

HB

293

HOUSE COMMITTEE REPORT

4/29

(9)

Date Referred: April 17, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 4-29-89

The RESOURCES Committee considered:

HB 293

HOUSE BILL NO. 293 [INCREASE CIVIL PENALTIES: OIL DISCHARGE]
 "An Act increasing civil penalties and removing a cap on total civil penalties that can be assessed for certain oil discharges."

RECOMMENDATIONS:

- be replaced with CS HB 293 (RES) 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): | APPROVES PREVIOUS: |
| (Dept) | (Date/Dept) |
| <input type="checkbox"/> fiscal impact _____ | <input type="checkbox"/> fiscal note(s) _____ |
| <input checked="" type="checkbox"/> zero fiscal note DEC _____ | <input type="checkbox"/> zero fiscal note(s) _____ |
| <input type="checkbox"/> zero with analysis _____ | <input type="checkbox"/> zero fu/analysis _____ |

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

Signature	Name	Signature	Name	Do Not Pass	No Rec	Amend
<i>Cliff Davidson</i>	DAVIDSON	<i>Bill Hudson</i>	HUDSON			<input checked="" type="checkbox"/>
<i>S. J. Williams</i>	MENARD	<i>Sen Mary Sharp</i>	SHARP			<input checked="" type="checkbox"/>
<i>Mike Davis</i>	M. DAVIS	<i>William FURMAN</i>	FURMAN			<input checked="" type="checkbox"/>
<i>Richard Foster</i>	FOSTER					
<i>Jacko</i>	JACKO					
<i>Navarre</i>	NAVARRE					

Cliff Davidson
 CO - Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: DEC
 Title: An Act increasing civil penalties and removing a cap on total penalties... BRU: _____
 Sponsor: Representative Brown Components: _____
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Amy D. Kyle Phone: 465-2600
 Division: Commissioner's Office Date: _____

Approved by Commissioner: A. D. Kyle Date: 4/28/89
 Agency: Department of Environmental Conservation

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

Original sponsors: Brown, M.Davis,
Ellis, et al.

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 293 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil penalties that can be
7 assessed for certain oil discharges; allowing the
8 state to recover full reasonable attorney fees and
9 costs in certain actions; and amending Rule 82,
10 Alaska Rules of Civil Procedure."

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

12 * Section 1. AS 46.03.758(b) is amended to read:

13 (b) No later than the 10th day after the convening of the Second
14 Session of the Sixteenth [TENTH] Alaska State Legislature, the depart-
15 ment shall submit to the legislature regulations establishing the
16 following schedule of fixed penalties for discharges of oil:

17 (1) Subject to (2) of this subsection, the penalties for
18 the following categories of receiving environments may not exceed

19 (A) \$50 [\$10] per gallon of oil which enters an anad-
20 romous stream or other freshwater environment with significant
21 aquatic resources;

22 (B) \$25 [\$2.50] per gallon of oil which enters an
23 estuarine, intertidal, or confined saltwater environment; and

24 (C) \$10 [\$1] per gallon of oil which enters an uncon-
25 fined saltwater environment, public land, or freshwater environ-
26 ment without significant aquatic resources.

27 (2) For discharges of oil which are caused by the gross
28 negligence or intentional act of the discharger, or when the court
29 finds that the discharger did not take reasonable measures to contain

1 and clean up the discharged oil, or where the discharger did not re-
2 spond according to an approved contingency plan, the penalty shall be
3 determined by multiplying the penalty established under (1) of this
4 subsection by a factor of five.

5 * Sec. 2. AS 46.03.758(e) is amended to read:

6 (e) If [AFTER APRIL 19, 1978, IF] a discharge of oil in excess
7 of 18,000 gallons not permitted under applicable state and federal law
8 occurs within the territorial jurisdiction of the state, or into or
9 upon the adjacent outer continental shelf of the state, the following
10 persons, in addition to the person causing or permitting the dis-
11 charge, are jointly and severally liable to the state, in a civil
12 action, for the full amount of penalties established in the regu-
13 lations adopted under this section: [, OR \$100,000,000, WHICHEVER IS
14 LESS,]

15 (1) if the discharge occurs from any commercial or indus-
16 trial facility other than a vessel or offshore platform, the owner,
17 lessee or permittee, and operator of the facility;

18 (2) if the discharge occurs from a vessel,

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

20 (B) the owner of the oil carried as cargo on the
21 vessel at the time the vessel was loaded, if the loading occurred
22 within the territorial jurisdiction of the state, or at a deep-
23 water port or other offshore storage facility adjacent to the
24 state; however, if the owner of the oil temporarily transfers
25 ownership of the oil to another person, and the transfer has the
26 purpose or effect of evading the vicarious liability imposed by
27 this section, the transferor will be considered the owner of the
28 oil for the purposes of this subsection; and

29 (3) if the discharge occurs from an offshore platform, the

1 lessee or permittee of the tract or acreage upon which the platform is
2 situated, and the operator of the platform.

