HOUSE COMMITTEE REPORT

(9)
Date Referred: February 22, 1990

FURTHER REFERRALS:
JUDICIARY
FINANCE

Date of Committee Action: 3/28/90

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 [ ] 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)
[ ] fiscal impact ______
[ ] zero fiscal note ______
[ ] zero with analysis ______

APPROVES PREVIOUS: (Date/Dept)
[ ] fiscal note(s) ______
[2] zero fiscal note(s) DEC 2/22/90 A&F+G 2/22/90
[ ] zero fn/analysis ______

SIGNING DO PASS:
Grant [signature]
Cliff Davidson
Mike Davis
Mike Navarre
George Jacko

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
Bill Hudson		✓	
Bert Sharp		✓	
[signature]	X		

[signature]
Chairman's Signature

STEVE COWPER
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,

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
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

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:
Date: 2/19/90
Agency: Department of Environmental Conservation

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

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 565 - corrected
PUBLISH DATE: HOUSE 2/22/90

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					
REVENUE	0					

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 D. Gilmore Date: 2 27 90
Agency: Fish and Game

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

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 565 (c) No. 2
PUBLISH DATE: HOUSE 2/22/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: An act strengthening DEC's contingency plan and inspection requirements
Sponsor: Governor Rules Committee
Requestor: Governor

Agency Affected: Department of Fish and Ga
BRU: Habitat Division
Components: Habitat

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	135.9					
TRAVEL	6.0					
CONTRACTUAL	13.6					
SUPPLIES	1.0					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	156.5					
CAPITAL	0					
REVENUE	0					

FUNDING: (Thousands of Dollars)

GENERAL FUND	156.5						
FEDERAL FUNDS	0						
OTHER	0						
TOTAL	156.5						

POSITIONS:

FULL-TIME	2						
PART-TIME	1						
TEMPORARY	0						

ANALYSIS: (Attach a separate page if necessary) (Explanation Attached)

FY 90 Impact: (3/24-6/30/90

Personal Services	51.9
Travel	2.0
Contractual	4.0
Supplies	1.0
Equipment	7.0
TOTAL	65.9

Prepared by: Frank Rue
Division: Habitat
Phone: 465-4105
Date: 2/14/90

Approved by Commissioner:
Agency: ADF&G
Date: 2/14/90

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

Continuation of fiscal note analysis

FY91 Line Itemization -

PCN/NEW	RANGE/STEP	CLASSIFICATION	NO. MONTHS (COST)	LOCATION
New	18C	Habitat Biologist III	12 (54.0)	Anchorage
New	18C	Habitat Biologist III	12 (61.1)	Fairbanks
6118	16J	Cartographer III	3 (13.5)	Anchorage
New	8C	Clerk/Typist III	1.5 (3.8)	Anchorage
6131	7A	Clerk/Typist III	1.5 (3.5)	Fairbanks
TOTAL			$135.9	

EXPLANATION

As a result of the Exxon Valdez oil spill, it has become apparent that existing oil spill contingency plans are inadequate. Consequently, the U.S. Coast Guard (USCG) is reviewing and updating its regional contingency plans, and the state intends to re-evaluate the adequacy of at least the major nongovernmental contingency plans. This effort has already been initiated and we anticipate that, at a minimum, the state will participate in planning projects for Prince William Sound, Cook Inlet, the Beaufort Sea, and possibly other areas such as the Chukchi Sea. the state will also be involved in re-evaluating and potentially expanding the Dispersant Use Guidelines and Wildlife Protection Guidelines, which have incorporated into the USCG Alaska Region spill contingency plan. In order to protect the state's interests in fish and wildlife populations, habitats, and public uses of these resources, ADF&G will require additional staff to dedicate specifically to contingency planning.

The principal resources at risk because of oil and other hazardous substance releases are fish and wildlife, and the ADF&G is the state agency with the expertise and statutory mandate to provide information and recommendations regarding these resources. The department must compile and provide information on the distribution, abundance, and critical life function needs of fish and wildlife populations that may be affected by a spill or other release. Based on this information, the department must recommend mitigation measures that will afford the highest possible level of fish and wildlife protection. Examples of mitigation decisions are

Continuation of Explanation

the identification of areas that are biologically suitable for oil dispersant use, identification of areas of highest priority for containment or defensive booming, identification of criteria for deploying shoreline cleanup equipment and crews, and the selection of shoreline cleanup techniques that will maximize biological benefits and minimize biological costs.

At present, ADF&G has no funding allocated to perform this function. Between February 16 and June 30 of FY90, ADF&G will need: 9 months of HBIII, 2.25 months of CTIII, and 1.0 month of CartIII. ADF&G will also require two computers and funding for other support services as noted above.

MENARD

go0510hH
Lauterbach
3/17/90

Original sponsor(s): Rules/Governor

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 565 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to civil penalty, damages, costs, and attorney fee provisions concerning the discharge of oil and other environmental violations; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

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

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

(a) The legislature finds that

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

(2) the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however, in light of the magnitude of harm that [WHICH] may be caused by oil discharges, and the vital importance of commercial, sport and subsistence fishing, tourism, and Alaska's natural abundance and beauty to the economic future of the state and its quality of life, it is the judgment of the legislature 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 ensure [INSURE] that the public does not bear substantial losses from oil pollution for which, because of its subtle, long-term or unquantifiable nature, compensation would not otherwise be received; and

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

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

(b) In order to promote the safe handling of oil, the department shall adopt regulations that establish a schedule of penalties for discharges of oil into the receiving environments described in (1) - (3) of this subsection. Subject to AS 46.08.761 and (m) of this section, the penalties may not exceed

(1) $12.50 per gallon of oil that enters a surface or subsurface freshwater environment;

(2) $8.00 per gallon of oil that enters an estuarine, intertidal, or confined saltwater environment;

(3) $6.00 per gallon of oil that enters an unconfined

saltwater environment or onto the land or subsurface land of the state.

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

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

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

(e) If a discharge of oil [IN EXCESS OF 18,000 GALLONS] not permitted under applicable state and federal law occurs within the territorial jurisdiction of the state, or into or upon the adjacent outer continental shelf of the state, the following persons, in addition to the person causing or permitting the discharge, are jointly and severally liable to the state, in a civil action, for the full amount of penalties established under this section and in the regulations adopted under this section:

(1) if the discharge occurs from a [ANY] commercial or industrial facility other than a vessel or offshore platform, the 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

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

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

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

(f) For purposes of assessing a penalty under (b) of this section, in determining how many gallons of oil have been discharged onto a surface freshwater or saltwater environment or onto the surface land of the state, the court shall deduct the number of discharged gallons of oil that the defendant proves 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 removal for purposes of this subsection.

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

(i) The imposition of a civil penalty under this section does not limit or otherwise affect the authority of the department to enforce a provision of this chapter, AS 46.04, or AS 46.09, or to

recover damages, restoration expenses, investigation costs, court costs, and attorney fees. A person who pays a civil penalty imposed under this section is entitled to set off the penalty amount paid against a civil penalty awarded by a court against the person for the same discharge under AS 46.03.760(a).

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

(m) The penalty that would otherwise be assessed under (b) of this section shall be multiplied by a factor of five if a court determines that

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

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

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

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

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

(1) $8 per gallon of crude oil discharged for the first 420,000 gallons discharged, subject to adjustment under AS 46.03.761; and

(2) $12.50 per gallon of crude oil discharged for amounts discharged in excess of 420,000 gallons, subject to adjustment under AS 46.03.761.

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

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

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

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

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

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

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

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

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

Oil Bill

JUDGE TAKES THESE 9 PTS INTO CONSIDERATION IN MAKING FINE.

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

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

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

(4) the prior history of violations committed by the person;

JUDGE DISCRETION

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

(6) the extent and seriousness of the violation;

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

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

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

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

(e) In addition to liability under (a) [- (d)] of this section, a person who violates or causes or permits to be violated a provision of AS 46.03.740 - 46.03.750 is liable to the state, in a civil action brought under AS 46.03.822, for the full amount of actual damages caused to the state by the violation, including direct and indirect costs associated with the abatement, containment and [OR] removal of the pollutant, restoration of the environment to its former state, and all incidental administrative costs.

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

Sec. 46.03.761. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar amounts in AS 46.03.758, 46.03.759, and 46.03.760 and in the

CONSUMER PRICE INDEX

regulations adopted under AS 46.03.758 change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all urban consumers for the Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January of the year in which this section becomes effective is the reference base index.

(b) The dollar amounts change on October 1 of each year. After calculation of the new amounts, the resulting amounts shall be rounded to the nearest cent.

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The department shall adopt a regulation

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

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

(3) announcing, promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

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

* Sec. 14. AS 46.03.763 is amended to read:

Sec. 46.03.763. ATTORNEY FEES AND COSTS. In an action [TO IMPOSE CIVIL PENALTIES] under AS 46.03.758, 46.03.759, [OR] 46.03.760, 46.03.765, 46.03.780, or 46.03.822 [FOR A DISCHARGE OF OIL], the state may recover full reasonable attorney fees and costs incurred by the state in maintaining the action.

* Sec. 15. AS 46.03.758(c), 46.03.758(g), 46.03.760(b), 46.03.760(c), and 46.03.760(f) are repealed.

* Sec. 16. AS 46.03.763, as amended by sec. 14 of this Act, has the effect of amending Rule 82, Alaska Rules of Civil Procedure, by allowing the recovery of full reasonable attorney fees and costs in certain additional actions.

* Sec. 17. This Act takes effect immediately under AS 01.10.070(c).

go0510hJ
Lauterbach
3/27/90

Original sponsor(s): Rules/Governor

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 565 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to civil penalty, damages, costs, and attorney fee provisions concerning the discharge of oil and other environmental violations; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

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

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

(a) The legislature finds that

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

(2) the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however, in light of the magnitude of harm that [WHICH] may be caused by oil discharges, and the vital importance of commercial, sport and subsistence fishing, tourism, and Alaska's natural abundance and beauty to the economic future of the state and its quality of life, it is the judgment of the legislature that substantial civil penalties should be imposed for the illegal discharge of oil in order to provide a meaningful incentive for the safe handling of oil

and to ensure [INSURE] that the public does not bear substantial losses from oil pollution for which, because of its subtle, long-term or unquantifiable nature, compensation would not otherwise be received; and

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

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

(b) In order to promote the safe handling of oil, the department shall adopt regulations that establish a schedule of penalties for discharges of oil into the receiving environments described in (1) - (3) of this subsection. Subject to AS 46.08.761 and (m) of this section, the penalties may not exceed

(1) $12.50 per gallon of oil that enters an anadromous stream or other freshwater environment with significant aquatic resources;

(2) $8.00 per gallon of oil that enters an estuarine, intertidal, or confined saltwater environment;

(3) $6.00 per gallon of oil that enters an unconfined saltwater environment, public land, or a freshwater environment without significant aquatic resources.

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

(d) The schedule must [SHALL] vary according to the toxicity, degradability, and dispersal characteristics of the oil. The schedule must [SHALL] also vary according to the sensitivity and productivity of the receiving environment. Variations under this subsection may be by subcategories of receiving environments, specific receiving environments, or both. The maximum penalties established in (b) of this section must [SHALL] apply to discharges in the most sensitive and productive of receiving environments within each category of receiving environment, and the penalty must [SHALL] decrease for less productive or sensitive receiving environments. If oil is discharged into multiple receiving environments, the penalty must be based upon the schedule penalty value applicable to the most sensitive and productive receiving environment unless the defendant proves how much oil entered each receiving environment by clear and convincing evidence. — Gene Pounder

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

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

(1) if the discharge occurs from a [ANY] commercial or industrial facility other than a vessel or offshore platform, the

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

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

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

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

(f) For purposes of assessing a penalty under (b) of this section, in determining how many gallons of oil have been discharged, the court shall deduct the number of discharged gallons of oil that the defendant proves by clear and convincing evidence were removed by the defendant from the environment as a result of a cleanup operation undertaken in conformity with applicable state and federal law, except that if the oil was discharged onto a surface freshwater or saltwater environment or onto the surface of public land, the court shall deduct the number of discharged gallons of oil that the defendant proves by clear and convincing evidence were removed by the defendant 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 removal for purposes of this subsection.

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

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

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

(m) The penalty that would otherwise be assessed under (b) of this section shall be multiplied by a factor of five if a court determines that

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

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

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

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

(a) A person who is found to be liable under any other state law for an unpermitted discharge of crude oil [IN EXCESS OF 18,000 GALLONS] is, in addition to liability for any other penalties or for damages or the cost of containment and cleanup, liable to the state in a civil action for a civil penalty, up to a maximum of $500,000,000, <u>subject to adjustment under AS 46.03.761,</u> in the amount of

(1) $8 per gallon of crude oil discharged for the first

420,000 gallons discharged, subject to adjustment under AS 46.03.761; and

(2) $12.50 per gallon of crude oil discharged for amounts discharged in excess of 420,000 gallons, subject to adjustment under AS 46.03.761.

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

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

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

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

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

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

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

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

(a) A person who violates or causes or permits to be violated a provision of this chapter, AS 46.04, AS 46.09, or a regulation, order of the department, permit, approval, or certificate issued under this chapter, AS 46.04, or AS 46.09, is liable to the state in a civil

action for a sum to be assessed by the court of not less than $2,500 nor more than $100,000 a day for each violation, subject to adjustment under AS 46.03.761. Each violation is a separate and distinct offense, and where a violation continues from day to day each day constitutes a separate violation. The amount assessed by the court under this subsection must reflect, as applicable,

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

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

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

(4) the prior history of violations committed by the person;

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

(6) the extent and seriousness of the violation;

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

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

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

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

(e) In addition to liability under (a) [- (d)] of this section, a person who violates or causes or permits to be violated a provision of AS 46.03.740 - 46.03.750 is liable to the state, in a civil action brought under AS 46.03.822, for the full amount of actual damages caused to the state by the violation, including direct and indirect

costs associated with the abatement, containment and [OR] removal of the pollutant, restoration of the environment to its former state, and all incidental administrative costs.

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

Sec. 46.03.761. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar amounts in AS 46.03.758, 46.03.759, and 46.03.760 and in the regulations adopted under AS 46.03.758 change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all urban consumers for the Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January of the year in which this section becomes effective is the reference base index. 3 YRS.

(b) The dollar amounts change on October 1 of each year. After calculation of the new amounts, the resulting amounts shall be rounded to the nearest cent.

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The department shall adopt a regulation

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

(2) amending, on or before June 30 of each year, the regulations adopted under AS 46.03.758(b) to reflect the changes in dollar

amounts required by (b) of this section; and

(3) announcing, promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

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

* Sec. 14. AS 46.03.763 is amended to read:

Sec. 46.03.763. ATTORNEY FEES AND COSTS. In an action [TO IMPOSE CIVIL PENALTIES] under AS 46.03.758, 46.03.759, [OR] 46.03.760, 46.03.765, 46.03.780, or 46.03.822 [FOR A DISCHARGE OF OIL], the state may recover full reasonable attorney fees and costs incurred by the state in maintaining the action.

* Sec. 15. AS 46.03.758(c), 46.03.758(g), 46.03.760(b), 46.03.760(c), and 46.03.760(f) are repealed.

* Sec. 16. AS 46.03.763, as amended by sec. 14 of this Act, has the effect of amending Rule 82, Alaska Rules of Civil Procedure, by allowing the recovery of full reasonable attorney fees and costs in certain additional actions.

* Sec. 17. This Act takes effect immediately under AS 01.10.070(c).

go0510hD
Lauterbach
3/28/90

Original sponsor(s): Rules/Governor

IN THE HOUSE BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 565 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to civil penalty, damages, costs, and attorney fee provisions concerning the discharge of oil and other environmental violations; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an effective date."

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

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

(a) The legislature finds that

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

(2) the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however, in light of the magnitude of harm that [WHICH] may be caused by oil discharges, and the vital importance of commercial, sport and subsistence fishing, tourism, and Alaska's natural abundance and beauty to the economic future of the state and its quality of life, it is the judgment of the legislature 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 ensure [INSURE] that the public does not bear substantial losses from oil pollution for which, because of its subtle, long-term or unquantifiable nature, compensation would not otherwise be received; and

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

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

(b) In order to promote the safe handling of oil, the department shall adopt regulations that establish a schedule of penalties for discharges of oil into the receiving environments described in (1) - (3) of this subsection. Subject to AS 46.08.761 and (m) of this section, the penalties may not exceed

(1) $12.50 per gallon of oil that enters an anadromous stream or other freshwater environment with significant aquatic resources;

(2) $8.00 per gallon of oil that enters an estuarine, intertidal, or confined saltwater environment;

(3) $6.00 per gallon of oil that enters an unconfined saltwater environment, public land, or a freshwater environment without significant aquatic resources.

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

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

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

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

(1) if the discharge occurs from a [ANY] commercial or industrial facility other than a vessel or offshore platform, the

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

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

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

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

(f) For purp ses of assessing a penalty under (b) of this section, in determining how many gallons of oil have been discharged, the court shall deduct the number of discharged gallons of oil that the defendant proves by clear and convincing evidence were removed by the defendant from the environment within 365 days after the discharge as a result of a cleanup operation undertaken in conformity with applicable state and federal law, except that if the oil was discharged onto a surface freshwater or saltwater environment or onto the surface of public land, the court shall deduct the number of discharged 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 removal for purposes of this subsection.

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

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

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

(m) The penalty that would otherwise be assessed under (b) of this section shall be multiplied by a factor of five if a court determines that

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

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

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

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

(a) A person who is found to be liable under any other state law for an unpermitted discharge of crude oil [IN EXCESS OF 18,000 GALLONS] is, in addition to liability for any other penalties or for damages or the cost of containment and cleanup, liable to the state in a civil action for a civil penalty, up to a maximum of $500,000,000, <u>subject to adjustment under AS 46.03.761,</u> in the amount of

(1) $8 per gallon of crude oil discharged for the first 420,000 gallons discharged, subject to adjustment under AS 46.03.761; and

(2) $12.50 per gallon of crude oil discharged for amounts discharged in excess of 420,000 gallons, subject to adjustment under AS 46.03.761.

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

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

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

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

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

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

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

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

(a) A person who violates or causes or permits to be violated a provision of this chapter, AS 46.04, AS 46.09, or a regulation, order of the department, permit, approval, or certificate issued under this

chapter, AS 46.04, or AS 46.09, is liable to the state in a civil action for a sum to be assessed by the court of not less than $2,500 nor more than $100,000 a day for each violation, subject to adjustment under AS 46.03.761. Each violation is a separate and distinct offense, and where a violation continues from day to day each day constitutes a separate violation. The amount assessed by the court under this subsection must reflect, as applicable,

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

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

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

(4) the prior history of violations committed by the person;

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

(6) the extent and seriousness of the violation;

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

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

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

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

(e) In addition to liability under (a) [- (d)] of this section, a person who violates or causes or permits to be violated a provision of AS 46.03.740 - 46.03.750 is liable to the state, in a civil action brought under AS 46.03.822, for the full amount of actual damages

caused to the state by the violation, including direct and indirect costs associated with the abatement, containment and [OR] removal of the pollutant, restoration of the environment to its former state, and all incidental administrative costs.

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

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

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

(c) If the index is revised, the percentage of change is calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index is determined by multiplying the reference base index applicable by the rebasing factor furnished by the United States Bureau of Labor Statistics. If the index is superseded, the index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for Alaskan consumers.

(d) The department shall adopt a regulation

(1) announcing, on or before June 30 of each third year,

the changes in dollar amounts required by (b) of this section;

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

(3) announcing, promptly after the changes occur, changes in the index required by (c) of this section, including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

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

* Sec. 14. AS 46.03.763 is amended to read:

Sec. 46.03.763. ATTORNEY FEES AND COSTS. In an action [TO IMPOSE CIVIL PENALTIES] under AS 46.03.758, 46.03.759, [OR] 46.03.760, 46.03.765, 46.03.780, or 46.03.822 [FOR A DISCHARGE OF OIL], the state may recover full reasonable attorney fees and costs incurred by the state in maintaining the action.

* Sec. 15. AS 46.03.758(c), 46.03.758(g), 46.03.760(b), 46.03.760(c), and 46.03.760(f) are repealed.

* Sec. 16. AS 46.03.763, as amended by sec. 14 of this Act, has the effect of amending Rule 82, Alaska Rules of Civil Procedure, by allowing the recovery of full reasonable attorney fees and costs in certain additional actions.

* Sec. 17. This Act takes effect immediately under AS 01.10.070(c).

NORTH PACIFIC FUEL
P.O. BOX 1487
KODIAK, ALASKA 99615

Rep. Cliff Davidson
Juneau Alaska

March 21, 1989

Dear Cliff:

Re:HB 565 and HB 567

I have reviewed the contents of the above mention bills and have a couple of concerns about them.

The areas that concern me the most are Financial Responsibility and Penalties, in regards to refined oil terminals.

