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HOUSE COMMITTEE REPORT

(7)

Date Referred: March 29, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: 4-18-90

The JUDICIARY Committee considered:

HB 565

HOUSE BILL NO. 565

OIL & OTHER ENVIRONMENTAL LAWS/PENALTIES

"An Act relating to strengthening the civil penalty and damage provisions concerning the discharge of oil and other environmental violations; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with CSH/B565 (JUD) [] the same title
 [] a new title
 [] have attached amendment(s)
 do pass
 [] do not pass
 [] no recommendation
 [] individual recommendations
 [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
 (Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
 [] zero fiscal note _____
 [] zero with analysis _____

- [] fiscal note(s) _____
 zero fiscal note(s) DEC 2/22/90 - 7-6-2/22/90
 [] zero fn/analysis _____

SIGNING DO PASS:

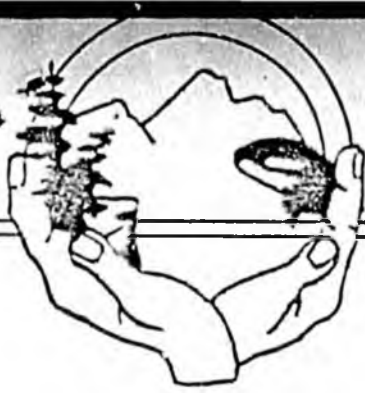
SIGNING:

(Check approp. column)

Do Not
Pass No Rec Amend

<u>[Signature]</u> Goll	<u>[Signature]</u> DAVIDSON			
<u>[Signature]</u> Gruenberg	<u>Mike Miller</u> Miller	✓		
<u>[Signature]</u> Ellis				
<u>[Signature]</u> DAVIS				

[Signature]
 Chairman's Signature



Oil Reform Alliance



4-18-90

AMENDMENT #1: INCREASE CIVIL PENALTIES FOR NONCRUDE OIL

Page 2, line 25, replace "12.50" with "\$50.00".

Page 2, line 28, replace "8.00" with "\$25.00".

Page 3, line 1, replace "\$6.00" with "\$10.00".

PG - MW.
mm - Obj. Issue.

J. D. P. L. C.



Oil Reform Alliance



AMENDMENT #2: INCREASE CIVIL PENALTIES FOR CRUDE OIL AND
PRO-RATE PENALTIES ON SENSITIVITY OF RECEIVING ENVIRONMENT

Page 6, lines 1-6, delete.

Replace with:

"(A) \$50 per gallon of oil that enters an anadromous stream or other freshwater environment with significant aquatic resources;

(B) \$25 per gallon of oil that enters an estuarine, intertidal, or confined saltwater environment;

(C) \$10 per gallon of oil that enters an unconfined saltwater environment, public land, or a freshwater environment without significant aquatic resources."

Handwritten notes:
Pg - MW
mm . Og
y - ~~mm~~ mm - md
pg 52
mm of

COMPARISON OF
CIVIL PENALTY STRUCTURE BASE
FOR NONCRUDE OIL **

Rec'ing Environ.	1977 Hammond Proposed	Current Law SLA 78	SLA 78 with CPI	HB565 Amended Cowper	1990 ORA Proposed
FRESH	\$50	\$10	\$20	\$12.50	\$50
MARINE confined	25	2.50	5	8	25
MARINE unconfined	10	1	2	6	10

CPI: Consumer Price Index

NOTE: The Oil Reform Alliance recommends adopting the civil penalties originally proposed by the Hammond Administration in 1977 for both crude and noncrude oil.

4-18-90

↓
Rep. Menard

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 565 (Resources)

3

PG
MD
MW
obj. - name
obj.
Adopt

Page 9, after line 18:

Insert new bill sections to read:

"* Sec. 15. AS 46.04.040(e) is amended to read:

(e) Financial responsibility may be demonstrated by self-insurance, insurance, surety, or guarantee, under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.760(e) [46.03.760(a) OR (e)], 46.03.822, or AS 46.04.030(g) or to collect penalties imposed under AS 46.03.759 may be brought in a state court directly against the insurer or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, or guarantor shall appoint an agent for service of process in the state. An insurer must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state.

* Sec. 16. AS 46.04.040(i) is amended to read:

(i) Financial responsibility under this section extends to a loss compensable under AS 46.03.760(e) or 46.03.822 and an assessment under AS 46.03.758, 46.03.759, [46.03.760(a)], or AS 46.04.030(g)."

Renumber the following bill sections accordingly.

PENALTY DETERMINATION

Freshwater 10.00/gallon
Product: Gasoline

Size: 10,000 gallons

	<u>Factor</u>
Toxicity - Highly Toxic	1.0
Degradability - Highly Degradable	.25
Dispersibility - Highly Dispersible	<u>.15</u>
	1.40
	mean = .47

$10.00 \times .47 = 4.70/\text{gallon} \times 10,000 \text{ gallons} = 47,000$
Times Five for Negligence

Crude

Toxicity - Moderately $.75 \times 27/30 = .68$

Degradability - Moderate $.5 \times 27/30 = .45$

Dispersibility - Moderate $.5 = \frac{.50}{1.63}$

mean = .54

$10.00 \times .54 = 5.40/\text{gallon} \times 10,000 \text{ gallons} = 54,000$

(1) The base civil penalty for discharges into various receiving environments is as follows:

	Freshwater	Marine	Public Land
Critical environmental resources	\$10.00	\$2.50	\$1.00
Very sensitive environmental resources	N/A	N/A	.75
Sensitive environmental resources	5.00	2.00	.50
Without significant environmental resources	1.00	1.00	.25

(2) Toxicity, degradability and dispersibility factors are as follows:

	Factor
(A) toxicity*	
(i) highly toxic	1.0
(ii) moderately toxic	0.75
(iii) less toxic	0.5
(iv) relatively nontoxic	0.25
(B) degradability**	
(i) low degradability	1.0
(ii) moderate degradability	0.5
(iii) high degradability	0.25
(C) dispersibility	
(i) high dispersibility	0.15
(ii) moderate dispersibility	0.5
(iii) low dispersibility	1.0

(3) The net civil penalty which will be assessed per gallon of oil discharged is calculated by multiplying the base penalty established in (1) of this section by the arithmetic mean of the toxicity, degradability, and dispersibility factors established in (2) of this section. If a portion of the oil enters more than one receiving environment, the civil penalty will be based upon the most sensitive receiving environment which that portion of the oil enters. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

*To determine the toxicity factor for a particular oil, the factor from the table is multiplied by a fraction whose numerator is the percent concentration of aromatics in the oil and whose denominator is 45. In no event shall the toxicity factor exceed 1.0.

The toxicity factor in crude oil is .75 multiplied by a fraction whose numerator is the API gravity of the crude oil and whose denominator is 30.

**The degradability factor for crude oil is .5 multiplied by a fraction whose numerator is 30 and whose denominator is the API gravity of the crude oil.

18 AAC 75.58
 private cases, conditions out of compliance provided for under 46.03.758. This section is subject to the discretion of the Department of Environmental Conservation. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.59
 convening of a meeting to review a report to the legislature for the calendar year, 4/19/78, Register 66

Authority: AS 46.03.758

18 AAC 75.60
 this chapter

- (1) "estuary" means a body of water that has a free connection with the sea and is measurably affected by the tidal action of the sea; (2) "freshwater" means water that is not saltwater and is not brackish water; (3) "estuaries" means those parts of the coast that are periodically or continuously or partially affected by the tidal action of the sea; (4) "marine" means saltwater wetlands; (5) "permafrost" means ground that is continuously or partially frozen for a period of one year or more; (6) "Prince William Sound" means the body of water bounded by the Alaska Peninsula and the Federal Register; (7) "saltwater" means water that is not freshwater and is not brackish water; (8) "shores" means the land adjacent to the water table; (9) "tidal" means the water table is affected by the tidal action of the sea.

Authority: AS 46.03.758



Northern Alaska Environmental Center

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FAIRBANKS, ALASKA 99701
(907) 452-5021

***** NEWS RELEASE *****

March 9, 1989
Release: Immediately

Contact: Rex Blazer
907-452-5021

HAZARDOUS AND TOXIC WASTES DUMPED, INJECTED INTO PIPELINE.
Environmentalists learned this week that the U.S. Environmental Protection Agency has determined that the NAPCO refinery near North pole, Alaska illegally dumped toxic and hazardous waste into the Alaska pipeline as well as the air, ground, and water of this suburban Fairbanks community.

"While it is legal to re-inject things like dirty fuel and oil into the pipeline, it most definitely is not to inject things like aniline, sodium hydroxide, and hydrogen peroxide" said Carl Reller, hazardous waste coordinator for the Northern Alaska Environmental Center. "These wastes ultimately end up at the Valdez terminal where the water soluble substances go directly into Valdez harbor, while the oil soluble wastes could damage refinery techniques and equipment."

The Alaska Department of Environmental Conservation has found more than a quarter of a million gallons of fuel in the ground under NAPCO thus far.

* MORE *

Only this week did environmentalists learn that on January 6 EPA quietly ordered MAPCO to begin an extensive and costly clean-up that will take nearly three years and require monitoring the ground water for decades. Over 10,000 people live within a three mile radius of the contaminated area, which is on land leased from the state by MAPCO.

Environmentalists called on the state Department of Environmental Conservation and EPA to establish an advisory group as provided for under the Resource Conservation and Recovery Act. "The drinking water wells for North Pole are less than a half mile from the contaminated zone and in the path of the toxic plume, yet the public has had no opportunity to become involved," Reller said. "MAPCO claimed that the public can't even be told the location of their monitoring wells. We feel the people of North Pole have the right to be involved in this critical process."

"The situation at MAPCO is extremely disturbing in light of other serious compliance problems stemming from North Slope oil development." said Rex Blazer, Executive Director of the Northern Alaska Environmental Center, who cited hazardous waste problems at Tesoro's Kenai refinery and a recently leaked EPA report which documented serious environmental damage resulting from improper and careless management of chemical and oil wastes on Alaska's North Slope. "If this

sort of thing is going on right next to our major population centers and indeed within a few miles of regulatory agency offices, how can we trust the oil industry to operate in compliance with environmental laws in the distant and more sensitive lands of the Arctic National Wildlife Refuge?"

* END *

MAPCO Oil Refinery
Compliance Chronology

July 13, 1984

DEC conducts a Superfund inspection of MAPCO using an independent contractor. Toxic chemicals are present which if spilled or discarded would be hazardous waste.

August 1986

DEC conducts a second Superfund inspection of MAPCO using an independent contractor. Toxic chemicals are present and MAPCO employees explained that when old or used they are dumped into the pipeline.

March 5, 1987

EPA headquarters requests DEC to conduct an official hazardous waste inspection of MAPCO. DEC reports that the injection of hazardous waste into the pipeline is not "disposal". DEC notes that north slope oil production facilities dump waste into the pipeline as do pump stations along the way. DEC verbally asks for a copy of a log book which contained the record of what was injected into the pipeline. MAPCO denies DEC the logbook. DEC labels their conclusions as a "training enforcement exercise".

May 15, 1987

The federal Government Accounting Office (GAO) opened an investigation into allegations that DEC compromised their enforcement at MAPCO.

MAY 15, 1987

EPA orders MAPCO to provide information concerning their hazardous waste management activities.

May 16, 1987

MAPCO states: "One, we do not handle toxic waste at the North Pole refinery. Two, We have not injected toxic waste into the Trans Alaska Pipeline. Three, we have not pumped hazardous waste into the pipeline." DEC denies enforcement of MAPCO was compromised

June 24, 1987

DEC agrees with the Ombudsman's findings that "DEC has not fulfilled the spirit and letter of the law."

July 9, 1987

A special investigator from the GAO office meets with DEC employees.

July 15, 1987

The DEC Commissioner meets with the EPA Administrator in Washington D.C.

Tesoro Oil Refinery
Compliance Chronology

Tesoro Oil Refinery
Compliance Chronology

Tesoro Spills Over 100,000 pounds of hazardous waste. DEC

August 12, 1980

Tesoro notifies EPA of hazardous waste activities.

January 3, 1981

September 1980 information from Tesoro concerning spills and

DEC inspects Tesoro hazardous waste pits and issues a
Compliance Order requiring Tesoro to stop violating Alaska
law, no record of compliance was found. The hazardous waste
EPA inspects Tesoro

October 8, 1980

Tesoro claims records are
Tesoro requests DEC to allow hazardous waste disposal pits
be permitted as normal solid waste landfills, application is
seriously deficient, DEC denies permit.

November 11, 1980

Tesoro files a RCRA part A application for hazardous waste
activity, application is incomplete.

November 14, 1980

Tesoro receives a report from their consultant identifying
pits containing over one million pounds of hazardous waste.

1981-1982

Tesoro claims DEC provided verbal approvals for hazardous
waste activities, no written records were kept.

January 1982

EPA acknowledges Tesoro's claim that the refinery is
designed to manage up to 30,000,000 pounds of hazardous
waste each day (three types of RCRA waste).

April 14, 1983

Tesoro attempts to use hazardous waste for berm material to
"protect" the hazardous waste pits, request is denied by
EPA.

September 10, 1983

Closure costs are estimated to be \$1,500,000.

November 10, 1983

Tesoro proposes to dump hazardous waste into Cook Inlet via
a ballast water treatment plant, EPA initially denies then
later approves Tesoro's request.

July 5, 1984

EPA meets with Tesoro and informs them of nine hazardous
waste violations.

July 6, 1984

DEC inspects Tesoro and finds unpermitted hazardous waste
activities.

MAPCO Oil Refinery
Compliance Chronology

2

September 2, 1987

The Alaska Ombudsman reviews DEC's comments and restates the problems of lax enforcement and closes the case.

February 23, 1988

EPA and MAPCO agree to resolve hazardous waste violations through an Administrative Order.

April 7, 1988

The GAO with holds the MAPCO/DEC report as "confidential". The DEC Commissioner states, "I can only assume we handled the matter properly."

June 16

August 1 and

September 7, 1988

EPA and MAPCO negotiate the Compliance Order.

July 20, 1988

EPA conducts an intensive hazardous waste investigation of the MAPCO refinery using an independent contractor.

October 23, 1988

EPA and MAPCO complete a draft Compliance Order.

December 1988

EPA determines MAPCO dumped hazardous and toxic waste into the pipeline, into surface waters, and on the ground. MAPCO is declared as having a "RCRA surface impoundment", the most difficult kind of hazardous waste dump to clean up (EPA Docket 1087-12-01-3008a).

January 1989

Tesoro Oil Refinery
Compliance Chronology

2

August 8, 1984

Tesoro spills over 120,000 pounds of hazardous waste. DEC approves a grossly inadequate clean up.

January 3, 1985

EPA requests information from Tesoro concerning spills and disposals of hazardous waste.

May 28, 1985

EPA inspects Tesoro and finds multiple hazardous waste violations. Tesoro claims records are kept in Texas but when pressed by inspector, Tesoro admits required hazardous waste records do not exist. Oily tar sludges (which appear identical to hazardous waste) are seen in a road side ditch. Tesoro was apparently illegally dumping hazardous waste, DEC promise EPA it will investigate - no follow up records were found.

July 24, 1985

EPA requests Tesoro for information regarding spillage of hazardous waste.

November 18, 1985

DEC informs Tesoro that it does not have an Oil Spill Contingency plan.

February 6, 1986

EPA conducts an inspection of Tesoro and finds numerous violations.

April 1, 1986

DEC recommends EPA issue a Notice of Violation to Tesoro because of multiple hazardous waste violations.

September 12, 1986

EPA issues a Complaint and Compliance Order because Tesoro ignored the July request for information, Tesoro is fined \$38,750.

January 23, 1987

EPA fines Tesoro \$19,000 for violations found on February 1986.

June 2, 1987

Tesoro informs EPA that the ground water is severely contaminated.

August 24, 1987

EPA issues a Consent Order to Tesoro because ground water is a substantial threat to human health

FURN 3/11/89

Mapco to pay fine, changes procedures

By BRIAN O'DONOGHUE
Staff Writer

Mapco Alaska Petroleum has agreed to institute new test procedures and pay an \$80,000 fine to conclude a 2-year-old investigation into past waste disposal violations at its North Pole oil refinery.

"The whole thing was largely a matter of administrative issues," said Mapco Vice President Buki Wright Jr. "We did agree to pay the fine. Certain administrative procedures have been changed and corrected. But no criminal charges were even considered."

The settlement was publicized this week by the Northern Alaska Environmental Center, a Fairbanks-based environmental group that wants a citizens advisory group created to monitor ongoing clean-up efforts at the refinery.

"It would work to everyone's benefit, because the public would gain more confidence in the methods they're using," said Carl Reller,

the center's hazardous waste expert.

Both the testing requirements and the fine arose as a result of inspections by representatives of the U.S. Environmental Protection Agency in March 1987. During those inspections, conducted by the state Department of Environmental Conservation, a number of drums containing hazardous cleaning solvents and refinery by-products were found improperly stored. The company's internal record-keeping and disposal program for hazardous materials were also determined to violate federal guidelines.

According to Wright, the majority of the problems addressed in the consent orders concerned technical violations of the EPA's complex waste monitoring regulations. He denied the environmental center's assertion that EPA determined Mapco has injected waste products into the trans-Alaska pipeline.

"The (EPA consent) order in no way concluded or implied that Mapco has dumped toxic or hazardous waste into the pipeline," Wright said. "We did not put anything into the pipeline period."

While the consent orders make no reference to the practice, Reller said EPA's file on the oil refinery contains four separate reports, by environmental officials and independent consultants, referring to the possibility such waste injection occurred. The most recent report, produced last September by California consultant A.T. Kearney, states: "Tank 112 stores recovered oil from Tank 192 as well as distillation residues and other process wastes. Material in this tank is piped to TAPS. According to facility personnel, this tank has never been cleaned out."

"Certainly we have to get the return oil back into the pipeline," Wright said when informed of the

(See MAPCO, Back Page)

MAPCO

(Continued from Page 1)

EPA reports. "But nothing collected from the sumps is injected into the pipeline. Those consent orders found we did not put anything hazardous into the pipeline."

Reller praised the new protections and testing requirements specified in the consent orders. But he and center Executive Director Rex Blazer cite the refinery's past problems as grounds for opposing development of the Arctic National Wildlife Reserve.

"The situation at Mapco is extremely disturbing in light of other serious compliance problems stemming from North Slope oil de-

velopment," Blazer said. "If this sort of thing is going on right next to our major population centers and indeed, within a few miles of regulatory agency offices, how can we trust the oil industry to operate in compliance with environmental laws in the distant and more sensitive lands of the Arctic National Wildlife Reserve?"

Wright believes the center's interest in Mapco's clean-up plans is rooted in the controversy over opening the refuge to development.

"There's nothing new about this," he said. "This whole thing is just a ploy to discredit ANWR. It has very little to do with Mapco."

An Environmental Compliance Audit
of the Oil and Gas Industry
Kenai, Alaska



An Environmental Compliance Audit
of the Oil and Gas Industry
Kenai, Alaska

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funded by:

Alaska Conservation Foundation

cover photograph: a night picture of the Unocal-Mitsubishi
chemical manufacturing plant, the largest
urea/ammonia plant in the world

November 17, 1989

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photographs by

Carl Reller

1. Introduction

The Kenai peninsula oil and gas fields provide raw materials for world class petrochemical industries. A small town of Kenai, called Nikiski hosts four major industrial facilities on less than one square mile, including the world's largest nitrogen fixing chemical manufacturing plant, North America's largest exporter of natural gas, and two petroleum refineries. Petrochemical industries are well known for causing substantial pollution in other parts of the United States. Prior to this study there was never a comprehensive evaluation of the pollution discharges, record of violations, or adequacy of enforcement for the Kenai industries.

1.1 Purpose

The objective of this report is to find out the how much pollution escapes into the environment and if current pollution control laws are adequate in scope and enforcement.

1.2 Scope

Research concentrated on a cluster of four petrochemical plants in Nikiski during a period of operation from the late 1950's to January 1989;

Chevron USA Refinery,

Phillips-Marathon-USX Refinery,

Tesoro Alaska Refinery, and the

Unocal-Mitsubishi (formerly Colliers) plant.

These facilities were selected for investigation because of their proximity to human habitation and potential to pollute. Other oil and gas facilities may be responsible for substantial regional environmental degradation but are not part of this study because available funds limited the scope. Further research is needed to determine the pollution problems of off shore platforms, reserve pits, and oil production facilities.

An additional section is dedicated to the Trading Bay production facility. As Trading Bay is an old facility it is expected to represent long term trends in environmental pollution, regulation, and enforcement.

1.3 Method

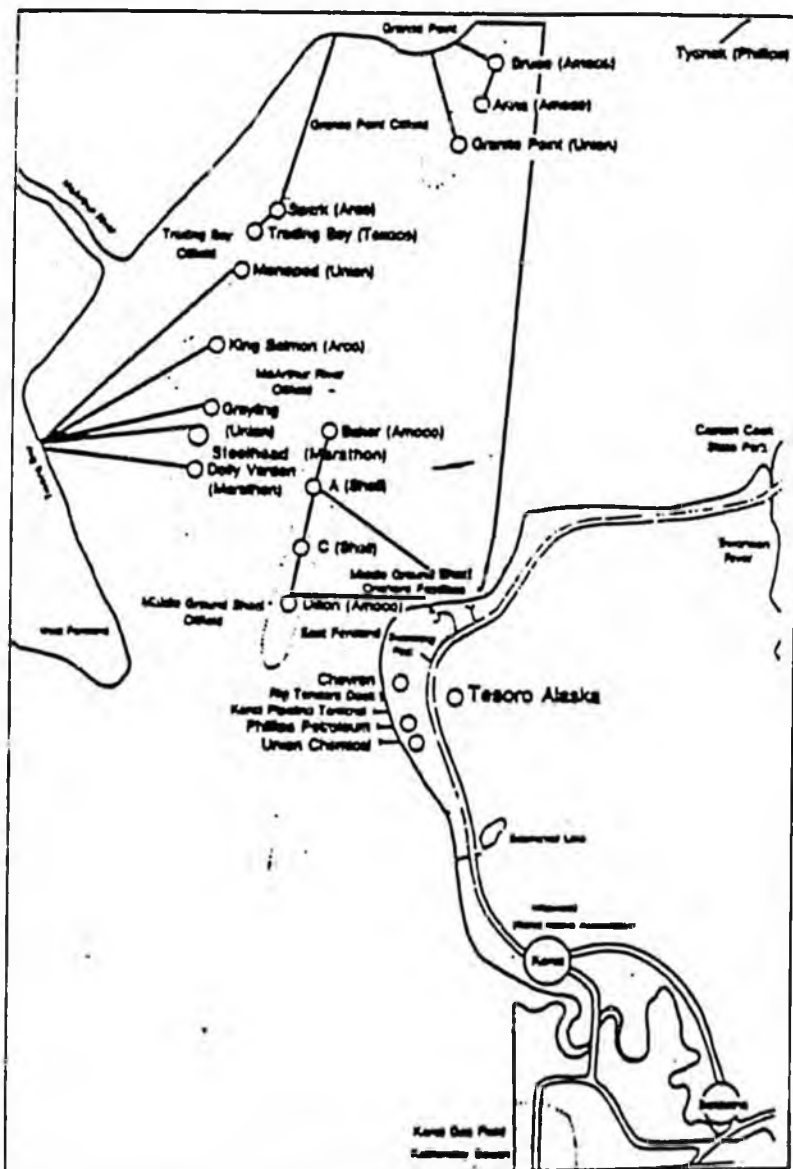
I reviewed approximately 20,000 pages of public records from state and federal agencies. Industry files are not available for public review. For the early years of facility operation few records existed. Every attempt was made to thoroughly research each facility file. All information presented is accurate, however more information may exist which could change the conclusions and recommendations.