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

4 (f) The court shall deduct from the penalties for which the
5 person charged is liable under (e) of this section that amount of oil
6 which was removed from the environment as a result of a cleanup opera-
7 tion undertaken in conformity with applicable state and federal law,
8 unless the oil was removed by an agency of state, local or federal
9 government. The dispersal of oil through the use of chemical agents,
10 biological additives, burning or sinking agents, or other means is not
11 considered removal for the purposes of this subsection. The court may
12 estimate the amount of oil removed.

13 * Sec. 4. AS 46.03.758(g) is amended to read:

14 (g) Except as provided in (f) and (j) of this section, the
15 entire penalty specified in the regulations shall be imposed [, EXCEPT
16 THAT A PERSON WHO DISCHARGES OIL INTO A RECEIVING ENVIRONMENT MAY
17 DEMONSTRATE, BY A PREPONDERANCE OF EVIDENCE, THAT MITIGATING CIRCUM-
18 STANCES RELATING TO THE EFFECTS OF THE DISCHARGE WOULD MAKE IMPOSITION
19 OF THE FULL PENALTY INAPPROPRIATE. IN DETERMINING WHETHER MITIGATING
20 CIRCUMSTANCES EXIST, THE COURT SHALL RECOGNIZE THAT SCIENTIFIC KNOWL-
21 EDGE PERTAINING TO OIL SPILLS IS VERY LIMITED AND IF THERE IS INSUFFI-
22 CIENT KNOWLEDGE EITHER TO PREDICT A BASE CASE OR TO SHOW MITIGATING
23 CIRCUMSTANCES VARYING FROM THAT BASE CASE, THE ADMINISTRATIVELY ESTAB-
24 LISHED SCHEDULE OF PENALTIES SHALL APPLY. IF MITIGATING CIRCUMSTANCES
25 ARE PROVEN BY A PREPONDERANCE OF THE EVIDENCE, THE COURT MAY REDUCE OR
26 TOTALLY ELIMINATE THE PENALTY, IN ACCORDANCE WITH THE PURPOSES OF THIS
27 SECTION].

28 * Sec. 5. AS 46.03.780(a) is amended to read:

29 (a) A person who violates a provision of this chapter, AS 46.04,

1 or AS 46.09, or who fails to perform a duty imposed by this chapter,
2 AS 46.04, or AS 46.09, or violates or disregards an order, permit, or
3 other determination of the department made under the provisions of
4 this chapter, AS 46.04, or AS 46.09, respectively, and thereby causes
5 the death of fish, animals, or vegetation or otherwise injures or
6 degrades the environment of the state is liable to the state for
7 damages, all reasonable attorney fees and costs incurred by the state
8 in collecting the damages, and all reasonable attorney fees and costs
9 incurred by the state in collecting penalties for violations described
10 in this subsection.

11 * Sec. 6. AS 46.03.780(a), as amended by sec. 5 of this Act, has the
12 effect of amending Rule 82, Alaska Rules of Civil Procedure, by allowing
13 the state to recover all reasonable attorney fees and costs in certain
14 actions.

15 * Sec. 7. APPLICABILITY. (a) AS 46.03.758(b), as amended by sec. 1 of
16 this Act, applies to a discharge of oil that occurs on or after the effec-
17 tive date of the regulations required to be submitted to the legislature
18 under AS 46.03.758(b), as amended by sec. 1 of this Act. Regulations
19 adopted under AS 46.03.758 remain in effect until superseded by regulations
20 adopted under AS 46.03.758, as amended by sec. 1 of this Act.

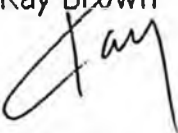
21 (b) AS 46.03.758(e) - (g), as amended by secs. 2 - 4 of this Act,
22 apply to a discharge of oil that occurs on or after the effective date of
23 this Act.

Kay Brown

Alaska State Legislature House of Representatives

TO: Representative Cliff Davidson, Co-Chair
Representative Curt Menard, Co-Chair

FROM: Representative Kay Brown

DATE: April 28, 1989 

SUBJ: HB 293/Civil Penalties for Oil Spills

Thank you for scheduling HB 293, legislation that would amend the civil penalty provisions in existing state law to increase civil penalties for oil spills.

The legislation before the Resources Committee today has two fundamental purposes:

- 1) to compensate for the actual but unquantifiable damages attributable to a spill; and
- 2) to provide appropriate incentive through financial penalties for potentially responsible parties to ensure the safe handling of oil and make appropriate response efforts.

