

***REGULATORY  
OVERSIGHT  
AND  
ENFORCEMENT  
OVERVIEW***



# Alaska State Legislature

HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES

POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3718

## HOUSE RESOURCES COMMITTEE, OIL SPILL HEARING

Tuesday, January 23, 1990  
3:00 to 5:00 p.m.  
Capitol Room 124

### REGULATORY OVERSIGHT AND ENFORCEMENT

**Captain Bodron** - Chief, Marine Safety Division  
U.S. Coast Guard, Alaska

Role in tanker inspections, personnel, # of inspections a year and ability to ensure compliance. Agreements between Coast Guard and State to allow the state to provide these functions.

**Dan Lawn** - Department of Environmental Conservation  
Difficulties as a field officer to gain access to the Pipeline terminal and suggestions to make access and oversight more effective. Inspections of facilities and tankers in order to prevent oil spills or improve oil spill response.

**Larry Dietrick** - Director, Environmental Quality  
Department of Environmental Conservation  
Regulatory concerns relating to Prince William Sound and Cook Inlet.

**Mike Williams** - V.P. Environmental Planning and Control  
Alyeska Pipeline Service Co.  
Alyeska's view of appropriate oversight and enforcement of environmental laws and regulatory requirements.

**Chuck O'Donnell** - Superintendent, Valdez Marine Terminal

**Anne Rothe** - Chair, Alyeska Citizen's Advisory Committee  
Explanation of the federal legislation as it relates to advisory committees and an explanation of the Alyeska citizen's advisory committee and its development. Role of Citizens in oversight of the industry.

**Michelle Brown** - Assistant Attorney General  
Office of the Attorney General  
Methods for improving statutes to ensure proper oversight and enforcement as well as incentives for compliance.

**Mike Wenig** - Staff Attorney, Trustees for Alaska  
Proposals for improving oversight and enforcement

NOTES FOR USE AT ALASKA STATE LEGISLATURE HOUSE RESOURCES  
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STATEMENT  
OF  
MIKE WILLIAMS  
Vice President for Environmental Planning & Control  
Alyeska Pipeline Service Company  
to the  
Alaska House Resources Committee on  
January 23, 1990

Thank you for the opportunity to testify to the House Resources Committee regarding regulatory oversight of Alyeska Pipeline Service Company, particularly at the Valdez Marine Terminal. I have been working at Alyeska on the Prince William Sound oil spill prevention and response plans since April 1989. On October 1, 1989, I became Alyeska's Vice President for Environmental Planning and Control. My brief testimony relies on Alyeska records, information from Alyeska employees, and personal experience.

Chuck O'Donnell, Alyeska's Valdez Marine Terminal Superintendent, is with me today to provide detailed information about the access rules he agreed to on September 21, 1989 with Bruce Erickson, DEC.

Alyeska wishes to make two suggestions today that we believe will improve not only regulatory oversight, but the relationship between industry and State government.

First, Alyeska believes it is most 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.

The second recommendation we wish to make is that a State law be introduced requiring all State and local government inspectors who have inspected a facility to give a verbal report of their findings to the facility's management before they leave the premises. This verbal report should be followed by a written report within seven days. In some cases, this or a similar procedure is already used. In those circumstances, the procedure has proven most beneficial for the agency and industry. It gives the management of the facility and the agency the opportunity to discuss concerns, but more importantly it gives the management a chance to rapidly fix any problems that may have been noted.

Before a state or local government inspector can carry out his duties, he must have access to the plant or facility.

Alyeska, like all other responsible corporations, has a real, ongoing concern for safety at our facilities. In any plant that handles crude oil or gas, there is the risk of fire and explosion. These risks are minimized by controlling the access of all people in these areas.

At Alyeska, for access to facilities such as the terminal, all visitors, including senior officials of the company, must state which part of the facility they wish to visit and must be accompanied to that area by trained personnel who know what is happening in that area at that time. We want to protect all

visitors and our own personnel from the potentially harmful consequences of inappropriate conduct by untrained people who lack detailed knowledge of daily changes in the operation.

Alyeska is frequently compared to the Sullom Voe terminal on the Shetland Islands. Alyeska's rules are, in fact, less stringent than those enforced at Sullom Voe where, for example, all visitors are escorted and no cameras or recording equipment are allowed.

Access to Alyeska's facilities such as the terminal cannot be free ranging for anyone. As you can see from the attached correspondence, Alyeska and the DEC agreed in 1986 to rules for routine access to the Valdez Marine Terminal. Chuck O'Donnell, Superintendent of the Terminal, will summarize these rules during his testimony.

Except for Alyeska's request to receive 24 hour prior notice of routine visits, which DEC has never adhered to, Alyeska continued to apply these rules until September 21, 1989 when Chuck O'Donnell, on behalf of Alyeska, and Bruce Erickson, on behalf of the DEC, clarified them to ensure that DEC personnel are allowed to enter the facility within 5 minutes of their arrival at the perimeter gate.

In summary, we wish to develop a good working relationship with the agencies concerned with good safe work practices.

I believe we have a good relationship with many agencies. We receive good cooperation and constructive feedback essential to problem solving from the federal Department of Transportation and

Bureau of Land Management and State Department of Natural Resources and Department of Environmental Conservation inspectors at our pump stations. However, we have had problems and misunderstandings with some DEC inspectors in Valdez. We have had very little feedback based on inspectors' trips to the terminal. We have unsuccessfully tried to use state public records act requests to obtain reports covering agency visits to the Valdez terminal. This lack of information exchange and cooperation is not good for us or for the DEC.

We hope that these confrontational patterns are a thing of the past. Alyeska wishes to work closely with all agencies and to rely on cooperation, not confrontation, in our future relationships.