BACKGROUND

In Alaska, everything runs on Petroleum Products, fishing, timber, heating homes, airplanes, and automobiles. The fuel distributor (and his oil terminal) play a vital link in basic survival in Alaska.

If laws are passed that make it more expensive for a fuel distributor to operate, the Alaskan consumer is the only one who will pay the bill.

If laws are passed that force the fuel distributor out of business then the Alaskan consumer has no place to purchase the vital products he needs to run industry, heat his home, just basicly survive.

When you get away from the parts of Alaska linked to the Oil Refineries on the Kenai Peninsula (or Fairbanks) by road, Oil Terminals have to be able to be able to supply the city, village or cannery for extended periods of time. So the size of the storage needs to be large.

Costs of ocean transportation increase as the quantity of fuel delivered decrease. Weather conditions can keep a fuel barge from reaching its destination for days, weeks or in some situations all winter. Because of conditions like this the fuel distributor needs to have adequate storage to take a large quantity of fuel and still not be in a "run out" situation.

FINANCIAL RESPONSIBILITY

There should be a sliding scale attached to financial responsibility. To classify all terminals over a 10,000 bbls the same is grossly unfair. An amount per barrel stored would be more fair, so a facility storing 15,000 barrels would not have the same responsibility as one storing 150,000 barrels.

The legislature needs to consider what is available for Terminals Operators to cover the financial responsibility requirement. We are not all Exon or Arco with unlimited resources to pledge. To those of us that are Alaskan owned business, this means buying insurance. The coverage may not be available or the price may be out of sight.

At one point a few years ago many dealers were not covered because the coverage was simply not available.

More thought needs to go into the regulations covering Refined Oil Terminals in the State. It is not good government to pass laws that cause extreme hardship and have no solution.

PENALTIES

The emphasis on penalitys is obviously designed to catch companies like Exon that do major damage and have lots of money. The net effect of these penalitys on a smaller company (fishing boat, freighter, independent oil company etc) could be devistaitng. A person may not be able to clean up the spill, fix the problem that caused the spill and still pay the penalitys.

PREVENTION

It is important that Oil Terminal Owners keep upgrading their facilities, if we have to put all our resources into paying insurance and saving accounts to pay fines in case we have a problem. There is that much less money to us to make our Facilities more enviromentaly safe.

CLOSING

We need to keep our environment safe and clean for ourselves and our children, but we need to do it in a manner that is reasonable and not destructive to business and consumers. There are only two types of individuals to pay these costs, taxpayers and consumers.

As you make you laws please consult with the industry which will be affected by the laws, the insurance companies which will need to provide the coverage. This will result in a system that works. To many times the legislature will pass a bill that creates an unworkable law.

Sincerely,

Jim Ramaglia

Jim Ramaglia
Vice President

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX N
JUNEAU, ALASKA 99811-1200
PHONE: 465-4322

March 14, 1990

The Honorable Curt Menard
Co-Chairman, House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

RE: HB 566; establisning the Alaska State Emergency Response Commission

Dear Representative Menard:

One of the bills currently before the House Resources Committee is HB 566 which, among other things, establishes the Alaska State Emergency Response Commission. I am writing to request that the Department of Public Safety (DPS) be added to the other State agencies which comprise the commission.

As you know, HB 566 would create by statute the successor to the present Emergency Response Commission (ERC) which was created by Administrative Order in response to the EXXON VALDEZ oil spill in Prince William Sound last year. While the Department of Public Safety has worked closely with the present ERC, we are not formally a member of it. Considering the limited role that DPS played in the spill cleanup efforts, after the initial response was over, we felt it was not necessary for DPS to be on the oil spill ERC.

The ERC established by HB 566 is of a more general and long term nature, however. Considering the broad responsibilities the new ERC would have, we strongly believe that DPS should be included in the commission. We have discussed this with the Governor's Office and they agree with our position. I respectfully request that, if HB 566 is moved from

12-L2LH

committee, a committee substitute which adds DPS to the commission be considered.

Thank you for your consideration of this request.

Sincerely,

Arthur English
Commissioner

cc: Shari Kochman
Legislative Staff Assistant
Office of the Governor

Northern Alaska Environmental Center

218 DRIVEWAY
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 MAPCO 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 MAPCO 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

August 12, 1980
Tesoro notifies EPA of hazardous waste activities.

September 1980
DEC inspects Tesoro hazardous waste pits and issues a Compliance Order requiring Tesoro to stop violating Alaska law, no record of compliance was found.

October 8, 1980
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 waster 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.

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

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 [illegible] a substantial threat to human health

Your Loca

VOL. LXXXVII, No. 69 FAIRBANI

FDNM 3/11/89

Mapco to pay fine, changes procedures

By BRIAN O'DONOGHUE
Staff Writer

Mapco Alaska Petroleum ... 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 ... 's file on the oil refinery cont... 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 informe... 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 development," Blazer said. "If this sort of thing is going on right next to our major population centers and indeed, within a few miles of reg... ory 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."

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 am ts. The general thrust of the legislation is not directly addr d 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.

HB 566

In general, HB 566 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 consistence 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 recognized 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 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.

HB 567

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 without overall policy Recommendations 1, 2 and 3.

A "worst case" would be 1.8 million barrels for Prince William Sound and 500,00 barrels for Cook Inlet. The oil industry claims this cannot be recovered. It can, however, be done by a regional response plan which brings in the capabilities of all concerned--industry, state, and federal.

The following have been offered by industry:

Alyeska Contingency Plan submitted the recovery of 10K barrels per hour name plate capacity. Allowing for 35% best case recovery in 72 hours	252,000
ARCO, per recent testimony, with a 24-hour lag to allow for mobilization from West Coast	250,000
Other 5 Alyeska owners	(unknown)
Barrels	502,000

The above figures are for containment and best case recovery situations, ie. less than six foot sea state and no more than 1 knot currents.

ARCO's proposed 70,000 ton skimmer could be built to recover 25,000 barrels per hour based on it having half the capacity to pump oil out of the water that is common at the Valdez terminal for pumping oil into tankers. This would have a capacity of 600,000 barrels per day and allowing for a 35% best case recovery rate, it would recover 630,000 barrels in 72 hours. Our total best 72-hour case recovery is now 1,132,000. Thus the remaining question is how to make up the 670,000 barrel difference. Allowing for 20% evaporation of the light ends during this period, or 360,000 barrels, we can see that we are approaching our goal and have 310,000 barrels remaining for which capability must be demonstrated. Here is where the API/PIRO response may come in, also federal response from the Navy, the Corp of Engineers, the Coast Guard, and if necessary further Alyeska response. In any case, by a combination of new technology already being proposed by ARCO and by accumulation of other sources into a regional response plan, we have come close to a creditable "worst case response" capability.

The next question is why must this response be mounted in 72 hours. If you examine the oil spill simulations in our report, you

will note that it is after 72 hours that the greatest impact on the beaches occurs. Once the oil is on the beach, the Commission considers the battle lost. Therefore, our strong recommendations are on the immediacy of the response efforts.

As our report shows, Exxon Valdez is only 34th on the list of 65 great oil spills. Thus, the possibility of spills where the entire tanker load is lost, 1,800,000 barrels for Prince William Sound or 500,000 barrels for Cook Inlet, is still a very real worst case situation.

There are presently 94 tankers licensed for operation into Alaskan ports. Only 10 are covered by Alyeska's present plan for a "worst case" loss; 43 are covered by combining the Alyeska and ARCO plans, adding the large skimmer as described covers 70 tankers leaving only 24 uncovered.

What are the costs of achieving this level of protection, remembering we are only achieving worst case protection by mechanical containment and recovery in good weather conditions? The costs included here are estimated by me based on our contractors estimates for similar equipment.

One Time Costs

Alyeska Costs (already committed but no cost breakdown yet provided, so this is my estimate based on our contractor's estimates)	$60,000,000
ARCO Costs (less 4 ERV and 4 other vessels in Alyeska Costs, note that this system serves entire West Coast	$ 32,000,000
70,000 Ton Skimmer Costs ($93 million for new ship by Commission estimate plus $20 million for skimmer conversion by ARCO estimates	$ 113,000,000
1,132,000 barrels in 72 hours recovery	$ 205,000,000
Full Worst Case, another 310,000 barrels	80,000,000
Full Worst Case Recovery System in good weather	$ 285,000,000

Annual Costs

Alyeska	$10,000,000
ARCO	5,000,000

70,000 Ton Skimmer	10,000,000
Additional Recovery	5,000,000
TOTAL	$30,000,000

Operating costs as above should cover 72 hour initial period but do not cover beach cleanup costs.

Assuming a 10-year depreciation on one time costs, the annual costs for "worst case" mechanical recovery in Prince William Sound are $58,500,000 or the industry profits on 5 days throughput at the Valdez terminal.

*$6 X 9,750,000 barrels

*From Deakins Report

Now the question is, what is the cost of "worst case recovery" in bad weather. The present options are burning or dispersants. Future options may include gelling agents as described in cur report. The costs of bad weather treatment are:

Burning, the loss of the ship and cargo	
250,000 T Tanker, new	$192,000,000
cargo 1.8 million barrels @ $20	36,000,000
Total	$218,000,000
70,000 T Tanker, new	$ 93,000,000
cargo, 500,000 barrels @ $20	10,000,000
Total	$103,000,000
The costs of the flights and igniting agents plus recovery of crew	$ 250,000
Dispersants: Following the British method of aerial application and the most favorable 1 to 20 crude to dispersant ratio, we require for the worst case 1,800,000 barrels, some 90,000 barrels of dispersant or 3,780,000 gallons @ $3/gal	$ 11,340,000
Costs of 700 C130 flights of 5 hour duration or 3,500 flight hours @ $3500 per hour*	$ 12,250,000
Worst Case by dispersant	$ 23,590,000

Gelling agents: This method is untried, untested, and wholly hypothetical. The ratio of 40 to 1, agent to oil, is the best known and the costs are in the ballpark of what is being paid by the US Navy for gelling agents.

Gelling agents 45,000 barrels, 6,250 tons or 1,890,000 gal @ $12/gal	$ 22,680,000
Costs of 350 C130 flights of 5 hours duration @ $3500 per hour*	6,125,000
Total	$ 28,805,000

* Assumes dispersants or gelling agents are located at Anchorage or Kenai.

Thus, it is true that the costs of a worst case response are large, whatever method is used. The alternative of avoiding it is equally costly in the long run. The size of the worst case scenario for each region will be governed by how much risks the industry places on the region. Exxon Valdez has shown us that the area at risk can be very large if response is not immediate enough to keep the oil from migrating to near and distance beaches.

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 in part.

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.

Our report details the sorry history of how the Coast Guard backed off after 1979 when the Alyeska owners' law suit and later legislative action eliminated the state presence on tankers. The Coast Guard budget on marine safety, wherein ship inspections lie, was cut 28% between 1982 and 1989. Allowing for inflation this was a real cut of 40%. The fleet, meanwhile, aged another 7 years, with only two new additions Exxon Valdez and Exxon Long Beach, being added in this period. Thus, inspections dropped as the ships got older. The Coast Guard testified at length about its concerns with increasing hull fatigue before House Resources on January 24. Despite this concern of the Coast Guard, I view the chances of

major budget increases in marine safety as small unless the initiatives come Congress.

RECOMMENDATIONS NOT CONTAINED IN HB 565, HB 566 OR HB 567

Recommendation 9: Tank farm capacity at Valdez. wants hearing

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.

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 in 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

Please enter into the record my testimony to the Senator Zharoff & ~~Local Senator & the~~ House Resources Committee
committee name

committee on See below, dated 9 March 90.
bill/subject

SUGGEST:

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

Thank you for your time.

Signed: William Breth
Testifier

myself
Representing (Optional)

1516 Shamilow PO Box 1398 KODIAK, AK 99615
Address

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.

Ray Gillespie
Gillespie & Associates
Lobbying & Governmental Affairs

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

M E M O R A N D U M

MARILYN

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

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 Phillpsborn 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?

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 <u>both</u> 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.

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.

BP Alaska Exploration, Inc.
Testimony Before the Senate Oil and Gas Committee
March 5, 1990

Thank you for giving BP the opportunity to comment on Senate Bills 468, 503 and 504. 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.

Concerning the use of the State's disaster response powers and and resources to respond to major oil spills, BP supports the use these powers and the dedication of State resources for the response activities. BP, however, recommends that changes be made in the State's administrative structure so that a clear and effective chain of command exists when the State responds to an oil spill.

Senate Bills 503 and 468

Portions of Senate Bill 503 and Senate Bill 468 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 untimately 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.

Senate Bill 504

Senate Bill 504 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, with virtually no response from the agency. If SB 504 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 SB 504 might permit waivers to be granted by the DEC, essentially SB 504 relinquishes all decisions about the operation of oil terminal facilities, oil and gas exploration and production 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 along 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 inspects 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, to establish a specific deivsion within the DEC to monitor available records and inspection reports.

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.

Statement of
Jerry A. Aspland
President, ARCO Marine, Inc.
Before the Alaska Senate Special Committee on Oil and Gas
Senate Bill 504
Juneau, Alaska

March 5, 1990

Madam Chair and committee members. My name is Jerry Aspland and I am President of ARCO Marine, inc., the marine transportation subsidiary of ARCO. I am a graduate of the California Maritime Academy and have spent most of my professional career in the marine transportation business. I appreciate this opportunity to appear before you today to express the views of ARCO Marine on Senate Bill 504, Oil Spill Contingency Plans/Requirements.

Before addressing the legislation, I would like to offer a few general comments on oil spill prevention, response and clean-up.

Prevention is the key to avoiding oil spills. I am concerned that most legislation, both federal and state, are concentrating on oil spill clean-up and penalties and not enough is being done on prevention. Vessel traffic system, ratification of the standards of training and watch keeping, new selection and certification criteria of seagoing personnel, are just a few areas of prevention which must be addressed. Prevention is the key to avoiding oil spills and it must be addressed in a logical and rational manner.

ARCO Marine's experience shows that the success of an effective clean-up operation is dependent, not only on the adequacy of resources but, most importantly, on good human interaction and cooperation among industry, government and the members of the community. It is essential that in responding to spills all the elements of this network work together and integrate their efforts to mitigate the problem.

There are two key factors in a successful spill response and clean-up:

The first is sufficient pre-planning aimed at a realistic goal. It is essential to develop an environmental map, identifying environmentally sensitive areas, and to prepare a matrix that prioritizes the level of protection that would be afforded to each of these environmentally sensitive locations. It is also important to prepare, in advance, a list of available equipment, their locations, and the strategy of deploying such equipment. Last, continual training of those directly involved in clean-up is a necessity.

The second factor is the management of the clean-up efforts. This demands decisiveness, experience and expertise in spill response, and the ability to utilize resources efficiently. Without good management all the contingency plans and equipment can not be utilized most effectively.

Madam Chair, while ARCO Marine has many concerns with this legislation, we have decided to state our views on one specific aspect of SB 504 with which we believe compliance is impossible. Section 1 of SB 504, amends AS 46.04.030 (f) to mandate that an applicant for an oil discharge contingency plan demonstrate an ability to rapidly contain a realistic maximum oil discharge, and to remove that discharge within the shortest possible time. This mandate represents a radical policy departure from the existing regulatory requirement that an oil discharge contingency plan provide for containment and removal of the most likely oil spill. Moreover, this mandate is simply impossible to achieve given the current limitations in oil spill response technology. In other words, the requirements to demonstrate a rapid response and removal of a realistic maximum oil discharge, as defined, is rationally meaningless. Environmental eradication of large spills, such as these that are well beyond 10,000 barrels is currently neither technologically nor operationally feasible. With this in mind, I know of no way that ARCO Marine could meet the proposed requirements for obtaining an approved oil discharge contingency plan.

Furthermore, let us assume this legislation passes and we try to meet the intended meaning of the legislation, we will spend considerable amount of resources, along with state officials, and not accomplish much because we will pass the point of no return on mechanical recovery and not be able to finish the job. Therefore we would strongly recommend that the legislation be amended to reflect a target amount of oil spilled to be removed within the shortest possible time and a scenario plan for the maximum amount of oil discharged.

ARCO Marine is already among only a few marine companies that hold approved oil spill contingency plans with the State of Alaska. Additionally, our oil spill response team has demonstrated its ability with its clean-up efforts in the 1985 Port Angeles oil spill and several training exercises, including the 1988 exercise in Valdez. Recently, we were able to provide expertise and assistance in the Huntington Beach oil spill response in Southern California.

If ARCO Marine is incapable of complying with propsoed SB 504, I believe that demonstrates a fundamental shortcoming with the legislation.

I would like to thank you for the opportunity of appearing before you today. ARCO Marine, Inc. stands ready to assist your committee in this effort. I would be pleased to answer any questions you might have regarding my statement or any other related subjects.

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.

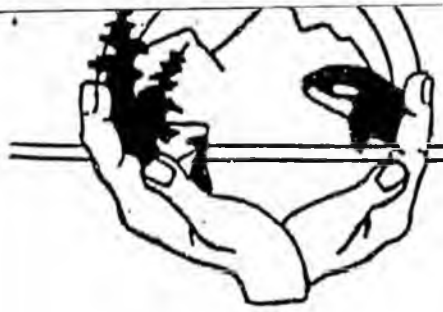
-- develop a regulation that sets the percentage of oil each producer can pump into the line

-- 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



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 pollutors.

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.

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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 phenonema 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

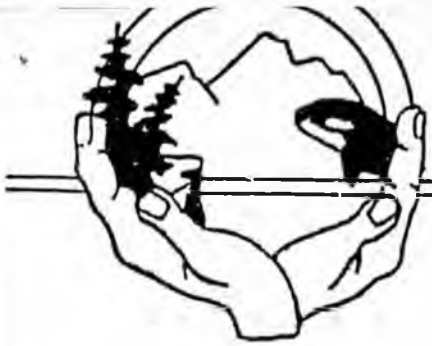
inspected by federal agencies, but the Alyeska facility has never been inspected in 12 years of operation and recent tests for corrosion in the pipeline have revealed extensive problems in 300 of the 800 miles.

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.

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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

March 7, 1990

TO: ALASKA SENATE
OIL & GAS COMMITTEE
JUNEAU, AK

FROM: TIM ROBERTSON
BOX 110
SELDOVIA, AK 99663

RE: SB 504

THANK YOU FOR THE OPPORTUNITY TO COMMENT ON SB 504.

THE FOLLOWING ARE MY COMMENTS:

1) **PREVENTION** I suggest that "Oil Discharge Contingency Plan" be changed to "Oil Discharge Prevention and Contingency Plan" everywhere it occurs in the statutes. It is important that oil explorers, producers, and shippers include a section in their C-plans that indicate what they have in place to PREVENT oil discharges as well as how they plan to clean them up. Alyeska has such a section in their new plan. It should be required in other plans also.

2) **FORCE OF LAW** C-plans need to have the force of law and need to be properly implemented. Mr. Williams of Alyeska mentioned to your committee the new policy of not shipping oil in weather and sea conditions when there is no possible chance of cleaning up a spill. However, Alyeska did not put this into their new C-plan. It is an internal company policy that is subject to change. All C-plans need to state that oil will not be shipped when conditions don't allow for a response and these conditions must be defined. The legislature must then give ADEC the authority and resources to make sure the plan is implemented and being followed.

3) **WORK TOGETHER** lets use all our knowledge and resources to make sure we are doing everything possible to prevent and prepare for oil spills. Section 1 (e) of SB 504 calls for review of C-plans by DEC, ADF&G, and DNR. A review by a CITIZENS ADVISORY COMMITTEE should also be required. I serve on the REGIONAL CITIZENS ADVISORY COMMITTEE created for Prince William Sound and we have met over 200 hours since June of 1989. We have completed an extensive review of the Alyeska Oil Spill Prevention and Response Plan. (I will provide you with a overview of that review shortly). The bill needs to be amended to require this type of review for all C-plans. Citizens Advisory Committees can be a strong preventative measure and can insure a vigilance born of concern for the protection of coastal resources by those for which it is most dear.

4) **REALISTIC PREPARATION** We now know if we can't put a massive containment and skimming effort on any major oil spill immediately the battle is lost. Section 1 (d) calls the oil industry to prepare for a response to a spill "within the shortest possible time". The maximum response should be within 48 hours. There should be a minimum response within 2 hours. In Europe they can bring 134,000 bbl/hr skimming capacity to bear on an oil spill within 48 hrs. Alyeska can bring 10,000 bbl/hr capacity to bear on a spill and has escort vessels that can begin an immediate response. In Lower Cook Inlet where I live there would be no equipment at the sight of a spill for over 12 hours and less than 2,000 bbl/hr in 48 hrs. There must be cleanup equipment and trained response crews close to a potential oil spill.