As reflected by the statement of legislative findings found in present state statutes regarding civil penalties for the discharge of oil, even minute quantities of oil released into the environment may cause a wide range of serious short- and long-term damages (AS 46.03.758). Some of the more obvious concerns include such things as increased mortalities among larval and juvenile life stages of important commercial fish species; contamination of food chains; or impacts on salmon migration patterns. The Department of Fish and Game and the other state and federal agencies are only now beginning the kinds of investigations that will give insight into the extent of damage that has been done to Prince William Sound.

Unfortunately, the exact nature and extent of oil pollution impacts can not, in many cases, be documented with great certainty or precisely quantified. Moreover, there are a great number of values such as lost recreational opportunities and the impact to Alaska's efforts to attract tourists that also defy quantification. The state's civil penalty provisions are intended to provide compensation for these real but largely unquantifiable impacts, while also providing appropriate incentive for the safe handling of oil.

The current penalties scheme clearly fails to meet either of its fundamental objectives. The Prince William Sound oil spill (and other incidents such as the Cook Inlet oil spill) make it painfully clear that the state's existing oil spill civil penalties are grossly inadequate. Preliminary estimates of the civil penalties that will result from the disaster are on the order of \$14 million, a figure that confirms the inadequacy of existing law to compensate adequately for the disastrous natural resource damages to Prince William Sound. Nor, as is evident from the failure of Exxon and Alyeska to mount a reasonable response effort, does the present penalty scheme provide the kind of incentive needed to ensure safe handling or appropriate response.

HB 293 would increase the civil penalty schedule found in present law to a level that would more appropriately provide both reasonable compensation and the necessary incentive for the safe handling of oil products.

Proposed Committee Substitute

In addition to the statutory changes included in HB 293 as introduced, additional provisions are offered in a proposed Committee Substitute. The proposed CS would include the following provisions:

- increased base penalty amounts
- elimination of the \$100,000,000 cap on liability in present law
- inclusion of a provision that a five-fold penalty increase would apply where the "discharger did not respond according to an approved contingency plan"
- language to clarify that the credit for removal of oil does not apply to dispersal by way of chemical agent or other means including use of

"biological additives, burning or sinking agents" (Note: dispersal agents do not remove oil at all but rather breaks down, dilutes, or pushes the oil under the surface or into the water column where it continues to create harm.)

- deletion of language in existing law that allows for the reduction or elimination of penalties in the event of "mitigating circumstances"

- additional language to clarify that the state's litigation costs are recoverable

It is important to realize that the current civil penalty provisions in state are a product of a 1977 legislative effort by the Hammond Administration to put in place a meaningful civil penalty provision prior to the start up of Prudhoe Bay. A review of the legislative history of this bill reveals that the legislation originally introduced was the subject of intensive oil industry lobbying that succeeded in severely compromising the bill before it finally achieved passage. The Prince William Sound oil spill makes it abundantly clear that the state's existing civil penalty provisions are completely unacceptable. The proposed CS would address these deficiencies.

* * * * *

Again, I appreciate your scheduling of HB 293. I look forward to the Resource Committee's consideration of this measure.

TO: Representative Kay Brown
FROM: Eric F. Myers *efm*
DATE: 4/27/89
SUBJ: HB 293/Civil Penalties for Oil Spills

This memorandum provides a summary of HB 293 as it was introduced, a brief overview of the state's existing civil penalties provisions relating to oil spills and discusses the issues that have emerged during consideration of SB 271 and appropriate changes for inclusion in HB 293.

SUMMARY OF HB 293 AS INTRODUCED

Section 1

Amends existing law at AS 46.03.758 (b) regarding base civil penalties for the discharge of oil to increase the existing schedule of penalties as follows:

→ \$50/gallon [up from \$10/gallon] of oil which enters an anadromous stream or other freshwater environment with significant aquatic resources

\$25/gallon [up from \$2.50/gallon] of oil which enters an estuarine, intertidal, or confined saltwater environment

\$10/gallon [up from \$1/gallon] of oil which enters an unconfined saltwater environment, public land, or freshwater environment without significant aquatic resources

The bill would direct the Department of Environmental Conservation to develop new regulations pertaining to the new fixed penalty schedule.

Section 2

— Based on intent

Amends existing law at AS 46.03.758 (e) to eliminate the existing \$100,000,000 cap on civil penalty awards.

DISCUSSION

State civil penalty statutes have two distinct and fundamental purposes:

- 1) to compensate for the actual but unquantifiable damages attributable to a spill; and
- 2) to provide appropriate incentive through financial penalties for potentially responsible parties to exercise due caution, take necessary safeguards, and make appropriate preventative investments.