Q. Does Alyeska agree with the Oil Spill Commission recommendations that Alyeska provide the DEC with an office at the Valdez Marine Terminal?

Alyeska presently provides work space and a telephone at the terminal security building to federal and state regulators.

Alyeska is willing to discuss different arrangements with the DEC. Alyeska would be receptive to the proposal so long as DEC personnel agree to an escort to other parts of the terminal and provide a verbal briefing after each inspection and send copies of inspection reports within seven days.

STATEMENT OF CHARLES F. O'DONNELL  
Valdez Marine Terminal Superintendent  
Alyeska Pipeline Service Company  
to the  
Alaska House Resources Committee on  
January 23, 1990

Thank you for the opportunity to testify. I began working for Alyeska as a lead controller in the Operations Control Center in October 1976.

In 1978 I became Manager of the Operations Control Center in Valdez that operates the pipeline. In April 1987 I was transferred to become Marine Manager at the terminal. I became Terminal Superintendent in June 1988 and continue to have that job.

As Terminal Superintendent, I am responsible for the safe operation of the terminal consistent with environmental regulations. As explained by Mike Williams, the rules for access to the terminal are designed to protect the safety of all concerned and accommodate the DEC's need to inspect our facilities.

Since 1986 we have asked the DEC to abide by the following rules:

1. We would like to receive one day's prior notice for routine visits.
2. Routine visits should occur during normal business hours of 8:00 a.m. to 4:30 p.m.
3. Agency personnel must be accompanied onto the terminal by an authorized Alyeska supervisor, or if

one is not available, by a security guard. Alyeska's supervisor will ensure compliance with terminal safety rules, will answer questions, and provide access to Alyeska records and data.

Alyeska agrees that the prior notification and daytime visit requirements are not applicable to emergency or unusual circumstances. As a matter of practice, the DEC has not provided one day prior notice of routine visits. Otherwise, these access rules have worked since 1986.

In July 1988, after becoming Terminal Superintendent, I agreed with Dan Lawn that DEC personnel should not be required to wait longer than 15 minutes at the terminal gate for an escort. This procedure was acceptable to the DEC until September 21, 1989 when I agreed with Bruce Erickson, on behalf of the DEC, to reduce the maximum waiting time at the gate to 5 minutes. Initially, Alyeska placed an additional security guard on daytime shifts to ensure compliance with this standard. I have also assigned Jim Wilson, an Alyeska employee, to the primary responsibility of providing timely access for DEC and other agency personnel.

As you can see from the attached data taken from gate logs for a period from June 1988 through September 1989, DEC visits to the terminal occurred as frequently as 41 times in one month, indicating that Alyeska's access rules did not interfere with the agency's work.

Consistently since 1986, Alyeska has requested feedback from DEC inspectors about their observations at the terminal. For example, we have requested the DEC to work with us to develop and

use a standard vessel inspection form. Several years ago we developed an inspection form with the Coast Guard that allows us to quickly identify and correct vessel operational problems during loading and identify problem trends needing attention. Immediate identification of DEC concerns during vessel loading should be addressed initially by the vessel. If a vessel is not responsive, Alyeska's marine supervisors are authorized to stop the vessel loading operations to prevent a potential pollution discharge. Similarly, we would like feedback on all DEC visits to enable us to evaluate corrective measures when problems are noted.

Unfortunately, we do not receive the substantial feedback from DEC inspectors that is essential for a constructive relationship. I agree with Mike Williams that state law should require agency inspectors to tell facilities managers what they find during visits and inspections.

Thank you again for seeking our views on Alyeska's relationship with the DEC in Valdez.

TABLE A  
 VISITS OF A.D.E.C. EMPLOYEES TO ALYESKA TERMINAL, BY MONTH

<u>MONTH</u>	<u>TOTAL VISITS</u>
JUNE 1988	10
JULY	39
AUGUST	41 (see table B for detail)
SEPTEMBER	36
OCTOBER	30
NOVEMBER	10
DECEMBER	1
JANUARY 1989	11
FEBRUARY	0
MARCH	8 (pre-spill 4: 3-11, 3-12, 3-12, 3-16) (post spill 4: 3-24, 3-29, 3-31, 3-31)
APRIL	32 (see table C for detail)
MAY	8
JUNE	7
JULY	11
AUGUST	17
SEPTEMBER	12

TABLE B, PAGE 1

DATE	TIME	A. D. E. C. EMPLOYEE	ALYSEA CONTACT	PURPOSE OF VISIT
8-1	0900 0910	D. LAWN, T. McCARTY	R. BROWN	SLUDGE PIT, IMPOUND BASIN
8-1	1539 1554	D. LAWN, T. McCARTY	R. BROWN	SLUDGE PIT, IMPOUND BASIN
8-2	1019 1039	D. LAWN, T. McCARTY	R. BROWN	SLUDGE PIT, IMPOUND BASIN
8-2	1519 1535	D. LAWN, T. McCARTY	R. BROWN	SLUDGE PIT, IMPOUND BASIN
8-3	0831 0855	D. LAWN, T. McCARTY	R. BROWN, C. ROBINSON	SLUDGE PIT, IMPOUND BASIN
8-3	1453 1615	T. SCVANCARA	R. BROWN, K. GILSON, R. SARNACKI	SLUDGE PIT, IMPOUND BASIN. INSPECT TANKER
8-3	1453 1508	D. LAWN	R. BROWN	SLUDGE PIT, IMPOUND BASIN
8-4	1413 1515	D. LAWN, G. MAGRR (sp?)	R. BROWN, C. ROBINSON	SLUDGE PIT, IMPOUND BASIN. AREA 19
8-5	1027 1107	D. LAWN, T. McCARTY	L. SHIER	IMPOUND BASIN, BUT, DAF CELLS
8-5	1426 1451	D. LAWN, T. SCVANCARA	L. SHIER	INSPECT TANKER
8-8	1138 1202	D. LAWN, T. SCVANCARA	C. ROBINSON	VAPOR RECOVERY
8-9	0956 1108	D. LAWN, T. McCARTY	guard CRAIG, R. BROWN	ADMIN BLDG
8-10	1500 1532	D. LAWN, T. McCARTY	R. BROWN	SLUDGE PIT
8-11	0925 1035	D. LAWN, T. McCARTY	L. SHIER	DESTINATION UNKNOWN
8-11	1459 1602	T. SCVANCARA	P. KOSZAREK	TANKER INSPECTION
8-12	0852 0932	D. LAWN, T. McCARTY	R. BROWN	DAF CELLS, SLUDGE PIT, BUT IMPOUND BASIN
8-15	1032 1214	T. SCVANCARA	J. BALDERIDGE	ALL BERTH TANKER INSPECTION