Information is organized similar to the mass balance model required of the Environmental Protection Agency (EPA) by the U.S. Congress in Superfund (CERCLA paragraph 313 (1)). There is increasing national recognition that current pollution control practices often only shift waste from one environmental media to another. Consequently, this report divides environmental pollution into the three media of air, water and soils. It is through these media that adverse effects of pollution are transferred between each other and to living things. The contamination of each media is reviewed in relation to the adequacy of current laws to prevent or reduce environmental degradation.

2. Facility Descriptions

The oil and gas industry can be divided into the three operations called well head, production, and petrochemical.

Offshore Platforms and Processing Plants



Well head facilities operate both on and off shore. On shore, 14 oil and gas fields flank the sides of Cook Inlet, off shore seven fields span 40 miles of ocean waters. Both exploratory and production wells generate liquid, solid, and airborne wastes. Liquid wastes are composed of "drilling muds" (a mixture of barium based clay sometimes with diesel or mineral oils and numerous other additives), brine (salt solutions from the oil formation), oil/water mixtures, and oily soapy waste water from washing down the oil rig. The bulk of solid wastes are dewatered drilling muds, used drill pipe, and discarded chemical containers used in drilling mud. Large volumes of air pollutants are released from power generating gas turbines and gas flares. This report did not attempt to evaluate the pollution from well head operations.

Production facilities are defined for purposes of this report to mean centralized collection/processing plants, and oil terminals. Oil leaving the well head contains water. The water comes from brines and chemicals solutions; such as, polyacrylamide used to enhance the recovery of oil. Oil is separated from water using gravity, heat, and emulsion breaking chemicals. After as much oil as possible is removed from the oil/water mixture a residue remains. Three disposal

methods are used for oil/water waste. Liquids with a high percentage of oil are flared in an open pit. Liquids with a high percentage of water are dumped into Cook Inlet. Oily sludges are dumped into pits. After oil is sufficiently clean it is sent to an oil terminal where it is stored before shipment aboard ocean tankers. Oil terminals generate oily sludges from the storage tanks, volatile hydrocarbons from tank and tanker venting, and ballast water. This report did not attempt to evaluate the impacts of production facilities other than a few comm. about Trading Bay.

2.1 Petroleum Refineries

The three Nikiski refineries are Chevron USA Refinery, Phillips-Marathon-USX Petroleum Refinery, and Tesoro Alaska Refinery. Together they make gasoline, jet fuel, fuel oils, asphalt, and export more natural gas than anywhere else in North America. Production began between 1964 and 1969. Current petroleum production capacity is 2.6 billion gallons a year.

If the combined annual production capacity was placed in 55 gallon drums and put end-to-end the drums would encircle the globe with enough left over to reach from Prudhoe Bay to San Francisco.

Phillips-Marathon-USX Natural Gas Refinery



2.2 Chemical Plant

Adjacent to the refineries is the Unocal-Mitsubishi facility also called the "Collier Plant" (original owner), the world's largest chemical plant dedicated to the manufacturing of ammonia and urea. Over 3 billion pounds of nitrogen based chemicals are produced annually - equal to 2% of the world's annual nitrogen fixing by soil bacteria (Garrels, Mackenzie, & Hunt 1975).

2.3 Petroleum Production Facilities

Trading Bay and Granite Point are collectively the largest oil production facility in Alaska (Cox 1988). Shell also operates a production facility on the East Forelands.

At the production facilities a mixture of approximately 40% oil and 60% water is treated chemically and physically to enhance separation. Approximately two hundred million gallons of oily waste water is dumped into Cook Inlet each year. The oily water is contaminated with biocides and chemicals. Biocides inhibit the growth of microorganisms in production

equipment. Acutely toxic chemicals such as polyacrylamide are injected underground to enhance oil recovery. The recovered oil is partially emulsified and more chemicals are added to extract additional oil. From the Marathon-USX facilities oil is piped 41 miles to the Drift River oil tanker terminal. The contaminated water is discharged into Cook Inlet.

2.4 Hazardous-Toxic Waste Sites

This report does not evaluate the hundreds of hazardous and toxic waste sites in Kenai. Further study is needed to investigate the known 60 drilling mud pits, 9 area wide injection wells, roads oiled with PCBs, and dumps - whether they be legal, illegal, "special" industrial, or military.

3. Air Pollution

Air quality is the single most important environmental requirement. Excessively poor air quality can cause death within minutes. Air pollution is unique for another reason, air pollution travels everywhere and affects all people. A single air pollution incident such as Cherynobal can impact the entire earth in less than ten days.

Unocal-Mitsubishi Chemical Manufacturing Plant



3.1 Totalled Pollution

The four Nikiski facilities annually dump over 60 million pounds of pollutants into the air, Table 1, more than enough to exceed National Air Quality Standards across the entire state of Alaska to a height of 250 feet.

Table 1

Annual Air Pollution from the
Nikiski Petrochemical Industry

<u>pounds</u>	<u>toxic waste</u>	<u>source</u>
30,000,000	ammonia	vents, stacks, leaks
19,000,000	* nitrogen oxides	stacks
5,400,000	* carbon monoxide	stacks
4,300,000	hydrocarbons	fugitive
3,400,000	methanol	cooling tower, vents
2,400,000	* particulates	stacks
1,000,000	* sulfur oxides	stacks
1,000,000	hazardous waste-arsenic	alleged burning
73,000	benzene	fugitive
45,000	xylenes	fugitive
32,000	chloroform	cooling towers
31,000	toluene	fugitive
18,000	1,1,1 trichloroethane	mixed with waste oil
17,000	cyclohexane	fugitive
13,000	ethylbenzene	fugitive
4,000	formaldehyde	vents, stacks, leaks
500	naphthalene	fugitive
100	* lead	waste oil burning
34	ethylene dichloride	fugitive
22	polycyclic aromatics	waste oil burning
1	chromium	waste oil burning
5	ethylene dibromide	fugitive
2	cadmium	waste oil burning
<u>67,000,000</u>	total	

* regulated by the Clean Air Act

compiled from current state air permits, Alaska Air Toxics inventory (Radian 1986), and facility reports required by Superfund section 313 of Title III Emergency Planning and Community-Right-to-Know Act

3.2 Regulation

The Clean Air Act commands that primary ambient air standards be set by reference to public health and not economics, although there are many economic concessions granted to special interests (West 1988). Regulations focus on suspended particulates, lead, and the listed oxides of sulfur, nitrogen and carbon. The other air pollutants are currently unregulated.

Only "large" facilities are effectively regulated. Large means a facility could emit 40 tons per year of a specified air pollutant. If a facility meets the 40 tons threshold then the facility may calculate potential affects on air quality. If models predict that an ambient air quality standard could be exceeded then "best available control technology" may be installed. The Clean Air Act contains numerous exemptions; for example, a facility can adjust emissions to 39.99 tons/year to avoid the 40 tons/year regulation - called PSD avoidance (PSD means Prevention of Significant Deterioration), old and poorly functioning facilities are grandfathered, and considerations are made for "excessive" costs.

In Alaska, the state is authorized to regulate industries using the Clean Air Act. If a state does not pursue Clean Air Act enforcement the federal government is obliged to enforce when the state will not.

3.3 Compliance

Only 41% of the air pollution tonnage is even considered for regulation. The inadequacy of the Clean Air Act to consider all emissions is further compounded by numerous violations. Little is known about the real impacts of these air pollutants. During a controversial permit hearing regarding expansion of the Tesoro refinery the state agreed to monitor and sample the air. After years of equipment failure and reallocation of resources air quality monitoring equipment was installed (while this report was being written), but the data and the evaluations are not currently available. It is not uncommon to see a large cloud of atmospheric pollutants hover over Nikiski.

Phillips-Marathon-USX

For 18 years waste oil of unknown composition (analyses not found) and refinery gasses were frequently dumped into a flare pit and burned in violation of air quality standards (Lucky 1986a).

Tesoro

Within the last year this refinery knowingly built new sources of air pollution without prior authorization, a violation of the Clean Air Act (Grantham 1988a, 1988b).

Unocal-Mitsubishi

On going violations include non compliance with the Clean Air Act limitations on suspended particulates (O'Neal undated). In response to over a decade of violations the Alaska Department of Environmental Conservation (DEC) has done the following:

- * stopped recording violations (Schulz 1987),
- * requested EPA not to issue an enforcement letter to Unocal (Kelso 1987),

- * promised Unocal to refrain from fines or legal action for past violations (DEC 1987), and
- * amended state air quality regulations to create a specific exemption for Unocal's air emissions (Verrelli 1988).

Trading Bay

The Trading Bay facility operates an open flare pit of questionable construction and efficiency which has received two Notices of Violation (Crawford 1988c). The flare pit is hole in the ground into which a flare tube is aimed (MacClarence 1985a). Toxic and dangerous chemicals are pumped into the upside down flare tube under conditions that produce an uncontrolled exhaust plume. A loophole in state air quality regulations allows this "device" to operate without a permit (Williams 1976, Lamoreaux 1984, MacClarence 1984, Verrelli 1984). A special attachment to the combustion device exempts the burner from regulations (MacClarence 1983), when the attachment was removed to burn a large volume of unspecified toxic waste the resulting uncontrolled burn destroyed the part of the combustion device (Brooks 1983).

4. Water Pollution

Polluted water is a serious problem. Once in the water dissolved and suspended pollutants flow without restraint impacting water quality far from the pollution source.

Ground water can flow hundreds of feet in one day, rivers hundreds of miles, and ocean currents eventually travel around the world. Surface water pollution in the Gulf of Alaska can rotate around in the Bering sea returning in only several years. Deep oceanic polluted water will find its way to the equator and back. Oily water once in the marine environment takes hundreds (near shore) to thousands (offshore) of years to completely biologically degrade.

4.1 Totalled Pollution

Surface Ocean Water

Nearly seven million pounds of toxic wastes are dumped into Cook Inlet each year by the four Nikiski facilities alone, this does not include the weight of the polluted water.

The water receiving this pollution is called Cook Inlet, well known as having some of the world's highest tidal fluctuations. However parts of Cook Inlet are not well mixed. In places water simply flows back and forth or around and around in large rotary currents. A potential exists for pollutants concentrating over time instead of dispersing. This problem is recognized but has not been adequately studied.

Tesoro Alaska Refinery

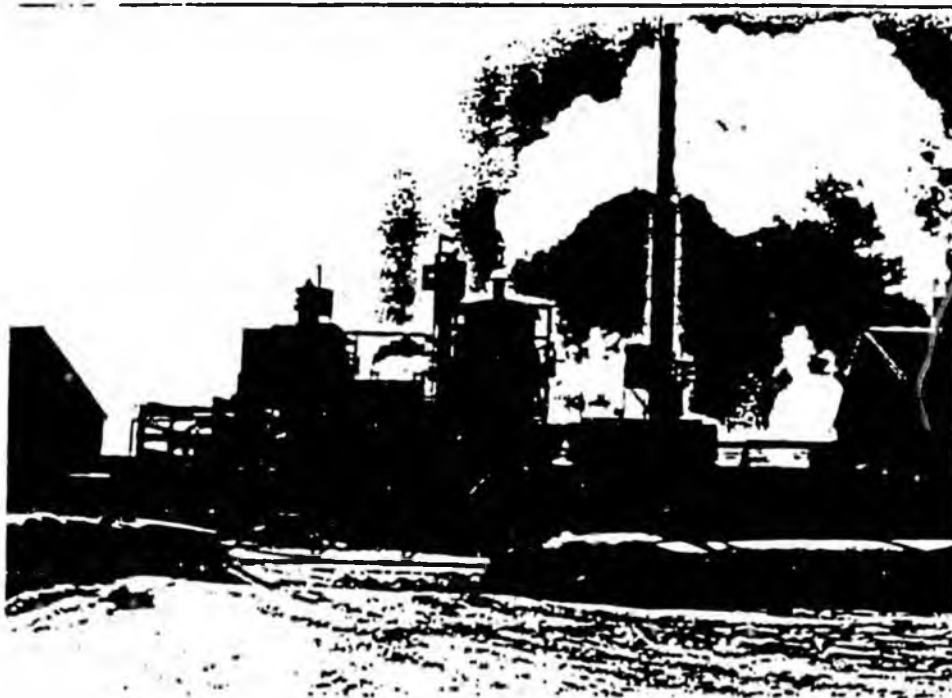


Table 2
Annual Oceanic Water Pollution from the
Nikiski Petrochemical Industry

<u>pounds</u>		<u>toxic waste</u>
3,300,000	*	nitrogen compounds
2,400,000	*	sulfuric acid
690,000	*	unidentified suspended solids
140,000	*	oil and grease
18,000	*	zinc
7,000		ethylene glycol
2,500		1,1,1 trichloroethane
970	*	chromium
460	*	phenols
550	*	sulfide
370		polynuclear aromatic hydrocarbons
200		cyclohexane
200		xylene
130		benzene
60		toluene
7		ethylbenzene
7		arsenic
7		cadmium
4		nickel
4		cyanide
<hr/> 6,500,000	total	
	*	regulated by current Clean Water Act permits

compiled from current EPA National Pollution Discharge Elimination System permits (NPDES), DEC waste water permits, and facility reports required to Superfund section 313 of Title III Emergency Planning and Community-Right-to-Know Act

Ground Water

Ground water pollution data is difficult to calculate. Leaking piles and pits of waste; such as the Sterling Special Waste Site, Tesoro's hazardous waste surface impoundments, and drilling mud pits, leak at undetermined rates over a long period of time. Oil spills contaminate not only the aquifer but soils above the water table which release hydrocarbons for decades.

Because of the lack of data on volumes of contaminated ground water two examples were chosen. The volumes of waste illustrated here do not account for the fact these waste mingle with clean ground water making the total amount of pollution much greater.

If we want to find out how much ground water is eventually polluted we need to have sufficient monitoring wells to determine the extent of contamination. I could not find a single waste site with an adequate number and types of monitoring wells. Therefore all I can say is there is a much larger amount of ground water pollution than listed here.

In calculating the data for Table 3 information was used from only three sites, Phillips-Marathon-USX refinery, Unocal-Mitsubishi chemical plant, and a Unocal underground injection well.

Table 3

Contaminated Water Dumped
Annually into the Ground Water
Without a Permit or in
Violation of Permit Conditions

<u>pounds</u>	<u>toxic waste in water</u>
92,000,000	ammonia, arsenic, urea, phenols
52,000,000	groundwater contaminated from a hazardous waste site
<hr/> 144,000,000	

compiled from current EPA Safe Drinking Water Act Underground Injection Control permits and DEC waste water files

4.2 Regulation

Two regulations control water pollution the Clean Water Act and the Safe Drinking Water Act. It is the national policy of the Clean Water Act to prohibit the discharge of toxic

pollutants in toxic amounts (Federal Water Pollution Control Act 1988). However the standards for discharge are more commonly based on physical observations rather than precise chemical analysis. For example off shore oil platforms and major oil production facilities must not have a visible oil slick or floating solids. The serious problem of cancer risks associated with dissolved benzene and other aromatic hydrocarbons is disregarded.

The Safe Drinking Water Act authorizes the injection of toxic and hazardous waste into the ground water. Alaska is authorized to permit oil and gas industrial waste disposal. The federal government permits the injection of hazardous wastes. Under ground injection wells nationally account for the majority of all hazardous waste disposal. In Alaska under ground injection wells operate with minimal if any restrictions at all.

4.3 Compliance

Phillips-Marathon-USX

A cluster of shallow underground injection wells on the Phillips facility, dumps contaminated water without a state or federal permit.

Marathon-USX

The oil production facility dumped waste water onto wet lands and Cook Inlet without permits (Erickson 1986, Soderlund 1984). Additionally Marathon Oil sued EPA in the Fifth Circuit Court of Appeals to an effort to relax their permit requirements (Geren 1987). Marathon lost the case and EPA subsequently proposed Administrative Orders under section 309 of the Clean Water Act requiring Marathon to change the facility and cease discharges to the wetlands.

Tesoro

Tesoro reported a "small underground oil spill" that grew from 40 to 2,400 to 150,000 gallons, to 700,000 (Crawford 1988b, Chappell 1988). Ground water under the refinery is polluted, now known to have as much as three feet of petroleum product on the water table, causing Unocal to abandon a water well.

When Tesoro increased production capacity the allowable pollution increased (Bowker 1986). Studies have shown the refinery water pollution effluent to be so toxic that all species subjected to a 1:10 dilution were killed and even a 3% mixture severely affected reproduction (Duncan 1987).

Unocal-Mitsubishi

The Unocal permit based allowable amounts of pollution on a mixing zone, yet when the pipe diffusers become plugged the pipe was cut underwater, thus negating the permit mixing zone calculations (EPA 1988).

Unocal dumped hazardous and toxic waste into both surface and ground waters in violation of both state and federal regulations, some examples follow.

- * By pouring "only" 4 barrels at a time into Cook Inlet, Unocal attempted a "midnight clean up" to dispose of over 50,000 pounds of a hazardous waste containing methanol and formaldehyde, in violation of the Resource Conservation and Recovery Act Clean Water Act (Burd 1987a).

- * Over 200 unpermitted underground injection wells are used to dump contaminated water, in violation of Alaska waste water discharge regulations (Lucky 1984a). Additional unpermitted wells are allowed under a "gentleman's agreement" (Turner 1984). The ground water under the plant is contaminated with arsenic, ammonia, and urea.

- * An underground injection well exceeded pressure limits and injected prohibited waste, a violation of permit conditions (Burd 1987b)

Unocal claimed their carcinogenic arsenic containing hazardous waste is "less toxic than table salt" (Turner 1983). Unocal's lack of concern for the public health is illustrated by the use of human subjects for a taste and odor panel used to screen contaminated water. A claim was made "Should any contaminated water somehow reach a domestic water well, the water would acquire a detectable taste or odor prior to becoming hazardous." (Scott 1975).

Compliance problems are complicated by the multiple authorities of state and federal regulatory agencies. Consequently pollution problems are not addressed in a comprehensive manner. For example, the following actions occurred in response to water pollution problems at Unocal.

1. Groundwater investigation was transferred from RCR to Superfund (Miller 1985).
2. Because of the contaminated ground water an unpermitted air releases the Superfund investigation calculated a Hazard Ranking System

score (called an HRS score) over 30, high enough for National Priorities List nomination (Tryck, Nyman, and Hayes 1987; HRS Documentation file with held from public review).

3. Unocal compliance issues were reassigned back to RCRA.
4. EPA environmental specialists stated that there are neither plans nor schedules to evaluate the ground water contamination issue under RCRA.

After nearly a decade and a half of documented ground water pollution under Unocal neither state nor federal authorities have taken enforcement actions.

5. Contaminated Soils, Sludges, and Spills

The most common forms of solid waste management at the Nikiski petrochemical facilities is "dump waste on the ground or spread it on the roads." As a consequence industry

disposes of their waste where convenient - in their back yard, where cheap - at inadequately permitted "special waste" dumps, or even illegally in gravel pits.

5.1 Petroleum Refineries

All three refineries generate some "listed hazardous waste" as defined by 40 CFR 261.32. Not all the refineries generate all of these wastes.

Chevron Refinery



Table 4

Listed Hazardous Waste Common to
Petroleum Refineries

<u>Hazardous Waste</u>	<u>EPA No.</u>
dissolved air flotation float	K048
slop oil emulsion solids	K049
heat exchanger cleaning sludge	K050
API separator sludge	K051
leaded tank bottoms	K052

Tesoro

Past hazardous waste practices resulted in fines totalling \$57,750 (Caldwell 1986, and Findley 1987). The hazardous waste violations include the following.

1. Tesoro dumped hazardous waste into unlined pits dug in porous soils (Findley 1987).
2. Hazardous waste was pumped out of the pits and spread on public roads (Necessary 1988).
3. Hazardous waste was illegally stored and shipped (Fuentes 1984).

4. Hazardous waste solids were allegedly recycled. Unacceptable uses included making disposal pits walls out of hazardous wastes sludge (Torok 1983).

Tesoro generates 10,000,000 pounds of elemental sulfur each year. Sulfur is dumped on the ground without a permit.

Chevron

At least three kinds of hazardous waste are generated at the Chevron refinery. In the past, Chevron dumped their hazardous waste both at the Sterling Special Waste Site and in pits at the rear of Chevron property (TetraTech 1984, Rice 1985). Currently, hazardous waste solids are added to consumer products (Burgh 1987a), this disposal method is not approved by RCRA. Solids derived from hazardous waste are not eligible for recycling (40 CFR 261.1). Chevron was twice served Notices of Violations for noncompliance with hazardous waste laws (Alexakos 1987). Other improper practices include dumping oil filter waste on roads for the purpose of disposal (Williams 1984).

Phillips-Marathon-USX

API separator sludges, which are listed hazardous wastes, are not stored, treated, and/or disposed as required by RCRA. Waste oil, possibly mixed with API hazardous waste is dumped on the ground with the intent of disposal (Burgh 1987b).

Filter charcoal contaminated with arsenic and mercury is analyzed for toxicity using EP-tox, an inappropriate and inapplicable test method considering the requested disposal methods (Patterson 1988). EP-tox tests used are intended to determine if waste should be in single or triple lined permitted landfill, in either case a permanent cap is placed over the waste. The EP-tox test results were used to justify dumping the contaminated charcoal on roads as "road oiling", rather than managing it as solid waste. The most recent incident involved 22,000 pounds of contaminated charcoal.

5.2 Chemical Plant

Solid waste problems are evident in two areas; solids and sludges, and hazardous waste.

Unocal-Mitsubishi Solids and Sludges

Unocal dumps toxic waste on facility grounds (Table 5) using waste for fill or simply dumping it in gravel pits.

Table 5

Toxic Waste Dumped Annually on the Ground at the
Unocal-Mitsubishi Chemical Plant

<u>pounds</u>	<u>waste</u>	<u>type of toxic waste</u>
3,600,000	sludge	metals
470,000	catalyst	metals
16,000	resins	synthetic polymers
<hr/>		
4,086,000		

Each day 10,000 pounds toxic metal sludges are dumped into gravel pits, an analysis of the sludge appears in Table 6 (Unocal 1980, EPA 1988).

Table 6

Toxic Metals Found in
Unocal-Mitsubishi Chemical Plant Sludge

<u>toxic metal</u>	<u>concentration</u> (ppm)
arsenic	3,300
cadmium	3
chromium	230
copper	25,500
lead	160
nickel	161
zinc	250,000

(Tryck, Nyman, and Hayes 1987)

Unocal generates one half million pounds of catalyst each year. Laboratory testing in 1983 indicated used catalysts are hazardous waste due to high levels of extractable chromium. Unocal repeated laboratory analyses until the

catalyst passed EP-tox tests, and then declared their waste "safe". Intra-laboratory differences of more than 100, between three separate labs were not resolved (Heus 1983), and the catalyst waste was "declared" non hazardous. Used catalysts are dumped on the ground, used for fill, and buried (Tryck, Nyman, and Hayes 1987). No solid waste permits were found for these disposals.