2, — The state's civil penalty scheme is not intended for punitive purposes. Nor is the current civil penalty scheme in AS 46.03.758 is intended to provide compensation for actual quantifiable damages. Rather to compensate for actual unquantifiable damages (sometimes referred to as "natural resource damages"). That is, real damages, but damages that are very difficult, if not completely impossible, to prove or otherwise quantify empirically (eg, diminished phytoplankton productivity, larval mortality, food chain contamination, other forms of reduced biological productivity or other kinds of harm such as lost recreational opportunities which cannot be established precisely but exist and warrant compensation).

→ At the same time, the civil damages scheme is intended to provide an incentive for the safe handling of oil. Existing law provides that the penalties will be increased by a factor of five

- in the case of gross negligence, or
- when the discharger did not take reasonable measures to contain and clean up the oil.

A cap of \$100,000,000 is provided, although as a practical matter it is virtually impossible to conceive of an event that would yield penalties of this magnitude, given the dollar penalty levels in current law.

Reason cost

Further, the existing civil damages scheme in AS 46.03.758 only applies to spills above 18,000 gallons. Civil penalties for spills of less than 18,000 gallons are limited to actual damages as provided in AS 46.03.760(a), although qualified (somewhat confusingly) by AS 46.03.760(f)(4).

*reasonable compensation — adverse environ. ~~action~~ toxicity, degradability, dispersal and sensitivity of receiving environment
degreⁱⁿ charged degrades existing environmental quality.*

Structure of Existing Civil Penalty Statute

The current state statute under which civil liabilities may be assessed for oil spills (also referred popularly to as the "dollars per gallon" law) establishes "base penalties" which are further modified according to the receiving environment impacted and the characteristics of the oil (toxicity, degradability and dispersability). That is, the amount of the fine varies depending upon the type of oil spilled and the sensitivity of the receiving environment.

Existing statute establishes three levels of base penalties associated with three distinct categories of receiving environment:

1) \$10/gallon for spills into anadromous streams and freshwater environments with significant aquatic resources

2) \$2.50/gallon for spills into estuarine, intertidal, or confined saltwater environments

3) \$1/gallon for spills into and unconfined saltwater environment, public land, or freshwater environment without significant aquatic resources

The statute further recognizes that the characteristics of the oil spilled may vary and directs that the penalties accommodate these characteristics. Regulations for the law assign numerical factors to different types of oil on the basis of their toxicity, degradability and dispersability characteristics. See regulations as an attachment.

Legislative History of Present Law

The current statute was the product of 1977 legislation introduced by the Hammond Administration just prior to the start-up of Prudhoe Bay. Prior to 1977, state law provided for a civil penalty maximum of \$100,000 for an initial violation and \$5,000 for each day of continuing violation. The 1977 legislation (HB 137) which led to present law was introduced with the dual objective of ensuring that the state could receive adequate compensation for natural resources damages (ie, real but unquantifiable) for oil spills and that a sufficient financial incentive would exist to inspire appropriate handling of oil.

The bill underwent substantial changes during its consideration by the legislature and the final bill adopted was substantially weakened by oil industry pressure. Particularly significant changes to the bill during its consideration included:

- ✓ reduction in penalties: early versions of the bill had a penalty schedule of \$50-25-10 which was changed to the current \$10-2.50-1 schedule
- ✓ limit on damages: the \$100,000,000 cap was added
- ✓ reduced for penalties for oil cleaned up: a deduction in penalties was added for the amount of oil "removed from the environment" (qualified to specifically provide that the dispersal of oil did not constitute removal for purposes of a deduction)
- ✓ reduction in penalties for "mitigating" circumstances: language was included to allow a person who discharges oil "to demonstrate ... that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate" and allow the court to reduce or eliminate penalties accordingly

18,000 gallon exemption: fears about the potential impact of penalties on "small" handlers of oil led to the inclusion of an 18,000 gallon threshold exemption for application of the civil damages scheme while spills below this level are subject only to the "liquidated damages" provisions of AS 46.03.760(a)

In summary, the legislation that established the state's existing civil penalties scheme for large oil spills was enacted in 1977 after being substantially watered down by industry interests.

The Prince William Sound oil spill disaster has brought to light how inadequate existing law is in serving the dual purposes that led to the enactment of the law: providing for an appropriate level of compensation and to ensure safe operations. As an "estuarine, intertidal, or confined saltwater environment" the base penalty associated with Prince William Sound is \$2.50 per gallon, as modified by the factors for crude oil characteristics of toxicity, dispersability, and degradability (crude oil is considered "moderate" in all three categories). **The net per gallon penalty is approximately \$1.44/gallon.** In the case of the Exxon Valdez tanker, where roughly 11.3 millions gallons spilled, a penalty may be estimated accordingly

$$(\$1.44) \times (11,300,000) = \$16,200,000$$

The state recently asked Exxon to pre-pay the civil penalties associated with the spill in the amount of \$14 million. See news article attached. (Note: Even if the five-fold factor for gross negligence is applied, the penalty amount will only be \$81,000,000.)