TABLE B, PAGE 2

DATE	TIME	A.D.E.C. EMPLOYEE	ALYESKA CONTACT	PURPOSE OF VISIT
8-15	1509 1527	D. LAWN, T. McCARTY	R. BROWN	DAF CELLS, E. IMPOUND BASIN, SLUDGE PIT
8-16	0845 1119	T. SCVANCARA	J. RUNNELLS	TANKER INSPECTION
8-16	1001 1045	D. LAWN, T. McCARTY	C. ROBINSON	AREA 19, W. FIREWATER PUMPHOUS VALVE 746
8-18	1505 1544	D. LAWN, T. McCARTY	J. RUNNELLS, R. OLIVER	VALVE 746, 747, IMPOUND BASIN SLUDGE PIT
8-19	0955 1039	D. LAWN T. McCARTY	C. ROBINSON	VALVE 746
8-19	1430 1555	T. SCVANCARA	J. RUNNELLS	TANKER INSPECTION
8-19	1458 1525	D. LAWN, T. McCARTY	C. ROBINSON	VALVES 746, 747, SLUDGE PIT IMPOUND BASIN
8-22	1033 1100	D. LAWN	C. ROBINSON	VALVE 746
8-22	1420 1555	T. SCVANCARA	J. RUNNELLS	TANKER INSPECTION
8-22	1500 1520	D. LAWN, T. McCARTY	C. ROBINSON	VALVE 746
8-23	0957 1037	D. LAWN	C. ROBINSON	VALVE 746, ADMIN OIL SPILL BASIN
8-23	1459 1600	D. LAWN, T. McCARTY	C. ROBINSON, R. PUGH, D. NIBLER	VALVE 746, POWER VAPOR, BAL. WATER
8-24	0951 1040	D. LAWN	D. NIBLER, R. PUGH	VALVE 746, SLUDGE PIT, ADMIN
8-24	1505 1557	D. LAWN, T. McCARTY	R. OLIVER, D. NIBLER	VALVE 746, DAF CELLS



## TABLE C, PAGE 1

DATE	TIME	A.D.E.C. EMPLOYEE	ALYESKA CONTACT	PURPOSE OF VISIT
4-1	1347 1341	J. JANSSEN	J. BALDRIDGE, L. SHIER, R. BROWN	ADMIN
4-1	1400 1436	I. JOOR (sp?), J. BUTLER	J. WILSON, R. KENT	BOAT DOCK AREA
4-4	1350 1550	J. JANSSEN, J. HATTSON	L. SHIER, J. RUNNELLS	EXXON BAYTOWN
4-5	1058 1219	J. JANSSEN	P. KIHL, R. BROWN	ADMIN
4-6	1351 unk	J. JANSSEN	R. BROWN	UNKNOWN
4-8	0820 1229	H. FRIEDMAN	R. PREVOST, EXXON OFFICIALS	INCINERATOR
4-8	0905 1210	J. LeBEAU	R. PREVOST	W. TANK FARM INCINERATOR
				BURNING MONITORING
4-9	0926 1025	J. JANSSEN, R. CORMACK	GREENLEE	TOUR OF VMT
4-10	0723 0756	R. CORMACK, J. WILLINHAM	D. TAYLOR	B-4,
4-10	0950 1019	J. HALVORSON	C. ROBINSON	B-4, KEYSTONE CANYON
4-10	0823 1657	J. WILLINHAM	PUGH	B-4, KEYSTONE CANYON
4-10	1414 1933	R. CORMACK, J. LeBEAU	R. BROWN, D. BARNUM	B-4 KEYSTONE CANYON
4-11	0707 0816	J. LeBEAU	P. SARNACKI	B-4 KEYSTONE CANYON
4-11	1723 1854	L. TELFER, J. LeBEAU	P. SARNACKI	MARINE OPS
4-12	0816 0938	J. LeBEAU	P. SARNACKI	B-4 KEYSTONE CANYON
4-17	1411 1602	T. McCARTY, R. CRABBE	R. BROWN, P. KIHL, C. ROBINSON	MTC
4-20	1542 1953	T. McCARTY, R. CRABBE	C. ROBINSON, J. RUNNELLS	BWT



An Appeal for Significant Improvement in the Enforcement of  
Alaska's Environmental Laws

Recommended Legislative Remedies

submitted by: Sue Libenson, Executive Director  
Alaska Center for the Environment

Mike Wenig, Staff Attorney  
Trustees for Alaska

Introduction

In the wake of the Exxon Valdez oil spill, Alaska's greatest environmental tragedy, it is anticipated that the legislature will consider numerous approaches to improving public policy with the intent of preventing future spills. Many of these changes will focus on improvements within the Alaska Department of Environmental Conservation (DEC) which has the bulk of the State's responsibility with regards to oil spill prevention and response.