Industrial accidents include Unocal dumping more than 800,000 pounds of air pollutants in a single incident (Tryck, Nyman, and Hayes 1987). Major spills of ammonia such as this occur on a regular basis, usually two or three times a year (Crawford 88a). As a result of spills and inadequate operating procedures off site air monitoring instruments have exceeded maximum readings for six hours at a time (Lucky 1985). These recurrent problems prompted a proposal for an ambient air standard for ammonia; however the proposal is stalled largely due to Unocal-Mitsubishi pressure on the DEC (Merrill 1988). Another dangerous incident occurred during an unregulated and unapproved clean up of a hazardous waste spill (formaldehyde and methanol) toxic gasses escaped in an uncontrolled chemical reaction, (Turner 1982) spreading across public roads and endangering both people and

industrial facilities; including potentially explosive liquid natural gas tanks (storage for the largest exporter of gas in North America).

Hazardous Waste - Waste Oil

In a single incident, Unocal attempted to dispose 70,000 pounds of drummed hazardous waste by giving it to the City of Kenai for road oiling (White 1986). The oil was hazardous waste because it contained excessive amounts of halogenated solvents, in addition to significant but unregulated amounts of arsenic, cadmium, chromium, and lead (Laurie 1987). After several years in storage the hazardous waste was moved from city storage yards back to the chemical plant. No records of manifests, storage facility permits, or other required RCRA reports were found in the public record.

Current solvent disposal methods at Unocal include dumping halogenated solvents into waste oil (Tryck, Nymn, and Hayes 1987, Burgh 1986). This practice is clearly prohibited by RCRA.

Hazardous Waste - Formaldehyde

Illegal disposal into Cook Inlet of formaldehyde hazardous waste was discussed in section 4.3. Unocal also dumped an undetermined amount of formaldehyde at the Sterling Special Waste Site (Burgh 1985).

Hazardous Waste - Arsenic

Unocal "burns" arsenic contaminated oil calling the practice recycling. Each year over one million pounds of hazardous waste is sprayed into a boiler not originally designed to burn hazardous waste, 10% goes up the stack and 90% accumulates within the boiler and must be scrapped off by hand thus increasing worker health risk (MacClarence 1985b, Unocal 1987) .

Arsenic hazardous waste spills are managed by a system of alleged recycling. Arsenic laden hazardous wastes (soil, rags, etc) are washed with hot water (Unocal 1987). The arsenic contaminated wash water is dumped into a lagoon on Unocal property (Laurie 1985a). According to Unocal the

arsenic is recycled into plant processes; but according to other Unocal documents this claim is suspect because incoming plant water must be deionized and cleaned prior to use. Unocal cannot use dirty water (Turner 1983). Residual arsenic in waste water cannot be recycled for the intended use of corrosion inhibition because sodium arsenite is a reactive compound and will not retain it's anti-oxidant properties when haphazardly mixed with dirt and hot water. Additional evidence is provided by the fact arsenic precipitates into lagoon sediments (Tryck, Nyman, and Hayes 1987) as opposed to Unocal's claim arsenic is recycled.

Serious and chronic problems concerning storage and spillage of hazardous waste exist at the chemical plant. The following problems were found.

- * EPA stated that Unocal violated the same RCRA storage regulation as many as three times in only four months (Findley 1984).
- * In a single year as much as 640,000 pounds of hazardous waste were spilled at the chemical plant (Lucky 1984b).

- * A Superfund investigation revealed hazardous waste and hazardous substance spills were a common problem. Between 1983 and 1985 there were seven reported major hazardous waste spills (Tryck, Nyman, and Hayes 1987).

- * Unocal ignored RCRA regulations and stored over 140,000 pounds of hazardous waste in violation of 40 CFR 270.71. Further mismanagement resulted in unreported spillage from bulldozers knocking over drums of hazardous waste (Smith 1984).

- * Over 1,000,000 pounds of hazardous waste is generated and stored each year at the Unocal plant. Two large hazardous waste tanks (190,000 pound total capacity) are called "temporary" and do not have RCRA permanent tank permits (Laurie 1985b).

- * A Superfund investigation revealed hazardous waste and hazardous substance spills were a common problem. Between 1983 and 1985 there were seven reported major hazardous waste spills (Tryck, Nyman, and Hayes 1987).

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- * Over 1,000,000 pounds of hazardous waste is generated and stored each year at the Unocal plant. Two large hazardous waste tanks (190,000 pound total capacity) are called "temporary" and do not have RCRA permanent tank permits (Laurie 1985b).

5.3 Petroleum Production Facilities

Marathon illegally operated disposal pits with expired permits at the Trading Bay facility (Crawford 1988c). The pits contain a mixture of oily sludges and toxic waste. Monitoring wells show contamination of the water and soils.

Oil spills are managed by dumping oil contaminated dirt on local roads in violation of DEC regulations (Cannone 1985, Curtis 1987, Lucky 1986b, c, d, e, & f).

5.4 Regulation

Laws controlling "solid waste" are the most complicated environmental regulations in effect today. Each law has numerous exemptions, exceptions, and special cases for large industries. For example oil spills are exempt from Superfund, and most mining and oil and gas industrial wastes are exempt from RCRA. Sludges from waste water treatment lagoons are left entirely to local control.

RCRA and Solid Waste

The Resource Conservation and Recovery Act (RCRA) regulates "hazardous waste". It is not easy to determine if a waste is a hazardous waste. How the waste was generated can be "more important" than the actual type and volume of waste. For example methanol used by the oil and gas industry for exploration and development is exempt, but methanol used by a local gas station is regulated. Methanol waste caused several young people death on Alaska North Slope.

Some kinds of hazardous waste can be declared nonhazardous if mixed with sufficient clean dirt. If other kinds of hazardous waste are mixed with clean material then the whole mixture is classified as hazardous waste. It is beyond the scope of this paper to describe the numerous shortfalls of hazardous waste laws.

Superfund

The Comprehensive Environmental Response Compensation and Liability Act (CERCLA or Superfund) evaluates the threat to public health from past disposals. As with RCRA there are exemptions. Oil and petroleum waste is excluded. There are two serious flaws with Superfund. The first is that sites are ranked using a hazard ranking system (called an HRS score), if the score is above 28.4 the EPA may nominate the site to the National Priorities List (NPL), and begin clean up activities. If the HRS score is below 28.4, action is seldom if ever taken. A serious consequence of the scoring system is that clean ups are unlikely in villages and towns with big problems but small populations. The second flaw lies in the fact the scoring process is subject to polluter pressure. The polluter may be large and internationally based, such as a mining company or oil and gas related industry, or even state government itself. Members of the affected public are not allowed to review the score. Contributing to the problem EPA has claimed "executive privilege" and exempted itself from the Freedom of Information Act regarding HRS score disclosure.

5.5 Compliance

RCRA and Solid Waste

Enforcement of RCRA is shared between DEC and EPA. Currently DEC conducts facility inspections and EPA is responsible for the enforcement. Inspections are infrequent and often superficial, DEC has never taken a sample from any of the four Nikiski facilities for RCRA enforcement (Dietrick 1988a). With a single exception, enforcement actions and fines resulted solely from anonymous complaints.

Enforcement of Alaska solid waste regulations is usually voluntary. Monitoring requirements are limited, post closure plans absent, and applications non existent for most oil and gas drilling mud disposal pits. New solid waste regulations were enacted by DEC but recent applications show little change from past practices.

What are these?

Superfund

Officially there are no sites within the Kenai peninsula that score above 28.4, however the Unocal-Mitsubishi chemical plant has an HRS score of 33. The public is not allowed access to the EPA record. DEC has cooperated with EPA in with holding HRS scoring information.

Several sites are undergoing "voluntary clean up" efforts; such as, the Union Oil Gravel Pit dump near Poppy Lane, an AMOCO production facility, and the Sterling Special Waste site. An informal use of "technical assistance" is the predominate method of enforcement. Compliance Orders, clean up standards, and procedures pertaining to remedial actions were not found. Little if any official correspondence or documentation is available. Currently the public has great difficulty or may face impossibilities when attempting to find out if a site was adequately cleaned up or even the standard of how "clean is clean".

6. Conclusions

After tabulating the mass of pollutants, analyzing the violations, checking on enforcement actions, and evaluating the compliance records three problems are evident.

1. POLLUTION

Although nearly invisible to a casual observer the Nikiski petrochemical industry generates and dumps a lot of pollution each year:

2,300 tons on the ground,

3,200 tons into the ocean,

33,000 tons into the air.

These wastes do not include wastes from oil and gas drilling, production facilities, or underground injection, wastes which are greater in volume but lower in toxicity.

Nor do these numbers include waste generated from the clean up of hazardous - toxic waste sites which could be in excess of 100,000 tons for a single site with great variations in toxicity.

2. VIOLATIONS

Violations of pollution control laws are a frequent occurrence. Some industries have chosen to simply ignore existing laws, others violate them on almost a daily basis.

3. ENFORCEMENT and COMPLIANCE

Laws with sole federal jurisdiction have the best compliance record (Clean Water Act).

Federal laws the state is authorized to enforce have a poor compliance record (Clean Air Act and Resource Conservation and Recovery Act).

State laws without federal jurisdiction are almost without compliance or enforcement (solid waste, waste water treatment sludges, oil spills, and clean ups not ordered by Superfund).

7. Recommendations

The state of Alaska cannot enforce environmental pollution control laws. Other states which rely on one or two major industries; such as, oil or mining, experience similar pollution control problems. Enforcement actions usually require considerable legal resources. The legal reserves of a multinational corporation greatly exceed those available to a state environmental regulatory agency. In addition regulatory agencies may not have sufficient funding or expertise to inspect, sample, and analyze.

If a federal pollution control law is violated a private citizen has the legal right to enforce that law. Citizen enforcement actions have major positive impacts regarding

compliance with the Clean Water Act in interior and arctic Alaska.

RECOMMENDATION 1

Alaska state law should be amended to allow citizen enforcement of all environmental pollution control laws. Federal provisions for citizen enforcement should be adapted to state law. Precedence in state laws should make this possible. Alaska law allows citizen enforcement in both mining (AS 27.21.950) and oil and gas (AS 31.05.170) activities, such provision should be extended to solid waste and waste water regulations.

RECOMMENDATION 2

Ensure that staff who work in technical assistance are not the same people who conduct enforcement actions. The DEC should have legal assistance dedicated to environmental pollution enforcement. Affected citizens

should have to right to be actively involved in Compliance Orders and enforcement actions.

RECOMMENDATION 3

Potentially affected citizens should be given the right to conduct inspections of facilities regulated under both state and federal law.

RECOMMENDATION 4

The clean up of hazardous - toxic waste sites is arbitrary. A task force composed of regulated industry, victims of improper waste dumping, environmental groups, and independent experts should be formed to develop guidelines for state regulations governing state clean up efforts. Current Alaska law provides for functioning and funding of an Environmental Advisory Board. The governor should appoint this board (AS 44.46.030).

RECOMMENDATION 5

The Cook Inlet general permit is inappropriate for on shore production facilities. A site specific permit such as required by the Alyeska terminal at Valdez should be required for on shore oil production facilities.

Unocal and Chevron



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TESTIMONY BEFORE THE ALASKA HOUSE RESOURCES COMMITTEE

ON HOUSE BILL 565 MARCH 13, 1990

BY GENE BURDEN FOR TESORO ALASKA PETROLEUM COMPANY

There are three points in the proposed bill that I ask be closely considered as the Committee evaluates this bill.

First is in Section 2 (proposed AS 46.03.758 (b)) which substantially redefines fees for discharge to "environments without significant aquatic resources" from the current level of \$1.00 per gallon to a level of up to \$50 per gallon. This proposal places the abiotic receiving environments in the same penalty description as those environments with significant aquatic resources. We support a continued separation between the two in regards to the statutory penalty descriptions applicable to each.

Second is in Section 3 (proposed AS 46.03.758(d)) which deals with situations where a spill affects more than one type of receiving environment. The proposal provides for spiller liability at the rate for the most critical environment affected for the entire discharge unless the Spiller can demonstrate by "clear and convincing evidence" the quantities entering each environment. This language not only shifts the burden of proof from the State to the Spiller but also abandons the preponderance of evidence standard in favor of the stricter clear and convincing evidence standard. There is question as to whether this higher

standard can ever be met when the quantities can typically only be identified by engineering projections and opinions.

Third is in Section 5 (proposed AS 46.03.758(f)) which would eliminate the current credit for recovery of spills that occurs after the first 36 hours following the spill. This will have the effect of virtually eliminating the credit for land based spills since they frequently will take more time to characterize, obtain engineering assistance and ADEC approvals for recovery techniques. We support continuation of the credit arrangement and believe it offers a spiller additional incentives to maximize the total recovery possible from a site. The financial implications from any spill can be very complicated; however it appears good policy to retain the offset provisions in current law as additional positive incentive for maximum recoveries.

LEGISLATIVE PROPOSAL

FRANK BAUER
4009 BARTLETT STREET
HOMER, ALASKA 99603

235-5154

OCTOBER 13, 1989

Corporations would probably be more cautious about their operating procedures if they knew that they would be seriously penalized in the event of a major spill or serious violation of environmental regulations.

In theory the Governor has the authority to stop the flow of oil through the pipeline. The prospect of facing such a penalty would likely command the attention of any potential offending producer.

In reality the Federal Government would be unlikely to allow this to happen. But perhaps a way could be found to deny access to the pipeline on a selective basis, without interrupting the actual flow of oil.

- develop a regulation that sets the percentage of oil each producer can pump into the line
- in the event of a catastrophic spill or major violation provide for automatic reduction of the offending company's allocation
- increase the allocations of other producers to maintain the flow of oil through the line
- the degree and term of the reduction would be scaled to the magnitude of the offense (these would be great enough to effectively penalize but not destroy the offending company)
- application of the penalty could be imposed for incidents occurring at any point from production source to point of delivery



Please reply to: 10390 Mendenhall Loop Road 215 Fidalgo Ave., Suite 201
Juneau, Alaska 99801 Kenai, Alaska 99611
(907) 463-3375 (907) 283-5405

M E M O R A N D U M

TO: Representative Cliff Davidson
Representative Curt Menard
Co-Chairmen
House Resources Committee

FROM: Ray Gillespie

DATE: March 21, 1990

SUBJECT: HB 565 and HB 567 - Civil Penalty and Financial
Responsibility for Non-Crude Oil Distributors

MAR 21 1990

I represent Petro Marine, Delta Western and Crowley Maritime, which are relatively small distributors of refined products, such as marine fuel and petroleum products, rather than crude oil. This memo contains thoughts and comments on the legislation as it may affect owners and operators of distribution facilities in Alaska:

- I. Appendix G to the Alaska Oil Spill Commission Report is entitled "The Role of Insurance for the Preparedness and Response to Oil Spills: Liability and Compensation Issues". This report should be carefully reviewed by the Committee and its recommendations seriously examined prior to action on HB 565 and 567. Neither the Alaska Oil Spill Commission report nor Appendix G recommends any specific changes to Alaska liability or penalty laws with respect to non-crude oil distributors.

On the contrary, Appendix G recommends that the Commission and the State Legislature review the analysis of the civil penalty scheme, oil spill liability and compensation thesis, written by W.J. Graham in 1989. This thesis was done at the University of Washington, Institute of Marine Studies and is entitled "Oil Spill Liability and Compensation: A Review of and Evaluation of Alaska's Civil Penalty Scheme." A copy of this paper has been provided to Committee staff.

- II. Other Observations and comments on Appendix G:

- A. The report references the U.S. Government Accounting Office, 1987 report, which states that the insurance industry has maintained that the basic concerns of underwriting, risk the process of identifying and evaluating risks and setting the premiums to be charged cannot be satisfied when assessing a pollution risk, making them sometimes uninsurable.
 - B. It suggests that insurance requirements of this nature have historically been addressed through national programs, such as the National Flood Insurance Program, the Flood Disaster Protection Act, the Federal Emergency Management Act and Earthquake Insurance Programs.
 - C. The House Resources Committee may wish to examine the pertinent provisions of Federal legislation to ensure that HB 567 is coordinated with pending Federal legislation, which may also contain liability provisions according to the report.
 - D. It may be advisable for the Resources Committee to hear from the author of Appendix G, Mr. Clancy Phillipsborn of Boulder, Colorado.
- III. With specific reference to HB 565 and 567, Delta Western, Petro Marine and Crowley Maritime offer the following general comments:
- A. Tank facilities owned and operated by these entities are located in the following communities: Unalaska, Nome, Kotzebue, Seward, Dutch Harbor, Kodiak, Nikiski, Anchorage and Juneau. With the exception of one small Anchorage lube plant and a small facility in Juneau, each of these facilities would be subject to the \$50 million financial responsibility requirement of HB 567.
 - B. Earlier testimony before the House Resources Committee by insurance representatives from Lloyds of London and an Anchorage marine insurance broker indicate that \$50 million is not available for many small companies operating these size facilities.

The testimony indicated that \$10 million might be available, depending upon the particular owner and operator, the size and age of the tanks and the type and nature of mitigation and prevention practices and policies in place at the specific location.

- C. The term "realistic maximum oil discharge" as the standard for demonstrating contingency spill plan cleanup capability needs further refinement. The tank farms referenced above range from a single tank to up to 18 tanks. Must these operators be prepared to cleanup a spill that presupposes full loss of the entire capacity of all the tanks, such as resulting from a catastrophic earthquake? If so, what manpower and equipment will be required and are the costs realistic for small operators of tank farms?
- D. It is apparent that some kind of transition mechanism should be in place while the new contingency plans are written and approved and the necessary manpower and equipment put on site after the effective date of the legislation and before final approval of the plans.
- E. With respect to tanks vessels or barges in excess of 300 gross tons, HB 567 would require \$20 million of coverage. This requirement does not necessarily reflect the risk of harm posed by tank vessels or barges nor does it necessarily reflect insurance which may be available in the market place. Much of the refined petroleum products sold in the state are transported by independent barge owners under charter to the distributors, such as Petro Marine, Crowley and Delta Western.
- F. There are several other issues that should be addressed by the committee such as:
 - 1. Must operators with multiple farms meet the financial responsibility requirement for each facility or will blanket coverage meet the requirements of HB 567?
 - 2. Will small operators be able to fairly compete with large operators if both must meet the same financial responsibility requirements?

March 21, 1990
Page Four

3. Will it be necessary to insure against the civil penalties contained in HB 565 in addition to the financial responsibility requirements of HB 567? See Section 2(j) of HB 567 which indicates that both types of coverage or responsibility must be demonstrated prior to contingency plan approval. If this is true, then the financial responsibility requirements are placed further out of reach for small operators.
4. For tank vessels and barges does the financial responsibility refer to each vessel or is blanket coverage sufficient?

We believe the Committee should seriously consider deleting non-crude from the bills at this time, to allow further examination of the serious and complicated issues surrounding small operators.

Thank you for the opportunity to address these bills. The companies I represent are willing and anxious to work further with the Committee on these bills. We suggest that sufficient time and study be devoted to HB 565 and 567 so that the small operators and distributors of refined products can serve the Alaskan consumer in a safe and efficient manner at reasonable prices.



Oil Reform Alliance



TESTIMONY BEFORE HOUSE RESOURCES COMMITTEE
ON
HB 565, HB 566, AND HB567

March 9, 1990

My name is Riki Ott. I am a commercial fisherman and Cordova resident. My training is in marine pollution: I have a Masters in oil pollution and a doctorate in sediment pollution. I am President of the Oil Reform Alliance, which is a grassroots coalition among commercial fishermen, environmentalist, and others within and outside Alaska who are dedicated to reforming oil industry practices that impact communities on social, economic, and environmental levels.

The Oil Reform Alliance (ORA) supports the intention of House Bills 565, 566, and 567. In the wake of the Exxon Valdez, we find that existing laws are clearly inadequate regarding the State's role in prevention and management of catastrophic oil spills from large facilities and tankers. In addition, we find that there are serious problems with spills, leaks, and illegal dumping of oil and hazardous wastes from numerous smaller facilities and operators statewide. We are very pleased with and strongly support the intent of this package to comprehensively address all polluters.

First, some general statements; then, some specific language changes.

Strengthening the state's role in prevention of oil spills seems to be the main theme of HB567. I find it an appalling state of affairs that the State has allowed the oil industry to proceed without common sense safeguards like state-approved contingency plans in place to protect other resources, the public, and the environment. Such oversight sends a clear message to industry that we don't care.

The public needs the assurance that industry has considered its safety and the environment in the event of an emergency as evidenced by an approved contingency plan. If DEC is currently a bottleneck in the approval process, then we ask the legislature to find out why and address this problem.

However, we urge caution on two accounts: 1) that DEC should not be forced to approve a contingency plan within a set time frame as this could result in industry pressuring DEC to approve a faulty plan; and 2) that the review process should NOT be extended to the Depts. of Fish and Game and Natural Resources as this would only further lengthen the approval process by including reviewers with limited expertise in this area.

We recommend the following specific language changes: to cover all facilities, on page 1, line 20, delete the word "offshore;" and on page 2, delete section (e) in its entirety which refers to multiple department review of contingency plans.

After the Exxon Valdez spill, Alyeska now claims they are prepared to respond to a maximum spill of 250,000 barrels. During testimony on these bills in the Senate Oil and Gas Committee, it was evident that 250,000 barrels has become the new industry standard.

This is NOT acceptable to the ORA. The Exxon Valdez only spilled one fifth of its cargo and tankers up to fifty percent larger than the Exxon Valdez carry oil from the terminal.

We ask that the industry assume a greater share of the inherent risk associated with transportation/production of oil -- as they have done in other parts of the world -- rather than push off this risk on the public. This is not an unrealistic request. In an area of northern Europe the geographic equivalent of Alaska, the combined response from scattered depots is 500,000 bbl/hr or 50 times the current capacity in the state.

We recommend that the language on page 2, lines 21-23, read: "...manpower and resources to rapidly respond to a maximum oil discharge in the time frame specified by the oil discharge contingency plan(s), but not to exceed 72 hours."

We can't require the oil industry to contain a spill because this may be impossible due to weather or other forces beyond their control. We can't require the oil industry to remove a discharge because this would eliminate the potential for dispersant use or burning as these methods do not remove oil, but instead force it into the air or water column.

But we can require the oil industry to stockpile the necessary equipment and pre-train the necessary manpower for rapid response to a maximum oil discharge. We stress that this language should apply to any applicants for an oil discharge contingency plan.

The current evacuation of the Drift River terminal is a forceful reminder that contingency plans must encompass total contents of terminals and tankers. What the oil industry calls redundancy, the public calls safety.

On page 2, lines 24-25, we recommend the following wording: "(g) An oil discharge contingency plan must be reviewed by DEC and upgraded, if necessary, by the applicant at least every three years."

We bring to the committee members' attention a booklet entitled: "A Citizen's Guide to Hazardous and Toxic Waste Sites of Fairbanks, Alaska" prepared for the Northern Alaska Environmental Center. This booklet documents and ranks 33 toxic waste problems ranging from a residential yard sprayed with PCBs to buried experimental military nuclear reactors. Twenty-five of the 33 toxic waste problems involved some form of petroleum hydrocarbons.

Ranked No.1 was the Fairbanks MUS city wells: "the sole source of all Fairbanks public water is contaminated with fuel. Benzene is present in city wells up to 13 ppb (the drinking water standard is 5 ppb.)

Ranked No. 2 was MAPCO which were "fined for polluting drinking water, not reporting spills, selling improperly identified fuel and dumping hazardous waste. Benzene contaminates the groundwater 4,000 times in excess of drinking water standards."

Ranked No. 3 was the Fort Wainwright Army Base which contaminated over 40 acres in a single gasoline/diesel spill and has at least nine leaking underground fuel storage tanks.