5) **NO VELVET CURTAINS** Alyeska has put together an impressive C-plan and organization since the EXXON VALDEZ oil spill. Yet, their plan clearly states that they intend to turn the management of the spill over to the shipper, owner, or Coast Guard within three days. Will the new managers follow the same Plan? Will the new managers have the same level of expertise, training, and experience as Alyeska? Will the new managers have the same local knowledge as a team put together by Alyeska. This bill needs to be amended to made sure that the answer to these questions is YES.

6) I strongly support the section of the Bill requiring PROOF OF FINANCIAL RESPONSIBILITY. Everyone must realize that a cost of doing business is protection and preserving our environment. Obviously these costs get passed on to the users as they should.

7) I strongly support the section of the Bill allowing for ACCESS AND INSPECTION to facilities and vessels. I encourage you to increase DEC's ability to have access to insure our environment is being protected.

Thank You for considering my comments.

STEVE COWPER, GOVERNOR

707 A STREET, SUITE 202
ANCHORAGE, AK 99501
PHONE: (907) 258-6545
FAX: (907) 279-4302

DEPARTMENT OF ADMINISTRATION

ALASKA OIL SPILL COMMISSION

March 6, 1990

MEMORANDUM

TO: Chairperson Drue Pearce, Special Committee on Oil & Gas
Committee Members

FROM: Walter B. Parker WBP
Chairman

I appreciate the offer to testify at length on the Governor's bills and our recommendations at some future date. After listening to the testimony offered on Monday, March 5, by Alyeska, ARCO and the State, I have the following specific comments:

Ability to Respond to Worse Case Scenarios

Mr. Asplund of ARCO stated a worst case would be 1.8 million barrels for Prince William Sound, exactly the figure I would use. What was not offered by industry was how do we achieve this figure. It can only be done by a regional response plan which brings in the capabilities of all concerned--industry, state, and federal.

The following have been offered:

Alyeska 10K barrels per hour name plate capacity. Allowing for 35% best case recovery in 72 hours	252,000
ARCO, per testimony, with a 24-hour lag to allow for mobilization from West Coast	250,000
Other five Alyeska owners	(unknown)
Barrels	502,000

The above figures are for containment and best case recovery situations, ie. less than six foot sea state and no more than 1 knot currents.

Memo
Senator Pearce
Mar 6, 1990

ARCO's proposed 70,000 ton skimmer could be built to recover 25,000 barrels per hour based on it having half the capacity to pump oil out of the water that is common at the Valdez terminal for pumping oil into tankers. This would have a capacity of 600,000 barrels per day and allowing for a 35% best case recovery rate, it would recover 630,000 barrels in 72 hours. Out total best 72-hour case recovery is now 1,132,000. Thus the remaining question is how to make up the 670,000 barrel difference. Allowing for 20% evaporation of the light ends during this period, or 360,000 barrels, we can see that we are approaching our goal and have 310,000 barrels remaining for which capability must be demonstrated. Here is where the API/PIRO response may come in, also federal response from the Navy, the Corp of Engineers, the Coast Guard, and if necessary further Alyeska response. In any case, by a combination of new technology already being proposed by ARCO and by accumulation of other sources into a regional response plan, we have come close to a creditable "worst case response" capability.

The next question is why must this response be mounted in 72 hours. If you examine the oil spill simulations in our report, you will note that it is after 72 hours that the greatest impact on the beaches occurs. Once the oil is on the beach, the Commission considers the battle lost. Therefore, our strong recommendations are on the immediacy of the response efforts.

As our report shows, Exxon Valdez is only 34th on the list of 65 great oil spills. Thus, the possibility of spills where the entire tanker load is lost, 1,800,000 barrels for Prince William Sound or 500,000 barrels for Cook Inlet, is still a very real worst case situation.

There are presently 94 tankers licensed for operation into Alaskan ports. Only 10 are covered by Alyeska's present plan fo_ a "worst case" loss; 43 are covered by combining the Alyeska and ARCO plans, adding the large skimmer as described covers 70 tankers leaving only 24 uncovered.

What are the costs of achieving this level of protection, remembering we are only achieving worst case protection by mechanical containment and recovery in good weather conditions? The costs included here are estimated by me based on our contractors estimates for similar equipment.

One Time Costs

Alyeska Costs (already committed but no cost breakdown yet provided, so this is my estimate	$60,000,000

Memo
Senator Pearce
March 6, 1990

ARCO Costs (less 4 ERV and 4 other vessels in Alyeska Costs, note that this system serves entire West Coast	$ 32,000,000
70,000 Ton Skimmer Costs ($93 million for new ship by Commission estimate plus $20 million for skimmer conversion by ARCO estimates	$ 113,000,000
1.132.000 barrels in 72 hours recovery	$ 205,000,000
Full Worst Case, another 310,000 barrels	80,000,000
Full Worst Case Recovery System in good weather	$ 285,000,000

Annual Costs

Alyeska	$10,000,000
ARCO	5,000,000
70,000 Ton Skimmer	10,000,000
Additional Recovery	5,000,000
TOTAL	$30,000,000

Operating costs as above should cover 72 hour initial period but do not cover beach cleanup costs.

Assuming a 10-year depreciation on one time costs, the annual costs for "worst case" mechanical recovery in Prince William Sound are $58,000,000 or the profits on 5 days throughput at the Valdez terminal.

*$6 X 9,750,000 barrels

*From Deakins Report

Now the question is, what is the cost of "worst case recovery" in bad weather. The present options are burning or dispersants. Future options may include gelling agents as described in our report. The costs of bad weather treatment are:

Burning, the loss of the ship and cargo	
250,000 T Tankers, new	$192,000,000
cargo 1.8 million barrels @ $20	36,000,000
Total	$218,000,000
70,000 T Tanker, new	$ 93,000,000
cargo, 500,000 barrels @ $20	10,000,000
Total	$103,000,000

Memo
Senator Pearce
March 6, 1990

The costs of the flights and igniting agents plus recovery of crew	$ 250,000
Dispersants: Following the British method of aerial application and the most favorable 1 to 20 crude to dispersant ratio, we require for the worst case 1,800,000 barrels, some 90,000 barrels of dispersant or 3,780,000 gallons @ $3/gal	$ 11,340,000
Costs of 700 C130 flights of 5 hour duration or 3,500 flight hours @ $3500 per hour*	$ 12,250,000
Worst Case by dispersant	$ 23,590,000

Gelling agents: This method is untried, untested, and wholly hypothetical. The ratio of 40 to 1, agent to oil, is the best known and the costs are in the ballpark of what is being paid by the US Navy for gelling agents.

Gelling agents 45,000 barrels, 6,250 tons or 1,890,000 gal @ $12/gal	$ 22,680,000
Costs of 350 C130 flights of 5 hours duration @ $3500 per hour*	6,125,000
Total	$ 28,805,000

* Assumes dispersants or gelling agents are located at Anchorage or Kenai.

Thus, it is true that the costs of a worst case response are large, whatever method is used. The alternative of avoiding it is equally costly in the long run. The size of the worst case scenario for each region will be governed by how much risks the industry places on the region. Exxon Valdez has shown us that the area at risk can be very large if response is not immediate enough to keep the oil from migrating to near and distance beaches.

Need for State Tanker Inspections

Regarding the need for state inspection on board tankers, our report details the sorry history of how the Coast Guard backed off after 1979 when the Alyeska owners' law suit and later legislative action eliminated the state presence on tankers. The Coast Guard budget on marine safety, wherein ship inspections lie, was cut 28% between 1982 and 1989. Allowin for inflation this was a real cut

of 40%. The fleet, meanwhile, aged another 7 years, with only two new additions Exxon Valdez and Exxon Long Beach, being added in this period. Thus, inspections dropped as the ships got older. The Coast Guard testified at length about its concerns with increasing hull fatigue before House Resources on January 24. Despite this concern of the Coast Guard, I view the chances of major budget increases in marine safety as small unless the initiatives come Congress.

REGIONAL CITIZEN ADVISORY COMMITTEE

March 12, 1990

Representative Curt Menard
P.O. Box V
Juneau, AK. 99811

Dear Mr. Menard:

Attached is some information about the Regional Citizen's Advisory Committee (RCAC) and a memorandum with regards to our positions on pending State Legislation. Our Legislative Sub-Committee will be working to develope position papers, testimony, and in some cases specific language for oil spill related bills. The fifteen directors of RCAC look forward to working with the legislature as well as the oil industry to put in place the best laws possible to prevent, respond to, and mitigate the impacts from future oil spills.

Thank You.

T. Robertson

Tim Robertson
V.P. Oil Spill Prevention & Response

TR/ph
cc: Marilyn Hyman

THE FOLLOWING REPORT, AS CORRECTED, WAS APPROVED BY THE RCAC ON MARCH 9, 1990

Memorandum -- 9 March 1990

To: RCAC

From: Legislative Subcommittee

Your legislative subcommittee recommends RCAC take a supporting position on the following legislation:

1. SB359/Comparable House Measure

Establishes $10 million within the Sec. 470 funds to support social and economic needs of a municipal response to a spill, through DCRA.

RCAC would support the efforts of the Oiled Mayors. In our statements, we would remind people of our stand that we feel the Alyeska plan, as submitted, is inadequate because it does not address social and economic impact of a spill.

2. SB 497/HB 409

Part of the Governor's oil spill package, the bill strengthens DEC access to terminal facilities, allows for administrative penalties, changes methods for compliance orders and provides for environmental audits.

The bill has passed committees of referral in the House and awaits floor action.

RCAC should support the legislation, as it brings Alaska environmental law in step with the rest of the country and strengthens RCAC's access.

In doing so, we should support proper funding and staffing of DEC for enforcement of this law and laws they already have.

3. SB504/HB567

The bill, submitted by Gov. Cowper and the Oil Spill Commission, would raise the standard for mandatory response plans. RCAC should support the bill with the following additions or caveats:

a. The bill should mandate prevention as well as response in contingency plans.

b. RCAC's should be recognized as a part of both the review of a

RCAC Legislative Subcommittee Report -- page two

plan and as essential to the operation of any plan. This is a good place to further mandate agency cooperation with citizen's advisory committees. We feel this legislation, if sufficiently modified, is the best way to tackle the concerns behind the Resources Committee bill draft that would create RCAC's on the state level.

c. On the bill's most controversial provision, we suggest the RCAC support language which would have a spill contained within 72 hours and picked up within the shortest possible time. Language also implies that immediate response is not required under the law, and we should clarify that language. Finally, on the issue of "realistic maximum discharge" vs. "most probable discharge" we support the former in concept, but believe RCAC should review this specific language further until we better understand the effect it would have on the current plan.

d. We would like to see the bill mandate legal and social and economic provisions of a prevention/response plan, and to see the DEC-Alyeska agreement on handoff of a response to a spiller recognized and clarified in the law.

e. We should note in testimony that several parts of the current law seem not to have been enforced by DEC, and use that to support a strong fiscal note for this provision, including funding of community review of response plans.

4. The RCAC will follow HB 565, SB 502, SB 503, HB 566, HB 315, HB 316 and legislation concerning citizens advisory committees and citizens suits. We will gain committee concurrence before taking a position.

5. Resources required: For the amendments we propose to SB 504/HB 567 we will attempt to have an amendment written by legislative staff but may wish to hire drafting counsel and to bill back some secretarial time. We wish to have the ability for a member of the committee to be in Juneau at immediate notice. We will teleconference with the RCAC as a whole if any change from these positions is required. We do not believe a retained lobbyist is required. We would welcome participation from anyone on the commmittee not currently on the subcommittee.

Position papers we prepare on these issues will be distributed to RCAC members in advance of use in order to involve our constituents in the process and to keep them up to speed.

Pending approval of Messers. Walker and Butler, Tim Robertson will serve as co-chair for state legislation. Mead Treadwell will serve as co-chair for federal legislation. RCAC will plan to have someone in Juneau during the session's last week.

REGIONAL CITIZENS ADVISORY COMMITTEE

The Regional Citizens Advisory Committee (RCAC) offers the best chance for the public to influence oil industry operations in this state. The RCAC is The Alaskan version of the successful system of citizen participation in the formulation of oil storage and transportation policy in the remote Shetland Islands of Scotland.

The formation of an interim RCAC, originally named the Alyeska Citizens Advisory Committee (ACAC), was initiated by the Alyeska Pipeline Service Company in June, 1989. Alyeska was responding to the need for citizens' participation in the process of formulating an effective oil spill prevention and response plan for Prince William Sound, as required by Alaska Department of Environmental Conservation in aftermath of the Exxon Valdez grounding.

The 15 committee members represent the communities of Prince William sound, the Kenai Peninsula and Kodiak Island, as well as fishing, conservation, aquaculture and native groups. No member of the committee represents Alyeska or the owner corporations.

As a fully independent entity, this interim committee has vigorously pursued its goals. The RCAC has begun its review of the Alyeska Oil Spill Response and Contingency Plan, and has taken on the additional responsibilities of monitoring the Alyeska Pipeline Terminal in order to help ensure its environmentally correct operation and the safe shipping of North slope Crude through Prince William Sound.

To guarantee the continued existence of a citizens advisory group, the committee is now in the process of developing bylaws and articles of incorporation as a nonprofit corporation, as well as negotiating a contract between RCAC and Alyeska for the permanent committee.

The interim committee has also involved itself in federal oil spill legislation. Most recently, RCAC modified Senate legislative language mandating a citizens advisory committee system, and in November sent a three-member subcommittee to Washington, D.C., to support the inclusion of this language in oil spill legislation before the House of Representatives. The concept of the advisory committee was introduced in the Senate by Senator Murkowski as a section of the oil spill liability bill passed in August.

The advisory committee language supported by RCAC was attached by Representative Young to the Coast Guard appropriations bill passed in October, rather than to the House version of the oil spill liability bill. The advisory committee language was later dropped from the legislation in conference, but Rep. Young's action succeeded in bringing the issue to the fore in the House, which is now on record as strongly supporting the concept. Senate and House members are expected to conference in March on the oil spill bill, chances are good that the Citizen Advisory Legislation will be part of the final bill.

The RCAC legislative subcommittee is planning to work towards better State Legislation related to Oil Spill Prevention and Response as well as Oil Spill Impact Mitigation. With its regional representation and independent status, the RCAC can add legislative refinements based on knowledge gained through real involvement.

The RCAC can act as an effective watchdog to the oil industry in Alaska. The first line of defense against oil spill or oil-related impacts is prevention. This is the field of endeavor which will be actively pursued by the environmental and technical subcommittees to be appointed by the RCAC. In addition, the RCAC will interact with federal and state regulatory agencies on an ex-officio basis.

3/8

ACAC MEMBERS March 1, 1990

NAME	ADDRESS	PHONE	FAX
GEORGIA BUCK CITY OF WHITTIER	CITY OF WHITTIER P.O. BOX 608 WHITTIER, AK 99693	472-2327(WK)	472-2404
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STACIE PASCAL CHUGACH ALASKA CORP.	3000 A STREET SUITE 400 ANCHORAGE, AK 99503	563-8866(WK)	563-8402
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ANN ROTHE NAT'L WLD. FEDERATION *CHAIRPERSON*	750 W. 2ND AVE SUITE 200 ANCHORAGE, AK	258-4800(WK)	258-4811
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MEAD TREADWELL [illegible] CORDOVA *VP-SCIENCE*	FIRST STREET [illegible] CORDOVA, AK [illegible]	424-6200(WK) [illegible]	424-6000
Bill Walker CITY OF VALDEZ *TREASURER*	509 W. 3rd AVE. ANCHORAGE, AK 99501	263-8251(WK) 274-7522(WK)	263-8320
JASON WELLS [illegible] *VP-TERM/ENV.*	P O BOX [illegible] [illegible]	835-4874(WK) [illegible]	[illegible]

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. 28)

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)

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 in 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.

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 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 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.

That concludes my remarks on these bills for now. Thank you again for you 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...

DUTIES OF —
SB 468 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 I AM IN FAVOR OF THAT.

PAGE 1, SECTION 1, LINES 13-17

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 26-29

- 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 PERSONNEL

MAR 06 '90 13:39 LEG. AFFAIRS - HOMER

Page 8, P. O'Meara

4AND
PAGE 5, SECTION, 8

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

NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 69
Barrow, Alaska 99723

Phone: 907-852-2611

George N. Ahmaogak, Sr., Mayor

TO: Garrey Peska, Chief of Staff
Office of the Governor

Rebecha Miller, Director
Fairbanks Executive Office
Office of the Governor

Mike Irwin, Special Staff Assistant
Office of the Governor

TO: Senator Al Adams

TO: Representative Eileen MacLean

FROM: Dennis Roper, State Government Affairs
Juneau Office

DATE: February 23, 1990

SUBJ: ANAKTUVUK PASS - NORTH SLOPE BOROUGH
DISASTER RELIEF

This will give you early notice that the North Slope Borough intends to request disaster relief from the Governor for the Borough village, Anaktuvuk Pass, for damage resulting from a fuel spill of approximately 40,000 gallons, and possibly for contamination of the village water supply.

At this time, the best estimate for the clean up is approximately $750,000 and does not include pipe repair.

This notification is for your information prior to Mayor's Ahmaogak's formal request for a Declaration of Disaster.

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 vigilence vests 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 probability 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 this 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.

Alaska Rural Electric Cooperative Association
Comments Regarding
House Bill 567 -and- Senate Bill 504

March 8, 1990

Section 2 of SB 504 would have a devastating impact on the electric utilities throughout the state.

Just among ARECA members alone, the following small cooperative or municipal utilities have fuel tanks large enough that Section 2(b)(2), as presently written, would require them to maintain $50,000,000 in storage facilities liability insurance:

Kotzebue Electric Association
Nome Joint Utilities
Nushagak Electric Cooperation (Dillingham)
Naknek Electric Association

It would be an utter impossibility for these small systems to comply with that requirement. Moreover, some of the larger electric utilities -- such as Chugach Electric Association in Anchorage -- maintain fuel oil storage facilities as back-up generation fuel or as primary fuel. For these utilities, too, $50,000,000 liability coverage would be prohibitively expensive or impossible to find.

In all cases, insurance costs would be borne by the utilities' consumers in the form of rate increases -- very large ones in many cases.

Present law requires even the small utilities to demonstrate financial responsibility for $1 million. Quotations for pollution liability insurance policies with very restricted coverage* have ranged from $23,000 to $45,000 per year each.

Nushagak Electric presently maintains a $1 million pollution liabilities insurance policy with Lloyds of London at an annual cost of $23,000. The other cooperatives decided that so little of their real exposure to potential clean-up costs would be covered by the commercial policies available that they have arranged to be essentially self-insured through a program made available by the ARECA Insurance Exchange. This arrangement complies with DEC requirements, but it does nothing to transfer the liability to a third party.

*Coverage on available insurance policies is limited to third party liability cases. They pay nothing for cleanup of oil spills on the insured's own property. All of the tanks owned by these utilities are properly diked, so the utilities fully expect any likely oil spills to be confined to their property, in which case the insurance policy would be of no benefit.

To provide an understanding of the scale involved in the small utilities, we would submit the following information from Nushagak Electric as a representative example.

Nushagak Electric serves fewer than 1,100 consumers. Its net assets are a little less than $2 million, and its annual revenues are about $2.4 million. Approximately $2.2 million is spent to pay for annual operating expenses. Despite its small size, Nushagak Electric has more than 24,000 barrels of fuel tank capacity. This amount of storage is necessary because of the limited time available to receive fuel shipments each year.

In addition to the above examples, there are many even smaller electric utilities providing essential service to small villages or other communities scattered throughout the state. Many of these systems would be impacted by Section 2(b)(1), which would require $1,000,000 in liability coverage for refined oil storage facilities between 5,000 and 10,000 barrels in size. The $1,000,000 requirement for these very small utilities would be as impossible as the $50,000,000 would be for those with storage facilities greater than 10,000 barrels.

The present law imposes a hardship on the electric utilities -- most of them non-profit corporations or municipally owned -- for which we have unsuccessfully sought relief in earlier legislative sessions.

We propose that refined petroleum products be exempted from the requirement of Section 2(b)(1) and (2) of the proposed legislation. We believe this makes good sense because this would exempt electric utilities from an impossible requirement, and because refined petroleum products do not have the same level of toxicity as crude oil. We hope reason will prevail here.

TESTIMONY OF WALT SCHLOTFELDT
BEFORE THE SENATE OIL & GAS COMMITTEE
RE: SENATE BILL 504
MARCH 6, 1990

I would like to preface my comments on SB 504 with an introduction to our company. Petro Star is a wholly owned subsidiary of the Arctic Slope Regional Corporation. Our operations include the refining and distribution of heating/diesel fuel products in Alaska, primarily the Interior. Our refinery takes approximately 6,500 bpd of State of Alaska Royalty Crude from the Trans-Alaska Pipeline. Approximately 1,500 bpd of heating/diesel fuels are produced and stored in five tanks ranging in size from 2,500 bbls to 10,000 bbls. Our total storage capacity at the refinery is 27,500 bbls. These products are distributed by truck to our customers. We have outlets in Fairbanks, North Pole and Delta Junction.