For any of the legislature's potential actions to succeed, however, they must be backed by one underlying factor - improved enforcement. While there are undoubtedly needs for change in spill prevention and response, the Commission must recognize that the current failure of existing regulatory safeguards is largely due to the inability of agencies, including DEC, to properly enforce the law and thereby create an atmosphere which encourages compliance by potential polluters.

The following outlines a package of legislative recommendations for improving the enforcement of Alaska's environmental laws and regulations. The implementation of these measures will ultimately be improved compliance, the ultimate tool in preventing future pollution catastrophes.

Recommendations

- I. Authorize DEC to assess administrative penalties.
- II. Strengthen criminal penalties for violations of pollution laws.
- III. Authorize DEC to make reasonable inspections without first obtaining a warrant.
- IV. Eliminate administrative and judicial "pre-enforcement review" of compliance orders.
- V. Provide for citizen suits to enforce environmental statutes and regulations.
- VI. Provide adequate funding for DEC to fulfill its regulatory

mandate.

Discussion of Recommendations

I. DEC SHOULD HAVE THE STATUTORY AUTHORITY TO ASSESS ADMINISTRATIVE PENALTIES

Among the tools that are necessary for DEC to have a credible, forceful, and efficient enforcement program is the authority to assess administrative penalties for violations of the State's environmental laws.

Penalties, generally, are an important enforcement tool because they greatly reduce the economic incentives to violate the State's environmental laws. However, DEC currently has the authority only to issue a compliance order requiring corrective action or to commence a judicial enforcement action for civil or criminal penalties.<sup>1</sup> Like most litigation, however, judicial enforcement actions require the State to commit substantial resources and time and, thus, are used only for the most extreme violators. By themselves, judicial enforcement actions cannot provide a sufficient enforcement threat.

A civil penalty program is thus a necessary tool for a credible enforcement arsenal. Administrative penalties could be assessed through a fair yet far less resource intensive administrative hearing procedure than court proceedings. Decisions by administrative hearing officers would be judicially reviewable on the record, rather than through a cumbersome trial

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<sup>1</sup> Two of these three tools, themselves, need to be strengthened, as explained below in sections IV and VI.

procedure.

Administrative penalties would greatly strengthen DEC's enforcement presence and capability by providing the agency with a relatively quick and efficient means of imposing penalties. The authority to assess administrative penalties is particularly important for the relatively numerous yet small violators, for whom DEC's commencement of lengthy judicial enforcement proceedings is simply not worthwhile. By greatly reducing the resources necessary to levy penalties, an administrative penalty program would provide an enforcement threat that is otherwise not present at all for these small violators.

Administrative penalties are an integral component of the federal environmental enforcement program.<sup>2</sup> Numerous state agencies also have the authority to assess penalties for violations of state environmental laws.<sup>3</sup> Administrative penalties should become an essential component of DEC's enforcement arsenal as well.

Of course, merely having the legal authority to assess penalties is not enough. DEC must also be given the corresponding budgetary resources to hire sufficient technical

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<sup>2</sup> See, e.g., section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g); section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a); section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 1361(a); section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a); and section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9609.

<sup>3</sup> For example, see Washington, RCW 90.48.144.

staff and permanent hearing officers to make the administrative penalty process work.

II. CRIMINAL PENALTIES FOR VIOLATIONS OF STATE ENVIRONMENTAL LAWS SHOULD BE STRENGTHENED

Stiff criminal sanctions are another essential component of the kind of enforcement program that is necessary to achieve full compliance with the State's environmental laws. The current liability for criminal violations of Alaska's environmental laws is inadequate.

With a few exceptions, negligent and knowing violations of the State's environmental laws are currently only class B and A misdemeanors, respectively. AS 46.03.790(a), (b). Class B misdemeanors are punishable by a fine of not more than \$1000 and by imprisonment for no longer than 90 days; Class A misdemeanors are punishable by a fine of not more than \$5000 and by a maximum of imprisonment for one year. AS 12.55.035(b)(3), (4); 12.55.135(a), (b).

These liabilities stand in stark contrast with criminal liabilities for violations of federal environmental laws. For example, under section 309(c) of the federal Clean Water Act, negligent violations are punishable by either or both maximum fines of \$25,000 per violation and/or one year imprisonment; knowing violations are punishable by either maximum fines of \$50,000 per violation or by three years imprisonment. 33 U.S.C.

§ 1319(c).<sup>4</sup>

Alaska's criminal liabilities should be strengthened by making negligent violations Class A misdemeanors and knowing violations Class C felonies, which are punishable by a maximum fine of \$50,000 per violation and five years' imprisonment. AS 12.55.035((b)(2); 12.55.125(e). In addition, the definition in AS 46.03.900(17) of "persons" who are subject to criminal sanctions should be amended to include "any responsible corporate officer." See Clean Water Act section 309(c)(6), 33 U.S.C. § 1319(c)(6).

The last legislature increased civil penalties for oil polluters (see SB 271) and considered tougher criminal sanctions in the oil pollution context. The legislature should now complete its mission and stiffen criminal sanctions for violations of all State environmental laws.

As to criminal liability for oil spills, in particular, two bills sponsored by the Governor and introduced in the last legislative session should become law. Among other things, HB 315 classifies as Class C felonies, oil spills of 10,000 barrels or more involving a failure to comply with an oil discharge contingency plan or a failure to adequately clean up a discharge of oil. HB 316 expands the penalties that can be levied against a defendant that is an organization by including fines equal to twice the damage or loss caused by the defendant.