Ranked No. 5 was the Eielson Air Force Base which reportedly had the largest underground fuel spill in North America: over 10 million gallons on 2.7 acres. "The pollution is so widespread a lake on base is nicknamed "POL lake;" short for "petroleum, oil and lubricants. Eielson has a proposal to DEC to inject 12 million tons/yr of waste water underground."

Ranked No. 9 was PetroStar with fuel spills contaminating soils and groundwater. "Monitoring wells between MAPCO and PetroStar are now contaminated."

It is quite clear that spilling oil is not a phenomenon specific to tankers in Valdez or big operators like Alyeska. Nor is Fairbanks alone in this problem. A similar booklet on hazardous and toxic waste sites is available for the Kenai area. We also bring to the committee's attention a compliance chronology on the Tesoro refinery and a New York Times article on a fuel oil barge explosion in Arthur Kill.

Little operators as well as big operators have accidents and the ORA insists that legislators address all polluters to minimize risks to the public and environment. Don't cop out and pass a bill that only protects us from part of the problem.

There is a general misconception that refined products are less toxic than crude oil. In reality, refined products contain the most toxic fraction of crude oil. This fraction is also the most volatile and soluble. For example, benzene dissolves rapidly into groundwater. Comparative toxicity of refined versus unrefined oil depends upon physical and biological parameters of the environment in which the discharge occurred.

So work for full protection. Consider options. For example, the American Petroleum Institute or the oil industry within the state could form a PIRO type depot with equipment located throughout the state. This could be a cooperative effort with participation from all applicants of oil discharge contingency plans.

A similar type of cooperative cooperation could be used to address industry concerns in the section on financial responsibility. Proof of financial responsibility should be evaluated based on size of operation with limits increased for large operators to the maximum allowed by the state (\$500,000). Decreases could be awarded for good behavior based on past performance.

Requiring adequate proof of financial responsibility is well within the capability of the industry. Last September, fishermen, environmentalists, and tourism/recreational groups held a marine demonstration in front of Alyeska protesting Amerada Hess charters of Liberian-flagged, Israeli-registered, Italian-crewed tankers, some of which were up to 50% larger than the Exxon Valdez. We demanded a billion dollar bond for these tankers and Amerada Hess posted it. Amerada Hess is only a minor owner (1.5%) of Alyeska: surely the other owners could post similar bonds.

And finally the scope of Sec. 4, which deals with DEC inspections of oil industry operations, needs to be increased by adding this language after (2) on line 16: "(3) examine the structural integrity of terminals, pipelines, and other facilities related to the exploration, production, and transportation of oil."

The fleet carrying North Slope crude accounts for 13% of the U.S. tanker fleet, but this same 13% accounts for 52% of the structural failures in the fleet. Tankers are supposedly inspected by the Coast Guard. The Alyeska facility and Trans-Alaska Pipeline are also supposedly

inspected by federal agencies, but the Alyeska facility has never been inspected in 12 years of operation and recent tests for corrosion in the pipeline have revealed extensive problems in 300 of the 800 miles.

Clearly, there is something very wrong with the federal inspection programs. Until such time as the federal government strengthens these programs and carries out its duties, the ORA strongly supports state (DEC) oversight in all these areas, either directly or as part of a joint state/federal effort. The legislature should provide DEC with the funds to contract expertise to conduct these inspections.

Last in HB567, the ORA recommends the following wording on page 8, line 18, for section (5): "(18) "maximum oil discharge" means the maximum oil discharge that could occur during the lifetime of the vessel or facility.

Very briefly, in HB566, there is confusion within the ranks of the ORA as to the language and intent of the sections dealing with duties of DEC versus DES. However, there is a strong consensus that we want DEC telling DES what to do during an oil or hazardous substance discharge emergency, not vice versa.

Thank you for the opportunity to testify.



Oil Reform Alliance



Governor Steve Cowper
Office of the Governor
Third Floor, State Capitol
Juneau, AK 99811

March 13, 1990

The Oil Reform Alliance is a grassroots coalition among commercial fishermen, environmentalists, and others within and outside Alaska who are dedicated to reforming oil industry practices that impact communities on social, economic, and environmental levels.

The Oil Reform Alliance (ORA) strongly supports the intention of the Governor's oil bill packet (HB565/SB502, HB566/SB503, and HB567/SB504). In the wake of the Exxon Valdez, we find that existing laws are clearly inadequate regarding the State's role in prevention and management of catastrophic oil spills from large facilities and tankers. In addition, we find that there are serious problems with wastes from numerous smaller facilities and operators statewide. We are very pleased with and strongly support the intent of this package to comprehensively address all polluters.

During hearings on this package in Senate Oil & Gas and House Resources, we noticed areas in which arguments for the Administration's position, as presented by DEC, were particularly weak. To augment the passage of this package, both in spirit and in letter, we would like to point out these weak areas so that the DEC could perhaps be better prepared to argue the Administration's position.

HB567/SB504

* Sec. 1

POINT: DEC authority to require and revoke contingency plans.

COUNTER: DEC is currently bottleneck in review process. (BP testified that Prudhoe Bay and Endicott oil spill contingency plans held up by DEC for nearly 2 yrs.) Currently there are over 50 operations without required contingency plans. How does the Dept. plan to address this? By reorganizing? By shifting priorities? By contracting? Present a plan to show how DEC will handle the job created for them in this bill.

POINT: Requiring response to "realistic" maximum oil discharge.

700 H Street, #4 Anchorage, Alaska 99501 • (907) 274-3621

COUNTER: DEC needs better arguments for requiring redundancy of equipment. Point out that industry is "redundant" in other areas of the world and we expect same redundancy (safety) measures in this state. Use specific examples: DEC sent personnel (Dan Lawn) over to Europe to report on exactly this topic and has the information available!

* Sec. 2

POINT: Proof of financial responsibility increases.
COUNTER: Small operators claim that this will put them out of business. Show that insurance cooperatives are possible. Use examples. What are comparable requirements in other states?

* Sec. 3

POINT: Increasing coverage of bill by reducing exemption from 10,000 to 5,000 barrels of oil.
COUNTER: Provide list of facilities that would be included with this change. Offer proof that these facilities should no longer be exempted; i.e., do any of these have a past history of noncompliance?

* Sec. 4

POINT: DEC inspections of tankers.
COUNTER: Real prevention starts with improved tankers: offer arguments that federal inspection program is weak (high percentage of structural failures in fleet carrying North Slope crude; no certified inspectors). DEC does not have expertise to inspect tankers so offer a plan. How does DEC expect to do this? Fund contractors to do job in California or wherever Alaskan tankers unload oil? How would DEC inspections interface with the Coast Guard inspections? What happens if inspections disagree? Does DEC plan to ban structurally unsound tankers from Alaskan trade? Use as example "Rogue's Gallery" from terminal in Sullom Voe, Scotland: is DEC planning something similar?

Enclosed is ORA testimony in House Resources (3/9/90). Please notice that we support additional changes which we believe will further strengthen the original intent of this package. The ORA has assembled documentation to support most of our arguments which we would be more than happy to provide if your staff are interested.

Local phone: 586-2820

Respectfully,

Dr. Riki Ott

Dr. Riki Ott
President



Laurie Ferguson Craig

TESTIMONY

FOR THE SENATE OIL AND GAS SUBCOMMITTEE

March 5, 1990

Thank you for the opportunity to testify. This piece of art was my initial reaction to the oil spill. Completed only a week after the spill, the ugly black hands were still just reaching out for the innocent creatures that would later fill mountains of plastic bags on the beach.

This graphic has joined with other poignant images of Prince William Sound to carry the message that oil and water are a deadly mix. To date, 500 posters, 45,000 postcards and numerous reproductions of this illustration have been seen all over the world. The Alaska Conservation Foundation has used it to raise funds to clean up and rehabilitate the Sound.

I realize that it takes more than ink and outrage to correct the circumstances that led to the wreck of the Exxon Valdez. In pursuit of information, I read the Oil Spill Commission's Executive Summary, a very readable document filled with common sense recommendations. The last sentence of the introduction compelled me to

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follow the legal trail of the report:

" Future vigilance rests in the hands of state and federal leaders, industry and public agency officials, terminal operators, tanker officers and crew, technical advisors, and, perhaps most important of all, citizens exercising a watchdog presence and role."

It was that invitation which prompted me to attend the first Commission hearing before the legislature in January, and to continue to pursue this process as a source of information and a hope for prevention of another environmental disaster.

Some of the testimony offered by the experts alarmed me: the age and condition of the tanker fleet; the Coast Guard's greater concern on a national level about crack cocaine than cracked hulls; the statistical provability of minimizing the effects of a spill like the Exxon Valdez by the requirement of double hulls; and the gross negligence which resulted from complacency.

But the one area that impacted me most strongly was the testimony of Professor Zygmunt Plater whose research team pointed out the amazing weakness of Alaska's legal authority to regulate and protect its own resources. One pivotal lawsuit brought the state to its knees and continues to be an axe waiting to fall again. Many of the preventative measures called for in the commission's report were all in place as part of the original program in the late 1970's, but lack of diligence and dollars dissolved them in the wake of the Chevron, et. al. vs. Hammond case.

Once again legislation is on the table to restore our legal ability to prevent oil-related disasters, respond when they occur, and ensure

The recovery of the natural environment.

In light of the responsibility incumbent upon you, I'd like to share the words of another artist, playwright and president of Czechoslovakia, Vaclav Havel, who delivered them recently to a joint session of the U.S. Congress:

" We are still incapable of understanding that the only genuine backbone of all our actions, if they are to be moral, is responsibility. Responsibility to something higher than my family, my country, my company, my success - responsibility to the order of being where all our actions are indelibly recorded and where and only where they will be properly judged."

I urge you to act decisively and with strength and courage on the legislation before you. Statistics indicate that another major oil spill is a matter not of "if", but "when". Perhaps with these measures in place, I won't have to draw another picture like this for a long, long time.

Thank you.

HB - 565

Specific

comments presented

to H. Resources

on HB - 565

COMMENTS ON SB 502, SB 503, AND SB 504
GOVERNOR COWPER'S OIL & GAS LEGISLATIVE PACKAGE
AND SB 468
PRESENTED TO THE SENATE SPECIAL COMMITTEE ON OIL & GAS

MARCH 5, 1990

MICHAEL S. O'MEARA

P.O. BOX 1125, HOMER, ALASKA 99603

SB 502 CIVIL PENALTIES AND DAMAGE PROVISIONS

Page 2, Sec. 2, Lines 24 & 25

The wording "penalties...may not exceed" should be changed to read, "penalties...shall be set at"
At the very least, if a maximum penalty is to be stated, the a minimum penalty should be stated as well. As written, application of penalties is discretionary.

Page 4, Sec. 3, Line 1

I am pleased to see that the language exempting spills of 18,000 gallons or less has been stricken. Penalties should apply to all spills regardless of size.

Page 7, Sec. 8, Lines 20-25

This seems to relate to the same statutes as HB 409. It might be to incorporate language from that bill here -- especially with respect to administrative penalties.



Alaska State Legislature

Senator Zharoff &
~~Local Senator to the~~
~~House Resources~~
~~Committee~~

Please enter into the record my testimony to the _____ committee name

committee on See below, dated 9 March 90.

SUGGEST: bill/subject

HOUSE BILL NO. 565 - SECTION 1, AS 46.03.758(a)(2)(1),
(C) \$50.00 per gallon of oil that enters an unconfined salt-
water environment . . . <Pg 3, 1>

Thank you for your time.

Signed: William Beeth
Testifier

myself
Representing (Optional)

1516 Lamailov PO Box 1398 KODIAK AK
Address 99615

486-2504 HOME / 486-6760 WORK
Phone No.

BP EXPLORATION (ALASKA), INC.
Testimony Before the House Resources Committee
March 9, 1990

HB 565

House Bill 565 increases the penalties on all oil spills. BP Exploration doesn't handle any refined productions in Alaska, so a good portion of this bill doesn't apply directly to us. BP does believe, however, that these types of penalties would be very damaging to many smaller businesses in Alaska who do distribute refined oil products.

Imposition of the required penalties on crude oil and refined product spills of any size (by deleting the 18,000 gallon minimum) will discourage additional development of marginal oil reserves, result in increased paperwork and discourage the reporting of all spills as we now do.

(X)

TESTIMONY BEFORE THE ALASKA HOUSE
RESOURCES COMMITTEE

HB 565, HB 566 & HB 567

WALTER B. PARKER, CHAIRMAN
ALASKA OIL SPILL COMMISSION

8 MARCH 1990

HB 565

The Commission did not address penalty amounts. The general thrust of the legislation is not directly addressed in any of our recommendations since our emphasis was on system improvement and not on penalties incurred for system violation.

Section 5 (F)

The elimination of all presently utilized means, other than mechanical recovery, could have an inhibiting effect on using best available technology in contingency plans. In particular, we would like to see the use of gelling agents promoted.

Section 6 (B)

Same comment as above.

HOUSE COMMITTEE REPORT

(9)

Date Referred: February 22, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/28/90

JUDICIARY
FINANCE

The RESOURCES Committee considered:

HB 565

HOUSE BILL NO. 565

OIL & OTHER ENVIRONMENTAL LAWS/PENALTIES

"An Act relating to strengthening the civil penalty and damage provisions concerning the discharge of oil and other environmental violations; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CS : HB 565 (RES) the same title
- be replaced with CS : HB 565 (RES) a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) DEC 2/22/90 RDTG 26
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approx. column)

	Do Not Pass	No Rec	Amend
Bill Huds		✓	
Scott May		✓	
W. J. ...	✗		

Chairman's Signature

STEVE COWDER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 21, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting three bills implementing recommendations made by the Alaska Oil Spill Commission.

One bill authorizes the governor to use the oil and hazardous substance release response fund, established under AS 46.08.010, to respond to declared disaster emergencies under AS 26.23.020(c). The bill also repeals the exception in AS 46.04.080(a) that requires the Department of Environmental Conservation (DEC) to perform the duties of the Division of Emergency Services during a catastrophic oil discharge. Finally, the bill creates in statute the State Emergency Response Commission, presently established by an administrative order.

Another bill extensively revises AS 46.03.758 - 46.03.763, which deals with civil penalties for oil spills. In general, the bill increases penalties for spills and eliminates unwarranted exemptions and defenses.

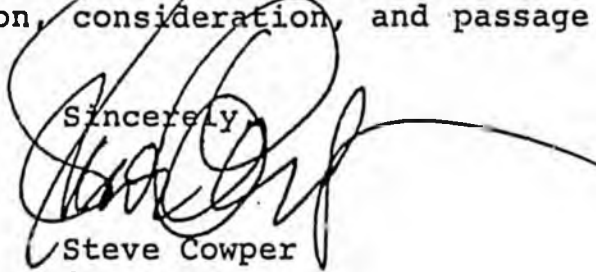
The third bill strengthens DEC's authority to require compliance with oil discharge contingency plans. Of particular significance is the requirement that applicants for contingency plans must maintain sufficient resources to contain and remove, within the shortest possible time, a realistic maximum oil discharge. Next, this bill increases the financial responsibility requirements for offshore oil exploration and production activities, to guarantee that in the event of another spill, significant financial resources will exist to compensate damaged parties, including the state. Finally, this bill authorizes DEC to inspect oil industry facilities and tankers to guarantee compliance with contingency plans and to assure structural integrity of the equipment.

Sectional analyses of each bill, describing the bills in detail, will be provided by my staff.

As you know, the Oil Spill Commission "Executive Summary," issued last month, includes over 50 recommendations. Through this legislation, as well as other bills already under consideration by the legislature (House Bill 409, Senate Bills 359, 421, and 497), most of those recommendations are being addressed. Furthermore, additional legislative proposals based upon these recommendations are still under consideration, and, after review of the full commission report, just released, additional proposals might be forthcoming.

The Oil Spill Commission, after extensive study, has identified several ways for the state to improve its ability to prevent future spills and to better respond if a serious bill occurs again. These bills are critical to prevent another disaster like the Exxon Valdez spill. I therefore urge your serious discussion, consideration, and passage of these measures.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Steve Cowper". The signature is written over the word "Sincerely," and extends to the right with a long horizontal flourish.

Steve Cowper
Governor

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 565 No. 1
PUBLISH DATE: HOUSE 2/22/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Environ Conservation
Title: An Act relating to the strengthening
of DEC's civil penalty and damage provisions. BRU: Environ. Quality
Sponsor: Rules Committee Components: Environ. Quality
Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

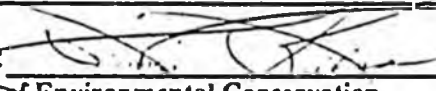
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)
This bill revises the schedule of penalties for the discharge of oil.

Prepared by: David Bruce
Division: Environmental Quality

Phone: 465-2630

Date: 2/12/90

Approved by Commissioner: 
Agency: Department of Environmental Conservation

Date: 2/19/90

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to
strengthening civil penalty...
 Sponsor: Rules Committee
 Requestor: Governor

Agency Affected: Fish and Game
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0					
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REVENUE	0					
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER	0					
TOTAL	0					

POSITIONS:

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS : (Attach a separate page if necessary)

No FY 90 Impact.

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

Approved by Commissioner: *Donald W. Wilby* Date: 2 27 90
 Agency: Fish and Game

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

To: All Teleconference Sites

From: Rep. Menard, Co-chair House Resources
Rep. Davidson, Co-chair House Resources

Attached is the Governor's new proposal regarding financial responsibility requirements in HB 567. The financial responsibility requirements in the original version of HB 567 have been withdrawn.

Both HB 565 and HB 567 are being modified by the House Resources Committee. Tonight we welcome additional assistance and comments on both bills as we continue our efforts to craft legislation that meets the needs of Alaskans and minimize costs for small utilities and fuel distributors.

Governor's Revised Proposal

NON-CRUDE ISSUES ADDRESSED IN HB 565 AND HB 567

<u>ISSUE</u>	<u>EXISTING LAW</u>	<u>ADMINISTRATION PROPOSAL 3/15/90</u>
Penalty Levels	<p>\$10/gallon for anadromous stream or other freshwater environment;</p> <p>\$2.50/gallon for sensitive or confined saltwater areas;</p> <p>\$1/gallon for unconfined saltwater, public land or freshwater without significant aquatic resources.</p> <p>Subject to a schedule that varies for toxicity, degradability and dispersal characteristics, as well as receiving environment.</p>	<p>\$12.50/gallon for any surface or subsurface freshwater environment;</p> <p>\$8/gallon for sensitive or confined saltwater areas;</p> <p>\$6/gallon for unconfined saltwater, public land or subsurface land.</p> <p>Subject to the existing schedule that varies for toxicity, degradability and dispersal characteristics.</p>
Exemptions	Spills of less than 18,000 gallons <u>are not</u> subject to penalties under AS 46.03.758.	Spills of less than 18,000 gallons <u>are</u> subject to penalties under AS 46.03.758.
Cleanup Credit	Allows the court to deduct the amount of oil removed from the environment when calculating penalties, with no regard for the length of time involved in the cleanup operation.	Allows the court to deduct the amount of oil removed from the environment within the first 36 hours of a discharge onto surface water or land when calculating penalties. Does not allow any credit for subsurface spills.
Financial Responsibility	SEE ATTACHED CHART	SEE ATTACHED CHART
Contingency Plans	Not required for facilities with less than 10,000 barrels storage capacity.	Not required for facilities with less than 10,000 barrels storage capacity. The department would be given the authority to survey, inspect, and inventory facilities with a storage capacity between 5,000 and 10,000 barrels. The department will report back to the legislature within a year with recommendations to address oil spill prevention and response for facilities under 10,000 barrels.

TABLE 1

**Oil Contingency Plan Requirements
Financial Responsibility Requirements
Vessel Inspection**

TYPE OF FACILITY	CURRENT FINANCIAL RESPONSIBILITY REQUIREMENTS	SB 504 HB 567	PROPOSED 3/15 REVISION
Crude Oil Terminals			
> 10,000 bbl. 5 - 10,000 bbl.	\$1 million up to \$50 million @ \$10/bbl. capacity None	\$50 million \$50 million	\$50 million \$50 million
Non-Crude Terminals			
> 10,000 bbl.	\$1 million up to \$50 million @ \$10/bbl. capacity	\$50 million	10 to 20,000 bbl. = \$5 million
5 to 10,000 bbl.	None	\$1 million	> 20,000 bbl. = \$10 million None
Offshore exploration and production facilities	\$35 million	\$50 million	\$50 million
Crude Oil Tank Vessels and Barges	TAPS = \$14 million, Non-TAPS = \$20 million. TAPS covered for an additional \$86 million per vessel.	\$500 million	\$500 million
Non-Crude Oil Tank Vessels and Barges	Tank Vessels = \$20 million, Barges = \$1 million	\$20 million	< 5,000 bbl = None 5,000 to 10,000 bbl = \$5 million 10,000 to 50,000 bbl = \$1 million 50,000 to 100,000 bbl = \$10 million 100,000 + bbl = \$20 million

Note: the following notes are not based on a comprehensive review of vessels and facilities; rather, they are examples of how the proposed revisions might affect some operators.

Currently there are 6 Tanker Vessels chartered by Petro-Diamond and Petro-Marine that are under 50,000 bbl. capacity and are required to have \$20 million coverage. Under proposed revisions of 3/15 their Financial Responsibility requirement would drop to \$1 million.

From information provided in contingency plans, all of Yulana Barge Lines barges are under 10,000 bbl., therefore their Financial Responsibility requirement would be cut in half to \$500 thousand.

Crowley has 10 barges listed at over 100,000 bbl., but they are covered by surety bond and not a regular insurance policy.

United Marine Tug and Barge, Inc. has at least 2 barges over 50,000 bbl., so their coverage would increase from \$1 million to \$10 million.

SECTIONAL ANALYSIS

The following is a sectional analysis of the bill that strengthens civil penalty and damage provisions.

Section 1 modifies the legislative findings in the non-crude oil damages and penalties provision (AS 46.03.758(a)) to make the findings consistent with the changes in this bill.

Section 2 increases the maximum per gallon civil penalties for non-crude oil discharges into various receiving environments and authorizes the Department of Environmental Conservation ("DEC") to adopt in regulations a schedule of penalties applicable to each type of receiving environment.

Section 3 provides that for non-crude oil discharges into multiple receiving environments, the penalty value applicable to the most sensitive receiving environment applies unless the defendant establishes the amount of oil which entered each receiving environment.

Section 4 removes the penalty exemption for non-crude oil discharges of less than 18,000 gallons.

Section 5 allows a defendant to deduct the number of gallons of non-crude oil recovered within 36 hours after a non-crude oil spill for penalty calculation purposes.

Section 6 reenacts AS 46.03.758(i) to allow a person who pays a civil penalty under AS 46.03.758 to set off the amount paid against a civil penalty awarded under AS 46.03.760(a). Section 8 also provides that an AS 46.03.758 civil penalty award does not affect DEC's authority to recover damages, restoration expenses, and other costs.

Section 7 amends the crude oil discharge civil penalty provision (AS 46.03.759) to remove the penalty exemption for crude oil discharges of less than 18,000 gallons; increase the AS 46.03.759(c) penalty multiplier from four to five times; allow a person who pays a civil penalty under AS 46.03.759 to set off the amount paid against a civil penalty award under AS 46.03.760(a); and provide that an AS 46.03.759 civil penalty award does not affect DEC's authority to recover damages, restoration expenses, and other costs.