I have many concerns with SB 504. I would like to raise my concerns point by point, starting at the beginning of the Bill.

-- Under existing statutes, "A person may not cause or permit the operation of an oil terminal facility in the State unless an oil discharge plan for the facility has been approved by the Department..." Due to the delays incurred in obtaining approval from the Department, for whatever reasons, I suggest that this be amended to "submitted." This would then place the burden on the DEC to quickly review the plan and make their recommendations in a timely manner. This is especially important if SB 502 is passed, and penalties of from $2,500 to $100,000 per day

give more $ so they can do their job quickly

may be assessed. Petro Star just received (after four months) approval of our plan. The DEC's approval gives us one month to modify, with their specific recommendations, our submitted plan. It's approval is limited to a three-year period. We also must re-submit for approval of a new plan once the Department has finalized their review and revisions of contingency plan approval criteria.

-- Sec. 1(a): Adding the language "...and has been properly implemented" is very subjective.

-- Throughout the Bill, the words "tanker vessel" and "tank vessel" are used interchangeably. Although this Bill does not affect tanker trucks, the current definition of tank vessels ("tank vessel" means a self-propelled vessel that is constructed or converted to carry liquid bulk cargo in tanks...") appears to allow tanker trucks to be "tank vessels". This should be clarified. HB 315 was amended to correct this in the House Judiciary Committee. Their amendment defines tank vessel as "a vessel that is constructed or adapted to carry or that carries, as a means of transportation by water, oil or hazardous material in bulk as cargo or cargo residue."

-- Sec. 1(d): The term "timely" is very subjective and should be further defined.

-- Sec. 1(e): The approval of an oil spill contingency plan is currently not an easy process. Approval may be delayed for significant periods of time. DEC is charged with protecting the environment of Alaska. The inclusion of the Department of Fish & Game and the Department of Natural Resources in the approval process

would be a serious mistake. I can envision the requirements of contingency plans expanding exponentially to the point of meaninglessness. The time to get approval on a plan would be lengthened. The practicality and effectiveness of a plan would be questionable.

-- Sec. 1(f): This section is totally unreasonable. Requiring applicants for oil discharge contingency plans to maintain all of the resources necessary to remove a spill in its area of operation (on-site) is totally unrealistic. What does "shall maintain in its area of operation" mean? The industry would probably have difficulty in committing to a pooling of resources because we are not willing to assume any potential liability for non-responsiveness to our competition. Please note that this paragraph applies to "applicants." Why would an applicant need to maintain all of the resources if an applicant is not allowed to operate a terminal? I have serious problems with the requirement that we have all manpower in our "area of operation". Does this mean that I must keep all staff required on the payroll ready to respond to a spill? This could be terribly expensive. I am concerned about the cost of maintaining the other resources required.

The meaning of the term "realistic maximum oil discharge" is very confusing to me. In interpreting the definition, I would presume that, due to our total tank capacity, PSI would be required to plan for a 27,500-bbl. spill. This is ludicrous, since our largest storage tank is only 10,000 bbl. I do not think we should be required to plan to respond even to a 10,000-bbl. spill because these tanks are installed within a lined containment area.

What is the national incidence of complete tank failures? As you see, Section 1(f) would be terribly detrimental to PSI.

-- Sec. 1(g): It will be costly to Petro Star to resubmit a contingency plan every three years. We are currently required to submit a new contingency plan if we change our operations. As I have already stated, the DEC is currently limiting the approval period for these plans to three years. The existing requirement to resubmit plans upon changes in operations seems adequate.

-- Sec. 1(h): The word "reasonable" is subjective and should be defined. The words "sufficient resources" are subjective. The word "shortest" is very subjective. Is 36 hours the shortest possible time? I interpret the words "best available technology" to mean that we will be required to continually upgrade all of our plan and equipment as new technology is developed. Technology in this area is currently developing very rapidly and we would be hard-pressed to monitor and acquire such technology at the speed that we would probably be required. Why should the Department require an applicant to demonstrate ability through training, exercises and equipment? Would these be required prior to the start-up of a new facility?

-- Sec. 1(j): The word "shortest" is subjective.

-- Sec. 2: What is a crude oil facility? In last night's testimony, the pipeline was referred to by the DEC as an adjunct to the Valdez terminal. Could the Petro Star refinery be considered an adjunct to the Valdez

terminal? We currently have less than 1,000 bbls. of crude oil in process at any given time. Does this crude oil make us a crude oil terminal facility? Please define crude oil terminal facility.

-- Sec. 2(d)(2) & (3): We currently deliver to barges on the Tanana and on the Yukon. These barges (Yukon) can be as large as 10,000 bbls. What evidence of financial ability will these barge owners provide us prior to loading fuel? Can we accept a notice from the Department which may have subsequently been rescinded? How will we know for sure? Am I inheriting some liability in this area?

-- My most serious problem with this Bill is the requirement in Section 2(b)(2) to have $50 million proof of financial responsibility. This would be a very serious problem for PSI and would likely put us out of business. I believe any reasonable person would be hard-pressed to determine how our small operation could possibly generate a $50 million risk. We currently have $1 million insurance.

I have highlighted the many concerns I have with SB 504. The Department is over-reacting to the Exxon Valdez spill by imposing requirements on many segments of the State which would be unreasonable. I hope that the Governor, the Legislature and the Department have considered the staffing levels and availability of knowledgeable, experienced personnel to be able to effectively implement the significant changes which the Governor's oil spill packages will create. Also, please consider the punitive nature and level of penalties which SB 432, SB 502 and HB 315 would impose, even under SB 504. Lastly, and most significantly,

please consider my request to input some REASON into any oil spill bills and consider their effects on facilities around the State of all sizes and potential risks. Please consider the consequences to the people of the State as consumers.

I appreciate this opportunity to provide input and would be happy to answer any questions now or at my office tomorrow (488-0730).

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 *

SYSTEM MODIFICATION	ALYESKA PREVENTION EFFORTS
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 traffice 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 Atigun 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.

TESTIMONY - HB 567

MY NAME IS DAVE BOUKER. I AM THE GENERAL MANAGER OF NUSHAGAK ELECTRIC COOPERATIVE, A SMALL RURAL NON-PROFIT ELECTRIC UTILITY WHICH PROVIDES POWER TO THE COMMUNITIES OF DILLINGHAM AND ALEKNAGIK.

I AM HERE TO TESTIFY ON HB 567 AND MORE SPECIFICALLY ON THAT SECTION WHICH MODIFIES AS 46.04.040 TITLED, "PROOF OF FINANCIAL RESPONSIBILITY."

AT THIS TIME, AN OIL TERMINAL OPERATOR OF A FACILITY WITH 10,000 BARRELS (BBLS) OF STORAGE, OR GREATER, IS REQUIRED TO SHOW ABILITY TO SELF-INSURE OR TO HAVE AN INSURANCE POLICY OF $1 MILLION TO INDICATE PROOF OF FINANCIAL RESPONSIBILITY FOR A SPILL DURING TRANSFER OPERATIONS. THE POLICY WHICH WE CURRENTLY HAVE IN FORCE IS WRITTEN BY LLOYDS OF LONDON AND COSTS US IN EXCESS OF $21,000 PER YEAR.

THE PROPOSED HB 567 WOULD INCREASE THE REQUIRED COVERAGE FROM $1 MILLION TO $50 MILLION. AN INCREASE OF 50 FOLD. WE HAD EXTREME DIFFICULTY IN OBTAINING THE EXISTING POLICY BECAUSE NO U.S. CARRIER WOULD TOUCH IT. OUR NET WORTH IS LESS THAN $2 MILLION AND I DO NOT BELIEVE THAT WE ARE INSURABLE FOR ANYTHING OVER THAT AMOUNT.

WE ARE LOCATED NORTH OF DUTCH HARBOR AND THIS MEANS THAT WE CAN ONLY RECEIVE FUEL DELIVERY DURING THE SUMMER MONTHS. THEREFORE, WE

HAVE TO HAVE THE STORAGE CAPACITY TO CARRY US THROUGH FROM SEPTEMBER TO MAY OR JUNE. THE LOCAL WHOLESALE DISTRIBUTOR IS IN MUCH THE SAME POSITION. IF THE INSURANCE COVERAGE REQUIREMENTS INCREASE 50 FOLD, YOU CAN BE ASSURED THAT THE ATTENDANT COSTS OF THAT INSURANCE WILL MEAN SUBSTANTIAL INCREASE IN COST OF POWER, HEATING FUEL, AND GASOLINE TO RURAL COMMUNITIES LEAST ABLE TO PAY.

ONE POSSIBLE ALTERNATIVE TO THIS ISSUE MIGHT BE TO INCREASE THE EXEMPTION IN AS 46.04.050 TO 50,000 BBLS OF REFINED PRODUCTS, BECAUSE THEY ARE FAR LESS DANGEROUS THAN CRUDE AND RAPIDLY DISSIPATE IN THE ATMOSPHERE IN THE EVENT OF A SPILL. IN ADDITION, AN EXEMPTION AT THIS LEVEL WOULD PROBABLY ACCOMMODATE MOST FUEL INVENTORIES IN WESTERN ALASKA. HOWEVER, THIS ASPECT SHOULD BE LOOKED INTO BEFORE ANY FINAL DECISION IS MADE.

WE BELIEVE THAT THE CATASTROPHE OF THE OIL SPILL IN PRINCE WILLIAM SOUND GENERATED THIS BILL. HOWEVER, IT SHOULD BE NOTED THAT THE OIL COMPANIES ARE NOT AS FINANCIALLY IMPACTED BY THE BILL AS THE SMALL RURAL COMMUNITIES BECAUSE MOST OF THE OIL COMPANIES ARE FINANCIALLY SOUND ENOUGH TO SELF-INSURE WHILE WE HAVE TO IMMEDIATELY PUT UP THE CASH TO BUY INSURANCE FROM SOME FOREIGN ENTITY OR PURCHASE A LETTER OF CREDIT AND, OBVIOUSLY, WE WILL HAVE DIFFICULTY IN PURCHASING A $50 MILLION LETTER OF CREDIT. I WOULD URGENTLY RECOMMEND THE COMMITTEE TO REVIEW THESE PROPOSED REQUIREMENTS AND THEIR ECONOMIC IMPACT BECAUSE THEY APPEAR TO PRESENT IMPOSSIBLE CONDITIONS TO US. (3/9/90:lwb\rptdb)

PETRO STAR INC.

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P.O. Box 56239
North Pole, Alaska 99705
Walt Schlotfeldt
President

March 7, 1990

Mr. Curt Menard
Co-Chair
House Resources Committee
Alaska State Legislature
P.O. Box V (M-3100)
Juneau, Alaska 99811

RE: HB 567

Dear Chairman Menard:

I would like to preface my comments on HB 567 with an introduction to our company. Petro Star is a wholly owned subsidiary of the Arctic Slope Regional Corporation. Our operations include the refining and distribution of heating/diesel fuel products in Alaska, primarily the Interior. Our refinery takes approximately 6,500 bpd of State of Alaska Royalty Crude from the Trans-Alaska Pipeline. Approximately 1,500 bpd of heating/diesel fuels are produced and stored in five tanks ranging in size from 2,500 bbls to 10,000 bbls. Our total storage capacity at the refinery is 27,500 bbls. These products are distributed by truck to our customers. We have outlets in Fairbanks, North Pole and Delta Junction.

I have many concerns with HB 567. I would like to raise my concerns point by point, starting at the beginning of the Bill.

-- Under existing statutes, "A person may not cause or permit the operation of an oil terminal facility in the State unless an oil discharge plan for the facility has been approved by the Department..." Due to the delays incurred in obtaining approval from the Department, for whatever reasons, I suggest that this be amended to "submitted." This would then place the burden on the DEC to quickly review the plan and make their recommendations in a timely manner. This is especially important if SB 502 is passed, and penalties of from $2,500 to $100,000 per day may be assessed. Petro Star just received (after four months) approval of our plan. The DEC's approval gives us one month to modify, with their specific

recommendations, our submitted plan. It's approval is limited to a three-year period. We also must re-submit for approval of a new plan once the Department has finalized their review and revisions of contingency plan approval criteria.

-- Sec. 1(a): Adding the language "...and has been properly implemented" is very subjective.

-- Throughout the Bill, the words "tanker vessel" and "tank vessel" are used interchangeably. Although this Bill does not affect tanker trucks, the current definition of tank vessels ("tank vessel" means a self-propelled vessel that is constructed or converted to carry liquid bulk cargo in tanks...") appears to allow tanker trucks to be "tank vessels". This should be clarified. HB 315 was amended to correct this in the House Judiciary Committee. Their amendment defines tank vessel as "a vessel that is constructed or adapted to carry or that carries, as a means of transportation by water, oil or hazardous material in bulk as cargo or cargo residue."

-- Sec. 1(d): The term "timely" is very subjective and should be further defined.

-- Sec. 1(e): The approval of an oil spill contingency plan is currently not an easy process. Approval may be delayed for significant periods of time. DEC is charged with protecting the environment of Alaska. The inclusion of the Department of Fish & Game and the Department of Natural Resources in the approval process would be a serious mistake. I can envision the requirements of contingency plans expanding exponentially to the point of meaninglessness. The time to get approval on a plan would be lengthened. The practicality and effectiveness of a plan would be questionable.

-- Sec. 1(f): This section is totally unreasonable. Requiring <u>applicants</u> for oil discharge contingency plans to maintain all of the resources necessary to remove a spill in its <u>area of operation</u> (on-site) is totally unrealistic. What does "shall maintain in its area of operation" mean? The industry would probably have difficulty in

committing to a pooling of resources because we are not willing to assume any potential liability for non-responsiveness to our competition. Please note that this paragraph applies to "applicants." Why would an applicant need to maintain all of the resources if an applicant is not allowed to operate a terminal? I have serious problems with the requirement that we have all manpower in our "area of operation". Does this mean that I must keep all staff required on the payroll ready to respond to a spill? This could be terribly expensive. I am concerned about the cost of maintaining the other resources required.

The meaning of the term "realistic maximum oil discharge" is very confusing to me. In interpreting the definition, I would presume that, due to our total tank capacity, PSI would be required to plan for a 27,500-bbl. spill. This is ludicrous, since our largest storage tank is only 10,000 bbl. I do not think we should be required to plan to respond even to a 10,000-bbl. spill because these tanks are installed within a lined containment area. What is the national incidence of complete tank failures? As you see, Section 1(f) would be terribly detrimental to PSI.

-- Sec. 1(g): It will be costly to Petro Star to resubmit a contingency plan every three years. We are currently required to submit a new contingency plan if we change our operations. As I have already stated, the DEC is currently limiting the approval period for these plans to three years. The existing requirement to resubmit plans upon changes in operations seems adequate.

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-- My most serious problem with this Bill is the requirement in Section 2(b)(2) to have $50 million proof of financial responsibility. This would be a very serious problem for PSI and would likely put us out of business. I believe any reasonable person would be hard-pressed to determine how our small operation could possibly generate a $50 million risk. We currently have $1 million insurance.

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please consider my request to input some REASON into any oil spill bills and consider their effects on facilities around the State of all sizes and potential risks. Please consider the consequences to the people of the State as consumers.

I appreciate this opportunity to provide these comments, and would be happy to answer any questions that you may have.

Sincerely,

Walt Schlotfeldt
President

WPS:pm:W.00307-2

FAX TRANSMITTAL RECORD

Chevron
SAUPE ENTERPRISES, INC.
P.O. BOX 70510
FAIRBANKS, AK 99707

FAX NUMBER - (907) 452-1033
Telephone - (907) 452-1238
Date Mar. 8 1990

TO: House Resources Committee ATTN: _____

FAX# c/o Rep. Sharp (Gloria) SUBJECT: H.B. 567
271-465-2294

(#Pages Sent: This plus one)

Message: Testimony offered to members of the House Resource Comm. relative to H.B. 567:

My name is Bernie Saupe' - I have owned and operated a small fuel distributorship here in Fairbanks for 15 years.

I appreciate the opportunity to testify, because I'm one of the little guys that will be put out of business by this Bill.

It *is* heartening to me, *and to others like me,* to *know* that you all share the concern, confusion, and uncertainty that we feel regarding *H.B. 567.* I applaud *any* attempts to identify exactly what the Bill will require, and I share your fear that the regulations *may* not coincide with the intent of the Bill.

The chairman of the study commission stated that their study included 3 large marine terminals and huge ocean-going super-tankers - yet the requirements proposed in "*567*" include little operations like my Fairbanks bulk plant! In fact, plants as small as ¼ our size, along with many river barges, would also be put out of business by "*567*" - many rural villages depend on facilities like these for economical fuel delivery! (I might note here that while we have almost 40,000 Bbls. of storage on site, we typically <u>use</u> only about 5,000 Bbls. at any given time.)

The DEC *has* indicated an adequate contingency plan includes virtually absolute and predictable control of 250,000/barrel releases. "*567*" requires me and many others like me to maintain the capability of recovering an unspecified portion of such a spill in an unspecified period of time. This is totally unrealistic - first of all, it would literally take us a whole year to <u>spill</u> that much product, based on our average thru-put for any 12-month period. A year-long spill is probably as <u>unlikely</u> a scenario as our being able to meet "*567*"'s requirements! Secondly, if it's impossible for major companies like Arco Shipping to comply with this contingency plan, it's utterly ridiculous for anyone <u>our</u> size to even <u>suggest</u> we could comply in any respect!

It's pretty obvious there are significant differences between a 1,000-foot ocean-going vessel and our little plant on Illinois St. There are worlds of differences between us and an Alyeska, or a Nikiski, or even a Drift River. There are even major differences between us and the 3 other plants like mine that are within 600 feet of my office! Yet "*567*" fails to see any difference between all of these examples! Again, if folks like Arco can't comply, it's clear that I and dozens of others like me, are instantly out of business!

Even greater and more immediate impacts are revealed by the "fantasy-world" financial-responsibility requirements of "567". It would be sheer hysteria for me to even anticipate $50 million coverage from any source! If my customers would tolerate a 20 or 30¢ increase in my prices, I might be able to handle premiums for a year or so, but there's still nobody out there to offer the coverage if I could afford it! The $50 million requirement would instantly strangle my business, and my company could then be faced with a subsequent bankruptcy.

For the last 4 or 5 years, we've been hard-pressed to obtain the $1 million coverage presently required - and we usually have only one carrier available to write it. Several years ago I attempted to add an extra umbrella of $500,000 but the additional premium for just the ½ million extra was $53,000!! Multiply that sort of costs by a 50-fold increase, and you could only guess what the annual premium might be!

Fortunately I don't have to attempt such estimates and projections. I'd like to quote verbatim from a letter I received Monday from my insurance broker: Quote:

"The limit of $50 million per incident is simply not available for an operation of your size in today's marketplace. Underwriters I contacted stated not only no, but "Hell No."..... and,

"If, by some stretch of the imagination, this limit was available to you, the cost of this coverage alone would be in the neighborhood of half a million dollars." End of Quote.

I don't know what else I could tell you, or of any nicer way to say it - so I'll just say thanks for hearing me, and I sincerely hope you'll remember all us little guys out here while you figure out what our future may hold! Thanks again!

Bernie Saupé

COMMENTS OF EXXON COMPANY, U.S.A.

TO

HOUSE RESOURCES COMMITTEE

ON

HB 566 AND HB 567

MARCH 9, 1990

GOOD AFTERNOON. MY NAME IS MICHAEL SMITH AND I AM THE ALASKA AREA ATTORNEY FOR EXXON'S ALASKA OPERATIONS. I WELCOME THE OPPORTUNITY TO PROVIDE EXXON'S COMMENTS TODAY REGARDING HB 566 AND HB 567. ALTHOUGH THESE BILLS ARE BOTH PART OF THE ADMINISTRATION'S PACKAGE, THEY ARE IN REALITY QUITE DIFFERENT FROM ONE ANOTHER IN PURPOSE AND EFFECT. EXXON SUPPORTS REASONABLE LEGISLATION AIMED AT PREVENTION OF OIL SPILLS. WE ALSO SUPPORT IMPROVING THE STATE'S ABILITY TO EFFICIENTLY RESPOND TO ANY EMERGENCY.

THE ALASKA OIL SPILL COMMISSION STATED, IN ITS FINAL REPORT, THAT THE STATE'S RESPONSE TO THE EXXON VALDEZ ACCIDENT WAS MARRED BY BUREAUCRATIC CONFUSION. HOUSE BILL 566 APPEARS INTENDED TO IMPLEMENT SOME OF THE COMMISSION'S RECOMMENDATIONS TO CORRECT THIS.

HB 566 PROPOSES CHANGES IN THREE MAIN AREAS: GIVING THE GOVERNOR SPENDING AUTHORITY OVER THE HAZARDOUS SUBSTANCE RELEASE FUND, GIVING THE DEC THE LEAD ROLE IN RESPONDING TO EMERGENCIES, AND STATUTORILY AUTHORIZING THE ALASKA STATE EMERGENCY RESPONSE COMMISSION.