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<sup>4</sup> See also, e.g., section 3008(d) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d); section 113(c) of the Clean Air Act, 42 U.S.C. § 7413(c).

III. DEC SHOULD HAVE THE AUTHORITY TO MAKE REASONABLE INSPECTIONS WITHOUT FIRST OBTAINING A WARRANT

The ability to make inspections to determine whether violations of the State's environmental laws are occurring is still another necessary element of a credible enforcement program. Currently, AS 46.03.860 appears to require DEC to obtain a search warrant before it can investigate possible violations. Federal environmental laws, in contrast, contain no such warrant requirement. For example, section 308(a)(B) of the Clean Water Act expressly provides the EPA with a "right of entry" and with authority "at reasonable times" to make inspections and copy relevant records. 33 U.S.C. § 1318(a)(B).<sup>5</sup>

Consistent with federal environmental law, AS 46.03.860 should be amended to remove the warrant requirement and thereby improve the DEC's ability to investigate potential violations of the State's environmental laws.

IV. THERE SHOULD BE NO "PRE-ENFORCEMENT REVIEW" OF DEC'S COMPLIANCE ORDERS IN EITHER AN ADMINISTRATIVE ADJUDICATORY HEARING OR JUDICIAL PROCEEDING

A sixth tool that is necessary for a sound, effective State environmental enforcement program is the ability of the enforcing agency to issue compliance orders without cumbersome procedural constraints. DEC does not presently have this ability.

Current State law (AS 46.03.850) provides DEC with the authority to issue compliance orders for known or suspected

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<sup>5</sup> See also, e.g., section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6927; and section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a).

violations of the State's environmental laws, but the required procedures for issuing such orders are so cumbersome as to render the compliance order an infrequently used and thus ineffective enforcement tool.

State law appears to require that, before DEC can issue an order requiring a polluter to comply with an applicable State environmental law, the agency must first notify the polluter of its finding that the polluter is or may be in violation and give the polluter an opportunity to respond to the finding. AS 46.03.850(a), (b).<sup>6</sup>

In addition, although compliance orders become effective upon receipt (AS 46.03.850(c)), it appears that recipients can subsequently contest the order in an adjudicatory hearing that is required to include the extensive procedural steps set out in the Administrative Procedure Act. See AS 44.62. Recipients of a compliance order can also challenge an adverse ruling by a hearing officer in court. AS 44.62.560.

By requiring DEC to defend an order at administrative and, subsequently, judicial hearings, Alaska law imposes substantial resource constraints on the use of the compliance order as an enforcement tool by DEC (and its legal representatives in the Department of Law). These constraints effectively discourage DEC

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<sup>6</sup> AS 46.03.865 allows DEC to sidestep this pre-notification procedure, but only in the extremely narrow circumstances, where DEC has found that there is an "actual or imminent" discharge of either oil, a hazardous substance, or a low level radioactive material.

from invoking this tool, except in extremely rare circumstances.<sup>7</sup> As a result, the tool has not been used to fulfill its obvious role, as an efficient, relatively quick means for DEC to command compliance with the State's environmental laws and to compel the cleanup of unlawful discharges of harmful pollutants.

As with several of the other enforcement tools discussed above, State law regarding the procedures for issuing compliance orders does not compare with EPA's legal authority to issue orders to compel compliance with federal laws. Federal environmental law generally adheres to the sound policy of not allowing "pre-enforcement review" of EPA's compliance orders. This means that compliance orders which do not also require the recipient to pay an administrative penalty generally can not be challenged in any administrative or judicial proceeding, until and unless EPA commences a judicial proceeding to enforce the order and seeks penalties for violations of the order. At that time, the validity of the order can be questioned by the

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<sup>7</sup> In fact, the right of a recipient to challenge an order in an administrative adjudicatory hearing, by itself, appears sufficient to effectively discourage DEC from issuing compliance orders. DEC's budget does not include sufficient funds for a permanent in-house staff of hearing officers. Thus, when an adjudicatory hearing is requested, DEC must hire hearing officers on a contract basis. The substantial expense of such outside contracting, alone, strongly discourages DEC from issuing compliance orders.

recipient as a defense to EPA's enforcement suit.<sup>8</sup>

As the Second Circuit Court of Appeals recognized, in upholding the principle of no pre-enforcement review of compliance orders issued under the federal Clean Air Act:

To introduce the delay of court review of administrative action taken to ameliorate a potential public health hazard would conflict with Congress' aim to 'accelerate . . . the prevention and control of pollution.' . . . In short, immediate pre-enforcement review of compliance orders . . . would 'serve neither efficiency nor enforcement' of the Clean Air Act.

Asbestec Const. Services, Inc. v. EPA, 849 F.2d 765, 769 (2d Cir. 1988).

Not until DEC's ability to issue compliance orders is as procedurally unencumbered as that of the EPA, will the compliance order become an effective tool in the State's environmental enforcement arsenal.

**V. PRIVATE CITIZENS SHOULD HAVE THE AUTHORITY TO ENFORCE THE STATE'S ENVIRONMENTAL LAWS**

The final, necessary, and, perhaps, most critical component of a viable, credible State enforcement program is the ability of citizens to act as "private attorneys general" by bringing suits to enforce the State's environmental laws. This ability is nonexistent under current law.

AS 46.03.760 and 46.03.765 provide State courts with authority to compel the payment of civil penalties and to grant

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<sup>8</sup> For example, section 113(h) of CERCLA, 42 U.S.C. § 9613(h) expressly prohibits federal courts from reviewing challenges to compliance orders, except under limited circumstances, including a suit brought by EPA to seek penalties for a violation of the order.

injunctive relief for violations of the State's environmental laws. But AS 46.03.870 provides that the bases for the enforcement actions listed above "inure solely to and are for the benefit of the state. . . ." Similarly, AS 46.03.890 provides that only State officials are authorized to enforce the State's environmental laws.

