a [ANY] construction contract that [WHICH]
10 purports to indemnify the promisee against liability for damages for
11 (1) death or bodily injury to persons, (2) injury to property, (3)
12 design defects or (4) [ANY] other loss, damage or expense arising
13 under (1), (2), or (3) of this section from the sole negligence or
14 wilful misconduct of the promisee or the promisee's agents, servants
15 or independent contractors who are directly responsible to the prom-
16 isee, is against public policy and is void and unenforceable; however,
17 this provision does not affect the validity of an [ANY] insurance
18 contract, workers' compensation, or agreement issued by an insurer
19 subject to the provisions of AS 21, or a provision, clause, covenant,
20 or agreement of indemnification respecting the handling, containment
21 or cleanup of oil or hazardous substances as defined in AS 46.

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

23 (a) When the department finds that an actual or imminent dis-
24 charge of oil, a hazardous substance, or low level radioactive mate-
25 rials to the air, water, land or subsurface land of the state poses an
26 immediate threat to the public health or welfare, or the environment
27 of the state, it may issue an order declaring an emergency and direct-
28 ing a person or persons to take action the department believes neces-
29 sary to meet the emergency, and protect the public health, welfare, or

1 environment.

2 * Sec. 8. AS 46.03 is amended by adding a new section to read:

3 Sec. 46.03.745. HAZARDOUS SUBSTANCE RELEASE. Except for a
4 controlled release, the reporting of which is the subject of an agree-
5 ment with the commissioner under AS 46.09.010(b), a person may not
6 cause or permit the release of a hazardous substance as defined in
7 AS 46.09.900.

8 * Sec. 9. 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. 10. AS 46.03.765 is amended to read:

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

12 * Sec. 11. AS 46.03.780(a) is amended to read:

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

21 * Sec. 12. AS 46.03.790(a) is amended to read:

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

28 * Sec. 13. AS 46.03.790(b) is amended to read:

29 (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. 14. 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. 15. 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 credited to a special account called the "oil and hazardous
23 substance release mitigation account".

24 * Sec. 16. AS 46.04.090(b) is amended to read:

25 (b) Inspection and enforcement employees of the department
26 designated by the commissioner are peace officers in the performance
27 of their duties under this chapter, AS 46.09, and AS 46.03.

28 * Sec. 17. Not later than January 1, 1987, the commissioner of environ-
29 mental conservation shall develop guidelines under AS 46.09.020, added by

1 sec. 2 of this Act.

2 * Sec. 18. Not later than October 1, 1987, the commissioner of environ-
3 mental conservation shall adopt regulations under AS 46.09.070, added by
4 sec. 2 of this Act.

5 * Sec. 19. Notwithstanding the provisions of AS 37.05.159(b) and
6 AS 37.07.080(e), the governor may, during the 1987 fiscal year, transfer
7 from the reserve for emergency operating expenses account to the oil and
8 hazardous substance release response fund (AS 46.08) amounts that, when
9 added to the amounts appropriated, reappropriated, or transferred to the
10 response fund in laws enacted by the legislature during the 1986 regular
11 legislative session, do not exceed \$1,000,000.

12 * Sec. 20. AS 46.03.758(k) is repealed.

13 * Sec. 21. Sections 1 - 18 and 20 of this Act take effect immediately
14 in accordance with AS 01.10.070(c).

15 * Sec. 22. Section 19 of this Act takes effect July 1, 1986.
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1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 SENATE BILL NO.

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) 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

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) "commissioner" means the commissioner of environmental conservation;

(2) "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;

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 or

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 ardous substance is released shall report the release to the depart-
4 ment 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.

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

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 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.

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 (5) "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

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

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

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

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

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

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

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

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

provisions of this chapter, [OR] AS 46.04, or AS 46.09, respectively, and thereby causes the death of fish, animals, or vegetation or otherwise injures or degrades the environment of the state is liable to the state for damages.

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

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

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

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

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

(d) Notwithstanding (a) and (b) of this section, a person who fails to provide or falsely states information required under AS 46.03.755, [OR] AS 46.04, or AS 46.09 is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

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

Sec. 46.04.010. REIMBURSEMENT FOR CLEANUP EXPENSES. The department shall promptly seek reimbursement [, EITHER] under AS 46.03.760(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).