WHILE THESE ARE OBJECTIVES THAT MAY NEED TO BE ADDRESSED, HB 566 IN ITS PRESENT FORM RAISES SOME QUESTIONS. OUR MAJOR CONCERN WITH THE BILL IS THAT IT UNFORTUNATELY LEAVES CONSIDERABLE ROOM FOR CONFUSION AS TO THE RESPECTIVE ROLES OF THE DEC AND THE DEPARTMENT OF MILITARY AFFAIRS, DIVISION OF EMERGENCY SERVICES. IN AN EMERGENCY, IT IS CRITICAL THAT ALL OF THE PARTIES INVOLVED, BOTH PUBLIC AND PRIVATE, UNDERSTAND WHO IS IN CHARGE OF WHICH ASPECTS OF THE RESPONSE EFFORT. THE OIL SPILL COMMISSION INVESTIGATION AND OTHER SOURCES HAVE DISCUSSED THE CONFUSION, AND TENSION THAT EXISTED BETWEEN DEC AND DES DURING THE VALDEZ EMERGENCY. THE

COMMISSION RECOMMENDS THAT DES, UNDER THE DEPARTMENT OF MILITARY AFFAIRS, HAVE THE CLEAR LEAD AUTHORITY IN THESE MATTERS. UNFORTUNATELY THE CURRENT LANGUAGE IN SECTIONS 3 AND 5 OF HB 566 RAISES A QUESTION AS TO "WHO'S ON FIRST?" HERE. SECTION 3 OF THE BILL SEEMS TO MAKE THE DEC LEAD AGENCY, YET THE LANGUAGE IN SECTION 5 APPEARS TO PRESERVE A SOMEWHAT INDEPENDENT ROLE FOR DES AND STATES THAT THE DEC SHALL COORDINATE ITS RESPONSE TO A CATASTROPHIC OIL DISCHARGE WITH THE DES EMERGENCY RESPONSE. THERE ARE NO GUIDELINES AS TO HOW DEC AND DES SHALL "CONSULT AND COORDINATE" IN EMERGENCY SITUATIONS. THUS, THERE IS STILL THE POTENTIAL CONFLICT BETWEEN THESE AGENCIES. EXXON BELIEVES THAT A CLEARLY DEFINED SINGLE LEAD STATE AGENCY OPERATING UNDER THE DIRECTION OF THE GOVERNOR IS THE APPROPRIATE METHOD TO DIRECT THE RESPONSE OF THE STATE TO AN EMERGENCY. IF IT IS AN ENVIRONMENTAL MATTER, THE DEC WOULD CERTAINLY HAVE A ROLE AS A SCIENTIFIC ADVISOR.

WITH REGARD TO THE GOVERNOR'S AUTHORITY OVER THE HAZARDOUS SUBSTANCE RELEASE FUND, THERE IS NO INDICATION IN HB 566 AS TO WHAT ROLE, IF ANY, THE LEGISLATURE SHOULD PLAY IN AUTHORIZING OR REVIEWING THE USE OF FUNDS. WE MERELY RAISE THIS POINT AS AN AREA WHICH THE COMMITTEE MAY WISH TO ADDRESS.

OVERALL HB 566 PRESENTS QUESTIONS WHICH ARE CRITICAL TO THE PROPER MANAGEMENT OF AN EMERGENCY. WITH SOME THOUGHTFUL CHANGES THIS LEGISLATION COULD SIGNIFICANTLY ENHANCE THE STATE'S RESPONSE CAPABILITY AND ALLOW IT TO WORK CONSTRUCTIVELY WITH ALL OTHER PARTIES INVOLVED. AS WRITTEN IT WOULD ONLY MAKE EMERGENCIES MORE DIFFICULT.

UNFORTUNATELY, HB 567 WILL NOT BE AS EASY TO REPAIR. THE APPROACH ADOPTED IN HB 567 IS FUNDAMENTALLY FLAWED. THE AVOWED GOAL IS PREVENTION OF POLLUTION, HOWEVER, IN REALITY THE ONLY WAY THAT THIS BILL MIGHT REDUCE THE RISK OF OIL SPILLS IN ALASKA IS BY DRIVING SOME OPERATORS WHO HANDLE OIL TO FORSAKE THE OPPORTUNITY TO DO BUSINESS IN THIS STATE. TAKEN AS A WHOLE, THIS BILL IS ENTIRELY UNREALISTIC. WHILE WE RECOGNIZE THE NEED FOR REASONABLE OVERSIGHT AND ENFORCEMENT AUTHORITY TO PROTECT THE ENVIRONMENT, HB 567 IS PATENTLY EXCESSIVE. EVEN THE LARGEST OPERATORS WILL BE UNABLE TO COMPLY WITH SOME OF THE PROPOSED REQUIREMENTS. IN ADDITION, OTHER SMALLER COMPANIES THAT PROVIDE VITAL SERVICES TO MANY OF THE STATE'S COMMUNITIES COULD FIND IT FINANCIALLY IMPOSSIBLE TO CONTINUE OPERATIONS.

WE HAVE FOUR SPECIFIC AREAS OF MAJOR CONCERN WITH HB 567. THE FIRST IS WITH THE VAGUENESS OF ITS LANGUAGE AND THE LACK OF MEANINGFUL DEFINITIONS IN THE BILL. THE SECOND IS THE SWEEPING POWER HANDED TO DEC WITHOUT EITHER LIMITS OR CLEAR LEGISLATIVE GUIDANCE. THIRD, IT SETS UNREALISTIC GOALS WHICH ARE VIRTUALLY IMPOSSIBLE TO ATTAIN, AND FINALLY, IT CONTAINS FINANCIAL RESPONSIBILITY REQUIREMENTS UNRELATED TO RELATIVE RISKS WHICH WOULD BE IMPOSSIBLE FOR MANY CURRENT SHIPPERS AND SUPPLIERS TO PROVIDE. WITH YOUR INDULGENCE, I WOULD LIKE TO TAKE THIS OPPORTUNITY TO BRIEFLY POINT OUT SOME OF THE PARTICULARLY TROUBLESOME PROVISIONS.

THE BILL WILL REQUIRE THAT ALL OPERATORS MAINTAIN ON HAND SUFFICIENT CLEANUP AND RESPONSE EQUIPMENT TO "RAPIDLY CONTAIN A REALISTIC MAXIMUM OIL DISCHARGE AND TO REMOVE THAT DISCHARGE WITHIN THE SHORTEST POSSIBLE TIME."

"MAXIMUM DISCHARGE" IS CAPABLE OF BEING VERY BROADLY DEFINED. FOR EXAMPLE, UNDER THE PROPOSED LANGUAGE THE DEC COULD DETERMINE THAT A REALISTIC MAXIMUM DISCHARGE FOR THE VALDEZ TERMINAL WOULD BE TEN OR MORE TIMES GREATER THAN THAT WHICH OCCURRED LAST YEAR. THERE IS SIMPLY NOT ENOUGH OIL SPILL RESPONSE EQUIPMENT IN THE ENTIRE WORLD TO SATISFY THAT REQUIREMENT. MOREOVER, EVEN IF THERE WAS THAT MUCH EQUIPMENT IN THE WORLD OR IF YOU DETERMINE THERE SHOULD BE, IT IS UNREALISTIC TO REQUIRE A STOCKPILE OF SUCH MAGNITUDE AT EVERY POINT WHERE SUCH A SPILL MIGHT OCCUR. THIS BILL WOULD REQUIRE THAT.

THE PROPOSED STANDARD IS MORE THAN UNREALISTIC; IT SIMPLY CANNOT BE ACHIEVED. WORST CASE SITUATIONS CAN ALWAYS BE ENVISIONED, AND SHOULD BE REASONABLY PLANNED FOR, BUT SOCIETY COULD NOT FUNCTION IF REQUIREMENTS SUCH AS THESE WERE IMPOSED IN EVERY ASPECT OF OUR LIVES. THE OIL SPILL COMMISSION FOUND THAT "PREVENTION IS THE ONLY WAY TO PROTECT THE OCEANS AND COASTLINES FROM OIL SPILLS." THE PROPOSED BILL CONTRIBUTES ABSOLUTELY NOTHING TOWARD THE GOAL OF PREVENTING AN OIL SPILL, INSTEAD IT DEMANDS CLEANUP AND RESPONSE CAPABILITIES WHICH CANNOT BE MAINTAINED. OTHER ASPECTS OF THE BILL ARE SIMILARLY FLAWED. THE DEC ALREADY HAS MORE THAN AMPLE AUTHORITY REGARDING THE APPROVAL AND MONITORING OF CONTINGENCY PLANS, INCLUDING THE AUTHORITY TO REVOKE APPROVED PLANS UNDER APPROPRIATE CIRCUMSTANCES. WE SUGGEST THAT ATTENTION SHOULD BE DIRECTED TOWARD ENCOURAGING AND ASSISTING DEC IN THE PERFORMANCE OF ITS EXISTING DUTIES, NOT GRANTING IT ADDITIONAL UNWIELDY AND VIRTUALLY UNLIMITED POWER AS SECTION 1 OF THE BILL WOULD DO.

THE LOGIC BEHIND THE PROPOSAL IN SECTION 4 THAT THE DEC BE GIVEN AUTHORITY TO INSPECT TANK VESSELS FOR "STRUCTURAL INTEGRITY" IS DIFFICULT TO UNDERSTAND. THE DEC HAS NO CAPABILITY OR EXPERTISE IN THIS AREA. IT WOULD HAVE TO HIRE SEVERAL ADDITIONAL EXPERTS, INCLUDING STRUCTURAL ENGINEERS AND NAVAL ARCHITECTS. A MEANINGFUL INSPECTION PROGRAM FOR THE STRUCTURAL INTEGRITY OF TANKERS, FOR EXAMPLE, ALSO WOULD REQUIRE DRYDOCK FACILITIES WHICH CURRENTLY DO NOT EXIST IN ALASKA. PERHAPS MORE SIGNIFICANTLY, AS REGARDS TANKERS, THIS AREA IS CURRENTLY WITHIN THE EXCLUSIVE JURISDICTION OF THE UNITED STATES COAST GUARD. THE COAST GUARD DOES HAVE THE NECESSARY EXPERTISE. MOREOVER, THIS INSPECTION BY DEC, WHILE IT WOULD BE COSTLY, LARGELY REDUNDANT, DISRUPTIVE AND TIME CONSUMING, WOULD CONTRIBUTE NOTHING TOWARD PREVENTING OIL SPILLS.

FINALLY, THE FINANCIAL RESPONSIBILITY REQUIREMENTS PROPOSED IN SECTION 2 DO NOTHING FOR PREVENTION, AND THE COSTS COULD BE PROHIBITIVE FOR CERTAIN SHIPPERS, CARGO OWNERS, AS WELL AS THE LOCAL SUPPLIERS AND BARGE OPERATORS THAT PROVIDE CRITICAL SUPPLIES TO MOST ALASKAN COMMUNITIES.

THESE ARE BUT A FEW OF THE MORE NOTABLE REASONS WHY HB 567 SHOULD NOT BE PASSED INTO LAW. TAKEN AS A WHOLE, THE BILL OFFERS NOTHING WHICH WOULD ACCOMPLISH THE PRIMARY GOAL IDENTIFIED BY THE OIL SPILL COMMISSION - PREVENTION. EXXON AGREES WITH THE COMMISSION THAT PREVENTION IS THE BEST AND MOST REALISTIC WAY TO AVOID ENVIRONMENTAL DISASTERS. WE ARE WILLING TO WORK WITH ALL APPROPRIATE GOVERNMENTAL AUTHORITIES TO ACHIEVE THAT COMMON GOAL.

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3/8/90

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.

Alaska State Legislature

Please enter into the record my testimony to the ~~Local Senator & the~~ Senator Zharoff & House Resources Committee
committee name

committee on See below, dated 9 March 90.
bill/subject

SUGGEST:

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

HOUSE BILL NO. 566

Under Sec 46.13.040 suggest the designee for the Department of Enviromental Conservation be ~~a coordinator~~ in charge of keeping an up to date "Emergency Response Plan". Up dating the Local Emergency Planning Committees with changing technoplogies in the field should also fall to this designee.

Thank you for your time.

Signed: William Breth
Testifier

myself
Representing (Optional)

1516 Shamrock PO Box 1398 KODIAK, AK 99615
Address

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

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.

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, are attached.

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,

Steve Cowper

Governor

Testimony by Annie McKenzie
House Resources Committee
March 9, 1990 HB 567

Mr. Chairman and committee members: My name is Annie McKenzie. I am a small business owner from Seldovia and am currently serving as a volunteer for the Alaska Environmental Lobby. I served as volunteer coordinator for the Seldovia response team during the Exxon-Valdez spill. From that perspective, I'd like to comment on contingency plans in house bills 567.

Contingency plans must prepare for cleanup of total discharge of contents within 72 hours. If this is impossible to achieve, as stated by Jerry Asplund of ARCO Marine (Senate Special Subcommittee on Oil & Gas hearing, March 5, 1990), then the amount of product being transported should be decreased to a level than can be adequately dealt with. The bill must also include language for immediate implementation of contingency plans.

Contingency plans must call for adequate equipment to be stockpiled in strategic locations. Industry testimony earlier this week at Senate Oil & Gas indicated they plan only to list equipment availability. Stockpiling of emergency materials for a worst case scenario became evident in Seldovia & other coastal communities outside PWS during the Exxon-Valdez spill. We built cumbersome home-designed log and seine boom to protect our bays since all available commercial boom was used initially in Prince William Sound.

The industry was also unable to provide sufficient tankerage for waste oil. A modified fleet of Seldovia fishing boats collecting oil off the water was shut down a number of times because barges, we were told, were all being used in Prince William Sound. These are a couple of examples of the lack of preparation by the oil industry for a large spill and the need for stockpiling of materials.

The contingency plan for the area south of Seal Rock calls only for use of dispersants. This is inadequate since weather does not always allow for their use. We should have well-placed stockpiles of equipment and materials along with boats with plans for utilization.

All oil-spill contingency plans should have well-developed

methods for disposing of all collected waste materials. Exxon-Valdez waste was disposed of in landfills outside the state, a method which threatens purity of groundwater, and by incineration, a method which releases dioxins and furans into the environment. Dioxins and furans are some of the most powerful and deadly toxins known. Minute amounts of these chemicals are known to cause cancer, birth defects, and immune deficiency responses. They are fat soluble, remaining in the food [illegible] from the smallest organisms up through fish and mammals to humans. Incinerating away from populated areas does not protect humans from their damage, since contaminated fish will travel long distances before being caught and consumed. The purity of Alaskan fish and the health of consumers should not be placed at risk by incineration of oily waste.

A Citizens Guide to Hazardous and Toxic Waste Sites of Fairbanks, Alaska

prepared for:

Northern Alaska Environmental Center
218 Driveway
Fairbanks, Alaska 99701
(907 452-5021

prepared by:

Carl Reller
Box 101255
Anchorage, Alaska 99510
(907) 243-4783

July 10, 1989

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cover photograph from:
State of Alaska Ombudsman Annual Report and
Fairbanks Daily News-Miner

FAIRBANKS HAZARDOUS - TOXIC WASTE SITES

The Northern Alaska Environmental Center compiled this data using public information. We found almost every kind of hazardous-toxic waste problem imaginable, from a residential yard sprayed with PCBs to chemical warfare agents dumped on the outskirts of a military base, to buried experimental military nuclear reactors. The risk of exposure and subsequent health impacts varies greatly. Some problems affect only a few people; such as, unsuspecting customers walking through a pile of PCB contaminated incinerator ash in a salvage yard. Other problems affect nearly everyone; like, public and private drinking water wells contaminated with fuel. It was impossible to identify every site and determine the degree of risk posed by each, but as public awareness increases both new problems will be found and hopefully existing ones solved.

You can do something about hazardous - toxic wastes in your community. Read the public record, organize your community, contact your legislator, and follow up on promises and plans. Whoever dumped the waste benefited from cheap and convenient disposal, you shouldn't have to bear the risk.

WHERE DOES THE WASTE COME FROM ?

GOVERNMENT

The Fairbanks economy is largely tied to local, state, and federal government expenditures and so are the waste problems. Fort Wainwright and Eielson have multiple dumps containing chemical warfare agents, PCBs, lead, selenium, pesticides, and solvents. The Army records are in worse shape than the Air Force, and we know Eielson may have the largest fuel spill in North America, reportedly over 10 million gallons, potentially covering 2.7 square miles, what Fort Wainwright has dumped and spilled remains to be seen. The Alaska Railroad freight yard has over four feet of fuel floating on the water table. Old city land fills are now homes and parks. At least three locations including a playground, were contaminated with PCBs from exploding MUS electrical equipment. The University of Fairbanks did not keep track of where they dumped laboratory and low level radioactive waste in the past.

PRIVATE

The biggest private property problems are from salvage yards which attempt to recycle government waste. McPeak salvage represents an imminent and substantial threat to human health and the environment due to PCBs, metals in the ground water and over a thousand drums of waste. Miller salvage yard with it's numerous illegal dumps was almost turned into a housing complex. The Shoupe property was in the process of development when acutely toxic waste were discovered including sodium cyanide, mercury, and low level radioactive waste. The FBI, Army, and DEC removed some waste but many questions are still unanswered including what happened to the waste, are surface soils and ground waters contaminated, and who is responsible ?

OIL INDUSTRY

At MAPCO serious violations of federal and state law started a lengthy clean up process that will continue on for decades. The biggest problems came from dumping hazardous waste into the sewer system and oil recycling tanks. As a result hazardous waste flowed into the waste water treatment plant, and probably leaked from the sewer into ground waters. Toxic waste was injected into the refinery stack where it evaporated and contaminated the air.

LEAKING FUEL TANKS

The most common hazardous - toxic waste problems are leaking gasoline tanks. Benzene (5% of local gasoline) rapidly dissolves into the ground water. Even clean ups pose risks, the most common remedial efforts extract fuel from the ground water by spraying it into the air, causing localized air pollution. Eielson Air Force Base has over 50 oil recovery wells, what happens to the contaminated groundwater is unclear.

WHAT SHOULD I DO ?

There are two steps. Go directly to the company or person that did the dumping. Ask them what they are doing now. Some companies are trying to protect your health and their business. Then go to the public agency in charge of regulatory actions.

It is usually very difficult to find someone who will answer your questions. Public agencies tend to work on narrowly defined tasks with little concern for problems not on their job description. Often you will be treated with condescension - do not tolerate patronizing treatment. Government exists because of the citizens, not in spite of them. Remember - public employees are public servants, treat them with respect and expect the same.

Try these questions for a start:

1. Has there been any testing, and if so, what was tested for ? Ask for a written copy of the results. Mention your rights of access to public information guaranteed under the Freedom of Information Act.

2. Were toxic or hazardous chemicals found ?

3. What was the maximum concentration found ?

4. Ask "at what concentration (in air, water and soil) does the chemical pose a health risk to exposed persons ?"

5. Are there any reports, memos, letters or other documents available ? If so ask to see the records and read them, take notes. Make copies of all "Compliance Orders" and "Notices of Violation".

6. Ask which local, state, and federal regulations apply to the site, find who is responsible for each regulation.

7. Ask who will do what and when. Ask to be put on a mailing list of interested parties.

8. Summarize in your own words the real problems. Ask if your understanding is correct and discuss your conclusions.

9. Go home, review your notes, mail the agency or company a letter explaining what you think needs to be done, thank them for their help. Send a copy of the letter to your legislator and the press.

10. Follow up a month later to check on progress.

Your first inquiry may take an hour or several days depending on the severity of the problem. But with each follow up it will take less time. Be persistent, courteous, and have patience. The waste probably wasn't dumped there overnight and it will take even longer to clean it up.

COMMONLY USED TERMS

The Fairbanks hazardous - toxic waste sites are ranked using established criteria published in the federal register (40 CFR part 300);such as, the number of people affected, waste volumes, toxicity, and containment. EPA occasionally calculates relative degrees of risk and assigns a number to a particular site. The method is called a Hazard Ranking System score (HRS). Ask if this number was calculated for your site. A brief explanation of terminology you will be confronted with follows.

Superfund or CERCLA - Comprehensive Environmental Response Compensation and Liability Act

A federally funded program concerned with "hazardous substance" problems (except oil spills). If the HRS score is above 28.5 federal enforcement may follow. If below 28.5 the state is responsible.

NPL - National Priorities List

A site scores above 28.5 and is being considered for a major Superfund follow up. Several Fairbanks sites fit this category but actual scores are currently withheld by the DEC and EPA.

RCRA - Resource Conservation and Recovery Act

A joint federal-state program that regulates a narrow and strictly defined class of "hazardous waste".

LUST - Leaking Underground Storage Tanks

Another joint state-federal program that affects gas stations and owners of underground fuel tanks. The most toxic chemicals controlled are benzene and aromatic hydrocarbons.