The ability of private citizens to enforce environmental laws is a critical supplement to government enforcement because resource constraints inevitably prevent governments from taking all the enforcement measures that would otherwise be warranted. Given the DEC's severely limited enforcement resources (even if a separate enforcement unit like the one recommended above were available), citizen suits are necessary to present to the regulated community a forceful and credible message that violations of the State's environmental laws will not be tolerated.

Congress has wisely recognized the value of citizen suits as supplements to governmental enforcement and thus provided citizens with ample authority to enforce the federal environmental laws.<sup>9</sup> The record of citizens suits to enforce these laws is a strong one. Citizens enforcement actions have proven not to be unreasonable avenues for harassment of industry

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<sup>9</sup> See, e.g., section 505 of the Clean Water Act, 33 U.S.C. § 1365; section 7002 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972, section 304 of the Clean Air Act, 42 U.S.C. § 7604; and section 310 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9659.

or the EPA, but to be valuable means for stopping major violators whom the EPA had not been able to reach.

Full enforcement and, in turn, compliance with the State's environmental laws will simply not be achieved without the ability of citizens as well as the government to enforce those laws.

VI. THE LEGISLATURE SHOULD PROVIDE ADEQUATE FUNDING FOR DEC TO FULFILL ITS LEGAL MANDATE OF PROTECTING THE ENVIRONMENT

A State such as Alaska which relies on a healthy environment for many of its economic mainstays such as tourism and fisheries and yet persistently scrimps on environmental protection will continue to run the risk of environmental and associated economic degradation. Current funding levels for DEC not only preclude effective enforcement, they also result in delayed and inadequately researched permits as well as narrow interpretation of regulations intended to protect the environment. Future funding should provide for sufficient personnel, including attorneys, to provide DEC the ability to more effectively enforce Alaska's environmental laws. A commitment to increased funding would more realistically reflect the immense mandate of environmental protection assumed by DEC and the importance of DEC's success in assuring that there will be a viable environment for Alaska's long term needs. We will be working shortly towards providing the legislature with some recommendations for DEC budget needs.

REGIONAL CITIZENS ADVISORY COMMITTEE  
750 West Second Avenue, Suite 200  
Anchorage, Alaska 99501  
(907) 694-9068

January 17, 1990

Senator Bettye Fahrenkamp, Chairman  
Alaska State Senate Resources Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

I am writing to express the support of the Regional Citizens Advisory Committee for Senate Joint Resolution No. 58 now under consideration by your committee.

The formation of the Regional Citizens Advisory Committee (RCAC) was a cooperative effort between Alyeska Pipeline Service Company (Alyeska) and citizens of Prince William Sound and adjacent areas impacted by the Exxon Valdez oil spill. Efforts to organize this group were guided by recognition of the fact that participation of an informed citizenry is essential to insuring that potential environmental impacts from the operation of the Trans Alaska Pipeline Terminal, including operation of oil tankers served by the terminal, are minimized.

For your information, I have attached a copy of the list of the members of RCAC. The members came together in June of 1989 for two purposes:

- 1) To review Alyeska's revised oil spill prevention and response plan for Prince William Sound; and
- 2) To develop a plan of action for the formation of a permanent citizens' oversight group to monitor operation of the Trans Alaska Pipeline Terminal and oil tanker traffic served by terminal.

RCAC members provided Alyeska with our comments on the Prince William Sound Oil Spill Prevention and Response Plan released August 1. Our comments were incorporated into major revisions

to the plan released December 31. We are presently reviewing these revisions and will submit our comments to Alyeska in mid February.

Our chosen course of action for developing a permanent citizens oversight group was to incorporate as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code and enter into a contract with Alyeska that requires them to provide funding for the citizens group and establishes a formal and verifiable process for insuring that the advice provided by the citizens group is given serious consideration by the company.

We were chartered as a nonprofit corporation by the State of Alaska on December 26, 1989. The organizational meeting of the newly incorporated Regional Citizens Advisory Committee was held January 15. At that meeting, we elected our corporation officers and approved bylaws. Contract negotiations with Alyeska are nearing completion and we anticipate we will have a final contract ready to sign by the end of this week.

While we were organizing RCAC here in Alaska, we were aware that the concept of a citizens advisory committee had been included in oil spill legislation pending in Congress. We carefully reviewed Title V of Senate Bill 686 (authored by Senator Murkowski) and Title VIII of House Bill 1465 (authored by Senator George Miller of California), which deal with the establishment of citizens oversight groups. We felt Senator Murkowski's legislation most closely reflected what we felt was needed, except that it did not provide enough regional representation.

We rewrote Senator Murkowski's Title V to provide broader citizen oversight and took our language to Washington, D.C. in the hope that we could get it included in HB 1465 before it passed the House. Although we were asking for our language to be inserted very late in the House debate on the bill, Congressman Don Young agreed that he would see what he could do. After reviewing the direction of the debate on HB 1465, Congressman Young thought our language would have greater success if he could find another vehicle for its passage. He changed the federal oversight authority outlined in our language from the Environmental Protection Agency (EPA) to the U.S. Coast Guard and attached it to the Coast Guard appropriations bill which passed the House November 7, 1989.

When the House version of the Coast Guard appropriations bill reached the Senate, Young's Amendment (our language) was deleted. The Senate felt the Young Amendment should not have

been attached to Coast Guard appropriations, but should be considered along with S 686 and HB 1465 by the House-Senate conference committee for oil spill legislation to be convened in February. We intend to carry our language to conference committee staff next week.