The current penalties scheme clearly fails to meet either of its fundamental objectives. This level of financial penalty will neither compensate adequately for the natural resource damages. Moreover, it is evident from the failure of Exxon and Alyeska to mount a reasonable response effort that this penalty scheme did not provide anything like the kind of incentive needed to ensure safe handling or appropriate response.

ISSUES TO BE ADDRESSED BY HB 293

During the hearings in Senate Oil and Gas, Doug Mertz/Department of Law testified that it would be preferable to not take crude oil out of the existing civil penalty scheme and establish a separate schedule as proposed by SB 271. Rather he urged an increase in the existing penalty amounts to the levels that were proposed when the law was originally considered in 1977. He also recommended removing the \$100 million cap on liability that was added to the 1977 bill by the legislature before it was enacted. This initial testimony was the basis for the drafting HB 293 which reflects these two provisions.

Since that time, hearings on SB 271 have further explored the idea of a separate schedule for oil spill penalties and raised a number of issues that should be addressed in HB 293. During review of SB 271 in the Senate Resources Committee, the Administration offered a draft CS for consideration by the committee (copy attached).

This Administration draft CS incorporates the provisions of HB 293 and makes other changes as well. Key features of the draft CS include:

- ✓ - increased base penalty amounts (same as proposed by HB 293)
- ✓ - addition of provision that the five-fold penalty increase factor would also apply where "discharger did not respond according to an approved contingency plan"
- additional language added to existing statute to clarify that the credit for removal of oil does not apply to dispersal by way of

chemical agent or other means including use of "biological additives,
burning or sinking agents" (dispersal does not remove oil at all;
simply dilutes the oil and pushes it under the surface or into the
water column)

Out of sight . . .

- removal of language in existing law that allows for the reduction or
elimination of penalties in the event of "mitigating circumstances"

These proposals are all worth including. Further, the Administration intends
to offer additional language to make it clear that attorney fees are fully
recoverable.

RECOMMENDATIONS FOR HOUSE HEARING ON HB 293

The changes proposed by the Administration should all be incorporated into
a Resources CS along with language (forthcoming) from the Department of
Law that would address the attorneys fee cost recovery issue. This last
issue could perhaps be handled through an amendment. If there is time
before the hearing, I will have a draft prepared which includes all of the
Administration's proposed changes.

attachments

HB 293 (as introduced)

Administration work draft CS for SB 271 dated 4/21/89

news article

18 AAC 75.395

n into compliance

corrections; and
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r 79)

READINESS. If any
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79)

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030(f). (Eff. 9/9/81,

75.305 — 18 AAC
18 AAC 75.305 —

18 AAC 75.500 ENVIRONMENTAL CONSERVATION 18 AAC 75.510

(1) "approved loading manual" means the manual including information regarding trim and stability, hullbending moment, and information meeting the requirements of 46 CFR § 45.105;

(2) "containment and exclusion equipment" means booms, logs, curtains, and other devices designed or constructed and deployed in order to control, concentrate and restrict the movement and spreading of oil;

(3) "discharge" means any spilling, leaking, pumping, pouring, sweating, emitting, emptying, or dumping;

(4) "lightering" means pumping or transferring of oil from cargo compartments of tank vessels to another vessel or storage container;

(5) "liquefied petroleum gas" means natural gas converted to a liquid state by pressure and cooling, butane, propane, and other light ends which at 70 degrees F. and atmospheric pressure revert to the gaseous state. (Eff. 9/9/81, Register 79)

Authority: AS 46.03.020
AS 46.04.030
AS 46.04.070

Editor's notes. — For the purposes of this chapter, the following terms are defined in AS 46.04.120: "department"; "off-shore exploration and production facility";

"oil"; "oil barge"; "oil terminal facility"; "operator"; "person"; "tank vessel"; "vessel."

Article 5. Schedule of Civil Penalties

Section	Section
500. Applicability	560. Dispersibility of petroleum, petroleum products, and byproducts
510. Freshwater environments	570. Schedule of civil penalties
520. Marine environments	580. Prosecutorial discretion
530. Public land environments	590. Annual report
540. Toxicity of petroleum, petroleum products, and byproducts	600. Definitions
550. Degradability of petroleum, petroleum products, and byproducts	

18 AAC 75.500. **APPLICABILITY.** 18 AAC 75.510 — 18 AAC 75.600 establish a schedule of civil penalties for the discharge of oil under AS 46.03.758. The schedule of civil penalties established by this chapter does not apply to discharges of oil which are specifically made subject to the penalty provisions of AS 46.03.760(a). (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.510. **FRESHWATER ENVIRONMENTS.** (a) For the purposes of AS 46.03.758(b)(1)(A), freshwater environments with significant aquatic resources are classified as follows:

(1) Critical freshwater environments include

(A) surface and subsurface water supplies for which the commissioner of natural resources has issued a water use permit under AS 46.15.040 *et seq.*, or which are in fact being used for a purpose that would qualify for a water use permit;

(B) rivers, lakes, and streams designated under AS 16.05.870(a) as important for the spawning, rearing, or migration of anadromous fish, and the water of lakes, streams, and rivers which flows or empties into those designated waters;

(C) lakes, streams, rivers, and freshwater wetlands within the boundaries of land administered under the National Wildlife Refuge System, and the water of lakes, streams, and rivers which flows or empties into those waters;

(D) lakes, streams, rivers, and freshwater wetlands within the boundaries of game reserve areas, refuges, critical habitat areas, and sanctuaries established under AS 16.05.255(1) or AS 16.20, and the water of lakes, streams, and rivers that flows or empties into those waters; and

(E) lakes, streams, rivers, and freshwater wetlands within the boundaries of fish reserve areas, refuges, critical habitat areas, and sanctuaries established under AS 16.05.251(1) or AS 16.20, and the water of lakes, streams, and rivers that flows or empties into those waters;

(2) Sensitive freshwater environments include

(A) lakes other than those classified in (1) of this subsection;

(B) freshwater wetlands other than those classified in (1) of this subsection; and

(C) subsurface freshwaters other than those classified in (1)(A) of this subsection.

(b) For the purposes of AS 46.03.758(b)(1)(C), all freshwater of the state not classified in (a)(1) or (2) of this section is classified as without significant aquatic resources. (Eff. 4/19/78, Register 66; am 8/6/87, Register 103)

Authority: AS 46.03.758

18 AAC 75.520. MARINE ENVIRONMENTS. (a) For the purposes of AS 46.03.758(b)(1)(E), estuarine, intertidal and saltwater environments are classified as follows:

(1) Critical marine environments include

(A) marine water within the boundaries of state game refuges established under AS 16.05.255(1) or AS 16.20;

(B) marine water within the boundaries of fish and game critical habitats established under AS 16.20;

(C) marine water within the boundaries of marine sanctuaries established under 33 U.S.C. 1401 *et seq.*, (P.L. 92-532);

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(a) For the pur-
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92-532);

(D) marine water within the boundaries of areas administered under the National Wildlife Refuge System;

(E) marine water within one statute mile of the mouth of waters designated under AS 16.05.870(a) as important for the spawning, rearing or migration of anadromous fish;

(F) marine water within one statute mile of a seabird colony or marine mammal rookery or hauling ground identified by the Alaska Department of Fish and Game in Alaska's Wildlife and Habitat, January, 1973;

(G) high density sea otter habitat identified by the Alaska Department of Fish and Game in Alaska's Wildlife and Habitat, January, 1973; and

(H) marine water within the barrier island-lagoon ecosystems extending from the Colville River to Canning River, and seaward of the Copper River delta;

(2) Sensitive marine environments include

(A) the inside waters of Southeast Alaska not otherwise classified in (1) of this subsection;

(B) saltwater wetlands and other intertidal and estuarine areas not otherwise classified in (1) of this subsection; and

(C) Prince William Sound, and the bays, arms, fjords, ports and other inside marine waters of Prince William Sound; and

(D) all marine water within 10 statute miles of any point of those waters designated in (1) of this subsection.

(b) For the purposes of AS 46.03.758(b)(1)(C), marine water not classified in (a) of this section is classified as without significant aquatic resources. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.530. PUBLIC LAND ENVIRONMENTS. (a) For the purposes of AS 46.03.758(b)(1)(C), public land is classified as follows:

(1) Critical terrestrial environments include

(A) state game reserve areas, refuges and sanctuaries established under AS 16.05.255(1) or AS 16.20 *et seq.*;

(B) state parks, campgrounds and waysides;

(C) municipal parks and park reserves;

(D) national parks, preserves, wilderness areas, monuments, recreation areas and lands administered under the National Wildlife Refuge System;

(E) established campgrounds, scenic waysides and picnic areas; and

(F) national historical sites;

(2) Very sensitive terrestrial environments include

(A) land administered under the National Forest System not otherwise classified in (1) of this subsection;

(B) land underlain with continuous permafrost not otherwise classified in (1) of this subsection; and

(C) land in state forests and research areas not otherwise classified in (1) of this subsection;

(3) Sensitive terrestrial environments include land other than that classified in (1) or (2) of this subsection upon which continuous natural terrestrial vegetation cover is present.