TSCA - Toxic Substances Control Act

A federal program that controls PCBs and several other "toxic substances".

Investigation

This term is broadly used to mean samples were taken and analyzed for suspected contamination.

Consent Order

A legal document used to remedy pollution. There are no provisions for public involvement, but the "Order" is public information after signing.

NOV - Notice of Violation

The first step of an enforcement action. An NOV is an official way to tell someone they violated the law, but it carries no penalty or fine.

COMMONLY NEEDED PHONE NUMBERS

DEC Fairbanks	452-1714	DEC Juneau	465-2600
EPA Anchorage	271-5083	EPA Seattle	(206) 442-2806
Wainwright	353-6211	Eielson	377-2116
Fairbanks MUS	456-1000	Fairbanks Borough	452-4761
MAPCO	488-2741	Alaska RailRoad	456-4364

FAIRBANKS HAZARDOUS - TOXIC WASTE SITES

RANKED BY THREAT TO PUBLIC HEALTH AND THE ENVIRONMENT

1 Fairbanks MUS city wells (site can be found on map 2)

The sole source of all Fairbanks public water is contaminated with fuel. This is the most serious drinking water contamination problem in all of Alaska. Benzene (a human carcinogen) is present in city wells up to 13 ppb (the drinking water standard is 5 ppb). As recently as 1986 the problem was on the increase.

waste description:	contaminated aquifer
toxic chemicals:	benzene and other aromatic hydrocarbons
containment:	none
action:	Investigation, monitoring, pilot recovery
references:	DEC file No. 102.45.023; 102.23.007; 102.16.003;
	DEC Consent Order 86-3-6-008-2
	DEC Oil Spill ID No. 88350127402
	EPA TSCA Docket 1087-03-06-2615
	EPA Superfund site No. AKD980495600

2 McPeak Salvage (site can be found on map 2)

A private salvage yard is littered with drums of military waste, a dump with over 200 tons of ash, and a pile of PCB laden ash (1,200,000 ppm) on the surface without fence, sign, or cover. Recently the name was changed to Arctic Surplus. The expired DEC solid waste permit required no monitoring wells.

waste description:	several hundred tons of ash, 1,300 drums
toxic chemicals:	PCBs - known, dioxins - highly probable
containment:	none
action:	Superfund Investigation, NPL
references:	DEC file No. 100.15.010
	DEC Oil Spill ID No. 89310902502
	DEC solid waste permit #8331-BA003
	EPA Superfund site No. AKD980988158

3 MAPCO (site can be found on map 4)

Because MAPCO violated numerous state and federal laws they were fined for polluting drinking water, not reporting spills, selling improperly identified fuel, and dumping hazardous waste. Residents of North Pole would be well advised to oversee the "clean up" of oil and hazardous waste. Benzene contaminates the groundwater 4,000 times in excess of drinking water standards. Watch for the expiration of the air permit.

waste description:	hazardous waste lagoons, massive spills
toxic chemicals:	aniline, chlorinated solvents, benzene
containment:	none
action:	RCRA and Oil Spill Consent Orders
references:	DEC file No. 100.23.106
	DEC Oil Spill ID No. 88310120504
	DEC air permit No. AQ 8431-AA008 expires 30 OCT 89
	EPA RCRA Orders 1087-12-01-3008a, & 1088-11-14-3008h
	Ombudsman Complaint F87-0011
	EPA Superfund site No. AKD000850701

4 Fort Wainwright Army Base (site can be found on map 2)

Wainwright is an old army base and in the past kept few if any records of waste disposal. Recently the presence of buried chemical warfare agents left over from WW II was confirmed. At least one gasoline/diesel spill contaminated over 40 acres and nine underground fuel storage tanks leak. This Army base needs to conduct an in depth investigation of their operations including sites off base; such as salvage yards, which may have unknowingly received hazardous waste. Over 3 million pounds a day of waste water are injected underground, watch for the expiration of this permit on September 3, 1989. As much as 10,000 gallons of hazardous waste was dumped on coal piles, spread around with heavy equipment then burned. Watch for the air permit expiring on January 30, 1993. The dump has questionable past practices of waste disposal, watch for the solid waste permit expiration on August 15, 1991. The Army is far behind the Air Force concerning identification of problems and attempting corrective action.

waste description:	dumps, spills, waste water
toxic chemicals:	chemical warfare agents, metals, solvents
containment:	none, or minimal
action:	Army investigation
references:	DEC file No. 100.02.002; 100.02.004; 100.45.092; 100.45.093; 100.23.004
	DEC Oil Spill ID No. 883501322
	DEC solid waste permit No. 8631-BA006 expires 15 AUG 91
	DEC waste water permit No. 8431-DB004&5 expires 03 DEC 89
	DEC air permit No. AQ 8731-AA007 expires 30 JAN 93
	EPA RCRA Compliance Order 1088-01-15-6001
	EPA Superfund site No. AKD6210022426

5 Eielson Air Force Base (site can be found on map 5)

Over 56 sites are known to be problems because of hazardous waste or fuel spills including possibly the largest underground fuel spill in North America, reportedly over 10 million gallons affecting 2.7 square miles. The pollution is so widespread a lake on base is nicknamed "POL lake"; short for "petroleum - oil & lubricants". Watch for the solid waste permit expiration on May 31, 1991. Also Eielson has a proposal to DEC to inject 12 million tons/year of waste water underground !

waste description:	spills, leaks, thousands of unmarked drums
toxic chemicals:	PCBs, fuel, solvents, methanol, ash
containment:	none, or minimal
action:	Air Force Investigation, NPL, Enforcement Docket 1087-03-25-6001
references:	DEC file No. 100.15.05; 100.45.58; 100.02.003A; 100.23.03
	DEC Oil Spill No. 87350108301
	DEC solid waste permit #8231-BA006 expires 31 MAY 91
	EPA Superfund site No. AKD1570028646

6 Alaska Rail Road (site can be found on map 2)

The Alaska Rail Road is a major source of waste problems around the state; from the chemical tank car disaster in Moose Pass to dumping trash along the tracks, and spraying pesticides. The Fairbanks yard is no exception. Known problems include an abandoned 10 acre dump, four feet of fuel floating on the water table and failed air pollution tests. Overall, the Alaska Railroad has a poor waste management track record.

waste description:	dump, air pollution, 4 feet of fuel on water
toxic chemicals:	benzene, metals, air pollution
containment:	none
action:	Superfund Investigation
references:	DEC file No. 102.02.007; 102.23.020; 102.15.002
	DEC Oil Spill ID No. 87350128901
	DEC air permit #8631-AA020 , NOV expires 31 JAN 92
	EPA Superfund site No. AKD980983183

7 Fairbanks Landfill (site can be found on map 2)

This dump was investigated by EPA and scored high enough to make the "worst of the worst" (NPL) list. The adjacent community has not received needed protection; such as, adequate monitoring wells and identification of contaminate plume extent and direction. The HRS score of this site indicates a need for further action. Watch for the expiration of this permit May 31, 1991.

waste description:	dump, contaminated ground water
toxic chemicals:	benzene, solvents, hazardous waste
containment:	none
action:	Superfund Investigation, NPL
references:	DEC file No. 100.15.002; 100.23.001; 102.07.001
	DEC Oil Spill ID No. 89310902504
	DEC solid waste permit No. 8631-BA003 expires 31 MAY 91
	EPA Superfund site No. AKD045771235

8 Ester Dome (site can be found on map 1)

Cyanide used in heap leach operations contaminated groundwater. Solid waste regulations used to regulate dumping of waste rock laden with cyanide were written for North Slope drilling mud pits. Because of the speculative nature of gold mines and gold prices heap leach operations need an extraordinary amount of oversight to assure adequate permit requirements and fulfillment of closure conditions.

waste description:	contaminated ground water
toxic chemicals:	cyanide, arsenic, acids, caustics, reactives
containment:	lined and unlined pits
action:	NOV
references:	DEC file No. 101.60.44; 175.62.001; 175.62.002; 175.62.081
	DEC solid waste permit No. 8130-DB001; 8731-BA007; 8731-BA009; 8731-BA010
	EPA NPDES permit No. AK 004348-6

9 PetroStar (site can be found on map 4)

Fuel spills contaminated the soils and groundwater. Monitoring wells between MAPCO and Petrostar are now contaminated.

waste description:	fuel spills
toxic chemicals:	benzene and aromatic hydrocarbons
containment:	none
action:	none
references:	DEC Oil Spill ID No. 8831010631

10 10th & Lacey, McCullum & Moore, 7th & Cowles

(site can be found on map 2)

Exploding transformers containing very high levels of PCBs (up to 140,000 ppm) sprayed residential yards, toys, and public sidewalks. MUS replaced the toys and raked a yard. The clean up included poor methods; such as, hosing down with water and raking leaves. A strong possibility exists that PCBs still contaminate homes and yards. Shortly after three PCB accidents EPA investigated the MUS transformer storage yard but failed to follow up on the clean up of residential yards.waste description:electrical equipment explosions

toxic chemicals:	PCBs
containment:	none, spilled in yard inadequate clean up
action:	MUS fined $171,000 by TSCA, Consent Order
references:	DEC file No. 102.23.007

11 Shoupe property (site can be found on map 1)

During property development in 1987 dangerous chemicals were discovered, possibly injuring children. The site was rapidly fenced off and investigated by the FBI. No evidence of sampling or follow up was found in the record.

waste description:	chemicals and drums
toxic chemicals:	cyanide, acids, mercury, low level radioactive
containment:	none
action:	FBI/Army/DEC partial clean up, fence
references:	DEC file No. 100.23.019
	DEC Oil Spill ID No. 89310902505

12 Miller Salvage (site can be found on map 2)

The owner of this site attempted to sell it for residential housing. Several buried rail road cars full of waste oil leaked and created "oil lakes".

waste description:	pools of oil, military waste
toxic chemicals:	lead, zinc, polynuclear aromatics
containment:	none
action:	Superfund Investigation, RCRA violations
references:	DEC file No. 102.23.017
	DEC Oil Spill ID No. 8931092522
	EPA Superfund site No. AKD103386744

13 University of Alaska (site can be found on map 1)

UAF has numerous problems including violations of hazardous waste storage, treatment, and disposal regulations, dumping coal ash at an unpermitted site (across the street from 'Hot Licks'), another unpermitted dump, and widespread groundwater contamination from an unknown source near Geist Road (benzene up to 30 times above the drinking water standard). UAF has permits to handle both high level (Am-241 & Co-60) and low level radioactive materials. The disposal of unregulated low level waste including "experimental animal bodies and sterilized dirt", is a problem. UAF has made recent inquiry to DEC regarding such a disposal site in the nearby area. Watch for air quality permit expiring on September 30, 1992.

waste description: unpermitted dump, fuel leaks

toxic chemicals: probable laboratory and low level radioactive

containment: none

action: Superfund Investigation

references: DEC file No. 105.02.002; 105.23.001; 105.25.001; 100.73.068

DEC Oil Spill ID No. 88310129114; 88310129115

DEC air permit No. 8731-AA005 expires 30 SEP 92

Nuclear Regulatory Commission permit No. 50-02430-07; 50-0243-09

EPA Superfund site No. AKD049679567

14 Chevron tank farm (site can be found on map 2)

The bulk tank farm is located at 418 Illinois Street. It is one of a few sites in Alaska where fuel is pumped out of the ground and recovered. The spilled fuel recovery needs citizen monitoring to assure the recovery pumps aren't turned off prematurely. Almost two tons of hazardous waste (leaded tank bottoms) were shipped out of state.

waste description:	leaking fuel
toxic chemicals:	benzene
containment:	none, ground water problem unknown
action:	extraction wells
references:	DEC file No. 102.23.010; 102.45.007
	DEC Oil Spill ID No. 84350111601

15 McCall property (site can be found on map 3)

A poor investigation by the state and EPA (only one sample was taken) concluded with "no further action recommended", although evidence was found of fuel and solvents contaminating the ground water. A bank repossessed the property, construction workers buried an unknown amount of waste and started a large fire which emitted off toxic fumes. The site was formerly used during pipeline construction. BUYER BEWARE !

waste description:	buried drums, contaminated ground water
toxic chemicals:	trichloroethane, acetone, benzene
containment:	none
action:	Superfund Investigation
references:	DEC file No. 100.23.025
	EPA Superfund site No. AKD981767080

16 Alaska Gold or USSR&M (site can be found on map 2)

Facility identical to the one in Nome which contaminated the playground and adjacent areas with the highest levels of mercury and arsenic ever reported anywhere in the United States. A nearby playground is contaminated with lead. On site numerous contaminates are present including PCBs (12,000 ppm), arsenic (1,100 ppm), mercury (78 ppm), and lead (506 ppm). A well is contaminated with tetrachloroethane. More work needs to be done at this site.

waste description:	waste piles, contaminated ground water
toxic chemicals:	mercury, arsenic, trichloroethene, PCBs
containment:	none
action:	Superfund Investigation
references:	DEC file No. 102.23.018
	DEC Oil Spill ID No. 89310902524
	EPA Superfund site No. AKD0980964216

17 Fairbanks Post Office (site can be found on map 1)

A new well is contaminated with fuel floating on the water table. Up to one acre is contaminated from an unknown source. Poor waste management at vehicle maintenance shop caused violations of federal hazardous waste laws.

waste description:	leaking tanks
toxic chemicals:	benzene, hazardous waste
containment:	none
action:	monitoring, RCRA NOV
references:	DEC file No. 100.23.023
	DEC Oil Spill ID No. 88350108301

18 Stage Stop (site can be found on map 4)

Local gas station leaked and spilled gas on the ground and into the groundwater.

waste description:	contaminated groundwater, leaking tanks
toxic chemicals:	benzene and other aromatic hydrocarbons
containment:	none
action:	LUST, Investigation
references:	DEC file No. 100.26.001
	DEC Oil Spill ID No. 87350127403

19 Lucky Sourdough (site can be found on map 2)

Downtown gas station leaked gas into the ground at the tested rate of 1 gallon per hour. No evidence was found that the groundwater was sampled for contamination.

waste description:	leaking tanks
toxic chemicals:	benzene and other aromatic hydrocarbons
containment:	none, ground water problems unknown
action:	LUST, no Investigation
references:	DEC file No. 102.26.001
	DEC Oil Spill ID No. 87350127405, 88310129107

20 Badger Trailer park (site can be found on map 3)

At 6.5 mile Badger road a trailer park drinking water well is contaminated with benzene.

waste description:	contaminated groundwater
toxic chemicals:	benzene and other aromatic hydrocarbons
containment:	none
action:	none
references:	DEC file No. 100.07.013
	DEC Oil Spill No. 88?10129106

21 Earth Movers of Alaska (site can be found on map 2)

The site is contaminated with fuel and lead. Agency records become sketchy when waste disposal options were considered.

waste description:	350 drums of waste
toxic chemicals:	waste oils, solvents, lead
containment:	on ground and in barrels
action:	Superfund Investigation
references:	DEC file No. 102.23.013
	DEC Oil Spill ID No. 89310902521
	EPA Superfund site No. AKD049983273

22 Wise warehouse (site can be found on map 2)

Local well is contaminated with fuel from unknown source.

waste description:	contaminated groundwater
toxic chemicals:	benzene and other aromatic hydrocarbons
containment:	none
action:	none
references:	DEC file No. 100.16.026
	DEC Oil Spill ID No. 88310129104

23 Bloom Enterprises (site can be found on map 2)

Local well is contaminated with fuel from unknown source. A citizen complaint led to the discovery of drinking water that smelled like fuel and contained twice the allowable amount of benzene. The soil around the facility is stained with oil indicating poor oily waste management.

waste description:	contaminated groundwater
toxic chemicals:	benzene and other aromatic hydrocarbons
containment:	none
action:	none
references:	DEC file No. 100.02.282
	DEC Oil Spill ID No. 88310129116

24 Air North (site can be found on map 2)

Local well is contaminated with fuel over 300 times the drinking water standard. So much fuel was spilled that the ground caught fire.

waste description:	contaminated groundwater
toxic chemicals:	benzene and other aromatic hydrocarbons
containment:	none
action:	none
references:	DEC file No. 100.02.052; 100.07.204
	DEC Oil Spill ID No. 84310105602

25 Westours bus barn (site can be found on map 2)

The statewide center for bus maintenance poured solvents and paint waste down a floor drain into a drain field.

waste description:	chlorinated solvents, fuel
toxic chemicals:	1,1,1 trichloroethane, trichloroethylene, benzene
containment:	none
action:	property transfer
references:	responsible party report to DEC 12/88

26 Alaska Battery Enterprises (site can be found on map 2)

A dumping ground for government and military batteries made this Alaska's first NPL Superfund site. Over 40 railroad cars hauled lead contaminated dirt to Idaho for disposal. Thoroughness of clean up is in question because "how clean is clean" was guessed at by digging until no more broken batteries were found. No record found of long term ground water monitoring.

waste description:	battery acid
toxic chemicals:	lead, acid
containment:	none
action:	contaminated soils removed
references:	DEC file No. 102.23.011
	EPA Superfund site No. AKD004904215

27 Chena Lakes, Tare Nike Site (site can be found on map 4)

Local well is contaminated with fuel, probably from abandoned military tanks. Benzene contaminates the groundwater over 300 times above the drinking water standard.

waste description:	spills and leaking tanks
toxic chemicals:	benzene, chlorinated solvents
containment:	none
action:	Air Force Investigation
references:	DEC Oil Spill No. 88310129102

28 2nd & Lathrop, Growden Park (site can be found on map 2)

Site of former city dumps now used for parks and housing. No records were found which establish dump boundaries although several independent interviews confirmed location and years of use. Prcperty owners and users of the park have the right to know if they are sitting on toxic time bombs.

was' description:	old city dumps
toxic chemicals:	probable fuel, solvents, metals
containment:	none
action:	none
references:	DEC Oil Spill No. 89310902519
	EPA Superfund site No. AKD980495543

29 Petty farm (site can be found on map 5)

Sewage sludge is dumped from MAPCO and city. Agricultural crops are grown in sludge. MAPCO sludge is known to contain hazardous waste. No record of federal RCRA enforcement. Watch for permit expiration on March 31, 1992.

waste description:	MAPCO, MUS, and military base waste water sludge
toxic chemicals:	hydrocarbons and infectious
containment:	none, unknown agricultural crops grown
action:	permitted dump
references:	DEC file No. 100.15.020
	DEC solid waste permit 8731-BA002
	expires 31 MAR 92

30 Clear Air Force Base MILITARY BASE NOT ON MAP

A military base near Anderson, Alaska (south of Fairbanks) operated by contractors uses over 200 tons of coal a day for powerful radar transmissions. A 12 million gallon lagoon is used as a mixing tank. Over 5,000 ponds of "slimicides" (B-nitrostyrene) are dumped into the lagoon at a time. On at least one known occasion operator error caused the lagoon to overflow and kill fish in a nearby stream. Fishermen were informed only after they reported ate contaminated fish and complained about the taste. As much as 12,000 gallons of silicon oil was dumped on the road at one time. Numerous other problems include the disposal of; chromium sludges, PCBs, fly ash, and low level radioactive 'Klystron tubes'. The facility received a Notice of Violation for improperly managing it's hazardous waste.

waste description:	dumps, fish kills
toxic chemicals:	PCBs, chromium, solvents, fuel
containment:	none
action:	NOV RCRA, Air Force Investigation
references:	DEC file No. 150.02.003; 150.16.001: 150.23.001; 150.45.022; 150.07.007
	DEC Oil Spill No. 89330102501
	EPA Superfund site No. AKD1570025638

31 Gerstle River /Fort Greely MILITARY BASE NOT ON MAP

A northern testing base of operations for an experimental nuclear power plant (buried on site), chemical, and biological warfare agents (shot out of rockets and bombs). Over 150,000 gallons of diesel spills, and leaking underground fuel tanks.

waste description:	dumps, spills
toxic chemicals:	nuclear, chemical nerve gas, biological warfare agents
containment:	none
action:	unknown
references:	DEC Oil Spill No. 89330902501; 88350113201 EPA Superfund site No. AKD7210022342

32 Murphy Dome MILITARY BASE NOT ON MAP

A scarce record but probably typical military dump and associated waste mismanagement.

waste description:	spills, leaking tanks
toxic chemicals:	PCBs, benzene
containment:	none
action:	unknown
references:	DEC Oil Spill No. 89310102501