Sections 8 and 9 revise and streamline DEC's major civil penalties and damages statute, AS 46.03.760.

Section 8 raises the minimum civil penalty from \$500 to \$2,500 per day for each violation, and modifies and expands the

factors the court evaluates in determining the proper amount.

Section 9 modifies the AS 46.03.760(e) damages provision to make it consistent with the changes in sec. 8 and 11.

Section 10 expands the state's authority to recover the attorney fees and costs incurred by the state in DEC enforcement cases.

Section 11 repeals the requirement for legislative approval of the regulations adopted by DEC under sec. 2; removes the AS 46.03.758(g) "mitigation defense" which now allows a court to "reduce or totally eliminate" the civil penalty for non-crude oil discharges; repeals the AS 46.03.760(b) restriction that amounts assessed must only be "compensatory and remedial"; repeals AS 46.03.760(c) as redundant because sec. 8 makes timeliness of compliance a factor for the court to weigh under AS 46.03.760(a); and repeals the AS 46.03.760(f) civil penalty provision as redundant because sec. 8 incorporates the penalties under AS 46.03.760(a).

Section 12 acknowledges that sec. 10 has the effect of changing Alaska Rule of Civil Procedure 82.

Section 13 provides that the Act becomes effective immediately.

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting three bills implementing recommendations made by the Alaska Oil Spill Commission.

One bill authorizes the governor to use the oil and hazardous substance release response fund, established under AS 46.08.010, to respond to declared disaster emergencies under AS 26.23.020(c). The bill also repeals the exception in AS 46.04.080(a) that requires the Department of Environmental Conservation (DEC) to perform the duties of the Division of Emergency Services during a catastrophic oil discharge. Finally, the bill creates in statute the State Emergency Response Commission, presently established by an administrative order.

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that in the event of another spill, significant financial resources will exist to compensate damaged parties, including the state. Finally, this bill authorizes DEC to inspect oil industry facilities and tankers to guarantee compliance with contingency plans and to assure structural integrity of the equipment.

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Sincerely,

Steve Cowper

Governor

**Testimony before the Alaska Senate
Special Committee on Oil and Gas
on SB 503 and SB 504**

**Walter B. Parker, Chairman
Alaska Oil Spill Commission**

1 March 1990

SB 503

In general, SB 503 reflects several of the major thrusts of recommendations by the Alaska Oil Spill Commission. Mainly, it brings oil spill response into the state's emergency response network and mandates strong cooperation between those state agencies concerned with emergency response to hazardous substances, including crude oil and refined petroleum products. Most important, it concentrates on establishing immediate response at the local level, something addressed by several of the commission's recommendations, most strongly Recommendations 27 and 49.

Section 1, 2 and 4

Recommendations 52 and 53 address the need for an immediately available oil or hazardous substance response fund. Broadening the use of the 470 fund and providing the governor with the flexibility to use those funds in addressing oil spills and other emergencies is directly consistent with the commission's intent in these recommendations.

Section 3

The problem the commission wrestled with in the relationships between the Department of Environmental Conservation and Division of Emergency Services was ultimately the determination of who would be in charge of a catastrophic spill response and at what level the response authority of DES would be implemented. Our recommendation on the use of the Incident Command System (Recommendation 48) is our major response to this problem. The key element is having an on-scene commander in each emergency response district that has the authority to bring the Incident Command System into operation.

The bill recognizes DES expertise in communications, logistics, equipment procurement, manpower and community liaison. This is supported by our Recommendations 50 and 51. DEC expertise in providing measurement and evaluations of environmental conditions is in the bill, but their role in directing initial response and later cleanup is not absolutely clear. The commission believed that use of the ICS would clarify the difference between oversight roles and management roles in a response mobilization at any level. It also would clarify federal and private participation in response, beyond the responsibilities outlined in the district contingency plan. In the best of worlds, each district will have a contingency plan that is absolutely clear on what role each party will play. We found that the Incident Command System does the best job of this.

Each district may have different structures that reflect the differences in state agency structure, federal agency structure, local government capabilities and private capabilities. We felt that maximizing the use of existing governmental and private capabilities through the ICS would be the most cost-effective and efficient way to achieve an oil spill response system that can meet the target of responding to a worst-case situation within 72 hours.

The commission did not address the formation of the State Emergency Response Commission. The SERC does carry out the intentions of Recommendations 27 and 49 on local involvement and Recommendations 45 and 50 on allocation of state response authority. Most importantly, it provides the structure for developing effective regional response plans. These plans are the most critical element of the entire response structure because it is in the region that the ability to respond quickly and effectively must be lodged.

SB 504

Section 1

Our Recommendation 55 should be considered. We feel that contingency plans should be based on the ability to respond to a "worst-case spill" within 72 hours. The language in the bill of a "realistic maximum" oil discharge and to remove that discharge "within the shortest possible time" does not provide a firm mandate for private contingency plans. It does not do enough to mitigate the risk oil shipment imposes on residents of adjacent coasts. It is not in line with our overall policy Recommendations 1, 2 and 3.

The requirement that contingency plans be properly implemented is a longstanding loophole that needs to be closed. If private plans are not implemented the government will have to take up the slack or we will have regional response plans whose effectiveness is as suspect as those that failed last March 24.

Section 2

The commission did not address in its report any amounts for financial responsibility. We did make the point in Recommendation 21 that the state should require the shipping industry to insure the state and its citizens against risk and this section carries out that idea.

Section 4

Providing DEC with the authority to inspect tankers, terminals, exploration and production facilities is, in many ways, the most important regulatory prevention measure that must be undertaken if the system is to truly improve. We address this in Recommendation 14, with other aspects addressed in Recommendations 11 and 13.

Recommendations not contained in SB 502, SB 503 or SB 504

Recommendation 9—Tank farm capacity at Valdez.

Recommendation 12—A citizens advisory council to oversee the safe transportation of oil, gas and other hazardous substances.

Recommendation 16—State licensing of private personnel involved in oil transportation.

Recommendation 25—Harbor Administration.

Recommendation 47—A system for emergency economic maintenance.

Recommendation 57—In-state research institute.

STATEMENT OF
MIKE WILLIAMS
Vice President for Environmental Planning & Control
Alyeska Pipeline Service Company
to the
Senate Oil and Gas Committee
on
March 1, 1990

Thank you for inviting Alyeska Pipeline Service Company to describe the Tanker Spill Prevention and Response Plan for Prince William Sound. My name is Mike Williams. I am Vice President for Environmental Planning and Control at Alyeska. Shortly after the EXXON VALDEZ spill, I was transferred by my employer, British Petroleum, to lead the team that developed and implemented Alyeska's new Tanker Spill Prevention and Response Plan that I will describe during my testimony.

My career with BP began in 1958 as an apprentice on board tankers. Ultimately, I earned an unlimited master's license. During the construction of the pipeline, I was assigned to the Marine Department of Sohio.

Alyeska wishes to cooperate with the Legislature in its evaluation and, where appropriate, enactment of the Oil Spill Commission recommendations. We urge, in the process of consideration of any new legislation related to oil spills, that you include comprehensive analysis of federal and state laws. That analysis will be essential to effective, fair and responsible legislation. For the most part, we at Alyeska believe that existing laws provide an adequate framework for prevention and management of oil spills.

Alyeska's goal is to determine and meet reasonable expectations for prevention efforts and response capability in Prince William Sound. We feel compelled to remind you that even as Alyeska achieves that goal, you still must resolve difficult issues such as the appropriate role for state government in Prince William Sound spill response and the appropriate blend of federal, state and private efforts in the rest of Alaska. During the next year, enactment and implementation of comprehensive federal legislation will establish major new components of a national prevention and response system. Also, the State's planning and response capability mandated last year will be developed during 1990. All involved should strive through coordination and cooperation to achieve maximum benefit from the private and public funds expended.

The Alaska Oil Spill Commission has made several recommendations that are addressed by bills before this Committee. My testimony will describe the prevention and response planning under way at the Valdez Marine Terminal and in Prince William Sound. I will also briefly comment on SB 503 and SB 504. Alaska should encourage prevention and response capabilities that are compatible with other state and federal efforts, are based on achievable, economically realistic standards, and are unambiguous and easily understood by all parties. We at Alyeska are prepared to work with the State to meet those guidelines.

The Oil Spill Commission's report provides an appropriate starting point for your policy deliberations. Like the Coast Guard

and the General Accounting Office, the Commission concluded that it is impossible, given existing technology, to remove all of a catastrophic spill. In a study for the General Accounting Office, ECO, which also provided technical support for the Oil Spill Commission, concluded that if all of the recovery equipment and manpower assembled in Prince William Sound by August last year had been immediately available to respond to the spill, only 35% to 45% of the oil would have been recovered. Few people urge that thousands of people and hundreds of skimmers should be positioned in Prince William Sound, Cook Inlet, southeast and western Alaska to respond if another catastrophic spill occurs.

Instead, most agree with the Oil Spill Commission's recommendation, that in light of the limited ability to recover spilled oil, our first priority should be prevention.

Prevention is the only way to protect the oceans and coastlines from oil spills. Once it reaches the water, spilled oil is extremely difficult to contain and collect, even under ideal conditions. And the conditions under which oil is spilled are seldom ideal.

General Accounting Office data suggest no more than 10-15 percent of oil lost in a major spill is ever recovered.

AOSC Executive Summary, p. 11

As initial responder on behalf of tankers in Prince William Sound, Alyeska has developed a Tanker Spill Prevention and Response Plan that is being reviewed by the state and federal agencies and the public, in a series of 19 public hearings. Prevention of spills from tankers is the first priority in the

plan. A comprehensive risk assessment for Prince William Sound, by a contractor to Alyeska, identified the risks that should be addressed by prevention strategies. Independently of Alyeska's risk assessment and planning work, the Commission's technical experts assessed the risks of spills in Prince William Sound and recommended appropriate prevention strategies.

As shown in the following table, Alyeska has implemented ECO's prevention strategies that are directly applicable to Alyeska.

Before describing the tanker plan for Prince William Sound, I would like to make a few additional comments on the Commission's report.

While reviewing legislation based on the Commission's recommendations, you must independently evaluate the direct and indirect costs to the state. During earlier testimony, Commissioners estimated that implementation of all of its prevention recommendations for Prince William Sound would cost six cents per barrel. Alyeska's prevention and response costs already exceed that level. Not counting administrative and capital costs, we are now spending around \$44,000,000 per year, which equals over seven cents per barrel at an average throughput of 1.9 million barrels per day. That cost per barrel will rise with inflation and declining throughput. Many believe that other areas cannot support the level of protection now in place for Prince William Sound. Obviously, important public policy issues are involved as the Legislature establishes standards for industry and makes appropria-

tions for oil spill programs. We hope that before creating new programs, you determine whether existing ones, with adequate funding, can be molded to meet new demands.

Alyeska agrees with the Commission's conclusion that regulation of industry should meet the expectations of Alaska citizens. In our opinion, the best way to achieve this goal is through a constructive professional relationship between industry and its regulators. We agree with Commissioner Parker's testimony last night that liability is not an effective enforcement tool. To establish and maintain a constructive relationship between the state and industry, regulations must be rational, scientifically based, and predictable. It is critical that agencies - especially the DEC - are adequately funded. Without adequate funding, the DEC is unable to develop and implement clear and concise regulations. Without adequate funding, the agency cannot employ enough qualified employees to interpret and enforce these regulations across all walks of industry. Without good, clear, concise and scientifically accurate regulations, it is difficult - if not impossible - for industry to operate free of controversy with an agency. With funding, both sides benefit.

On the subject of our relationship with the DEC, Alyeska desires to establish a constructive relationship consistent with the need for safety and our prerogative to make daily operational decisions. The Commission has expressed concern about DEC access to the Valdez Marine Terminal. During discussions in November 1989 with DEC personnel in Valdez, we renewed our commitment to provide

TABLE VI-2. COSTS ASSOCIATED WITH
PRINCE WILLIAM SOUND MARINE TRANSPORTATION SYSTEM
MODIFICATIONS *

<u>SYSTEM MODIFICATION</u>	<u>ALYESKA PREVENTION EFFORTS</u>
GROUP I	GROUP I
1. Mandatory Drug and Alcohol Testing	1. Alcohol testing for Masters and Crew
2. Emergency and High-risk Navigation Area Training	2. Endorse Navigation Committee
3. Port Closure System	3. Endorse Navigation Committee
4. Two Person Watchstanding Requirement	4. Vessel prerogative
5. Improved Loading/Unloading Procedures	5. All vessels boomed at Terminal; booms monitored
6. Local Spill Prevention Involvement	6. Regional Citizens Advisory Committee; Area and Community Response Centers
7. Spill Response Equipment Coordination	7. Incident Command System; predesignated call out, including contracts with fishermen
GROUP II	GROUP II
1. Vessel Monitoring System	1. Support mandatory Vessel Traffic System
2. Traffic Separation Lanes with One-Way Traffic	2. Vessels to stay in lane; reduce speed if encounter ice. One way traffic in Valdez Narrows
3. Designated Anchorage Areas	3. In Spill Prevention and Response Plan
4. Emergency Response Pollution Control Vessels	4. Five ERV's in Valdez. Two vessels escort laden tankers
5. Improved Loading/Unloading Design	5. Will review when full response available
GROUP III	GROUP III
1. Improved Tanker Design	1. Issues for tankers

* Reproduced based on Table VI-2, ECO Report to Alaska Oil Spill Commission

rapid, escorted access to the DEC in Valdez that would not delay or impede legitimate regulatory processes. Recently, I have discussed access with DEC officials and believe we will agree that DEC employees will be allowed to proceed immediately, without escort, to vessels or to an office on the terminal provided by Alyeska. Escorts to other areas from the DEC office on the terminal will be provided within 10 minutes of the request. In turn, we believe that local and state government agents should conduct an exit interview after inspecting a facility and should, as a matter of course, provide written documents generated as a result of a site visit. We anticipate receiving this cooperation from the DEC in the future.

Alyeska also agrees with the Commission recommendation that the company employ an executive whose principal responsibility is to achieve compliance with environmental regulations. That is my job which Alyeska's new President, Jim Hermiller, created last fall. Alyeska has created a new division, which I head, employing approximately 50 people with an additional 100 people employed under contract as crews on the Emergency Response Vessels and as spill response workers. For the past nine months, I have focused much of my energy on directing the development of a new spill prevention and response plan for Prince William Sound. I am also responsible for environmental compliance company-wide and will provide internal review of contingency planning and preparedness and response to spills.

I would like to summarize the prevention and response systems that I mentioned earlier. State and federal law places liability and clean up responsibility for an oil discharge on the spiller - in this case a tanker owner/operator. As operator of the pipeline, Alyeska has no direct affiliation with tanker owners and operators. However, to centralize prevention and initial response efforts on behalf of those tankers, Alyeska has developed the Prince William Sound plan. Once approved, the Tanker Spill Prevention and Response Plan developed by Alyeska will be incorporated into tanker contingency plans that must be approved by the DEC for each vessel in the TAPS trade. Alyeska will contract with the vessels to provide this service. Those contracts and the vessel plans will prescribe an orderly transition of spill response management from Alyeska to the vessel in the event of a large spill. An overview of the plan is submitted for your reference. One copy of the three volume plan is provided to the Committee.

Alyeska agrees with the Commission that recovery of all the oil from a catastrophic spill is impossible and, therefore, prevention is the first priority. Programs to prevent tanker accidents in Prince William Sound include:

1. Tanker crew members returning from shore leave are tested for alcohol if their conduct or breath odors indicate consumption.
2. Tanker masters are given a breathalyzer test within one hour prior to sailing.

3. Drug testing will be implemented once federal regulations are in place.
4. Alyeska installed new communications sites in Prince William Sound in order to maintain radio contact with tankers in the Sound.
5. Each laden tanker is escorted in Prince William Sound by two vessels that have the capability to tow a fully loaded tanker. This system proved its effectiveness when the vessel Atiqun Pass lost power in the vicinity of Bligh Reef and was taken under tow by its escorts.
6. Alyeska supports Coast Guard operation of an appropriate Vessel Traffic System in Prince William Sound.
7. Through its escort system, Alyeska has obtained tanker agreement to abide by traffic rules in Prince William Sound, including a 10 knot speed limit, no deviation from traffic lanes, and a decrease in speed when ice is encountered.
8. Alyeska will not provide escort services if the weather in the Sound would appear to create unacceptable safety hazards for personnel on the ERV. Through this approach, Alyeska is in effect saying tankers will not sail in bad weather. We are building an experience base to determine the safe operating conditions. Presently, if bad weather

develops during the transit of the Sound, the Coast Guard and the masters decide how to proceed.

9. We are working with the Coast Guard to develop rules governing tanker operations in the port area during adverse weather conditions.

Prevention strategies must be backed up by appropriate oil spill response strategies. Alyeska's strategies are based on the assumptions that oil will spread rapidly once it is on water, and that weathering and changing environmental factors make recovery more difficult as time passes. If a spill occurs, our initial strategy will be to control the oil as close to the source as practical. Then we will endeavor to remove the oil quickly, prior to weathering or loss of control due to weather or sea conditions.

To enable these two fundamental strategies, booming and skimming equipment is kept in proximity to laden tankers traveling through the Sound. Under the tanker plan, response capability includes:

1. Rapid response with booms and sea skimmers from at least one of the escort vessels.
2. Additional large scale skimming and lightering capability from vessels anchored in Prince William Sound midway along the tanker route.
3. Additional ocean skimming equipment and response material in Valdez.

4. Pre-positioned equipment and pre-trained spill responders in communities and hatcheries.
5. Larger stockpiles of dispersants and Alaska-based application equipment.
6. Larger stockpiles of fire boom and igniters for in situ burning.

Alyeska's response to a tanker spill will utilize the Incident Command System (ICS), recommended to us by Prince William Sound communities and wholeheartedly endorsed by the Oil Spill Commission. This ICS will be tailored to facilitate coordination between industry and government response efforts and to structure transition of response management from Alyeska to the spiller. Alyeska held its first major desk top drill of the Incident Command System in Valdez the last week of January 1990. Alyeska, shippers and government personnel, along with representatives of potentially impacted communities participated in, and critiqued, the drill. It may be of interest for you to know that BP used the ICS system developed by Alyeska in its successful response to the Huntington Beach spill.

It is essential to note that despite our desire and commitment to prevent an oil spill, or to clean up as much oil as possible after a spill, there can be no guarantee that all accidents will be prevented or all spilled oil recovered. Nonetheless, we believe the prevention and response systems now in place are second to none.

Alyeska is funding and working with an independent citizens advisory committee that represents a cross-section of the concerned communities, to evaluate these new measures and assist our training and diligence. Our goal for Alyeska is to meet our responsibility to the people of Alaska while operating the pipeline efficiently. We are receptive to your suggestions, on behalf of your constituents.

I would like to conclude with a few general comments on SB 503 and SB 504.

SB 503. At the urging of Prince William Sound communities, and with the support of the Commission, Alyeska has developed an Incident Command System to organize its response to tanker spills. The system will be used to manage industry response internally, coordinate it with federal and state response to a spill and establish the capability for rapid, military style decision making. However the state allocates response capability, state responders should be at least as well trained as their industry and federal counterparts and should be prepared to make decisions as rapidly as necessary. This may require making decisions based on limited information or based on tradeoffs that seem appropriate at the time. State and regional plans should be designed to effectively integrate the state response with other efforts. Industry should be encouraged to participate in all of the state's response planning and on commissions that oversee the government effort.

SB 504. Alyeska's primary concern with this bill is what response capability will be required. Last night, Walt Parker, Chairman of the Oil Spill Commission, reiterated that complete removal of a catastrophic spill is an unachievable goal with existing technology. As a result, you must establish a policy that will create achievable standards applicable throughout Alaska. Alaska law should encourage and nurture prevention. After prevention, we would suggest that on hand response capability focus on the most likely spills. In addition, in Prince William Sound, we are preparing for another catastrophic event of 250,000 barrels. Because of numerous variables, neither Alyeska nor the tankers can guarantee removal of all the oil spilled. With the civil and criminal penalties in place, no responsible business would guarantee recovery of a large spill. If legislation requires unattainable performance guarantees, our operation would end and the state would be presented with the difficult goal of meeting its energy needs when businesses are not capable of providing guarantees for movement of refined and crude petroleum.

Rather than seeking unachievable guarantees for worst case spills, the state should require transporters to have realistic crisis management plans that detail equipment and manpower mobilization for response in the event of a worst case spill. Rather than requiring a replication of these large scale mobilization plans for each facility and vessel covered by this legislation, the state's master plan should provide a system to be utilized by all in the state. This could be achieved by a coopera-

tive planning effort between transporters and the state. The final crisis management plan could be incorporated into each individual plan.

After we hear more about this legislation from the administration, we would appreciate the opportunity to comment further on specific issues that are of concern.

Thank you for the opportunity to testify this evening.

BP EXPLORATION (ALASKA), INC.
Testimony Before the House Resources Committee
March 9, 1990

Good afternoon, my name is John Ringstad. I am representing BP Exploration (Alaska). Thank you for giving BP the opportunity to comment on House Bills 565, 566 and 567. While most of BP's comments will be directed towards this legislation, it is important to understand that oil spill legislation combined with other state and federal actions, will implement Alaska's total oil spill response program. To accurately judge any piece of legislation, the entire program must be viewed as a whole. Therefore, my comments also address the general subject of laws affecting oil spill response.

HB 565

House Bill 565 increases the penalties on all oil spills. BP Exploration doesn't handle any refined productions in Alaska, so a good portion of this bill doesn't apply directly to us. BP does believe, however, that these types of penalties would be very damaging to many smaller businesses in Alaska who do distribute refined oil products.

Imposition of the required penalties on crude oil and refined product spills of any size (by deleting the 18,000 gallon minimum) will discourage additional development of marginal oil reserves, result in increased paperwork and discourage the reporting of all spills as we now do.

HB 566

Portions of House 566 attempt to implement recommendations made by the Alaska Oil Spill Commission. BP supports the Oil Spill Commission's recommendation that the Division of Emergency Services be given primary responsibility to respond to an oil spill. The Division of Emergency Services, as part of the Department of Military and Veteran's Affairs, uses a military command structure and has experience in dealing with complicated logistics and supply problems. This type of experience and operational command is exactly what is needed in an oil spill response. Experience plus a clear and effective chain of command will promote prompt decisions and a rapid response to a spill.

While the Department of Environmental Conservation has scientific and technical expertise, it is not as well equipped as the Division of Emergency Services to deal with the logistics of responding to a spill. Consequently their services should be used to provide the Division of Emergency Services with scientific and technical direction, in coordination with the applicable facility, regional or state oil spill plan as ultimately developed by the DEC. As the Oil Spill Commission recommended, the Division of Emergency Services should be the lead State Agency for oil spill response.

House Bill 567

House Bill 567 seeks to strengthen oil spill contingency requirements, increase financial responsibility requirements, and give the Department of Environmental Conservation the authority to inspect

the structural integrity of tank vessels and oil barges. Viewed in the abstract, these goals are reasonable. However, when the bill is examined section by section, it becomes increasingly apparent that these new provisions are unreasonable as well as impractical.

1. Delays in Reviewing Oil Spill Contingency Plans. In the past, the DEC has not been able to review or approve oil spill contingency plans in a timely manner. For example, since January 1988, BP has had its Prudhoe Bay and Endicott oil spill contingency plans pending before the DEC. If HB 567 was enacted tomorrow, both fields would be required to cease operations because the spill contingency plans had not been approved. While the extensive administrative discretion incorporated in HB 567 might permit waivers to be granted by the DEC, essentially HB 567 relinquishes all decisions about the operation of oil terminal facilities and tanker vessels or oil barges to the DEC. BP believes that the DEC is not the appropriate agency to exercise such discretion. Further, any legislation which links continued operation of a facility with approval of the oil spill contingency plan should also contain provisions which force approval of submitted plans within a definite time, and which outlines the contents of an acceptable plan.