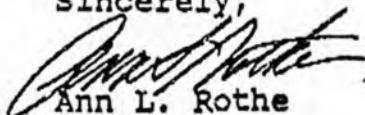
I have included for your information our final recommendations on this language. Please note that we have given the federal oversight authority back to the EPA because we felt our concerns over the operation of the Trans Alaska Pipeline Terminal and tanker traffic through Prince William Sound fall primarily in their purview as the lead federal agency charged with responsibility for enforcement of the Clean Water Act. We have contacted the offices of Senators Stevens and Murkowski and Congressman Young, and have received assurances that they will help us in our efforts.

In the meantime, we are continuing the task of building our organization. We have established four working subcommittees: Oil Spill Prevention and Response, Port Operations and Vessel Traffic Systems, Terminal Operations and Environmental Monitoring, and Scientific Research and Review. We intend to hold public meetings over the next three months in locations throughout the region represented by our committee to take public comment regarding the scope and purpose of these subcommittees and seek nominations for subcommittee members. In addition, we will seek nominations for ex-officio members from the state and federal regulatory agencies responsible for overseeing terminal operations and tanker traffic in the Sound.

I hope this provides you with an understanding of the purpose and commitment of the Regional Citizens Advisory Committee. On behalf of our committee, I respectfully request that you give your strong support to SJR No. 58.

If you have further questions regarding the Regional Citizens Advisory Committee, please do not hesitate to contact me.

Sincerely,

  
Ann L. Rothe  
President

Enclosures

cc: Members, Regional Citizens Advisory Committee

NATIONAL WILDLIFE FEDERATION



ANN ROTHE  
ALASKA REGIONAL  
REPRESENTATIVE

750 WEST SECOND AVENUE, #200  
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(907) 258-4800

December 12, 1989

## RCAC MEMBERS

NAME	ADDRESS	PHONE	FAX
BOB BRODIE CITY OF KODIAK	710 MILL BAY RD. KODIAK, AK 99615	486-3224(WK) 486-3079(HM)	486-4009
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CHRIS GATES CITY OF SEWARD	5th & ADAMS BOX 167 CITY HALL SEWARD, AK 99664	224-3331(WK) 224-8667(HM)	224-3248
MARILYN LELAND, C.D.F.U.	BOX 939 CORDOVA, AK 99574 SS# 384-48-2011	424-3447(WK) 424-7778(HM)	424-3430
JOHN McMULLEN PWSAC	PWSAC OFFICE CORDOVA, AK 99574 SS# 386-32-5722	424-7511(WK)	424-7514
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STACY PASCAL CHUGACH ALASKA CORP.	3000 A STREET SUITE 400 ANCHORAGE, AK 99503	563-8866(WK) 272-2272(HM)	563-8402
TIM ROBERTSON CITY OF SELDOVIA	DRAWER B SELDOVIA, AK 99663	234-7469(WK) 234-7491(HM)	234-7430
ANN ROTHE NAT'L WLD. FEDERATION	750 W. 2ND AVE SUITE 200 ANCHORAGE, AK SS# 479-70-4492	258-4800(WK)	258-4811
JEROME SELBY KODIAK ISLAND BOROUGH	710 MILL BAY RD KODIAK, AK 99615	486-5736(WK)	486-2886
MARGE TILLON CITY OF HOMER	P.O. BOX 935 HOMER, AK 99603	235-7085(HM)	235-7085
MEAD TREADWELL CITY OF CORDOVA	FIRST STREET BOX 1210 CORDOVA, AK 99574	424-6248(WK) 277-3042(HM)	424-6000

## DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The mission of the Department of Environmental Conservation (DEC) is to protect public health and the environment. DEC provides statewide water and sewer construction, management, and technical assistance. It inspects restaurants and food processors. DEC also has broad responsibilities in the highly technical area of pollutant and hazardous waste control. This is the lead agency for oil spill management.

### SUMMARY ANALYSIS

The Valdez oil spill placed DEC at the center of state (and national) attention. The FY1990 budget was substantially increased over FY1989, from \$20 million to \$29 million. For FY1991 the Governor proposed an additional \$3.7 million, \$2.9 of which is general fund.

### MAJOR ISSUES

The Governor has requested \$470,000 (\$350,000 GF) to expand the Remote Maintenance Worker Program, provide utility management and business services, and enhance the operation of village wastewater systems.

Environmental Health increments total \$489,300 (\$403,800 GF): \$109,300 GF is requested for a reindeer inspection program, \$249,800 GF to increase seafood inspection capabilities, and \$130,200 (\$44,700 GF) for the Palmer lab facility, mostly for a pesticide monitoring program.

The bulk of the requested increments fall into the Environmental Quality Projects component: \$518,000 from the Oil and Hazardous Substance Release Response Fund will be used to clean up ten additional contaminated sites.

General fund requests total \$2,156,300:

\$915,500 to enhance oil spill prevention and response (17 full-time positions).

\$481,200 for hazardous waste management under RCRA (7 full-time positions).

\$437,000 for an investigation and enforcement unit (5 full-time positions).

\$186,000 to expand the Prince William Sound Office (2 full-time positions).

\$136,600 for toxic air contaminant control positions (2 full-time positions).

The Governor's requested budget for DEC represents a 13.5 percent increase (17.3 % GF) over the FY1990 authorized.

## **POSITION ANALYSIS**

Five full-time and 1 part-time position are proposed to be added to Facilities Construction and Operations to provide maintenance and management assistance to remote villages.

Environmental Health has the proposed addition of a veterinarian for reindeer inspection, three seafood inspectors, and two positions at Palmer for pesticide control.