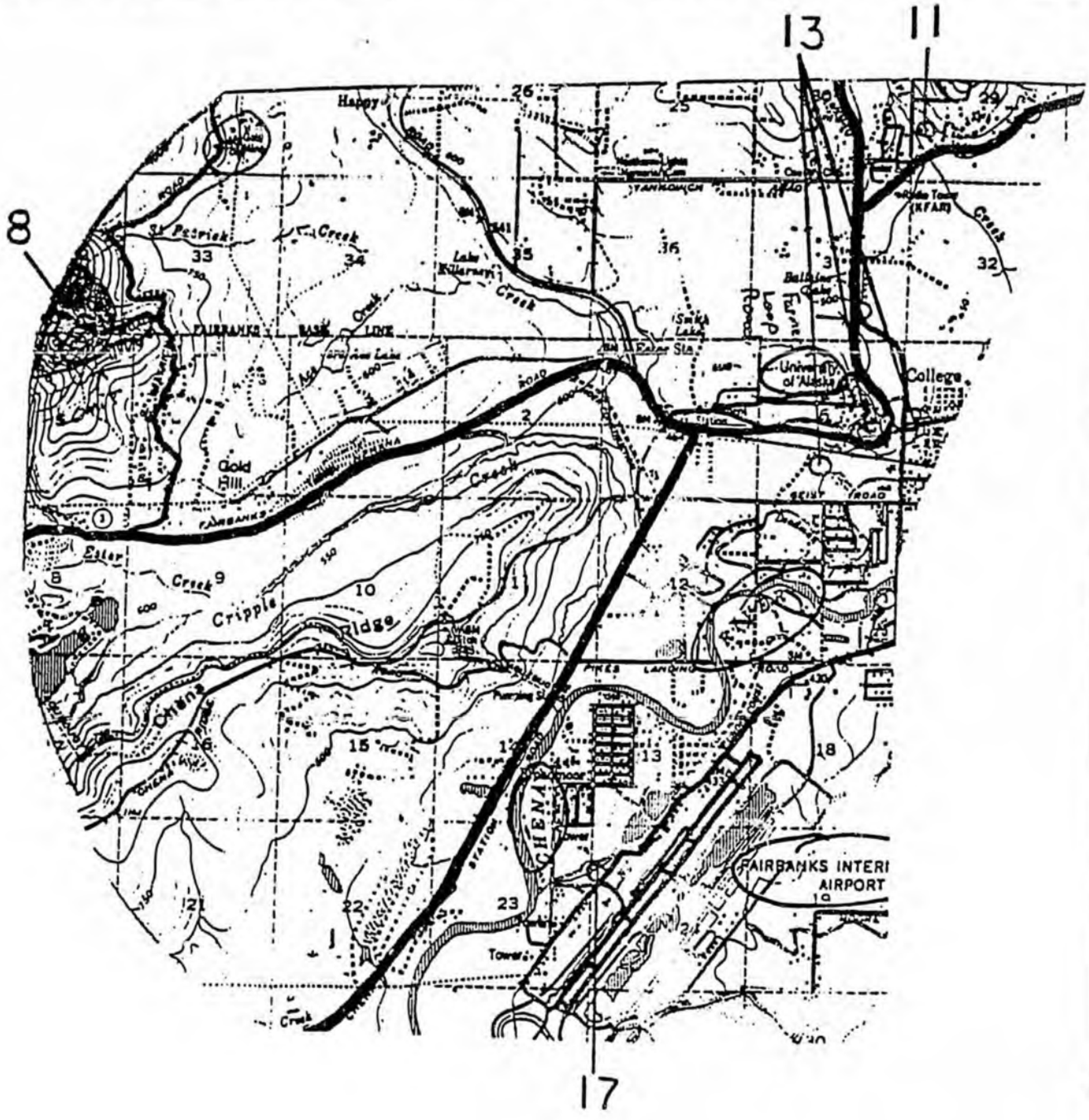
33 Alyeska Nordale yard (site can be found on map 3)

Alyeska violated RCRA hazardous waste regulations. Reportedly cleaned up 768 drums, but no record of follow up. Over 400 gallons of hazardous waste were stored, the waste was transferred from numerous locations (including Valdez) in violation of RCRA regulations. Some waste was injected into the pipeline but no records of analyses were found. The facility was inspected three times and RCRA violations were always found.

waste description:	768 drums waste, some hazardous
toxic chemicals:	lead, potassium hydroxide, solvents
containment:	in drums
action:	RCRA inspection, waste moved
references:	DEC file No. 100.23.02

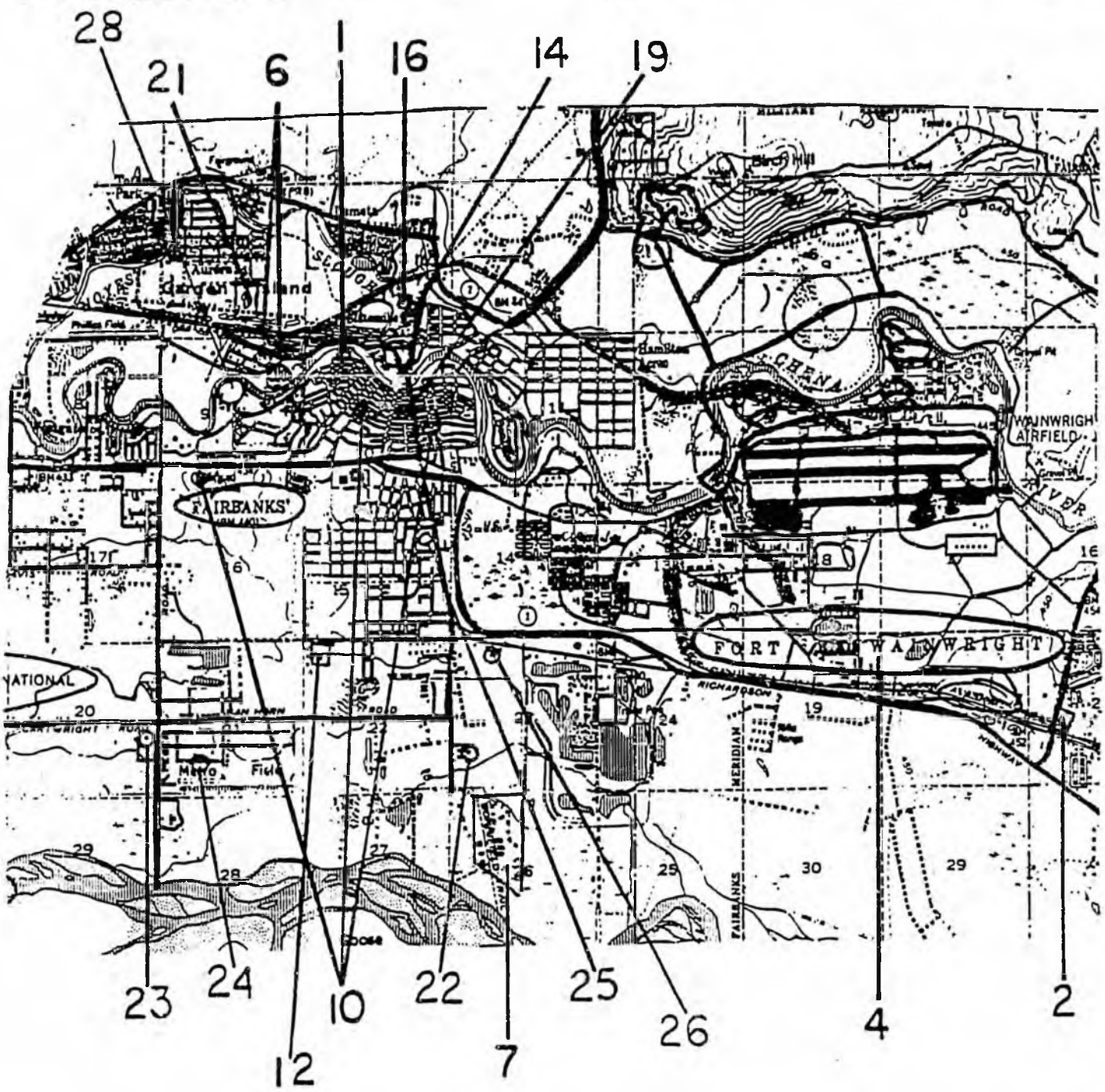
MAP 1

SITES
8, 11, 13, 17



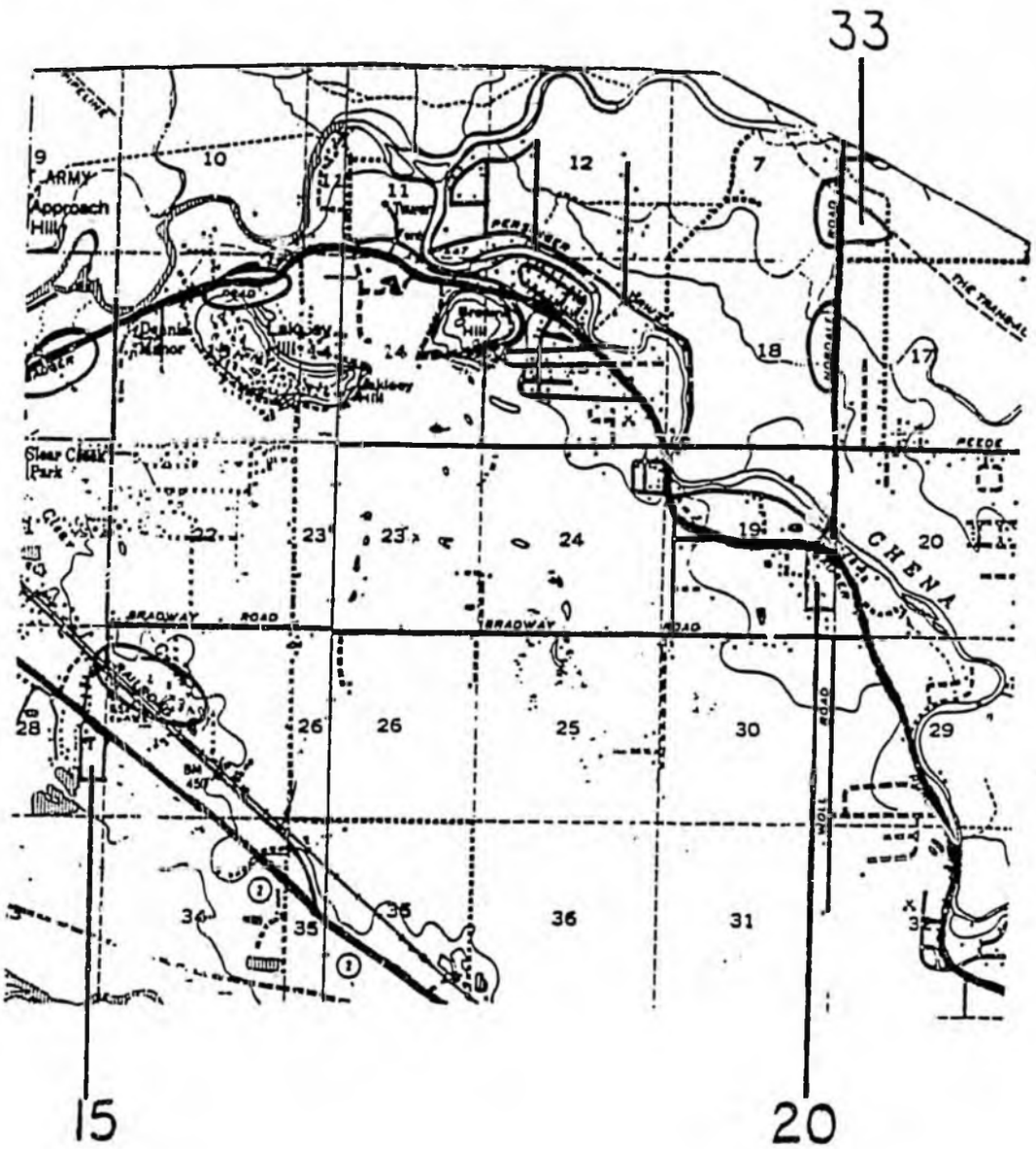
MAP 2

SITES
1, 2, 4, 6, 7, 10
12, 14, 16, 19, 21
22, 23, 24, 25, 26, 28



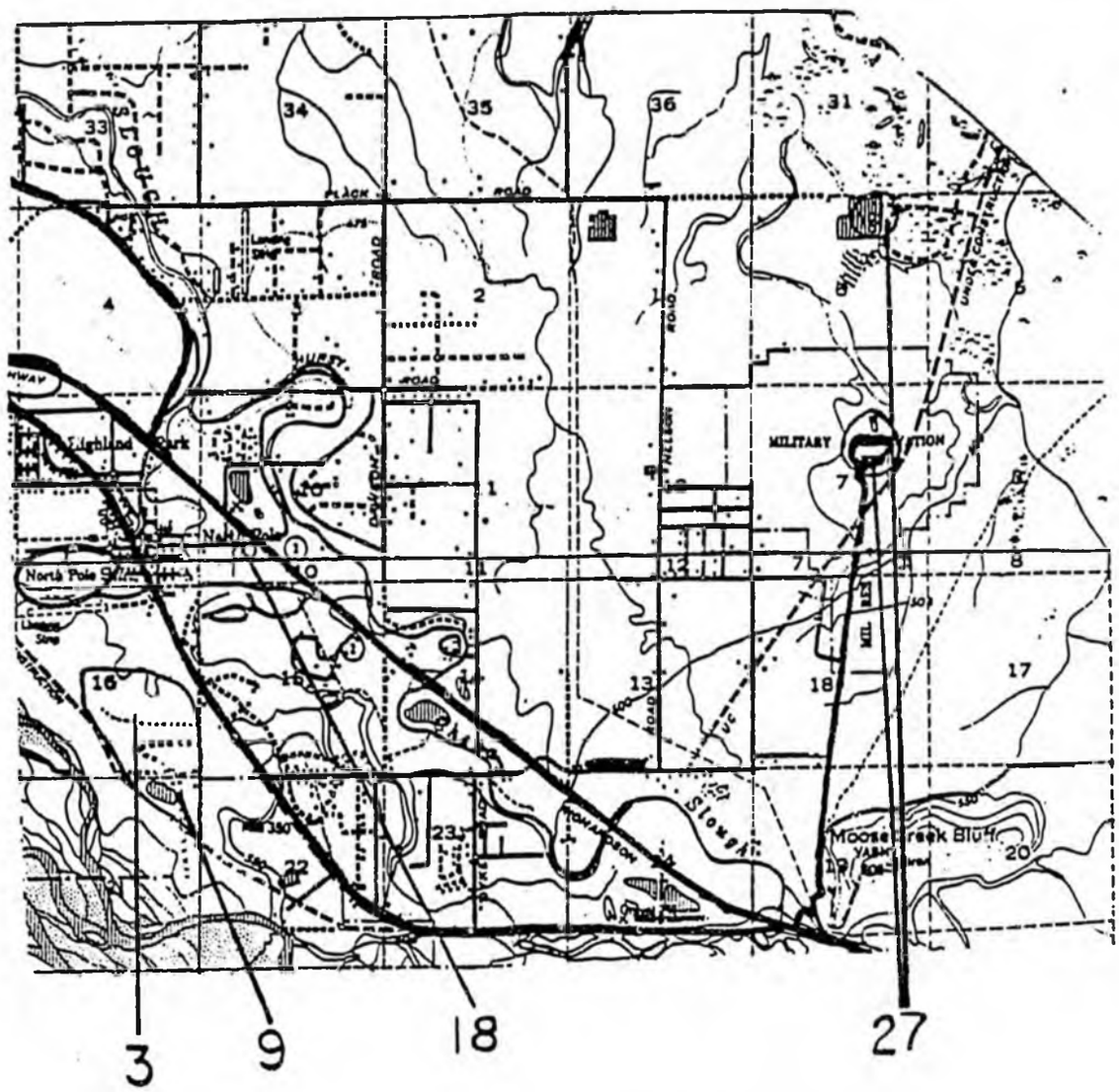
MAP 3

SITES
15, 20, 33



MAP 4

SITES
3, 9, 18, 27



MAP 5

SITES
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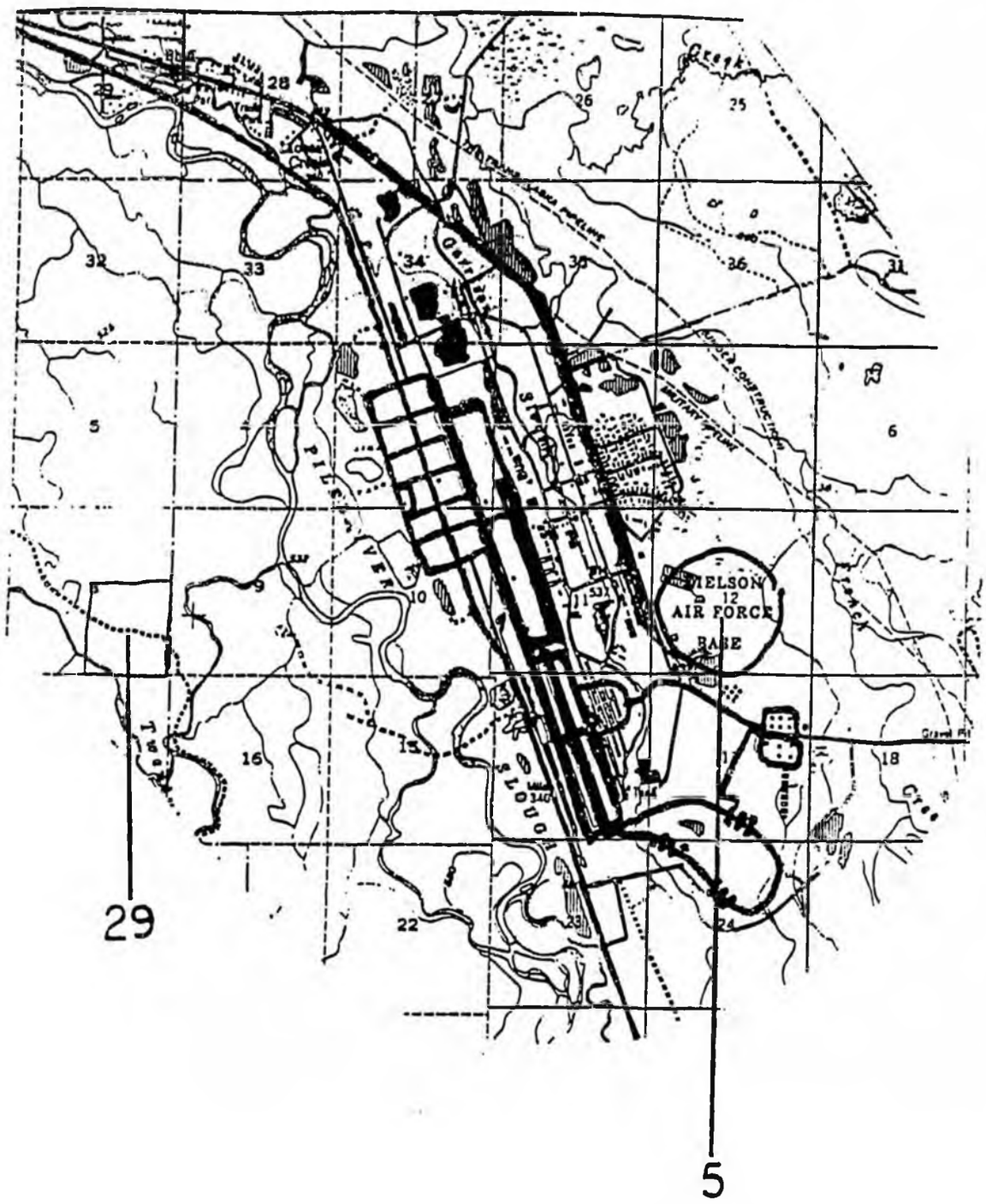

HB 565

773-90-0051

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.

PENALTY DETERMINATION

Freshwater 10.00/gallon
Product: Gasoline

Size: 10,000 gallons

	Factor
Toxicity - Highly Toxic	1.0
Degradability - Highly Degradable	.25
Dispersibility - Highly Dispersible	.15
	1.40

mean = .47

10.00 x .47 = 4.70/gallon x 10,000 gallons = 47,000
Times Five for Negligence

Crude

Toxicity - Moderately	.75 x 27/30 =	.68
Degradability - Moderate	.5 x 27/30 =	.45
Dispersibility - Moderate	.5 =	.50
		1.63

mean = .54

10.00 x .54 = 5.40/gallon x 10,000 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.