2. The Cleanup Standard. Subsection (f) of Section .030 requires the permittee to maintain "in its area of operation . . . sufficient oil discharge containment, storage, transfer, and

removal equipment, manpower and resources to rapidly contain a realistic maximum oil discharge and remove that discharge within the shortest possible time." A maximum oil discharge is further defined as the DEC's estimate of the maximum and most damaging oil discharge that could occur during the life of a facility. The magnitude of oil produced from North Slope fields and the immense volume of oil transported through TAPS make literal application of this provision impossible. Even though significant changes have occurred in cleanup capability at the Valdez terminal, the concept of maintaining equipment and manpower equal to what was required during the Exxon Valdez disaster across the entire North Slope and along the entire length of the pipeline is simply unworkable.

3. Financial Responsibility. While it is desirable to require proof of financial responsibility for operators of facilities subject to this legislation, the increase in limits and the use of ambiguous language in the legislation combine to make it difficult, if not impossible, to implement the provisions of the bill. For example, the legislation requires that the limits be on a "per incident" basis but the meaning of this phrase is not defined in the bill. The Committee should also be aware that the continued operation of the facilities covered by the legislation is conditioned upon obtaining proof of financial responsibility. Consequently, the feasibility of insurance should be understood before a provision of this nature is adopted.

4. Inspection of Tanker Vessels and Oil Barges. The U.S. Coast Guard currently inspect tanker vessels and oil barges; this legislation would establish a second regulatory regime requiring inspection by the DEC, an agency with no previous experience in this area. Inspection of tanker vessels and oil barges is a specialized, complicated and sometimes dangerous process requiring entry into the compartments where oil is stored. The legislation provides no guidelines for the methods or frequency of inspections to be provided by DEC. Further, there is no evidence of appropriate fiscal or manpower resources within DEC to implement such a program. Rather than renewed testing of the limits of Alaska's jurisdiction in this area, a more constructive approach would be to require close cooperation between the Coast Guard and the DEC concerning the approval of tanker vessels.

In closing, BP hopes that this committee view the entire oil spill legislative and regulatory program before enacting specific pieces of legislation. BP will continue to help and assist in this process.

COMMENTS ON SB 502, SB 503, AND SB 504
GOVERNOR COWPER'S OIL & GAS LEGISLATIVE PACKAGE
AND ~~SB 468~~
PRESENTED TO THE SENATE SPECIAL COMMITTEE ON OIL & GAS

MARCH 5, 1990

MICHAEL S. O'MEARA

P.O. BOX 1125, HOMER, ALASKA 99603

I was very pleased to see the Governor's oil and gas legislative package introduced. It is disappointing, however, that prior to introduction he chose to present the bills to industry alone for critique. This bodes ill for the greater public oversight and participation recommended by the Alaska Oil Spill Commission. Happily, you have taken a step in the right direction by scheduling these teleconferences at a time convenient for the working public. Let me commend you and thank you for the opportunity to express my views.

In a recent presentation to the Homer Chamber of Commerce, Exxon's Don Carpenter explained that it was company policy to comply with the "letter of the law", not the "spirit of the law." High officials from British Petroleum and other corporations have reflected the same commitment on a number of occasions.

If nothing else does, this should bring home the need to reform that body of law governing oil industry operations in Alaska. Some of the legislative reforms which I feel should be enacted are touched upon in the Governor's bills.

1. Increase, broaden, and clarify civil and criminal penalties for parties responsible for chronic and catastrophic spills of petroleum and other hazardous substances.
2. Require effective, coordinated response planning for both industry and government.
3. Require full financial responsibility for operators of oil & gas facilities and vessels.
4. Strengthen and clarify the authority of regulatory agencies to inspect oil & gas facilities and vessels.
5. Improve the ability of regulatory agencies to assure compliance with health, safety, and environmental regulations and lease or permit stipulations.
6. Provide adequate funding for more effective spill prevention and response capabilities.

To the extent that these bills would help realize these reforms, I support them. In reading over them it became obvious that in a number of ways they fall short of doing so, and of course, there are important areas of concern beyond their scope which must be addressed as well. For now I will confine my comments to suggestions regarding the reforms enumerated.

There are a number of important omissions in the Governor's package. At least twelve of the Alaska Oil Spill Commission's recommendations have not been addressed -- as follows:

- 1) Seven day tank farm capacity (PG. 18)
- 2) Establish a harbor administration office (PG. 23)
- 3) Establish state (PG. 21) and Regional advisory councils (PG. 29) and they should represent local governments (PG. 29)
- 4) Licensing of all transportation safety personnel (PG. 24)
- 5) Compensation for persons impacted by oil spill who are not protected by unemployment insurance (PG. 44)
- 6) Regional and State oversight council (PG. 21)
- 7) Government space at Alyeska or other major terminals (PG. 24)
- 8) Task force on the environmental safety of pipeline (PG. 27)
- 9) Interstate compact (PG. 25)
- 10) Provision for citizen lawsuits (PG. 23)
- 11) Quick response (PG. 44)
- 12) Plans to cover worst-case scenarios (PG. 52)

-- page 4, O'MEARA --

Another important area that has not been considered in the present bills is the matter of criminal penalties. The State House has done so with HB 315 and HB 316, and ^{it} is my hope that the Senate will be supportive of this issue.

A major flaw in the liability legislation passed last spring was the exemption of refined products. As far as I can tell, the Governor's bills do not correct this error. It seems vital to me that all spill related law include both crude oil and refined product.

Now to specific bills (2/21/90 -- go00510s, go00520s, go00530s)

SB 502 CIVIL PENALTIES AND DAMAGE PROVISIONS

Page 2, Sec. 2, Lines 24 & 25

The wording "penalties...may not exceed" should be changed to read, "penalties...shall be set at"
At the very least, if a maximum penalty is to be stated, then a minimum penalty should be stated as well. As written, application of penalties is discretionary.

Page 4, Sec. 3, Line 1

I am pleased to see that the language exempting spills of 18,000 gallons or less has been stricken. Penalties should apply to all spills regardless of size.

Page 7, Sec. 8, Lines 20-25

This seems to relate to the same statutes as HB 409. It might be to incorporate language from that bill here -- especially with respect to administrative penalties.

-- page 5, O'MEAPA --

SB 503 AUTHORIZING USE OF HAZARDOUS SUBSTANCE RELEASE RESPONSE
FUND/ROLE OF ADES/ESTABLISHING EMERGENCY RESPONSE
COMMISSION

The first thing that this bill should do is increase the size of the response fund to a minimum of \$1 billion.

This bill should incorporate language from HB 421, broadening the uses for the fund to cover many of the costs associated with prevention and response preparedness.

Page 1, Sec. 2, Lines 22-25

This language should be clarified to assure that the fund can be used only for prevention of and response to oil and hazardous substance disasters.

Page 2, Sec. 5, Lines 18, 19, 22, & 23

It is unclear exactly what the role and authority of the Alaska Division of Emergency Services is with respect to the A.D.E.C. and other agencies. This needs to be made clear.

Page 2, Sec. 6, Lines 26-28 and on...

Again, this is all very unclear. We need to have a clear understanding of the relative authority, responsibility, and working structure involving:

1. The Alaska Div. of Emergency Services
2. The Alaska State Emergency Response Commission
3. The A.D.E.C. Oil Spill Response Office, its response corps and depots
4. THE DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

We need to know who is in charge. A single administrative presence with clear authority to direct all response activity is vital. Experience shows that we cannot do this by a committee of peers.

Page 3, Sec. 6, Lines 16-21 and Page 5, Sec. 6, Lines 8-11

Do the "emergency planning districts" correspond to the areas covered by the "regional contingency plans"? Will the commission take over direction of contingency plan and response office development started by A.D.E.C.? This is very confusing and we really need to get it worked out before we have to deal with another emergency.

-- page 6, O'MEARA --

HB 504 CONTINGENCY PLAN REQUIREMENTS/FINANCIAL RESPONSIBILITY/
INSPECTION AUTHORITY

Page 1, Sec. 1, Lines 13, 20, and 23

The bill requires a contingency plan for operation of oil terminals, oil platforms, and tank vessels or barges. I would suggest that it should also require such a plan for operation of refineries, pipelines, and onshore facilities.

Page 2, Sec. 1, Lines 11-16

There should be a provision for public as well as agency oversight of contingency plan approval or modification. Citizen oversight and advisory councils as suggested on pages 21 and 29 of the Alaska Oil Spill Commission's executive summary could fulfill that role.

Page 2, Sec. 1, Line 22 and Page 3, Line 3

Requiring response to a spill in the "shortest possible time" is a fine idea, but I think we need to have some clarification as to what that means. It would be helpful if we could tie it down a bit more.

Page 5, Sec. 2, Lines 20 & 21

Given the great costs associated with oil spills, it would seem that demonstration of financial responsibility greater than \$500 million is called for. I would suggest raising the minimum to \$1 billion for tank vessels and barges.

Page 6, Sec. 2, Lines 15-17

There are only two ways to be sure of actual financial responsibility -- through bona fide insurance or by posting bond. These should be the only acceptable proofs of financial responsibility. I suggest all other so-called proofs be deleted from this bill.

Page 8, Sec. 4, Line 9

Clarification of rights of access for regulating agencies is very important and I am pleased to see this language. It does seem related to language in HB 409, and I would suggest adding the more comprehensive provisions from that bill here. I would also repeat my previous suggestion that provisions of this bill apply to refineries, pipelines, and all onshore facilities as well as those already cited in the bill.

PLEASE — NO LIMITS ON "REALISTIC MAXIMUM OIL DISCHARGE"
OIL IS OIL! WE MUST BE PROTECTED NO MATTER WHO IS
INVOLVED. COST SHOULD NOT BE A FACTOR.

-- page 7, O'MEARA --

That concludes my remarks on these bills for now. Thank you again for your effort in bringing them before the public. I would appreciate being kept apprised of further work on these bills as well as introduction of other legislation dealing with oil and gas reform.

P.S.

I JUST GOT A COPY OF THIS BILL, SOOOO...

SB 468 DUTIES OF —
DEPT. OF MILITARY AND VETERANS AFFAIRS
DEPT. OF ENVIRONMENTAL CONSERVATION
IN RELATION TO OIL, ETC.

IT APPEARS THAT THIS BILL IS AN ATTEMPT TO ORGANIZE A VERY CONFUSING SITUATION
PAGE 1, SECTION 1, LINES 13-17 I AM IN FAVOR OF THAT.

THIS IS CONFUSING. IT SAYS THAT ~~DMVA~~
ADES SHALL ESTABLISH THE OIL AND HAZARDOUS
RESPONSE OFFICE — LAST YEAR SB 264 WAS
PASSED CHARGING ADEC TO DO THAT. SB 503
SEEMS TO CHARGE ADEC TO DO THAT ALSO, THROUGH
FORMATION OF THE ALASKA STATE EMERGENCY RESPONSE
COMMISSION. WHO IS IT? WHO IS IN CHARGE. SEE
MY COMMENTS ON SB 503.

PAGE 2, SECTION 3, LINES 11-17

IT SEEMS HERE THAT THE DIVISION OF
EMERGENCY SERVICES IS THE LEAD AGENCY. IS THAT
CORRECT? WHO IS THE ADMINISTRATOR WITH
ULTIMATE AUTHORITY TO DIRECT COORDINATED SPILL RESPONSE?

PAGE 3, SECTION 5, LINES 21 AND 26-27

- GOOD THAT PLANS WILL BE SUBMITTED FOR PUBLIC REVIEW.
- GOOD THAT UNANNOUNCED DRILLS WILL BE REQUIRED

PAGE 4, SECTION 7, LINES 10-27

- GOOD THAT YOU WISH TO EXPAND USE OF FUND
THIS IS SIMILAR TO LANGUAGE IN SB 503 AND
HB 421 — THESE BILLS SHOULD BE COMBINED.
SEE MY COMMENTS ON SB 503.

I WOULD SUGGEST THAT THE FUND MIGHT ALSO
BE USED TO FUND A STAFF OF DEDICATED MONITORING

4 AND
PAGES 5, SECTION, 8

Page 8, ²0:00 mears

THIS SEEMS TO FINE TUNE PROVISIONS IN LAST YEAR'S
SB 264. IS THAT TRUE?



Oil Reform Alliance



HOUSE JUDICIARY COMMITTEE

HB565

April 5, 1990

My name is Riki Ott. I am a commercial fisherman from Cordova. My training is in marine toxicology. I have a masters degree in oil pollution and a doctorate in sediment pollution. I am testifying as President of the Oil Reform Alliance.

The Oil Reform Alliance is a grassroots coalition of fishermen, environmentalists, tourism and business people - citizens - who combined efforts after the Exxon Valdez spill to work on reforming both state and federal policies on oil.

The Oil Reform Alliance supports HB565 with amendments.

Prevention of future oil spills starts with attitude changes and attitudes are influenced by penalties. The penalty structure should strike a balance between being too low, so as not to deter potential polluters, and being too high, so as to impair ability to operate.

It is clear from the compliance records that Alaskan laws are far too lenient: the penalty structure is not deterring polluters.

A report entitled, "An Environmental Compliance Audit of the Oil and Gas Industry Kenai, Alaska," concludes that violations of pollution control laws [by the Nikiski petrochemical industry] are a frequent occurrence. Some industries have chosen to simply ignore existing laws, others violate them on almost a daily basis."

Further, "laws with sole federal jurisdiction have the best compliance record. Federal laws the state is authorized to enforce have a poor compliance record. [While] State laws without federal jurisdiction are almost without compliance or enforcement."

This study was funded by the Alaska Conservation Foundation and is the first such study to comprehensively evaluate the pollution discharges, record of violations, and

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enforcement record for the Nikiski petrochemical industry, an industry which has been operating for over thirty years.

Lack of compliance with state environmental laws has lead to unacceptably high public risk in the Fairbanks area from extensive contamination of groundwater, including drinking water, with fuel. This report entitled, "A Citizen's Guide to Hazardous and Toxic Waste Sites of Fairbanks, Alaska," shows that 25 of the 33 study sites involved some form of petrochemical pollution.

While these two studies were funded by citizen advocacy groups, I also have the compliance chronology of both the MAPCO and Tesoro oil refineries, according to EPA and DEC records. The chronology partially elucidates why we have chronic petroleum pollution in the Fairbanks and Kenai areas.

After the Arthur Kill fuel oil spill of 567,000 gal, the governors of NY and NJ stated: "The oil industry is NOT doing enough. We need greater public scrutiny of current industry practices. Industry explanations for these spills are no longer sufficient."

But industry explanations for spills are all that we Alaskans are going to get until we enact stiff penalties to provide a strong incentive for safer handling of these hazardous substances.

The civil penalties for non-crude oil as amended by the Administration do NOT go far enough towards providing strong incentives. (Here, I'm on page 2, lines 25-29, and page 3, lines 1-3.) I also have a chart attached to my testimony which details that which I'm about to explain.

The penalties in the bill before you establishes fines of \$12.50/gal of oil discharged in a freshwater environment, \$8/gal of oil discharged in a confined marine environment, and \$6/gal of oil discharged in an unconfined marine environment. For the sake of the following discussion, let's refer to these penalties as \$12.50-\$8-\$6. Now stick with me.

The current penalties, as set in 1978, are \$10-\$2.50-^{and} \$1. There was no mechanism established in statute then to inflation-proof these penalties. Should there have been such a mechanism in place, the 1978 penalties would be equal to \$20-\$5-\$2, based on the national consumer price index.

The amended penalties of \$12.50-\$8-\$6 do not even keep pace with inflation, for fines in freshwater environments, and are just barely better than inflation-proofed rates for fines in marine environments. These penalties are not the

"page 3

extensive revisions and strong incentives for safe handling of oil as originally proposed by the Administration.

The Cowper Administration originally proposed penalties of \$50-\$50-\$25 per gallon of oil spilled into the different receiving environments. This is very similar, in intent and magnitude, to the penalties proposed in 1977 by the Hammond Administration of \$50-\$25-\$10.

The legislative history of how we arrived at the current penalty structure of \$10-\$2.50-\$1 from the Hammond Administration's original proposal is very well documented in a final report dated January, 1989, prepared for the Institute of Marine Studies, University of Washington, and entitled, "Oil Spill Liability and Compensation: A Review and Evaluation of Alaska's Civil Penalty Scheme."

The historic perspective reveals that the Administration and legislature, quite frankly, succumbed to the arguments of industry lobbyists. And now history is in danger of being repeated. The Administration has already buckled to industry pressure.

We propose that committee members adopt the civil penalties originally proposed by the Hammond Administration by replacing on page 2, line 25, \$12.50 with \$50, on line 28, \$9.00 with \$25.00, and on page 3, line 1, \$6.00 with \$10.00.

Further, we propose that the Hammond Administration proposed penalty structure for noncrude oil is then adopted for crude oil by replacing the language on page 6, lines 1-6, with the amended language on page 2, lines 25-29, and page 3, lines 1-3.

We support price indexing these civil penalties as provided in HB565.

We ask committee members to not follow the lead of the Administration. Don't buckle to industry pressure as the Administration did. Support the ideals originally set forth by two different administrations over a span of 13 years. Set higher civil penalties and chart this state on a new course of meaningful incentives for safer handling of oil.

Thank you for the opportunity to testify.

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COMPARISON OF
CIVIL PENALTY STRUCTURES
FOR NONCRUDE OIL

<u>Rec'ing Environ.</u>	<u>Current Law</u>	<u>1977-1990 with CPI</u>	<u>1977 Hammond</u>	<u>Amended Cowper</u>	<u>Original Cowper</u>
FRESH	\$10	\$20	\$50	\$12.50	\$50
MARINE confined	2.50	5	25	8	50
MARINE unconfined	1	2	10	6	25

CPI: Consumer Price Index

NOTE: The Oil Reform Alliance recommends adopting the civil penalties originally proposed by the Hammond Administration in 1977 (1977 Hammond, above) for both crude and noncrude oil.

HB565 PROPOSED AMENDMENTS

April 5, 1990

Amendment #1

Page 5, line 28, delete [UP TO A MAXIMUM OF \$500,000,000].

Justification: legislature found that "substantial civil penalties should be imposed for the discharge of oil in order to provide a meaningful incentive for the safe handling of oil and to insure that the public does not bear substantial losses from oil pollution" as per language in Sec. 1 pages 1-2, lines 28-2. Unlimited liability provides such an incentive.

Amendment #2

Page 6, lines 8-9, delete: "[SUBJECT TO THE \$500,000,000 MAXIMUM SET UNDER (a) OF THIS SECTION]"

Justification: same as for #1 above.

Amendment #3

Page 2, line 25, replace "\$12.50" with "\$50.00".

Page 2, line 28, replace "\$8.00" with "25.00".

Page 3, line 1, replace "\$2.00" with "10.00".

Justification:

See #1 above, and these were penalties originally proposed by Hammond Administration in 1977 and are very similar in intent and magnitude to original proposal of Cowper Administration. Historic perspective reveals that Hammond Administration and legislation succumbed to arguments of industry lobbyists. History is in danger of being repeated. We need meaningful incentives for safer handling of oil.

Amendment #4

Page 6, lines 1-6, delete entirely and replace with language identical to that on page 2, lines 25-29, and page 3, lines 1-3 as amended above:

ORA

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"(A) \$50 per gallon of oil that enters an anadromous stream or other freshwater environment with significant aquatic resources;

(B) \$25 per gallon of oil that enters an estuarine, intertidal, or confined saltwater environment;

(C) \$10 per gallon of oil that enters an unconfined saltwater environment, public land, or a freshwater environment without significant aquatic resources."

Justification: See #1 and #3 above. Also, raising the penalties for illegal discharges of crude oil to equal that of products oil eliminates the justifiable arguments of operators with refined products that this bill makes it more expensive for them to spill their product.

Amendment #5

Page 2, lines 24 & 25, amend to read: "(1) Subject to (2) of this subsection, the penalties for the following categories of receiving environments may not exceed, nor be less than 75% of:"

Justification: this ensures that penalties will be substantial, yet gives DEC the ability to apply its penalty matrix with some flexibility.

#B
565

GRUENBERG

Prepared for

The Oil Spill Damage Assessment Study
Institute for Marine Studies
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Final Report

**Oil Spill Liability and Compensation:
A Review and Evaluation of Alaska's
Civil Penalty Scheme**

by Wendy J. Graham

January, 1989

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INTRODUCTION

Annual estimates of the amount of oil discharged into the seas, either deliberately or accidentally, by both ships and offshore installations, range from one to two million tons per year.¹ Operational discharges by vessels, including deballasting, tank washings, and bilge pumping account for approximately 80% of this total.² Conversely, accidental discharges from ships and offshore installations account for only about 15% and 5% respectively.³ While these amounts tend to belie the popular belief that ships (most specifically tankers) and/or offshore installations account for the majority of oil discharged into the seas, these accidental spills often release large quantities of oil at once, frequently taking place in or drifting into the most sensitive of marine environments.

Liability for the unlawful discharge of oil into public waters and the public's right to be compensated for the resulting environmental and natural resources damage has been addressed in statute at both the federal and state levels.⁴ Typically these statutes rest on the premise that compensable environmental and natural resource damage can in fact be established through a damage assessment process, with the monetary value of the loss being determined through the use of various economic valuation techniques.⁵ The responsible parties are then held strictly liable to an unlimited maximum amount or to some stated maximum amount for the damage as determined through these procedures.⁶

An exception to this more traditional approach can be found in the oil spill liability and compensation scheme presently in place in the State of Alaska. Statutes holding responsible parties strictly liable for environmental and natural resource damages as determined through a damage assessment process remain on the books.⁷ However, Alaska rarely attempts to establish actual damages or to pursue compensation for them through a damage assessment process. Instead, while maintaining the strict liability component, Alaska pursues compensation for all natural resource and environmental damage through civil penalties which are assessed on each

1. David W. Abraham, The Law and Practice Relating to Oil Pollution From Ships, Butterworth & Co. Ltd., 1978.

2. *Id.* at p. 4.

3. *Id.* at p. 4.

4. See, for example, Federal Water Pollution Control Act Section 1321(f), 33 USC Section 1251 et. seq.; Outer Continental Shelf Lands Act Amendments of 1978 Sections 303, 304, 43 USC Section 1301 et. seq.; Deep Water Port Act of 1974, 33 USC Section 1501 et. seq.; Florida Statutes Section 403.165; Washington Revised Code Sections 90.48.142, 90.48.144, 90.48.120, 90.48.134; California Navigational Code Section 291.

5. For example, recreational value, willingness to pay, and market valuation techniques. See Yang, Edward J., Dower, Roger C., Menefee, Marc; "The Use of Economic Analysis in Valuing Natural Resource Damages," Environmental Law Institute, Washington DC, June, 1984.

6. For example, Washington State has no ceiling on liability, while the Federal Water Pollution Control Act sets the maximum liability for damages for an inland barge at \$125 per gross ton or \$125,000, whichever is greater; for other vessels, \$150 per gross ton (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater; and for on and offshore facilities, \$50,000,000. 33 USC 1321(f).