(b) For the purposes of AS 46.03.758(b)(1)(C), all public land not classified in (a) of this section is classified as without significant terrestrial environmental resources. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.540. TOXICITY OF PETROLEUM, PETROLEUM PRODUCTS, AND BYPRODUCTS. For the purposes of AS 46.03.758(d), the toxicity of petroleum, petroleum products, and byproducts is as follows:

(1) highly toxic

(A) numbers 1, 2 and Arctic diesel fuel and heating oil;

(B) jet aviation fuels A and B;

(C) motor gasoline including aviation gasoline;

(D) kerosene; and

(E) stationary turbine fuels;

(2) moderately toxic

(A) waste oil and waste oil mixtures;

(B) lubricating oil;

(C) jet fuels other than those specified in (1)(B) of this section;

and

(D) crude oil;

(3) less toxic

(A) bunker and residual fuel oils; and

(B) hydraulic fluids;

(4) relatively nontoxic

(A) asphalts;

(B) tars; and

(C) other petroleum, petroleum products, and byproducts not listed in (1) — (3) of this section. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.550. DEGRADABILITY OF PETROLEUM, PETROLEUM PRODUCTS, AND BYPRODUCTS. For the purposes of AS 46.03.758(d), the degradability of petroleum petroleum products and byproducts is as follows:

(1) low degradability

(A) asphalt;

- (B) tar;
 - (C) bunker and residual fuel oils; and
 - (D) other petroleum, petroleum products, and byproducts not otherwise listed in (2) or (3) of this section;
- (2) moderate degradability.
- (A) hydraulic fluids;
 - (B) lubricating oil;
 - (C) waste oils and waste oil mixtures; and
 - (D) crude oil;
- (3) high degradability
- (A) motor gasoline, including aviation gasoline;
 - (B) numbers 1, 2 and Arctic diesel fuel and heating oil;
 - (C) jet and stationary turbine fuels; and
 - (D) kerosene.

(Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.560. DISPERSIBILITY OF PETROLEUM, PETROLEUM PRODUCTS, AND BYPRODUCTS. For the purposes of AS 46.03.758(d), the dispersibility of petroleum, petroleum products, and byproducts is as follows:

- (1) highly dispersible
- (A) motor gasoline, including aviation gasoline;
 - (B) all jet fuels;
 - (C) kerosene;
 - (D) numbers 1, 2 and Arctic diesel fuel and heating oil;
 - (E) hydraulic fluids; and
 - (F) stationary turbine fuels;
- (2) moderately dispersible
- (A) emulsified oil mixtures;
 - (B) lubricating oils;
 - (C) waste oil and waste oil mixtures; and
 - (D) crude oils;
- (3) low dispersibility
- (A) bunker and residual fuel oils;
 - (B) asphalts;
 - (C) tars; and
 - (D) other petroleum, petroleum products, and byproducts not otherwise listed in (1) or (2) of this section. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.570. SCHEDULE OF CIVIL PENALTIES. The schedule of civil penalties for which a person may be held liable under AS 46.03.758(e) is established as follows:

(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.

75.570

receiving

Public
Land
\$1.00
.75
.50
.25

as fol-

Factor

1.0
0.75
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18 AAC 75.580 ENVIRONMENTAL CONSERVATION 18 AAC 75.600

18 AAC 75.580. PROSECUTORIAL DISCRETION. In appropriate cases, the department will, in its discretion, either settle actions out of court under AS 46.03.758 for less than the full penalty provided for under this chapter, or decline to file an action under AS 46.03.758. This section is intended to confirm the department's litigation discretion, and may not be construed as creating a reviewable decision. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.590. ANNUAL REPORT. Within 10 days after the convening of each regular legislative session, the department will report to the legislature on all actions brought during the preceding calendar year, and the status and disposition of those actions. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

18 AAC 75.600. DEFINITIONS. As used in secs. 500 — 600 of this chapter

- (1) "estuary" means a semienclosed, coastal body of water which has a free connection with the sea and within which seawater is measurably diluted with freshwater derived from land drainage;
- (2) "freshwater wetlands" means those environments characterized by rooted vegetation which is partially submerged either continuously or periodically by surface freshwater with less than .5 parts per thousand salt content and not exceeding three meters in depth;

(3) "inside waters of Southeast Alaska" includes all those marine waters lying inside the boundary line established in 33 C.F.R. secs. 82.1705-1730, 42 Federal Register 35791 (July 11, 1977);

(4) "marine water" means all saltwater environments, including saltwater wetlands, estuaries, and the intertidal zone;

(5) "permafrost" means soil or other earth material supporting vegetation with a temperature which remains below 0 degrees Celsius (32 degrees Fahrenheit) for two or more years;

(6) "Prince William Sound" includes all marine water lying inside the boundary line established in 33 C.F.R. sec. 82-1740, 42 Federal Register 35791 (July 11, 1977); and

(7) "saltwater wetlands" means those coastal areas along sheltered shorelines characterized by halophytic hydrophytes and macroalgae extending from extreme low tide to an area above extreme high tide which is influenced by sea spray or tidally induced water table changes. (Eff. 4/19/78, Register 66)