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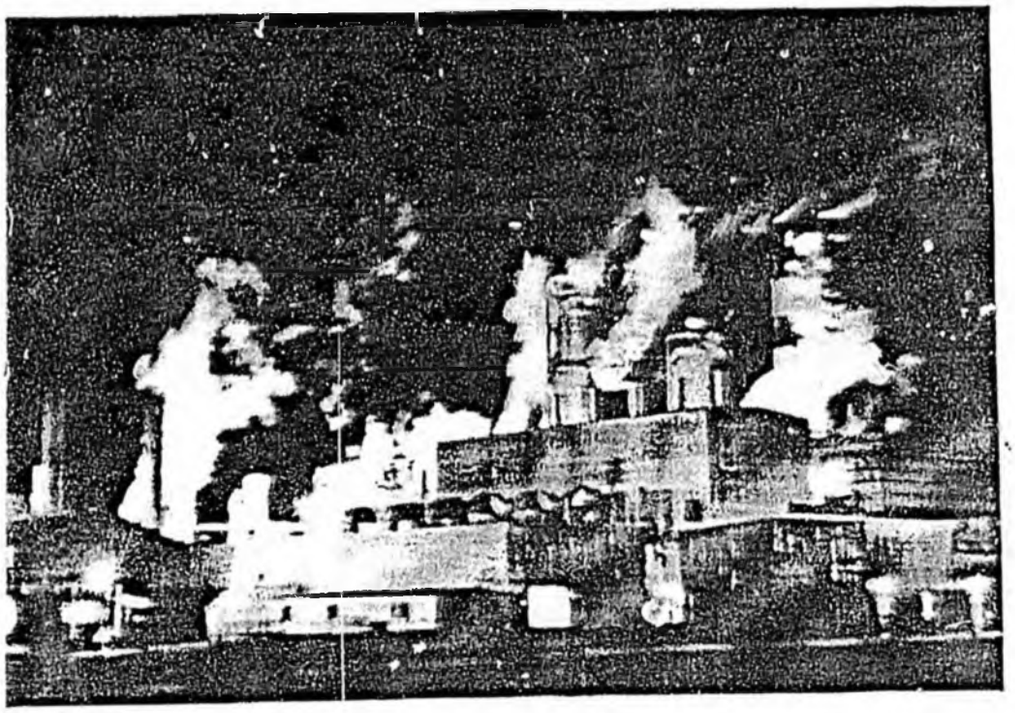
An Environmental Compliance Audit of the Oil and Gas Industry Kenai, Alaska



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

research and authorship by:

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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 Roller

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 en[illegible]c.

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

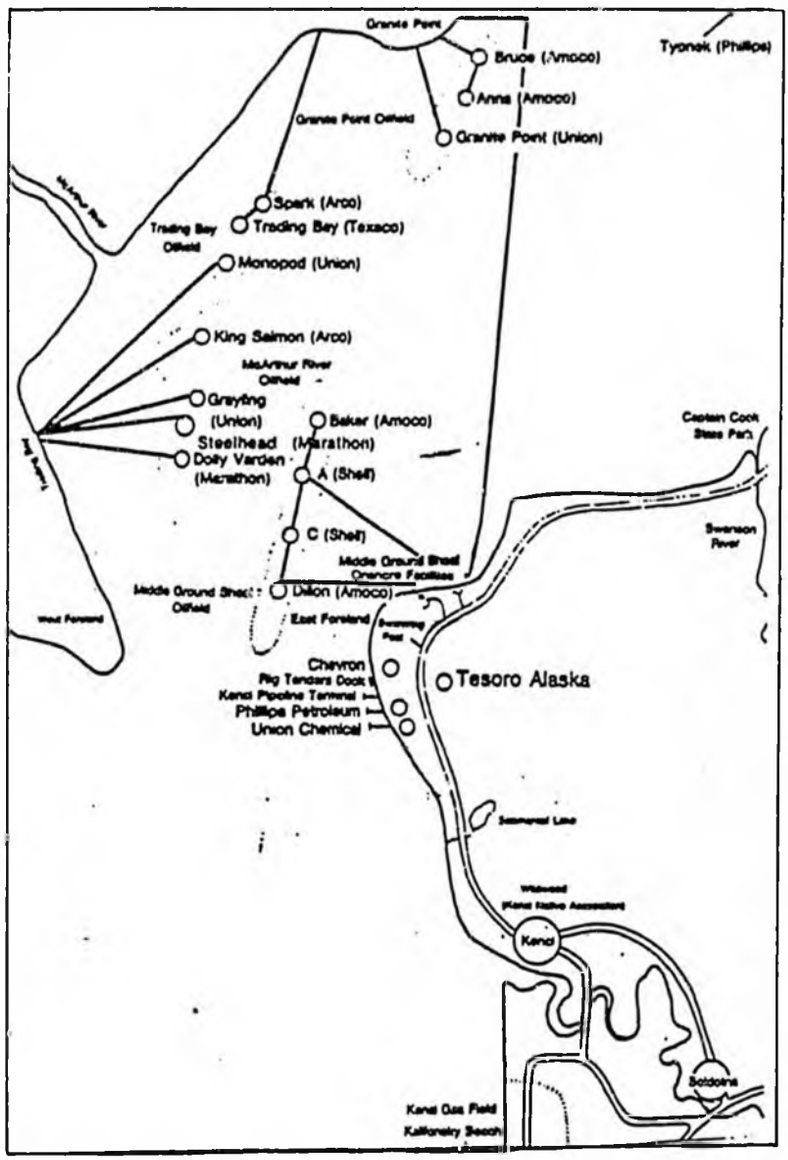
I reviewed approximately 20,000 pages of public records from state and federal agencies. Industry files are not available for public review. For the early years of facility operation few records existed. Every attempt was made to thoroughly research each facility file. All information presented is accurate,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

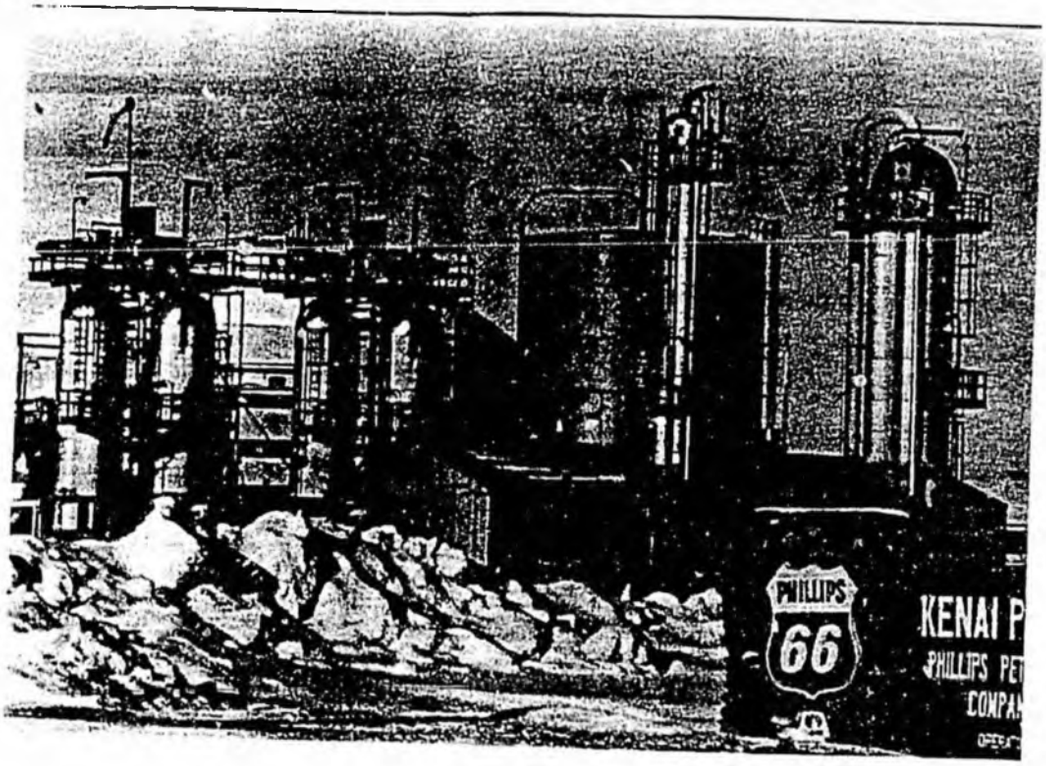
methods are used for oil/water waste. Liquids with a high percentage of oil are flared in an open pit. Liquids with a high percentage of water are dumped into Cook Inlet. Oily sludges are dumped into pits. After oil is sufficiently clean it is sent to an oil terminal where it is stored before shipment 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 comments 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.

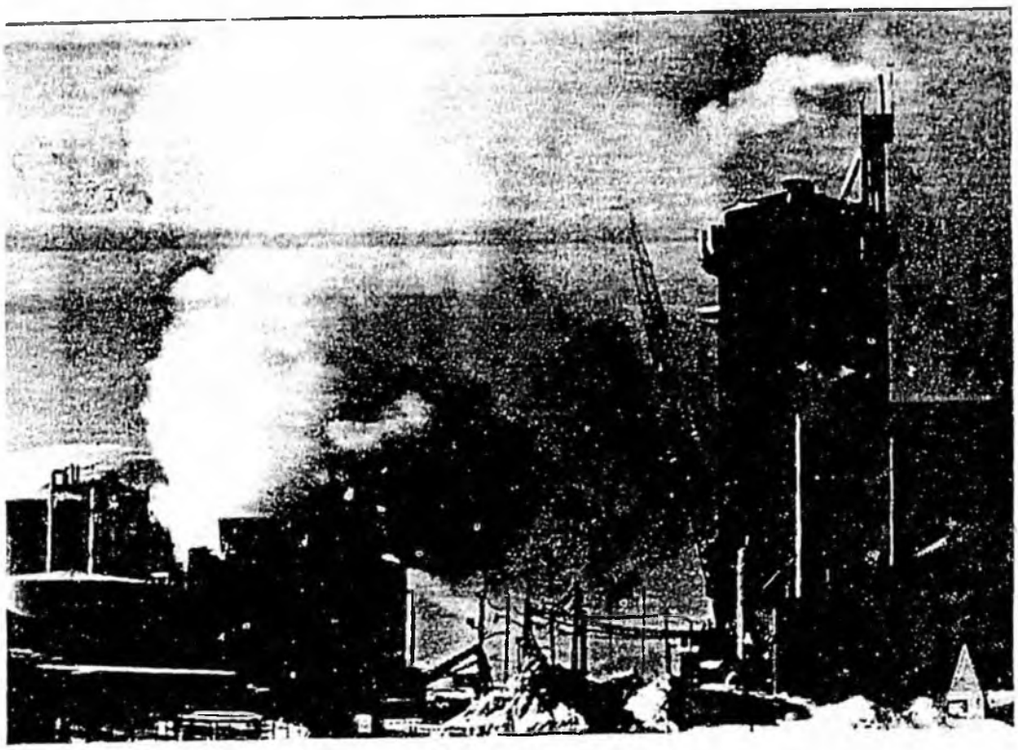
2.4 Hazardous-Toxic Waste Sites

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

pounds		toxic waste	source
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
67,000,000		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

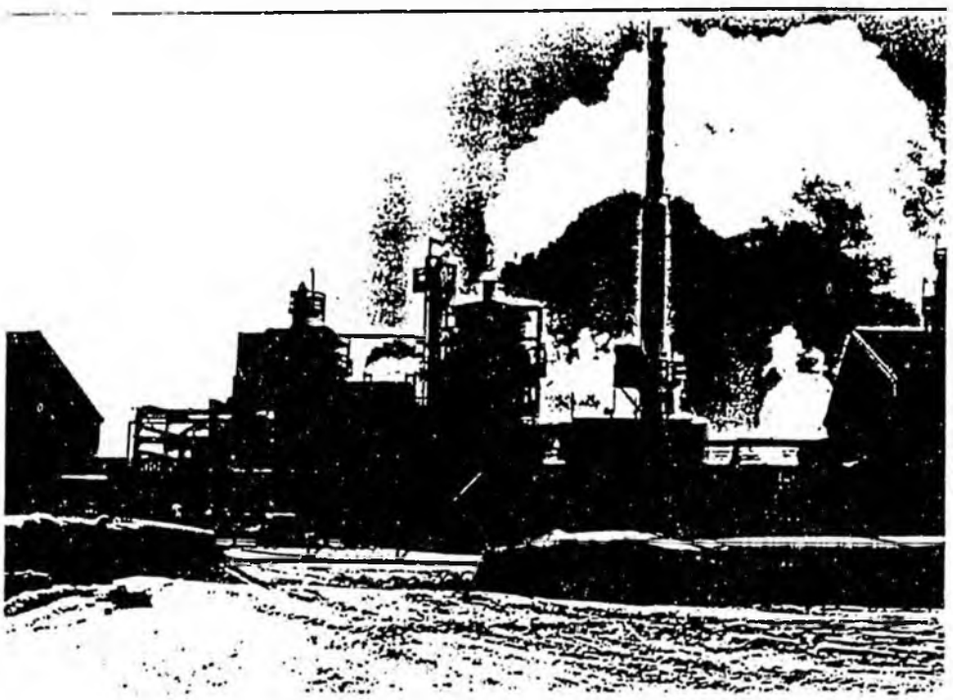


Table 2
Annual Oceanic Water Pollution from the
Nikiski Petrochemical Industry

pounds		toxic waste
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		xylenes
130		benzene
60		toluene
7		ethylbenzene
7		arsenic
7		cadmium
4		nickel
4		cyanide
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

pounds	toxic waste in water
92,000,000	ammonia, arsenic, urea, phenols
52,000,000	groundwater contaminated from a hazardous waste site
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 2,000, 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 RCRA to Superfund (Miller 1985).

2. Because of the contaminated ground water and 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

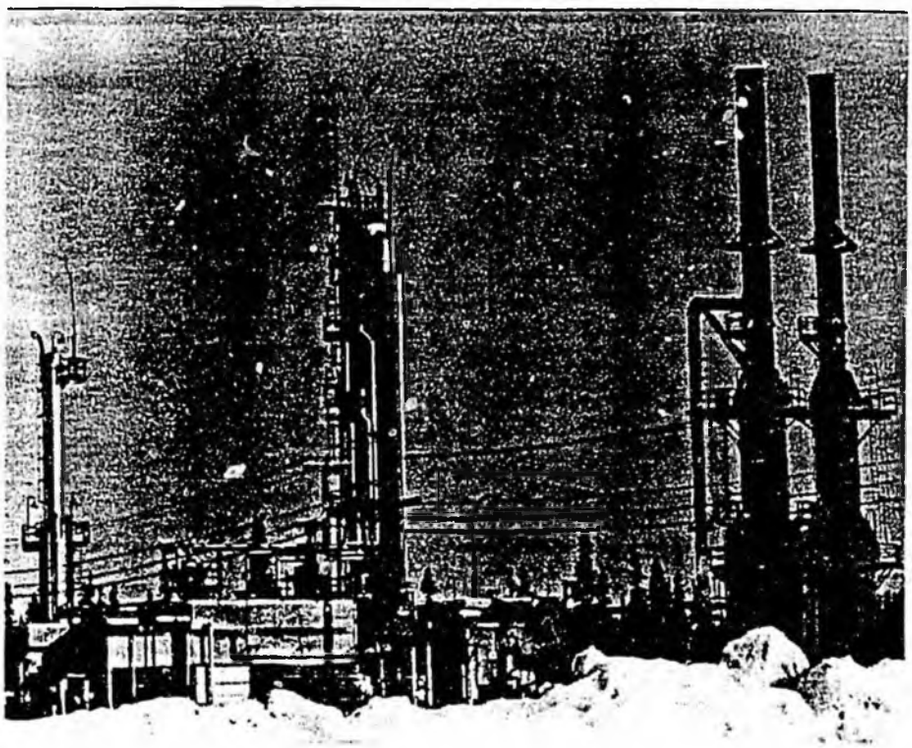


Table 4

Listed Hazardous Waste Common to Petroleum Refineries

Hazardous Waste	EPA No.
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 nct stored, treats, 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

pounds	waste	type of toxic waste
3,600,000	sludge	metals
470,000	catalyst	metals
16,000	resins	synthetic polymers
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

toxic metal	concentration (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, Nyman, 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).

* 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).

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.

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 causal 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.

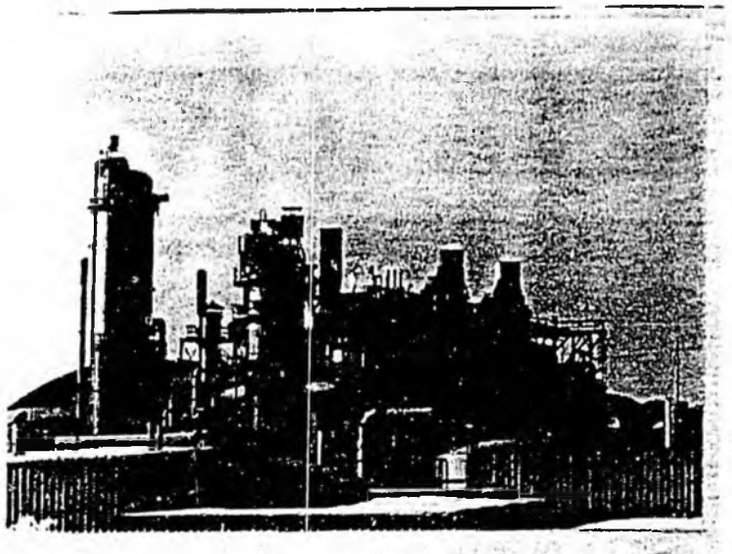
RECOMMENDATION 4

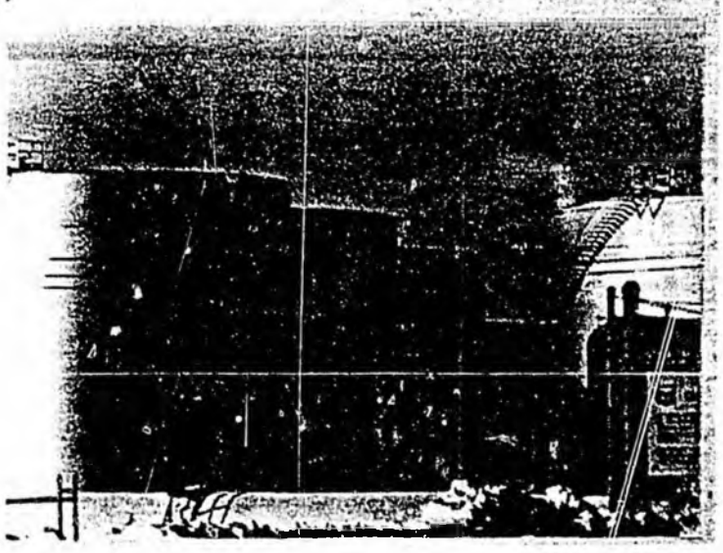
The clean up of hazardous - toxic waste sites is arbitrary. A task force composed of regulated industry, victims of improper waste dumping, environmental groups, and independent experts should be formed to develop guidelines for state regulations governing state clean up efforts. Current Alaska law provides 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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NON-CRUDE ISSUES ADDRESSED IN HB 565 AND HB 567

ISSUE	EXISTING LAW	ADMINISTRATION PROPOSAL 3/15/90
Penalty Levels	**$10/gallon** for anadromous stream or other freshwater environment; **$2.50/gallon** for sensitive or confined saltwater areas; **$1/gallon** for unconfined saltwater, public land or freshwater without significant aquatic resources. Subject to a schedule that varies for toxicity, degradability and dispersal characteristics, as well as receiving environment.	**$12.50/gallon** for any surface or subsurface freshwater environment; **$8/gallon** for sensitive or confined saltwater areas; **$6/gallon** for unconfined saltwater, public land or subsurface land. Subject to the existing schedule that varies for toxicity, degradability and dispersal characteristics.
Exemptions	Spills of less than 18,000 gallons are not subject to penalties under AS 46.03.758.	Spills of less than 18,000 gallons are 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.

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 distributers.

TABLE 1

Oil Contingency Plan Requirements
Financial Responsibility Requirements
Vessel Inspection

Tesoro

TYPE OF FACILITY	CURRENT FINANCIAL RESPONSIBILITY REQUIREMENTS	SB 504 HB 567	PROPOSED 3/15 REVISION
Crude Oil Terminals			
>10,000 bbl.	$1 million up to $50 million @ $10/bbl. capacity	$50 million	$50 million
5 - 10,000 bbl.	None	$50 million	$50 million
Non-Crude Terminals			10 to 20,000 bbl. = $5 million
>10,000 bbl.	$1 million up to $50 million @ $10/bbl. capacity	$50 million	> 20,000 bbl. = $10 million
5 to 10,000 bbl.	None	$1 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

x ½ the capacity ? Since total failure is unlikely ...

more than 1 facility

AVEC

TANKER MORE LIKELY TO HAVE SPILL YET REQ. FOR NON-CRUDE TERMINALS IS 10X THE AMOUNT REQUIRED FOR VESSELS

← NONCRUDE → ← CRUDE

	1977	AncCPI	USCPI	Approx Oil Index	565	ORIGINAL 565(1977)	
FW	$10	18.40	19.67	13.32	12.50	50	50
SW	$2.50	4.59	4.92	3.33	8.00	50	25
Open SW	$1.00	1.84	1.97	1.33	6.00	25	10

$8/gal ≤ 10,000 bbl (420,000 gal)

$12.50/gal > 420,000 gal

Exxon Valdez @ $12.50 = $137,500,000 (cleanup 1 order of magnitude higher)

w/ penalty matrix = $687,500,000