7. ALASKA Statutes 46.03.780 Liability for Remediation, and 46.03.822 Strict Liability for the Discharge of Hazardous Substances.

gallon of oil spilled.⁸ The amount of the fine varies depending upon the type of oil spilled and the sensitivity of the receiving environment.⁹

The premises upon which this civil penalty system is based, as well as its intent, differ to some extent from the more traditional damage assessment approach. Yet this method does provide a viable alternative response to the issues of liability and public compensation in relation to oil pollution damage, and as such it is worthy of consideration. It is the intent of this paper to examine 'The Alaska Method' in some detail in an effort to determine its effectiveness as a response to these issues. In Chapter 1 I will first review the oil spill liability and compensation scheme that Alaska had in place prior to the implementation of the civil penalty approach. I will then discuss what led to the enactment of the civil penalty statute. In Chapter 2 I will examine the civil penalty statute and an effort will be made to delineate the intent or goals of this relatively innovative approach. In Chapter 3 I will examine the implementation of this system and an attempt will be made to establish how successfully the intent or goals of the law have been met in practice. It is concluded that several features of this civil penalty statute weaken its effectiveness as a response to the oil spill liability and compensation issues. Chapter 4 will then suggest how Alaska's oil spill liability and compensation scheme in general, and the civil penalty statute in particular, might be modified to more effectively address these issues.

8. Alaska Statutes 46.03.758(b).

9. Alaska Statutes 46.03.758(d).

TABLE 1: PERCENTAGE OF THE BASE PENALTY USED IN CALCULATING
THE PER GALLON PENALTY

<u>OIL TYPE</u>	<u>TOX</u> ¹	<u>DEG</u> ²	<u>DISP</u> ³	<u>%W/O</u> ⁴	<u>%AR</u> ⁵	<u>%W</u> ⁶
#1,2 & Arctic diesel fuel & heating oil	1.0	0.25	0.15	46.6	15 ⁷	31.9
Jet aviation fuels A & B	1.0	0.25	0.15	46.6	15 ⁸	24.4
Motor/aviation gasoline	1.0	0.25	0.15	46.6	10 ⁹	20.7
Kerosene	1.0	0.25	0.15	46.6	15 ¹⁰	24.4
Stationary turbine fuels	1.0	0.25	0.15	46.6		
Waste oil/ waste oil mix	0.75	0.50	0.50	58.3		

¹TOX: The toxicity factor number for the oil in question from 18 AAC 540-570. (See Appendices B and C).

²DEG: The degradability factor number for the oil in question from 18 AAC 540-570. (See Appendices B and C).

³DISP: The dispersibility factor number for the oil in question from 18 AAC 540-570. (See Appendices B and C).

⁴%W/O: The percentage of the base penalty which would be assessed if only the arithmetic mean of the toxicity, degradability, and dispersibility factor numbers were considered in the formula to assess the per gallon penalty.

⁵%AR: The percentage of aromatic hydrocarbons present in the oil in question (for those which this number could readily be identified).

⁶%W: The percentage of the base penalty which will be assessed once the percentage of the aromatic hydrocarbons present in the oil in question is factored into the formula.

The percent aromatics used here is for fuel oil #2 (Diesel oil) as contained in the NOAA Technical Memorandum ERL MESA-17, "Chemical and Physical Properties of Refined Petroleum Products," by Herbert Carl, Jr. and Kevin O'Donnell (1977) at p. 12.

⁷For the purpose of illustration, the percentage of aromatics used here is the average (from 1 to 30%) aromatic hydrocarbon content for light naphthenes and aromatic gasoline as set forth in The Annual Book of the American Society for Testing and Materials (ASTM Standards, Volume 05.02, Petroleum Products and Lubricants, ASTM, Philadelphia, PA, 1987, at p. 112.

⁸Id. at p. 6.

¹⁰Id. at p. 8.

TABLE I (Cont.)

<u>OIL TYPE</u>	<u>TOX</u>	<u>DEG</u>	<u>DISP</u>	<u>% (W/O)</u>	<u>%AR</u>	<u>% (W)</u>
Lubricating oil	0.75	0.50	0.50	58.3		
Other jet fuels	0.75	0.25	0.15	38.3		
Crude oil	0.75	0.50	0.50	58.3	26.4 ¹¹	57.5
Bunker/ residual fuel oils	0.50	1.0	1.0	83.3	25 ¹²	75.9
Hydraulic fluids	0.50	0.50	0.15	38.3		
Asphalts	0.25	1.0	1.0	75.0		
Tars	0.25	1.0	1.0	75.0		
Emulsified oil mixes	0.25	1.0	0.50	58.3		
All other	0.25	1.0	1.0	75.0		

¹¹ In the case of crude oil, the formula for assessing the per gallon penalty takes into account the API gravity of the crude in question as opposed to the aromatic content. The number used here is the average API gravity for Alaska North Slope crude. Generally speaking, the API gravities for crudes range from 10 to 49.1. The average is 33.1 with a standard deviation of 6.7. See "Description and Analysis of Alaska's Formula to Assess Civil Penalties and Applications of that Formula to the Port Angeles and Anacortes Oil Spills," by Jonathan Rubin, prepared for the Oil Spill Damage Assessment Study, Institute for Marine Studies, University of Washington, Seattle, WA, Final Draft, October, 1988, (not issued).

¹² See Supra note 9 at p. 21. (Percentage of aromatics for Bunker 'C').

CHAPTER 4. Suggestions for Improving the Effectiveness of Alaska's Oil Spill Liability and Compensation Scheme

This paper has discussed in some detail the legislative history and intent of Alaska's 'Civil Penalties for Discharges of Oil' statute and regulations, as well as how this statute and the regulations have been implemented in practice. Several inconsistencies between legislative intent and practical application, and several shortcomings inherent in the provisions of the law and regulations themselves have been identified. These factors weaken the overall effectiveness of this civil penalty approach as a response to the issues of oil spill liability and compensation. In this final chapter I will discuss how Alaska's oil spill liability and compensation scheme in general, and the civil penalty statute and regulations in particular, might be strengthened to better respond to these issues.

The intent of an oil spill liability and compensation scheme, as it relates to liability for natural resource damages, is to assure that the public is compensated for the natural resource damages resulting from a spill incident. The discussion in Chapter 2 of this paper makes it clear that the civil penalties imposed by AS 46.03.758 are intended to compensate only for the harm that the public suffers as a result of unidentifiable and unquantifiable damages resulting from an oil spill incident. However, as discussed in Chapter 3, Alaska does not typically perform natural resource damage assessment studies aimed at determining the full extent of actual damages. These studies would be necessary in order to pursue compensation for identifiable and quantifiable damages under the more traditional oil spill liability laws. Instead, compensation for these damages are in practice sought through the civil penalties imposed by AS 46.03.758.

Because of several factors unique to the State of Alaska, it may well be that the civil penalty approach will commonly be the most effective way of assuring that the public is compensated for natural resource damages in that state. For example, because of harsh weather conditions, the remote locations where spills commonly occur, and/or a lack of baseline data, natural resource damage assessment studies may simply not be feasible in many cases. However, it should be made clear that there is a tradeoff between using the civil penalties to compensate for actual damages, and determining the extent of actual damages and pursuing recovery of that amount. That is, the civil penalties are by their very nature arbitrary. As such, when the extent of actual damages are not determined, there is no assurance that the civil penalty imposed will adequately compensate for the damage done.

To assure that the public is adequately compensated, the decision to pursue compensation for actual damages through the civil penalties, as opposed to determining the full extent of those damages and pursuing compensation for them under other applicable liability laws, should be based on some criteria that this is indeed the most appropriate response. From the cases

examined in Chapter 3, as well as the interviews held with Alaska officials,¹ there is no indication that Alaska goes through such a decision making process. Alaska's oil spill liability and compensation scheme would thus be strengthened by the introduction of some criteria upon which to base this decision.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986² (SARA) provides some guidance. In particular, CERCLA Section 301 directs the President, acting through Federal officials, (in this case the Department of Interior (DOI)), to promulgate regulations for assessing the "...damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purposes of this chapter and section 1321(f)(4) and (5) of Title 33 (The Clean Water Act)."³ The regulations are to specify "(A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area (type 'A' assessments), and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss (type 'B' assessments)."⁴ These regulations would be used by a state or federal trustee when the trustee would be seeking recovery for the damages from the responsible party under the provisions of this act.

In the CERCLA natural resource damage assessment regulations promulgated by the DOI, a trustee is required to perform a pre-assessment screen before a damage assessment is done.⁵

1. Personal interview with Alaska Assistant Attorney General Doug Mertz, Juneau, AK, April 20, 1988; personal interview with Paul O'Brien, ADEC, Juneau, AK, April 15, 1988.

2. 42 USC Section 9601-9673.

3. Section 301 (c)(1), 42 USC Section 9651 (c)(1). The president delegated this responsibility to the DOI. See Exec. Order No. 12316, 46 Fed. Reg. 42237 (Aug. 14, 1981), later superseded by Exec. Order No. 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987). (This information was obtained from the Brief For Respondents prepared in the case of State of Ohio v. U. S. DOI and Donald Hodel, Secretary, on Petition for Review of an Action of the United States Department of the Interior, No. 86-1529 and Consolidated Cases, U. S. Court of Appeals for the District of Columbia Circuit, August 10, 1988). 33 USC 1321 (f) is entitled "Liability for Actual Costs of Removal." Sections (4) and (5) address liability for restoration or replacement of natural resources impacted by a discharge of oil or a hazardous substance.

4. Section 301 (c)(2), 42 USC 9651 (c)(2). The Type 'A' assessment actually consists of a computer program. Various factors including, for example, the location of the spill, the amount spilled, and the time of the year, are put into this program and the program is then supposed to determine the expected fate of the oil, what natural resources can be expected to be impacted, and what the economic value of those damages may be. This approach is intended to establish actual damage without incurring the time and expense of a full scale damage assessment, and is a possible alternative to using civil penalties when a damage assessment is determined to be inappropriate. However, the program presently can only take into consideration a very few different types of oil, and includes only a limited number of receiving environment categories. As such, it is presently of limited value at best. See U. S. DOI, CERCLA 301 Project, "Measuring Damages to Coastal and Marine Natural Resources, Concepts and Data Relevant for CERCLA Type A Damage Assessments," FBE7-142483, Washington, DC, January, 1987, (two volumes). The Type 'B' assessment is equivalent to what has been referred to here as a full scale natural resource damage assessment.

5. 43 CFR Subtitle A, Subpart B--Pre-assessment Phase, and Subpart C--Assessment Plan Phase.

The purpose of the screen is to determine whether a 'reasonable cost' criterion can be met for either the 'type A' simplified assessment procedures or the more detailed 'type B' assessment procedures before either is carried out, so that the costs incurred will be recoverable from the spiller under CERCLA.

DOI has defined 'reasonable costs' in the regulations as follows:

'Reasonable cost' means the amount that may be recovered for the cost of performing a damage assessment. Costs are reasonable when: (1) the Injury Determination, Quantification, and Damage Determination phases (of the actual damage assessment) have a well-defined relationship to one another and are coordinated; (2) the anticipated increment of extra benefits in terms of the precision or accuracy of estimates obtained by using a more costly injury, quantification, or damage determination methodology are greater than the anticipated increment of extra costs of that methodology; (3) and the anticipated cost of the assessment is expected to be less than the anticipated damage amount determined in the Injury, Quantification, and Damage Determination phases.⁶

DOI holds that this definition, and its application in the natural resource damage assessment regulations, means that,

...the natural resource damage assessment must be well planned in advance of the actual conduct of the assessment and expenditure of costs. The assessment must be directed towards achieving a goal—the derivation of a damage amount based on the injuries sustained as a result of the discharge or release. To this end, the trustee is directed to collect only the minimum amount of information required to move from one phase of the assessment to another. In addition, the planned assessment costs should be maintained below the anticipated damage amount. Studies of injury or damages that do not directly contribute to the determination of a dollar value for the injured resource should not be part of the damage claim.

6. 43 CFR Subtitle A, Section 11.14(ee).

7. Brief for Respondents in the case of State of Ohio v. U. S. DOI and Donald Hotel, Secretary, on Petition for Review of an Action of the U. S. DOI, No. 86-1529 and Consolidated Cases, U. S. Court of Appeals for the District of Columbia Circuit, August 10, 1988. In this case the State of Ohio as well as several other states and groups are challenging the natural resource damage assessment rules promulgated by the DOI. With regard to the 'reasonable cost' criterion, petitioners focus on the third requirement of the definition (that the anticipated cost of the assessment is expected to be less than the anticipated damage amount) and assert that this requirement is arbitrary, that the reasonableness of a cost cannot be determined mechanically as the DOI provides, and that a limit on recovery of essential costs based on a strict proportionality is not reasonable. (See Joint Opening Brief of Petitioners (en) in State of Ohio v. U. S. DOI and Donald Hotel, No. 86-1529 and Consolidated Cases, U. S. Court of Appeals for the District of Columbia Circuit, April 25, 1988 at pp. 79-80). DOI responds that petitioners have incorrectly focused on this single aspect of the definition, and thus fail to recognize that the definition in its entirety neither results in an irrational one-to-one linkage of assessment costs to that of expected damages nor discourages trustees from performing assessments to recover damages. The definition specifies anticipated costs and damages. Thus, the goal of the assessment is to be done is based on the anticipated damage amount. The trustee is not precluded from expanding the assessment and its costs if sufficient information gathered during the assessment warrants collecting additional data, using other methodologies, or applying other procedures. Thus, the DOI asserts, the regulations are not inflexible in their allowance for 'reasonable and necessary' costs of performing assessments. In fact, the regulations are flexible in allowing the trustee to design an assessment consistent

As envisioned here for use in Alaska, each resource potentially impacted by an oil spill would be evaluated during the reconnaissance stage with regard to whether the three elements of CERCLA's 'reasonable cost' criterion, or a criterion modeled after CERCLA's, can be met. If the requirements of the criterion cannot be met, then compensation for that resource would be sought through the civil penalty provisions of AS 46.03.758. If it can be met, a damage assessment would proceed and compensation for the amount of damage determined would be sought under one of the other applicable liability laws. Alaska could still pursue compensation for unidentifiable and unquantifiable damages. However, rather than referring to them as damages which cannot be determined, they might more accurately be referred to as damages which cannot be identified and quantified at a reasonable cost, based on the 'reasonable cost' criterion.

Using a 'reasonable cost' criterion as a basis for the decision on whether to pursue compensation under the civil penalty statute or under one of the other applicable liability laws would strengthen Alaska's oil spill liability and compensation scheme in several ways. First of all, it would assure that compensation is sought in the most effective and appropriate way. Secondly, it would provide a focus for reconnaissance activities. Rather than simply determining, for example, that overall damages 'may be expected to be minimal,' each resource would be examined individually and evaluated in the same manner. This would assure consistency between damage assessment studies conducted following any particular spill, as well as consistency between damage assessment studies conducted among different spills.

Further, by forcing state officials to closely examine all resources potentially impacted by a spill, this process might also identify some damages for which compensation might not otherwise be sought. This situation was identified by Geselbracht and Leschine in an examination of Washington State's natural resource damage assessment procedures.⁸ In particular, they found that damage assessments were not performed, and thus no damage claims were made, for some resource damage where recovery might well have been accomplished.⁹

Evaluating resources based on a 'reasonable cost' criterion might also provide the State of Alaska with valuable information. For example, Alaska may find that the extent of actual damages for some resources can in fact be determined within the confines of this criterion. This information

with the anticipated damage amount. (See Brief for Respondent cited above at pp. 97-98). This case is still pending. CERCLA's 'reasonable cost' criterion might not be the appropriate criterion for use in Alaska. It is offered here only as an example of a criterion that Alaska could use for making a determination as to whether compensation for damages should be sought through the civil penalties or through a damage assessment program.

8. Geselbracht, Lawrence and Thomas M. Leschine, "Washington's Compensation Recovery Mechanisms for Aquatic Resource Damages from Petroleum Spills: A Review and Appraisal," A Report from the Oil Spill Damage Assessment Study, Institute for Marine Studies, University of Washington, Seattle, WA. Final Draft, October, 1988.

9. *Id.*

gained might well serve as the beginning of the state's baseline data in many areas, but in any case it would be valuable information if a spill should occur in the same location at a later date.

Finally, going through the same evaluation for every resource potentially impacted would strengthen the State's case when a civil penalty is assessed in lieu of actual damages. In particular, when the 'reasonable cost' criterion cannot be met due to, for example, harsh weather conditions or the remote location where a spill occurs, the State would have a strong basis for asserting that the civil penalty is indeed the most appropriate way of compensating the public for the damage against which it is assessed.

By specifically allowing the civil penalties to compensate for actual damages, if both the civil penalty and compensation for actual damages are sought in a given case, the double recovery issue would surely be raised. To avoid this, when the extent of actual damage to a particular resource is determined, the monetary value of this harm could be reduced from the total penalty amount to be assessed in that case. The remaining amount of the civil penalty could still be recoverable as compensation for the remaining damages which reconnaissance activities indicate cannot be fully quantified within the constraints of the 'reasonable cost' criterion. When actual damages exceed the total assessed penalty, to avoid the double recovery issue the State could pursue only the actual damage amount.

This oil spill liability and compensation scheme could also be manipulated in a way which has not been tried in the State of Alaska. That is, if spilled oil enters two different receiving environments, the civil penalty could be used to compensate for damages in one area (based on the number of gallons entering that environment), while actual damages, or the civil penalty less actual damages, could be pursued in the second area. Here again, a double counting of damages would be avoided.

With Alaska's oil spill liability and compensation scheme modified in this way, many of the inconsistencies between intent and implementation as well as many of the shortcomings identified in the civil penalty statute and regulations themselves might be addressed and resolved.

First of all, the amounts of the civil penalties in the statute and regulations were originally intended to compensate only for the harm resulting from unidentifiable and unquantifiable damages. However, as used in practice, and as suggested here, the civil penalties are considered as compensation for actual damages as well. The amount of the penalties should thus be reviewed and if appropriate, raised. Several Alaska officials have in fact expressed some concerns about the amount of the fines in the existing civil penalty schedule. For example, Bayliss asserts that the maximum \$10 penalty is 'not close to a good deal for the environment.'¹⁰ Mertz also feels that the penalty amounts are not particularly high, and notes that they have not been adjusted for

10. Personal interview with Rudolph Bayliss, former Director of the Alaska Department of Environmental Conservation, Valdez office, in Juneau AK on April 18, 1988.

inflation since the law came into effect over ten years ago.¹¹ Finally, O'Brien also implies that the penalties are too low and suggests that the schedule might be better if it were more evident where the base penalty amounts came from.¹²

One will recall that the amount of the penalties imposed vary from the base penalty amounts depending on the productivity and sensitivity of the receiving environment, and the toxicity, degradability, and dispersal characteristics of the oil. As discussed in Chapter 3, when the regulations were being formulated the State of Alaska was limited to including only biological criteria (and only a limited number of biological criteria were actually used) in determining the sensitivity and productivity of the receiving environments, and the toxicity factor takes into consideration only the aromatic content of the oil spilled. Again, the civil penalties were intended to compensate only for the harm done as a result of unidentifiable and unquantifiable damages, not actual damages. The State would still have been able to pursue compensation for actual damages under the other applicable liability laws. As such, it is arguable that the receiving environment categories and oil characteristics did not need to be determined as precisely as possible. However, allowing the civil penalties to compensate for actual damages in those cases where a 'reasonable cost' criterion indicates that a full scale damage assessment is not appropriate suggests that the receiving environments and the oil characteristics should be more thoroughly evaluated. For example, more biological criteria could be taken into account. Also, non-biological factors such as recreational values may affect the overall value of an area to society. These factors may be worth taking into consideration as well.

Regarding the oil characteristics, other factors besides aromatic content may influence the toxicity of an oil (for example nitrogen, sulfur and oxygen compounds). These other factors could be examined and included in the oil characteristic criteria if appropriate in order to better capture the actual toxic effects of oil. Further, as discussed in Chapter 3, the purpose of the modification factor numbers in the penalty schedule is unclear. The formula for assessing the per gallon penalty should thus be re-examined. Yet it must be acknowledged that while it may be possible to formulate a civil penalty schedule with a more solid foundation than the one presently used in Alaska, these are civil penalties, as opposed to actual damages, and as such it will be impossible to avoid at least some measure of arbitrariness.

As a practical matter, it is doubtful that the maximum \$100 million penalty will ever be assessed in any oil spill case. However, under the other Alaska statutes which impose liability for actual damages, the responsible party is held liable for those damages to an unlimited maximum amount. Since the penalties are being discussed here as compensation for actual damages, if the

11. See *Supra* note 1, Merz interview.

12. See *Supra* note 1, O'Brien interview.

assessed penalty should ever exceed this ceiling, the responsible party should be held liable for the total amount. As such, this ceiling should be removed.

Next, one will recall from Chapter 3 that the mitigation clause as interpreted in practice could potentially re-open the whole question of actual damages. As suggested here, the civil penalty would take into account actual damages. However, by using a 'reasonable cost' criterion the State would have a stronger basis for asserting that the assessed penalty or the damage amount claimed is appropriate. When a penalty is deemed appropriate based on this criterion, the question of actual damages should be precluded. As such, the mitigation clause should be removed.

As indicated in Section 3.3.6 above, the 18,000 gallon exemption as entailed in the civil penalty schedule has in practice hindered enforcement efforts. For example, according to Browne, experience has shown that small spills can cause a great deal of damage. Yet as noted by Mertz, it is prohibitively expensive for the State to pursue recovery for the damage resulting from 'small' spills, and thus they tend to slip through the system. It is likely that in many cases it will be more difficult to meet the 'reasonable cost' criterion for small spills than large spills. Or in other words, that full scale natural resource damage assessment studies will be deemed appropriate more often in cases of large spills than small spills. In order to assure compensation for damage which may result even from a small spill, the 18,000 gallon exemption should be removed.

Finally, with regard to the reduction in the assessed penalty based on the amount of oil cleaned up, as discussed in Section 2.5.2, when this civil penalty statute was being considered in the legislature the State argued that cleanup takes time and as such some natural resource damage would still result. Further, as discussed in Section 3.3.5, it is questionable how effective this provision is as an incentive to clean up spilled oil. Also, if a responsible party was held liable for actual damages, there would be no credit in the damage amount for oil removed. Again, as discussed here the civil penalties would be assessed in lieu of actual damages, not in addition to them. Based on all of these considerations, this provision should be removed.

A comment regarding the use of recovered funds is worth noting. As discussed in Chapter 3 above, restoration or 'returning recovered funds to the environment' is not a priority in the State of Alaska. However, under the present system, the full extent of actual damages are not in fact determined. As such, the State never has knowledge of the monetary value of that damage for purposes of returning that amount to the environment. Under the modified scheme being discussed here, when the 'reasonable cost' criterion indicates that the actual extent of damage to a resource should be determined, it is perhaps reasonable to suggest that Alaska should consider returning at least this amount to the environment. Support for this suggestion might be found in federal natural resource liability statutes. Specifically, CERCLA as originally enacted only required that sums recovered for natural resource damage be available for use to restore, rehabilitate, or to

acquire the equivalent of the injured resources.¹³ However, CERCLA, as amended by SARA now requires that recovered sums be used for these purposes.¹⁴

In conclusion, Alaska's experience with AS 46.03.758 has shown that the civil penalty approach is a viable method of assuring that the public is compensated for damages resulting from oil spill incidents. However, this paper has identified several inconsistencies between the legislative intent of this statute and its implementation, as well as several shortcomings inherent in the provisions of the statute and regulations themselves. This chapter has suggested how these factors might be addressed in order to make Alaska's overall oil spill liability and compensation scheme more effective. While this modified scheme is being offered to Alaska as an alternative to its present one, it is a viable scheme for other states as well. As such, it is hoped that the information provided in this paper might prove useful to other states contemplating a review of their present oil spill liability and compensation schemes.¹⁵

13. 42 USC 9607(f) (before being amended by SARA).