Authority: AS 46.03.758

Article 6. General Provisions

Section
900. Definitions

18 AAC 75.900. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "cleanup" means the removal of a hazardous substance from the land or water, and other measures which the regional supervisor or his designee considers necessary to mitigate or avoid environmental harm;

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

(3) "discharge" means the entry of a hazardous substance into or upon the water or land of the state, regardless of causation;

(4) "facility or operation" means any offshore or onshore structure, improvement, vessel, vehicle, land, enterprise, endeavor or act;

(5) "hazardous substance" means an element or compound which, when it enters into or upon the water or surface or subsurface land of the state, presents an imminent and substantial danger to the public health or welfare or to fish, animals, vegetation, or any part of the natural habitat in which they are found, and includes, but is not limited to, poisons, pesticides, acids, caustics, infectious or pathological wastes, chemical toilet wastes, radioactive materials, solvent, toxic heavy metals, and oil;

(6) "oil" means a derivative of a liquid hydrocarbon and includes crude oil, lubricating oil, sludge, oil refuse or any other petroleum-related product or byproduct;

(7) "open burning" means the burning of any material such that the products of combustion are emitted directly into the ambient air without passing through a stack or flare;

(8) "person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or any other entity whatsoever;

(9) "person in charge" includes, in addition to the person causing or permitting the discharge

(A) for vessels, the master;

(B) for vehicles, the operator; and

(C) the person exercising a possessory interest in the facility or operation at the time of the discharge, unless the possessory interest is being exercised solely for the purpose of providing a place of residence for the person;

(10) "pesticide" means any chemical or biological agent intended for preventing, destroying, repelling or mitigating plant or animal

18 AAC 80.010 ENVIRONMENTAL CONSERVATION 18 AAC 80.010

life, and any substance intended for use as a plant regulator, defoliant or desiccant, including but not limited to insecticides, fungicides, rodenticides, herbicides, nematocides and biocides;

(11) "sheen" means an iridescent appearance of the surface of the water;

(12) "sludge" means a combination of solids and liquids, including but not limited to an aggregate of oil or oil and matter of any other kind having a combined specific gravity equivalent to or greater than that of water; and

(13) "water" includes lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, straits, passages, canals, the Pacific Ocean, Gulf of Alaska, Bering Sea, and Arctic Ocean, in the territorial limits of the state, and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially in or bordering the state or under the jurisdiction of the state. (Eff. 4/23/77, Register 62)

Authority: AS 46.03.020(10)
AS 46.03.755
AS 46.03.900

CHAPTER 80. DRINKING WATER

Section	Section
10. Alaska drinking water standards	70. Examination of water
20. Source protection	80. Reporting requirements
30. Cross-connections prohibited	90. Public notice of noncompliance
40. Water disinfection	100. Plan review
50. Maximum contaminant concentrations	110. Variance
60. Sampling and analysis	900. Definitions and abbreviations

18 AAC 80.010. ALASKA DRINKING WATER STANDARDS.

(a) Public water systems must comply with the requirements of this chapter.

(b) Subject to 18 AAC 80.110, no person may cause or allow the use of any water from a public water system owned or operated by that person which contains, or has a significant potential for containing

(1) any contaminant in noncompliance with the primary maximum contaminant concentrations set by 18 AAC 80.050; or

(2) any other contaminant in sufficient amount to make water unfit for human consumption. (Eff. 12/31/77, Register 64; am 9/1/82, Register 83)

Authority: AS 46.03.020(10)
AS 46.03.050
AS 46.03.070

State officials ask Exxon to pay minimum fine now

By CHEILA TOOMEY
Daily News reporter

State officials have asked Exxon to ante up a \$14 million down payment on civil penalties the attorney general says will likely be imposed on the company because of the Valdez oil spill.

In a letter dated April 25, Attorney General Doug Baily said paying the minimum fine now will signal that Exxon is serious about accepting responsibility for the spill, and will save them some interest costs down the road.

Baily said Wednesday the pollution fines are "totally separate" from possible civil damages or criminal charges that might be filed.

An Alaska statute, usually called the dollars-for-gallons law, calls for fines ranging from \$1 to \$10 per gallon of spilled oil. Spillers can get credit for oil recovered.

Preliminary calculations included in Baily's letter use a \$2.50 a gallon rate for pollution of estuarial, intertidal and confined saltwater environments. It assumes a 10 million-gallon spill with no recovery by Exxon.

The assessment is based on findings by the Department of Environmental Conservation and "the best information available at this time," Baily said.

Steve Muldur, an attorney for Bogle and Gates, the Anchorage law firm representing Exxon, said he could not comment on the state's request because the letter had not yet been received.

A recent study by the Daily News of tanker spills in Valdez indicated few spillers pay even minimal fines. Of about 160 mostly small spills since 1984, only once did the state demand money.