The Governor proposed 33 Environmental Quality Projects component new positions (as indicated in parentheses) for the increments listed above. In addition nineteen positions were created in the adjusted base (funded by transfer of contractual monies) for various programs including Leaking Underground Storage Tank (LUST), air and water quality, and oil and hazardous response.

# Alyeska pipeline

SERVICE COMPANY

1205 SOUTH WYOMING STREET, ANCHORAGE, ALASKA 99501 TELEPHONE 265-1211 TELETYPE 265-1211

March 19, 1986

Mr. William Ross, Commissioner  
Department of Environmental Conservation  
State of Alaska  
Pouch O  
Juneau, AK 99811

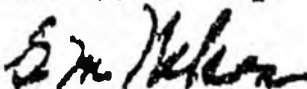
Dear Mr. Ross:

In an effort to promote a more effective exchange of information between your office and Alyeska, we intend to implement a more defined and hopefully more useful approach to accommodate representatives from your office while at the Valdez Terminal. As you are aware, the Department of Environmental Conservation is empowered to, at reasonable times, enter and inspect any property or premises to investigate or to ascertain compliance or non-compliance with any regulations.

Alyeska intends to put the following procedure into effect as soon as possible: Alyeska will require advance notice of intent to enter the Terminal facilities - preferably one day's notice. Visits should be confined to day-time periods of operation (8:00 am to 4:00 pm). These requirements can, of course, be waived under unusual or exceptional circumstances. In addition, Alyeska will require that before entering the Terminal an ADEC representative will be required to check in with a designated Alyeska representative who will accompany them at all times during their stay on the Terminal to answer any questions or address any concerns they may have at the time.

We believe this approach represents an opportunity to enhance effective communications between your department and Alyeska, without interfering with our respective responsibilities. If you have any questions regarding the implementation or operation of this approach, please feel free to contact us directly at 265-8506.

Sincerely,



G. M. Nelson  
President

**DEPT. OF ENVIRONMENTAL CONSERVATION**

OFFICE OF THE COMMISSIONER  
P.O. BOX 0, JUNEAU, ALASKA 99811-1800

TELEPHONE (907)  
465-2500

907-465-2500

March 27, 1988

Mr. G. M. Nelson, President  
Alaska Pipeline Service Company  
1835 South Bragaw Street  
Anchorage, Alaska 99512

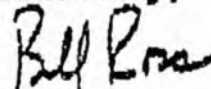
Dear Mr. Nelson:

I have received your letter of March 19 in which you describe procedures that you believe would facilitate access to the premises of the Valdez Terminal by Department of Environmental Conservation (DEC) staff.

I concur that the procedures are, by and large, reasonable and DEC will conform with them, consistent with the need to discharge our official duties.

As we discussed on the phone, DEC reserves the right to conduct impromptu visits for the purposes of monitoring and/or enforcement activities. However, should the need arise to do either of these, it is reasonable that we check in with your designated representative.

Sincerely,



Bill Ross  
Commissioner

cc: Keith Kelton, Director  
Environmental Quality, DEC  
Bob Martin, Deputy Director  
Environmental Quality, DEC  
Bill Lamoreaux, Supervisor  
Southcentral Regional Office, DEC  
Dan Lawn, Environmental Engineer  
Valdez District Office, DEC

(P)

U.S. Department  
of Transportation

United States  
Coast Guard



Commander  
Seventeenth  
Coast Guard District

P.O. Box 3-5000  
Juneau, AK 99802-1217  
Phone: (907) 586-7195  
Staff Symbol: m

16000  
December 19, 1989

Marilyn Heiman  
Alaska Oil Spill Commission  
707 A Street, Suite 202  
Anchorage, Alaska 99501

Dear Ms. Hieman:

Listed below are the number of personnel assigned to the departments at the three (3) Marine Safety Offices (MSO) in Alaska. The departments are broken down as follows:

Marine Inspection: responsible for vessel inspection duties and investigation of marine casualties.

Port Operations: reviews contingency plans; conducts facility inspections; conducts vessel inspections for compliance with navigation and pollution prevention laws; responds to pollution incidents.

Regional Examination Center: responsible for licensing and documentation of seamen.

Vessel Traffic Services:

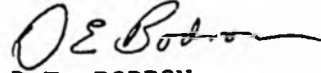
The numbers listed include personnel assigned to Marine Safety Detachments (MSD) associated with MSO Anchorage and MSO Juneau. The numbers do not reflect the total number of personnel assigned to each unit. For instance, I have not included administration personnel or civilian employees assigned to vessel documentation duties. Nor have I included the commanding and executive officers because they are responsible for all aspects of marine safety within their Captain of the Port/Marine Inspection zones.

You must also realize that many officers and enlisted personnel have multiple responsibilities that transcend the department breakdowns listed above. The information provided is a listing of the primary personnel assigned to each department, but these same personnel may be used in other areas as operational commitments dictate.

	<u>Marine Inspection</u>	<u>Port Operations</u>	<u>Regional Exam Center</u>	<u>VTS</u>
MSO ANCHORAGE	7 officers 1 enlisted	2 officers 14 enlisted	1 officer 1 enlisted	N/A N/A
MSO VALDEZ	2 officers 0 enlisted	0 officers 4 enlisted	N/A N/A	1 officer 10 enlisted 3 civilians
MSO JUNEAU	4 officers 0 enlisted	1 officer 4 enlisted	1 officer 1 enlisted	N/A N/A

16000  
December 19, 1989

If you have any questions about the above information or the organization of the Marine Safety Offices please contact Commander Scot Tiernan of my staff at the 586-7689. He will provide you with any additional information you need.



D.E. BODRON  
Captain, U. S. Coast Guard  
Chief, Marine Safety Division  
Seventeenth Coast Guard District  
By direction of the District Commander