14. 42 USC 9607(f) (following the SARA amendments of 1986).

15. Concern over the relationship between the cost of natural resource damage assessment studies and the amount of damages ultimately claimed has led the Washington State legislature to request a review of that State's procedures for deciding when damage assessment studies are appropriate. See Washington Law, Chapter 479, Second Substitute Senate Bill No. 1986, Oil Spills, Section 1, 1987. This examination and evaluation of Alaska's civil penalty statute has in fact been done as part of that study.



Oil Reform Alliance



HOUSE JUDICIARY COMMITTEE

HB565

April 5, 1990

My name is Riki Ott. I am a commercial fisherman from Cordova. My training is in marine toxicology. I have a masters degree in oil pollution and a doctorate in sediment pollution. I am testifying as President of the Oil Reform Alliance.

The Oil Reform Alliance is a grassroots coalition of fishermen, environmentalists, tourism and business people - citizens - who combined efforts after the Exxon Valdez spill to work on reforming both state and federal policies on oil.

The Oil Reform Alliance supports HB565 with an amendment.

Prevention of future oil spills starts with attitude changes and attitudes are influenced by penalties. The penalty structure should strike a balance between being too low, so as not to deter potential polluters, and being too high, so as to impair ability to operate.

It is clear from the compliance records that Alaskan laws are far too lenient: the penalty structure is not deterring polluters.

A report entitled, "An Environmental Compliance Audit of the Oil and Gas Industry Kenai, Alaska," concludes that violations of pollution control laws [by the Nikiski petrochemical industry] are a frequent occurrence. Some industries have chosen to simply ignore existing laws, others violate them on almost a daily basis."

Further, "laws with sole federal jurisdiction have the best compliance record. Federal laws the state is authorized to enforce have a poor compliance record. [While] State laws without federal jurisdiction are almost without compliance or enforcement."

This study was funded by the Alaska Conservation Foundation and is the first such study to comprehensively evaluate the pollution discharges, record of violations, and

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enforcement record for the Nikiski petrochemical industry, an industry which has been operating for over thirty years.

Lack of compliance with state environmental laws has lead to unacceptably high public risk in the Fairbanks area from extensive contamination of groundwater, including drinking water, with fuel. This report entitled, "A Citizen's Guide to Hazardous and Toxic Waste Sites of Fairbanks, Alaska," shows that 25 of the 33 study sites involved some form of petrochemical pollution.

While these two studies were funded by citizen advocacy groups, I also have the compliance chronology of both the MAPCO and Tesoro oil refineries, according to EPA and DEC records. The chronology partially elucidates why we have chronic petroleum pollution in the Fairbanks and Kenai areas.

After the Arthur Kill fuel oil spill of 567,000 gal, the governors of NY and NJ stated: "The oil industry is NOT doing enough. We need greater public scrutiny of current industry practices. Industry explanations for these spills are no longer sufficient."

But industry explanations for spills are all that we Alaskans are going to get until we enact stiff penalties to provide a strong incentive for safer handling of these hazardous substances.

The civil penalties for non-crude oil as amended by the Administration do NOT go far enough towards providing strong incentives. (Here, I'm on page 2, lines 25-29, and page 3, lines 1-3.) I also have a chart attached to my testimony which details that which I'm about to explain.

The penalties in the bill before you establishes fines of \$12.50/gal of oil discharged in a freshwater environment, \$8/gal of oil discharged in a confined marine environment, and \$6/gal of oil discharged in an unconfined marine environment. For the sake of the following discussion, let's refer to these penalties as \$12.50-\$8-\$6. Now stick with me.

The current penalties, as set in 1978, are \$10-\$2.50-^yand \$1. There was no mechanism established in statute then to inflation-proof these penalties. Should there have been such a mechanism in place, the 1978 penalties would be equal to \$20-\$5-\$2, based on the national consumer price index.

The amended penalties of \$12.50-\$8-\$6 do not even keep pace with inflation, for fines in freshwater environments, and are just barely better than inflation-proofed rates for fines in marine environments. These penalties are not the

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extensive revisions and strong incentives for safe handling of oil as originally proposed by the Administration.

The Cowper Administration originally proposed penalties of \$50-\$50-\$25 per gallon of oil spilled into the different receiving environments. This is very similar, in intent and magnitude, to the penalties proposed in 1977 by the Hammond Administration of \$50-\$25-\$10.

The legislative history of how we arrived at the current penalty structure of \$10-\$2.50-\$1 from the Hammond Administration's original proposal is very well documented in a final report dated January, 1989, prepared for the Institute of Marine Studies, University of Washington, and entitled, "Oil Spill Liability and Compensation: A Review and Evaluation of Alaska's Civil Penalty Scheme."

The historic perspective reveals that the Administration and legislature, quite frankly, succumbed to the arguments of industry lobbyists. And now history is in danger of being repeated. The Administration has already buckled to industry pressure.

We propose that committee members adopt the civil penalties originally proposed by the Hammond Administration by replacing on page 2, line 25, \$12.50 with \$50, on line 28, \$3.00 with \$25.00, and on page 3, line 1, \$6.00 with \$10.00.

Further, we propose that the Hammond Administration proposed penalty structure for noncrude oil is then adopted for crude oil by replacing the language on page 6, lines 1-6, with the amended language on page 2, lines 25-29, and page 3, lines 1-3.

We support price indexing these civil penalties as provided in HB565.

We ask committee members to not follow the lead of the Administration. Don't buckle to industry pressure as the Administration did. Support the ideals originally set forth by two different administrations over a span of 13 years. Set higher civil penalties and chart this state on a new course of meaningful incentives for safer handling of oil.

Thank you for the opportunity to testify.

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COMPARISON OF
CIVIL PENALTY STRUCTURES
FOR NONCRUDE OIL

<u>Rec'ing Environ.</u>	<u>Current Law</u>	<u>1977-1990 with CPI</u>	<u>1977 Hammond</u>	<u>Amended Cowper</u>	<u>Original Cowper</u>
FRESH	\$10	\$20	\$50	\$12.50	\$50
MARINE confined	2.50	5	25	8	50
MARINE unconfined	1	2	10	6	25

CPI: Consumer Price Index

NOTE: The Oil Reform Alliance recommends adopting the civil penalties originally proposed by the Hammond Administration in 1977 (1977 Hammond, above) for both crude and noncrude oil.

HB565 PROPOSED AMENDMENTS

April 5, 1990

Amendment #1

Page 5, line 28, delete [UP TO A MAXIMUM OF \$500,000,000].

Justification: legislature found that "substantial civil penalties should be imposed for the discharge of oil in order to provide a meaningful incentive for the safe handling of oil and to insure that the public does not bear substantial losses from oil pollution" as per language in Sec. 1 pages 1-2, lines 28-2. Unlimited liability provides such an incentive.

Amendment #2

Page 6, lines 8-9, delete: "[SUBJECT TO THE \$500,000,000 MAXIMUM SET UNDER (a) OF THIS SECTION]"

Justification: same as for #1 above.

Amendment #3

Page 2, line 25, replace "\$12.50" with "\$50.00".

Page 2, line 28, replace "\$8.00" with "25.00".

Page 3, line 1, replace "\$2.00" with "10.00".

Justification:

See #1 above, and these were penalties originally proposed by Hammond Administration in 1977 and are very similar in intent and magnitude to original proposal of Cowper Administration. Historic perspective reveals that Hammond Administration and legislation succumbed to arguments of industry lobbyists. History is in danger of being repeated. We need meaningful incentives for safer handling of oil.

Amendment #4

Page 6, lines 1-6, delete entirely and replace with language identical to that on page 2, lines 25-29, and page 3, lines 1-3 as amended above:

"(A) \$50 per gallon of oil that enters an anadromous stream or other freshwater environment with significant aquatic resources;

(B) \$25 per gallon of oil that enters an estuarine, intertidal, or confined saltwater environment;

(C) \$10 per gallon of oil that enters an unconfined saltwater environment, public land, or a freshwater environment without significant aquatic resources."

Justification: See #1 and #3 above. Also, raising the penalties for illegal discharges of crude oil to equal that of products oil eliminates the justifiable arguments of operators with refined products that this bill makes it more expensive for them to spill their product.

Amendment #5

Page 2, lines 24 & 25, amend to read: "(1) Subject to (2) of this subsection, the penalties for the following categories of receiving environments may not exceed, nor be less than 75% of:"

Justification: this ensures that penalties will be substantial, yet gives DEC the ability to apply its penalty matrix with some flexibility.

Original sponsor(s): Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 565 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil penalty, damages, costs,
7 and attorney fee provisions concerning the discharge
8 of oil and other environmental violations."

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

10 * Section 1. AS 46.03.758(a) is amended to read:

11 (a) The legislature finds that

12 (1) recent information discloses that the discharge of oil
13 may cause significant short and long-term damage to the state's en-
14 vironment; even [. EVEN] minute quantities of oil released to the
15 environment may cause high mortalities among larval and juvenile forms
16 of important commercial species, may affect salmon migration patterns,
17 and may otherwise degrade and diminish the renewable resources of the
18 state;

19 (2) the exact nature and extent of oil pollution can be
20 neither documented with certainty nor precisely quantified on a spill-
21 by-spill basis; however, in light of the magnitude of harm that
22 [WHICH] may be caused by oil discharges, and the vital importance of
23 commercial, sport and subsistence fishing, tourism, and Alaska's
24 natural abundance and beauty to the economic future of the state and
25 its quality of life, it is the judgment of the legislature that sub-
26 stantial civil penalties should be imposed for the discharge of oil in
27 order to provide a meaningful incentive for the safe handling of oil
28 and to ensure [INSURE] that the public does not bear substantial
29 losses from oil pollution for which, because of its subtle, long-term

1 or unquantifiable nature, compensation would not otherwise be re-
2 ceived; and

3 (3) the handling of oil in large quantities is a hazardous
4 undertaking that [WHICH] poses a significant threat to the economy and
5 environment of the state, that [WHICH] can be substantially reduced
6 only by the taking of rigorous safety precautions involving consider-
7 able expense; conversely, persons handling oil in smaller amounts
8 might pose a correspondingly lower risk to the economy and environment
9 of the state, and might be [ARE] capable of safe oil handling prac-
10 tices at correspondingly lower costs [; IN ORDER TO PROVIDE AN INCEN-
11 TIVE WHICH IS EFFECTIVE, BUT NOT PUNITIVE, IT IS NECESSARY AND APPRO-
12 PRIATE THAT THE ASSESSMENT OF CIVIL PENALTIES FOR DISCHARGES OF SMALL
13 QUANTITIES OF OIL BE LEFT FOR CASE-BY-CASE JUDICIAL DETERMINATION,
14 WHILE INSURING, THROUGH THE PENALTY PROVISIONS OF THIS SECTION, THAT
15 THE HANDLING OF OIL IN LARGE QUANTITIES OCCURS IN A MANNER WHICH WILL
16 NOT IMPAIR THE RENEWABLE RESOURCES OF THE STATE].

17 * Sec. 2. AS 46.03.758(b) is repealed and reenacted to read:

18 (b) In order to promote the safe handling of oil, the department
19 shall adopt regulations that establish a schedule of penalties for
20 discharges of oil into the receiving environments described in (l) -
21 (3) of this subsection. Subject to AS 46.08.761 and (m) of this
22 section, the penalties may not exceed

23 (1) \$50 per gallon of oil that enters an anadromous stream
24 or other freshwater environment with significant aquatic resources;

25 (2) \$25 per gallon of oil that enters an estuarine, inter-
26 tidal, or confined saltwater environment;

27 (3) \$10 per gallon of oil that enters an unconfined salt-
28 water environment, public land, or a freshwater environment without
29 significant aquatic resources.

1 * Sec. 3. AS 46.03.758(d) is amended to read:

2 (d) The schedule must [SHALL] vary according to the toxicity,
3 degradability, and dispersal characteristics of the oil. The schedule
4 must [SHALL] also vary according to the sensitivity and productivity
5 of the receiving environment. Variations under this subsection may be
6 by subcategories of receiving environments, specific receiving en-
7 vironments, or both. The maximum penalties established in (b) of this
8 section must [SHALL] apply to discharges in the most sensitive and
9 productive of receiving environments within each category of receiving
10 environment, and the penalty must [SHALL] decrease for less productive
11 or sensitive receiving environments. If oil is discharged into mul-
12 multiple receiving environments, the penalty must be based upon the
13 schedule penalty value applicable to the most sensitive and productive
14 receiving environment unless the defendant proves how much oil entered
15 each receiving environment by clear and convincing evidence.

16 * Sec. 4. AS 46.03.758(e) is amended to read:

17 (e) If a discharge of oil in excess of 500 [18,000] gallons not
18 permitted under applicable state and federal law occurs within the
19 territorial jurisdiction of the state, or into or upon the adjacent
20 outer continental shelf of the state, the following persons, in addi-
21 tion to the person causing or permitting the discharge, are jointly
22 and severally liable to the state, in a civil action, for the full
23 amount of penalties established under this section and in the regu-
24 lations adopted under this section:

25 (1) if the discharge occurs from a [ANY] commercial or
26 industrial facility other than a vessel or offshore platform, the
27 owner, lessee or permittee, and operator of the facility;

(2) if the discharge occurs from a vessel,

(A) the owner and operator of the vessel; and

1 (B) the owner of the oil carried as cargo on the
2 vessel at the time the vessel was loaded, if the loading occurred
3 within the territorial jurisdiction of the state, or at a deep-
4 water port or other offshore storage facility adjacent to the
5 state; however, if the owner of the oil temporarily transfers
6 ownership of the oil to another person, and the transfer has the
7 purpose or effect of evading the vicarious liability imposed by
8 this section, the transferor will be considered the owner of the
9 oil for the purposes of this subsection; and

10 (3) if the discharge occurs from an offshore platform, the
11 lessee or permittee of the tract or acreage upon which the platform is
12 situated, and the operator of the platform.

13 * Sec. 5. AS 46.03.758(f) is repealed and reenacted to read:

14 (f) For purposes of assessing a penalty under (b) of this sec-
15 tion, in determining how many gallons of oil have been discharged, the
16 court shall deduct the number of discharged gallons of oil that the
17 defendant proves by clear and convincing evidence were removed by the
18 defendant from the environment within 365 days after the discharge as
19 a result of a cleanup operation undertaken in conformity with appli-
20 cable state and federal law, except that if the oil was discharged
21 onto a surface freshwater or saltwater environment or onto the surface
22 of public land, the court shall deduct the number of discharged
23 gallons of oil that the defendant proves by clear and convincing
evidence were removed by the defendant from the environment within the
first 36 hours after the discharge as a result of a cleanup operation
undertaken in conformity with applicable state and federal law. The
dispersal of oil through burning, the use of chemical agents, biological
additives, sinking agents, or other means is not considered re-
moval for purposes of this subsection.

1 * Sec. 6. AS 46.03.758(i) is repealed and reenacted to read:

2 (i) The imposition of a civil penalty under this section does
3 not limit or otherwise affect the authority of the department to
4 enforce a provision of this chapter, AS 46.04, or AS 46.09, or to
5 recover damages, restoration expenses, investigation costs, court
6 costs, and attorney fees. A person who pays a civil penalty imposed
7 under this section is entitled to set off the penalty amount paid
8 against a civil penalty awarded by a court against the person for the
9 same discharge under AS 46.03.760(a).

10 * Sec. 7. AS 46.03.758 is amended by adding a new subsection to read:

11 (m) The penalty that would otherwise be assessed under (b) of
12 this section shall be multiplied by a factor of five if a court deter-
13 mines that

14 (1) the discharge was caused by the gross negligence or
15 intentional act of the discharger;

16 (2) the discharger did not take reasonable measures to
17 contain and cleanup the discharged oil; or

18 (3) the defendant did not respond in accordance with an
19 approved oil discharge contingency plan.

20 * Sec. 8. AS 46.03.759(a) is amended to read:

21 (a) A person who is found to be liable under any other state law
22 for an unpermitted discharge of crude oil [IN EXCESS OF 18,000 GAL-
23 LONS] is, in addition to liability for any other penalties or for
24 damages or the cost of containment and cleanup, liable to the state in
25 a civil action for a civil penalty, up to a maximum of \$500,000,000,
26 subject to adjustment under AS 46.03.761, in the amount of

27 (1) \$50 [\$8] per gallon of crude oil that enters an
28 anadromous stream or other freshwater environment with significant
29 aquatic resources, subject to adjustment under AS 46.03.761

1 [DISCHARGED FOR THE FIRST 420,000 GALLONS DISCHARGED]; [AND]

2 (2) \$25 [\$12.50] per gallon of crude oil that enters an
3 estuarine, intertidal, or confined saltwater environment, subject to
4 adjustment under AS 46.03.761; and

5 (3) \$10 per gallon of crude oil that enters an unconfined
6 saltwater environment, public land, or a freshwater environment with-
7 out significant aquatic resources, subject to adjustment under AS 46.-
8 03.761 [DISCHARGED FOR AMOUNTS DISCHARGED IN EXCESS OF 420,000
9 GALLONS].

10 * Sec. 9. AS 46.03.759(c) is amended to read:

11 (c) Subject to the [\$500,000,000] maximum set under (a) of this
12 section the court shall assess five [FOUR] times the penalty amounts
13 set out in (a) of this section if the court finds

14 (1) the discharge was caused by the gross negligence or
15 intentional act of the defendant;

16 (2) the defendant did not take reasonable measures to
17 contain and clean up the discharged oil; or

18 (3) the defendant did not respond in accordance with an
19 approved oil discharge contingency plan.

20 * Sec. 10. AS 46.03.759(d) is repealed and reenacted to read:

21 (d) The imposition of a civil penalty under this section does
22 not affect the authority of the department to enforce a provision of
23 this chapter, AS 46.04, or AS 46.09, or to recover damages, restora-
24 tion expenses, investigation costs, court costs, and attorney fees. A
25 person who pays a civil penalty imposed under this section is entitled
26 to set off the penalty amount paid against a civil penalty awarded by
27 a court against the person for the same discharge under AS 46.03.-
28 760(a).

29 * Sec. 11. AS 46.03.760(a) is repealed and reenacted to read:

1 (a) A person who violates or causes or permits to be violated a
2 provision of this chapter, AS 46.04, AS 46.09, or a regulation, order
3 of the department, permit, approval, or certificate issued under this
4 chapter, AS 46.04, or AS 46.09, is liable to the state in a civil
5 action for a sum to be assessed by the court of not less than \$2,500
6 nor more than \$100,000 a day for each violation, subject to adjustment
7 under AS 46.03.761. Each violation is a separate and distinct of-
8 fense, and where a violation continues from day to day each day con-
9 stitutes a separate violation. The amount assessed by the court under
10 this subsection must reflect, as applicable,

11 (1) reasonable compensation for adverse environmental
12 effects of the violation;

13 (2) reasonable costs incurred by the state in the detec-
14 tion, investigation, and attempted correction of the violation;

15 (3) the economic savings realized by the person in not
16 complying with the requirement for which the violation is charged;

17 (4) the prior history of violations committed by the per-
18 son;

19 (5) the need for an enhanced civil penalty to deter future
20 violations;

21 (6) the extent and seriousness of the violation;

22 (7) the person's attainment of compliance, within the
23 shortest feasible time, with the requirement for which the violation
24 is shown;

25 (8) the person's ability to pay; and

26 (9) other factors that the court determines are in the
27 interest of justice.

28 * Sec. 12. AS 46.03.760(e) is amended to read:

29 (e) In addition to liability under (a) [- (d)] of this section,

1 a person who violates or causes or permits to be violated a provision
2 of AS 46.03.740 - 46.03.750 is liable to the state, in a civil action
3 brought under AS 46.03.822, for the full amount of actual damages
4 caused to the state by the violation, including direct and indirect
5 costs associated with the abatement, containment and [OR] removal of
6 the pollutant, restoration of the environment to its former state, and
7 all incidental administrative costs.

8 * Sec. 13. AS 46.03 is amended by adding a new section to read:

9 Sec. 46.03.761. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar
10 amounts in AS 46.03.758, 46.03.759, and 46.03.760 and in the regula-
11 tions adopted under AS 46.03.758 change, as provided in this section,
12 according to and to the extent of changes in the Consumer Price Index
13 for all urban consumers for the Anchorage metropolitan area compiled
14 by the Bureau of Labor Statistics, United States Department of Labor
15 (the index). The index for January of the year in which this section
16 becomes effective is the reference base index.

17 (b) The dollar amounts change on October 1 of each third year
18 according to the percentage change between the index for January of
19 that year and the most recent index used to determine whether to
20 change the dollar amounts. After calculation of the new amounts, the
21 resulting amounts shall be rounded to the nearest cent.

22 (c) If the index is revised, the percentage of change is cal-
23 culated on the basis of the revised index. If a revision of the index
24 changes the reference base index, a revised reference base index is
25 determined by multiplying the reference base index applicable by the
26 rebasing factor furnished by the United States Bureau of Labor Statis-
27 tics. If the index is superseded, the index referred to in this sec-
28 tion is the one represented by the Bureau of Labor Statistics as
29 reflecting most accurately changes in the purchasing power of the

1 dollar for Alaskan consumers.

2 (d) The department shall adopt a regulation

3 (1) announcing, on or before June 30 of each third year,
4 the changes in dollar amounts required by (b) of this section;

5 (2) amending, on or before June 30 of each third year, the
6 regulations adopted under AS 46.03.758(b) to reflect the changes in
7 dollar amounts required by (b) of this section; and

8 (3) announcing, promptly after the changes occur, changes
9 in the index required by (c) of this section, including, if applica-
10 ble, the numerical equivalent of the reference base index under a
11 revised reference base index and the designation or title of any index
12 superseding the index.

13 (e) The department shall also provide notification of a change
14 in dollar amounts required under (b) of this section to the clerks of
15 court in each judicial district of the state.

16 * Sec. 14. AS 46.04.040(e) is amended to read:

17 (e) Financial responsibility may be demonstrated by self-
18 insurance, insurance, surety, or guarantee, under terms the department
19 may prescribe. An action brought under AS 46.03.758, 46.03.760(e)
20 [46.03.760(a) OR (e)], 46.03.822, or AS 46.04.030(g) or to collect
21 penalties imposed under AS 46.03.759 may be brought in a state court
22 directly against the insurer or another person providing evidence of
23 financial responsibility. The applicant, and an insurer, surety, or
24 guarantor shall appoint an agent for service of process in the state.
25 An insurer must either be authorized by the Department of Commerce and
26 Economic Development to sell insurance in the state or be an unau-
27 thorized insurer listed by the Department of Commerce and Economic
28 Development as not disapproved for use in the state.

29 * Sec. 15. AS 46.04.040(i) is amended to read:

1 (i) Financial responsibility under this section extends to a
2 loss compensable under AS 46.03.760(e) or 46.03.822 and an assessment
3 under AS 46.03.758, 46.03.759, [46.03.760(a)], or AS 46.04.030(g).

4 * Sec. 16. AS 46.03.758(c), 46.03.758(g), 46.03.760(b), 46.03.760(c),
5 and 46.03.760(f) are repealed.
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